



**THE LAW REFORM COMMISSION  
OF WESTERN AUSTRALIA**

**Project No 51**

**Unclaimed Money**

**REPORT**

**DECEMBER 1980**

The Law Reform Commission of Western Australia was established by the *Law Reform Commission Act 1972-1978*.

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To: THE HON I G MEDCALF, QC, MLC  
ATTORNEY GENERAL

In accordance with the provisions of section 11(3)(b) of the *Law Reform Commission Act 1972-1978*, I am pleased to present the Commission's report on unclaimed money.

(Signed) David K Malcolm, QC  
Chairman

19 December 1980

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## **TERMS OF REFERENCE**

1. The Commission was asked to consider and report upon the subject of unclaimed money.

## **WORKING PAPER**

2. On 28 October 1976 the Commission issued a Working Paper. The Working Paper contained the following appendices -

- I     The *Unclaimed Moneys Act 1912-1947*
- II    Details of unclaimed money paid to the Treasurer during the period 1 January 1974 to 30 June 1976
- III   Legislation dealing with unclaimed money in specific circumstances
- IV    Analysis of comparable legislation relating to unclaimed money in other jurisdictions
- V     Legislation in Western Australia dealing with unclaimed trust money.

These appendices are reproduced as appendices I to V to this Report. Appendices containing details of legislation have been updated to include amendments made up to the date of this Report. The information in Appendix II continues to be relevant by illustrating typical circumstances where unclaimed money arises. The Working Paper itself is not annexed to this Report. Copies are available, however, free of charge, at the Commission's office. The names of those who commented on the Working Paper are listed in Appendix VI to this Report.

## **CHAPTER 1**

### **THE LAW AND PRACTICE IN WESTERN AUSTRALIA RELATING TO UNCLAIMED MONEY**

1.1 The law in Western Australia relating to unclaimed money can be divided into four separate categories, each depending on the circumstances in which the money is owed. These categories are -

- \* money owed, normally in the form of a debt,<sup>1</sup> which is governed by the *Unclaimed Moneys Act 1912-1947*;<sup>2</sup>
- \* money which has been lost but found, which is governed largely by legal principles derived from decided cases;
- \* unclaimed money owing in certain special circumstances, which is governed by a number of specific statutory provisions;
- \* money owed by a trustee to a beneficiary or in circumstances analogous to a trustee/beneficiary relationship.

It is convenient to deal with each category separately.

#### **The Unclaimed Moneys Act**

1.2 In the absence of any statutory provision to the contrary if a claim by a creditor for money owed to him is not made within the appropriate limitation period,<sup>3</sup> the debtor has a defence to any subsequent claim to the money. This applies where the money is owed in the form of a specified liquidated sum, such as money agreed to be paid under a contract. Similar principles apply where money is owed as unliquidated damages, such as might arise from liability for negligence or for breach of contract. The law is based on the expectation that a

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<sup>1</sup> The word "debt" in the *Unclaimed Moneys Act* has a wider meaning than is commonly understood. The Act applies to "all principal and interest money, and all dividends, bonuses, profits and sums of money whatsoever, which have been owing to any person..." : s 2. Thus unpaid wages and dividends are included in the term "debt".

<sup>2</sup> Hereinafter referred to as *The Unclaimed Moneys Act*.

<sup>3</sup> *Limitation Act 1935*. The period allowed for claims in contract and in tort is six years - s 38(1)(c)(v) and (vi).

creditor or claimant, as the case may be, should take the initiative and in his own interests take steps to recover money owed to him.

1.3 The *Unclaimed Moneys Act* provides a statutory departure from this principle. It is not unique to Western Australia. Similar legislation can be found in all other jurisdictions in Australia and in New Zealand, but with significant differences in its application.<sup>4</sup> The Act was passed in the belief that money held in trading bank accounts could be retained by the banks concerned if a period representing the relevant limitation period expired and the customer either made no claim for his money or did not operate on his account. This belief<sup>5</sup> no longer provides a justification for the Act because money held in trading bank accounts, other than with the Rural and Industries Bank of Western Australia, is governed by Commonwealth legislation.<sup>6</sup> Although there is no express provision in this legislation dealing with unclaimed money held by private savings banks,<sup>7</sup> it is not clear whether the *Unclaimed Moneys Act* applies to such money.<sup>8</sup>

1.4 The *Unclaimed Moneys Act* provides for "unclaimed money", that is money owed and unclaimed for six years, to be paid to the Treasurer.<sup>9</sup> The object of the Act is that such money should always remain available to the creditor if and when he seeks payment. The Act is selective in its operation. It only applies to companies incorporated in or carrying on business in Western Australia.<sup>10</sup> The word "companies" has an extended meaning in the Act and includes every "person or firm carrying on business as traders in Western Australia, and acting as agents or private bankers for individuals or companies" and also includes banks, life

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<sup>4</sup> Appendix IV contains an analysis of comparable legislation in other Australian jurisdictions and in New Zealand.

<sup>5</sup> Which in any case was probably misconceived. The limitation period does not begin to run until the customer has made a demand on the banker: see *Joachimson v Swiss Bank Corporation* [1921] 3 KB 110. See also Working Paper, 36 footnote 2

<sup>6</sup> *Banking Act 1959* (Cwth), s 69. The R & I Bank is not covered by this Act; trading accounts with that bank are governed by the *Unclaimed Moneys Act*. See generally, paras 3.37 and 3.38 below.

<sup>7</sup> Unclaimed money held in a savings account with the Rural and Industries Bank of Western Australia (the "R & I Bank") is governed by the *Rural and Industries Bank Act 1944* (WA), s 65V; unclaimed money held in a savings account with the Commonwealth Savings Bank of Australia is governed by the *Commonwealth Banks Act 1959* (Cwth), s 53.

<sup>8</sup> If the *Banking Act 1959* (Cwth) "covers the legislative field" the *Unclaimed Moneys Act* would be inconsistent with it and therefore, because of s 109 of the *Commonwealth Constitution*, inapplicable to private savings banks: see P H Lane, *The Australian Federal System* (2nd ed, 1979), 863-898. This may be so even though s 69 of the *Banking Act 1959* (Cwth) refers only to trading banks. In addition, money held in a savings account may not be "owed" or "payable" for the purposes of the *Unclaimed Moneys Act* until a withdrawal form signed by the customer is presented to the bank: see para 1.6 below.

<sup>9</sup> *Unclaimed Moneys Act*, ss 2 and 6.

<sup>10</sup> *Id*, s 2.

assurance companies or associations, liquidators of companies and building societies. The Act applies only to sums of \$10 or more.<sup>11</sup>

1.5 Companies or persons who fall within the Act must enter details of money owed for six years or more in a register and the contents of the register are advertised in the *Government Gazette*.<sup>12</sup> If no claims are made within one year following the advertisement the money is payable into a Government fund known as the "Unclaimed Moneys Fund ". Interest may be paid into Consolidated Revenue.<sup>13</sup> There is no express provision made for the disposition of capital. In practice, the Treasurer, relying on provisions in the *Audit Act 1904*, pays capital into Consolidated Revenue if it has remained unclaimed in the Unclaimed Moneys Fund for six years. It is not clear, however, whether the provisions in the *Audit Act 1904* were intended to apply in these circumstances. Uncertainty over the disposition of capital was one of the reasons for the referral of this project to the Commission.

1.6 A sum of money is regarded as unclaimed money for the purposes of the *Unclaimed Moneys Act* if two conditions are satisfied. The money must be both owed to someone and yet remain unclaimed. For certain other purposes, some form of claim is necessary before money is owed. It is a question of some difficulty whether a similar argument would apply as regards the *Unclaimed Moneys Act*.<sup>14</sup> The Commission is not aware of any decided case on the point. There are cases, however, where undoubtedly the making of a prior claim is not necessary. The *Unclaimed Moneys Act* is mainly concerned with money in this latter category. From Appendix II it will be noted that typical examples are unpaid wages and dividends payable on shares.

1.7 Figures available for the period from 1974 to 1978 indicate that an average of over \$45,000 per annum was paid into the Unclaimed Moneys Fund. However this includes two large payments from Co-operative Bulk Handling Ltd.<sup>15</sup> Without these payments the average would be \$26,000. From 1 July 1978 to 30 June 1979 over \$65,000 was paid into the

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<sup>11</sup> Id, s 3(1).

<sup>12</sup> Id, ss 3(1) and 4

<sup>13</sup> Id, s 6(2).

<sup>14</sup> For example, for the purposes of a garnishee order, money deposited in a savings bank account is not "owing" until a withdrawal form signed by the customer is presented to the bank: see *Bank of New South Wales Savings Bank Ltd v Fremantle Auto Centre Pty Ltd and Poland* [1973] WAR 161. The *Unclaimed Moneys Act* requires money not only to be "owed" but also "payable", and similar doubts arise as to this latter word also. In para 4.13 below, the Commission recommends the inclusion of a provision in a revised Unclaimed Moneys Act to clarify the position.

<sup>15</sup> \$70,993.66 in 1975 and \$27,420.98 in 1978. The circumstances giving rise to these sums are outlined in detail in the Working Paper at 30-33, paras 25-31.

