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Dear Mr Crawford,

## **Unclaimed monies regime**

The Australian Bankers' Association (ABA) welcomes the opportunity to respond to the Discussion Paper *Options for Improving the Unclaimed Bank Account and Life Insurance Money Provisions*. We note previous comments provided to the Treasury regarding the unclaimed monies regime and the need to improve the application of the provisions to ensure industry has certainty about their obligations and customers have confidence in the purpose and operation of the unclaimed monies regime.

## **Overview of recommendations**

The ABA supports the underpinning policy basis for the unclaimed monies regime for the benefits provided to customers to reunite them with lost monies. However, there are a number of measures which the banking industry recommends be implemented to improve the customer's experience while also improving the efficiency of the unclaimed monies regime for both the Government and the banking industry.

These measures include: increasing and reinstating the period of inactivity from three years to seven years, exempting a number of account types from the provisions (ensuring that existing exemptions and clarifications are appropriately transferred into any new regime), and ensuring customers can be treated consistently with current practices and avoid their monies being reported and transferred even where there has not been a withdrawal or deposit on their account. We also recommend improving privacy safeguards for customers, providing banks with more legal guidance and certainty around the implementation of the provisions, and better communication with consumers about the policy rationale and purpose of the unclaimed monies regime, and any changes to the provisions.

## **Transfer of unclaimed monies**

*Should ADIs continue to hold and pay interest on unclaimed accounts, instead of transferring them to ASIC?*

This is a fundamental question as to the operation of the unclaimed monies regime. The purpose of the provisions is to ensure that consumers who have lost their monies are able to be reunited through a centralised process. Therefore, we support the approach by ASIC to hold unclaimed monies, with appropriate exemptions and clarifications to make sure consumers are not inadvertently disadvantaged or face detriment.

The unclaimed monies regime as administered by ASIC provides real value to the community and the banking industry by aggregating the information at one site to make it easier for people to be reunited with their money, as well as paying interest to preserve the value of the amount. It is also worth noting that any substantial changes, such as reverting to an approach whereby banks hold the monies, would lead to lost productivity, customer confusion and complaints. The benefit of ASIC holding the monies far outweighs alternatives. It is a relatively small amount of money for the banking industry, but an important asset for consumers.

## Period of inactivity

*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?*

The ABA believes that the current period of inactivity, being three years, is inappropriate and has caused substantial disruption for banks and their customers.

The complexity of regulations and guidance, coupled with different timeframes and exemptions in the provisions, means banks must assess whether accounts are captured or not. A change from three years to another period would in practice require similar changes to compliance systems and processes. For example, some banks have limitations in their compliance systems and processes to automate different timeframes and exemptions across their retail banking account management systems, so manual assessments are required to remove certain accounts from the automated batch run conducted to identify possible unclaimed monies accounts from the designated period of inactivity. These exemptions are important to ensure certain account types are not captured which would disrupt some customers savings, business transactions, and other arrangements.

In our experience, the ABA believes that a period of inactivity of seven years is appropriate and better meets customer expectations and reduces costs and inefficiencies for the banking industry and ASIC. Many accounts tend to no longer be inactive after seven years, and therefore, this is better aligned with the way customers tend to operate their accounts. A common example is a deposit account used like a term deposit rather than a transaction account, with the money at-call to maintain flexibility. Another example is an account used for commercial arrangements where the particulars are not settled within the three year period, with activity typically within seven years. Additionally, we consider that a period of inactivity of seven years is better aligned with the limitation period for statute barred debt.

The ABA believes that savings from increasing the period of inactivity prior to report/transfer are substantial. We estimate that an increase in the period to seven years would halve the number of claims, and reduce the administration, marketing and complaints handling costs for the banking industry and ASIC.

## Complaints

When considering change to the current unclaimed monies regime, the ABA notes that it is worth understanding the range of complaints that arose when the period of inactivity was reduced to three years (albeit, it is recognised that any change increasing the period is less likely to raise complaints).

According to industry estimates, when the regime reduced the period of inactivity from seven to three years, complaints increased by 300%. The impact of the change was felt across the customer base, including individual, business and institutional banking customers. In addition to older customers confused by the change, complaints came from people related to a deceased customer, people calling on behalf of an elderly parent customer, customers acting as executors for trustees of accounts, and customers facing changed circumstances and financial stress, such as unemployment, severe drought and/or business disruption (in particular, farmers), injury and illness.

