

INFORMATION FOR COMPANIES AND SUPERANNUATION ENTITIES LODGING UNCLAIMED MONEYS

(Effective 22 December 2005)

GENERAL INFORMATION

A number of Australian (Commonwealth/State/Territory) laws deal with unclaimed moneys. This information guide deals only with –

- *Unclaimed Moneys Act 1950*;
 - moneys held by companies (other than superannuation);
 - certain superannuation funds and Retirement Savings Accounts;
- *Legal Practitioner's Act 1970*;
- *Agents Act 2003*.

UNCLAIMED MONEYS ACT 1950

While not a legislative requirement, unclaimed moneys are generally held by the State or Territory in which the organisation is incorporated. Most unclaimed money lodged with the Public Trustee is lodged under the *Unclaimed Moneys Act 1950*.

The Act covers unclaimed assets in the hands of liquidators but only where the liquidation took place prior to 1 January 1991. However it does not cover -

- moneys held by banks;
- personal moneys;
- moneys owing by a business within the terms of the *business names act*;
- salaries and wages (determined under arbitration legislation);
- unclaimed moneys under the jurisdiction of the Australian Securities and Investments Commission (refer *Corporations Act*).

1. Moneys held by Companies (other than superannuation)

This category covers moneys held by a company and payable to a member of that company, or in respect to deposits or securities with the company, and where -

- six years or more have elapsed since the date payable; and
- no contact has been made with the company by the person entitled, within that time.

“Company” includes -

- a body corporate being a company (including a foreign company) for the purposes of the *Corporations Act*;
- a cooperative society registered under the *Cooperatives Act 2002*; and
- an association incorporated under the *Associations Incorporation Act 1991*.

Obligations of companies

Companies are required to -

- enter in an alphabetical register, by 31 January each year, particulars of moneys, which have become unclaimed moneys during the preceding year;
- maintain the register for public scrutiny at its principal office during office hours;
- by 31 March of the following year:
 - (i) publish in a daily newspaper circulating in the ACT, a notice stating the company has unclaimed amounts owing from the previous year and with contact details for enquiries;
 - (ii) lodge with the Public Trustee, a copy of the register, evidence of publication and a signed lodgement form.
- lodge the moneys with the Public Trustee, no earlier than 12 months after publication and no later than one month of the end of that 12 month period.

Following this, the company is relieved of all further liability in respect to the moneys.

2. Moneys held by superannuation trustees and Retirement Savings Accounts (RSA's)

Unclaimed moneys held in specified superannuation funds and RSA's, which have not been claimed, are unclaimed moneys under the Act and must be paid to the Public Trustee.

A superannuation fund is subject to the Act where -

- the trustee is a corporation whose registered office is in the ACT;
- the trustee is natural person whose principal place of business is in the ACT;
- the trustee is an exempt public sector scheme whose principal place of business is in ACT; or
- there are many trustees in the fund, and all the above conditions apply to at least one of the trustees, and the principal place where the fund is administered is in the ACT.

Benefits held by affected funds are unclaimed moneys where a member of the fund has reached the eligible age for an age pension and a benefit is payable to that member. The eligible age is 65 years for men and, for women, the age prescribed in the *Social Security Act 1991* (C'wlth). An additional requirement is that the member has not applied for payment of the funds and the trustee is unable to locate the member to pay the benefit.

Benefits are also unclaimed moneys where -

- a member of the fund has died, a benefit is payable to that member and the member has not applied for the funds or died after making such application; and
- the trustee is unable to find a person to whom he or she is required to pay the benefit, and has made reasonable attempts to locate the member or beneficiary to pay the benefit.

Obligations of superannuation trustees and RSA providers

Trustees of eligible superannuation funds and RSA providers must lodge with the

Public Trustee –

- a statement of all unclaimed moneys held in the fund/accounts every half year commencing 30 June 1997 (by 31 October and 30 April following each respective six month period);
- details of payments of unclaimed moneys paid by the trustee/provider to an entitled person listed in the statement prior to lodgement of the statement; and
- details of the member of the fund/account holder in respect to whom the unclaimed money was payable, including the -
 - name, gender and date of birth of member/account holder;
 - last known address of member;
 - amount of moneys held;
 - name of last known employer (superannuation only); and
 - date of commencement of the policy/account.

Where a statement of unclaimed moneys is lodged with the Public Trustee, the trustee/provider must pay an equivalent amount to the Public Trustee, less any amounts already paid to a beneficiary/RSA holder.

After payment to the Public Trustee, the trustee/provider is discharged from further liability in relation to the moneys paid.

Receipt of Moneys

Moneys should be paid to the Public Trustee in the form of a cheque made payable to "Public Trustee for the ACT", or by EFT to Commonwealth Bank account "Public Trustee for the ACT" 062-920 10036944 with a narration of UCM (name of lodging company).

Obligations of Public Trustee

The Public Trustee is responsible for -

- receiving unclaimed moneys paid by companies or other agencies under the Act or other legislation;
- paying those moneys into a trust account;
- maintaining a register containing particulars of those moneys;
- receiving claims and authorising payments for those moneys as authorized;
- receiving and filing returns lodged by companies holding the moneys on behalf of persons entitled to claim.

Following this, the company is relieved of all further liability in respect to the moneys.

3. Unclaimed moneys held under other legislation

Agents Act 2003

Under S.119 & 122 of the Agents Act, licensed agents must give the Commissioner of Fair Trading by 31 July each year, a statement of unclaimed trust moneys of more than three years held as at 1 July. The statement should include name, address, amount and purpose held.

Within six months of receipt, the Commissioner will prepare a notice under the *Legislation Act* and publication in an ACT newspaper under S.123. After expiry of a further three months, a written notice will be issued to the licensed agent to pay unclaimed moneys to the Public Trustee.

The Commissioner for Fair Trading may be contacted on 6207 0400 or 6205 0607.

Legal Practitioners Act 1970

Under existing administrative arrangements, unclaimed moneys held in trust accounts controlled and administered by legal practitioners must be paid to the Public Trustee within one month of becoming unclaimed. S.200 of the Act sets out the requirements for payments.

Moneys held in solicitors trust accounts must have been held by a solicitor for not less than 6 years and –

- the solicitor has no knowledge of the existence or the address of the person upon whose behalf those trust moneys are held; or
- the person has refused to accept payment.

Claims for payment must be made by application to the ACT Supreme Court. The Public Trustee will authorise payment to the claimant on receipt of an order from the Court.

FURTHER INFORMATION

For further information please contact –

Public Trustee for the ACT,
Ground Floor
ActewAGL House
221 London Circuit (Cnr London Crct & Nangari St)
[GPO Box 515](#),
CANBERRA CITY ACT 2601.

Telephone (02) 6207 9800

Facsimile (02) 6207 9811

Website www.publictrustee.act.gov.au

Hours of business 9:00 am-4.30 pm Monday to Friday

ACT Legislation www.legislation.act.gov.au