

First print



New South Wales

Unclaimed Money Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to provide for the payment of unclaimed money to a Chief Commissioner of Unclaimed Money, and
- (b) to require the publication of information concerning unclaimed money, and
- (c) to establish a scheme for making and determining applications for repayment of unclaimed money, and
- (d) to repeal the *Unclaimed Money Act 1982*.

The Bill re-enacts the provisions of the *Unclaimed Money Act 1982* in simpler language and makes the following changes of substance:

- it widens the range of organisations required to pay unclaimed money to the State (but excludes the banks to which the *Banking Act 1959* of the Commonwealth applies)
 - it increases the penalties for failure to do so
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- it updates powers of investigation
- it reduces from 20 years to 6 years the period during which the owner of unclaimed money held by the State is entitled to recover the money from the State
- it provides for appeals against determinations of applications for repayment of unclaimed money.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 defines certain terms used in the proposed Act.

Clause 4 specifies certain circumstances in which an account is to be taken to be **operated on** (or not operated on) for the purposes of the proposed Act.

Clause 5 clarifies references to money **held** by an enterprise and by an enterprise that does not have a separate legal personality. **Enterprise** is defined (in clause 3) as follows:

enterprise means a person, partnership, association, society, institution, organisation or other body, whether or not incorporated, that:

- (a) operates in any way (or, in the case of a natural person, has a residential address) in the State, and
 - (b) holds money on account of another person or body,
- but does not include a bank (within the meaning of the *Banking Act 1959* of the Commonwealth).

Clause 6 provides that the proposed Act binds the Crown.

Part 2 Unclaimed money

Clause 7 sets out the criteria for determining whether money is **unclaimed money** for the purposes of the Act.

Clause 8 specifies the kind of money that may constitute unclaimed money.

Clause 9 exempts certain money from the meaning of the term *unclaimed money*.

Part 3 Payment of unclaimed money to Chief Commissioner

Clause 10 requires an enterprise that holds unclaimed money on 30 June in any year to pay the money to, and lodge a return relating to the money with, the Chief Commissioner of Unclaimed Money (the *Chief Commissioner*). The money is to be paid and the return lodged by the end of the following August (or within such longer time as the Chief Commissioner allows). The Chief Commissioner is to pay the money to the Consolidated Fund.

Clause 11 requires an enterprise that lodges a return to retain a copy of it for at least 6 years. An enterprise must make the retained copies of returns reasonably available for inspection by any person. Any inspection fee charged is not to exceed \$10 (or such greater amount as the regulations may prescribe).

Clause 12 requires the Chief Commissioner to cause to be published in the Government Gazette information concerning:

- each amount of unclaimed money exceeding \$50 (or exceeding the amount, if any, prescribed by the regulations) that is paid to the Chief Commissioner, and
- the identity of the owner of the money, if known.

Clause 13 relieves an enterprise from all further liability (apart from a liability arising under another law) in respect of unclaimed money that the enterprise pays to the Chief Commissioner. However, the provision does not operate to relieve the enterprise of its obligations in relation to records concerning that money, or from liability in respect of money that the Chief Commissioner repays to the enterprise under proposed Part 4 (Claims for and repayment of unclaimed money).

Part 4 Claims for and repayment of unclaimed money

Clause 14 defines *applicant*, for the purposes of proposed Part 4, as a person who applies under the Part for the repayment of unclaimed money paid to the Chief Commissioner.

Clause 15 specifies that the owner of any unclaimed money paid to the Chief Commissioner under the proposed Act is entitled to recover that money from the Chief Commissioner.

Clause 16 makes it clear that, if an owner's right to unclaimed money was not extinguished before the money was paid to the Chief Commissioner, the right subsists until the end of a period of 6 years beginning on the date of that payment.

Clause 17 empowers the owner of unclaimed money paid to the Chief Commissioner to make written application to the Chief Commissioner for its repayment.

Clause 18 limits the time for making such applications to the period during which the owner's right to the money subsists.

Clause 19 makes it clear that an applicant bears the onus of establishing that the applicant is the owner of the money to which the application relates.

Clause 20 provides that the standard of proof for establishing ownership of unclaimed money is the balance of probabilities.

Clause 21 specifies the way in which the Chief Commissioner determines an application (by giving the applicant notice in writing to the effect that the Chief Commissioner is satisfied, or is not satisfied, that the applicant owns the money (or part of the money) to which the application relates). If the Chief Commissioner has not determined the application at the end of a period of 90 days after the application was lodged, the Chief Commissioner is taken to have given a notice, at the end of that period, to the effect that the Chief Commissioner is not satisfied that the applicant is the owner of the money concerned.

Clause 22 allows an applicant to appeal against a determination to the District Court in accordance with rules of court.

Clause 23 makes it clear that an appeal is to be by way of a rehearing of the original application, although information additional to the information considered for the purposes of the original determination may be taken into consideration. The clause also provides that the District Court may make an order varying the determination appealed from or dismissing the appeal. The District Court's determination of an appeal is final.

Clause 24 empowers the Chief Commissioner to repay unclaimed money to its owner, and relieves the Chief Commissioner from further liability in respect of unclaimed money so repaid. However, if the person to whom the Chief Commissioner repaid the money is not the owner of the money, the owner is entitled to recover the money from that person (unless the owner is prevented from doing so by operation of the *Limitation Act 1969*).

Clause 25 deals with the situation where the Chief Commissioner is of the opinion that money paid to the Chief Commissioner in purported compliance with the proposed Act is not unclaimed money required to be so paid. The Chief Commissioner may repay the money to any person the Chief Commissioner considers appropriate.

Clause 26 appropriates the Consolidated Fund for the purposes of repayments by the Chief Commissioner.

Part 5 Investigative powers

Clause 27 provides that a power conferred under proposed Part 5 may be exercised only for the purposes of exercising functions under the proposed Act or the regulations.

Clause 28 permits the Chief Commissioner to authorise an officer of the Office of State Revenue, by delegation, to exercise the powers conferred on the Chief Commissioner by proposed Part 5. An officer so authorised is a *delegated officer* for the purposes of the proposed Part.

Clause 29 specifies the matter that must be included in the instrument of delegation.

Clause 30 confers on the Chief Commissioner power to require a person to provide records, information and evidence.

Clause 31 specifies the way in which the Chief Commissioner may deal with records provided or produced to the Chief Commissioner or a delegated officer.

Clause 32 requires an enterprise holding records that the Chief Commissioner or a delegated officer considers to be incorrect in relation to unclaimed money to note the records with details of what the Chief Commissioner believes to be the correct position.

Clause 33 confers on the Chief Commissioner power to require a person to attend and give evidence before the Chief Commissioner or a delegated officer.

Clause 34 is a standard provision to the effect that the possibility of self-incrimination does not excuse a person from complying with a requirement under the proposed Act to answer a question, furnish information or produce a record. However, any information given in an answer or otherwise furnished, and any record produced, in compliance with such a requirement is not admissible in any criminal proceedings against the person, except for proceedings for an offence against proposed section 40 (Offence—obstructing Chief Commissioner or delegated officer) or the regulations, or proceedings in respect of the falsity of information given on oath or by affirmation.

Clause 35 confers on the Chief Commissioner a power to enter premises.

Clause 36 makes it clear that entry to residential premises may be effected only with the consent of the owner or occupier or under the authority of a search warrant.

Clause 37 requires reasonable notice of an intention to enter premises to be given, unless the entry is made with the consent of the owner or occupier, or the giving of notice would defeat the purpose of the entry.

Clause 38 specifies the powers the Chief Commissioner may exercise once entry to the premises has been effected. These powers include the power to:

- require any person at the premises to produce any records in the person's possession or under the person's control, and to answer questions and otherwise furnish information, and
- seize and remove evidence of the commission of an offence against the proposed Act or the regulations.

Clause 39 provides for the issue of search warrants.

Clause 40 provides that it is an offence for a person to prevent, hinder or obstruct, or refuse or fail to comply with a requirement of, or provide false or misleading information to, the Chief Commissioner or a delegated officer in the exercise of their functions under proposed Part 5.

Clause 41 provides that it is an offence to impersonate the Chief Commissioner or a delegated officer.

Clause 42 provides that a person charged with an offence under proposed Part 5 is not guilty if the court hearing the charge is satisfied that the person could not have complied with the requirement to which the charge relates, or that the person complied to the best of the person's ability.

Part 6 Administration

Clause 43 provides that there is to be a Chief Commissioner of Unclaimed Money who, under the Minister, has the general administration of the proposed Act.

Clause 44 allows the Chief Commissioner to delegate his or her functions to an officer of the Office of State Revenue.

Part 7 Miscellaneous

Clause 45 allows an officer of an enterprise that is not a natural person to act on behalf of the enterprise.

Clause 46 provides that an officer of an enterprise that contravenes a provision of the proposed Act or regulations is taken to have contravened the same provision if the officer knowingly authorised or permitted the contravention.

Clause 47 provides that proceedings for offences against the proposed Act or regulations may be taken only by a person authorised in writing by the Chief Commissioner, and are to be taken before a Local Court constituted by a Magistrate sitting alone.

Clause 48 provides for the way in which something may be lodged with the Chief Commissioner.

Clause 49 makes it clear that the proposed Act does not affect the operation of any other law dealing with unclaimed money.

Clause 50 empowers the making of regulations for the purposes of the proposed Act.

Clause 51 repeals the *Unclaimed Money Act 1982*.

Clause 52 is a formal provision giving effect to the amendment of Acts set out in Schedule 1.

Clause 53 is a formal provision giving effect to the savings, transitional and other provisions set out in Schedule 2.

Clause 54 provides for the review of the operation of the proposed Act by the Treasurer 5 years after the date of assent to the Act.

Schedule 1 Amendment of Acts

Schedule 1.1, 1.3 [1], 1.4, 1.5, 1.6 and 1.7 replace references to the *Unclaimed Money Act 1982* and the Treasurer in various Acts with references to the proposed Act and the Chief Commissioner, respectively.

