



Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012

No. 176, 2012

**An Act to amend the law relating to unclaimed
money, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 176, 2012

**An Act to amend the law relating to unclaimed
money, and for other purposes**

[Assented to 4 December 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Treasury Legislation Amendment
(Unclaimed Money and Other Measures) Act 2012*.

Schedule 1 Banking

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 4 December 2012 |
| 2. Schedule 1, items 1 to 7 | 1 July 2013. | 1 July 2013 |
| 3. Schedule 1, item 8 | The day after this Act receives the Royal Assent. | 5 December 2012 |
| 4. Schedule 2, items 1 to 5 | 1 July 2013. | 1 July 2013 |
| 5. Schedule 2, item 6 | The day after this Act receives the Royal Assent. | 5 December 2012 |
| 6. Schedule 3, items 1, 2 and 3 | 1 July 2013. | 1 July 2013 |
| 7. Schedule 3, item 4 | The day after this Act receives the Royal Assent. | 5 December 2012 |
| 8. Schedule 4, items 1 to 4 | The day after this Act receives the Royal Assent. | 5 December 2012 |
| 9. Schedule 4, items 5 and 6 | 30 December 2012. | 30 December 2012 |
| 10. Schedule 4, items 7 and 8 | The day after this Act receives the Royal Assent. | 5 December 2012 |
| 11. Schedule 5 | The day after this Act receives the Royal Assent. | 5 December 2012 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Banking

Banking Act 1959

1 Subsection 69(1)

Omit “not less than 7 years.”, substitute:

not less than:

- (a) 3 years; or
- (b) if a greater number of years is specified in the regulations—that greater number of years;

beginning:

- (c) at the most recent time when the account was operated on either by deposit or withdrawal; or
- (d) if another time is ascertained in accordance with the regulations—at that other time.

2 After subsection 69(1)

Insert:

- (1AA) Subsection (1) has effect subject to subsections (1A), (1B), (1C), (1D) and (1E).

3 Paragraphs 69(1A)(b) and (c)

Repeal the paragraphs, substitute:

- (b) the account has not been operated on either by deposit or withdrawal for a period (the *inactive period*) of not less than:
 - (i) 3 years; or
 - (ii) if a greater number of years is specified in the regulations—that greater number of years;

beginning:

- (iii) at the most recent time when the account was operated on either by deposit or withdrawal; or
 - (iv) if another time is ascertained in accordance with the regulations—at that other time; and
- (c) after the period of:
 - (i) 3 years; or

- (ii) if a greater number of years is specified in the regulations—that greater number of years; beginning at the start of the inactive period, the ADI has been unable to contact the owner about those farm management deposits after making reasonable efforts.

4 After subsection 69(1A)

Insert:

- (1B) However, moneys to the credit of an account specified in the regulations are *unclaimed moneys* if, and only if, the conditions specified in the regulations are satisfied.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (1C) However, deposits specified in the regulations are *unclaimed moneys* if, and only if, the conditions specified in the regulations are satisfied.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (1D) Subsection (1) does not apply to an account specified in the regulations.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (1E) Subsections (1) and (1A) do not apply to a deposit specified in the regulations.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

4A Subsection 69(3)

After “sums of unclaimed moneys”, insert “as at the end of the year”.

4B Subsection 69(3)

Omit “higher”, substitute “other”.

5 After subsection 69(7)

Insert:

- (7AA) If unclaimed moneys are paid to an ADI under subsection (7) on or after 1 July 2013:

Schedule 1 Banking

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- (a) the Commonwealth must also pay to the ADI the amount of interest (if any) worked out in accordance with the regulations; and
 - (b) the ADI must pay that amount to the person.
- (7AB) Regulations made for the purposes of paragraph (7AA)(a) may involve different rates of interest for different periods over which the interest accrues. For this purpose, *rate* includes a nil rate.
- (7AC) Interest under paragraph (7AA)(a) does not accrue in relation to a period before 1 July 2013.

