

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

4 – 6 June 2013

Question: BET 137-151

Topic: Unclaimed Monies

Written: 13 June 2013

Senator BOYCE asked:

137. In regard to legislative changes made late last year why was it decided that the definition of 'unclaimed money' could now be applied to an account that was "inactive' for three years instead of the previous seven?
- a. Why three years?
138. There would appear to be two threads to your definition of "inactive'. One is that there has been no debits or credits to the account in question for three years and two is that if mail in regard to the account, is sent to the account holder and no reply is received then the account is closed and the monies it holds is then transferred to ASIC. But there could be many explanations as to why mail from a financial institution is not responded to by the account holder – the financial institution may have the wrong address – Australia Post may have delivered the mail to the wrong address or have lost the mail entirely. The mail may be stolen from the address to which it's sent - there could be a host of reasons why an account holder may quite legitimately not respond or not be able to respond. Under these scenarios by what right do you appropriate money from accounts you declare 'inactive'?
139. What do you say to people who quite simply say as to whether an account is active or inactive that it is 'none of your business'?
140. What attempts is the financial institution duty bound to reasonably take to make sure the account in question qualifies as 'inactive'?
141. How do we know that a private corporation has made rigorous attempts to contact or notify an account holder that their account is about to be seized or do we just take their word?
- a. Is this system foolproof?
142. Obviously not. I bring to your attention the matter of a Queensland couple who when the husband came out of having a quintuple heart bypass he found his bank had emptied one of his accounts of \$22,616 and handed it over to ASIC. This had been money they had religiously saved over 14 years as insurance for any health related costs. The bank –Suncorp- claimed that they had written to the couple saying the account was in danger of being appropriated but received no reply – so they took the money. Now we all have mail go missing or misplaced unopened – but is this all it takes for someone to steal (the couples words not mine) 14 years worth of savings?
143. What too, of the case of another Brisbane person, Margaret Franklin who discovered that \$157,644 of her money had been seized in this fashion?
- a. This wasn't supposed to be put into operation till June 1 – this money was taken on April 30?

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- b. And how do they get it back?
 - l. What if another 18 months or two years goes by before they go to use that account now closed and emptied?
 - c. It takes you 24 hours to take the alleged unclaimed money but a minimum of six weeks to return it. Why is that?
 - d. What is the maximum amount of time it could take to return this money to its lawful owner?
 - l. Is there a procedural or statutory limit on how long it can pass before you must have returned the money?
144. Why does it appear that people need to prove their identity before being reunited with their money?
145. What rate of interest do you pay for the period of time the money is in your possession?
146. Do you reimburse all and any costs for its lawful recovery –'its reunion' - with its rightful owners?
147. The Australian Bankers Association said "there are no benefits for consumers from the changes". What to you are the benefits?
148. Given that the Government has allocated substantial sums of money in the millions to advertise the Gonski Reforms and the NBN, how much money has been spent advertising these quite significant changes?
149. How many bank accounts have been seized by the Government and what is the total amount taken?
150. Do you have a breakdown of how many accounts are personal and how many belong to community groups such as Neighbourhood Watch?
- a. Have the ramifications of these new provisions for community organisation's bank accounts – like Neighbourhood Watch as an example – been taken into account?
 - b. What if say, a community group had a purpose built fundraiser with its own spate account for future capital expenditure – it is quite possible that that account would see no activity for an extended period till the funds were required. Have special provisions been made for such circumstances?
 - c. Under the Budget papers this money is considered by the Government as income – does this not make it clear that all unclaimed money belongs to the government whether a proper process of establishing legal ownership has been undertaken or not.
151. What is the extent of ASIC's role in this process and how much does it cost ASIC to act as the administrative conduit between financial institutions and consolidated revenue?

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Answer:

137. This is a decision made by the Government.

a. This is a decision made by the Government.

138. If money held by an Authorised Deposit-taking Institution (**ADI**), including money in an account held with the ADI, meets the definition under the *Banking Act 1959* (and related regulations) of unclaimed money, it is required to be provided to the Treasurer (with ASIC authorised on behalf of the Treasurer). The authority to receive such funds is pursuant to that Act and related regulations.

Neither the Banking Act nor the regulations identify money held by an ADI, including money in an account held with an ADI, as unclaimed money only if no reply is received to mail sent to the customer by the ADI. There are other conditions the money/account must meet, e.g. the account has no deposit or withdrawal for a period of not less than 3 years.

139. The long standing provisions relating to unclaimed money are the law, passed by the Commonwealth Parliament. ASIC's role is essentially an administrative one, receiving in and making payments of unclaimed money on behalf of the Commonwealth in accordance with the law.