The ABA notes that the issues which gave rise to the most complaints included:

1. Lack of awareness of the existing government policies, and an understanding that while monies are transferred to the Government, they would continue to be owned by the customers.
2. High-interest bearing accounts were transferred to accounts with nominal interest.
3. Foreign currency accounts were converted to AUD, adding an unexpected layer of risk for customers.

4. Frustration regarding the necessary timeframe between the reporting date and the transfer date, and subsequently the return of monies from ASIC, and inability for a customer to access an account during this period.
5. Delays in the return of monies from ASIC with complaints directed at the banks.
6. Confusion as to the need to conduct a transaction (withdrawal or deposit) to ensure an account would not be deemed unclaimed.
7. Confusion as to the tax treatment for monies claimed back.

The ABA is especially concerned by the unintended and adverse consequences of the change as it impacted on customers experiencing financial difficulties and other vulnerable customers. For example, the unclaimed monies regime assumes that certain customers will select accounts, such as term deposits or Farm Management Deposits (FMDs), to save monies, such as older people and/or farmers. However, customers have indicated that in order to continue to have ready access to their monies and/or to minimise account complexities (such as, tax treatment of interest on FMDs) they have chosen to have regular deposit accounts, which are subject to the unclaimed monies regime, unlike term deposits and FMDs that are exempt. Unfortunately, especially during the initial period of the new unclaimed monies regime with the period of inactivity of three years, these accounts were deemed unclaimed monies if there were no transactions and there are accounts of significant administration and return of monies delays due to resourcing problems with ASIC.

Therefore, in our experience, the ABA believes consideration should be given to special arrangements to fast-track the return of monies from ASIC for those customers who identify as experiencing financial difficulties. We understand this may involve some additional complexities for ASIC and would need to be further thought-through (noting it seems a policy conflict for governments and banks to provide financial hardship assistance and support). For example, ASIC would need to establish clear guidelines around “identifying as experiencing financial difficulties”, otherwise this may require an assessment period to be conducted by ASIC and/or an increase in financial difficulty claims where consumers are aware they can get their money back quicker. Similarly, ASIC may need to consider returning monies directly to the customer, not via the bank or other ADI, and/or banks and other ADIs may need to consider implementing an ‘exception process’ into their systems and approaches. Importantly, given the monies have already been transferred to the Government, any such approach and processing of requests would substantially need to be handled by ASIC, not banks and other ADIs.

### **Costs and benefits (including timetable for regulatory change)**

*What period of adjustment would be sufficient to manage any future changes to the period of inactivity? What costs would be involved in any changes to the current arrangements? What savings would be involved in any changes to the current arrangements? What savings would be involved over time if changes were to be made on now made?*

The ABA notes that changes can be expensive, but the banking industry believes the benefits from the changes recommended would likely outweigh the cost to the banking industry and ASIC.

Member banks advise that the set-up cost to change the period of inactivity would be in the range of \$50,000 to \$1,000,000, depending on the level of automation involved in each banks' compliance systems and processes. Many banks estimate the change would cost between \$50,000 to \$250,000 per bank. However, if banks are required to rebuild an automated system, the IT system, documentation and other changes could range between \$500,000 and \$1,000,000 per bank. Alternatively, if a bank is changing an entirely manual process, the costs would be minimal, however, ongoing manual processes are more costly. A number of banks have a mix of automated and manual processes.

The ABA notes that the cost to make changes would be substantially less than the costs incurred to make the original changes where the changes are introduced with clarity and sufficient time to be implemented. When the unclaimed monies regime was changed, it was done in an ill-considered and rushed way causing technical and operational problems, unnecessary compliance costs and administrative complexity, and frustration for banks and ADIs required to implement subsequent changes (not to mention the adverse impact on some customers).

The overall compliance costs associated with making changes to revert to a period of inactivity of seven years will depend on the time available to make these compliance systems and process changes. Therefore, we consider that banks and other ADIs should be provided with at least 12 months' notice, from the next annual assessment, for any changes so these changes can be adopted into the following compliance period without incurring unnecessary compliance costs.

For example, if legislative changes are made during the Spring sittings 2014, banks could implement for the following compliance period, being 31 December 2015; whereas, if legislative changes are made during the Autumn sittings 2015, banks could implement for the next compliance period, being 31 December 2016. However, once the changes are made, the banking industry estimates the savings would be in the range of \$95,000 to \$350,000 per bank, annually.