Unclaimed Moneys Fund. The figure for the year from 1 July 1979 to 30 June 1980 was over \$70,000. It would appear that the amount is increasing but for the purposes of this Report an average of \$70,000 is adopted. In other jurisdictions surprisingly large sums of unclaimed money have accumulated.<sup>16</sup>

### **Money Which Has Been Lost**

1.8 Under existing law, which is based on principles derived from decided cases in England, a person who finds money, or in some cases his employer, or the owner of the property where the money is found, is entitled to keep the money unless it is reclaimed by the owner within the relevant limitation period.<sup>17</sup> There are, however, two exceptions where the money is payable to the Treasurer. One such exception is where the money is "charged [by the police] to be stolen or unlawfully obtained".<sup>18</sup> If a person is in possession of such money and cannot give a satisfactory account of how he came by it, he can be prosecuted. It should, therefore, be handed in to the police. If the money is not claimed by the owner within six months the police must, within twelve months, pay it to the Treasurer for public purposes. The Treasurer will meet a late claim on an ex gratia basis, but usually does so only on the advice of a senior member of the Police Department. The other exception, where money which is found is payable to the Treasurer, arises where the money is in the form of gold or silver in coin plate or bullion and is obviously hidden and not lost. This rare situation is known in law as "Treasure Trove".<sup>19</sup>

### **Other Statutory Provisions Dealing With Unclaimed Money In Specific Circumstances**

1.9 There are a number of statutes, listed in Appendix III, providing for the disposition of unclaimed money in Western Australia in particular circumstances. For example, there are

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<sup>16</sup> In its edition of 8 August 1978 *The Bulletin* published an article entitled "There's Money Waiting for the Absent-minded". The article is based on a search of the *Government Gazettes* of New South Wales and Victoria and draws attention to a number of large amounts owing to persons whose whereabouts are unknown. The article points out at p 94 that:

"Each year, many hundreds of thousands of dollars are paid into the coffers of the State Governments because the rightful owners don't claim it.

NSW alone collected more than \$450,000 for 1976-77 from this source and Victoria another \$813,136.

Victoria now has more than \$6.5 million in unclaimed money in trust".

<sup>17</sup> Normal procedure, especially where the amount concerned is large, is for the finder to hand the money over to the police to avoid liability for a prosecution for theft by finding. The police hand the money back after three months if it is not claimed - see Working Paper at 49-50, para 57.

<sup>18</sup> Working Paper at 50-51, para 60 and *Police Act 1892*, ss 69, 74 and 75.

<sup>19</sup> Working Paper at 51, para 61.

provisions in legislation regulating Port Authorities entitling the relevant authority to sell goods left on a wharf and providing for the disposal of the proceeds either to the owner if possible, or otherwise to the Treasurer. Similar provisions apply under the *Disposal of Uncollected Goods Act 1970* and the *Warehousemen's Liens Act 1952*. There are also provisions dealing with the disposal of unclaimed coal mine workers pensions,<sup>20</sup> money derived from the sale or transfer of company shares or assets,<sup>21</sup> life insurance policy proceeds,<sup>22</sup> money held by local authorities,<sup>23</sup> lottery prizes<sup>24</sup> and T.A.B. winnings.<sup>25</sup>

1.10 Section 126 of the *Transfer of Land Act 1893* enables a mortgage to be discharged where the mortgagee is absent from Western Australia and there is no person authorised to give a receipt. The money owing under the mortgage can be paid to the Treasurer to be invested on behalf of the mortgagee and the mortgage can be removed from the title.

1.11 Sections 35 and 36 of the *Aboriginal Affairs Planning Authority Act 1972* are also relevant to unclaimed money. Section 35 concerns unclaimed trust money arising from the administration of an estate of an Aborigine who dies intestate without any next of kin. Section 36 applies to wages, property and any other money owing to or belonging to an Aborigine. Both sections provide for unclaimed money to be paid immediately to the Public Trustee. If it remains unclaimed for a prescribed period<sup>26</sup> the Public Trustee must pay the money to the Aboriginal Affairs Planning Authority for use for Aborigines.

1.12 Although it is an offence to fail to comply with section 36<sup>27</sup> the Commission has been informed that, at least for the last three to four years, the section has been used only for the disposal of trust money forming part of an estate which is owing to an Aboriginal beneficiary who is missing. The Commission is aware that some persons owing other money to Aborigines, such as wages, are not complying with the requirements of section 36. Presumably such persons are either retaining money owed for their own purposes or paying it to the Treasurer under the *Unclaimed Moneys Act*. As at 31 March 1980 the Public Trustee

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<sup>20</sup> *Coal Mine Workers (Pensions) Act 1943*, s 20(6).

<sup>21</sup> *Companies Act 1961*, ss 185(9) and (10), 286 and 364.

<sup>22</sup> *Life Insurance Act 1945* (Cwth), s 106.

<sup>23</sup> *Local Government Act 1960*, ss 457, 526(2)(b) and 589.

<sup>24</sup> *Lotteries Regulations 1967*, Regulation 9.

<sup>25</sup> *Totalisator Agency Board Betting Act 1960*, s 23(3).

<sup>26</sup> Two years in the case of s 35, three years in the case of s 36.

<sup>27</sup> The penalty for a first offence is a fine up to \$100 or imprisonment up to six months; for a second offence a fine up to \$200 or imprisonment for up to one year; for a third or subsequent offence a fine up to \$400 or imprisonment for up to two years: *Aboriginal Affairs Planning Authority Act 1972*, s 50.

was holding \$11,654 under section 35, and \$723 under section 36. Money received by the Aboriginal Affairs Planning Authority from the Public Trustee, approximately \$5,000 per annum, is currently used for the purposes of the Aboriginal Lands Trust.

### **Unclaimed Trust Money**

1.13 Money held in trust is treated in law quite separately from non-trust money which is owed to a claimant. Trust money is held in the name of the trustee, but it is not his money and he is not entitled to make use of it for his own purposes. He is normally under strict legal duties to invest the money for the beneficiaries. Once the money becomes distributable<sup>28</sup> the beneficiary is entitled to claim his share at any time. There is no limitation period to bar a claim by a beneficiary for his money. Consequently, in the absence of any provision to the contrary, a trustee holding unclaimed trust money would be required to retain it indefinitely in investments for the beneficiary. However, there are certain statutory provisions in Western Australia dealing with unclaimed trust money. They are as follows -

#### **Escheat**

- (a) In the case of a deceased estate, if there are no beneficiaries the money is payable under the laws of intestacy to the deceased's next of kin.<sup>29</sup> If there are no persons entitled to succeed, the Crown has a right, derived from English common law, to apply for property to be given over to the Crown. The relevant procedure is contained in the *Escheat (Procedure) Act, 1940*.

#### **Orders under section 66 of the Trustees Act 1962**

- (b) If trust property is unclaimed because the beneficiary entitled to it is unknown, or cannot be found, or it is not known whether he is dead or alive, an order may be obtained under section 66 of the *Trustees Act 1962* enabling the trustee to distribute the property as if such beneficiary were dead and his share had lapsed.

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<sup>28</sup> That is where any conditions imposed by the trust have been met and the beneficiary is of full age and of legal capacity.

<sup>29</sup> *Administration Act 1903*, s 14(1). Distribution is governed by a statutory table ranging from close relatives such as the deceased's spouse and children if any, parents and brothers and sisters to more remote "next of kin".

### **Special provisions for trustee companies**

- (c) The Public Trustee and the two private trustee companies in Western Australia, namely West Australian Trustees Ltd and Perpetual Trustees Ltd, are required to pay unclaimed trust money to the Treasurer. In the case of the Public Trustee, unclaimed trust money is defined as money which is distributable but unclaimed for six years.<sup>30</sup> In the case of the private trustee companies the relevant period is five years.<sup>31</sup>

### **Special provisions for money owing to Aborigines**

- (d) Sections 35 and 36 of the *Aboriginal Affairs Planning Authority Act 1972* have broad application to money, including non-trust money, owing to Aborigines. In practice, however, they are used only to deal with unclaimed trust money. The procedure is outlined above.<sup>32</sup>

### **Special provisions for money paid to public servants**

- (e) There are provisions in the *Audit Act 1904*<sup>33</sup> requiring money paid to the Treasurer pursuant to any Act, or to any public servant for, or on account, or for the use and benefit of any other person, to be paid into Consolidated Revenue.<sup>34</sup>

### **Trustees' general power**

- (f) Any trustee may pay **any** trust money (not just unclaimed trust money) into the Supreme Court pursuant to section 99 of the *Trustees Act 1962*.<sup>35</sup> In practice such money in the nature of unclaimed trust money is paid to the Public

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<sup>30</sup> *Public Trustee Act 1941*, s 45.

<sup>31</sup> *The West Australian Trustee Executor and Agency Co Ltd Act 1893*, s 22 and *Perpetual Trustee WA Ltd Act 1922*, s 22.

<sup>32</sup> See paras 1.11 to 1.12.

<sup>33</sup> Sections 26-29.

<sup>34</sup> These are the provisions used to transfer unclaimed money held by the Treasurer in special trust funds such as the Unclaimed Moneys Fund and the Testamentary and Trust Fund into Consolidated Revenue: see para 1.5 above in respect to the Unclaimed Moneys Fund.

<sup>35</sup> See *Rules of the Supreme Court 1971*, Order 62 and the Third Schedule.

Trustee pursuant to section 37 of the *Public Trustee Act 1941*. In most cases the sums are small, that is under \$100, and come from deceased estates. The Public Trustee invests the money in the Common Fund pending further directions from the Court. It earns interest at the applicable rate from time to time, presently 12½%. The total held by the Public Trustee in this account as at 30 June 1979 was \$270,000. In the absence of instructions from the Court the money remains indefinitely in the Common Fund.<sup>36</sup> Some amounts currently held were paid into the Fund prior to 1943.

