

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

Select Legislative Instrument No. 176, 2015

Banking Act 1959

Banking Amendment (Unclaimed Money) Regulation 2015

Section 71 of the *Banking Act 1959* (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.

The *Banking Amendment (Unclaimed Money) Regulation 2015* (Regulation) complements the *Banking Laws Amendment (Unclaimed Money) Act 2015* by extending the unclaimed moneys period from three years to seven years for certain types of accounts held in authorised deposit-taking institutions (ADIs). The Regulation does this by extending the unclaimed moneys period for ADI accounts prescribed to have special treatment under the *Banking Regulations 1966* and making other necessary consequential amendments.

The *Banking Regulations 1966* currently prescribe special conditions for the purposes determining whether linked accounts, sub accounts, frozen accounts, children's accounts and security, set-off or escrow accounts consist of unclaimed moneys.

The Regulations extend the period of time before linked accounts, sub accounts, frozen accounts and security, set-off or escrow accounts consist of unclaimed moneys from three years to seven years.

The Regulations repeal the special treatment provided to children's accounts and removes the definition of a children's account as children's accounts will receive a full exemption from the unclaimed moneys provisions under the *Banking Laws Amendment (Unclaimed Money) Act 2015*.

The Regulations extend the period in which an account holder (or agent) can notify an ADI that an account should be treated as active so that the account does not have to be transferred to the Commonwealth. The period for notification will be extended from three years to seven years.

Details of the Regulation and a statement of Compatibility with Human Rights are included in the Attachment.

Public consultation on an exposure draft of the Regulation was conducted between 28 May 2015 and 26 June 2015 with no concerns being raised by any stakeholders.

All of the changes made by the Regulation are minor and consequential to the amendments in the *Banking Laws Amendment (Unclaimed Money) Act 2015*. The regulatory savings associated with this Regulation are included in the regulation impact statement in the explanatory memorandum to the *Banking Laws Amendment (Unclaimed Money) Act 2015*.

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

The Regulation will commence on 31 December 2015.

Details of the *Banking Amendment (Unclaimed Money) Regulation 2015*

Section 1 – Name of Regulation

This section provides that the name of the regulation is the *Banking Amendment (Unclaimed Money) Regulation 2015* (Regulation).

Section 2 – Commencement

This section provides for the Regulation to commence on 31 December 2015.

Section 3 – Authority

This section provides that the Regulation is made under the *Banking Act 1959*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Items 1 to 4, and 6 to 7

This regulation extends the period of time before which linked accounts (item 1), sub accounts (items 2 and 3), frozen accounts (item 4) and security, set-off or escrow accounts (items 6 and 7) consist of unclaimed moneys from three years to seven years.

The same special conditions that currently apply to each of the accounts will continue to operate. Once these conditions are met, the period of time before these accounts will consist of unclaimed moneys is extended from three years to seven years.

Item 5

This regulation removes the special conditions applying to children's accounts and removes the definition of a children's account. *Banking Laws Amendment (Unclaimed Money) Act 2015* exempts children's accounts from the unclaimed moneys provisions and so the special conditions and definition are no longer required.

Item 8

This regulation extends the period (from three to seven years) within which an account holder (or agent) can notify an ADI that an account should be treated as active so that the account does not have to be transferred to the Commonwealth.

In conjunction with the changes to subsection 69(3) of the *Banking Act 1959* in the *Banking Laws Amendment (Unclaimed Money) Act 2015* this means that if an account is deemed to be inactive on 31 December but the account holder satisfies the notification requirements prior to their funds being transferred to the Australian Securities and Investments Commission, their account will not have to be transferred and will not be at risk of becoming unclaimed until it has been inactive for a further seven years.

Under the existing regulations, an account holder or their agent can satisfy the notification requirements by, for example, checking the account balance online or over the phone, or by advising their bank that they wish for the account to remain active.

Statement of Compatibility with Human Rights

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

Banking Amendment (Unclaimed Money) Regulation 2015

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

The Banking Amendment (Unclaimed Money) Regulation 2015 (Regulation) complements the *Banking Laws Amendment (Unclaimed Money) Act 2015* by:

- extending the period of time before linked accounts, sub accounts, frozen accounts and security, set-off or escrow accounts consist of unclaimed moneys from three years to seven years; and
- repealing the unclaimed moneys provisions relating to children's accounts as these accounts are being given a full exemption under legislation.

Human rights implications

This Legislative Instrument engages Article 3(1) of the Convention on the Rights of the Child which provides that the rights of a child should be a primary consideration.

Item 5 of the regulation repeals the special treatment of children's accounts in relation to the unclaimed moneys provisions. The special treatment under the *Banking Regulations 1966* currently provides that children's account only consist of unclaimed moneys if they are inactive for seven years (as opposed to the three-year period applying to all other accounts).

The special treatment is being repealed, as it is no longer required owing to children's accounts being made fully exempt from the unclaimed moneys provisions as part of the *Banking Laws Amendment (Unclaimed Money) Act 2015*. As a result of the exemption being introduced, children's accounts will no longer have to be transferred to the Commonwealth when accounts become inactive.

Repealing the special treatment provided to children's accounts in the *Banking Regulations 1966* is consistent with Article 3(1) of the Convention on the Rights of the Child. This is because it is part of a package of changes, which provides for a greater level of protection for children's accounts as they will no longer have to be transferred to the Commonwealth.

The package of changes is in the best interest of children because the amendments will ensure that children do not have to go through lengthy processes to reclaim their accounts. The amendments will also ensure that children do not lose out on any higher interest payments that may accrue in relation to their accounts as accounts transferred to the Commonwealth only accrue interest at the rate of the consumer price index.

Conclusion

The Legislative Instrument is compatible with human rights because it is part of a package of changes that are in the best interests of children as children's accounts are being given a full exemption from the unclaimed moneys provisions. To the extent that the regulation repeals the current special provisions for children's accounts, this is being done only because of enhanced protections being provided as part of the package of changes being introduced under legislation.