

TASMANIA

UNCLAIMED MONEY BILL 2015

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UNCLAIMED MONEY BILL 2015

(Brought in by the Treasurer, the Honourable Peter Carl Gutwein)

A BILL FOR

An Act to provide for the management of unclaimed money in an economical, efficient and effective manner, for the payment of unclaimed money into and out of the Public Account, to repeal the *Unclaimed Moneys Act 1918* and for related purposes

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Unclaimed Money Act 2015*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention appears –

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Part 1 – Preliminary

holder means the person or body that holds unclaimed money and includes –

- (a) any person acting for or on behalf of the holder; and
- (b) the legal personal representative of the holder;

legal personal representative means –

- (a) the executor of the will or administrator of the estate of a deceased person; or
- (b) the trustee of the estate of a person under a legal disability; or
- (c) a person who holds an enduring power of attorney granted by a person;

officer means a person who is –

- (a) a State Service officer or State Service employee; or
- (b) employed –
 - (i) by or in an Agency; or
 - (ii) by the Governor-in-Council pursuant to the royal prerogative or pursuant to any written law; or

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(iii) for the purposes of an Agency pursuant to any written law –

whether that person is employed under a contract of service or a contract for service and whether or not that person receives any remuneration for the employment;

owner means the person entitled to any unclaimed money, and includes his or her legal personal representatives or assigns, and his or her, or their, lawful attorney or agent in this State;

Public Account means the Public Account of the State referred to in section 5 of the *Public Account Act 1986*;

State entity has the same meaning as in the *Audit Act 2008*;

unclaimed money means money taken to be unclaimed money under section 4(2), 18, 19(2) or 21(1);

unclaimed superannuation benefit means an amount of money that is taken to be unclaimed money under sections 12 and 14 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth.

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Part 2 – General Unclaimed Money

PART 2 – GENERAL UNCLAIMED MONEY

4. Application of this Part

- (1) This Part applies to all principal and interest money, and all dividends, bonuses, profits and sums of money, which are held or owing by –
 - (a) any company which is registered or incorporated in this State; and
 - (b) any person, firm, body or institution carrying on business as traders and having their principal office or place of business in this State; and
 - (c) a State entity –excluding amounts referred to in Part 3, 4 or 5.
- (2) For the purposes of this Part, an amount is unclaimed money if –
 - (a) a period of 12 months has passed since the day the amount became payable to the owner; and
 - (b) no claim has been made by the owner against the holder; and
 - (c) the amount is, in relation to the holder, the relevant minimum amount.
- (3) For the purposes of subsection (2)(c), the relevant minimum amount, in relation to a holder, is –

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- (a) \$50; or
 - (b) if another relevant minimum amount is determined in relation to the holder under subsection (4)(b) – that amount; or
 - (c) if another relevant minimum amount is determined in relation to holders generally under subsection (4)(a) and there is no relevant minimum amount determined under subsection (4)(b) in relation to the holder – the amount determined under subsection (4)(a).
- (4) The Treasurer may –
- (a) by notice, determine a relevant minimum amount, in relation to holders generally, for the purposes of subsection (2)(c); or
 - (b) by written notice given to a holder, determine a relevant minimum amount, in relation to the holder, for the purposes of subsection (2)(c).
- (5) The Treasurer may, by written notice given to a holder, determine that this Part, or any specified provision of this Part, does not apply to the holder.
- (6) The Treasurer may, by written notice given to a person or entity not specified in subsection (1), determine that this Part, or any specified provision of this Part, will apply to that person or entity.

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Part 2 – General Unclaimed Money

5. Register of unclaimed money

- (1) A holder of unclaimed money to which this Part applies must –
 - (a) establish, in the prescribed form, a register, of all unclaimed money, that is at or readily accessible from its principal office or place of business; and
 - (b) at least once every 12 months, enter in the register the prescribed details in relation to each sum of unclaimed money held.
- (2) The register is to be open to the inspection of all persons at that principal office or place of business, during ordinary business hours, on payment of the fee, if any, that the holder determines, that is a fee not exceeding the relevant maximum amount.
- (3) For the purposes of subsection (2), the relevant maximum amount, in relation to a holder, is –
 - (a) \$5; or
 - (b) if another relevant maximum amount is determined in relation to the holder under subsection (4)(b) – that amount; or
 - (c) if another relevant maximum amount is determined in relation to holders generally under subsection (4)(a) and there is no relevant maximum amount determined under subsection (4)(b) in

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relation to the holder – the amount determined under subsection (4)(a).

- (4) The Treasurer may –
 - (a) by notice, determine a relevant maximum amount, in relation to holders generally, for the purposes of subsection (2); or
 - (b) by written notice given to a holder, determine a relevant maximum amount, in relation to the holder, for the purposes of subsection (2).
- (5) The entry of details of unclaimed money in the register does not affect or prejudice the rights of the owner of the unclaimed money and the owner may recover the unclaimed money from the holder at any time before it is paid to the Treasurer under section 7.

