



Australian Government

Options for improving the Unclaimed Bank Account and Life Insurance Money Provisions

Discussion Paper
30 May 2014

© Commonwealth of Australia 2014

ISBN 978-0-642-74986-4

This publication is available for your use under a Creative Commons Attribution 3.0 Australia licence, with the exception of the Commonwealth Coat of Arms, the Treasury logo, photographs, images, signatures and where otherwise stated. The full licence terms are available from <http://creativecommons.org/licenses/by/3.0/au/legalcode>.



Use of Treasury material under a Creative Commons Attribution 3.0 Australia licence requires you to attribute the work (but not in any way that suggests that the Treasury endorses you or your use of the work).

Treasury material used 'as supplied'.

Provided you have not modified or transformed Treasury material in any way including, for example, by changing the Treasury text; calculating percentage changes; graphing or charting data; or deriving new statistics from published Treasury statistics — then Treasury prefers the following attribution:

Source: The Australian Government the Treasury.

Derivative material

If you have modified or transformed Treasury material, or derived new material from those of the Treasury in any way, then Treasury prefers the following attribution:

Based on The Australian Government the Treasury data.

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the It's an Honour website (see www.itsanhonour.gov.au).

Other Uses

Inquiries regarding this licence and any other use of this document are welcome at:

Manager
Communications
The Treasury
Langton Crescent Parkes ACT 2600
Email: medialiaison@treasury.gov.au

CONSULTATION PROCESS

REQUEST FOR FEEDBACK AND COMMENTS

The Government seeks your feedback and comments on the measures outlined in this proposal paper. The information obtained through this process will inform the Government's approach to implementation and aid it in meeting the objectives of best practice regulation.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please email responses in a Word or RTF format. An additional PDF version may also be submitted.

All information (including name and address details) contained in submissions will be made available to the public on the Treasury website, unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment. A request made under the Freedom of Information Act 1982 for a submission marked 'confidential' to be made available will be determined in accordance with that Act.

CLOSING DATE FOR SUBMISSIONS: FRIDAY, 11 JULY 2014

Email: unclaimedmoneys@treasury.gov.au

Mail: Banking and Capital Markets Regulation Unit (BCMRU)
Financial System and Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

Enquiries: Enquiries can be directed to David Crawford (02 6263 2757)

CONTENTS

CONSULTATION PROCESS	III
FOREWORD	1
BACKGROUND AND CONTEXT	3
REQUEST FOR FEEDBACK — REGULATORY BURDEN	5
EXTENDING THE REQUIRED PERIOD OF INACTIVITY FOR BANK ACCOUNTS AND LIFE INSURANCE POLICIES.....	6
EXEMPTIONS FROM THE UNCLAIMED BANK ACCOUNT PROVISIONS	9
BALANCING PRIVACY WITH THE EFFICIENT RETURN OF FUNDS	11
IMPROVING ADMINISTRATIVE ARRANGEMENTS.....	13
ATTACHMENT A: CONSOLIDATED DISCUSSION QUESTIONS.....	15

FOREWORD



The Government is committed to building a stronger, more productive, and more diverse economy with lower taxes, more efficient government and more competitive business. Central to this goal is the removal of \$1 billion of regulatory burden per year.

On 22 October 2012, the previous Government announced changes to the arrangements relating to the transfer of unclaimed bank accounts and life insurance policies to the Government through the Australian Securities and Investment Commission. These changes saw accounts transferred after three years of inactivity, rather than seven.

These changes caused substantial disruption to account holders (due to a rapid increase in the number of accounts declared unclaimed) and to industry (with businesses forced to rapidly implement new and costly systems). While many businesses have largely adapted their systems and a number of regulatory changes have been made to exempt a number of accounts from the new three year period, questions remain as to whether the existing policy is appropriate.

This discussion paper provides an opportunity for a broad discussion on the role of the unclaimed moneys provisions (with a focus on the provisions relating to unclaimed bank account and life insurance money), and how they can be improved to balance the protection of the value of account holder's funds with effectively reuniting account holders with their money. We want to reduce the regulatory burden of these laws, in line with the Government's election commitment to reduce red tape.

I encourage all those who have an interest in the efficient operation of these provisions to comment on this discussion paper.

The deadline for submissions is 11 July 2014.

I look forward to working with the community and industry to provide a more efficient banking system.