Schedule 1.2 repeals a provision of the *Co-operatives Act 1992* to the effect that money that is required to be paid to a former member of a co-operative under Division 4 of Part 6 of that Act (Cancellation of membership etc of inactive members) is not unclaimed money for the purposes of the

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Unclaimed Money Act 1982, and that any such money may be credited to the general reserves of the co-operative when a person's right and title to the money against the co-operative is extinguished by the operation of any law providing for the limitation of actions.

Schedule 1.3 [2] repeals a provision of the *Local Government Act 1993* that specifically applies the *Unclaimed Money Act 1982* to purchase money paid for land sold by a local council for overdue rates and charges if the purchase money exceeds the amount owing. The provision is not necessary, as the proposed Act will apply to that money. (This is because section 720 (1) of the *Local Government Act 1993* is to the effect that any such excess is to be paid into the council's trust fund and held by the council in trust for the persons having estates or interests in the land immediately before the sale.)

Schedule 1.8 amends the *Search Warrants Act 1985* in consequence of proposed section 39.

Schedule 2 contains savings, transitional and other provisions. In particular, the Schedule provides that a person who would have been entitled to maintain an action for the recovery of unclaimed money under the *Unclaimed Money Act 1982* immediately before the repeal of that Act and would not (but for the Schedule) be entitled to recover unclaimed money from the Chief Commissioner under the proposed Act may apply to the Chief Commissioner for repayment of the money within 6 months after the repeal.



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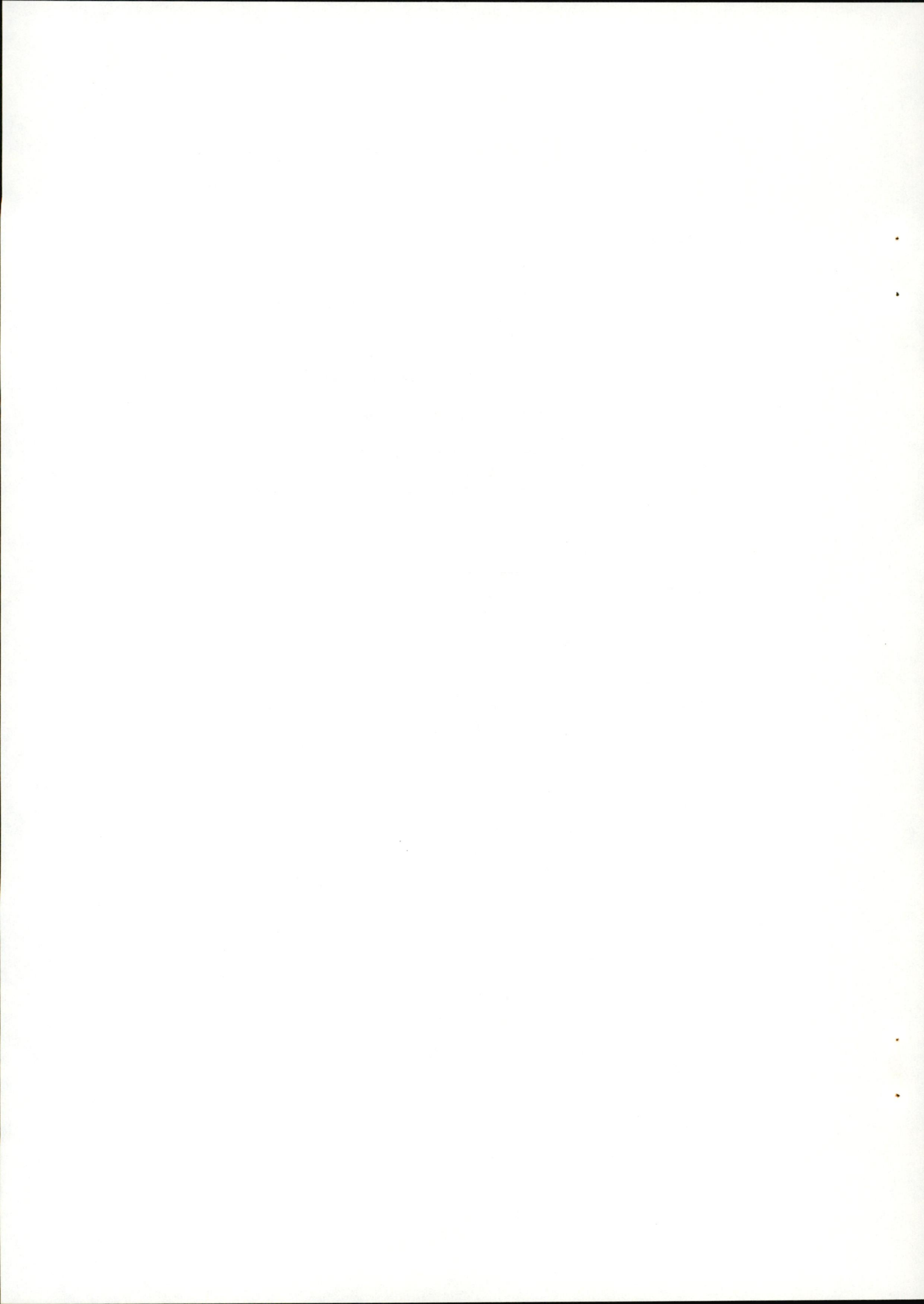
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New South Wales

Unclaimed Money Bill 1995

No. , 1995

A Bill for

An Act to provide for the payment of unclaimed money into the Consolidated Fund; to require the publication of information relating to unclaimed money; to provide for a Chief Commissioner of Unclaimed Money and a scheme for determining applications for repayment of unclaimed money; to repeal the *Unclaimed Money Act 1982*; to make consequential amendments to other Acts; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Unclaimed Money Act 1995*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

account includes a record of money held on account of another person or body. 10

Chief Commissioner means the Chief Commissioner of Unclaimed Money referred to in section 43.

enterprise means a person, partnership, association, society, institution, organisation or other body, whether or not incorporated, that: 15

(a) operates in any way (or, in the case of a natural person, has a residential address) in the State, and

(b) holds money on account of another person or body,

but does not include a bank (within the meaning of the *Banking Act 1959* of the Commonwealth). 20

exercise a function includes perform a duty.

function includes a power, authority or duty.

officer of an enterprise that is not a natural person means a person who is concerned in or takes part in the management of the enterprise, and includes a person in accordance with whose instructions the enterprise is managed or controlled. 25

owner of money means the person who is entitled to the money (or the person who would be so entitled except for the operation of the *Limitation Act 1969*), and includes the person's executors, administrators and assigns and the lawful attorney or agent in the State of the person, executor, administrator or assign. 30

record includes:

- (a) any book, account, deed, writing or document, and
- (b) any other source of information compiled, recorded or stored in written form, or on microfilm or by electronic process, or stored in any other manner or by any other means.

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return means a return required by section 10.

4 Operation on account

- (1) For the purposes of this Act, an account is taken to be operated on during any period that money is held in the account pursuant to an agreement (other than an implied agreement) to hold the money for a fixed term.
- (2) However, the debiting of a fee, duty, tax or charge, or the crediting of interest or a dividend, to an account does not constitute an operation on the account.

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5 Money held by enterprise

- (1) In this Act, a reference to money held by an enterprise:
 - (a) includes a reference to money that is in the hands or under the control of the enterprise, and
 - (b) is, in relation to an enterprise that does not have a separate legal personality, taken to be a reference to money held by the members for the time being of the enterprise for the purposes of the enterprise.
- (2) In this section, *member* of an enterprise means a person, body or organisation that is, under its rules of membership, a member of the enterprise, or, if the rules do not provide for membership of the enterprise, a person, body or organisation that is a member of the body that governs or has the management of the enterprise.

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6 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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Part 2 Unclaimed money

7 Unclaimed money

- (1) For the purposes of this Act, money is *unclaimed money* if it is money of a kind referred to in section 8 that an enterprise holds in an account that has not been operated on for at least: 5
- (a) 6 years, or
 - (b) such shorter period:
 - (i) as may be prescribed by the regulations (being a period of not less than 2 years), or
 - (ii) as may be approved, in relation to a particular enterprise, by the Chief Commissioner at the request of the enterprise (being a period of not less than 12 months). 10
- (2) The account may include: 15
- (a) money whose owner is not identifiable, and
 - (b) money owned jointly or severally by 2 or more persons.

8 Money that may constitute unclaimed money

Money may be unclaimed money only if it is one of the following kinds:

- (a) money (including principal and interest, dividends, bonuses and profits) the recovery of which has been or may be barred by operation of law, 20
- (b) money on deposit,
- (c) share capital subscribed for a share in a body from which the capital subscribed may be withdrawn by the subscriber. 25

9 Certain money not unclaimed money

- (1) Money held by an enterprise in an account is not unclaimed money at any particular time (despite section 7) if, at that time, the recovery of the money by its owner is not barred by operation of law and: 30

-
- (a) the enterprise holding the money also holds other money (not being unclaimed money) of the owner in an account, or
- (b) the enterprise (or an officer of an enterprise that is not a natural person) knows or has reason to believe that the owner of the money wishes to retain the money in the account. 5
- (2) However, an enterprise (or an officer of an enterprise that is not a natural person) does not have reason to believe that an owner wishes to retain money in an account merely because the owner does not respond to a communication from the enterprise (or does not respond as specified in the communication), even if the terms of the communication suggest that the owner's failure to respond indicates such a wish. 10
- (3) For the purposes of this Act, money is not unclaimed money if the money: 15
- (a) is, or is of a class, prescribed by the regulations as exempt from the operation of this Act, or
- (b) is held by an enterprise that is, or is of a class, prescribed by the regulations as exempt from the operation of this Act. 20

Part 3 Payment of unclaimed money to Chief Commissioner

10 Return and payment of unclaimed money to Chief Commissioner

- (1) An enterprise that holds unclaimed money on 30 June in any year must, within 2 months after that date (or such longer period as the Chief Commissioner may in a particular case allow):
- (a) lodge with the Chief Commissioner a return relating to that money in a form approved by the Chief Commissioner, and 10
 - (b) pay the money to the Chief Commissioner.
- (2) The Chief Commissioner is to pay money received under this section into the Consolidated Fund.
- (3) An enterprise that fails to comply with subsection (1) is guilty of an offence and is liable: 15
- (a) to a penalty not exceeding 50 penalty units, and
 - (b) to a further penalty not exceeding 5 penalty units for each day after the period within which it was required to comply with that subsection during which the failure continues. 20

11 Copies and inspection of returns

- (1) An enterprise that lodges a return must retain a copy of the return at the enterprise's registered office or principal place of operation in the State (or, if the enterprise is a natural person, at a place nominated by the person and specified in the return). 25
- Maximum penalty: 2 penalty units.
- (2) The copy is to be retained for at least 6 years after the date on which it was lodged.
- Maximum penalty: 2 penalty units.
- (3) The copy may be held in any form, but it must be readily able to be reproduced in the form of a document. 30
- Maximum penalty: 2 penalty units.

