

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

SEAT OF GOVERNMENT (ADMINISTRATION) ACT 1910

UNCLAIMED MONEYS (AMENDMENT) ORDINANCE 1984

(Issued Under the Authority of the Attorney-General)

No 57 of 1984

Sub-section 12(1) of the Seat of Government (Administration) Act 1910 provides that the Governor-General may make Ordinances for the peace, order and good government of the Australian Capital Territory.

The purpose of this Statement is to explain the amendments to the Unclaimed Moneys Ordinance 1950 ("the Principal Ordinance").

Under the Principal Ordinance, liquidators and companies holding moneys which remain unclaimed for specified periods of time, must pay them to the Australian Government.

In summary, the amendments:-

- . transfer a number of functions and powers of the Attorney-General and the Secretary of the Attorney-General's Department under the Principal Ordinance to the Corporate Affairs Commission of the Australian Capital Territory;
- . make it clear that the Principal Ordinance does not apply to unclaimed moneys of companies incorporated in States and Territories (other than the ACT) participating in the co-operative companies and securities scheme;
- . place responsibility on a company to arrange for publication of details of unclaimed moneys held by it;
- . increase the penalties for failing to comply with provisions of the Principal Ordinance;
- . make a number of minor drafting amendments to the Principal Ordinance to bring its format into line with current drafting practice.

Details of the proposed Ordinance are as follows:

Section 1 Short Title

The Ordinance is cited as the Unclaimed Moneys (Amendment) Ordinance 1984.

Section 2 Principal Ordinance

The Unclaimed Moneys Ordinance 1950 is referred to as "the Principal Ordinance".

Section 3 Interpretation

The phrase "unless the contrary intention appears" is inserted as a qualification to words defined in section 3 of the Principal Ordinance. This follows the common drafting style of contemporary legislation, but does not change the meaning of any substantive provision in the Principal Ordinance.

The Principal Ordinance requires companies and liquidators of companies to pay unclaimed moneys to the Australian Government. This requirement extends to recognised companies and liquidators of such companies, because in the Principal Ordinance, the definition of "company" includes a recognised company.

A recognised company is defined in the Companies Act 1981 as one that is incorporated under a corresponding law of a State or Territory participating in the co-operative companies and securities scheme. The A.C.T. is the only Territory so far participating in the scheme. As all participating States have laws relating to unclaimed moneys similar to the Principal Ordinance it was considered that the Principal Ordinance should not apply to unclaimed moneys in relation to recognised companies. For this reason "recognised company" is omitted from the definition of a company in section 3 of the Principal Ordinance.

Section 4 Unclaimed Assets in Hands of Liquidators

The term "the Commonwealth" is substituted for "Australia" in sub-sections 4(1), (3), (4) and (5) of the Principal Ordinance. This amendment brings the Principal Ordinance into line with the practice of using "the Commonwealth" to mean the Commonwealth of Australia, when it is expressed in a legal context as distinct from a geographical context.

Section 4 of the Principal Ordinance provides for the payment of unclaimed moneys to the Commonwealth and for particulars of such payment to be given to the Secretary of the Attorney-General's Department. As the Corporate Affairs Commission has the carriage of day to day administration of the Principal Ordinance, the amendment requires that these particulars now are to be given directly to the Commission.

Section 5 Payments to persons entitled

The term "the Commonwealth" is substituted for "Australia" in sub-sections 5(1), (2) and (4) of the Principal Ordinance for similar reasons to those given above in relation to section 4. Under section 5 of the Principal Ordinance a person claiming entitlement to unclaimed moneys paid to the Australian Government may apply for a court order for reimbursement.

Section 6 Gazettal, etc; of register

Under section 8 of the Principal Ordinance a company which compiles a register of unclaimed moneys shall send annually a copy of the register to the Attorney-General for publication by him in the Commonwealth of Australia Gazette. Section 8 is amended to make the company responsible for annual publication. It is considered that the arrangement for gazettal should more appropriately be made by the companies concerned rather than the Government. Also, it is now the company's responsibility to publish annually in an A.C.T. daily newspaper particulars relating to each amount of unclaimed moneys in excess of \$10 entered in the register. It is considered that details of unclaimed moneys should be circulated widely and this is best achieved through this medium. Also, the company now is required to lodge a copy of the register with the Corporate Affairs Commission rather than the Attorney-General.

Section 7 Failure to compile, gazette or lodge register

The penalty provided in section 9 of the Principal Ordinance for failing to compile an unclaimed moneys register as required by section 7 of the Ordinance is increased from \$4 a day to \$30 a day. The previous penalty, fixed in 1950, was no longer considered appropriate.

Section 8 Payment of unclaimed moneys

Under section 10 of the Principal Ordinance unclaimed moneys are paid to the Australian Government. The term "the Commonwealth" is substituted for "Australia" in sub-section 10(1) of the Principal Ordinance for similar reasons to those given above in relation to section 4 of the Ordinance.

Section 9 Failure to pay unclaimed moneys

The term "the Commonwealth" is substituted for "Australia" in sub-section 11(1) of the Principal Ordinance for the same reasons given above in relation to section 4 of the Ordinance.

The penalty provided in section 11 of the Principal Ordinance for failing to lodge a copy of a register of unclaimed moneys with the Corporate Affairs Commission is increased from \$4 a day to \$30 a day. The previous penalty, fixed in 1950 was considered no longer appropriate.

Section 10 Examination of accounts, etc

Section 12 of the Principal Ordinance formerly enabled the Attorney-General in relation to unclaimed moneys to:-

- . examine accounts (sub-section 12(1));
- . require the production of records (sub-section 12(1));
- . direct the amendment of errors in those records (sub-section 12(1)); and
- . cause to be examined the books and accounts of a company that does not furnish a return of unclaimed moneys (sub-section 12(2)).

Section 12 of the Principal Ordinance was amended to transfer these powers and functions to the Corporate Affairs Commission, the Authority responsible for the day to day administration of the Principal Ordinance.

The amendment also provides the Corporate Affairs Commission with a power to delegate its powers and functions under sub-section 12(1) of the Principal Ordinance, to a person authorised by it in writing.

The previous penalty provided in section 12 of the Principal Ordinance for failing to comply with requirements under the section was \$200. This was fixed in 1950 and was no longer an appropriate penalty. It has been increased to \$1000.

Section 11 Payment of moneys to lawful claimant

The term "the Commonwealth" is substituted for "Australia" in sub-sections 13(1), (2), (3) and (4) of the Principal Ordinance for the reasons given above in relation to section 4 of the Ordinance.

Section 13 of the Principal Ordinance provides machinery for a person claiming entitlement to apply to the Court to recover moneys paid to the Australian Government. Prior to an amendment to the Principal Ordinance in 1974 unclaimed moneys were paid to the Treasurer. From 1974 to 1982, pursuant to sub-section 13(4) of the Principal Ordinance, moneys paid to the Treasurer were deemed to be paid to the Australian Government for the purpose of section 13. In Ordinance no. 51 of 1982 "Attorney-General" was substituted for "Treasurer" in sub-section 13(4) along with other substituting amendments relating to the transfer of the administration of the Principal Ordinance to the administration of the Attorney-General. The former status of sub-section 13(4), has now been revived by substituting "Treasurer" for "Attorney-General" so that moneys paid to past Treasurers are recoverable by proper claimants under section 13 of the Principal Ordinance.

Section 12 Second Schedule

The second schedule to the Principal Ordinance is the form of Statutory Declaration which is to accompany the annual advice of unclaimed moneys.

This form is amended by correcting the citation of the Statutory Declarations Act 1959.

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