Senator the Hon Mathias Cormann
Minister for Finance
Acting Assistant Treasurer

BACKGROUND AND CONTEXT

In the 2012-13 Mid-Year Economic and Fiscal Outlook (MYEFO) the previous Government announced changes to the treatment of unclaimed money in relation to unclaimed bank accounts, unclaimed life insurance money, unclaimed first home saver accounts, lost superannuation and unclaimed company moneys. These were the most significant changes to these arrangements, which have existed since at least the *Banking Act 1959*.

The 2012-13 MYEFO measures reduced the period before bank accounts and unclaimed life insurance amounts are transferred to the Government through the Australian Securities and Investments Commission (ASIC) from seven years to three years. Authorised Deposit Taking Institutions (ADIs) must now transfer to the government all 'inactive' accounts that have not had a transaction other than interest accrue or fees deducted for three or more years, as at the end of each calendar year (that is, 31 December). Life insurers must now transfer to the government all sums of money payable on the maturity of a policy which are not claimed within three years of the maturity date, assessed at the end of each calendar year.

The changes also included regulations exempting particular accounts from the change in time period, such as children's (remains seven years) and term deposit accounts (exempt). In addition, the regulations allow account holders to notify their ADI (in a number of different ways) that they are aware of the account(s) and do not want them to be considered inactive. For example, simply interacting with the account online or over the phone is enough to ensure that the account is not deemed to be unclaimed under the provisions.

Details of unclaimed bank accounts and life insurance moneys are published in a Gazette and searchable on ASIC's 'MoneySmart' website. Owners can reclaim their moneys at any time by contacting their bank or life insurer. From 1 July 2013, the Government also provides tax-free interest linked to the Consumer Price Index on unclaimed bank account and life insurance moneys, to assist in preserving the real value of the accounts.

Inactive accounts that are transferred to ASIC are added to the Government's Consolidated Revenue fund¹ and treated as Government revenue when received. As of 31 December 2013 there was approximately \$710 million worth of unclaimed bank and life insurance moneys with the Government.

The unclaimed money provisions are ultimately aimed at preserving the value of potentially 'lost' bank account and life insurance moneys. However, it is not clear that the current arrangements strike an appropriate balance between re-uniting people with their moneys and the costs that the recent changes have imposed on account holders and industry.

1 Since July 1 2013 funds continue to attract a nominal level of interest for the duration that they are unclaimed.

As a result, this discussion paper seeks to determine what changes account holders and industry believe could be made to the unclaimed bank account and life insurance provisions to better balance the benefits of the scheme, with its regulatory cost by focussing on the following issues:

- options to improve the efficiency and reduce the regulatory burden of the unclaimed moneys provisions, including option to extend the current period of inactivity;
- exemptions from the unclaimed moneys provisions;
- the administrative arrangements of unclaimed moneys; and
- managing the importance of privacy for affected account holders against the objective of reuniting people with their accounts, including a discussion of options for private entities to share tax file numbers (TFNs) with Government agencies.

The Government is mindful of the need to ensure that industry is given sufficient time to adjust to any changes to the current arrangements, in line with the Government's commitment to a moratorium on new significant financial services regulation until the completion of the Financial System Inquiry (FSI).

REQUEST FOR FEEDBACK — REGULATORY BURDEN

To improve the quality of regulation, the Government is requiring all regulations to undergo a Regulatory Impact Assessment to establish the impact of regulation on businesses, not-for-profit organisations and individuals. This assessment includes the quantification of compliance costs associated with regulation. To inform this analysis, the Government welcomes information from interested parties.

Where possible, please identify whether any of the amendments suggested in this paper would generate any additional compliance costs (or savings) compared to the situation where the proposal is not adopted, and, where possible, estimates of the dollar quantum of these costs. Note that for new regulations, the base case would be the scenario where there is no regulation, while for proposals that amend existing policy; the base case would be the previous, non-amended situation. There are three types of regulatory costs that the Government is interested in:

- administrative costs — costs incurred primarily to demonstrate compliance with the regulation or to allow government to administer the regulation (for example, keeping records, filling in forms, conducting internal audits and inspections, making an application or conducting tests);
- substantive compliance costs — costs that directly lead to the regulated outcome (for example, training, providing information to third parties, inputs to comply with a plan or test, operations, purchase and maintenance of plant and equipment and installing safety devices); and
- delay costs — expenses and loss of income incurred through having to complete an application requirement or wait for an application approval (for example, waiting for approval of a building permit).

