

**UNCLAIMED MONEY (SUPERANNUATION AND RSA PROVIDERS)
BILL 2002**

Explanatory Memorandum

Part 1 - Preliminary

Clause 1

Short Title.

Clause 2

Provides for the Act to come into operation at the beginning of the first half-year after it receives Royal Assent.

Clause 3 – Overview of this Act

The Act enables unclaimed money held by certain superannuation and RSA providers to be paid to the Treasurer, to provide for a register of such unclaimed money, and for related purposes, and imposes obligations on superannuation providers.

Clause 4 – Meaning of Terms

Contains the definitions required for the purposes of the Act.

Unclaimed money has the meaning given by sections 12 and 14 of the Commonwealth *Superannuation (Unclaimed Money and Lost Members) Act 1999*. Section 12 of that Act reads

“General meaning of unclaimed money - an amount payable is treated as unclaimed money if:

- *the member has reached eligibility age;*
- *the superannuation provider determines that under the governing rules of the fund or by operation of law, a benefit (other than a pension or annuity) is immediately payable in respect of the member;*
- *the superannuation provider has not received an amount in respect of the member (and, in the case of a defined benefits superannuation scheme, no benefit has accrued in respect of the member) for at least 2 years (eg. the account has been inactive for the last 2 years); and*

- *after making reasonable efforts and after a reasonable period has elapsed (eg. a reasonable period may be necessary to resolve legal issues), the superannuation provider is unable to ensure that the member receives the benefit.”*

Section 14 reads

“Meaning of unclaimed money deceased member

An amount payable is treated as unclaimed money if:

- *the member has died;*
- *the superannuation provider determines that under the governing rules of the fund or by operation of law, a benefit (other than a pension or annuity) is immediately payable in respect of the member;*
- *the superannuation provider has not received an amount in respect of the member (and, in the case of a defined benefits superannuation scheme, no benefit has accrued in respect of the member) for at least 2 years; and*
- *after making reasonable efforts and after a reasonable period has elapsed, the superannuation provider is unable to ensure that the benefit is received by the person who is entitled to receive the benefit.”*

Clause 5 – Status of Notes

Notes in this Act are provided to assist understanding and do not form part of the Act.

Part 2 – Obligations of superannuation providers

The proposed State legislation will not impose any obligation on superannuation providers that does not already exist but will provide for the administration of this function in Western Australia.

Clause 6 – Statement of unclaimed money

A superannuation provider must give to the Treasurer a statement of all unclaimed money at the end of each half-year [**Subclause 6(1)**] in an approved form. [**Subclause 6(2)**]

If, between the end of the half-year and the day the statement is given to the Treasurer, the superannuation provider pays any unclaimed money to a person

entitled to it, the statement must contain such particulars relating to the amounts paid as are required by the approved form. **[Subclause 6(3)]**

An unclaimed money statement must be given to the Treasurer within 4 months of the end of each half-year:

- 1 November for the half-year ending 30 June; and
- 1 May for the half-year ending 31 December.

[Subclause 6(4)]

The Treasurer may, in writing, extend the time to lodge the unclaimed money statement before, on or after the due date (ie. 1 May and 1 November each year).

[Subclause 6(5)]

If the requirements in respect of unclaimed money statements to be given to the Treasurer apply to a superannuation provider and the provider has not complied with the requirements, the provider is liable to a fine of up to \$11 000.

[Subclause 6(6)]

A superannuation provider does not fail to comply with the requirement to report unclaimed money within the 4 month period if the Treasurer has extended the time to lodge the unclaimed money statement and the superannuation provider lodged the statement within the extended period. **[Subclause 6(7)]**

Clause 7 – Payment of unclaimed money to the Treasurer

The superannuation provider must pay with the statement to the Treasurer, the outstanding amount of unclaimed money for the half-year. **[Subclause 7(1)]**

A superannuation provider that does not comply with the requirements relating to the payment of unclaimed money to the Treasurer is liable to a fine of up to \$11 000.

[Subclause 7(2)]

Clause 8 – Records of superannuation providers

This Bill imposes certain record keeping requirements on superannuation providers. Superannuation providers must keep records of all transactions and acts engaged in under the Act **[Subclause 8(1)]**.

