

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 100

Issued by the Authority of the Parliamentary Secretary to the Treasurer

Banking Act 1959

*Banking Amendment (Unclaimed Moneys – Specified Accounts and Conditions)
Regulation 2013*

Section 71 of the *Banking Act 1959* (Banking Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Amendment of Banking Regulations 1966

Under subsection 69(1B) of the Banking Act, moneys to the credit of an account specified in the regulations are unclaimed moneys if, and only if, the conditions specified in the regulations are satisfied. The amendments to the regulations specify conditions for certain accounts to become unclaimed moneys.

The Regulation would add a new condition for accounts to be classified as security, set-off or escrow accounts (accounts used as a kind of security for loan, contract or other financial obligation) under regulation 20 of the *Banking Regulations 1966*, that is authorised deposit taking institutions (ADIs) have been notified by account holders about the purpose of the accounts.

The Regulation would also specify conditions that must be fulfilled for controlled accounts that are opened and held as a requirement of a law or a contract (including lease bond accounts, statutory trust accounts, and controlled money accounts) and security, set-off and escrow accounts to be classified as unclaimed.

The amendments would specify that, for one of these accounts to be classified as unclaimed, no deposits or withdrawals must have been made for:

- a period of at least seven years if the ADIs have been only notified about the purpose of the accounts, or
- a period of at least three years after the relevant contract expired if the ADIs have been notified about the purpose of the accounts and the period of the underlying loan, financial obligation, legal requirement, or contract.

These timeframes are longer than standard periods of inactivity of accounts before they are considered unclaimed, because transactions on controlled accounts are often restricted or limited as a requirement or intent of the law or contract.

Examples of how the Regulation would operate in relation to these accounts are set out at Attachment B.

Treasury consulted with the Australian Bankers' Association and Abacus, the industry groups which represent authorised deposit-taking institutions in Australia.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered.

ATTACHMENT A

Details of the *Banking Amendment (Unclaimed Moneys – Specified Accounts and Conditions) Regulation 2013*

Section 1 specifies the name of the Regulation as the *Banking Amendment (Unclaimed Moneys – Specified Accounts and Conditions) Regulation 2013*

Section 2 provides that the Regulation will commence on the day after it is registered.

Section 3 provides that this regulation is made under the *Banking Act 1959*

Section 4 provides that Schedule 1 amends the *Banking Regulations 1966*.

Schedule 1

Item 1 clarifies the definition for set-off accounts. Item 2 adds a new condition for accounts to be classified as security, set-off or escrow accounts. Item 3 defines the controlled accounts and sets out the conditions for controlled accounts and security, set-off or escrow accounts to be assessed as unclaimed.

ATTACHMENT B

Examples of the application of the *Banking Amendment (Unclaimed Moneys – Specified Accounts and Conditions) Regulation 2013*

Lease bond account

Example 1: A lessee placed a lease bond of \$2,000 with a real estate agent and the bond money is subsequently put into a lease bond account. The ability of the real estate agent to make a transaction on the lease bond is limited by a state law. The bond is treated as being in escrow for the lease agreement between the lessor and the lessee, although the bond could be used to compensate for rental property damages or other costs. The real estate agent has informed the ADI about the purpose of the account but not the period of the lease. Consequently, the lease bond account will only become unclaimed if no deposit or withdrawal is made for at least seven years. If the real estate has informed the ADI about the purpose of the account and the lease period (e.g. 5 years), the account will only become unclaimed if no deposit or withdrawal is made for at least three years after the lease expired, i.e. eight years.

Statutory trust account

Example 2: A group of individuals have entered into a pre-sale contract with a real estate agent or a third party to buy an off-the-plan property. Under the contract, each individual is required certain amount of money for the real estate agent to hold. Then the real estate agent opens and holds a statutory trust account (as trustee) for these individuals with Bank XYZ containing \$1,000,000 for the pre-sale contract on the construction project. Transactions on the statutory trust account by the real estate agent are restricted by a state law. The bank has been notified about the purpose of the account by the agent or by the virtue of the type of account. The account will only become unclaimed if no deposit or withdrawal is made for a period of at least seven years. If the agent has notified the ADI about the purpose of the account and the contract period (e.g. 3 years), the account will only become unclaimed if no deposit or withdrawal is made for at least seven years.

Controlled money account

Example 3: A person has entered into a contract with a third party to buy an off-the-plan property. As part of the contract, the person directs his or her lawyer to open and hold an account of \$30,000 for the contract. Even though the lawyer has exclusive control over the account, the intent of a law requires the lawyer to make a transaction only on the basis of a direction from the person. The lawyer has notified the ADI about the arrangement of the account. The account will only become unclaimed if no deposit or withdrawal is made for a period of at least seven years. If the lawyer has notified the ADI about the purpose of the account and the contract period (e.g. 6 years), the account will only become unclaimed if no deposit or withdrawal is made for at least three years after the contract expired, i.e. 9 years.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Banking Amendment (Unclaimed Moneys – Specified Accounts and Conditions) Regulation 2013

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Subsection 69(1B) of the *Banking Act 1959* (Banking Act) allows regulations to set specific conditions for certain accounts to be assessed as unclaimed moneys. The Regulation will set the specific conditions for security, set-off or escrow accounts and controlled accounts.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.