Banking Amendment (Unclaimed Money) Bill 2013

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Contents

Purpose of the Bill ................................................................. 2
Background .................................................................................. 2
Unclaimed money arrangements ......................................................... 2
Recent changes to unclaimed money arrangements .................................. 4
Problems arising from the Unclaimed Money and Other Measures Act ............... 5
Committee consideration .................................................................. 6
Senate Standing Committee for the Scrutiny of Bills .................................. 6
Parliamentary Joint Committee on Human Rights ...................................... 6
Policy position of non-government parties/independents ................................. 6
Position of major interest groups .......................................................... 7
Financial implications ........................................................................ 7
Key issues and provisions .................................................................... 7
    Amendments to the Banking Act ..................................................... 7
Application ....................................................................................... 8
Banking Amendment (Unclaimed Money) Bill 2013

Date introduced: 29 May 2013

House: House of Representatives

Portfolio: Treasury

Commencement: Sections 1–3 on Royal Assent. Schedule 1 on the later of the day after Royal Assent, or immediately after the commencement of item 1 of Schedule 1 to the Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012.¹

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/

Purpose of the Bill

The purpose of the Banking Amendment (Unclaimed Money) Bill 2013 (the Bill) is to amend the Banking Act 1959 (Banking Act) to exempt reactivated accounts from being reported and transferred to the Commonwealth as unclaimed moneys and to allow the Commonwealth to provide refunds to authorised deposit-taking institutions (ADIs) if moneys are collected unnecessarily.²

Background

Unclaimed money arrangements

The Banking Act provides that unclaimed moneys held by ADIs³ are to be paid annually to the Treasurer.⁴ Unclaimed moneys means ‘all principal, interest, dividends, bonuses, profits and sums of money legally payable by [the bank] but in respect of which the time within which proceedings may be taken for the recovery thereof has expired’ and includes moneys in accounts that have not been active for at least seven years.⁵ Regulations set a minimum account balance of $500 to which the provisions apply⁶, so that amounts of less than this are not reported as unclaimed and continue to be retained by the institution.

¹ That is, 1 July 2013.
³ The term ‘ADI’ covers major Australian and Foreign subsidiary banks, as well as Building Societies and Credit Unions. A list of ADIs as at 24 October 2012 is published by the Australian Prudential Regulation Authority at: http://www.apra.gov.au/adi/pages/adilist.aspx
⁴ Section 69, Banking Act 1959.
⁵ Subsection 69(1), Banking Act 1959. Debiting of fees and crediting of interest is not considered to constitute activity. Certain farm management deposit accounts are exempt from these requirements.
ADI’s have specific obligations under the Banking Act in relation to the notification of unclaimed moneys and the transfer of funds to the Commonwealth:

- within three months after 31 December each year a statement of unclaimed moneys must be delivered to the Treasurer and
- the total amount shown in the statement is required to be paid by the ADI to the Commonwealth at the same time the statement is delivered.\(^7\)

The ADI is guilty of an offence if it fails to deliver the statement and/or fails to pay the required amount to the Commonwealth.\(^8\)

There are no specific requirements in the Banking Act for the process that ADIs might take to inform customers that their account is at risk of being transferred to the Commonwealth as unclaimed moneys. Whilst many banks have adopted the voluntary Code of Banking Practice which applies to individual and small business customers\(^9\), the Code does not contain any provision about the impact on those customers of unclaimed money laws.\(^10\)

The Australian Bankers’ Association noted that banks typically have an existing annual process that runs over three to four months in advance of 31 December each year. For some banks, such a notification process may be part of the terms and conditions that apply to accounts, which require a specific notification period (30 days).\(^11\) This annual process is to notify customers that their account is about to be classified as unclaimed to ensure that customers are reunited with lost monies and/or alert to the need to take action to retain their existing account arrangements and avoid the unclaimed monies provisions being triggered.\(^12\)

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7. Subsections 69(3) and 69(5) of the Banking Act 1959.
8. Subsections 69(3AA) and 69(5A) of the Banking Act 1959. Under subsections 69(3AA) and 69(5A) of the Banking Act, contravention of subsection 69(3) and 69(5) of the Banking Act respectively incurs a penalty of 50 penalty units. If a body corporate is convicted of the offence, subsection 4B(3) of the Crimes Act 1914 allows a court to impose a fine of up to five times that penalty amount. Section 4AA of the Crimes Act 1914 provides that a penalty is equivalent to $170. This means that the penalty will range between $8500 and $34 000. The text of the Crimes Act 1914 can be viewed at: http://www.comlaw.gov.au/Details/C2013C00180/Download

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Recent changes to unclaimed money arrangements

In late 2012, the Government announced as part of the October 2012 Mid-Year Economic and Fiscal Outlook 2012–13 that the period of inactivity after which the balance of an ‘inactive’ bank account was required to be transferred to consolidated revenue was to be reduced from seven years to three years. The measure was to provide net savings to the Budget of $92.3 million over the period 2012–13 to 2015–16 and was to commence from 31 December 2012.

The Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012 (the originating Bill) was introduced into the House of Representatives on 30 October 2012. The originating Bill, as introduced, would have operated as follows:

- the provisions of the Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012 (when enacted) would take effect from the day after the Royal Assent—as noted above, this was expected to be from no later than 31 December 2012
- the meaning of the term unclaimed moneys would have changed to include moneys in accounts that had not been active for at least three years and
- the banks would have four months after 31 December 2012—that is, until 30 April 2013, to deliver a statement of unclaimed moneys to the Treasurer and to pay the total amount shown in the statement to the Commonwealth.

When the originating Bill was being debated by the Parliament, the banking industry warned the Government about the short timeframe between the announcement of the policy and the proposed implementation of 31 December 2012. The Australian Bankers’ Association noted that:

The ABA notes that the proposed timing for implementation and a commencement of 31 December 2012 is unrealistic, being in less than 2 months and falling during a period when banks implement freezes on any technology or IT systems changes. It is estimated that banks and other ADIs will require at least 6 months to make all the necessary changes, inform customers in a legally compliant manner, and meet compliance requirements. It should be noted that individual banks and other ADIs will have different implementation issues. Therefore, the ABA believes that a 12 month transitional period for compliance is appropriate to ensure the legal, technical and practical issues can be addressed and ensure that the new regime can be

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14. Ibid. This figure is the combined impact of reducing the period of inactivity on bank accounts and life insurance policies.
15. Information about the Bill as introduced and in its final form is on the Bill homepage which can be viewed at: [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4921%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4921%22)
17. Item 8 (transitional provisions) of the Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012.
streamlined into the existing annual process without disrupting banks’ systems or bank-customer relationships.  

Prior to the passage of the originating Bill, the Government moved seven amendments. The effect of the amendments was, amongst other things, that:

- the banks would have five months after 31 December 2012—that is, until 31 May 2013, to deliver a statement of unclaimed moneys to the Treasurer and to pay the total amount shown in the statement to the Commonwealth and
- the amendment to the term **unclaimed moneys** would not commence until 1 July 2013.

These changes, including the delayed timeframe, were implemented by the *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012* (Unclaimed Money and Other Measures Act) which received Royal Assent on 4 December 2012.

### Problems arising from the Unclaimed Money and Other Measures Act

Although the amendment to the definition of **unclaimed money** does not commence until 1 July 2013, it has been reported that some ADIs have forwarded money to the Commonwealth as unclaimed even though the relevant account has not been inactive for seven years.

The passage of the Unclaimed Money and Other Measures Act gives rise to two questions:

- what happens in circumstances where an account is ‘reactivated’ by the account owner between the time that the relevant ADI compiles its report on inactive accounts and the time that the ADI forwards the amount in the report to the Commonwealth and

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19. Item 1 of the Government amendments to the Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012 that were issued on 22 November 2013.
• does the Commonwealth have the power to refund these moneys (or any other moneys that have been erroneously deemed to be unclaimed) to the relevant ADI rather than to the account owner upon receiving an application from that person?

This Bill responds to those questions.

Committee consideration

At the time of writing this Bills Digest, the Bill had not been referred to a Parliamentary Committee for inquiry and report.

Senate Standing Committee for the Scrutiny of Bills

At the time of writing this Bills Digest the Senate Standing Committee for the Scrutiny of Bills had not published any comments in relation to the Bill.

Parliamentary Joint Committee on Human Rights

At the time of writing this Bills Digest the Parliamentary Joint Committee on Human Rights had not published any comments in relation to the Bill.