6 Paragraph 69(7A)(a)

After “(7)”, insert “or (7AA)”.

7 Subsection 69(8)

Omit “subsection (7)”, substitute “subsections (7) and (7AA)”.

8 Transitional—supplementary statement and payment obligations

- (1) In addition to its effect apart from this subitem, section 69 of the *Banking Act 1959* also has the effect it would have if:
 - (a) in subsection 69(3) of that Act, the words “within 3 months after the 31 December in each year” were omitted and the words “before the end of 31 May 2013” were substituted; and
 - (b) in subsection 69(3) of that Act, the words “as at the end of the applicable assessment day” were inserted after “sums of unclaimed moneys”; and
 - (c) the amendments made by items 1, 2, 3, 4 and 4B of this Schedule had commenced on 31 December 2012; and
 - (d) any regulations made, in accordance with section 4 of the *Acts Interpretation Act 1901*, for the purposes of any of the following provisions of the *Banking Act 1959* had taken effect from the day on which the regulations are registered under the *Legislative Instruments Act 2003*:
 - (i) paragraph 69(1)(b);
 - (ii) paragraph 69(1)(d);
 - (iii) subparagraph 69(1A)(b)(ii);
 - (iv) subparagraph 69(1A)(b)(iv);

- (v) subparagraph 69(1A)(c)(ii);
- (vi) subsection 69(1B);
- (vii) subsection 69(1C);
- (viii) subsection 69(1D);
- (ix) subsection 69(1E);
- (x) subsection 69(3).

No double counting

- (2) For the purposes of the application to an ADI of section 69 of the *Banking Act 1959* (as that section has effect under subitem (1)), **unclaimed moneys** does not include any 7-year unclaimed amounts for the ADI.
- (3) For the purposes of this item, if:
 - (a) an amount is required to be set out in an ADI's statement under subsection 69(3) of the *Banking Act 1959* (as that subsection has effect otherwise than under subitem (1)); and
 - (b) the ADI is required, by subsection 69(3) of the *Banking Act 1959* (as that subsection has effect otherwise than under subitem (1)), to deliver the statement to the Treasurer within 3 months after 31 December 2012;

the amount is a **7-year unclaimed amount** for the ADI.

Applicable assessment day

- (4) For the purposes of this item, the **applicable assessment day** for an ADI is:
 - (a) 30 May 2013; or
 - (b) if the ADI, by written notice given to the Treasurer before 30 May 2013, nominates a day that is:
 - (i) not earlier than 31 December 2012; and
 - (ii) not later than 29 May 2013;
- the nominated day.

Schedule 2—First Home Saver Accounts

First Home Saver Accounts Act 2008

1 Section 17A

Before “The”, insert “(1)”.

2 Paragraph 17A(a)

Omit “at least 7 years; and”, substitute:

at least:

- (i) 3 years; or
- (ii) if a greater number of years is specified in the regulations—that greater number of years; and

3 At the end of section 17A

Add:

- (2) Subsection (1) has effect subject to subsections (3) and (4).
- (3) The regulations may provide that the balance of a specified FHSA held by a person is ***unclaimed money*** in relation to the person if, and only if, the conditions specified in the regulations are satisfied.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (4) Subsection (1) does not apply to an FHSA specified in the regulations.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

4 After subsection 51C(1)

Insert:

- (1A) If ASIC pays an amount to an FHSA provider under subsection (1) on or after 1 July 2013, ASIC must also pay to the FHSA provider the amount of interest (if any) worked out in accordance with the regulations.

(1B) Regulations made for the purposes of subsection (1A) may involve different rates of interest for different periods over which the interest accrues. For this purpose, *rate* includes a nil rate.

(1C) Interest under subsection (1A) does not accrue in relation to a period before 1 July 2013.

5 Paragraph 51C(2)(a)

After “subsection (1)”, insert “or (1A)”.

