





# **Banking Amendment (Unclaimed Money) Act 2013**

**No. 90, 2013**

**An Act to amend the *Banking Act 1959*, and for related purposes**

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



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**An Act to amend the *Banking Act 1959*, and for related purposes**

[Assented to 28 June 2013]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Banking Amendment (Unclaimed Money) Act 2013*.

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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.	28 June 2013
2. Schedule 1	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 1 of Schedule 1 to the <i>Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012</i> .	1 July 2013 (paragraph (b) applies)

Note: This table relates only to the provisions of this Act as originally enacted.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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 Act 1959**

### **Part 1—Amendments**

#### **1 Subsection 69(2)**

Omit “subsections (1) and (1A)”, substitute “this section”.

#### **2 Subsection 69(3)**

Repeal the subsection, substitute:

- (3) An ADI must, within 3 months after the 31 December in each year, deliver to the Treasurer a statement, complying with subsection (4) and any regulations under subsection (3A), of all sums of unclaimed moneys of not less than \$100 (or such other amount as is prescribed) as at the end of the year, other than unclaimed moneys:
- (a) held in RSAs (within the meaning of the *Retirement Savings Accounts Act 1997*); or
  - (b) held in FHSAs (within the meaning of the *First Home Saver Accounts Act 2008*); or
  - (c) held in accounts with the ADI that are operated on either by deposit or withdrawal between the end of the year and the day the statement is delivered to the Treasurer.

Note: The *First Home Saver Accounts Act 2008* deals with unclaimed money held in FHSAs.

#### **3 Paragraph 69(4)(b)**

Omit “due”, substitute “required to be paid under subsection (5)”.

#### **4 Subsection 69(5)**

Repeal the subsection, substitute:

- (5) The ADI must, at the time of the delivery of the statement, pay the Commonwealth an amount equal to the total of all sums of unclaimed moneys covered by subsection (3) in relation to the ADI, as at the end of the year.

#### **5 Paragraph 69(5A)(a)**

Omit “specified in the statement, as”.

**6 After subsection 69(7A)**

Insert:

- (7B) If an ADI satisfies the Treasurer that an amount paid by the ADI under subsection (5) exceeds the amount that should have been paid under that subsection, the Treasurer must refund the amount of the excess.

**7 Subsection 69(8)**

Omit “(7) and (7AA)”, substitute “(7), (7AA) and (7B)”.

## **Part 2—Application, transitional and savings provisions**

### **8 Application provision**

- (1) The amendments made by Part 1 of this Schedule apply in relation to statements required to be delivered under section 69 of the *Banking Act 1959* for the year ending on 31 December 2013, and future years.
- (2) In addition, the amendments made by items 1 to 5 of this Schedule apply, and are taken always to have applied, in relation to statements required to be delivered under section 69 of the *Banking Act 1959*, as that section has effect under subitem 8(1) of Schedule 1 to the *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012*.
- (3) For the purposes of subitem (2), subsection 69(3) of the *Banking Act 1959*, as amended by this Schedule, has effect as if:
  - (a) the words “as at the end of the year” were omitted; and
  - (b) in paragraph (c) of that subsection, the words “the end of the year” were omitted and the words “the day after the applicable assessment day” were substituted.

Note: For paragraph (3)(a), subitem 8(1) of the *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012* has the effect that the words “as at the end of the applicable assessment day” were substituted instead.

### **9 Transitional provision—supplementary statement about unclaimed moneys relating to accounts not operated for 3 years**

- (1) This item applies if:
  - (a) unclaimed moneys relating to a person are paid by an ADI to the Commonwealth in connection with a statement required to be delivered under section 69 of the *Banking Act 1959*, as that section would have had effect under subitem 8(1) of Schedule 1 to the *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012*; and
  - (b) the Treasurer is satisfied that the account to which the unclaimed moneys relate has been operated on either by deposit or withdrawal during the period:

- (i) starting on the day after the applicable assessment day for the ADI referred to in subitem 8(4) of that Schedule; and
- (ii) ending on the day the statement is delivered.

Note: Subitem 8(1) of Schedule 1 to the *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012* requires an additional statement to be delivered, and unclaimed moneys to be paid to the Commonwealth, in relation to accounts that have not been operated for 3 years as at 30 May 2013 or a day nominated by the ADI that falls between 31 December 2012 and 29 May 2013.

***Treasurer to repay balance of account to ADI***

- (2) Upon written application from an ADI within 3 months after the commencement of this item, the Treasurer must repay to the ADI the unclaimed moneys that the Treasurer is satisfied represents the balance of the person's account as at the end of the applicable assessment day for the ADI.

Note: See section 28 of the *Financial Management and Accountability Act 1997* (appropriation of the Consolidated Revenue Fund for the purposes of repayments by the Commonwealth).

***ADI to pay amounts to person to whom unclaimed moneys relate***

- (3) If an ADI is repaid an amount under subitem (2), the ADI must pay to the person an amount equal to any amounts deducted from the account in order for the ADI to pay the unclaimed moneys to the Commonwealth as mentioned in subitem (1).

***Offence***

- (4) An ADI commits an offence if:
  - (a) the ADI is subject to a requirement under subitem (3); and
  - (b) the ADI contravenes the requirement.

Penalty: 50 penalty units.

***Delegation***

- (5) The Treasurer may, by instrument in writing, delegate any of his or her functions or powers under this item to:
  - (a) ASIC; or
  - (b) a member of ASIC, or a staff member, within the meaning of the *Australian Securities and Investments Commission Act 2001*.

## **10 Savings provision—regulations**

Regulations in force for the purposes of subsection 69(3) of the *Banking Act 1959* immediately before the commencement of this item have effect on and after that commencement for the purposes of that subsection as substituted by this Schedule, including as that subsection has effect under subitem 8(2) of this Schedule.

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[*Minister's second reading speech made in—  
House of Representatives on 29 May 2013  
Senate on 20 June 2013*]

(142/13)

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