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<sup>36</sup> The Public Trustee takes the view that this money is not payable to the Treasurer under s 45 of the *Public Trustee Act 1941* as it does not form part of an estate or trust under administration by him.

## CHAPTER 2

### THE LAW IN OTHER JURISDICTIONS RELATING TO UNCLAIMED MONEY

2.1 Legislation dealing with unclaimed money, including trust money, is not unique to Western Australia. Similar legislation exists in other jurisdictions in Australia and in New Zealand. There is a considerable variation in detail. An outline of the relevant provisions in the form of a comparative table is provided in Appendix IV.

2.2 One major development not dealt with in Appendix IV is the establishment of proposals in the United States for a *Revised Uniform Disposition of Unclaimed Property Act*. This was approved and recommended for enactment in all States in 1966. It is a revision of the *Uniform Disposition of Unclaimed Property Act 1954*. As of 1 August 1978 twenty-eight States had adopted the *Uniform Disposition of Unclaimed Property Act 1954*, and thirteen of these States had adopted the amended version.<sup>1</sup>

2.3 The revision arose because of special problems relating to unclaimed travellers cheques. The legislation provides for property which is presumed to be abandoned to pass to the State. This applies to money which has been unclaimed for seven years.<sup>2</sup> An extended period of fifteen years is recommended for unclaimed travellers cheques. The revision exempts a person who owes money on a travellers cheque (that is the person or company issuing the cheque) from a requirement to report the name of the person to whom the money is owed; the reason being that, in most cases, he would not know who the holder is.<sup>3</sup>

2.4 The following extract from a prefatory note to the revision provides a convenient summary of the object of the United States legislation:<sup>4</sup>

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<sup>1</sup> Among the States which have adopted the Uniform Law are:

Florida	Illinois	*Indiana
*Iowa	Utah	Virginia
*Wisconsin		

Among the States which have not adopted the legislation are:

California	Michigan	Massachusetts
New York	Ohio	Pennsylvania
Texas		

Those marked \* have adopted the revised version.

<sup>2</sup> Uniform Disposition of Unclaimed Property Bill, clause 9.

<sup>3</sup> The position in Western Australia regarding travellers cheques is outlined below: paras 3.42 to 3.44.

<sup>4</sup> National Conference of Commissioners on Uniform State Laws, *Revised Uniform Disposition of Unclaimed Property Act (1966)*, 4.

"The *Uniform Act* is custodial in nature - that is to say, it does not result in the loss of the owner's property rights. The state takes custody and remains the custodian in perpetuity. Although the actual possibility of his presenting a claim in the distant future is not great, the owner retains his right of presenting his claim at any time, no matter how remote. State records will have to be kept on a permanent basis. In this respect the measure differs from the escheat type of statute, pursuant to which the right of the owner is foreclosed and the title to the property passes to the state. Not only does the custodial type of statute more adequately preserve the owner's interests, but, in addition, it makes possible a substantial simplification of procedure.

The Act, which consists of thirty-two sections, commences with the usual section on definitions. This is followed by sections 2 through 9 devoted to defining and describing the circumstances under which various classes of property are to be presumed abandoned under the Act. Separate sections deal with property held or owing by banks or other financial organisations, insurance corporations, public utilities, other business associations, trustees in corporate dissolution proceedings, fiduciaries, and state courts and other public agencies. Section 9 is an omnibus section covering all other items held or owing 'in the ordinary course of the holder's business. Thereafter comes section 10 which may be regarded as a key section in the Act, for it contains the provisions which preclude the possibility of multiple liability being imposed upon the holder of unclaimed property who happens to be subject to the jurisdiction of two or more states. The remaining sections, 11 through 32, deal principally with procedural matters, including the reporting of unclaimed property, the giving of notice to owners, payment into the custody of the state and various provisions pursuant to which the owner may subsequently present his claim to the state and recover his property.

The *Uniform Disposition of Unclaimed Property Act*, if adopted by the states, will serve to protect the interests of owners, to relieve the holders from annoyance, expense and liability, to preclude multiple liability, and to give the adopting state the use of some considerable sums of money that otherwise would, in effect, become a windfall to the holders thereof."

2.5 There is a common theme running through legislation in Australia, New Zealand and the United States of America. In each case an obligation is imposed upon certain persons who owe unclaimed money to advertise and, if it remains unclaimed, to pay it to the Treasurer, or equivalent, for use for public purposes. There is, however, a considerable variation in the persons who are made subject to these compulsory provisions,<sup>5</sup> the type of money owed to which they apply and the prescribed procedures.<sup>6</sup>

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<sup>5</sup> The uniform legislation in the United States of America appears to cast the widest net. It contains specific provisions dealing with money owed by banks, insurance companies, public utilities and distributions by business associations. These are followed by a general provision, s.9, which applies to all "intangible personal property... that is held or owing... in the ordinary course of the holder's business and has remained unclaimed by the owner for more than 7 years after it became payable...". By way of illustration s.9 includes money, stocks, bonds, certificates of membership in corporations, securities, bills of exchange, deposits, interest, dividends, income, amounts due and payable under the terms of insurance policies, pension trust agreements, profit sharing plans, credit balances on paid wages, security deposits, refunds, funds deposited to redeem stocks, bonds, coupons and other securities.

<sup>6</sup> These differences are not dealt with in detail in this Report. References to the law in other jurisdictions are made only where there is a substantial variation or point at issue.

## CHAPTER 3

### PAYMENT OF UNCLAIMED MONEY TO THE TREASURER

3.1 In its Working Paper the Commission put forward a view that there was no need to compel persons to pay unclaimed money to the Treasurer. It suggested that provision of a voluntary procedure might suffice thereby avoiding anomalies and difficulties associated with a compulsory procedure. On further consideration the Commission now takes the view that there should be both a voluntary and compulsory procedure for payment of unclaimed money to the Treasurer.<sup>1</sup> For further elaboration of its reasons for taking this view it is convenient to deal separately with trust money and money other than trust money.

#### COMPULSORY PAYMENT OF UNCLAIMED TRUST MONEY TO THE TREASURER

3.2 There is an absence in existing law of clear guidelines on the manner in which a trustee should dispose of unclaimed trust money. Depending on the circumstances potential recipients of unclaimed trust money may include other beneficiaries of a trust, the Aboriginal Affairs Planning Authority, the Treasurer under unclaimed trust moneys legislation and the Crown through its right over bona vacantia and the procedure for escheat. In some cases these various interests may compete. For example compulsory provisions in legislation applying to the Public Trustee and the two private trustee companies seem to require payment of unclaimed trust money to the Treasurer even in circumstances where it might perhaps be paid to other beneficiaries.<sup>2</sup> There is no suitable procedure for trustees other than the Public Trustee and the private trustee companies to relieve their responsibility for unclaimed trust money by paying it to the Treasurer. The practice of making payment into the Supreme Court under section 99 of the *Trustees Act 1962* seems inappropriate for the long term disposition of unclaimed trust money.<sup>3</sup>

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<sup>1</sup> The Commission has considered the possibility of creating a separate body, such as an Unclaimed Moneys Commission, in the place of the Treasurer, to deal with unclaimed money. In its view, however, the establishment of such a body is unnecessary and would be undesirable. The Law Reform Commission of Tasmania reached a similar conclusion - see *Report and Recommendations on the Type of Legislation Required in Tasmania for the Disposal of Unclaimed Charitable Funds*, 4 July 1975 at 2, para 3.

<sup>2</sup> This would be so if the view were taken that the mandatory provisions requiring the Public Trustee and the private trustee companies to pay unclaimed trust money to the Treasurer were inconsistent with and expressed a contrary intention to the general power given to trustees under s 66 of the *Trustees Act 1962* - see s 5(3)(b) of the *Trustees Act 1962*.

<sup>3</sup> See para 1.13(f) above.

3.3 It would be sensible to compel persons holding unclaimed trust money to pay it to the Treasurer. Trustees cannot use trust money for their own purposes. No purpose is served if a trustee retains money in trust invested indefinitely for a beneficiary who may never claim it. One justification for compulsory provisions is that there would be a greater benefit to society if trustees were compelled to pay unclaimed trust money to the Treasurer for use for public purposes but preserving a beneficiary's right to recover the money.

3.4 An objection to compulsory provisions is that they would prevent a willing trustee from retaining and investing trust money to the best possible advantage of a beneficiary. A late claim by a beneficiary against the Treasurer should in some cases include interest,<sup>4</sup> but a better return might be obtained if the money remained in the charge of the trustee.

3.5 Commentators on the Working Paper expressed different views on whether trustees should be compelled or simply permitted to pay unclaimed money to the Treasurer. The Law Society of Western Australia suggested that the obligations at present applicable to the Public Trustee and the private trustee companies<sup>5</sup> should continue to apply, but that other trustees should be merely permitted to dispose of unclaimed trust money to the Treasurer. The Treasury Department and Perpetual Trustees Ltd considered that the provisions should be compulsory for all trustees.

3.6 In other jurisdictions the law varies. In Victoria any trustee holding unclaimed trust money for six years must pay it to the receiver of revenue.<sup>6</sup> Money held in a solicitor's trust account must be paid to the receiver of revenue where the owner after due inquiry cannot be found.<sup>7</sup> In Queensland the Public Trustee and private trustee companies are required to pay trust money which has been unclaimed for six years into the Public Trustee's "Unclaimed Moneys Fund".<sup>8</sup> Other trustees, solicitors, conveyancers and public accountants are required to give details to the Under Secretary for Justice of money for which they are liable to account and which has been unclaimed for one year. The Under Secretary may direct that payment be

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<sup>4</sup> See paras 4.42 to 4.47 below.