6 Transitional—supplementary statement and payment obligations

- (1) In addition to their effect apart from this subitem, sections 51A to 51E of the *First Home Saver Accounts Act 2008* also have the effect they would have if:
- (a) in paragraph 51A(1)(a) of that Act, the words “a calendar year” were omitted and the words “the applicable assessment day” were substituted; and
 - (b) in paragraph 51A(1)(b) of that Act, the words “within 3 months after the end of the year” were omitted and the words “before the end of 31 May 2013” were substituted; and
 - (c) in subsection 51A(4) of that Act, the words “the calendar year” were omitted and the words “the applicable assessment day” were substituted; and
 - (d) the amendments made by items 1, 2 and 3 of this Schedule had commenced on 31 December 2012; and
 - (e) any regulations made, in accordance with section 4 of the *Acts Interpretation Act 1901*, for the purposes of any of the following provisions of the *First Home Saver Accounts Act 2008* had taken effect from the day on which the regulations are registered under the *Legislative Instruments Act 2003*:
 - (i) subparagraph 17A(1)(a)(ii);
 - (ii) subsection 17A(3);
 - (iii) subsection 17A(4).

No double counting

- (2) For the purposes of the application to an FHSA provider of sections 51A to 51E of the *First Home Saver Accounts Act 2008* (as

Schedule 2 First Home Saver Accounts

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those sections have effect under subitem (1)), ***unclaimed money*** does not include any 7-year unclaimed amounts for the FHSA provider.

- (3) For the purposes of this item, if:
- (a) an amount is required to be set out in an FHSA provider's statement under section 51A of the *First Home Saver Accounts Act 2008* (as that section has effect otherwise than under subitem (1)); and
 - (b) the FHSA provider is required, by section 51A of the *First Home Saver Accounts Act 2008* (as that section has effect otherwise than under subitem (1)), to give the statement to ASIC within 3 months after the end of 31 December 2012;
- the amount is a ***7-year unclaimed amount*** for the FHSA provider.

Applicable assessment day

- (4) For the purposes of this item, the ***applicable assessment day*** for an FHSA provider is:
- (a) 30 May 2013; or
 - (b) if the FHSA provider, by written notice given to ASIC before 30 May 2013, nominates a day that is:
 - (i) not earlier than 31 December 2012; and
 - (ii) not later than 29 May 2013;the nominated day.

Schedule 3—Life insurance

Life Insurance Act 1995

1 After subsection 216(7)

Insert:

- (7A) If an amount is paid to a company under subsection (7) on or after 1 July 2013, the Treasurer must also:
- (a) cause to be paid to the company the amount of interest (if any) worked out in accordance with the regulations; and
 - (b) direct the company to pay the amount to the person specified in the direction.
- (7B) Regulations made for the purposes of paragraph (7A)(a) may involve different rates of interest for different periods over which the interest accrues. For this purpose, *rate* includes a nil rate.
- (7C) Interest under paragraph (7A)(a) does not accrue in relation to a period before 1 July 2013.

2 Subsection 216(9)

After “(7)(d)”, insert “or (7A)(b)”.

3 Subsection 216(15) (paragraph (c) of the definition of *unclaimed money*)

Repeal the paragraph, substitute:

- (c) sums of money payable on the maturity of a policy which are not claimed within:
- (i) 3 years; or
 - (ii) if a greater number of years is specified in the regulations—that greater number of years;
- after the maturity date of the policy; and