Respondents are invited to use the Business Cost Calculator² (BCC) to estimate costs. The Government would appreciate being provided with the input parameters to the BCC as well as the final result. The BCC can be accessed at: <https://bcc.obpr.gov.au/>.

² Please note that the Government is in the process of implementing its Deregulation Agenda. As part of this implementation process, the Business Cost Calculator might be modified over the coming months.

EXTENDING THE REQUIRED PERIOD OF INACTIVITY FOR BANK ACCOUNTS AND LIFE INSURANCE POLICIES

An extension of the period before an account or life insurance policy is considered inactive could help to reduce the burden of the unclaimed money provisions on all affected stakeholders without undermining the policy intent. The advantages and disadvantages of a required period of inactivity of three, five, and seven years are addressed below.

OPTION 1: RETAIN THE STATUS-QUO OF THREE YEARS

Under Option 1 the current required period of inactivity of three years would be retained. This would have the advantage of not creating additional confusion for customers and not requiring ADIs and Life insurers to make any further changes to their existing processes or IT systems. After three years ADIs and Life insurers are also more likely to have up to date contact details for customers at risk of having their money transferred to ASIC — potentially minimising the number of accounts incorrectly declared unclaimed.

However, instances do exist where bank accounts that are effectively active are being declared inactive and transferred to ASIC, even though the provisions allow for account holders to notify their ADI that they are aware of the account(s) and do not want them to be considered inactive. This can take a number of forms as specified above, and can include interacting with the account online.

OPTION 2: FIVE YEARS

Option 2 would extend the required period of inactivity before an account is transferred to ASIC to five years. This may more adequately balance the trade-off between preserving the value of the account and efficiently reuniting people with their money and the burden that the provisions place on the community and industry. For example, stakeholders have indicated that if a period of five years were to be introduced then the number of unclaimed accounts could fall by up to half, which could have substantial cost and resource saving for industry and ASIC in terms of administration, marketing, and complaints handling. It would also minimise the number of essentially ‘active’ accounts that are being captured by the existing provisions.

These benefits, however, could be partially offset by the potentially substantial upfront implementation costs that would have to be met only a short period after the previous Government’s changes in 2012.

OPTION 3: SEVEN YEARS

Option 3 would involve returning to a required period of inactivity of seven years. This would essentially reverse the changes of 2012 and could be expected to further reduce the number of accounts transferred to ASIC relative to options 1 and 2. It is also considered, however, that the majority of accounts inactive for a period of five years or more would be genuinely unclaimed. As a result a period of seven years may not be ideal in terms of preserving the value of the account for account holders. In addition, stakeholders have indicated that while they may often still be able to

contact a customer after five years of inactivity, this is often no longer the case after seven. As a result, reuniting account holders with their funds could become more difficult under this option.

In addition, a reversion to a seven year period would require similar upfront expenditure by ADIs and Life insurers to those under option 2 in order to guarantee compliance. While there would also be additional administrative savings due to fewer accounts being transferred, the magnitude of these potential savings is unclear.

Finally the Government is very conscious of the fact that implementing either options 2 or 3 would require a significant transition period to allow industry to implement the changes and minimise any disruption.

Any extension to the required period of inactivity beyond three years will also have an impact on the Federal Budget as the funds in unclaimed bank accounts and life insurance moneys are treated as government revenue when they are transferred to ASIC.

Consultation questions:

1. Is an increase in the required period of inactivity from three years supported? If so which period (for example, five or seven years) would be preferred?
2. What period of adjustment would be sufficient to manage any future changes to the period of inactivity?
3. What costs would be involved in any changes to the current arrangements?
4. What savings would be involved over time if changes were to be made or not made?

EXEMPTIONS FROM THE UNCLAIMED BANK ACCOUNT PROVISIONS

In addition to the change to the period of inactivity from seven to three years, the previous Government made a number of regulations to exempt certain types of accounts or provide special rules before that type of account is transferred to ASIC. These include:

- term deposit accounts (exempt);
- children's accounts (seven year period);
- linked accounts (three years after the last transaction on either linked account); and
- accounts held as security (at least seven years).

