



**AUSTRALIAN BANKERS'
ASSOCIATION INC.**

Steven Münchenberg
Chief Executive officer

AUSTRALIAN BANKERS' ASSOCIATION INC.
Level 3, 56 Pitt Street, Sydney NSW 2000
p. +61 (0)2 8298 0404 Ext f. +61 (0)2 8298 0402

www.bankers.asn.au

9 November 2012

Mr Tim Bryant
Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
Australia
economics.sen@aph.gov.au

Dear Mr Bryant

Unclaimed monies

The Australian Bankers' Association welcomes the opportunity to provide comments to the Senate Economics Legislation Committee's inquiry into the *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012*.

The ABA limits our comments to the impacts of the proposed legislation on banks and other authorised deposit-taking institutions (ADIs) in terms of the amendment to the *Banking Act 1959* and the *First Home Saver Accounts Act 2008*. However, we note that the proposed legislation will also have impacts on the insurance and superannuation businesses within banking groups.

Opening remarks

The ABA notes that the Federal Government did not consult with the banking industry prior to announcing the proposed change to the unclaimed monies provisions to omit the words "not less than 7 years" and substitute with "not less than 3 years, or if a greater number of years is specified in regulations – that greater number of years."

The ABA assumes that there is no intention for the scope of the existing unclaimed monies provisions to be altered or changed. Notwithstanding, the proposed change would have a significant impact on banks and their customers. Additionally, the proposed implementation for this change does not allow sufficient time for banks to make the necessary changes to systems, procedures, processes, terms and conditions, customer communications and other documentation and other compliance requirements or to provide their customers with necessary communications about the new arrangements. The proposed change would also have an impact on the Government where an interest component would be payable on reclaimed monies in certain circumstances.

Importantly, the ABA believes that the proposed changes will have implications for banks in terms of compliance arrangements already underway within the existing regime. New and/or a temporary compliance arrangement would be necessary to comply with the proposed legislation. New and ongoing compliance arrangements will be required to satisfy the new statutory requirements. We are concerned about the impact on banks' systems, procedures and processes, the impact on customers, the likely administrative complexity and unnecessary compliance costs, and the timing for implementation.

Additionally, the ABA notes that if there were changes to alter or change the scope of the existing unclaimed monies provisions or to capture term facilities or deposits, this would have significant financial and operational implications for banks' balance sheet management, which in turn could affect banks' funding costs. It should be noted that there has not been adequate time to contemplate the broader implications of the proposed changes, and this assessment would need a far more detailed analysis.

Specific comments

Inconsistency of statutes

Section 69 of the Banking Act defines 'unclaimed moneys' as: "... all principal, interest, dividends, bonuses, profits and sums of money legally payable by an ADI but in respect of which the time within which proceedings may be taken for the recovery thereof has expired, and includes moneys to the credit of an account that has not been operated on either by deposit or withdrawal for a period of not less than 7 years."

The statute barred debts provisions of State legislation generally provide creditors with 6 years to bring an action for recovery of a debt enabling a bank to exercise its right of set-off over a longer time period. The original intent behind the unclaimed monies period being 7 years was set with reference to the general limitation period. The period of time within which proceedings may be taken for recovery of sums of money legally payable by an ADI is generally 6 years.

Therefore, the ABA notes that a reduction in the unclaimed monies period from 7 years to 3 years would be inconsistent with the intent of the unclaimed monies provisions as reflected in the Banking Act. It would also be inconsistent with the limitation period for an action regarding breach of contract (for example, arising out of a failure to comply with the Code of Banking Practice). A reduction in the unclaimed monies period would cause administrative and legal complexity for banks and other ADIs in dealing with recovery proceedings.

Current definition

The ABA notes that the current definition for "inactivity" and as used by banks and other ADIs is typically where there is "no customer initiated transactions within the assessment period", which means any transaction processed to the account that was not originated by the bank or ADI as a fee, interest charge or payment. A reduction in the unclaimed monies period will present problems for some banking products and, in particular, new banking products designed to respond to the changing expectations of customers seeking greater flexibility and autonomy with their transactions and account needs.

