

No. 18 of 1974

AN ORDINANCE

To amend the *Companies (Unclaimed Assets and Moneys) Ordinance 1950-1966*.

I, THE GOVERNOR-GENERAL of Australia, acting with the advice of the Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1972*.

Dated this nineteenth day of April, 1974.

PAUL HASLUCK
Governor-General.

By His Excellency's Command,

FRANK CREAN
Treasurer.

UNCLAIMED MONEYS ORDINANCE 1974

1. (1) This Ordinance may be cited as the *Unclaimed Moneys Ordinance 1974*.^{*} Short title
and citation.

(2) The *Companies (Unclaimed Assets and Moneys) Ordinance 1950-1966*[†] is in this Ordinance referred to as the Principal Ordinance.

(3) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Unclaimed Moneys Ordinance 1950-1974*.

2. Section 3 of the Principal Ordinance is repealed and the following sections are substituted:— Definitions.

“ 3. In this Ordinance—

‘ company ’ means—

- (a) a body corporate that is a company or a foreign company for the purposes of the *Companies Ordinance 1962-1973*;
- (b) a co-operative society registered under the *Co-operative Societies Ordinance 1939-1972*; and
- (c) an association incorporated under the *Associations Incorporation Ordinance 1953-1966*;

‘ corresponding law ’ means a law of a State or another Territory declared by the Treasurer, by notice in the *Gazette*, to be a law that corresponds with this Ordinance.

^{*} Notified in the *Australian Government Gazette* on 30 April 1974.

[†] Ordinance No. 15, 1950, as amended by No. 14, 1954; No. 7, 1962; and No. 19, 1966.

Delegation
by the
Treasurer.

“ 3A. (1) The Treasurer may, by instrument in writing, delegate to a person all or any of his powers or functions under this Ordinance (except this power of delegation) either generally or otherwise as provided in the instrument of delegation.

“ (2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

“ (3) A delegation under this section is revocable at will and does not prevent the exercise of a power, or the performance of a function, by the Treasurer.”.

3. Section 4 of the Principal Ordinance is repealed and the following section substituted:—

Unclaimed
assets in
hands of
liquidator.

“ 4. (1) A liquidator of a company who—

- (a) has in his hands or under his control any amount (including a dividend) that has remained unclaimed for more than six months from the date when the amount became payable; or
- (b) after making a final distribution, has in his hands or under his control any unclaimed or undistributed amount arising from the property of the company,

shall pay that amount to Australia.

“ (2) The Supreme Court may, at any time, upon the application of the Registrar of Companies, by order, direct a liquidator to submit to the Court an account of any unclaimed or undistributed moneys or dividends in his hands.

“ (3) Where the Supreme Court makes an order under sub-section (2), it may, by its order, give directions as to—

- (a) the verification of the account;
- (b) the auditing of the account; and
- (c) the payment by the liquidator to Australia of unclaimed or undistributed moneys or dividends.

“ (4) A liquidator who makes a payment to Australia in accordance with sub-section (1) or in accordance with an order under sub-section (2) shall give to the Secretary to the Department of the Treasury particulars of—

- (a) the amount so paid;
- (b) the name of the company concerned; and
- (c) the name of the person who appears, from the records of the company, to be entitled to the moneys to which the payment relates.

“ (5) Where a liquidator pays an amount to Australia in accordance with sub-section (1) or in accordance with an order made under sub-section (2), the liquidator is discharged from liability to any person in respect of that amount.”.

4. Section 5 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) the words “the Treasurer” and substituting the word “Australia”;
- (b) by omitting from sub-section (2) the words “the Treasurer” (first occurring) and substituting the word “Australia”; and
- (c) by adding at the end thereof the following sub-section:—
 - “(4) In this section, a reference to money paid to Australia under this Part shall be read as including a reference to money paid to the Treasurer in accordance with this Part as in force immediately before the commencement of the *Unclaimed Moneys Ordinance 1974*.”

Payments to persons entitled.

5. Section 6 of the Principal Ordinance is repealed and the following section substituted:—

“6. (1) This Part applies in relation to moneys payable by a company—

Application of Part.

- (a) to a person in his capacity as a member of the company; or
- (b) in respect of deposits with, or securities of, the company.

“(2) For the purposes of this Part, moneys in relation to which this Part applies are unclaimed moneys if—

- (a) a period of not less than six years has elapsed since the date on which the moneys became payable; and
- (b) during that period, the company has not received from a person entitled to the moneys a request that the moneys be paid to him or according to his direction.”

6. Section 9 of the Principal Ordinance is amended by adding at the end thereof the following sub-sections:—

“(2) It is a defence to a prosecution for an offence arising out of a failure to comply with sub-section (1) of section 7 that, in relation to the moneys in question, the defendant complied with a corresponding law, being a law that applied to, or in relation to, those moneys.

Penalty for failure to compile or gazette register.

“(3) It is a defence to a prosecution for an offence arising out of a failure to comply with section 8 that, in relation to the register in question, the defendant complied with a corresponding law, being a law that applied to, or in relation to, that register.”

7. Section 10 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) the words “the Treasurer” and substituting the word “Australia”; and
- (b) by omitting sub-section (3).

Unclaimed moneys to be paid to Treasurer.

8. Section 11 of the Principal Ordinance is amended—

- (a) by omitting the words “the Treasurer” and substituting the word “Australia”; and

Penalty for neglect to pay unclaimed moneys.

(b) by adding at the end thereof the following sub-section:—

“ (2) It is a defence to a prosecution for an offence against sub-section (1) that, in relation to the moneys in question, the defendant complied with the requirements of a corresponding law, being a law that applied to, or in relation to, those moneys.”.

9. Section 13 of the Principal Ordinance is repealed and the following section substituted:—

Payments of
moneys to
lawful
claimant.

“ 13. (1) A person who claims to be entitled to any moneys paid to Australia in accordance with section 10 may apply to the Supreme Court for an order under this section.

“ (2) Where, on an application made under sub-section (1), the Supreme Court is satisfied that the applicant is entitled to moneys paid to Australia in accordance with section 10, the Court shall make an order declaring that the applicant is entitled to those moneys.

“ (3) Where—

(a) the Supreme Court makes an order under sub-section (2) declaring a person to be entitled to moneys paid to Australia in accordance with section 10; or

(b) the Treasurer is satisfied that a person is entitled to such moneys,

Australia shall pay to that person an amount equal to the moneys to which he is entitled.

“ (4) In this section, a reference to moneys paid to Australia in accordance with section 10 shall be read as including a reference to moneys paid to the Treasurer in accordance with section 10 as in force immediately before the commencement of the *Unclaimed Moneys Ordinance 1974*.”.

First
Schedule.

10. The First Schedule to the Principal Ordinance is amended by omitting the words “ Register of unclaimed moneys which became statute-barred during the year 19 ” and inserting in their stead the words “ Register of moneys which became unclaimed moneys during the year 19 ”.

Second
Schedule.

11. The Second Schedule to the Principal Ordinance is amended by omitting the words “ *Companies (Unclaimed Assets and Moneys) Ordinance 1950* ” (wherever occurring) and inserting in their stead the words “ *Unclaimed Moneys Ordinance 1950-* ”.