4 Transitional—supplementary statement and payment obligations

Schedule 3 Life insurance

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- (1) In addition to its effect apart from this subitem, section 216 of the *Life Insurance Act 1995* also has the effect it would have if:
- (a) in subsection 216(1) of that Act, the words “Within 3 months after the end of each calendar year” were omitted and the words “Before the end of 31 May 2013” were substituted; and
 - (b) in subsection 216(1) of that Act, the words “that year” were omitted and the words “the applicable assessment day” were substituted; and
 - (c) in subsections 216(4) and (6) of that Act, the words “the calendar year” were omitted and the words “the applicable assessment day” were substituted; and
 - (d) the amendment made by item 3 of this Schedule had commenced on 31 December 2012; and
 - (e) any regulations made, in accordance with section 4 of the *Acts Interpretation Act 1901*, for the purposes of subparagraph (c)(ii) of the definition of **unclaimed money** in subsection 216(15) of the *Life Insurance Act 1995* had taken effect from the day on which the regulations are registered under the *Legislative Instruments Act 2003*.

No double counting

- (2) For the purposes of the application to a life company of section 216 of the *Life Insurance Act 1995* (as that section has effect under subitem (1)), **unclaimed money** does not include any 7-year unclaimed amounts for the life company.
- (3) For the purposes of this item, if:
- (a) an amount is required to be set out in a life company’s statement under subsection 216(1) of the *Life Insurance Act 1995* (as that subsection has effect otherwise than under subitem (1)); and
 - (b) the life company is required, by subsection 216(1) of the *Life Insurance Act 1995* (as that subsection has effect otherwise than under subitem (1)), to give the statement to ASIC within 3 months after the end of 31 December 2012;
- the amount is a **7-year unclaimed amount** for the life company.

Applicable assessment day

- (4) For the purposes of this item, the *applicable assessment day* for a life company is:
- (a) 30 May 2013; or
 - (b) if the life company, by written notice given to ASIC before 30 May 2013, nominates a day that is:
 - (i) not earlier than 31 December 2012; and
 - (ii) not later than 29 May 2013;the nominated day.

Schedule 4—Superannuation

Superannuation (Unclaimed Money and Lost Members) Act 1999

1 After subsection 17(2AA)

Insert:

(2AB) If:

- (a) the Commissioner makes a payment under subsection (2) on or after 1 July 2013 to a fund, a legal personal representative or a person; and
- (b) the payment is in accordance with paragraph (2)(a), (c) or (d);

the Commissioner must also pay to the fund, legal personal representative or person the amount of interest (if any) worked out in accordance with the regulations.

Note: Money for payments under subsection (2AB) is appropriated by section 16 of the *Taxation Administration Act 1953*.

(2AC) If:

- (a) the Commissioner makes a payment under subsection (2) on or after 1 July 2013 to a death beneficiary; and
- (b) the payment is in accordance with paragraph (2)(b);

the Commissioner must also pay to the death beneficiary the amount of interest (if any) worked out in accordance with the regulations.

Note: Money for payments under subsection (2AC) is appropriated by section 16 of the *Taxation Administration Act 1953*.

(2AD) Regulations made for the purposes of subsection (2AB) or (2AC) may prescribe different rates for different periods over which the interest accrues. For this purpose, *rate* includes a nil rate.

(2AE) Interest under subsection (2AB) or (2AC) does not accrue in relation to a period before 1 July 2013.

2 After subsection 20H(2)

Insert:

- (2AA) If the Commissioner makes a payment under subsection (2) on or after 1 July 2013, the Commissioner must also pay to the person, fund or legal personal representative the amount of interest (if any) worked out in accordance with the regulations.
- (2AB) Regulations made for the purposes of subsection (2AA) may prescribe different rates for different periods over which the interest accrues. For this purpose, *rate* includes a nil rate.

3 Subsection 20H(2A)

Omit “The”, substitute “If the Commissioner makes a payment under subsection (2) before 1 July 2013, the”.

4 Paragraph 20H(3)(b)

After “under subsection”, insert “(2AA) or”.

5 Paragraph 24B(1)(b)

Omit “\$200”, substitute “\$2,000”.

6 Paragraph 24B(2)(b)

Omit “5 years”, substitute “12 months”.

