



Abacus
Australian Mutuals

Association of Building Societies and Credit Unions

9 November 2012

Tim Bryant
The Secretary
Senate Economics Legislation Committee
Parliament House
Canberra ACT 2600
By email: economics.sen@aph.gov.au

Dear Mr Bryant

Inquiry into Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012 (the *Unclaimed Monies Bill*)

Thank you for providing Abacus with the opportunity to make a submission to the Senate Economics Legislation Committee's Inquiry into the Unclaimed Monies Bill.

Abacus is the industry association for Australia's mutual banking institutions, representing 88 credit unions, seven mutual building societies and six mutual banks.

Abacus members provide the full range of retail banking services and products to more than 4.5 million customers.

Our members are Authorised Deposit-taking Institutions (ADIs) regulated by the Australian Prudential Regulation Authority under the Banking Act 1959.

The mutual banking sector has \$83 billion in assets. Our members hold 8.4% of the new home loan market and 11.4% of household deposits, making them the fifth largest holder of household deposits in Australia.

The mutual sector's customer-owned business model focuses on the needs of its members and mutual ADIs consistently outperform other banking institutions in customer satisfaction rankings.

We note that in referring this Bill to the Senate Committee, the Selection of Bills Committee stated that the principal issues for consideration were "...*measures relating to inactive bank accounts and the impact on consumers.*"¹ Our submission has focussed on these issues, and our comments have been grouped into the following three areas:

- The impact of the policy on consumers;
- Implications of the implementation timeframe; and
- Other technical matters not addressed in the Bill.

¹ Senate, *Hansard*, 1 November 2012, p. 24.

Policy rationale

The Unclaimed Monies Bill gives effect to the following three policy measures announced by the Government in its Mid-Year Economic and Fiscal Outlook:

- *Bank accounts and life insurance policies – reform of arrangements relating to transfer of unclaimed monies to ASIC;*²
- *Company monies – reform of arrangements relating to transfer of unclaimed monies;*³ and
- *Superannuation – reform of arrangements relating to transfer of lost member accounts to the ATO.*⁴

These three policies all do broadly the same thing, which is to reduce the amount of time before various types of unclaimed monies are transferred from the institutions holding them to the Government. However, while the outcomes are the same in each case, the policy rationales are not.

Most of the Government's public statements have been about the merits of the superannuation policy changes. These changes are designed to "...preserve the value of lost member accounts in the superannuation system," and "...ensure they are properly protected from being eroded by fees and charges."⁵ The second reading speech for the Unclaimed Monies Bill focuses at length on the benefits that the changes will have for holders of small lost superannuation accounts, noting that fees and deductions can significantly erode the value of these smaller accounts until they are transferred to the Government.⁶

In the case of superannuation, the reforms are about protecting the interests of account holders, and holders of affected superannuation accounts will be financially better off under the proposed changes.

However, the same policy rationale cannot be applied in the case of deposit accounts. Deposit accounts are not subject to the same sort of fees and charges as small superannuation accounts, and as such, their value does not erode over time. Abacus is concerned that, under the proposed changes, holders of deposit accounts could be made worse off financially, and may experience greater difficulties in trying to recover their money.

Costs to consumers

There are presently customers in the banking system who intend to leave money untouched for a number of years. This could be due to living overseas, planning for children to receive funds when they grow up, or putting away money for retirement.

² The Hon. Wayne Swan, *Mid-Year Economic and Fiscal Outlook 2012-13*, p. 277.

³ *ibid.* p. 277-278.

⁴ *ibid.* p. 178-179.

⁵ The Hon. Bill Shorton, *Media Release – Government Reforms Boost Super Savings and Lower Industry Costs*, 22 Oct 12.

⁶ House of Representatives, *Hansard*, 30 Oct 2012, p. 55.

Individuals in these situations would be captured by the Government's policy change, and will be made worse off where they currently hold their deposit in an account with an interest rate greater than CPI.

Accounts of this kind are not uncommon. For example:⁷

- CUA's eSaver account pays an interest rate of 3.75%.⁸
- FCCS Credit Union's Online Saver account S70 pays an interest rate of 3.75%.⁹
- Queensland Professional Credit Union's Netsaver Account pays an interest rate of 4.25%.¹⁰

Transferring an account of this kind to ASIC, and reducing the interest payment to CPI would have a detrimental impact on the individual's savings. With CPI currently running at 2%,¹¹ transferring the funds to ASIC could halve an individual's interest earnings. For example, an individual with an account balance of \$20,000 could be made more than \$2,500 worse off over five years under the proposed changes.