- (4) An enterprise must make the retained copies of returns reasonably available for inspection by any person.

Maximum penalty: 2 penalty units.

- (5) The enterprise may charge an inspection fee of not more than \$10 (or, if the regulations prescribe a greater amount for the purposes of this subsection, that greater amount).

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12 Publication of information relating to unclaimed money

The Chief Commissioner is to cause to be published in the Gazette such information as appears to the Chief Commissioner to be sufficient to give reasonable notification of:

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- (a) the existence of each sum of unclaimed money paid to the Chief Commissioner under this Act that exceeds \$50 (or, if another amount is prescribed by the regulations for the purposes of this paragraph, that other amount), and
- (b) the identity of the owner of the money (if known).

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13 Liability in respect of unclaimed money

- (1) An enterprise that pays unclaimed money to the Chief Commissioner in compliance with this Act is relieved from all further liability (other than a liability arising under any other law) in respect of the money concerned.

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- (2) However, this section does not operate to relieve an enterprise from:

- (a) any obligation to comply with section 11 or a requirement, notice or direction under Part 5, or
- (b) liability in respect of money paid to the Chief Commissioner in purported compliance with this Act if the Chief Commissioner repays the money to the enterprise under Part 4.

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Part 4 Claims for and repayment of unclaimed money

14 Definition

In this Part:

applicant means a person who applies under section 17 for the repayment of unclaimed money paid to the Chief Commissioner under this Act. 5

15 Owner's entitlement to recovery

The owner of any unclaimed money paid to the Chief Commissioner under this Act is entitled to recover that money from the Chief Commissioner in accordance with this Part. 10

16 Extinguishment of entitlement

Despite the *Limitation Act 1969*:

(a) if an owner's right to money paid to the Chief Commissioner under this Act was not extinguished before the date of that payment, the owner's entitlement under this Part is not extinguished until the end of a period of 6 years beginning on that date, and 15

(b) the owner's right to that money subsists until the end of that period. 20

17 Application for repayment

- (1) The owner of any money paid to the Chief Commissioner under this Act may apply to the Chief Commissioner for repayment of the money.
- (2) An application under this section must be made in writing and be lodged with the Chief Commissioner. 25

18 Time for application

An application in accordance with section 17 may be lodged at any time before the owner's right to the money is extinguished.

19 Onus on applicant 30

An applicant bears the onus of establishing that the applicant is the owner of the money to which the application relates.

20 Standard of proof

The standard of proof for establishing ownership of unclaimed money is the balance of probabilities.

21 Notice of determination

- (1) The Chief Commissioner determines an application by giving the applicant notice in writing to the effect that the Chief Commissioner is satisfied (or is not satisfied) that the applicant is the owner of the money (or part of the money) to which the application relates. 5
- (2) If the Chief Commissioner has not determined an application by the end of the period of 90 days after its lodgment, the Chief Commissioner is taken to have given the applicant notice, at the end of that period, to the effect that the Chief Commissioner is not satisfied that the applicant is the owner of the money concerned. 10
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22 Appeal

An applicant who is dissatisfied with a determination of the Chief Commissioner may appeal to the District Court in accordance with rules of court.

23 Nature of appeal

- (1) An appeal is to be by way of a rehearing of the application under section 17. 20
- (2) In hearing such an appeal, the District Court may take into consideration information additional to the information considered for the purposes of the original determination. 25
- (3) On hearing an appeal, the District Court:
 - (a) may make an order varying the determination appealed from, or
 - (b) may make an order dismissing the appeal.
- (4) The District Court's determination of an appeal is final. 30

24 Chief Commissioner may repay unclaimed money to owner

- (1) The Chief Commissioner may repay unclaimed money paid to the Chief Commissioner under this Act to any person who is determined under this Part to be the owner of the money.
- (2) A notice under section 21 (1) is to be accompanied, or followed as soon as practicable, by the appropriate repayment (if any). 5
- (3) The Chief Commissioner is relieved from further liability in respect of unclaimed money repaid as referred to in this section.
- (4) However, the owner of the money, if not the person to whom the Chief Commissioner repaid it, is entitled to recover the money from the person to whom it was paid (unless the owner is prevented from doing so by operation of the *Limitation Act 1969*). 10

25 Chief Commissioner may repay unclaimed money not required to be paid to Chief Commissioner 15

- (1) The Chief Commissioner may repay money paid to the Chief Commissioner in purported compliance with this Act, but only if the Chief Commissioner is of the opinion that the money is not unclaimed money that is required to be paid to the Chief Commissioner under this Act. 20
- (2) The money may be repaid to the person by whom it was paid or to such other person as the Chief Commissioner considers appropriate.

26 Appropriation

The Consolidated Fund is appropriated by this section for the purposes of, and to the extent necessary to permit, repayments by the Chief Commissioner under this Part. 25

Part 5 Investigative powers

27 Circumstances in which investigative powers may be exercised

A power conferred under this Part may be exercised only for the purpose of exercising functions under this Act or the regulations.

28 Delegated officers

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- (1) The Chief Commissioner may, by delegation under section 44, authorise an officer of the Office of State Revenue to exercise the functions conferred on the Chief Commissioner under this Part.
- (2) A person so authorised is a *delegated officer* for the purposes of this Part.

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29 Issue of instrument of delegation

- (1) The Chief Commissioner must issue a delegated officer with an instrument of delegation that:
 - (a) states the name of the delegated officer, and
 - (b) states the functions delegated to the delegated officer and that those functions are functions under this Part, and
 - (c) states the date (if any) on which it expires, and
 - (d) bears the signature of the Chief Commissioner.

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30 Power to require information and evidence

- (1) The Chief Commissioner may require a person, by written notice, to provide such records, information or evidence as is specified or described in the notice.
- (2) The Chief Commissioner may require the information or evidence to be provided in the form of or verified by statutory declaration.
- (3) The person to whom the notice is given must comply with the notice within such period as is specified in the notice or such extended period as the Chief Commissioner may allow.

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Maximum penalty (subsection (3)): 200 penalty units.

31 Use and inspection of records provided or produced to Chief Commissioner or delegated officer

- (1) This section applies to a record that is provided or produced to the Chief Commissioner or a delegated officer.
- (2) The Chief Commissioner or the delegated officer may take and retain possession of the record for a reasonable period for the purpose of enabling the record to be inspected and for copies of, or extracts or notes from, the record to be made or taken by or on behalf of the Chief Commissioner or delegated officer. 5
- (3) However, if the record was provided or produced to the Chief Commissioner or delegated officer on the premises where it is normally kept, the Chief Commissioner or delegated officer may remove it from those premises for the purposes referred to in subsection (2) only: 10
 - (a) with the consent of the owner or occupier of the premises, or 15
 - (b) if it is not practicable to inspect or copy or take extracts or notes from the record on the premises.
- (4) The Chief Commissioner or the delegated officer must permit a person who would be entitled to inspect the record if it were not in the possession of the Chief Commissioner or delegated officer to inspect the record at any reasonable time. 20
- (5) Nothing in this section prejudices a lien a person has on the record.

32 Annotation of records 25

- (1) If the Chief Commissioner or a delegated officer is of the opinion that any matter in a record of an enterprise that relates (or may at some future time relate) to unclaimed money is incorrect, the Chief Commissioner may direct the enterprise to note the record with details of what the Chief Commissioner believes to be the true position concerning the matter. 30
- (2) The enterprise must comply with any such direction.
Maximum penalty (subsection (2)): 5 penalty units.

33 Power to require attendance

(1) The Chief Commissioner may require a person, by written notice, to attend and give evidence before the Chief Commissioner or a delegated officer.

(2) The Chief Commissioner may require the evidence to be given on oath or by affirmation and for that purpose the Chief Commissioner or a delegated officer may administer an oath or affirmation. 5

(3) The person to whom the notice is given must comply with the notice. 10

Maximum penalty (subsection (3)): 200 penalty units.

34 Self-incrimination

(1) A person is not excused from answering any question, furnishing any information or producing any record if required to do so under this Act, on the ground that the answer, information or record might tend to incriminate the person or make the person liable to a penalty. 15

(2) Information given in answer to a question, or otherwise furnished, and a record produced, by a person in compliance with this Act is not admissible against the person in any criminal proceedings other than: 20

(a) proceedings for an offence against section 40, or

(b) a criminal proceeding in respect of the falsity of information given on oath or by affirmation.

35 Power of entry on premises 25

(1) The Chief Commissioner may enter and remain on premises if the Chief Commissioner believes on reasonable grounds that there are records at the premises that are relevant to the administration of this Act.

(2) Entry may be made at any reasonable time. 30

(3) The power of a delegated officer to enter premises may not be exercised unless the delegated officer has the instrument of delegation issued by the Chief Commissioner and produces it if requested to do so by the owner or occupier of the premises.