## Recommended exemptions

*Are there any additional account types that should be excluded from the unclaimed bank account provisions? (Q5) Could the current exemptions and special rules be streamlined to reduce the complexity of the unclaimed bank account provisions?*

The ABA recommends that the existing law and regulations should be streamlined to reduce unnecessary administrative complexity, yet provide a targeted response without imposing unnecessary complications across certain account types. Additionally, we consider a number of account types should be exempted from the unclaimed monies regime, with the rules applying the inactivity period of seven years for other account types, beyond term deposits and FMDs. This approach would streamline the existing regulations and guidance and would greatly reduce customer complaints and administrative complexities and costs.

### Exempt entirely from the unclaimed monies regime

Based on our experience and the existing 'special treatment' of certain account types in the regulations intended to recognise that these accounts are not standard deposit accounts, the ABA recommends the following accounts be exempted from the provisions:

1. Accounts for which the primary purpose is credit, for example, accounts with a line of credit, credit cards and pre-paid cards (such as, travel money cards and stored value cards). These accounts may have positive balances from time to time, but are for the purpose of access to credit. Issues arise with these accounts/facilities when customers are not able to access the line of credit at a time when needed.
2. Accounts for which the primary purpose is investment, for example, cash management accounts held in superannuation funds or managed investments.
3. Children's accounts according to the definition already contained in the regulations, and youth accounts where the customer cannot transact in their own right until a designated age, such as the age of 16.
4. Bank cheques (including un-presented). These facilities are taken out for a primary purpose (arguably these facilities are not captured by the definition of an account, but this should be made clear).
5. Linked accounts, sub-accounts and other accounts which are part of packaged and bundled products. For example, some accounts can be structured to have linked accounts or sub-accounts. Alternatively, some investment accounts can be structured where there can be multiple accounts with positive or negative balances from time to time, but are used to manage a portfolio of interests, including investments and loans, but may not be "linked accounts" or "sub-accounts" according to the definition already contained in the regulations, but are functionally-equivalent products.
6. All accounts where customers are not resident in Australia, where regular transactions are likely to be more expensive and often infrequent.
7. Controlled accounts and accounts on which there are restrictions on transactions, for example, court controlled accounts (i.e. victims of crime trust accounts), frozen accounts (these accounts can be inactive for many more than seven years while proceedings are progressed, and when unfrozen, they can be dealt with as any other deposit account), security, set-off or escrow accounts (i.e. operational accounts held as security against an active facility, controlled accounts held as security against a bank or indemnity guarantee, security deposit accounts) and other controlled accounts (i.e. investment trust accounts or lease bond accounts held by solicitors and agents who are holding funds in trust and statutory trust accounts where the accounts hold pooled trust funds ultimately not belonging to the entity holding the account, respectively). These controlled accounts are held as a

requirement of a law of the Commonwealth, a State or a Territory or due to a contract, loan or financial obligation. Typically, these accounts are issued for the purpose of maintaining a credit facility, issued to hold monies for a special purpose or issued as perpetual, and the associated accounts have restraints placed on the account and/or restrictions on transactions.

8. Government-designated special purpose deposit accounts, typically with special tax treatments, for example, FMDs and First Home Saver Accounts (FHSAs). (We note that the *Tax Laws Amendment Act (No. 1) 2014* received Royal assent on 30 May 2014 and this amends the Banking Act to specifically exclude FMDs from unclaimed monies.)
9. All foreign currency accounts, due to the foreign exchange risk of converting the funds to AUD and administrative complexity. (This account type is discussed in more detail below.)
10. Term deposits (already exempt).

### **Treatment of foreign currency accounts**

*Which of the three proposed treatments of foreign currency accounts (FCAs), if any, is preferred?*

The ABA believes that all foreign currency accounts should be exempt entirely from the unclaimed monies regime to streamline the operation of the provisions.

We agree that options one and two in the discussion paper involve risks and responsibilities which the Government is not well placed to take, nor should it take responsibility to manage on behalf of customers. These options, as well as option three, also add to the administrative complexity of the provisions.

It should be noted that customers with foreign currency accounts are typically sophisticated users of financial services and include commercial entities and high-net worth customers residing in Australia or overseas. Previous changes to the provisions elicited a large number of complaints and significant dissatisfaction from these customers due to their monies being reported/transferred to ASIC and consequent changes in the amount due to changes in foreign exchange rates between the period of the transfer and return of the monies from ASIC. In some cases, banks have covered the adverse movement in foreign exchange rates to maintain good customer relations. We do not believe this is a satisfactory situation.

