

Explanatory Memorandum for Executive Council

In the attached draft Ordinance it is proposed to amend the Companies (Unclaimed Assets and Moneys) Ordinance 1950-1966 for the Australian Capital Territory as explained hereunder:-

Title and Citation

The present title does not adequately represent the subject matter of this Ordinance, which deals with unclaimed moneys in the hands of liquidators and companies. The title has been changed to "Unclaimed Moneys Ordinance" in keeping with the titles of comparable legislation in the majority of the States.

Section 3

In order to bring unclaimed moneys held by associations incorporated under the Associations Incorporation Ordinance within the scope of the Ordinance the definition of "company" is amended. This will provide common treatment for unclaimed moneys held by companies, co-operative societies and incorporated associations. A new definition of "corresponding law" is included to cover the references to this in sections 9 and 11.

Section 3A

This is a new section to enable the Treasurer to delegate his powers and functions under the Ordinance. This will render it unnecessary for the Treasurer to exercise personally all his powers and functions under the Ordinance.

Section 4

The current section requires a liquidator to pay unclaimed moneys directly to the Treasurer and for the Treasurer to pay all moneys to the Consolidated Revenue Fund. Provision is also made for the giving of receipts by the Secretary to the Treasury or a person authorized by him for the purpose. In practice, moneys are not usually paid directly to the Treasurer and, in any case, it is preferable that provision be made to enable persons other than the Treasurer to receive moneys and issue receipts. The wording of the new section follows the usual form adopted in other similar enactments (e.g. the Banking Act). The other changes to the section are of a drafting nature.

Section 5

The amendments proposed to this section are consequential upon the changes to section 4. A transitional provision is also included, to cover moneys paid to the Government under the provisions of the present Ordinance, the effect of which will be to apply the provisions of the amended Ordinance to moneys paid to the Treasurer immediately before the commencement of the Ordinance.

Section 6

The existing section provides that moneys shall be regarded as unclaimed once the right of recovery of the person entitled to the moneys has become statute barred. However, the Attorney-General's Department has advised that a debt does not become statute barred where the creditor may have been, and may continue to be, under a disability at the time the debt became due. As it is appropriate for the Ordinance to apply in these cases, the amendment provides that moneys may now be treated as unclaimed six years after the date on which they became payable.

Section 9

An amendment to this section is necessary to avoid the possibility of conflict between the Australian Government and State Government legislations. The amendment provides that compliance with a corresponding provision in the legislation of another State or Territory is a complete defence to a prosecution under the Ordinance arising out of a failure to comply with the provisions of sections 7 or 8 of the Ordinance.

Section 10

The amendment accords with that to section 4 and enables unclaimed moneys paid by companies to be received by persons other than the Treasurer.

Section 11

As with section 9 the proposed amendment provides a complete defence to a prosecution for failure to comply with sub-section (1) of this section if there has been compliance with a corresponding provision in the legislation of another State or Territory. The other change to this section is consequential upon that to section 10 and covers the penalties for failure of a company to pay unclaimed moneys to Australia.

Section 13

This section deals with the procedures to be followed in connection with claims lodged by persons in respect of moneys which have been unclaimed. Provision is made for application to the Supreme Court as well as for the Treasurer to make payment when he is satisfied about entitlement.