In addition, some private companies offer to "recover" unclaimed monies for individuals in exchange for a fee. Where individuals choose to make use of one of these services, this will further erode the value of the lost account.

Unnecessary transfers

Shortening the period of inactivity from seven years to three years risks increasing the number of accounts transferred which are not "genuine" unclaimed monies. The explanatory memorandum accompanying the previous decision to increase the threshold from \$100 to \$500 noted that:

*"In practice, approximately 40 per cent of transferred money is reclaimed within four years which indicates that a significant portion of such money is not genuine unclaimed moneys. The processing of such transfers is considerably costly both to the Government and the banks and acts as an irritant to people who have forgotten about their bank account or are unaware of the provisions of section 69."*¹²

In addition to the administrative burdens these unnecessary transfers place on ADIs and the Government, transferring money to ASIC can also result in longer delays before account holders can recover their money. In dealing with unclaimed monies, Westpac notes in its advice to customers that *"it may take three months or more to recover money that has been transferred to the Government."*¹³

⁷ Interest rates in each example are as at 5 November 2012.

⁸ See: <http://www.cua.com.au/personal-banking/savings-and-term-deposits/esaver>

⁹ See: <http://www.ratecity.com.au/savings-accounts/fccs-credit-union/online-saver-account-s70>

¹⁰ See: <http://www.qldprofcu.com.au/accounts-savings-accounts.html>

¹¹ Australian Bureau of Statistics, *Cat 6401.0*, Sep 2012.

¹² Banking (Unclaimed Moneys) Regulations 1993, *Explanatory Statement*.

¹³ Westpac, *Deposits Accounts for Personal and SMSF Customers – Terms and Conditions*, p. 34.

Reducing the inactive period from seven years to three years would be expected to increase the proportion of money transferred which is not genuinely “unclaimed,” and lead to a similar increase in the proportion of transferred money being subsequently reclaimed. This unnecessary double handling will impose additional costs on the Government, ADIs and consumers for no real benefit.

Informing consumers

Given the rapid implementation of this measure, and the detrimental impact it could have on customers who are not made aware of the change, we recommend a public awareness campaign on the measure by the Government. Financial institutions should not be solely responsible for advising their customers of the change in government policy. Effective communication will give customers a greater opportunity to take action before monies are transferred, reducing the number of accounts being transferred unnecessarily and reducing the number of irritated customers.

Implications of the implementation timeframe

Consultation timeframes and start date

It would have been preferable if the Government could have consulted with industry on this proposal at an earlier stage. Announcing a change of this magnitude on 22 October, to take effect from 31 December, is a very short timeframe for implementation. Furthermore, giving stakeholders less than two weeks to review the legislation does not provide sufficient time for careful consideration of the full implications of the proposed change.

We would prefer commencement of this policy to be delayed until 1 January 2014, allowing time for a comprehensive consultation process to take place before implementation.

Transitional arrangements in the Bill

The proposed changes to the Banking Act in the Unclaimed Moneys Bill include transitional arrangements for transfers in 2012-13. However, while the Bill extends the deadline for reporting and transfers to 30 April 2013 (from 31 March), the cut-off point on which the reporting and transfers are based would remain 31 December 2012.

Providing this additional month to complete reporting and transfers is of very little benefit to our members. Most of the activity around managing unclaimed monies and account transfers needs to be dealt with in the period prior to the 31 December cut-off. One of the most significant activities is getting in touch with potentially affected members to provide them with notification of the ADI’s obligations in relation to unclaimed monies.

Most ADIs have existing processes in place where they will seek to make contact with the holders of inactive accounts before closing the accounts. This could include seeking to contact members by phone, post or email. Confirming that a member is

not contactable is a process that can take a considerable period of time, especially where the institution holds many such accounts.

With the legislation likely to be passed at the end of November, ADIs will have just one month to identify relevant accounts and contact affected account holders. December can also be a difficult time to try to make contact with members, as many people take holidays around the end of the year. Some ADIs would normally commence the process of contacting affected account holders earlier in the year, but are unable to do so in this case as the passage of the legislation currently remains uncertain.

In addition, the change in the period of inactivity from seven years to three years will create a significant spike in the number of accounts which need to be processed as unclaimed monies. Instead of just having to deal with accounts that have been inactive for seven years, this year ADIs will also have to manage accounts that have been inactive for three, four, five and six years, meaning that the workload is likely to be around five times as great as in a normal year. For many of these "transitional accounts," the ADI may not yet have taken any steps to contact the member, under the impression that they still had several years before the account needed to be closed.