### **Balancing privacy with efficiency of the unclaimed monies regime**

*Do the current arrangements for public disclosure of details of unclaimed bank accounts and life insurance monies achieve an appropriate balance? What changes could be made to sufficiently protect privacy and still ensure that account holders can easily locate their unclaimed accounts? Should TFNs be able to be shared between ADIs and ASIC/the ATO to more effectively reunite individuals with the unclaimed monies? Are there any alternative approaches to more efficiently reunite individuals with their unclaimed monies while effectively balancing privacy concerns?*

The ABA believes that privacy is an issue for the process of identifying and claiming unclaimed monies as the regime currently operates. The public nature of the current database with names, addresses and amounts enables others to easily view the financial arrangements of others. It has also given rise to scams, some of which have been brought to the ABA's attention. Typically, scammers have contacted the owners of the monies and offered to recover the monies for a substantial fee (when this can be done for free by customers). It is also possible for scammers to claim the monies themselves if they have sufficient information about the owner.

The ABA recommends reducing the amount of information made public on the ASIC website to the first initial, family name and suburb of each customer. We also recommend adjusting the information to allow searches by business entity name (not just individuals' name). Following, a telephone call to ASIC can then verify the remaining information, including the balance. This approach would impose additional obligations, and therefore, discourage scammers. While this approach does not completely eliminate privacy issues or fraud and scam risk, an alternative approach may discourage customers from finding their monies and undermine the purpose of the provisions. We also recommend ASIC consult with the Privacy Commissioner.

The ABA does not recommend tax file numbers (TFNs) being shared between banks and other ADIs and ASIC/the ATO to more effectively reunite individuals with unclaimed monies. While we recognise this approach may work for superannuation funds, this will add another layer of complexity and administration and as well as likely complaints from customers.



Additionally, bank customers are not required to provide a TFN to their bank to open and operate an account (unlike superannuation funds, due the different tax treatment between deposit accounts and superannuation accounts). (We note that banks indicate that customers should provide a TFN so they can be identified for tax purposes, and to avoid tax being withheld from any interest paid to the account at the highest marginal tax rate, but it is not essential.)

## Other opportunities

*Are there other opportunities to streamline the unclaimed money arrangements? Are there broader opportunities to reduce the regulatory burden of unclaimed monies provisions? Are there any other issues that you like addressed as part of this consultation process?*

## Legal certainty

The ABA believes legal certainty is important for the effective application and operation of the unclaimed monies regime. Issues that have arisen without guidance include a lack of consistency as to which accounts are excluded and what qualifies as notification or activity to determine that the customer has knowledge and control of the account. We note the Information Sheet prepared by ASIC to assist the banking industry, however, the law and regulations should be streamlined to make the application and operation of the regime clear to banks and other ADIs as well as consumers. We consider that the Government should make technical amendments to ensure certain account types are not inadvertently captured and to resolve outstanding operational issues. Guidance in ASIC's Information Sheet should be reflected appropriately in the law (and accompanying regulations), especially with regards to the various practices for allowing a customer to meet a notification requirement without having to conduct an arbitrary transaction on the account (deposit or withdrawal) and/or where the customer has accessed their account and/or been identified by the bank or other ADI (identified accounts).

## Consumer education

The ABA notes that when the period of inactivity was changed from seven to three years, there was no communication with the public by the Government explaining how and why the changes were being made to the existing unclaimed monies regime. This led to considerable confusion and anger in the community, particularly as it was not widely understood that the unclaimed monies regime had been around for some time and was not a new Government-initiated approach. As a result, the ABA and member banks were required to provide consumer communications and deal with public and media criticism. At the time, the ABA published a fact sheet for banks and customers to explain the changes, however, there was no Government consumer education beyond targeted changes to the ASIC and ATO websites.

If the provisions are changed to increase the period of inactivity and better define the accounts captured by the provisions, the ABA advocates the need for the Government, in consultation and conjunction with the banking industry, to implement a consumer education campaign to ensure consistent messages are established and promoted to the public. We consider this essential, particularly given the recent media attention on the unclaimed monies regime. It is important to make sure customers are aware of the unclaimed monies regime and how it may impact on their accounts and choices as well as to make it clear and build awareness that transfers occur due to legislative requirements and not because of the decisions of individual banks. The banking industry welcomes the opportunity to improve the customer experience, improve the efficiency of the unclaimed monies regime for the Government and the banking industry, and contribute to the operation of one of the world's best financial systems.

Yours sincerely,



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**Diane Tate**