36 Premises used for residential purposes

The powers of entry and inspection conferred by this Part are not exercisable in relation to premises or a part of premises used for residential purposes except:

- (a) with the consent of the owner or occupier of the premises or part, or 5
- (b) under the authority conferred by a search warrant.

37 Notice of entry

Before the Chief Commissioner or a delegated officer enters premises under this Act, the Chief Commissioner or delegated officer must give the owner or occupier of the premises reasonable notice of the intention to enter unless: 10

- (a) entry is made with the consent of the owner or occupier, or
- (b) the giving of notice would defeat the purpose for which it is intended to enter the premises. 15

38 Functions exercisable on entry

- (1) The Chief Commissioner or a delegated officer who has entered premises in accordance with this Part may:
 - (a) require any person at those premises to produce any records in the possession or under the control of the person (including a written record that reproduces in an understandable form information stored by computer, microfilm or other means or process), and 20
 - (b) require any person at those premises to answer questions or otherwise furnish information, and 25
 - (c) require the owner or occupier of the premises to provide the Chief Commissioner or delegated officer with such assistance and facilities as are reasonably necessary to enable the Chief Commissioner or delegated officer to exercise the functions of the Chief Commissioner or a delegated officer under this Part, and 30
 - (d) seize and remove evidence of the commission of an offence against this Act or the regulations.
- (2) A receipt is to be issued for anything removed.
- (3) Nothing in this section limits or affects section 31. 35

39 Search warrant

- (1) The Chief Commissioner or a delegated officer may apply to an authorised justice for a warrant to search any premises if the Chief Commissioner or the delegated officer has reasonable grounds to believe that any records are to be found there, being records to which the Chief Commissioner or delegated officer would have access if they were kept on premises to which the Chief Commissioner or delegated officer has access. 5
- (2) An authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the Chief Commissioner or delegated officer to enter and search the premises. 10
- (3) Nothing in this section limits or restricts any power conferred on the Chief Commissioner or a delegated officer under this Part.
- (4) In this section, *authorised justice* has the same meaning as in the *Search Warrants Act 1985*. 15

40 Offence—obstructing Chief Commissioner or delegated officer

- (1) A person who:
- (a) prevents the Chief Commissioner or a delegated officer from exercising a function under this Part, or 20
- (b) hinders or obstructs the Chief Commissioner or a delegated officer in the exercise of such a function, or
- (c) without reasonable excuse, refuses or fails to comply with a requirement made by, or to answer a question of, the Chief Commissioner or a delegated officer asked in accordance with section 38, or 25
- (d) furnishes the Chief Commissioner or a delegated officer, in connection with the exercise of a delegated officer's functions, with information knowing that it is false or misleading in a material particular, 30
- is guilty of an offence.
- Maximum penalty: 200 penalty units.
- (2) A person is not guilty of an offence under this section arising from the entry of the Chief Commissioner or a delegated officer onto premises unless it is established that, at the material time, the Chief Commissioner or the delegated officer: 35

Clause 40 Unclaimed Money Bill 1995

Part 5 Investigative powers

- (a) identified himself or herself as the Chief Commissioner or a delegated officer, and
- (b) warned the person that a failure or refusal to comply with the requirement constituted an offence.

41 Offence—impersonating Chief Commissioner or delegated officer 5

A person who impersonates or falsely represents that the person is the Chief Commissioner or a delegated officer is guilty of an offence.

Maximum penalty: 200 penalty units. 10

42 Defence—reasonable compliance

A person is not guilty of an offence under this Part if the court hearing the charge is satisfied:

- (a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates, or 15
- (b) that the defendant complied with the requirement to the extent of the defendant's ability to do so.

Part 6 Administration

43 Chief Commissioner

- (1) There is to be a Chief Commissioner of Unclaimed Money who, under the Minister, has the general administration of this Act.
- (2) The person for the time being holding office or acting as the Executive Director, Office of State Revenue, also holds office as the Chief Commissioner. 5

44 Delegation

The Chief Commissioner may delegate any of the functions of the Chief Commissioner under this Act (other than this power of delegation) to an officer of the Office of State Revenue. 10

Part 7 Miscellaneous

45 Enterprises that are not natural persons

Any act or thing that an enterprise is required or permitted to do by or under this Act may, in the case of an enterprise that is not a natural person, be done on behalf of the enterprise by an officer of the enterprise. 5

46 Liability of officers for offences by enterprises

- (1) If an enterprise contravenes, whether by act or omission, any provision of this Act or the regulations, each officer of the enterprise is taken to have contravened the same provision if the officer knowingly authorised or permitted the contravention. 10
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the enterprise has been proceeded against or convicted under that provision.
- (3) Nothing in this section affects any liability imposed on an enterprise for an offence committed by the enterprise against this Act or the regulations. 15

47 Proceedings

Proceedings for an offence against this Act or the regulations:

- (a) may be taken only by a person authorised in writing by the Chief Commissioner, and 20
- (b) are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

48 Lodgment with Chief Commissioner

For the purposes of this Act, a thing is lodged with the Chief Commissioner if it is: 25

- (a) lodged at an office of the Chief Commissioner, or
- (b) sent by post addressed to the Chief Commissioner at an office of the Chief Commissioner, or

-
- (c) sent by facsimile transmission or other electronic means notified by the Chief Commissioner as being an available means of communication, or
- (d) delivered to the facilities of a document exchange addressed to the Chief Commissioner if the Chief Commissioner has indicated that documents may be delivered to the Chief Commissioner in that way, or 5
- (e) sent by any means provided for the service of documents by another Act or law.
- 49 Other laws not affected** 10
- Nothing in this Act affects the operation of any other law that provides for the manner in which unclaimed money is to be dealt with.
- 50 Regulations**
- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 15
- (2) A regulation may impose a penalty not exceeding 2 penalty units for a breach of the regulation. 20
- 51 Repeal**
- The *Unclaimed Money Act 1982* is repealed.
- 52 Amendment of Acts**
- Schedule 1 has effect.
- 53 Savings, transitional and other provisions** 25
- Schedule 2 has effect.
- 54 Review of Act**
- (1) The Treasurer is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 30

Clause 54 Unclaimed Money Bill 1995

Part 7 Miscellaneous

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

5

Schedule 1 Amendment of Acts

(Section 52)

1.1 Co-operation Act 1923 (1924 No 1)

[1] Section 80AB Unclaimed Money Act 1995

Omit "*Unclaimed Money Act 1982*".
Insert instead "*Unclaimed Money Act 1995*".

5

[2] Section 80AB

Omit "paid to the Treasurer under section 6".
Insert instead "paid to the Chief Commissioner of Unclaimed Money under section 10".

10

1.2 Co-operatives Act 1992 No 18

Section 138 Unclaimed Money Act 1982 not to apply

Omit the section.

1.3 Local Government Act 1993 No 30

[1] Section 22 Note to the section

15

Omit:

Unclaimed Money Act 1982 unclaimed money to be paid
to the Treasury

Insert instead:

Unclaimed Money Act 1995 unclaimed money to be paid
to the Chief Commissioner of
Unclaimed Money

20

Unclaimed Money Bill 1995

Schedule 1 Amendment of Acts

[2] Section 720 What if the purchase money is more than the amounts owing?

Omit subsection (3).

1.4 Mining Act 1992 No 29

Section 246 Sale of mining plant

5

Omit subsection (4). Insert instead:

- (4) Any balance remaining is to be paid to the Chief Commissioner of Unclaimed Money as unclaimed money, and section 10 (2) and Part 4 of the *Unclaimed Money Act 1995* apply to the balance so paid as they would have applied had the balance been paid to the Chief Commissioner under section 10 of that Act.

10

1.5 Petroleum (Onshore) Act 1991 No 84

Section 83 Sale of petroleum plant

Omit subsection (4). Insert instead:

15

- (4) Any balance remaining is to be paid to the Chief Commissioner of Unclaimed Money as unclaimed money, and section 10 (2) and Part 4 of the *Unclaimed Money Act 1995* apply to the balance so paid as they would have applied had the balance been paid to the Chief Commissioner under section 10 of that Act.

20

1.6 Public Finance and Audit Act 1983 No 152

Section 14 Unclaimed money

Omit "*Unclaimed Money Act 1982*" from subsection (1) (a).
Insert instead "*Unclaimed Money Act 1995*".

25

1.7 Roads Act 1993 No 33

Section 195 Payment of compensation money

Omit subsection (3). Insert instead:

- (3) Any money remaining in the trust account after 6 years from the date of the acquisition of the land is to be paid to the Chief Commissioner of Unclaimed Money for payment into the Consolidated Fund, there to be dealt with as unclaimed money under the *Unclaimed Money Act 1995*.

5

1.8 Search Warrants Act 1985 No 37

10

Section 10 Definitions

Insert in the definition of *search warrant* in alphabetical order of Acts the following words:

section 39 of the *Unclaimed Money Act 1995*,

Schedule 2 Savings, transitional and other provisions

(Section 53)

Part 1 Preliminary

- 1 Regulations** 5
- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 10
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 15
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act 20

2 Definition

In this Part:

earlier Act means the *Unclaimed Money Act 1982*.