These issues present particularly significant challenges for smaller ADIs, which do not typically have the capacity to rapidly implement and scale up the new processes needed to implement this sort of a change. As a consequence, it is likely that it will simply not be possible to contact many affected account holders before the initial 31 December deadline, which also increases the likelihood of monies being transferred to ASIC which are not truly "unclaimed."

The rush to have these new processes in place by 31 December 2012 is therefore likely to result in a much higher incidence of transferred monies being claimed by account holders, creating inefficient double handling of money, unnecessarily increasing administrative burdens placed on the Government and ADIs, and potentially frustrating customers who find their money transferred without their knowledge.

As noted previously, the number of unnecessary transfers already appears to be high, and not providing ADIs with adequate time to contact members before transferring funds will only make this issue worse.

A more effective transitional arrangement could be achieved by providing more time between the passage of the legislation and the initial 31 December cut-off. For example, for transfers in the 2012-13 financial year, the 31 December cut-off could be delayed until 31 March, and the proposed 30 April deadline for transfers could be delayed until 31 May. This would provide ADIs with more time to contact affected account holders, and better enable them to manage the significant spike in the unclaimed monies workload which will occur in the current financial year.

Transitional relief for smaller ADIs

As noted previously, smaller ADIs with limited resources to quickly change systems, processes and disclosure documents will find it particularly difficult to comply with these new requirements within the proposed timeframes. In recognition of this issue, we would recommend that a staggered approach be taken to this policy's implementation, which would give smaller institutions more time to adjust their existing processes.

Specifically, Abacus proposes allowing all non-major ADIs a further twelve months to prepare for the change. Given that the four major banks hold around 70 per cent of household deposits,¹⁴ this would have a minor impact on Government revenue in 2012-13, and would be revenue neutral across the forward estimates. Alternatively, we propose allowing ADIs with total assets of less than \$20 billion a further 12 months to prepare for the change. This would give relief to the vast majority of ADIs, but would still see the measure covering around 85 per cent of household deposits in 2012-13.¹⁵

Technical matters not addressed in the Bill

In addition to the matters set out above, there are a number of technical matters around the implementation of this policy which are not currently addressed in the Bill. While some of these issues could potentially be resolved through the associated regulations referred to in the Explanatory Memorandum, it is unlikely that these regulations can be drafted and enacted prior to the first cut-off under the new system on 31 December 2012. This creates uncertainty for ADIs, and also makes it difficult for new processes to be formalised, as the exact obligations ADIs will face in relation to unclaimed monies won't be known until the associated regulations have been finalised.

Rather than leaving all of these issues for resolution in the regulations, it would be preferable if some of them could be dealt with through legislative amendment. In particular, legislative clarity around the treatment of term deposits would assist ADIs in managing the implementation of this change.

Proposed treatment of term deposits

In dealing with term deposits, the MYEFO statement notes that: *"in line with existing arrangements for life insurance policies, the period of inactivity for term deposits will commence from when the term deposit matures."*

Abacus received advice from Treasury in 2001 that term deposits are not regarded as money for the purposes of section 69, and that therefore where a customer becomes lost, credit unions need to end the term deposit and put it into a savings account before the monies can be transferred to the government.

¹⁴ APRA *Monthly Banking Statistics*, APRA *Quarterly Credit Union and Building Society Performance Statistics*, & RBA *B10 Finance Companies and General Financiers* – all June 2012.

¹⁵ *ibid.*

While these two definitions are similar, they are not the same, and this difference becomes quickly apparent in the case of term deposits which are rolled over. Take the example of a twelve month term deposit which is automatically rolled over every year for five years before being transferred to a transaction account. Under the 2001 Treasury definition, this account would not become “unclaimed monies” until the end of the eighth year, as the three year period of inactivity would not start until the amount was moved to a transaction account at the end of the fifth year. However, under the new MYEFO definition, the money would be “unclaimed” at the end of the fourth year, as the period of inactivity would commence from when the term deposit initially matured at the end of the first year.

The MYEFO definition can cause problems where a term deposit is set up with a standing instruction to automatically rollover a term deposit into another of the same period in perpetuity (or until the customer provides the ADI with other instructions). Where this is the case, it can be many years before it becomes clear that a customer has gone missing. Sometimes it is only if mail is returned to the financial institution that they become aware that the customer is lost.

In these cases, Abacus’s advice to our members has been for them to conduct a reasonable search for a member when it appears they are lost, and then have a provision in the terms and conditions to allow the financial institution to breach the automatic rollover standing instruction and return it to a savings account in anticipation of dormancy. Even with a very robust set of terms and conditions, this transition can take a considerable period of time to implement in practice. Furthermore, not all terms and conditions on existing term deposits are sufficiently robust to effect a smooth transition, and without sufficient legal capacity to break a perpetual rollover it can be difficult to do so.