<sup>5</sup> See para 1.13(c) above.

<sup>6</sup> *Unclaimed Moneys Act 1962*, s 13A added in 1973.

<sup>7</sup> *Legal Profession Practice Act 1958*, s 40A as amended by the *Unclaimed Moneys Act 1973*, s 3.

<sup>8</sup> *Public Trustee Act 1978*, ss 102 and 116. Money in this fund is invested in Government securities and interest is payable into Consolidated Revenue, *Public Trustee Act 1978*, s 25.

made to the Public Trustee.<sup>9</sup> By contrast, in New Zealand, the relevant provisions permit rather than require trustees to account for unclaimed trust money to the Treasurer.<sup>10</sup>

3.7 In the Commission's view, for the reasons expressed above,<sup>11</sup> it is in the public interest that the Treasurer should be the ultimate custodian of trust money which is unclaimed. The Public Trustee and the private trustee companies are currently required to pay unclaimed trust money to the Treasurer. In other Australian jurisdictions such obligations are imposed on similar trustee bodies and in Victoria and Queensland they are extended to all trustees. It is the Commission's view that a compulsory procedure should apply to all trustees in Western Australia including implied, resulting and constructive trustees who are holding unclaimed money on behalf of a beneficiary.<sup>12</sup> The Commission also considers that it would be desirable for such a procedure to apply retrospectively to unclaimed money held in the Public Trustee's Common Fund. This would include money which has been paid into the Supreme Court under section 99 of the *Trustees Act 1962* or its earlier equivalent.<sup>13</sup>

3.8 Provision should be made, however, to enable a trustee to apply for exemption from the compulsory procedure in appropriate circumstances. For example, a trustee might seek exemption because he has reason to believe that a missing beneficiary can be found, or because the circumstances are such that in due course it might be appropriate to obtain an order for distribution under s 66 of the *Trustees Act 1962*. It would be preferable for a decision regarding exemption to be made by the Master of the Supreme Court rather than by the Treasurer. The procedure for seeking an exemption should be simple and expedient. An application by letter to the Master setting out the grounds for an exemption should be sufficient. The Master should be given power to grant a letter or certificate of exemption.

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<sup>9</sup> *Trust Accounts Act 1973*, s 33.

<sup>10</sup> *Trustee Act 1956*, s 77 and *Law Practitioners Act 1955*, s 72.

<sup>11</sup> Para 3.3.

<sup>12</sup> Money held by trustees which is owing to other persons, such as creditors, should not be affected. The Commission agrees with a submission by Perpetual Trustees Ltd that the procedure in ss 63 and 64 of the *Trustees Act 1962* deals adequately with unclaimed money owed by a trustee to a creditor. Section 63 provides for a trustee to advertise for creditors to submit claims against an estate to the trustee within a specified period being not less than one month. If no claims are received the trustee is free to distribute the property to the beneficiaries without further liability. If a trustee is aware of a claim which has been or may be made he is able to require the creditor to take action to prosecute it under s 64.

<sup>13</sup> See para 1.13(f) above and the Annual Report of the Auditor General for the year ending 30 June 1980 at p 87.

## **COMPULSORY PAYMENT OF UNCLAIMED MONEY OTHER THAN TRUST MONEY TO THE TREASURER**

3.9 In the Working Paper the Commission criticised compulsory provisions in the *Unclaimed Moneys Act* for the payment of unclaimed money other than trust money to the Treasurer.<sup>14</sup> The principal criticism was that the Act created anomalies and discriminated against certain debtors and in favour of certain creditors (by waiving limitation bars on their claims) without any apparent justification.<sup>15</sup> In other words, unlike provisions requiring unclaimed trust money to be paid to the Treasurer, provisions in the *Unclaimed Moneys Act* operate to deprive a person compulsorily of money which he owes but which the creditor has not claimed and create a substantial departure from the policy and effect of the *Limitation Act 1935*. The Commission recognised that it would be desirable to provide a voluntary procedure for persons to pay unclaimed non-trust money to the Treasurer, but it questioned the need for compulsion.

3.10 Of the eight submissions received on the Working Paper five dealt with the desirability of repealing the obligations imposed by the *Unclaimed Moneys Act*. Three<sup>16</sup> were in favour of repealing the obligations, although one<sup>17</sup> thought that there might be a sound argument for retaining the obligation for sums exceeding \$200 owing for goods or services supplied. One other commentator<sup>18</sup> considered that the legislation in its present form was unsatisfactory and that it should be either repealed or revised.

3.11 The Treasury Department favoured retention of the obligations imposed by the Act. It recognised that there were "philosophical arguments" stemming from the law governing the limitation of actions which supported repeal of compulsory provisions in the Act. In its view, however, the issue was "whether an individual, a firm, or a company should benefit because another party has not claimed in accordance with his rights". It suggested not only that the obligations imposed by the Act should be retained, but also that the application of the Act should be widened to include all statutory authorities, unincorporated societies and persons in

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<sup>14</sup> At 37-41, paras 41-44.

<sup>15</sup> The historical basis for the Act no longer applies - see para 1.3 above - and in some cases the operation of the Act might appear to be unfair. For example, if a company decides to distribute profits to its shareholders and some shareholders cannot be located, it might be reasonable to expect the company to be able to retain unclaimed profits for later distribution to other members after expiration of the limitation period.

<sup>16</sup> Law Society of WA, Perpetual Trustees Ltd and West Australian Trustees Ltd.

<sup>17</sup> West Australian Trustees Ltd.

<sup>18</sup> The Chairman of the State Legislation Review Committee of the Western Australian Branch of the Institute of Chartered Accountants in Australia.

business, and not just persons or firms carrying on business as traders and acting as agents or private bankers for any person.

3.12 The Corporate Affairs Office raised a number of practical considerations which would arise if the obligations imposed by the Act were altered. He suggested that there should be a time lapse before any changes in existing procedure were introduced so that companies would have an opportunity to make accounting and administrative adjustments.<sup>19</sup> The Commission agrees. He also suggested that a procedure should remain available to deal with situations where a debtor cannot retain money owing to other persons. In his view this applied to money owing by a company liquidator or by the Commissioner for Corporate Affairs as the administrator of a defunct company. It was suggested that the same might apply to cases where a body has sold assets belonging to another to repay a debt, and has money left over. An example given was where a shire council sells land in order to recovery outstanding rates.

3.13 A common feature of legislation relating to unclaimed non-trust money in other jurisdictions studied by the Commission is that it compels specified persons in certain circumstances to pay such money to the Treasurer.<sup>20</sup> A prefatory note to the revised uniform law for the United States of America gives as reasons for such an approach that it serves to<sup>21</sup> -

- \* protect the interests of owners;
- \* relieve the holders from annoyance, expense and liability;
- \* preclude conflicting liability; and
- \* give the adopting state the use of some considerable sums of money that otherwise would, in effect, become a windfall to the holders thereof.

3.14 The Commission agrees with these objectives in principle but considers that compulsory provisions should operate in defined areas where there is a need for such statutory intervention.<sup>22</sup> In the context of a compulsory procedure, it is the protection of the interests of

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<sup>19</sup> The Corporate Affairs Office drew attention to repercussions -  
 "(a) in relation to annual accounts already prepared (and possibly audited) and submitted to shareholders, or lodged in this [Corporate Affairs] office ;  
 (b) in relation to taxation returns already prepared and lodged ; and  
 (c) in relation to the incidence of taxation on undistributed profits ,  
 in each case in respect of prior years (ie past accounting periods) ".

<sup>20</sup> See para 2.5 above.

<sup>21</sup> See para 2.4 above.

<sup>22</sup> The Commission's recommendations on the limits of compulsory provisions are in paras 3.20 to 3.44 below.

the creditor which is the most important. A compulsory procedure for payment of unclaimed money to the Treasurer protects the creditor's interests because it provides -

- (a) a way of enforcing advertising of unclaimed money in appropriate circumstances;
- (b) a permanent fund against which a person may claim money owing to him .

3.15 There is no doubt that the requirement for advertising imposed by the Act, although the procedure could be improved,<sup>23</sup> alerts a number of creditors to the fact that they are owed money. The Co-operative Bulk Handling Ltd case, outlined in the Working Paper, illustrates the point. In 1975 Co-operative Bulk Handling Ltd owed over \$200,000 in unclaimed debenture redemptions, rebates and wages. After advertising<sup>24</sup> only \$71,000 was paid into the Treasury Department. The balance had been paid out to claimants. Removal of the obligations imposed by the *Unclaimed Moneys Act* would have the consequence of removing the requirement for publicity to be given to money which is unclaimed. If, for example, a company knew that unclaimed wages could be added to profits there would be little incentive for it to take any measures to trace previous employees to whom the money was owed.

3.16 It might be argued that advertising and payment of unclaimed money to the Treasurer are separate issues. For example, one suggestion in the Working Paper was that persons who owe money should be required to advertise in certain circumstances but without imposing any requirement for payment to the Treasurer. Such advertising could be made a condition of a defence based on the *Limitation Act 1935*. Perpetual Trustees Ltd agreed with this approach. It suggested that amounts owing which exceeded \$100 should be advertised after one year, and then in every successive year until the expiration of the relevant limitation period. For amounts between \$40 and \$100 it said one advertisement should suffice. An alternative would be to impose a penalty for failure to advertise money owing in specified circumstances.