6. Penalty for neglect in keeping register

A holder must not fail to keep a register of unclaimed money or refuse to permit inspection of the register by any person.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

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Part 2 – General Unclaimed Money

7. Unclaimed money to be paid to Treasurer

- (1) All unclaimed money to which this Part applies that has not been paid by the holder to the owner within one year after the money has been, or should have been, entered in the register referred to in section 5 is to be paid by the holder to the Treasurer for credit to the Public Account.
- (2) The holder, on the payment to the Treasurer of the unclaimed money referred to in subsection (1), is to provide the Treasurer with a return relating to that money in a form approved by the Treasurer.
- (3) On payment to the Treasurer of an amount as required by this section, the holder is discharged from further liability in respect of that amount.
- (4) A holder must not fail to pay unclaimed money to the Treasurer, or fail to provide a return to the Treasurer relating to that money, as required by this section.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

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Part 3 – Unclaimed Superannuation Benefits

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**PART 3 – UNCLAIMED SUPERANNUATION
BENEFITS**

8. Interpretation of Part 3

In this Part, unless the contrary intention appears –

Board has the same meaning as in the
Retirement Benefits Act 1993;

Fund has the same meaning as in the
Retirement Benefits Act 1993;

half-year means a period of 6 months ending
on 30 June or 31 December;

trustee has the same meaning as in the
*Superannuation Industry (Supervision)
Act 1993* of the Commonwealth.

9. Application of Part 3

This Part applies to all unclaimed superannuation benefits which are, or are liable to be, paid to the Treasurer under the *Retirement Benefits Regulations 2005*.

10. Statement of unclaimed superannuation benefits

- (1) The Board must give to the Treasurer a statement, in a form approved by the Treasurer, of all unclaimed superannuation benefits in the Fund as at the end of each half-year.

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Part 3 – Unclaimed Superannuation Benefits

- (2) The Board must give the Treasurer the statement –
 - (a) in relation to a half-year ending on 31 December, on or before the following 30 April; and
 - (b) in relation to a half-year ending on 30 June, on or before the following 31 October.
- (3) The Treasurer, at any time, may approve a date later than that specified in subsection (2)(a) or (b) by giving notice in writing of that approval to the Board.
- (4) If, after the end of the half-year, and before the Board gives the statement to the Treasurer, the Board pays any unclaimed superannuation benefit to a person who is entitled to it, the statement must contain any particulars about the payment as may be required in the form approved under subsection (1).
- (5) An approval by the Treasurer of a form of statement for the purposes of subsection (1) may require that the statement contain the tax file number of –
 - (a) any beneficiary of the relevant fund, if –
 - (i) the statement relates to the beneficiary; and
 - (ii) the beneficiary has quoted his or her tax file number to the trustee for the purposes of the

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Superannuation Industry
(Supervision) Act 1993 of the
Commonwealth; and

(b) the Fund.

- (6) The Board must not contravene a provision of this section.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

11. Payment of unclaimed superannuation benefits

The Board, when giving a statement under section 10, must pay to the Treasurer for credit to the Public Account an amount equal to the sum of the unclaimed superannuation benefits specified in the statement less the sum of the benefits paid by the Board and specified in accordance with section 10(4).

12. Treasurer to refund unclaimed superannuation benefits

(1) If –

- (a) the Board pays an unclaimed superannuation benefit to the Treasurer under this Part; and
- (b) the Treasurer is satisfied on application made by a person that, if this Part and the

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Part 3 – Unclaimed Superannuation Benefits

Superannuation (Unclaimed Money and Lost Members) Act 1999 of the Commonwealth had not been enacted, that person would have been paid that unclaimed superannuation benefit by the Board –

the Treasurer must pay an amount equal to the amount of that unclaimed superannuation benefit to that person.

- (2) An application under subsection (1)(b) is to be in a form approved by the Treasurer.

13. Treasurer to refund

If the Board, after paying an amount to the Treasurer under this Part, satisfies the Treasurer that the amount so paid –

- (a) exceeds the amount that the Board would have paid to the person concerned if it had not made the payment to the Treasurer; or
- (b) is not unclaimed superannuation benefits that are required to be paid to the Treasurer under this Part –

the Treasurer must refund to the Board the amount of the excess under paragraph (a) or the amount under paragraph (b).

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14. Register of unclaimed superannuation benefits

- (1) The Treasurer must keep a register of unclaimed superannuation benefits paid to the Treasurer under this Part.
- (2) The Treasurer may determine the form in which, and manner by which, the register is to be kept.

15. Discharge of liability

On payment to the Treasurer of an amount as required by this Part, the Board is discharged from further liability as trustee in respect of that amount.

