

**Banking Laws Amendment (Unclaimed Money) Bill 2015**

**Explanatory Guide**

**DRAFT**



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# **Chapter 1**

## **Amendments to the Banking Act 1959**

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### **Outline of chapter**

1.1 Schedule 1 to the Bill will amend the *Banking Act 1959* (Banking Act) to provide for new arrangements for unclaimed moneys held by authorised deposit-taking institutions (ADIs).

### **Context of amendments**

1.2 Currently, ADIs are required to assess all accounts to determine if they consist of unclaimed moneys by 31 December each year and transfer any that do to the Commonwealth by 31 March of the following year (Subsection 69(3), Banking Act).

1.3 An account held by an ADI consists of unclaimed moneys if in the previous three years there have been no transactions in the account other than interest or charges (Subsection 69(1), Banking Act) and they have not satisfied the notification requirements by, for example, checking their account balance online or on the phone, or by specifically advising their bank that they would like the account to remain active.

1.4 Evidence suggests that many of the accounts that are declared unclaimed and transferred to the Commonwealth are effectively active as the account holder remains aware of them. For example, around 15 per cent of unclaimed funds transferred from ADIs are reclaimed in the same year they are transferred to the Commonwealth. Approximately 50 per cent of all funds transferred to the Commonwealth as unclaimed are reclaimed within two years..

1.5 The high proportion of effectively active accounts transferred to the Commonwealth each year under the current provisions increases the regulatory burden of the unclaimed moneys provisions for ADIs and account holders. ADIs have to assess and transfer all accounts with unclaimed moneys to the Commonwealth even though many of the accounts are still effectively active. Once these accounts are transferred, account holders have to complete the necessary paperwork and verify their details in order to reclaim their accounts.

1.6 To minimise the number of effectively active accounts that are transferred to the Commonwealth, regulation 20A of the *Banking*

*Regulations 1966* (Banking Regulations) enables account holders to notify an ADI that an account should be treated as active. If the notification is provided prior to 31 December (that is, when ADIs have to assess accounts as unclaimed moneys) then the account does not have to be transferred to the Commonwealth.

1.7 If, however, the account holder provides notification after an account is assessed as unclaimed money on 31 December, but before the ADI transfers the account to the Commonwealth then the account must still be transferred.

1.8 This is inconsistent with the treatment of accounts where the account holder satisfies the activity requirements (such as completing a transaction) after an account has been deemed to be unclaimed but before the funds are transferred to the Commonwealth. These accounts do not have to be transferred to the Commonwealth.

1.9 The unclaimed moneys provisions currently apply to foreign currency accounts and children's accounts. The application of the unclaimed moneys provisions to these accounts does not align to how they are used by the community.

1.10 Foreign currency accounts are generally used by sophisticated consumers to settle business transactions in foreign currencies. Transferring these accounts to the Commonwealth under the unclaimed moneys provisions requires the account to be converted into Australian dollars, potentially exposing the account holder to exchange rate fluctuations. Given this risk and the fact that these accounts are used by sophisticated consumers that are likely to know of these accounts, it is not appropriate to transfer them to the Commonwealth under the provisions.

1.11 Children's accounts are generally established for long periods so that money can be set aside in a high-interest account for a child to access on, for example, their eighteenth birthday. Transferring these accounts to the Commonwealth may result in some children losing out on higher interest rates because accounts transferred to the Commonwealth will only accrue the interest at the rate of Consumer Price Index .

1.12 Details of unclaimed moneys held by the Commonwealth must be published annually in the Australian Securities and Investment Commissions (ASIC) *Unclaimed Moneys Gazette* (Subsection 69(9), Banking Act). Information on unclaimed moneys is also released under the *Freedom of Information Act 1982* (FOI Act) and is published on the ASIC website.

1.13 Details of unclaimed moneys is also searchable online via the ASIC Money Smart website (Subsection 69(9)(b), Banking Act).

1.14 The level of information available has created the opportunity for groups to approach account holders offering to reunite them with their account for a fee. Account holders can reclaim their money from the Government at no charge. The level of information could also potentially be used for identity theft.

## Summary of new law

1.15 The new law amends the Banking Act to extend the unclaimed moneys period from three years to seven years from 31 December 2015.

1.16 The new law provides that ADI accounts created for children and those that are held in a foreign currency are exempt from the unclaimed moneys provisions.

1.17 The new law stops ADI accounts being transferred to the Commonwealth where the account holder provides notification that the account should be treated as active after the account is assessed as unclaimed moneys at the end of the calendar year but before the it is transferred to the Commonwealth.