3.17 Having given the matter further consideration the Commission takes the view that the only practical method of ensuring publicity for unclaimed money is to make advertising part

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<sup>23</sup> See paras 4.16 to 4.27 below.

<sup>24</sup> The Company carried out more extensive advertising than is required by law. The *Unclaimed Moneys Act* requires advertising in the *Government Gazette*. The Company drew attention to the names published in the *Gazette* by publishing notices in newspapers and asking Members of Parliament and persons who called to collect money to "spread the word".

of a procedure for such money to be paid to the Treasurer. The Commission does not favour the introduction of a requirement for advertising either generally with a penal sanction or as a condition precedent for a defence based on the expiry of a limitation period. The burden which such a requirement would impose on debtors would be substantial. Penal enforcement of such a requirement would raise problems and would be undesirable. If advertising were made a condition of a defence based on the *Limitation Act 1935*, many debtors would forget, or simply would not bother to advertise, choosing instead to take a chance that creditors will not make a claim. The result would be that creditors would be able to "sleep on their rights" and claim money years later, thereby causing confusion and uncertainty for a debtor which the *Limitation Act 1935* was designed to overcome.

3.18 Furthermore, advertising requirements, as part of a defence based on limitation periods, could only apply satisfactorily to cases where there was no dispute that the amount was owing. It would be difficult to prevent debtors from escaping advertising requirements simply by disputing liability.

3.19 In addition to the provision of publicity and of a permanent fund for claims by a creditor, the Commission considers that there is a further justification for retaining provisions for compulsory payment of certain unclaimed money to the Treasury. There are cases where a person has acted for another, not as a trustee, but in circumstances so similar that he should be treated as a trustee for the purposes of his responsibility for unclaimed money. The relationship between principal and agent is one example. Another example, in the Commission's view, is the relationship between money lender and borrower where money has been borrowed in the course of business. In non-legal terms these persons could be said to be handling other person's money. The Commission's recommendations on the limit of such compulsory provisions follow.

### **The Limits Of Compulsory Provisions**

3.20 The *Unclaimed Moneys Act* applies to companies incorporated in or carrying on business in Western Australia. The word "companies" has an extended statutory meaning which includes any "person or firm carrying on business as traders in Western Australia, and acting as agents or private bankers for individuals or companies". The Commission, in the

Working Paper, referred to several difficulties of interpretation which could arise if such a formula continued to apply.<sup>25</sup>

3.21 Furthermore, the Act does not clearly identify the circumstances in which the money owed should be payable to the Treasurer. In practice the Treasurer receives only liquidated sums owing under an undisputed liability in Western Australia. The legislation, however, does not stipulate any such limitation. It could be argued that the Act applies to any sum owing by a person whether or not it is a liquidated sum, whether or not it is owing in Western Australia and whether or not it is owing as part of the person's business, or in a private capacity.

3.22 The scope of legislation in other jurisdictions varies. In some cases<sup>26</sup> the legislation applies only to companies and their liquidators. In other jurisdictions the legislation applies not only to companies and other specified bodies but also applies generally to unincorporated bodies of persons associated together for the purpose of carrying on business. This is the approach taken in a recent amendment in Queensland where compulsory provisions apply to companies, receivers, statutory authorities, trustee companies, other bodies nominated by the Governor and persons carrying on any trade, business or profession.<sup>27</sup> Similar provisions appear in Victoria<sup>28</sup> and in the uniform legislation proposed for the United States of America.<sup>29</sup>

3.23 Another approach is to specify types of businesses which should fall within the requirements of the legislation. The New Zealand legislation, which adopts this approach, applies to companies, liquidators, receivers, banks, building societies, money lenders and borrowers, insurance companies, auctioneers, real estate agents, share-brokers, accountants and motor vehicle dealers. Furthermore it specifies the type of money owing to which the Act applies. For example, money lenders or borrowers are accountable under the Act for money borrowed, auctioneers for the proceeds of any auction, real estate agents for money held in trust accounts, sharebrokers and accountants for money held on behalf of clients and motor

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<sup>25</sup> In brief the difficulties are that there is no clear definition of a "trader" and it is not clear whether the Act is intended to apply only to money owed by the trader as agent, or whether it applies to any unclaimed money which he owes: see paras 48-53 of the Working Paper.

<sup>26</sup> South Australia, Australian Capital Territory and the Northern Territory.

<sup>27</sup> *Public Trustee Act 1978*, s 98.

<sup>28</sup> Specified bodies in Victoria include The Victorian Inland Meat Authority, building societies, industrial and provident societies and co-operatives.

<sup>29</sup> It applies to banking organisations, business associations (including corporations, partnerships and any association for business purposes of two or more individuals), financial organisations (including building societies), life insurance companies, trustees and other individuals or legal entities.

vehicle dealers for money held on behalf of any person for whom they have acted as agents. In all cases the money must be situated in New Zealand. The uniform legislation proposed for the United States of America also goes to some lengths to define the type of money intended to be governed by the legislation.<sup>30</sup>

3.24 In the Commission's view, in the interests of certainty, it would be preferable to specify as far as possible the types of money owed which should be governed by the legislation. The object should be to identify and deal with areas where there appears to be a particular need to protect the interests of persons who are owed money. It should be made clear that the procedure should apply only to quantified amounts which are owing in Western Australia. Unquantified amounts owing as damages for liability in tort or for breach of contract should be excluded.

3.25 The New Zealand legislation provides a recent and comprehensive model for legislation in Western Australia but needs to be adapted to special circumstances in this State.<sup>31</sup> The types of money owed which should be subject to provisions compelling payment to the Treasurer are considered in detail in the remainder of this Chapter.

#### *Money Held On Behalf Of Others By Persons In A Similar Position To Trustees*

3.26 As noted above<sup>32</sup> the Commission's view is that unclaimed money which is held on trust (including express, implied, resulting and constructive trusts) should be paid to the Treasurer. The relationship between principal and agent is similar to that of trustee and beneficiary. An agent and a trustee both occupy fiduciary positions which impose on them similar obligations.<sup>33</sup> In some cases it is a matter of some difficulty to decide on the facts whether a particular transaction establishes a trust or an agency.<sup>34</sup> If, however, both trustees and agents are compelled to pay unclaimed money to the Treasurer, and if there is to be no

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<sup>30</sup> It applies, for example, to demand, savings and deposit accounts with banks, cheques issued, dividends, money arising out of a voluntary dissolution and other money owing in the course of a business.

<sup>31</sup> Life insurance companies and associations are now governed by Commonwealth legislation which contains provisions dealing with unclaimed proceeds of assurance policies - *Life Insurance Act 1945* (Cwth), s 106. It would therefore be inappropriate for any such proceeds to be covered by State legislation. A similar position obtains in respect of deposits in trading and savings banks: see paras 3.34 to 3.38 below.

<sup>32</sup> See para 3.7.

<sup>33</sup> See Pettit, *Equity and the Law of Trusts* (4th ed, 1979) at 19.

<sup>34</sup> Ibid.

difference in the prescribed procedure, as the Commission recommends,<sup>35</sup> it would not be necessary to make a clear distinction between trust and agency.

3.27 In New Zealand, accountants, auctioneers, real estate agents, sharebrokers and motor vehicle dealers are all governed by compulsory provisions. In the Commission's view such persons in Western Australia should also be compelled to pay unclaimed money held on behalf of other persons to the Treasurer. They are all persons who, in the ordinary course of business, handle money on behalf of other persons. The Commission considers that legal practitioners, settlement agents, business agents, finance brokers, insurance brokers and travel agents fall within the same principle and should be added to the list in Western Australia. It would also be appropriate to add company liquidators and receivers.<sup>36</sup>

3.28 The Commission is also of the view that the list should be extended to include any other person, company or body holding money in similar circumstances to those specifically named. The legislation should apply to any person carrying on a trade, business or profession in the ordinary course of which money is held on behalf of others in respect of that money.

3.29 It might also be desirable to include certain statutory authorities, such as primary produce marketing boards, in a compulsory scheme. In the Commission's view this could best be achieved by empowering the Governor in Council to add to the scope of compulsory provisions.<sup>37</sup>

### *Money Borrowed In The Course Of Business*

3.30 The relationship in law between a borrower and lender is quite different from that between a trustee and beneficiary or principal and agent. However, the Commission holds the

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<sup>35</sup> See para 4. 2 below.

<sup>36</sup> The Commissioner for Corporate Affairs has powers under Division 4 of Part X of the *Companies Act 1961* to dissolve defunct companies. Money received by him in the course of winding up such a company is dealt with as if it were trust money payable into the Supreme Court under section 99 of the *Trustees Act 1962* - see *Companies Act 1961*, s 311(4). This procedure might be appropriate where a court order is needed to determine the destination of the money. If the Commissioner is not aware of any person with a claim to the money, however, it would be preferable for him to dispose of it under a revised *Unclaimed Moneys Act*. For reasons expressed in paras 1.13(f) and 3.2 above the Commission takes the view that the procedure in s 99 of the *Trustees Act 1962* is not appropriate for the disposition of unclaimed money. There would be no need to compel the Commissioner to pay unclaimed money to the Treasurer. He could take advantage of the proposed voluntary procedure - see para 3.1 above.