New rules were also introduced in mid-2013 that will enable customers to notify their bank that they are aware of the account and do not want it to become unclaimed. This removed the need for customers to make a transaction on their account to prevent it being transferred to the government. For example an account holder can notify their ADI using written, verbal, electronic, online or digital communication, or interaction via mail, email, in person, by phone, through their Internet or digital banking channel in order to avoid their account being transferred under the unclaimed moneys provisions.

Despite the significant number of exemptions and special rules that have been introduced recently, some stakeholders have identified other types of accounts that could potentially be exempted from the unclaimed money arrangements, such as foreign currency accounts.

FOREIGN CURRENCY ACCOUNTS

Foreign Currency Accounts (FCAs) are bank accounts held in a denomination other than Australian Dollars (AUD). When they are declared unclaimed they are converted to AUD before being transferred to ASIC, and when claimed are also returned to the account holder in AUD. As a result account holders are exposed to the risk that the exchange rate will appreciate or depreciate over the relevant period. ADIs also face additional compliance costs as they must convert the accounts to AUD prior to transfer and potentially handle complaints or damage to customer relationships on their return if the accounts value has fallen. There are three potential solutions to this problem.

The first option could be to exempt FCAs from the unclaimed moneys provisions entirely. This would likely deliver a reduction in the compliance burden for ADIs and account holders, but if the accounts are genuinely unclaimed they will never be captured and therefore could have their value eroded by fees and charges.

A second option could be for the Government to effectively hedge the exchange risk on behalf of the rightful owners of the accounts via an explicit agreement to return the real value (that is the accounts initial value in its original denomination plus interest accruing at the rate of CPI) of an account, as it was at the time of transfer to ASIC. However, this could result in increased administrative complexity and it is not clear that the responsibility for an individual's exchange risk management on behalf of an individual should rest with the Government and taxpayers more generally.

A third option could be for ADIs to continue to hold and pay interest on FCAs that are deemed to be unclaimed under the provisions, but not charge further account fees. The account holder's details would continue to be provided to ASIC (as they are currently) in order to aid the return of an individual's account(s), however, the funds themselves would be held by the bank. It is envisioned that this would reduce the compliance burden of the provisions for both banks (who no longer have to transfer funds to ASIC) and account holders (who could be reunited with their lost funds more rapidly). Under this option the Government would receive less revenue from the Unclaimed Moneys provisions and the administrative complexity of the scheme would increase.

Consultation questions:

1. Are there any additional account types that should be excluded from the unclaimed bank account provisions?
2. Could the current exemptions and special rules be streamlined to reduce the complexity of the unclaimed bank account provisions?
3. Which of the three proposed treatments of FCAs, if any, is preferred?

BALANCING PRIVACY WITH THE EFFICIENT RETURN OF FUNDS

Some privacy concerns have been raised previously over the treatment of individuals' data once their accounts have been transferred to ASIC.

Under the *Banking Act 1959* when an unclaimed bank account is transferred to ASIC the details of the account holder are required by law to be published in the Gazette. This includes the full name of the account holder, their last known address, and the value of the account. These personal details also become publicly searchable on-line via ASIC's 'MoneySmart' website.

In November 2012, the Parliamentary Joint Committee on Human Rights expressed concern that the publication of details may raise privacy issues. However, the Joint Committee also noted that potential privacy rights must be balanced against the objective of efficiently reuniting people with their unclaimed money. For example, if legislative publication requirements are amended so that fewer details are published, it would make it harder for people to find their lost accounts, or could reduce their willingness to apply to reclaim it if they are uncertain of the amount or if they are in fact the rightful owner. Any changes to the current arrangements will also need to be consistent with the new *Australian Privacy Principles* that apply to the handling of personal information by Australian Government agencies.

Consultation questions:

4. Do the current arrangements for public disclosure of details of unclaimed bank accounts and life insurance moneys achieve an appropriate balance?
5. What changes could be made to sufficiently protect privacy and still ensure that account holders can easily locate their unclaimed accounts?

IMPROVING ADMINISTRATIVE ARRANGEMENTS

A potentially more effective way of reuniting people with their lost bank accounts would be to allow ADIs to report tax file numbers (TFNs) to ASIC. The use of TFNs has some form of precedent, for example the ATO already uses TFNs and their associated data to reunite individuals with their lost superannuation.

Under the current system ADIs generally collect an account holder's TFN in addition to their other details when an account is created. However, unclaimed accounts become detached from their TFNs when they are transferred to ASIC because banks are not permitted by law to pass TFNs on to ASIC.