3 Money held before commencement of Act

- (1) This Act applies to money held before as well as after the commencement of this Act. 25

-
- (2) However, this Act does not apply to money held in an account that had not been operated on for a period of 6 or more years immediately before the commencement of this Act if the money concerned was not, on that commencement, unclaimed money for the purposes of the earlier Act. 5

4 Time running before commencement of Act

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

5 Money paid to Treasurer under earlier Act

Any money paid to the Treasurer in compliance with the earlier Act is taken to have been paid to the Chief Commissioner under this Act. 10

6 Exercise of Treasurer's functions under earlier Act

Any functions exercised by the Treasurer under the earlier Act are taken to have been exercised by the Chief Commissioner under this Act. 15

7 Form for lodgment of returns

The form set out in Schedule 1 to the earlier Act is taken to be the form approved by the Chief Commissioner for the purposes of section 10 until the Chief Commissioner approves a different form. 20

8 Application for payment of unclaimed money

- (1) A person who:

- (a) would have been entitled to maintain an action for the recovery of unclaimed money under section 10 of the earlier Act immediately before the repeal of that Act, and 25

Unclaimed Money Bill 1995

Schedule 2 Savings, transitional and other provisions

(b) would not, but for this subclause, be entitled to recover unclaimed money from the Chief Commissioner under this Act,

may apply to the Chief Commissioner for the repayment of that money within 6 months after that repeal.

5

(2) The provisions of Part 4 of this Act apply to and in respect of any such application as if it were an application under that Part.

UNCLAIMED MONEY BILL 1995

SECOND READING SPEECH

LEGISLATIVE COUNCIL

Mr President

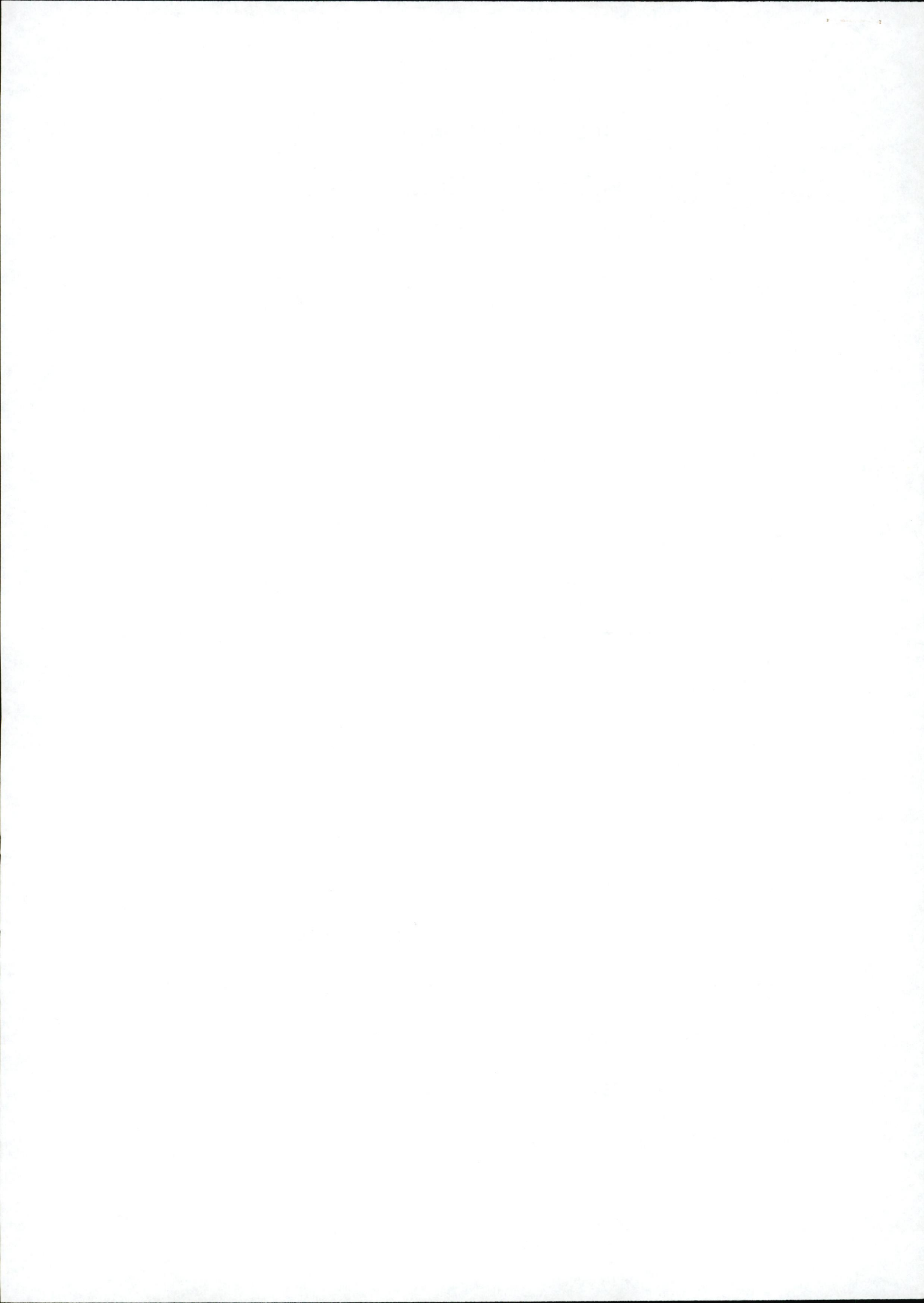
I move:

That this Bill be read a second time.

The Bill now before the House replaces the Unclaimed Money Act 1982 and in the process, will modernise the Act and standardise administration provisions with other legislation administered by the Office of State Revenue.

Current Act

Under the current Unclaimed Money Act 1982, money held in New South Wales accounts which are not acted upon for more than 6 years must be paid to the Treasurer on an annual basis. Owners of this money may reclaim it from the Treasurer within a period of 20 years. Consequently, the Office of State Revenue and the businesses involved must retain records of the money for a period of some 26 years.



PROPOSED CHANGES

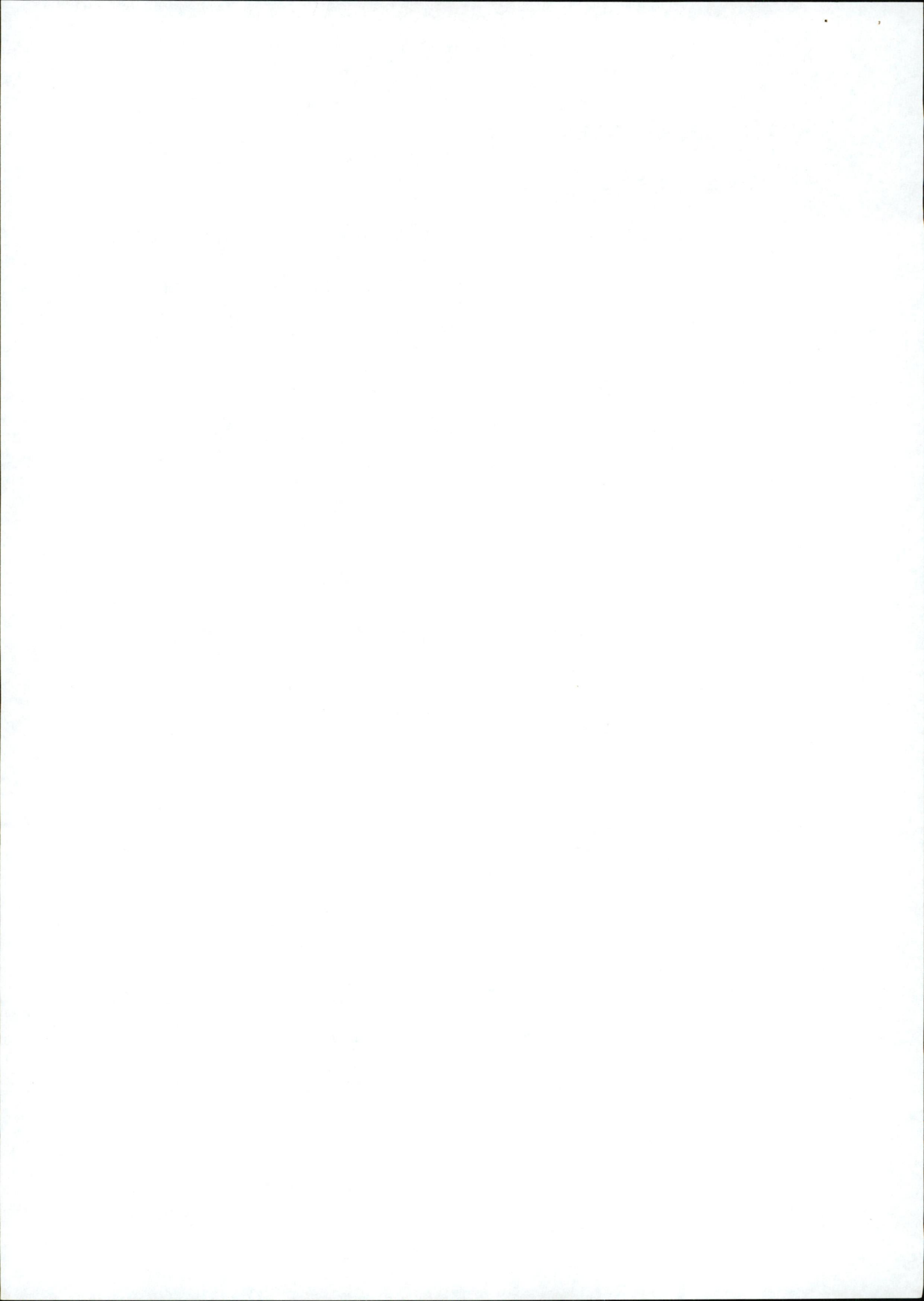
Unclaimed Moneys and Accounts

The Bill includes a number of changes to clarify and extend the coverage of the Act. The definition of "business" is replaced by a definition of "enterprise" which extends the Act to the operations in NSW of non-profit bodies. However, as the Commonwealth has overriding legislation covering unclaimed money held by banks, the new Act specifically excludes banks as defined in the Banking Act 1959 of the Commonwealth.

The meaning of unclaimed money has also been clarified by specifying that it is not necessary that an owner of money be identifiable for money to be classified as "unclaimed".

Reduced Period for Lodging Claims

Claims for money are rarely made after 6 years. Therefore, in order to lower the cost of maintaining records for NSW enterprises as well as the Office of State Revenue, the Bill reduces the period for claiming unclaimed money from 20 years to 6 years, that is, 12 years after an account was last used.