Farm management deposits

The ABA notes that farm management deposits are excluded in the proposed legislation. We assume that these accounts will continue to be excluded.

Term deposits

The ABA assumes that the existing provisions will continue for fixed products such as term facilities and deposits and that these products will be excluded (irrespective of the commentary in the 2012-13 Mid-Year and Economic Fiscal Outlook.¹).

The ABA recommends that the treatment of term facilities and deposits should be clarified by regulations. We consider that any new unclaimed monies provisions should only apply to at-call account types which satisfy the definition for inactivity (see above).

¹ http://www.budget.gov.au/2012-13/content/myefo/download/2012-13_MYEFO.pdf

First Home Saver Accounts

The ABA notes that the proposed unclaimed monies provisions are intended to apply to First Home Saver Accounts (FHSAs).

The ABA recommends that these accounts should be excluded and proposed changes to the First home Saver Accounts Act should not be implemented. We consider that customers generally find these accounts and the restrictions and conditions confusing. Applying the unclaimed monies provisions would add additional complexity, especially given the 4 year qualifying rule. Similarly to fixed products, we consider that any new unclaimed monies provisions should only apply to at-call account types which satisfy the definition for inactivity.

Linked accounts

The ABA notes that since the unclaimed monies provisions were introduced, new banking products such as linked accounts have emerged. For example, a customer might have a transaction account and an online savings account. The customer may opt to have deposits directed to the online savings account, and therefore "inactivity" might occur in the transaction account (which is treated as a deposit for the purposes of the unclaimed monies provisions). However, the transaction account is required for the online savings account and as a linked account is not in fact inactive.

The ABA recommends that linked accounts should be excluded by regulations.

Offset accounts

The ABA notes that since the unclaimed monies provisions were introduced, new banking products such as offset accounts have emerged. For example, a customer might have an account linked to their mortgage account which offsets the amount of principal owed for the purpose of calculating interest, and therefore reduces the interest charged. The customer may elect to have deposits directed to a particular account or sub-account. Alternatively, the customer may elect to retain a particular level in the offset account for a period of time, and therefore "inactivity" might occur in the offset account (which is treated as a deposit for the purposes of the unclaimed monies provisions). However, the offset account is required to ensure that the deposited monies reduces the principal (for the purpose of calculating interest) and the interest charged on the mortgage account. As a linked account, the offset account is not in fact inactive.

The ABA recommends that offset accounts should be excluded by regulations.

Other accounts

The ABA notes that there are other accounts and circumstances which should be excluded by regulations, including:

- Accounts on which a security stop has been placed – these accounts may be inactive for the legitimate purpose of protecting the assets of elderly or disabled customers;
- Accounts held by children – these accounts may be inactive, however, communications about the unclaimed monies provisions would be difficult and have unintended consequences;
- Accounts held as security over a lending facility – these accounts may or may not be a term deposit (eg. cash management account) and these accounts may be inactive for the legitimate purpose of securing a facility (ie. purchase of a property); and
- Accounts held by business customers and self managed superannuation funds² – these accounts may be inactive for the legitimate purpose of maintaining the suite of business account products and services.

The ABA recommends that these account types should be excluded by regulations.

² The ABA notes that changes are proposed to the unclaimed monies provisions relating to superannuation.

Impacts on banks' systems, procedures and processes

The ABA notes that the proposed legislation will require banks and other ADIs to:

- Intervene in existing automated systems, manual processes and compliance arrangements to ensure compliance with existing statutory requirements for the 31 December period (and 31 March reporting period). Banks have commenced their annual processes, including hard coding, flagging of accounts and file generation across core retail banking systems; systems recoding and file management; statement messages, customer letters and outbound calls; marketing; etc. Specifically, banks typically contact customers during September – December. Therefore, customers have generally already been contacted about the existing unclaimed monies provisions, and a change at this point would require not only new internal processes, but new external communications. This would result in additional compliance costs and administrative complexity for banks and confusion for customers. We strongly believe that any intervention in existing compliance arrangements would be unmanageable.
- Schedule, prepare and make systems changes to retail banking systems. Banks typically operate multiple systems for different account types. The process rules for each of these systems will have to be updated with the new timeframe and testing will need to be completed. New business rule definitions and development of selection criteria will be necessary. It is estimated that the systems work alone, without preparatory and other implementation and development work, will require at least 90 days work (and overall timeframes for the changes are expected to be 6 months taking into account the current pipeline of work which has already been prioritised). This assumes that systems work is not detailed, not applied to account types beyond the existing unclaimed monies provisions, and that existing annual processes for advising customers are retained.
- Revise all procedures, both manual and systems driven, depending on account types and train staff on changes to processes or procedures. Banks would need to assign resources to develop new procedures. Importantly it should be noted that due to a number of operational risk considerations, banks put in place freezes on technology and IT systems changes to ensure IT stability, allow staff in certain non-critical functions to take annual holidays, and to reduce the need for testing between systems and accounts, and therefore reduce the risk of malfunction over the busy period of the year when customer demand on the banking system is high.
- Revise all relevant terms and conditions, documents, and materials, reprint or republish them, having notified customers of changes with adequate notice, and destroy old documentation as necessary (documentation would be hard copy and electronic). Banks are typically required to provide at least 30 days' notification to customers of any changes to accounts and terms and conditions and the new arrangements would not be able to be implemented before notification to customers. It is estimated that assignment of new notifications about the reduction in the unclaimed monies period would take at least 30 days, and then the additional 30 days notification period would follow. This assumes that disclosure changes and legal work is not detailed.
- Develop, prepare and issue disclosures and communications. Banks typically notify customers that their account is about to be classified as unclaimed to ensure that customers are united with lost monies and/or alert to the need to take action to retain their existing account arrangements and avoid the unclaimed monies provisions being triggered.
- Other internal reporting considerations – reconciliations, financial reporting requirements, funding structures.

Impacts on bank-customer relationships and communications

The ABA notes that the proposed legislation will impact on communications between banks and customers. Banks are currently in the process of contacting customers under the existing unclaimed monies provisions – that is, customers whose accounts are shortly to become "inactive" are being contacted to "reactivate" accounts. Annual processes are implemented on a calendar year basis and typically 3-4 months in advance of 31 December. Additional communications and new processes will result in additional manual workarounds/systems changes and compliance costs for banks. Additional communications will likely cause significant customer confusion and result in banks having to deal with increases in customer queries and complaints.

The ABA recommends that if the Government is minded to make any changes to the existing unclaimed monies provisions, this should not interfere with the current reporting period for the existing unclaimed monies regime. Furthermore, we do not support a specific or temporary workaround for an arbitrary compliance period which differs from the existing annual process and results in banks having to implement a once-off process requiring replication of the annual process already underway.

Proposed implementation and transitional period

The ABA notes that the proposed timing for implementation and a commencement of 31 December 2012 is unrealistic, being in less than 2 months and falling during a period when banks implement freezes on any technology or IT systems changes. It is estimated that banks and other ADIs will require at least 6 months to make all the necessary changes, inform customers in a legally compliant manner, and meet compliance requirements. It should be noted that individual banks and other ADIs will have different implementation issues.

Therefore, the ABA believes that a 12 month transitional period for compliance is appropriate to ensure the legal, technical and practical issues can be addressed and ensure that the new regime can be streamlined into the existing annual process without disrupting banks' systems or bank-customer relationships. If the Government is minded to make any changes to the existing unclaimed monies provisions, we consider that this transitional period is necessary for the following reasons:

- Regulations are not made and are required to clarify the application of the new unclaimed monies provisions, including exclusion of certain account types and confirmation of inactivity period (which is created by the reduction in the unclaimed monies period);
- Annual processes are already underway and should not be disrupted or required to be commenced again. Account identification and customer communications approaches should be streamlined and adjusted for the next compliance period;
- Disclosure, contractual and other changes should not be prohibitive or cause legal interpretation issues for banks, including Code of Banking Practice, etc; and
- Banks should not be required to implement intensive projects within tight timeframes and/or to allocate resources during technology and IT systems freezes.

Yours sincerely,

Steven Münchenberg