The records must be kept in writing in the English language or, if not in writing (eg. in an electronic medium such as computer disc), in a form which is readily accessible and convertible into writing in English. **[Subclause 8(2)]**

The records must be retained until the end of 5 years or the completion of the transactions or acts to which those records relate (eg. this may involve the cessation of the member being a lost member of the provider), whichever is the later. **[Subclause 8(3)]**

A superannuation provider does not have to keep records if the Treasurer notifies the provider that it is not required to do so. **[Subclause 8(4)]**

The maximum penalty on conviction for failure to comply with the record keeping requirements is a fine of not more than \$6 600.

Clause 9 – Discharge of superannuation providers from liability

The superannuation provider is discharged from further liability in respect of the unclaimed money upon payment of the money to the Treasurer.

Clause 10 – Superannuation providers not in breach of trust

Nothing done by a superannuation provider in accordance with this Act constitutes a breach of trust.

Part 3 – Administration

Clause 11 – Register of unclaimed money

The Treasurer must keep a register that has particulars of:

- unclaimed money paid by a superannuation provider to the Treasurer; and
- each member entitled to the unclaimed money.

[Subclause 11(1)]

The register may also contain:

- other information given to the Treasurer that is of the type contained in the register (this will allow the register to be updated with other relevant information given to the Treasurer, for example, from members of the public);
- information originally contained in the unclaimed money register kept by the Commonwealth Commissioner of Taxation and provided to the Treasurer by the Commissioner; and

- information relating to unclaimed money of members of regulated exempt public sector superannuation schemes.

[Subclauses 11(2), (3), (4) and (5)]

Clause 12 – publication of information in the register

The Treasurer may authorise information in the register to be:

- published in the Gazette;
- made available to the public (whether or not on the payment of a fee) in such other manner as the Treasurer determines; or
- made available to a particular person (whether or not on the payment of a fee) in such manner as the Treasurer determines.

[Subclause 12(1)]

The authorisation may extend to so much of the information in the register as the Treasurer considers appropriate. ***[Subclause 12(2)]***

Tax file numbers are specifically excluded from the information that may be published. ***[Subclause 12(3)]***

Clause 13 – payment of unclaimed money by the Treasurer

The Treasurer must pay unclaimed money to a person if:

- unclaimed money has been paid to the Treasurer by a superannuation provider; and
- the Treasurer is satisfied that the superannuation provider who paid the unclaimed money to the Treasurer, would have paid the unclaimed money to the person.

[Subclause 13(1)]

If a superannuation provider satisfies the Treasurer that an amount of unclaimed money paid by the superannuation provider to the Treasurer exceeds the correct amount due to the person concerned, the Treasurer must refund the excess amount collected, to the provider. ***[Subclause 13(2)]***

The Consolidated Fund is appropriated for the purposes of payment of unclaimed money. ***[Subclause 13(3)]***

Clause 14 – Access to premises

This Bill contains provisions dealing with access to premises and information gathering powers. Similar provisions are found in other Acts administered by the Treasurer, for example, section 45 of the *Payroll Tax Assessment Act 1971*. The provisions are necessary to facilitate management of compliance with the Act. **[Clauses 14 and 15]**

Under these powers, an authorised officer must be given entry at any reasonable time, to land or premises. The officer must also be given full and free access to all books, records and other documents held by any person, and right to inspect, examine or make copies of them. **[Subclause 14(1)]**

The officer is not entitled to remain on the land or premises unless written authority signed by the Treasurer is produced at the request of the occupier. **[Subclause 14(2)]**

The occupier of land or premises entered or proposed to be entered by an authorised officer is required to provide the officer with all reasonable facilities and assistance to carry out official duties. **[Subclause 14(3)]**

The maximum penalty on conviction for failure to comply with the access to premises provisions is a fine of \$1 100. **[Subclause 14(4)]**

Clause 15 – Obtaining information and documents

The Treasurer will also be able to require, by notice in writing, any person to:

- give information on oath or otherwise;
- attend before the Treasurer and answer questions on oath or otherwise; or
- produce any documents in the custody or under the control of that person.