Chief Commissioner to Administer New Act

The Bill creates the Office of Chief Commissioner of Unclaimed Money who will be responsible for administering the Act, thus standardising it with other legislation administered by the Office of State Revenue.

The current legislation provides that responsibility for administrative matters, including decisions on claims for the refund of unclaimed money, rests with the Treasurer. The Bill transfers such administrative responsibilities to the Chief Commissioner.

Mechanism for Appeals Created

The Bill provides a mechanism for appeal to the District Court if an applicant is dissatisfied with a determination made by the Chief Commissioner.

Return Period Varied

The current legislation provides that returns of unclaimed money must be lodged within two months after 31 December, the end of the calendar

year . In order to bring the return period into line with the standard business accounting period, the Bill changes the period for lodging returns to two months after 30 June, the end of the financial year.

Investigative Powers

Under the current legislation provisions for access to records are fairly limited. The Bill amends the Act to provide the Chief Commissioner or a delegated officer, with powers of access to records and information similar to the powers contained in other Acts administered by the Office of State Revenue.

Penalties for Offences

The Bill updates the penalty provisions to provide a more adequate deterrent against failure to comply with the Act. For example, the maximum court imposed penalties for failure to remit unclaimed money to the Office of State Revenue will be increased from \$500 plus \$50 per day for continuing offences, to \$5,000 plus \$500 per day.



Mr President, the Bill before the House will modernise and strengthen the legislative provisions relating to the administration of Unclaimed Money and will provide the people of New South Wales with improved consumer protection.

I commend the Bill to the House.



New South Wales

Unclaimed Money Act 1995 No 75

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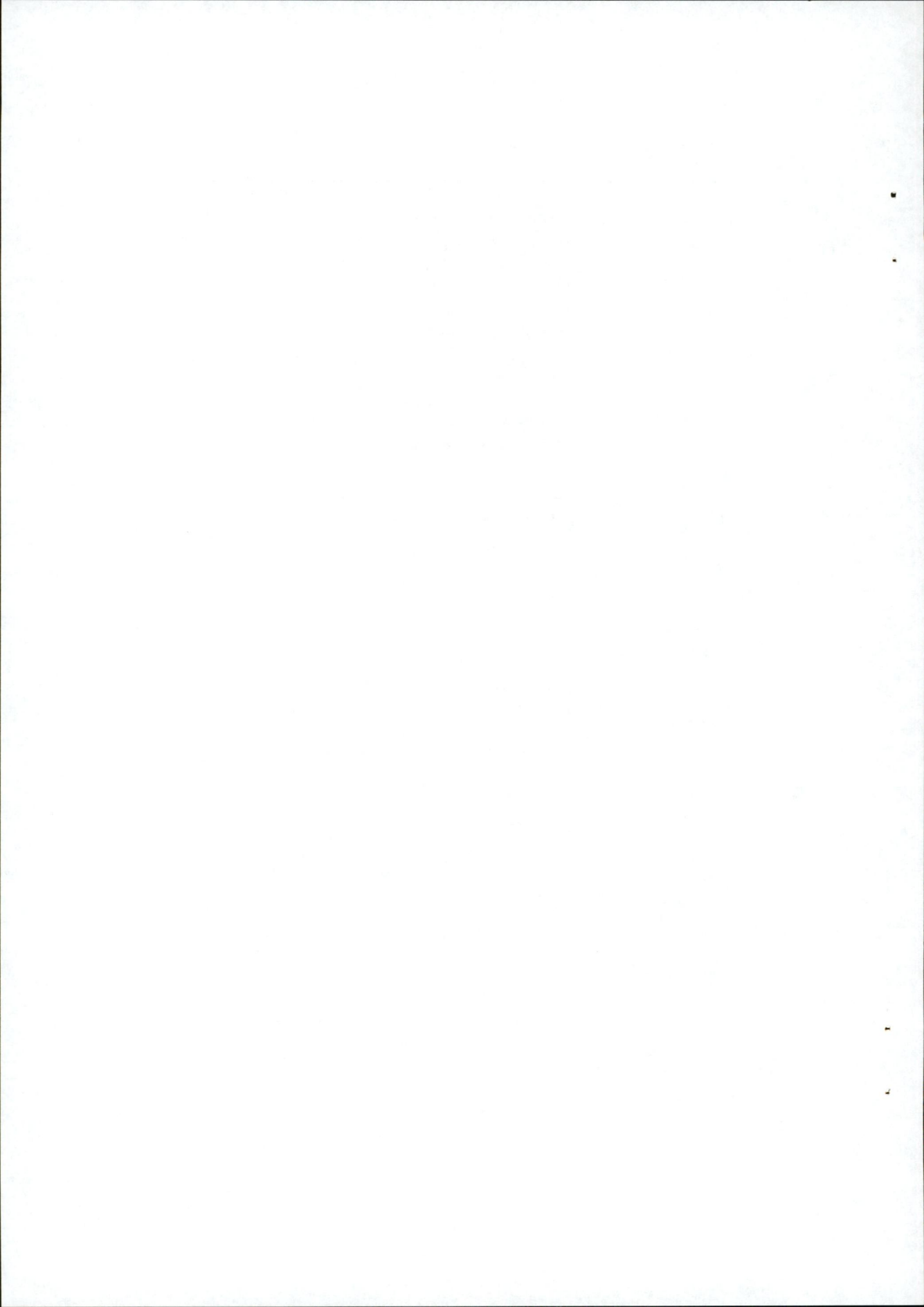
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New South Wales

Unclaimed Money Act 1995 No 75

Act No 75, 1995

An Act to provide for the payment of unclaimed money into the Consolidated Fund; to require the publication of information relating to unclaimed money; to provide for a Chief Commissioner of Unclaimed Money and a scheme for determining applications for repayment of unclaimed money; to repeal the *Unclaimed Money Act 1982*; to make consequential amendments to other Acts; and for other purposes. [Assented to 12 December 1995]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Unclaimed Money Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

account includes a record of money held on account of another person or body.

Chief Commissioner means the Chief Commissioner of Unclaimed Money referred to in section 43.

enterprise means a person, partnership, association, society, institution, organisation or other body, whether or not incorporated, that:

- (a) operates in any way (or, in the case of a natural person, has a residential address) in the State, and
- (b) holds money on account of another person or body,

but does not include a bank (within the meaning of the *Banking Act 1959* of the Commonwealth).

exercise a function includes perform a duty.

function includes a power, authority or duty.

officer of an enterprise that is not a natural person means a person who is concerned in or takes part in the management of the enterprise, and includes a person in accordance with whose instructions the enterprise is managed or controlled.

owner of money means the person who is entitled to the money (or the person who would be so entitled except for the operation of the *Limitation Act 1969*), and includes the person's executors, administrators and assigns and the lawful attorney or agent in the State of the person, executor, administrator or assign.

record includes:

- (a) any book, account, deed, writing or document, and
- (b) any other source of information compiled, recorded or stored in written form, or on microfilm or by electronic process, or stored in any other manner or by any other means.

return means a return required by section 10.

4 Operation on account

- (1) For the purposes of this Act, an account is taken to be operated on during any period that money is held in the account pursuant to an agreement (other than an implied agreement) to hold the money for a fixed term.
- (2) However, the debiting of a fee, duty, tax or charge, or the crediting of interest or a dividend, to an account does not constitute an operation on the account.

5 Money held by enterprise

- (1) In this Act, a reference to money held by an enterprise:
 - (a) includes a reference to money that is in the hands or under the control of the enterprise, and
 - (b) is, in relation to an enterprise that does not have a separate legal personality, taken to be a reference to money held by the members for the time being of the enterprise for the purposes of the enterprise.
- (2) In this section, *member* of an enterprise means a person, body or organisation that is, under its rules of membership, a member of the enterprise, or, if the rules do not provide for membership of the enterprise, a person, body or organisation that is a member of the body that governs or has the management of the enterprise.

6 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Part 2 Unclaimed money

7 Unclaimed money

- (1) For the purposes of this Act, money is *unclaimed money* if it is money of a kind referred to in section 8 that an enterprise holds in an account that has not been operated on for at least:
- (a) 6 years, or
 - (b) such shorter period:
 - (i) as may be prescribed by the regulations (being a period of not less than 2 years), or
 - (ii) as may be approved, in relation to a particular enterprise, by the Chief Commissioner at the request of the enterprise (being a period of not less than 12 months).
- (2) The account may include:
- (a) money whose owner is not identifiable, and
 - (b) money owned jointly or severally by 2 or more persons.

8 Money that may constitute unclaimed money

Money may be unclaimed money only if it is one of the following kinds:

- (a) money (including principal and interest, dividends, bonuses and profits) the recovery of which has been or may be barred by operation of law,
- (b) money on deposit,
- (c) share capital subscribed for a share in a body from which the capital subscribed may be withdrawn by the subscriber.

9 Certain money not unclaimed money

- (1) Money held by an enterprise in an account is not unclaimed money at any particular time (despite section 7) if, at that time, the recovery of the money by its owner is not barred by operation of law and:

- (a) the enterprise holding the money also holds other money (not being unclaimed money) of the owner in an account, or
 - (b) the enterprise (or an officer of an enterprise that is not a natural person) knows or has reason to believe that the owner of the money wishes to retain the money in the account.
- (2) However, an enterprise (or an officer of an enterprise that is not a natural person) does not have reason to believe that an owner wishes to retain money in an account merely because the owner does not respond to a communication from the enterprise (or does not respond as specified in the communication), even if the terms of the communication suggest that the owner's failure to respond indicates such a wish.
- (3) For the purposes of this Act, money is not unclaimed money if the money:
- (a) is, or is of a class, prescribed by the regulations as exempt from the operation of this Act, or
 - (b) is held by an enterprise that is, or is of a class, prescribed by the regulations as exempt from the operation of this Act.