1.18 The new law amends the Banking Act to remove the requirement for ASIC to publish details of unclaimed moneys in the annual unclaimed moneys gazette and introduces a secrecy provision to prevent access to information on unclaimed moneys via the FOI Act. The Treasurer will retain the ability to publish information on unclaimed moneys, such as on ASIC's MoneySmart website.

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
ADI accounts consist of unclaimed moneys <b>seven years</b> after there are no transactions other than interest and charges unless an exemption applies.	ADI accounts consist of unclaimed moneys <b>three years</b> after there are no transactions other than interest and charges unless an exemption applies.
Foreign currency accounts held by ADIs are exempt from the unclaimed moneys provisions.	No special treatment for foreign currency accounts held by ADIs.
A Children's accounts in an ADI is exempt from the unclaimed moneys provisions.	A children's account in an ADI only consist of unclaimed moneys if there are no transactions for seven years (in the Banking Regulations).

ADIs do not have to transfer accounts to the Commonwealth if an account holder provides notification that an account is active after the account is assessed as unclaimed moneys at the end of a calendar year but before the ADI transfers the account the Commonwealth.	ADIs must transfer accounts to the Commonwealth if an account holder provides notification that an account is active after the account is assessed as unclaimed moneys at the end of a calendar year but before the ADI transfers the account the Commonwealth.
Removes the requirement for details on unclaimed moneys held in ADI accounts to be published in the annual AISC unclaimed moneys gazette.	Details on unclaimed moneys held in ADI accounts must be published in the annual ASIC unclaimed moneys gazette
A secrecy provision prohibits the disclosure of information relating to unclaimed moneys unless provided for in the Banking Act.	Details on unclaimed moneys can be sought under FOI requests and is published on the ASIC website.

## Detailed explanation of new law

1.19 The Bill modifies the definition of unclaimed moneys in subsection 69(1) of the Banking Act by increasing the time before an ADI account is assessed as unclaimed moneys from three years to seven years. *[Schedule 1, item 1, subsection 69(1)]*

1.20 The Bill excludes foreign currency accounts and children's accounts from being treated as unclaimed moneys. The existing exemption for farm management deposits remains unchanged. *[Schedule 1, item 2, subsection 69(1A)]*

1.21 The Bill provides that ADIs do not have to report on or transfer to the Commonwealth any accounts where the account holder notifies the ADI that the account should be treated as active, after the account is assessed as unclaimed moneys at the end of a calendar year, but prior to the ADI actually transferring the account to the Commonwealth. *[Schedule 1, item 3, subsection 69(3)]*

### Example 1 .1

Mitch has an account with ABC bank. His account is assessed as having unclaimed moneys on 31 December 2015. On 20 January 2016, ABC bank has not yet transferred the account the Commonwealth when Mitch notifies them that he wants to treat the account as active. ABC bank will no longer have to report on or transfer Mitch's account to the Commonwealth.



### **Example 1.2**

Sue has an account XYZ credit union. Her account is assessed as having unclaimed moneys on 31 December 2015. XYZ credit union transfers all of the accounts it has assessed as unclaimed moneys to the Commonwealth on 20 March 2016. Sue provides XYZ credit union with notification that her account is active on 25 March 2016. Sue's notification is too late as the account has already been transferred to the Commonwealth. She will have to reclaim her account.

1.22 The Bill removes the requirement for ASIC to publish details of ADI accounts with unclaimed moneys to be published in the annual *unclaimed moneys gazette*. The Bill continues to enable information on ADI accounts with unclaimed moneys to be published in any manner determined by the Treasurer. *[Schedule 1, item 4, subsection 69(9)]*

1.23 The Bill establishes the definition for a Children's account for the purposes of subsection 69(1A). The definition is identical to the one in the Banking Regulations. *[Schedule 1, item 5, subsection 69(12)]*

1.24 The Bill creates a secrecy provision that prevents the disclosure of information relating to ADI accounts with unclaimed moneys unless authorised by subsection 69(3) of the Banking Act. The secrecy provision applies in relation to the FOI Act which will ensure that access to information on ADI accounts with unclaimed moneys via the FOI Act is only available the people to whom the information relates (or their agent). *[Schedule 1, item 6, section 69A]*

1.25 The Bill renumbers section 69AA as section 69B. No substantive changes are being made to the provision. *[Schedule 1, item 7, section 69AA]*

## **Consequential amendments**

1.26 Section 38 of the FOI Act provides that a document is exempt from freedom of information applications if it is prohibited under a provision of another Act and the provision is specified in Schedule 3 of the FOI Act.