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

Policy position of non-government parties/independents

The Coalition were opposed to the original proposal to reduce the threshold for unclaimed money from seven years to three years and voted against this legislation in both the House of Representatives and the Senate. Prior to the Government amending the originating Bill in the House of Representatives to provide for the later commencement date of 31 May 2013, the Coalition moved an amendment for the measure to commence from 31 December 2013. In moving this amendment, the Coalition noted that:

[W]e are giving everyone time to properly consider this legislation and to properly implement it. The policy intent might be there, and the Parliamentary Secretary to the Treasurer is right to say we had similar in principle unclaimed policy proposals under our government. But this government is just doing a fix to try and get the budget to surplus this year. That is all it is about, and quite frankly we are not going to cop it

22. The Statement of Compatibility with Human Rights can be found at page 9 of the Explanatory Memorandum to the Bill.
because we will not support legislation that is fundamentally flawed and adds to the red tape burden of everyone on an everyday basis.\textsuperscript{24}

### Position of major interest groups

The Australian Bankers’ Association has stated that:

- The ABA believes there is no benefit for consumers from the changes. The banking industry did not support the changes to the law.
- Since the new law has been introduced, the ABA has been working with the Treasury to address unintended consequences and to ensure necessary technical amendments are made.\textsuperscript{25}

### Financial implications

According to the Explanatory Memorandum, the financial impact of the Bill is ‘is likely to be low but is difficult to quantify due to insufficient data being available’.\textsuperscript{26}

### Key issues and provisions

The amendments proposed by the Bill are intended to respond to circumstances where a customer makes a transaction on an account which an ADI has identified as satisfying the statutory requirements of being \textit{unclaimed money} and has included that account in its mandatory reporting and payment to the Commonwealth.

### Amendments to the Banking Act

Section 69 of the Banking Act sets out the rules for reporting on, and making payment to the Commonwealth of, \textit{unclaimed money}.

**Item 2** of the Bill repeals and replaces subsection 69(3) of the Banking Act. The effect of this amendment is to exempt moneys held in accounts with the ADI that are operated on, either by way of deposit or withdrawal, between 31 December in each year and the day (being not later than 31 March in the following year) that the ADI delivers its statement to the Treasurer and pays the total of the amount in that statement to the Commonwealth.\textsuperscript{27}


\textsuperscript{26}. Explanatory Memorandum, Banking Amendment (Unclaimed Money) Bill 2013, p. 3, viewed 17 June 2013, [http://parlinfo.aph.gov.au/parlinfo/search/display/display.w3p;query=id%3A%22legislation%2Fems%2Fr5072_ems_b7d9fe2b-808d-4533-890d-a4a638c40a5a%22](http://parlinfo.aph.gov.au/parlinfo/search/display/display.w3p;query=id%3A%22legislation%2Fems%2Fr5072_ems_b7d9fe2b-808d-4533-890d-a4a638c40a5a%22)

\textsuperscript{27}. Proposed paragraph 69(3)(c) of the Banking Act.
The existing exemptions for retirement savings accounts and first home saver accounts are retained, as is the minimum $100 threshold for inclusion in such a statement (or another prescribed amount).  

This amendment provides ADIs additional flexibility in adhering to the unclaimed money requirements so that any transactions that take place between 31 December and the time that the statement is furnished to the Treasurer—which can be no later than 31 March—are not subject to the unclaimed money regime.

**Item 4** of the Bill repeals and replaces subsection 69(5) of the Banking Act so that amounts required to be paid to the Commonwealth are adjusted to take account of the exemption for accounts 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.

**Item 5** of the Bill amends the penalty provisions in subsection 69(5A) of the Banking Act to ensure that the penalty provisions are consistent with the proposed exemption of reactivated accounts from the statement preparation and payment requirements.

**Item 6** of the Bill inserts **proposed subsection 69(7B)** into the Banking Act so that where the Treasurer is satisfied that amounts paid to the Commonwealth an unclaimed money by an ADI exceed the amount that should have been paid, the Treasurer must refund that amount to the ADI.

**Application**

**Item 8** of the Bill provides that the amendments apply for statements to be delivered for the year ending 31 December 2013 and future years.

**Item 9** of the Bill captures those moneys which were reported on and paid to the Commonwealth under the Unclaimed Money and Other Measures Act but which have subsequently been found to have been reactivated. In that case, subitem 9(2) of the Bill provides that the Treasurer is to repay those moneys, upon written application from the ADI.

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28. The terms ‘retirement savings account’ and ‘first home owner savings account’ are defined in existing sub section 69(3) of the Banking Act to have the same meanings as in the Retirement Savings Accounts Act 1997 and First Home Saver Accounts Act 2008 respectively.

29. **Item 3** of the Bill amends paragraph 69(4)(b) of the Banking Act for consistency with **proposed subsection 69(5)**.