<sup>37</sup> For a similar approach see *Public Trustee Act 1978* (Qld), s 98.

view that, with certain exceptions,<sup>38</sup> a person whose business is comprised wholly or in part of the borrowing of money should not be permitted to retain the use of monies so provided which remain unclaimed. Such monies are identifiable, certain, and there is a possibility of the creditor not claiming the money either through misfortune or death. Such persons include persons licensed under the *Money Lenders Act 1912* and companies with whom the public deposit money.

### *Wages Owed By Companies*

3.31 A large portion of the money currently paid to the Treasurer in Western Australia under the *Unclaimed Moneys Act* comes from companies in the form of unclaimed wages.<sup>39</sup> This is clearly illustrated by notices published in the *Government Gazette*.<sup>40</sup> The Commission's view is that the application of the legislation to wages is an important function of the Act and should be specifically mentioned in a revised Act. Persons employed, particularly those in the transient workforce, may not be aware of retrospective wage increases or for some other reason may fail to recover the full amount owing to them. It is desirable that wide publicity should be given to such sums and that a person to whom they are owed should have an opportunity to recover the amounts concerned. It might be questioned why companies<sup>41</sup> only should be singled out for compulsory provisions relating to unclaimed wages. One reason is that companies tend to be the largest employers of a transient workforce. Another reason is that an extension to individuals, firms or unincorporated bodies, although perhaps desirable in principle, would be difficult to enforce.

3.32 A question arises whether other money owing by a company, such as unclaimed pensions or superannuation money, rebates and money arising from a commercial transaction for goods supplied or services rendered, should be paid to the Treasurer. The Commission's view is that unclaimed pensions and superannuation money should be treated in the same manner as unclaimed wages, namely that they should not be exempted from a compulsory procedure for advertising and payment to the Treasurer. The Commission sees no need for a

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<sup>38</sup> As to the exceptions see paras 3.34 to 3.41 below in relation to trading banks, savings banks and building societies.

<sup>39</sup> It is not altogether certain whether the recent amendment in Queensland would apply to unclaimed wages. It would depend on whether this was money payable "in the course of [a] trade, business or profession" - *Public Trustee Act 1978*, s 98.

<sup>40</sup> See Appendix II.

<sup>41</sup> In paras 3.31 and 3.32 "companies" means those companies carrying on business in Western Australia for purposes of gain whether incorporated in Western Australia or elsewhere.

compulsory procedure to apply to money such as rebates and money arising from commercial transactions owing by a company.

### *Company Dividends*

3.33 Compulsory provisions in existing law in Western Australia apply to unclaimed dividends. Legislation in the Australian Capital Territory and in the Northern Territory applies to "deposits with, or securities of, the company, and dividends, bonuses, profits or other monies payable to a member of the company". The Commission agrees that unclaimed money legislation should apply to deposits with a company, whether by members or others, and to debentures which represent money invested with the company.<sup>42</sup> In contrast, dividends, bonuses and profits arise from a company's own resources. Such money should, if unclaimed, remain with the company and be available for distribution in due course to members. Provision to this effect was made in New Zealand in 1971.<sup>43</sup>

## **Exceptions To Compulsory Provision**

### *Deposits In Savings Banks*

3.34 Unclaimed money held in a savings account with the R & I Bank is governed by section 65V of the *Rural and Industries Bank Act 1944*. This section provides that if a savings bank account, other than an account in the name or on behalf of an infant, has been dormant for not less than seven years the money standing to the credit of the account shall be transferred, in the depositor's name, to the "Depositors' Unclaimed Fund" operated by the Bank. The money is held in this fund until it is paid to the person who, in the opinion of the Commissioners of the Bank, is entitled to receive it. Until that time the money in the Depositors' Unclaimed Fund is available for lending by the Bank and interest becomes part of the general profit of the Bank. Although depositors are not entitled to interest on money paid into the fund, in practice the Bank allows interest on amounts successfully claimed.

3.35 There is no requirement in the *Rural and Industries Bank Act 1944* which requires the bank to advertise details of the unclaimed money it holds in the Depositors' Unclaimed Fund. Nevertheless it takes considerable steps to locate the customers concerned if it appears that

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<sup>42</sup> Deposits and debentures fall within the recommendation contained in para 3.30 above.

<sup>43</sup> *Unclaimed Money Act 1971* (NZ), s 4(2).

money held has been overlooked. These steps include letters sent to their last known address and a search of the telephone directory where appropriate.

3.36 As mentioned above<sup>44</sup> unclaimed money held in savings accounts with private savings banks may not be covered by the *Unclaimed Moneys Act*. In the Commission's view a revised Act should expressly provide that it does not apply to such money. As the Commonwealth Parliament has enacted provisions which deal with unclaimed money held by private trading banks,<sup>45</sup> and by both the Commonwealth Trading Bank of Australia and the Commonwealth Savings Bank of Australia,<sup>46</sup> it would be far more appropriate for questions concerning the handling of unclaimed money held by the private savings banks to be dealt with by Commonwealth legislation.

#### *Deposits in Trading Banks*

3.37 Unclaimed money held by trading banks other than the R & I Bank, is specifically dealt with by Commonwealth legislation.<sup>47</sup> Unclaimed money held by the R & I Bank in a trading account, but not unclaimed money held by it in a savings account,<sup>48</sup> is covered by the *Unclaimed Moneys Act*.

3.38 The Commission is unaware of any justification for different provisions governing unclaimed money held by the R & I Bank in trading accounts and unclaimed money held by it in savings accounts. The Commission is of the opinion that different provisions are unnecessary. In its view the R & I Bank should not be compelled to pay unclaimed money to the Treasurer. It is a public institution governed by its own legislation. No additional public benefit would be derived from transferring unclaimed money to the Treasurer. Also, in many cases it would be more consistent with the customer's expectations that money deposited in the Bank would remain able to be withdrawn from the Bank. The Commission is of the view, therefore, that a procedure similar to that which applies to savings accounts with the R & I Bank be introduced for money held in trading accounts with that Bank.

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<sup>44</sup> Para 1.3.

<sup>45</sup> *Banking Act 1959* (Cwth), s 69. See Appendix III.

<sup>46</sup> *Commonwealth Banks Act 1959* (Cwth), s 53. See Appendix III.

<sup>47</sup> *Banking Act 1959* (Cwth), s 69. The Commonwealth legislative power in respect of banking contained in s 51(xiii) of the *Commonwealth Constitution* does not extend to State banking carried on within the limits of the State concerned. The R & I Bank is a State bank and the Commission is advised that it only carries on business within Western Australia. The Commonwealth Parliament would in these circumstances have no legislative power over it.

<sup>48</sup> Discussed in para 3.34 above.

### *Deposits In Building Societies*

3.39 Fixed term deposits in building societies are paid to the Treasurer under the *Unclaimed Moneys Act* if they are not claimed for six years after maturity and the society is unable to trace the depositor. Savings accounts with a building society are regarded as investments of indefinite duration which are not "owing" unless conditions of withdrawal (typically presentation of withdrawal slip, passbook, and agreed notice) have been met.<sup>49</sup> Consequently these amounts are not paid to the Treasurer under the *Unclaimed Moneys Act* and a savings account may continue indefinitely.

3.40 There is a substantial similarity between savings deposits in a building society and savings accounts with the R & I Bank. In both cases interest is payable to the depositor and his money is used by the institution to fund loans to applicants throughout Western Australia. Building societies, like the R & I Bank, are governed by specific legislation and they take considerable steps to trace customers if it appears that an investment has been overlooked.

3.41 There is a difference between building societies and the R & I Bank in that the former are privately owned. In the event of a building society being wound up excess profits would pass to shareholders. Notwithstanding this difference in ownership, however, the Commission's view is that from a practical point of view there is no reason why unclaimed money held by a building society should be treated differently from unclaimed money held by the R & I Bank.

### *Travellers Cheques*

3.42 The question whether money paid for a travellers cheque which is not presented for payment would be within the scope of a revised *Unclaimed Moneys Act* is a complex one. Difficulties would arise, however, if such money were to be included. In Western Australia travellers cheques are issued by the R & I Bank, American Express and Thomas Cook Pty Ltd. Other banking institutions also issue travellers cheques but they are governed by

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<sup>49</sup> See page 4, note 14 above. Although sometimes described as deposits or savings accounts, some transactions are, legally speaking, the acquisition of shares in the society. The raising of funds by this method is permissible under s 53 of the *Building Societies Act 1976*.

Commonwealth legislation.<sup>50</sup> Travellers cheques may be unrepresented for payment for a number of reasons. They may be retained unused by the person to whom they were issued or they may be lost. They may also be retained or lost by a person to whom they have been negotiated. Without specific enquiries the issuer has no means of knowing into which category any unrepresented travellers cheque may fall.