1.27 The Bill amends schedule 3 of the FOI Act to prescribe that the secrecy provision that is being introduced in subsection 69A(2) of the Banking Act is a provision to which section 38 of the FOI Act applies. *[Schedule 1, item 10, schedule 3 of the FOI Act]*

1.28 This will mean that information related to unclaimed ADI accounts (such as the name and recorded address of the account holder) will not be available under the FOI Act to anyone other than the person to whom the information relates (or their agent).

## **Application and transitional provisions**

1.29 The amendments in this Chapter to the Banking Act will commence on 31 December 2015.

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## **Chapter 2**

# **Amendments to the Life Insurance Act 1995**

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### **Outline of chapter**

2.1 Schedule 1 to the Bill will amend the *Life Insurance Act 1959* (Insurance Act) to provide for new arrangements for unclaimed moneys held by life insurance providers.

### **Context of amendments**

2.2 Currently, life insurance providers are required to assess all accounts to determine if they consist of unclaimed moneys by 31 December each year and transfer any that do to the Commonwealth by 31 March of the following year (Subsections 216(1) 216(3), and 216(6) Life Insurance Act).

2.3 An account held by a life insurance provider consists of unclaimed moneys if there have been no transactions in the account other than interest or charges in the previous three years (Subsection 216(16), Life Insurance Act).

2.4 Many of the accounts that are transferred to the Commonwealth are still effectively active as the account holder remains aware of them. Around 9 per cent of life insurance accounts are reclaimed in the same year as they are transferred to the Commonwealth and 50 per cent of all funds transferred are reclaimed within two years.

2.5 The high proportion of effectively active accounts that are transferred to and reclaimed from the Commonwealth creates a regulatory burden for life insurance providers and account holders. Life insurance providers have to assess and transfer all accounts with unclaimed moneys to the Commonwealth even though the accounts may still be effectively active. Once these accounts are transferred, account holders have to complete the necessary paperwork and verify their details in order to reclaim their accounts.

2.6 Information on unclaimed moneys is released under the *Freedom of Information Act 1982* (FOI Act) and is published on the ASIC

website. Details of unclaimed moneys is also searchable online via the ASIC Money Smart website

2.7 The level of information available has created the opportunity for groups to approach account holders offering to reunite them with their account for a fee. Account holders can reclaim their money from the Government at no charge. The level of information could also potentially be used for identity theft.

## Summary of new law

2.8 The new law amends the Life Insurance Act to change the unclaimed moneys period from three years to seven years from 31 December 2015.

2.9 The new law amends the Life Insurance Act to introduce a secrecy provisions to prevent access to information on unclaimed moneys via the FOI Act. Details on unclaimed moneys in life insurance accounts will still be able to be published in any way as determined by the Treasurer.

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Life insurance accounts consist of unclaimed moneys <b>seven years</b> after there are no transactions other than interest and charges unless an exemption applies.	Life insurance accounts consist of unclaimed moneys <b>three years</b> after there are no transactions other than interest and charges unless an exemption applies.
A secrecy provision prohibits the disclosure of information on unclaimed moneys unless provided for in the Insurance Act.	Details on unclaimed moneys can be sought under FOI requests and is published on the ASIC website.

## Detailed explanation of new law

2.10 The Bill modifies the definition of unclaimed moneys in subsection 216(1) of the Life Insurance Act by increasing the time before a life insurance account is assessed as unclaimed moneys from three years to seven years. [*Schedule 1, item 8, subsection 69(15)(c)(i)*]

2.11 The Bill creates a secrecy provision that prevents the disclosure of information relating to life insurance accounts with unclaimed moneys unless authorised by subsection 216 of the Life Insurance Act. The secrecy provision applies in relation to the FOI Act which will ensure that access to information on life insurance accounts with unclaimed moneys via the FOI Act is only available the people to whom the information relates (or their agent). *[Schedule 1, item 9, section 216A]*

## **Consequential amendments**

2.12 Section 38 of the FOI Act provides that a document is exempt from freedom of information applications if it is prohibited under a provision of another Act and the provision is specified in Schedule 3 of the FOI Act.

2.13 The Bill amends schedule 3 of the FOI Act to prescribe that the secrecy provision that is being introduced in subsection 216A(2) of the Life Insurance Act is a provision to which section 38 of the FOI Act applies. *[Schedule 1, item 10, schedule 3 of the FOI Act]*

2.14 This will mean that information related to unclaimed life insurance accounts (such as the name and recorded address of the account holder) will not be available under the FOI Act to anyone other than the person to whom the information relates (or their agent).

## **Application and transitional provisions**

2.15 The amendments in this Chapter to the Life Insurance Act will commence on 31 December 2015.