16. Board not in breach of trust

Nothing done by the Board in accordance with this Part is a breach of trust by the Board.

17. Conflict with governing instrument of fund

If there is a conflict between a duty imposed on the Board by this Part and a duty imposed on the Board by the governing instrument of the Fund, whether the governing instrument is an Act, regulations or any other kind of instrument, the Board must comply with this Part and in doing so will be taken to have complied with the governing instrument.

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Part 3 – Unclaimed Superannuation Benefits

18. Treasurer's responsibility for unclaimed superannuation benefits

Unclaimed superannuation benefits which have been, or are, paid by the Board to the Treasurer are taken to be, and may be dealt with by the Treasurer as if they were, unclaimed money.

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Part 4 – Money Paid into Court

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PART 4 – MONEY PAID INTO COURT

19. Application of Part 4

- (1) This Part applies to all money which has been paid into a court in this State.
- (2) In this Part, an amount is unclaimed money if –
 - (a) a period of 6 years has passed since the money was paid into the court; and
 - (b) no order has been made by the court for the disposal of that money to any other person.

20. Unclaimed money to be paid to Treasurer

- (1) Unclaimed money to which this Part applies and all interest, if any, received in respect of that money is to be paid, within 12 months of it becoming unclaimed money, by the officer of a court authorised by the court to make such a payment, to the Treasurer for credit to the Public Account.
- (2) The officer of the court referred to in subsection (1), on the payment of the unclaimed money referred to in subsection (1), is to provide to the Treasurer a return relating to that money in a form approved by the Treasurer.
- (3) An officer of a court must not contravene a provision of this section.

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Part 4 – Money Paid into Court

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

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**PART 5 – UNCLAIMED MONEY UNDER WRITTEN
LAW**

21. Unclaimed money under written law

- (1) For the purposes of this Part, an amount is unclaimed money if it is, or may be required to be, paid to the Treasurer, or into the Public Account, as unclaimed money under any written law, excluding amounts referred to in Part 2, 3 or 4.
- (2) Unclaimed money referred to in subsection (1) is to be paid by the holder to the Treasurer for credit to the Public Account within 12 months of it becoming unclaimed money or, if any other period is provided for in other written law, within that other period.
- (3) The holder, on the payment of the unclaimed money referred to in subsection (1), is to provide the Treasurer with a return, relating to that money, in a form approved by the Treasurer.
- (4) A holder must not fail to pay to the Treasurer, in accordance with this section, unclaimed money, or fail to provide, in accordance with subsection (3), a return to the Treasurer relating to that money.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

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Part 6 – Treasurer’s Obligations and Powers

**PART 6 – TREASURER’S OBLIGATIONS AND
POWERS**

22. Treasurer to pay money into Public Account

The Treasurer is to pay into the Public Account each sum of unclaimed money received by the Treasurer under Parts 2, 3, 4 and 5.

23. Treasurer to publish

- (1) The Treasurer, as soon as practicable, is to publish details of each sum of unclaimed money paid to the Treasurer under Parts 2, 3, 4 and 5.
- (2) The Treasurer may determine the method by which, and the period for which, the information referred to in subsection (1) is to be published.

24. Treasurer may examine accounts

- (1) The Treasurer may, at any time after receipt of a return or statement under this Act, examine any of the accounts relating to the unclaimed money referred to in that return or statement, and may for that purpose require the production before him or her, or before an officer appointed by the Treasurer, of any book, voucher or document referring to that money.
- (2) If any error is found in the return or statement referred to in subsection (1), the Treasurer may direct the return or statement to be amended.

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- (3) If the Treasurer has reason to believe that a holder has unclaimed money and a return or statement has not been given to the Treasurer, the Treasurer may require the production before him or her, or before an officer appointed by the Treasurer, of any book or account referring to that money.
- (4) If any error is found in any book or account produced under subsection (3), the Treasurer may direct that the unclaimed money be paid to the Treasurer for credit to the Public Account, and a return or statement be provided in a form approved by the Treasurer.
- (5) A person must not refuse or fail to comply with a requirement made of him or her by this section.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

25. Power of Treasurer to pay lawful claimants

- (1) If any claimant makes any demand against the Treasurer for any unclaimed money paid to the Treasurer under this Act, the Treasurer, upon being satisfied that the claimant is the owner of the money demanded, is to direct that payment be made to the claimant.
- (2) No claimant is to be paid interest on the amount of any unclaimed money for which demand on the Treasurer is made or on the amount of any

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Part 6 – Treasurer’s Obligations and Powers

unclaimed money paid under this section, unless the Treasurer determines otherwise.

26. Treasurer not responsible for payment in certain cases

If any unclaimed money paid to a claimant under section 25 is afterwards claimed by any other person, the Treasurer is not responsible for the payment of that money but that person may have recourse against the claimant to whom the Treasurer has paid the money.