7 After subsection 24G(3)

Insert:

(3A) If:

- (a) the Commissioner makes a payment under subsection (2) on or after 1 July 2013 to a fund, a legal personal representative or a person; and
- (b) the payment is in accordance with paragraph (2)(a), (c) or (d);

the Commissioner must also pay to the fund, legal personal representative or person the amount of interest (if any) worked out in accordance with the regulations.

Note: Money for payments under subsection (3A) is appropriated by section 16 of the *Taxation Administration Act 1953*.

(3B) If:

Schedule 4 Superannuation

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- (a) the Commissioner makes a payment under subsection (2) on or after 1 July 2013 to a death beneficiary; and
 - (b) the payment is in accordance with paragraph (2)(b);
- the Commissioner must also pay to the death beneficiary the amount of interest (if any) worked out in accordance with the regulations.

Note: Money for payments under subsection (3B) is appropriated by section 16 of the *Taxation Administration Act 1953*.

- (3C) Regulations made for the purposes of subsection (3A) or (3B) may prescribe different rates for different periods over which the interest accrues. For this purpose, *rate* includes a nil rate.
- (3D) Interest under subsection (3A) or (3B) does not accrue in relation to a period before 1 July 2013.

8 Transitional—scheduled statement day

Scope

- (1) This item applies if an unclaimed money day is 31 December 2012.

Scheduled statement day

- (2) Sections 24C and 24E of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* have effect as if the scheduled statement day for the unclaimed money day was 31 May 2013 instead of the day specified in the instrument under section 15A of that Act.

Schedule 5—Corporations

Australian Securities and Investments Commission Act 2001

1 Division 1 of Part 8

Repeal the Division.

Corporations Act 2001

2 Section 9 (definition of *Companies and Unclaimed Moneys Special Account*)

Repeal the definition.

3 Section 9 (paragraph (d) of the definition of *unclaimed property*)

Omit “definition; or”, substitute “definition.”.

4 Section 9 (paragraph (e) of the definition of *unclaimed property*)

Repeal the paragraph.

5 Subsection 1339(2)

Repeal the subsection, substitute:

- (2) If property (other than money) becomes unclaimed property, ASIC must, on behalf of the Commonwealth, sell or dispose of the property as ASIC thinks fit.

6 Subsections 1341(1) and (2)

Repeal the subsections, substitute:

- (1) If:
 - (a) unclaimed property is or was held by ASIC; and
 - (b) the unclaimed property is an amount of money; and
 - (c) a person claims to be entitled to that amount; and
 - (d) ASIC is satisfied that the person is entitled to that amount;ASIC must:

Schedule 5 Corporations

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- (e) pay the person an amount equal to that amount; and
- (f) do so out of money appropriated by the Parliament for the purposes of this section.

(2) If:

- (a) ASIC has, under subsection 1339(2), sold or disposed of unclaimed property; and
- (b) the amount of the proceeds is or was held by ASIC; and
- (c) a person claims to be entitled to that amount; and
- (d) ASIC is satisfied that the person is entitled to that amount;

ASIC must:

- (e) pay the person an amount equal to that amount; and
- (f) do so out of money appropriated by the Parliament for the purposes of this section.

7 Subsection 1341(3)

After “subsection”, insert “(1) or”.

8 After subsection 1341(3)

Insert:

- (3A) If ASIC pays an amount to a person under subsection (1) or (2) on or after 1 July 2013, ASIC must:
 - (a) also pay to the person the amount of interest (if any) worked out in accordance with the regulations; and
 - (b) do so out of money appropriated by the Parliament for the purposes of this section.
- (3B) Regulations made for the purposes of paragraph (3A)(a) may prescribe different rates for different periods over which the interest accrues. For this purpose, *rate* includes a nil rate.
- (3C) Interest under subsection (3A) does not accrue in relation to a period before 1 July 2013.

*[Minister's second reading speech made in—
House of Representatives on 30 October 2012
Senate on 28 November 2012]*

(194/12)

*Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012*No. 176,
2012/19