140. All institutions that provide unclaimed money to ASIC have the obligation to ensure that the funds they provide qualify as unclaimed money, as defined by the relevant legislation. This is the same for ADI's and money in accounts held with them.

141. In relation to bank accounts, generally there is no statutory obligation on an ADI to make contact or notify an account holder about money in their account being identified as unclaimed money.

ASIC does not hold data on whether ADI's undertake such a process. However, from anecdotal sources, we can say that there is evidence that some ADI's do make such contact and provide such warning, while others may not.

a. It is noted from anecdotal sources that, firstly not all institutions make contact with their clients about their money becoming unclaimed money. Secondly, even where customers have been contacted and notified of steps that need to be taken by them to prevent their money from becoming unclaimed, they have not taken such steps. This could be for a variety of reasons.

Unclaimed money transferred to the Commonwealth (through ASIC) is never lost to the rightful owner. These funds are always claimable and from 1 July 2013 will attract the payment of interest.

142. While we are not aware of the specifics of this particular account, generally for an account to fall within the definition of unclaimed money it would need to have no deposit or withdrawal for a period of 3 years. Interest and fees are not regarded as deposits or withdrawals for this purpose (as per the Banking Act).

If the money falls within the definition of unclaimed money, as provided for in the Banking Act and related regulations, those funds must be transferred by law to the Commonwealth (through ASIC).

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Unclaimed money transferred to the Commonwealth is never lost to the rightful owner. These funds are always claimable and from 1 July 2013 will attract the payment of interest.

143. As per 142 above.

a. The *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012* contained transitional provisions which became operational from 4 December 2012. In the case of the Banking Act, this provided for ADI's to do an assessment of whether money held met the definition of unclaimed money on a date between 31 December 2013 and 31 May 2013. The ADI was required to provide the unclaimed money to the Commonwealth (through ASIC) by 31 May 2013, but they could also do so before 31 May 2013.

b. Unclaimed money transferred to the Commonwealth is never lost to the rightful owner. These funds are always claimable and from 1 July 2013 will attract the payment of interest.

The rightful owner can undertake a free search of the unclaimed money records held by ASIC on the MoneySmart website – www.moneysmart.gov.au – and, for bank accounts – would then contact the ADI that previously held the funds to initiate their claim.

Once the ADI is satisfied that they have identified the rightful owner of the funds, they will make a claim to ASIC who, on behalf of the Treasurer, takes steps to return those funds, with interest from 1 July 2013, to the ADI. The ADI then must provide the funds to the rightful owner.

i. It is likely that their institution will be able to advise them that the money was identified as unclaimed money and transferred to the Commonwealth. They could then check this by doing a search on the MoneySmart website.

These funds can then be claimed.

c. ASIC will generally complete the payment of a claim within 28 days from the date all required information is provided to us.

A person claiming unclaimed money must establish that they are the rightful owner of those funds. Once they have established this to the satisfaction of the institution or ASIC (depending on the type of unclaimed money) then a claim is processed. Payment is either made to the institution (for unclaimed money under, say, the Banking Act, who then pays the claimant) or directly to the claimant (for unclaimed money under the *Corporations Act 2001*). To make the payment, an appropriation request is made by ASIC to the Department of Finance and Deregulation (DoFD) for funds to be made available. When the funds are received by ASIC, payment is made, either by EFT or by cheque. Cheque payments are made by the Reserve Bank of Australia (RBA) and require ASIC to send the payment information to the RBA, before they print and send the cheque.

d. ASIC will generally take up to 28 days from the date all required information is provided to ASIC for a claim to be paid.

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- I. There is no procedural or statutory limit on how long it can take before the Commonwealth or ASIC must have returned the money.

There is also no time limit within which a rightful owner can claim their funds.

144. It is incumbent on all parties assessing claims for unclaimed money to identify the rightful owner, preventing payment of the money to the incorrect party.

It is standard practice for claimants, making claims for unclaimed money in a particular name, to provide evidence of their identity and that they are the rightful owner of the money. If there is no proof of the identity of the claimant and their link to the unclaimed money, it is difficult to see how one could establish that the claimant is the rightful owner of those funds.

145. The unclaimed money is consolidated revenue, it is not ASIC's.

The rate of interest for claims paid in the 2013-14 financial year is 2.5% (or 0.0250).