27. Payment into Consolidated Fund

- (1) If unclaimed money has been unclaimed for a period of 2 years after it was paid to the Treasurer, the Treasurer may direct that the money be paid into the Consolidated Fund.
- (2) The payment of unclaimed money into the Consolidated Fund does not affect or prejudice the right of the owner of the unclaimed money, and the owner may recover the unclaimed money as if the money had not been paid into the Consolidated Fund.
- (3) If a lawful claim is made under section 12, 13 or 25 for unclaimed money that has been paid into the Consolidated Fund, the Treasurer is to direct that payment be made to the claimant.
- (4) Any amount payable to a claimant under subsection (3) is payable out of the Consolidated Fund, which is, to the necessary extent,

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| appropriated accordingly.

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Part 7 – Miscellaneous

PART 7 – MISCELLANEOUS

28. Administration

- (1) The costs incurred in administering this Act may, as determined by the Treasurer, be met from the balance of unclaimed money in the Public Account.
- (2) The Treasurer may charge a fee of an amount determined by the Treasurer in respect of any transaction entered into or service provided under this Act.
- (3) The fee referred to in subsection (2) must be reasonable having regard to the circumstances in which the service is provided or transacted.

29. Delegations

- (1) The Treasurer may, by instrument in writing and either generally or as otherwise provided by that instrument, delegate to another Minister or to the Secretary of the Department such of the Treasurer's functions and powers under this Act as are specified in that instrument.
- (2) The Treasurer may, by instrument in writing, revoke wholly or in part or vary a delegation made under subsection (1).
- (3) If a function has been delegated under subsection (1) to the Secretary of the Department, the Secretary of the Department may, by instrument in writing, delegate to a

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person for the time being holding a specified office in the Department any functions that are delegated to the Secretary of the Department in accordance with this section, other than this power of delegation.

- (4) The Secretary of the Department may, by instrument in writing, revoke wholly or in part or vary a delegation made under subsection (3).
- (5) Any act or thing done in the performance of a function delegated under subsection (1) or (3) has the same force and effect as if it had been done by the Treasurer under this Act.

30. Prosecution of offences

A prosecution for an offence against this Act –

- (a) is to be by way of summary proceedings under the *Justices Act 1959* within 12 months after the offence is committed or within 6 months after the commission of the offence comes to the knowledge of the complainant, whichever period later expires; and
- (b) may be instituted by a person authorised in writing in that behalf by the Treasurer.

31. Regulations

- (1) The Governor may make regulations for the purposes of this Act.

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Part 7 – Miscellaneous

- (2) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations.

32. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Treasurer; and
- (b) the department responsible to the Treasurer in relation to the administration of this Act is the Department of Treasury and Finance.

33. Savings and transitional provisions

The savings and transitional provisions specified in Schedule 1 have effect.

34. Consequential amendments

The legislation specified in Schedule 2 is amended as specified in that Schedule.

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35. Legislation repealed

The legislation specified in Schedule 3 is repealed.

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**SCHEDULE 1 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 33

1. Money held before commencement of Act

This Act applies to unclaimed money held before the commencement of this Act in the same manner as it applies to unclaimed money held after that commencement.

2. Time running before commencement of Act

A period specified in this Act includes any part of that period that may have occurred before the commencement of this Act.

3. Money paid to Treasurer under earlier Act

Any money paid to the Treasurer in compliance with the *Unclaimed Moneys Act 1918* is taken to have been paid to the Treasurer under this Act.

SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS

Section 34

Gaming Control Act 1993

1. Section 76ZP(b) is amended by omitting “unclaimed moneys under the *Unclaimed Moneys Act 1918*” and substituting “unclaimed money under the *Unclaimed Money Act 2015*”.
2. Section 76ZS(2)(c)(ii) is amended by omitting “unclaimed moneys under the *Unclaimed Moneys Act 1918*” and substituting “unclaimed money under the *Unclaimed Money Act 2015*”.

Marine and Safety Authority Act 1997

1. Section 38D(4) is amended by omitting “*Unclaimed Moneys Act 1918*” and substituting “*Unclaimed Money Act 2015*”.

Retirement Benefits Regulations 2005

1. Regulation 75(2) is amended as follows:
 - (a) by omitting “*Unclaimed Moneys Act 1918*” first occurring and substituting “*Unclaimed Money Act 2015*”;
 - (b) by omitting from paragraph (c) “*Unclaimed Moneys Act 1918*” and substituting “*Unclaimed Money Act 2015*”.

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Water Management Act 1999

1. Section 87(3) is amended by omitting “*Unclaimed Moneys Act 1918*” and substituting “*Unclaimed Money Act 2015*”.

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SCHEDULE 3 – LEGISLATION REPEALED

Section 35

Unclaimed Moneys Act 1918 (No. 13 of 1918)