Part 3 Payment of unclaimed money to Chief Commissioner

10 Return and payment of unclaimed money to Chief Commissioner

- (1) An enterprise that holds unclaimed money on 30 June in any year must, within 2 months after that date (or such longer period as the Chief Commissioner may in a particular case allow):
 - (a) lodge with the Chief Commissioner a return relating to that money in a form approved by the Chief Commissioner, and
 - (b) pay the money to the Chief Commissioner.
- (2) The Chief Commissioner is to pay money received under this section into the Consolidated Fund.
- (3) An enterprise that fails to comply with subsection (1) is guilty of an offence and is liable:
 - (a) to a penalty not exceeding 50 penalty units, and
 - (b) to a further penalty not exceeding 5 penalty units for each day after the period within which it was required to comply with that subsection during which the failure continues.

11 Copies and inspection of returns

- (1) An enterprise that lodges a return must retain a copy of the return at the enterprise's registered office or principal place of operation in the State (or, if the enterprise is a natural person, at a place nominated by the person and specified in the return).

Maximum penalty: 2 penalty units.

- (2) The copy is to be retained for at least 6 years after the date on which it was lodged.

Maximum penalty: 2 penalty units.

- (3) The copy may be held in any form, but it must be readily able to be reproduced in the form of a document.

Maximum penalty: 2 penalty units.

- (4) An enterprise must make the retained copies of returns reasonably available for inspection by any person.

Maximum penalty: 2 penalty units.

- (5) The enterprise may charge an inspection fee of not more than \$10 (or, if the regulations prescribe a greater amount for the purposes of this subsection, that greater amount).

12 Publication of information relating to unclaimed money

The Chief Commissioner is to cause to be published in the Gazette such information as appears to the Chief Commissioner to be sufficient to give reasonable notification of:

- (a) the existence of each sum of unclaimed money paid to the Chief Commissioner under this Act that exceeds \$50 (or, if another amount is prescribed by the regulations for the purposes of this paragraph, that other amount), and
- (b) the identity of the owner of the money (if known).

13 Liability in respect of unclaimed money

- (1) An enterprise that pays unclaimed money to the Chief Commissioner in compliance with this Act is relieved from all further liability (other than a liability arising under any other law) in respect of the money concerned.
- (2) However, this section does not operate to relieve an enterprise from:
- (a) any obligation to comply with section 11 or a requirement, notice or direction under Part 5, or
- (b) liability in respect of money paid to the Chief Commissioner in purported compliance with this Act if the Chief Commissioner repays the money to the enterprise under Part 4.

Part 4 Claims for and repayment of unclaimed money

14 Definition

In this Part:

applicant means a person who applies under section 17 for the repayment of unclaimed money paid to the Chief Commissioner under this Act.

15 Owner's entitlement to recovery

The owner of any unclaimed money paid to the Chief Commissioner under this Act is entitled to recover that money from the Chief Commissioner in accordance with this Part.

16 Extinguishment of entitlement

Despite the *Limitation Act 1969*:

- (a) if an owner's right to money paid to the Chief Commissioner under this Act was not extinguished before the date of that payment, the owner's entitlement under this Part is not extinguished until the end of a period of 6 years beginning on that date, and
- (b) the owner's right to that money subsists until the end of that period.

17 Application for repayment

- (1) The owner of any money paid to the Chief Commissioner under this Act may apply to the Chief Commissioner for repayment of the money.
- (2) An application under this section must be made in writing and be lodged with the Chief Commissioner.

18 Time for application

An application in accordance with section 17 may be lodged at any time before the owner's right to the money is extinguished.

19 Onus on applicant

An applicant bears the onus of establishing that the applicant is the owner of the money to which the application relates.

20 Standard of proof

The standard of proof for establishing ownership of unclaimed money is the balance of probabilities.

21 Notice of determination

- (1) The Chief Commissioner determines an application by giving the applicant notice in writing to the effect that the Chief Commissioner is satisfied (or is not satisfied) that the applicant is the owner of the money (or part of the money) to which the application relates.
- (2) If the Chief Commissioner has not determined an application by the end of the period of 90 days after its lodgment, the Chief Commissioner is taken to have given the applicant notice, at the end of that period, to the effect that the Chief Commissioner is not satisfied that the applicant is the owner of the money concerned.

22 Appeal

An applicant who is dissatisfied with a determination of the Chief Commissioner may appeal to the District Court in accordance with rules of court.

23 Nature of appeal

- (1) An appeal is to be by way of a rehearing of the application under section 17.
- (2) In hearing such an appeal, the District Court may take into consideration information additional to the information considered for the purposes of the original determination.
- (3) On hearing an appeal, the District Court:
 - (a) may make an order varying the determination appealed from, or
 - (b) may make an order dismissing the appeal.
- (4) The District Court's determination of an appeal is final.

24 Chief Commissioner may repay unclaimed money to owner

- (1) The Chief Commissioner may repay unclaimed money paid to the Chief Commissioner under this Act to any person who is determined under this Part to be the owner of the money.
- (2) A notice under section 21 (1) is to be accompanied, or followed as soon as practicable, by the appropriate repayment (if any).
- (3) The Chief Commissioner is relieved from further liability in respect of unclaimed money repaid as referred to in this section.
- (4) However, the owner of the money, if not the person to whom the Chief Commissioner repaid it, is entitled to recover the money from the person to whom it was paid (unless the owner is prevented from doing so by operation of the *Limitation Act 1969*).

25 Chief Commissioner may repay unclaimed money not required to be paid to Chief Commissioner

- (1) The Chief Commissioner may repay money paid to the Chief Commissioner in purported compliance with this Act, but only if the Chief Commissioner is of the opinion that the money is not unclaimed money that is required to be paid to the Chief Commissioner under this Act.
- (2) The money may be repaid to the person by whom it was paid or to such other person as the Chief Commissioner considers appropriate.

26 Appropriation

The Consolidated Fund is appropriated by this section for the purposes of, and to the extent necessary to permit, repayments by the Chief Commissioner under this Part.

Part 5 Investigative powers

27 Circumstances in which investigative powers may be exercised

A power conferred under this Part may be exercised only for the purpose of exercising functions under this Act or the regulations.

28 Delegated officers

- (1) The Chief Commissioner may, by delegation under section 44, authorise an officer of the Office of State Revenue to exercise the functions conferred on the Chief Commissioner under this Part.
- (2) A person so authorised is a *delegated officer* for the purposes of this Part.

29 Issue of instrument of delegation

- (1) The Chief Commissioner must issue a delegated officer with an instrument of delegation that:
 - (a) states the name of the delegated officer, and
 - (b) states the functions delegated to the delegated officer and that those functions are functions under this Part, and
 - (c) states the date (if any) on which it expires, and
 - (d) bears the signature of the Chief Commissioner.

30 Power to require information and evidence

- (1) The Chief Commissioner may require a person, by written notice, to provide such records, information or evidence as is specified or described in the notice.
- (2) The Chief Commissioner may require the information or evidence to be provided in the form of or verified by statutory declaration.
- (3) The person to whom the notice is given must comply with the notice within such period as is specified in the notice or such extended period as the Chief Commissioner may allow.

Maximum penalty (subsection (3)): 200 penalty units.

31 Use and inspection of records provided or produced to Chief Commissioner or delegated officer

- (1) This section applies to a record that is provided or produced to the Chief Commissioner or a delegated officer.
- (2) The Chief Commissioner or the delegated officer may take and retain possession of the record for a reasonable period for the purpose of enabling the record to be inspected and for copies of, or extracts or notes from, the record to be made or taken by or on behalf of the Chief Commissioner or delegated officer.
- (3) However, if the record was provided or produced to the Chief Commissioner or delegated officer on the premises where it is normally kept, the Chief Commissioner or delegated officer may remove it from those premises for the purposes referred to in subsection (2) only:
 - (a) with the consent of the owner or occupier of the premises, or
 - (b) if it is not practicable to inspect or copy or take extracts or notes from the record on the premises.
- (4) The Chief Commissioner or the delegated officer must permit a person who would be entitled to inspect the record if it were not in the possession of the Chief Commissioner or delegated officer to inspect the record at any reasonable time.
- (5) Nothing in this section prejudices a lien a person has on the record.

32 Annotation of records

- (1) If the Chief Commissioner or a delegated officer is of the opinion that any matter in a record of an enterprise that relates (or may at some future time relate) to unclaimed money is incorrect, the Chief Commissioner may direct the enterprise to note the record with details of what the Chief Commissioner believes to be the true position concerning the matter.
- (2) The enterprise must comply with any such direction.

Maximum penalty (subsection (2)): 5 penalty units.

33 Power to require attendance

- (1) The Chief Commissioner may require a person, by written notice, to attend and give evidence before the Chief Commissioner or a delegated officer.
- (2) The Chief Commissioner may require the evidence to be given on oath or by affirmation and for that purpose the Chief Commissioner or a delegated officer may administer an oath or affirmation.
- (3) The person to whom the notice is given must comply with the notice.

Maximum penalty (subsection (3)): 200 penalty units.

34 Self-incrimination

- (1) A person is not excused from answering any question, furnishing any information or producing any record if required to do so under this Act, on the ground that the answer, information or record might tend to incriminate the person or make the person liable to a penalty.
- (2) Information given in answer to a question, or otherwise furnished, and a record produced, by a person in compliance with this Act is not admissible against the person in any criminal proceedings other than:
 - (a) proceedings for an offence against section 40, or
 - (b) a criminal proceeding in respect of the falsity of information given on oath or by affirmation.

35 Power of entry on premises

- (1) The Chief Commissioner may enter and remain on premises if the Chief Commissioner believes on reasonable grounds that there are records at the premises that are relevant to the administration of this Act.
- (2) Entry may be made at any reasonable time.
- (3) The power of a delegated officer to enter premises may not be exercised unless the delegated officer has the instrument of delegation issued by the Chief Commissioner and produces it if requested to do so by the owner or occupier of the premises.