3.43 Money representing the amount of such cheques issued by the R & I Bank, American Express and Thomas Cook Pty Ltd is not kept in Western Australia. The R & I Bank, until 1979, issued its own travellers cheques for Australian currency but it now issues Thomas Cook Pty Ltd cheques. Money for these cheques is held in Melbourne. Money for American Express cheques is held in New York. The R & I Bank is gradually clearing its record of unrepresented travellers cheques issued prior to 1979. It is doing so by attempting to contact the person to whom they were issued for an explanation of the delay in presenting them for payment. If that person cannot be located the amounts involved are being treated as unclaimed money under the *Unclaimed Moneys Act*. The Bank advertised a total of \$750 as unclaimed travellers cheques in the *Government Gazette* earlier this year.<sup>51</sup>

3.44 It is not current practice for travellers cheques other than those issued by the R & I Bank until 1979 to be treated as unclaimed money. The reason is that travellers cheques are sold on the basis that the issuer, American Express or Thomas Cook Pty Ltd, will meet payment at any time. They must therefore retain funds to meet this obligation. Provision could no doubt be made for recoupment of money paid to the Treasurer. The Commission has been informed, however, that this would impose administrative burdens which would be unmanageable. It would mean that every cheque which came through for payment would have to be traced back to the place (jurisdiction) and time when it was issued to see from which fund payment should be made. It is the Commission's view that unrepresented travellers cheques should be specifically excluded from the scope of compulsory provisions regarding the disposal of unclaimed money.

## **CONSOLIDATION OF LEGISLATION : A REVISED UNCLAIMED MONEYS ACT**

3.45 The *Unclaimed Moneys Act* deals mainly with non-trust money. Provisions relating to trust money appear in the *Public Trustee Act 1941*, the private trustee company Acts and the

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<sup>50</sup> *Banking Act 1959* (Cwth).

<sup>51</sup> *Government Gazette*, 1 February 1980 at 347. A total of \$650 was owing to one person.

*Audit Act 1904*. In practice unclaimed trust money is also disposed of under provisions in the *Trustees Act 1962*. The question arises whether the Commission's recommendations should be implemented by separate amendments to the various enactments, or whether there should be a single revised Unclaimed Moneys Act to deal with both trust and non-trust money. The Commission's view is that it would be preferable to consolidate provisions for the payment of unclaimed trust and non-trust money to the Treasurer in the form of a single Act, namely a revised Unclaimed Moneys Act.<sup>52</sup>

### **THE COMMISSION'S RECOMMENDATIONS ON PAYMENT OF UNCLAIMED MONEY TO THE TREASURER**

3.46 *The Commission recommends that there should be a revised and consolidated Unclaimed Moneys Act to deal with cases where unclaimed money is to be paid to the Treasurer. The Act should apply to both trust and non-trust money and should replace the Unclaimed Moneys Act and relevant provisions in the Public Trustee Act 1941, the private trustee company Acts and the Audit Act 1904.*

3.47 *The Commission recommends that there should be provisions compelling the following to pay unclaimed money to the Treasurer -*

- (a) *trustee in respect of money held on express, implied, resulting or constructive trust for a beneficiary, including unclaimed money paid into the Supreme Court and currently held in the Public Trustee's Common Fund;*
- (b)
  - (i) *company liquidators, receivers, accountants, legal practitioners, settlement agents, finance brokers, insurance brokers, business agents, auctioneers, real estate agents, travel agents, sharebrokers, motor vehicle dealers and any other person, company or body carrying on a trade, business or profession in the ordinary course of which money is held on behalf of others, in respect of that money;*
  - (ii) *any statutory authorities nominated by the Governor in Council, which hold money in similar circumstances;*

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<sup>52</sup> This is the approach taken in Victoria in the *Unclaimed Moneys Act 1962*.

- (c) *persons, other than trading banks, savings banks and building societies, whose business is comprised wholly or in part of the borrowing of money, in respect of money so borrowed;*
- (d) *companies carrying on business in Western Australia for gain in respect of unclaimed wages, superannuation and pensions, but not in respect of distributions of company profits such as dividends and bonuses nor in respect of rebates and other money owed by a company arising from a commercial transaction for goods supplied or services rendered;*

*The obligation to pay money to the Treasurer should apply where there is an undisputed liability to pay a sum of money which is certain in quantum and which is owing in Western Australia.*

3.48 *The Commission **recommends** that the following should be exempt from compulsory provisions -*

- (a) *money deposited with trading banks, savings banks, and building societies;*
- (b) *travellers cheques.*

3.49 *The Commission also **recommends** that -*

- (a) *provision should be made to enable a trustee to apply in writing to the Master of the Supreme Court for a letter or certificate of exemption from the obligation to pay unclaimed trust money to the Treasurer;*<sup>53</sup>
- (b) *a reasonable period should be allowed before proclamation of legislation compelling payment of unclaimed money to the Treasurer to allow accounting and administrative adjustments to be made;*<sup>54</sup>
- (c) *provision should be made to enable any person to pay unclaimed money to the Treasurer on a voluntary basis.*<sup>55</sup>

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<sup>53</sup> See para 3.8 above.

<sup>54</sup> See para 3.12 above.

<sup>55</sup> See paras 3.1 and 3.9 above.

## **CHAPTER 4**

### **THE PROCEDURE FOR PAYMENT OF UNCLAIMED MONEY TO THE TREASURER AND OTHER MATTERS**

4.1 Based on the difference in character between trust and non-trust money there is an argument that a revised Unclaimed Money Act should make separate provision for trust money. For example, it might be argued that whilst an exception from a compulsory procedure might be desirable for small amounts of non-trust money it would be inappropriate for trust money. Similarly, it might be desirable to allow different periods for retention of money before payment to the Treasurer is required or permitted depending on whether or not the money is trust money, and to make separate provisions for advertising.

4.2 The argument for separate provisions for unclaimed trust money is persuasive in principle, but would conflict with the Commission's aim which is to provide a simple procedure for the disposition of unclaimed money. In its view the advantage of separate provisions for unclaimed trust money would not outweigh the practical problems, uncertainty and inconvenience which such provisions would create. The Commission's recommendations in this Chapter therefore relate to both trust and non-trust money which is unclaimed and they deal with -

- \* exemption of small amounts from compulsory provisions;
- \* the time for payment to the Treasurer;
- \* the avoidance of conflicting liability to pay unclaimed money to Treasurers in competing jurisdictions;
- \* advertising of unclaimed money;
- \* the use of unclaimed money by the Treasurer;
- \* claims to recover unclaimed money from the Treasurer; and
- \* the provision of interest on successful claims.

## Exemption Of Small Amount From Compulsory Provisions

4.3 Compliance with the proposed procedure for the disposal of unclaimed money to the Treasurer will involve expense. Advertising costs will have to be met<sup>1</sup> and there will be a hidden administration expense for the person owing the money. It could be argued that for economic reasons provisions compelling certain persons to pay unclaimed money to the Treasurer should apply only to sums owing which exceed a certain minimum amount. The *Unclaimed Moneys Act* applies only to sums of \$10 or more. This figure was set in 1912.

4.4 In the Working Paper the Commission suggested, in relation to non-trust money, that only sums exceeding \$200 should be required to be paid to the Treasurer. This figure could be considered to be reasonable considering inflation since 1912.

4.5 Only one commentator expressed views on the minimum amount of unclaimed money which should be payable to the Treasurer.<sup>2</sup> The suggestion was that compulsory provisions should apply only to money owed for goods or services supplied which exceeded \$200 in value.

4.6 The legislation in other jurisdictions provides varying minimum figures before obligations imposed in relation to unclaimed money come into operation. These range from \$6 in Tasmania to \$20 in New Zealand.<sup>3</sup> The latter figure is the most recent in the comparable legislation studied. It was fixed in 1971. In uniform legislation proposed for the United States of America there is no lower limit, although the procedure is simplified for sums less than \$3 by permitting the holder to deal with such sums in aggregate.<sup>4</sup> There is no minimum figure for unclaimed trust money.

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<sup>1</sup> See the Commission's recommendations in paras 4.16 to 4.27 below.

<sup>2</sup> This is not surprising as most commentators considered that there should be no *compulsion* to pay unclaimed money to the Treasurer. Some commentators who took the view that there should be publicity for unclaimed money owing but without any obligation to pay money to the Treasurer suggested minimum figures for this purpose - see paras 4.16 to 4.27 below. In an independent submission to the Treasurer made in 1977 the Western Australian Division of the Australian Society of Accountants suggested a minimum sum of \$25.

<sup>3</sup> In Queensland sums less than \$50, or \$100 with the Public Trustee's consent, do not have to be advertised, but this does not relieve the person who owes money under these amounts from his obligation to pay it to the Public Trustee - *Public Trustee Act 1978*, ss 100(3) and 102(1).

<sup>4</sup> *Draft Uniform Disposition of Unclaimed Property Act 1966*, s 11(3). Advertising is not required for sums less than \$25, see para 4.21 below.

4.7 The Commission's view is that provisions for compulsory payment of unclaimed money to the Treasurer should apply only to sums which exceed a certain minimum amount. On further consideration the Commission's view is that the existing figure of \$10 is too low but that the figure of \$200 suggested in the Working Paper might be too high. The following is a breakdown of sums advertised in the *Government Gazette*<sup>5</sup> for the two years from 1 July 1978 to 30 June 1980 -

<b>Amount</b>	<b>Number</b>	<b>Total</b>
\$50- 100	720	\$80,070
\$100- 200	315	\$42,723
\$200 and over	175	\$65,988

The aim is to choose a sum which warrants Government administration, with a minimum of administrative inconvenience for persons who owe the money and which is not unfair to the person to whom it is owed. In the Commission's view the figure of \$50 would be appropriate. As at 30 June 1980 the average weekly earnings of an adult male in Western Australia was \$257.60. The figure of \$50 therefore represents approximately one day's pay.

4.8 *The Commission recommends that no person should be compelled to pay sums less than \$50 to the Treasurer.* The proposed voluntary procedure would be available to persons owing sums less than \$50. It is expected that this would be particularly useful for persons such as trustees who are unable to use the money for their own purposes.