However, this approach would not be workable under the MYEFO definition as the money would be defined as unclaimed while still held in the term deposit. For this reason we believe it would be more appropriate for the Government to retain the existing approach to the treatment of term deposits.

It would also be useful if clarity around the treatment of term deposits could be confirmed through the addition of new provisions in section 69 to specifically address this issue. We note that special provisions already exist in section 69 to manage the treatment of farm management deposits, retirement savings accounts, and first home saver accounts.

Abacus would propose the following items be included in a revised section 69:

- An explicit recognition that term deposits do not fall within the scope of unclaimed monies as defined by section 69(1); and
- Confirmation that, where a term deposit is transferred into a savings account, the three year period applying under 69(1) would commence from the time when the transfer took place.

This would give financial institutions the flexibility to rollover term deposits until they have confirmed to their satisfaction that the member is dormant, without having to be concerned about the operation of the three year time limit. This would ensure that

term deposits only ended up in savings accounts, and then with ASIC, where the probability of the funds genuinely being “unclaimed” is high.

It is in no one’s interest to unnecessarily force customers out of term deposits and into unclaimed monies, a move which would result in reduced interest payments for customers and could have a significant detrimental financial impact.

Given that under the MYEFO policy announcement, any money currently in a term deposit would not be transferred for at least three years, any changes to the way term deposits are managed would not have any impact on government revenue until at least the 2015-16 financial year.

Impacts on other legislation

The basis of the current wording of the definition of “unclaimed money” in section 69(1) of the Banking Act and the seven year period aligns with the end of the statutory limitation period.

By setting this instead at the shorter period of three years, there are potential issues that arise in court cases. For example, if someone includes a financial institution in a court case recovering money from a particular customer’s account, then this will create an added level of complexity about the fact that the financial institution no longer holds the funds.

The reduction in the time frame from seven years to three years could necessitate changes to legislation in a number of fields, such as in relation to court proceedings and bankruptcy, in order to accommodate circumstances such as the ones set out above.

Possible conflicts with existing ADI constitutions

The current constitution of a financial institution may make mention of the seven year period. This will put these financial institutions in a difficult position until their constitution can be amended to reflect the change in government policy. During this transitional period, these institutions will have to manage the conflict between what the law says and what their constitution says.

We have not had the time to fully investigate how many of our members may be affected by this issue.

Possible conflicts with existing ADI terms and conditions

FOS Bulletin 29¹⁶ recommends that where an institution has a policy to close dormant accounts earlier than the current legislative requirement, this practice should be set out in the terms and conditions. In addition, many financial institutions currently refer to the seven year period in their existing terms and conditions.

¹⁶ Financial Ombudsman Service, *Bulletin no. 29*, June 2001, p. 3.

For example, ANZ's terms and conditions state that *"If you do not operate your account for seven years and your account balance at the time is \$500 or more, we must send your money to the Government as unclaimed money."*¹⁷

It will take time for financial institutions to adjust their terms and conditions to align with the change in government policy, and in the interim, they will be placed in the difficult position of having to manage a situation where their legal obligations are different to the commitments in their terms and conditions.

Treatment of non-dormant accounts with no transactions

In some circumstances, it is possible that no transactions will have been made on an account for three years but the ADI remains in contact with the account owner. Under the proposed Bill, this money would still need to be transferred to ASIC, even where the account holder has contacted the ADI and indicated a clear intention for the account to remain with that financial institution.

It would be more sensible if the need to transfer an account where no transactions have been made was waived where an ADI has contacted the account holder and the account holder has confirmed that they wish to continue holding the account with the ADI.

Treatment of multiple accounts with same account holder

Where a customer holds multiple accounts with a financial institution, activity in one account should be sufficient to ensure that all accounts are considered "active" and therefore not need to be transferred to the Government.

Abacus received written confirmation from Treasury in 2001 that it is reasonable to regard a membership account as the 'account' for the purposes of section 69 rather than the sub-accounts attached to the particular membership number. However, Treasury also noted that their advice may be different where there are separate contractual relationships between the member and the financial institution.

While this advice has resolved the uncertainty around the treatment of linked accounts, it would be useful if these rules could be formalised through inclusion in the associated regulations referred to in the Unclaimed Monies Bill.

Please contact me on _____ or Micah Green, Senior Policy Adviser, on _____ to discuss any aspect of our submission.

Yours sincerely

MARK DEGOTARDI
Head of Public Affairs

¹⁷ ANZ, *ANZ Saving and Transaction Product Terms and Conditions*, May 2012, p. 28.