If banks were allowed to pass on TFNs to ASIC, ASIC could share this information with the Australian Tax Office (ATO) which may have more up-to-date contact details for account holders. This is as many individuals file annual tax returns. This in turn may increase the likelihood of re-uniting people with their money. The use of TFNs would also provide both ASIC and account holders with another way to verify an individual's claim to an unclaimed account.

The sharing of TFN information between the ATO and ASIC would require a legislative amendment. Using TFNs to match lost accounts with individuals also raise further potential privacy issues and would therefore need to be considered carefully to ensure that the potential benefits outweigh any privacy risks.

In addition to potentially improving the unclaimed moneys scheme through the use of TFNs, there may also be scope to improve the administration of the unclaimed moneys scheme by centralising all unclaimed money within a single Government agency. For example ASIC currently administers unclaimed bank account, life insurance and company moneys while the ATO currently administers unclaimed superannuation and it is worth considering if there may be efficiency gains in consolidating these responsibilities. It should be noted that there are also unclaimed money laws in each State and Territory.

It is also worth considering whether the arrangements proposed under Option 3 for the treatment of FCAs (that is, ADIs continue to hold and pay interest on unclaimed accounts while passing the account holder's details to ASIC) could be extended to the scheme in its entirety. Under such a model the Government would receive no revenue from the Unclaimed Moneys provisions, and administering the scheme would become much more complex.

Consultation questions:

6. Should TFNs be able to be shared between ADIs and ASIC/the ATO to more efficiently reunite individuals with the unclaimed moneys?
7. Are there any alternative approaches to more efficiently reunite individuals with their unclaimed moneys while effectively balancing privacy concerns?
8. Should ADIs continue to hold and pay interest on unclaimed accounts, instead of transferring them to ASIC?
9. Are there other opportunities to streamline the unclaimed money arrangements?

REGULATORY BURDEN

As indicated at the start of this paper, in addition to seeking feedback on the policy issues raised above, the Government is seeking comment on the need for any further amendments to reduce the regulatory burden of the unclaimed moneys provisions.

Finally, as part of the Government's deregulation agenda, the Government also welcomes information from parties on any other impacts that should be taken into account when considering any future changes to the unclaimed moneys provisions.

Consultation questions:

10. Are there broader opportunities to reduce the regulatory burden of the unclaimed moneys provisions?
11. Are there any other issues that you would like addressed as part of this consultation process?

ATTACHMENT A: CONSOLIDATED DISCUSSION QUESTIONS

EXTENDING THE REQUIRED PERIOD OF INACTIVITY FROM THREE YEARS TO FIVE YEARS

1. Is an increase in the required period of inactivity from three years supported? If so which period (for example, five or seven years) would be preferred?
2. What period of adjustment would be sufficient to manage any future changes to the period of inactivity?
3. What costs would be involved in any changes to the current arrangements?
4. What savings would be involved over time if changes were to be made or not made?

EXEMPTIONS FROM THE UNCLAIMED MONEYS PROVISIONS

5. Are there any additional account types that should be excluded from the unclaimed bank account provisions?
6. Could the current exemptions and special rules be streamlined to reduce the complexity of the unclaimed bank account provisions?
7. Which of the three proposed treatments of FCAs, if any, is preferred?

BALANCING PRIVACY WITH THE EFFICIENT RETURN OF FUNDS

8. Do the current arrangements for public disclosure of details of unclaimed bank accounts and life insurance moneys achieve an appropriate balance?
9. What changes could be made to sufficiently protect privacy and still ensure that account holders can easily locate their unclaimed accounts?

IMPROVING ADMINISTRATIVE ARRANGEMENTS

10. Should TFNs be able to be shared between ADIs and ASIC/the ATO to more efficiently reunite individuals with the unclaimed moneys?
11. Are there any alternative approaches to more efficiently reunite individuals with their unclaimed moneys while effectively balancing privacy concerns?
12. Should ADIs continue to hold and pay interest on unclaimed accounts, instead of transferring them to ASIC?
13. Are there other opportunities to streamline the unclaimed money arrangements?

REQUESTS FOR FEEDBACK — REGULATORY BURDEN

14. Are there broader opportunities to reduce the regulatory burden of the unclaimed moneys provisions?

15. Are there any other issues that you would like addressed as part of this consultation process?