The *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Regulation 2013*, made on 13 June 2013, amends the Banking Regulations 1966. Regulation 22 provides that the interest rate for a financial year is:

- (a) the percentage change in the All Groups CPI between the two March quarters most recently published before the first day of the financial year (rounded up to 4 decimal places); or
- (b) if that percentage change is less than 0% - 0%.

For this purpose, CPI is defined to mean the Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Bureau of Statistics.

146. A claimant is paid the original amount of unclaimed money and, from 1 July 2013, an amount of interest for periods where the funds were held by the Commonwealth from 1 July 2013 onwards.

The claimants are not charged any fee by ASIC for the return of the funds.

147. Searchability - Through the online search on the MoneySmart website, consumers have a central, easy and accessible way of conducting a search to locate money that they may have forgotten about. There is no similar facility for consumers to search the various institutions to make such an enquiry.

Preservation of the funds – When the funds are transferred to the Commonwealth (through ASIC) they are no longer subject to eroding through fees and charges of the institution. Further, with the introduction of the payment of interest from 1 July 2013, the real value of the unclaimed money will be protected.

148. ASIC has not been provided with any funding for advertising the changes.

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149. 1 July 2012 to 30 June 2013 Financial Year receipts

Banking Act 1959

Received: \$520.4 million

Number of accounts: 88,200 approximately

[In this transitional year, institutions were permitted to lodge with ASIC a standard return (for unclaimed money meeting the 7 year period) and a supplementary return (for unclaimed money meeting the new 3 year period), or a combined return (including both the standard and supplementary return as one). As some institutions lodged combined returns and the details in the returns do not identify if they are under the 7 or 3 year rule, it is difficult to accurately separate unclaimed money arising under the 7 year period and that arising under the new 3 year period.

However, as a guide, generally money received between January and May 2013 was largely from standard returns (7 year period), while money received in June 2013 was from supplementary returns (the new 3 year period). The total year, the period to May 2013 and the June 2013 split up of unclaimed money received under the *Banking Act 1959* is outlined below.

2012-13 Financial Year *Banking Act 1959* receipts

Received: \$520.4 million

Number of accounts: 88,200 approximately

1 January to 31 May 2013 *Banking Act 1959* receipts (also included in total year figures)

Received: \$117.6 million

Number of accounts: 19,850 approximately

June 2013 *Banking Act 1959* receipts (also included in total year figures)

Received: \$402.8 million

Number of accounts: 68,350 approximately]

150. No. ASIC does not receive details on the type of account - personal, community group, etc.

- a. ASIC is not aware of any analysis undertaken in relation to ramifications of the new provision for community organisations. However, the ramifications would appear to be the same as those for any other type of account.
- b. Regulations made in relation to the Banking Act provide different treatments of particular types of accounts, including linked accounts; sub accounts; frozen accounts; children's accounts; security, set-off or escrow accounts; controlled accounts; term deposits; and notified accounts.

A notified account, is where the holder of an account, or an agent of the holder, has notified the ADI, within the previous three years, that the holder wishes to treat the account as active. In these circumstances, the account will not be unclaimed money.

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In the case of this community group, if no other exclusion applies to their circumstances, they can either make a deposit or withdrawal or provide notification to their institution, once every three years, to avoid the money becoming unclaimed.

- c. Unclaimed money transferred to the Commonwealth is never lost to the rightful owner. These funds are always claimable and from 1 July 2013 will attract the payment of interest.
151. A person claiming unclaimed money must establish that they are the rightful owner of those funds. Once they have established this to the satisfaction of the institution or ASIC (depending on the type of unclaimed money) then a claim is processed. Payment is either made to the institution (for unclaimed money under, say, the Banking Act, who then pays the claimant) or directly to the claimant (for unclaimed money under the *Corporations Act 2001*). To make the payment, an appropriation request is made by ASIC to the Department of Finance and Deregulation (DoFD) for funds to be made available. When the funds are received by ASIC, payment is made, either by EFT or by cheque. Cheque payments are made by the Reserve Bank of Australia (RBA) and require ASIC to send the payment information to the RBA, before they print and send the cheque.

From 1 July 2013 ASIC will also calculate the amount of interest payable for each claim, adding this to the amount appropriated from DoFD and to the repayment to the claimant/institution.

For the 2012-13 financial year, ASIC was funded \$1.8 million for its core unclaimed money work, with additional funding of \$1 million provided for the additional work arising from changes to the unclaimed money laws in December 2012. This funding is for all unclaimed money work, banking, life insurance, managed investment scheme, shares and company unclaimed monies (including money of de-registered companies). It supports the 19 staff who carry out this important function at ASIC, in reuniting Australians with their unclaimed monies.