36 Premises used for residential purposes

The powers of entry and inspection conferred by this Part are not exercisable in relation to premises or a part of premises used for residential purposes except:

- (a) with the consent of the owner or occupier of the premises or part, or
- (b) under the authority conferred by a search warrant.

37 Notice of entry

Before the Chief Commissioner or a delegated officer enters premises under this Act, the Chief Commissioner or delegated officer must give the owner or occupier of the premises reasonable notice of the intention to enter unless:

- (a) entry is made with the consent of the owner or occupier, or
- (b) the giving of notice would defeat the purpose for which it is intended to enter the premises.

38 Functions exercisable on entry

- (1) The Chief Commissioner or a delegated officer who has entered premises in accordance with this Part may:
 - (a) require any person at those premises to produce any records in the possession or under the control of the person (including a written record that reproduces in an understandable form information stored by computer, microfilm or other means or process), and
 - (b) require any person at those premises to answer questions or otherwise furnish information, and
 - (c) require the owner or occupier of the premises to provide the Chief Commissioner or delegated officer with such assistance and facilities as are reasonably necessary to enable the Chief Commissioner or delegated officer to exercise the functions of the Chief Commissioner or a delegated officer under this Part, and
 - (d) seize and remove evidence of the commission of an offence against this Act or the regulations.
- (2) A receipt is to be issued for anything removed.
- (3) Nothing in this section limits or affects section 31.

39 Search warrant

- (1) The Chief Commissioner or a delegated officer may apply to an authorised justice for a warrant to search any premises if the Chief Commissioner or the delegated officer has reasonable grounds to believe that any records are to be found there, being records to which the Chief Commissioner or delegated officer would have access if they were kept on premises to which the Chief Commissioner or delegated officer has access.
- (2) An authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the Chief Commissioner or delegated officer to enter and search the premises.
- (3) Nothing in this section limits or restricts any power conferred on the Chief Commissioner or a delegated officer under this Part.
- (4) In this section, *authorised justice* has the same meaning as in the *Search Warrants Act 1985*.

40 Offence—obstructing Chief Commissioner or delegated officer

- (1) A person who:
 - (a) prevents the Chief Commissioner or a delegated officer from exercising a function under this Part, or
 - (b) hinders or obstructs the Chief Commissioner or a delegated officer in the exercise of such a function, or
 - (c) without reasonable excuse, refuses or fails to comply with a requirement made by, or to answer a question of, the Chief Commissioner or a delegated officer asked in accordance with section 38, or
 - (d) furnishes the Chief Commissioner or a delegated officer, in connection with the exercise of a delegated officer's functions, with information knowing that it is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 200 penalty units.

- (2) A person is not guilty of an offence under this section arising from the entry of the Chief Commissioner or a delegated officer onto premises unless it is established that, at the material time, the Chief Commissioner or the delegated officer:

- (a) identified himself or herself as the Chief Commissioner or a delegated officer, and
- (b) warned the person that a failure or refusal to comply with the requirement constituted an offence.

41 Offence—impersonating Chief Commissioner or delegated officer

A person who impersonates or falsely represents that the person is the Chief Commissioner or a delegated officer is guilty of an offence.

Maximum penalty: 200 penalty units.

42 Defence—reasonable compliance

A person is not guilty of an offence under this Part if the court hearing the charge is satisfied:

- (a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates, or
- (b) that the defendant complied with the requirement to the extent of the defendant's ability to do so.

Part 6 Administration

43 Chief Commissioner

- (1) There is to be a Chief Commissioner of Unclaimed Money who, under the Minister, has the general administration of this Act.
- (2) The person for the time being holding office or acting as the Executive Director, Office of State Revenue, also holds office as the Chief Commissioner.

44 Delegation

The Chief Commissioner may delegate any of the functions of the Chief Commissioner under this Act (other than this power of delegation) to an officer of the Office of State Revenue.

Part 7 Miscellaneous

45 Enterprises that are not natural persons

Any act or thing that an enterprise is required or permitted to do by or under this Act may, in the case of an enterprise that is not a natural person, be done on behalf of the enterprise by an officer of the enterprise.

46 Liability of officers for offences by enterprises

- (1) If an enterprise contravenes, whether by act or omission, any provision of this Act or the regulations, each officer of the enterprise is taken to have contravened the same provision if the officer knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the enterprise has been proceeded against or convicted under that provision.
- (3) Nothing in this section affects any liability imposed on an enterprise for an offence committed by the enterprise against this Act or the regulations.

47 Proceedings

Proceedings for an offence against this Act or the regulations:

- (a) may be taken only by a person authorised in writing by the Chief Commissioner, and
- (b) are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

48 Lodgment with Chief Commissioner

For the purposes of this Act, a thing is lodged with the Chief Commissioner if it is:

- (a) lodged at an office of the Chief Commissioner, or
- (b) sent by post addressed to the Chief Commissioner at an office of the Chief Commissioner, or

- (c) sent by facsimile transmission or other electronic means notified by the Chief Commissioner as being an available means of communication, or
- (d) delivered to the facilities of a document exchange addressed to the Chief Commissioner if the Chief Commissioner has indicated that documents may be delivered to the Chief Commissioner in that way, or
- (e) sent by any means provided for the service of documents by another Act or law.

49 Other laws not affected

Nothing in this Act affects the operation of any other law that provides for the manner in which unclaimed money is to be dealt with.

50 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may impose a penalty not exceeding 2 penalty units for a breach of the regulation.

51 Repeal

The *Unclaimed Money Act 1982* is repealed.

52 Amendment of Acts

Schedule 1 has effect.

53 Savings, transitional and other provisions

Schedule 2 has effect.

54 Review of Act

- (1) The Treasurer is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Amendment of Acts

(Section 52)

1.1 Co-operation Act 1923 (1924 No 1)

[1] Section 80AB Unclaimed Money Act 1995

Omit "*Unclaimed Money Act 1982*".

Insert instead "*Unclaimed Money Act 1995*".

[2] Section 80AB

Omit "paid to the Treasurer under section 6".

Insert instead "paid to the Chief Commissioner of Unclaimed Money under section 10".

1.2 Co-operatives Act 1992 No 18

Section 138 Unclaimed Money Act 1982 not to apply

Omit the section.

1.3 Local Government Act 1993 No 30

[1] Section 22 Note to the section

Omit:

Unclaimed Money Act 1982

unclaimed money to be paid to the Treasury

Insert instead:

Unclaimed Money Act 1995

unclaimed money to be paid to the Chief Commissioner of Unclaimed Money

[2] Section 720 What if the purchase money is more than the amounts owing?

Omit subsection (3).

1.4 Mining Act 1992 No 29

Section 246 Sale of mining plant

Omit subsection (4). Insert instead:

- (4) Any balance remaining is to be paid to the Chief Commissioner of Unclaimed Money as unclaimed money, and section 10 (2) and Part 4 of the *Unclaimed Money Act 1995* apply to the balance so paid as they would have applied had the balance been paid to the Chief Commissioner under section 10 of that Act.

1.5 Petroleum (Onshore) Act 1991 No 84

Section 83 Sale of petroleum plant

Omit subsection (4). Insert instead:

- (4) Any balance remaining is to be paid to the Chief Commissioner of Unclaimed Money as unclaimed money, and section 10 (2) and Part 4 of the *Unclaimed Money Act 1995* apply to the balance so paid as they would have applied had the balance been paid to the Chief Commissioner under section 10 of that Act.

1.6 Public Finance and Audit Act 1983 No 152

Section 14 Unclaimed money

Omit "*Unclaimed Money Act 1982*" from subsection (1) (a).
Insert instead "*Unclaimed Money Act 1995*".

1.7 Roads Act 1993 No 33

Section 195 Payment of compensation money

Omit subsection (3). Insert instead:

- (3) Any money remaining in the trust account after 6 years from the date of the acquisition of the land is to be paid to the Chief Commissioner of Unclaimed Money for payment into the Consolidated Fund, there to be dealt with as unclaimed money under the *Unclaimed Money Act 1995*.

1.8 Search Warrants Act 1985 No 37

Section 10 Definitions

Insert in the definition of *search warrant* in alphabetical order of Acts the following words:

section 39 of the *Unclaimed Money Act 1995*,

Schedule 2 Savings, transitional and other provisions

(Section 53)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definition

In this Part:

earlier Act means the *Unclaimed Money Act 1982*.

3 Money held before commencement of Act

- (1) This Act applies to money held before as well as after the commencement of this Act.

- (2) However, this Act does not apply to money held in an account that had not been operated on for a period of 6 or more years immediately before the commencement of this Act if the money concerned was not, on that commencement, unclaimed money for the purposes of the earlier Act.

4 Time running before commencement of Act

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

5 Money paid to Treasurer under earlier Act

Any money paid to the Treasurer in compliance with the earlier Act is taken to have been paid to the Chief Commissioner under this Act.

6 Exercise of Treasurer's functions under earlier Act

Any functions exercised by the Treasurer under the earlier Act are taken to have been exercised by the Chief Commissioner under this Act.

7 Form for lodgment of returns

The form set out in Schedule 1 to the earlier Act is taken to be the form approved by the Chief Commissioner for the purposes of section 10 until the Chief Commissioner approves a different form.

8 Application for payment of unclaimed money

- (1) A person who:
- (a) would have been entitled to maintain an action for the recovery of unclaimed money under section 10 of the earlier Act immediately before the repeal of that Act, and

(b) would not, but for this subclause, be entitled to recover unclaimed money from the Chief Commissioner under this Act,

may apply to the Chief Commissioner for the repayment of that money within 6 months after that repeal.

(2) The provisions of Part 4 of this Act apply to and in respect of any such application as if it were an application under that Part.

[Minister's second reading speech made in—
Legislative Assembly on 15 November 1995
Legislative Council on 4 December 1995]

BY AUTHORITY