



AUSTRALIAN CAPITAL TERRITORY

Unclaimed Moneys (Amendment) Act 1997

No. 34 of 1997

An Act to amend the *Unclaimed Moneys Act 1950*

[Notified in ACT Gazette S180: 30 June 1997]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Unclaimed Moneys (Amendment) Act 1997*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Principal Act

3. In this Act, “Principal Act” means the *Unclaimed Moneys Act 1950*.¹

Addition

4. The Principal Act is amended by adding after section 15 the following Part:

“PART IV—UNCLAIMED SUPERANNUATION BENEFITS

Interpretation

“16. In this Part, unless the contrary intention appears—

‘approved deposit fund’ has the same meaning as in the Commonwealth Act;

‘Commonwealth Act’ means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

‘eligibility age’, in relation to an age pension, means—

- (a) in the case of a man—65 years or, if another age is prescribed, that age; or
- (b) in the case of a woman—62.5 years or, if another age is prescribed, that age;

‘fund’ means an approved deposit fund or a regulated superannuation fund to which this Part applies by virtue of section 17;

‘regulated superannuation fund’ has the same meaning as in the Commonwealth Act;

‘unclaimed money’ means money taken to be unclaimed money by virtue of subsections 18 (1) and (2).

Application of Part

“17. (1) This Part applies to an approved deposit fund or regulated superannuation fund if—

- (a) the trustee of the fund is a company incorporated in the Territory;
- (b) the trustee of the fund is a corporation that has its registered office in the Territory;
- (c) the trustee of the fund is a natural person and the principal place the trustee carries on business as trustee is in the Territory;
- (d) in the case of an exempt public sector superannuation scheme—the principal place where the fund is administered is in the Territory; or

- (e) where there is more than 1 trustee of the fund and paragraph (a), (b) or (c) applies to at least 1 of the trustees—the principal place where the fund is administered is in the Territory.

“(2) In subsection (1)—

‘corporation’ and ‘registered office’ have the same respective meanings as in the Corporations Law;

‘exempt public sector superannuation scheme’ has the same meaning as in the Commonwealth Act.

Unclaimed money

“18. (1) If—

- (a) a member of a fund has reached the eligibility age for an age pension;
- (b) the trustee determines that, under the governing rules of the fund, a benefit (other than a pension or annuity) is immediately payable in respect of the member;
- (c) the member has not applied to the trustee to have the amount of his or her benefits in the fund paid to him or her; and
- (d) the trustee is unable to pay those benefits to the member because the trustee, after making reasonable efforts to find the member, is unable to do so;

any amount payable to the member shall be taken to be unclaimed money.

“(2) If—

- (a) a member of a fund has died;
- (b) the trustee determines that, under the governing rules of the fund, a benefit (other than a pension or annuity) is immediately payable in respect of the member;
- (c) the member had not applied to have the amount of his or her benefits in the fund paid to him or her or has died after making such an application; and
- (d) the trustee is unable to pay those benefits in respect of the member because the trustee, after making reasonable efforts, is unable to find a person to whom the trustee is required to pay those benefits;

any amount payable to the beneficiary shall be taken to be unclaimed money.

“(3) If—

- (a) paragraphs (1) (a), (b) and (c); or
- (b) paragraphs (2) (a), (b) and (c);

are satisfied in relation to a member, the trustee shall make reasonable efforts to find the member or beneficiary (as the case requires) and pay the benefits to him or her.

“(4) In this section—

‘beneficiary’ means a person to whom a trustee is required to pay benefits referred to in paragraph (2) (d).

Deeming age or gender

“19. (1) If the age of a member is unknown, for the purposes of section 18, the member shall be taken to have been 18 years of age at the time when his or her first contribution to the fund was made.

“(2) If the gender of a member is unknown, for the purposes of section 18 the member shall be taken to be the gender for which the eligibility age is higher.

Statement of unclaimed money

“20. (1) The trustee of a fund shall give to the Minister a statement in the form approved by the Minister of—

- (a) all unclaimed money in the fund as at the end of each half year starting with the half year ending on 30 June 1997; and
- (b) particulars relating to the payment of any unclaimed money referred to in paragraph (a) that the trustee pays to a person who is entitled to it between the end of the relevant half year and the day on which the statement is given to the Minister.

“(2) A statement under subsection (1) shall be given to the Minister on or before—

- (a) in relation to a half year ending on 30 June in a calendar year—31 October in that calendar year; and
- (b) in relation to a half year ending on 31 December in a calendar year—30 April in the following calendar year.

“(3) Notwithstanding subsection (2), on application by a trustee made before, on or after the day on which a statement under subsection (1) is to be given to the Minister (in this subsection called the ‘relevant day’), the statement may be given to the Minister on or before such day (being later than the relevant day) as the Minister determines in writing.

“(4) An approval by the Minister of a form of statement for the purposes of subsection (1) may require or permit the statement to be given on a specified kind of data processing device in accordance with specified software requirements.

“(5) The trustee of a fund shall not contravene subsection (1) or (2).

Penalty for contravention of subsection (5):

- (a) if the offender is a natural person—20 penalty units;
- (b) if the offender is a body corporate—100 penalty units.

Payment of unclaimed money to Minister

“21. (1) Where a trustee gives the Minister a statement under subsection 20 (1), the trustee shall pay to the Minister an amount equal to the amount referred to in the statement in accordance with paragraph 20 (1) (a) less any amount referred to in the statement in accordance with paragraph 20 (1) (b).

Penalty:

- (a) if the offender is a natural person—20 penalty units;
- (b) if the offender is a body corporate—100 penalty units.

“(2) The Minister shall pay any amount paid to him or her under subsection (1) into the trust account.

“(3) In subsection (2)—

‘trust account’ means the trust bank account maintained by the Chief Executive of the administrative unit responsible for administering this Act in accordance with section 51 of the *Financial Management Act 1996*.

Discharge of trustee from liability

“22. On payment to the Minister of an amount as required by this Part, the trustee of a fund is discharged from further liability in his or her capacity as trustee in relation to that amount.

Payment to person entitled

“23. (1) If—

- (a) any unclaimed money has been paid to the Minister under this Part; and

- (b) on application, the Minister is satisfied that, but for this Part and section 225 of the Commonwealth Act, the applicant would have been paid that unclaimed money by the trustee of a fund by whom it was paid to the Minister;

the Minister shall pay that unclaimed money to the applicant.

“(2) An application under paragraph (1) (b) shall be in a form approved by the Minister.

Repayment of excess money

“24. If the trustee of a fund, after paying an amount to the Minister under this Part, satisfies the Minister that the amount so paid exceeds the amount that would have been paid to the relevant person, the Minister shall refund to the trustee the amount of the excess.

Register of money received

“25. The Minister shall keep a register that contains particulars of—

- (a) any unclaimed money paid to him or her by the trustee of a fund under this Part; and
- (b) the member of the fund in respect of whom the unclaimed money was payable.”.

NOTES

Principal Act

1. Reprinted as at 31 May 1991. See also Act No. 64, 1993; No. 46, 1995.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 17 June 1997]