[Subclauses 15(1), (2) and (3)]

The regulations must prescribe scales of expenses to be allowed to persons required to attend before the Treasurer. **[Subclause 15(4)]**

The maximum penalty for failure to comply with the requirement under subsection (1) and (2) is a fine of \$2 200. **[Subclause 15(5)]**

Part 4 – Privacy

Clause 16 – Persons to whom this Part applies

This part applies to a person who is or has been:

- the Treasurer;
- a person to whom the Treasurer has delegated a function or power under this Act;
- the holder of an office in the Public Service; or
- in other cases, appointed or employed by, or a provider of services for the State.

[Subclause 16(1)]

A person to whom Part 4 applies must, if and when required by the Treasurer to do so, make an oath or declaration, in a manner and form set out in writing by the Treasurer to maintain secrecy in accordance with this Part.

[Subclauses 16(2) and (3)]

Clause 17 - Information may be recorded or disclosed only for the purposes of this Act

A person to whom this Part applies must not:

- make a record of any protected information; or
- disclose directly or indirectly to a person any protected information about a third party,

unless the record is made, or the information is disclosed:

- under or for the purposes of this Act ; or
- in performing a person’s duties under or in relation to the Act.

A person who commits a breach of privacy is liable to a term of imprisonment of up to 2 years.

Clause 18 – Courts may not require information or documents

A person to whom this Part applies is not required:

- to disclose protected information to a court; or
- to produce a protected document in court,

except where it is necessary for the purposes of implementing this Act.

Clause 19 – Information may be divulged to persons performing duties under this Act

Nothing in the Act or other legislation of which the Treasurer has general administration prohibits the Treasurer or an authorised person from disclosing any information to a person performing duties under the Act for the purpose of enabling that person to perform the duties.

Clause 20 - Information may be divulged to a court for the purposes of this Act

Nothing in the Act or other legislation of which the Treasurer has general administration, prohibits the Treasurer or an authorised person from:

- disclosing to a court any information obtained under or for the purposes of the Act or other legislation of which the Treasurer has general administration; or
- producing in court a document obtained or made under or for the purpose of the Act,

where it is necessary for the purposes of implementing this Act.

Clause 21 – Information may be divulged with the consent of the superannuation provider or individual

This Act does not prohibit the Treasurer or an authorised person from disclosing any protected information relating to:

- the affairs of a superannuation provider or a trustee of a regulated exempt public sector superannuation scheme if the provider or trustee agrees in writing to disclose the information; or
- an individual if the individual agrees in writing to the disclosure of the information.

Part 5 - Miscellaneous

Clause 22 – Approved forms

A notice, application, statement, or other document is in an approved form if it:

- is in a form approved in writing by the Treasurer;
- contains all the required information; and
- is lodged at the place and in the manner that the Treasurer requires.

[Subclause 22(1)]

An approved form may extend to electronic transmissions, mediums and forms and may apply to more than one notice, application, statement or other document.

[Subclauses 22(2) and (3)]

Clause 23 – Delegation by the Treasurer

The Treasurer may delegate to any Minister any functions or powers that the Treasurer has under this Act, other than this power of delegation. ***[Subclause 23(1)]***

The Treasurer or any Minister to whom any function has been delegated under subsection (1) may delegate to any officer of the Public Service any function or powers other than this power of delegation. ***[Subclause 23(2)]***

The delegation must be in writing. ***[Subclause 23(3)]***

Clause 24 – Authorised Officers

The Treasurer may, in writing, authorise a person who is an officer in the Public Service to be an authorised officer for the purposes of a provision or provisions of this Act.

Clause 25 – Regulations

This Bill provides that the Governor may make regulations for the purposes of the Act.

Clause 26 – Miscellaneous amendments

Provides for an amendment to the Unclaimed Money Act 1990 to insert a reference to sections 12 and 14 of the Commonwealth *Superannuation (Unclaimed Money and Lost Members) Act 1999*. The sections provide definitions of meaning for unclaimed money in general and in relation to deceased members respectively.