### **The Time For Payment To The Treasurer**

4.9 At present, unclaimed money is not paid to the Treasurer under the *Unclaimed Moneys Act* until at least seven years after it first became payable to the claimant; that is six years prior to advertising and one year following advertising. The retention period of six years coincides, no doubt deliberately, with the normal limitation period. In the case of trust money the retention period varies from six years for the Public Trustee to five years for the private trustee companies.

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<sup>5</sup> For details of the amounts actually paid to the Treasurer see para 1.7 above.

4.10 In most other jurisdictions the period of retention allowed for non-trust money is based on the limitation period. For example, unclaimed money is defined in New South Wales, Tasmania, the Australian Capital Territory and the Northern Territory as money the recovery of which is barred by operation of law. Victoria is an exception. In that State money is payable into the Unclaimed Moneys Fund if it has been due and payable for two years.

4.11 In the Commission's view it would be undesirable to compel money to be paid to the Treasurer before the period allowed for claims by a creditor has expired. On the other hand difficulties could arise if unclaimed money were made payable to the Treasurer by direct reference to the limitation period. For example uncertainty could arise in cases where the limitation period does not begin to run until demand is made for the money, or where an extension may be granted for persons who are of unsound mind or are otherwise incapacitated. The Commission therefore considers that legislation compelling payment of unclaimed money to the Treasurer should apply to money which has been unclaimed for six years. This figure is set having regard to the normal limitation period for actions in contract or debt. It should be reviewed if any change were made to the limitation period.<sup>6</sup> In the interests of simplicity and for reasons outlined above,<sup>7</sup> the same period of six years should apply to trust money.

4.12 Some persons who owe unclaimed money may not wish to retain it for a full six year period. They may wish to make payment to the Treasurer and be discharged from further responsibility at their earliest opportunity. This might be particularly relevant in cases where a person wishes to pay money voluntarily to the Treasurer.<sup>8</sup> The Commission has considered making provision to allow any person to pay money as unclaimed money to the Treasurer at any time. However, to reduce the possibility of abuse by persons who owe money and to reduce administrative inconvenience to the Treasurer the Commission's view is that money should not be treated as if it were unclaimed money until it has been owed for two years or more. Persons making payment to the Treasurer should be given a statutory defence to any further claim in respect of the money.

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<sup>6</sup> The Commission currently has a project to review the *Limitation Act 1935*, but it is not in a position to prophesy any changes which might be made to the limitation periods specified in that legislation.

<sup>7</sup> See para 4.2.

<sup>8</sup> See paras 3.1 and 3.49(c) above.

**4.13** *Commission recommends that money should be payable to the Treasurer if it has been owing but unclaimed for six years or, in the case of a voluntary payment, if it has been owing but unclaimed for two years. A person making payment to the Treasurer, including payments before the expiration of the limitation period, should have a statutory defence to any further claim in respect of such sum paid.*

In order to ensure that -

- (1) unclaimed money is caught by the legislation, even though it may not be "owing" or "payable" under the general law because no notice or demand has been given by the customer as required;<sup>9</sup>
- (2) the conditions under which borrowed money is to be regarded as unclaimed are clearly specified; and
- (3) borrowed money is not required to be paid to the Treasurer prematurely where it is part of an active account,

*the Commission recommends that borrowed money should be regarded as unclaimed if it consists of -*

- (a) *money deposited upon current or running account (including any interest or any amount in the nature of interest thereon) and the customer has not operated on the account for a period of six years, whether by deposit, or withdrawal, or instruction in writing;*
- (b) *money, deposited for a fixed term, (including any interest or any amount in the nature of interest thereon) which has been in the possession of the borrower for the period of six years immediately following the date of the expiry of the term; or*
- (c) *money, including any interest or any amount in the nature of interest thereon, deposited -*

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<sup>9</sup> See para 1.6 above.

- (i) *without limitation of time; or*
- (ii) *for a fixed term where, on the expiry of that term, the money, if not withdrawn by the customer, is to be treated as reinvested, and*

*where in either case the customer has not operated on the account for a period of six years, whether by deposit, or withdrawal, or instruction in writing.*<sup>10</sup>

*The legislation should also provide that money may be owing even though, as between the parties, a notice or demand is required before the money is owing or payable.*<sup>11</sup>

### **Avoidance Of Conflicting Liability**

4.14 In some circumstances the disposal of unclaimed money may give rise to conflict of law issues. For example a person who owes money (debtor) might live in Western Australia and the person to whom the money is owed (creditor) might have been last heard of in Victoria. The normal rule is that a debt is situated where the debtor resides.<sup>12</sup> In the above example unclaimed money would be payable according to Western Australian law to the Western Australian Treasurer. Complications could arise, however, if the debtor has ties with both Western Australia and Victoria. An example would be where the debtor in the illustration above is a company with a branch office in Melbourne. The solution adopted in the uniform legislation for the United States of America is to favour the place where the creditor had his last known address. The Commission agrees with this result. The principle should be that where a debtor is subject to the laws of Western Australia and another jurisdiction, and the creditor had his last known address in that other jurisdiction, Western Australian law should provide that unclaimed money should be disposed of according to the law of that other jurisdiction. This would have the desirable result that advertising would be carried out in the place where the creditor was last heard of.

**4.15** *The Commission recommends that where a liability arises to pay the same unclaimed money to two or more Treasurers in separate jurisdictions, one of which being Western*

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<sup>10</sup> Cf *Unclaimed Money Act 1971* (NZ), s 4.

<sup>11</sup> Cf *Companies (Unclaimed Assets and Moneys) Ordinance 1963* (NT), s 8.

<sup>12</sup> P E Nygh, *Conflict of Laws in Australia* (3rd ed, 1976) at 407-408.

*Australia, it should be paid according to the law in the jurisdiction where the person to whom the money is owed had his last known address.*

## **Advertising**

4.16 The most desirable feature of unclaimed money legislation, in the Commission's view, is the publicity which is given to money which is owed in circumstances of which the person to whom it is owed might be unaware. At present, under the *Unclaimed Moneys Act*, advertising is carried out for sums of \$10 or more in the *Government Gazette*. There is no advertising required in newspapers, but occasionally publicity is obtained through this medium as a news item.<sup>13</sup>

4.17 With regard to trust money, only the Public Trustee is required to advertise before paying unclaimed trust money to the Treasurer. He is required to advertise at least twice at intervals of fourteen days in a newspaper circulated in Perth, and the money is payable to the Treasurer only if the Public Trustee has no information or knowledge of the existence of any person entitled in distribution or claiming so to be.<sup>14</sup> Other trustees, including the private trustee companies, may, however, be expected to advertise as part of their fiduciary duties.

4.18 In the Working Paper the Commission suggested that the advertising requirements for unclaimed money were not as effective as they might be. A number of improvements were suggested. These included earlier advertising for sums exceeding say \$100, consolidation of advertisements and wider publicity.

4.19 Most commentators on the Working Paper expressed views on the question of advertising. All agreed that some improvement was needed. The Law Society of Western Australia suggested that periodic block advertising in a newspaper of sums exceeding \$40 should be required.<sup>15</sup> The Treasury Department considered that persons owing sums of \$50 or more should advertise in the *Government Gazette* and in a prescribed newspaper before paying the money to the Treasurer. Perpetual Trustees Ltd suggested similar provisions for

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<sup>13</sup> See, for example, the articles in the *Sunday Times* dated 9 July 1978 at p 38 and 9 March 1980 at p 37 entitled "Mysteries Over Unclaimed \$1m" and "Thousands of Dollars Unclaimed in WA" respectively, and in *The Bulletin* dated 8 August 1978 at p 94 entitled "There's Money Waiting For the Absent-Minded".

<sup>14</sup> *Public Trustee Act 1941*, s 45.

<sup>15</sup> The submission was directed only towards non-trust money governed by the *Unclaimed Moneys Act*.

sums of \$40 or more. It suggested, however, that, for sums of \$100 or more, advertising should be carried out after the money is owing for one year, and again in each successive year until the money is paid to the Treasurer.

4.20 Perpetual Trustees Ltd also suggested that a trustee should be required to complete a declaration before paying any trust money to the Treasurer. In its view the declaration should contain details of the beneficial entitlement and the steps taken by the trustee to locate the beneficiaries. Details of the beneficial entitlement should be entered in a register to be maintained by the Treasurer and the contents of the register should be advertised annually in the *Government Gazette*.

4.21 In other jurisdictions studied by the Commission advertising is required for non-trust money exceeding a certain figure. The highest minimum figure for advertising in Australia and New Zealand is \$50.<sup>16</sup> The United States proposals exempt sums owed less than \$25 from advertising.<sup>17</sup> With the exception of Queensland no provision is made for advertising unclaimed trust money.<sup>18</sup>

4.22 In the Commission's view, as part of the procedure for payment of unclaimed money to the Treasurer, there should be a requirement for the amount concerned to be advertised in the *Government Gazette* and in a local newspaper with a wide circulation such as *The West Australian* or the *Sunday Times*. Advertisements of unclaimed money, including trust money, should be consolidated and published once annually. Such a procedure would attract more publicity than a series of smaller notices published at random throughout the year. To give effect to this the Commission considers that advertising should be made the responsibility of the Treasurer.<sup>19</sup>

4.23 Persons who are compelled or who wish to pay unclaimed money to the Treasurer should provide him with details of money owing in January each year. The Treasurer should

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<sup>16</sup> This figure applies in Queensland. With the Public Trustee's consent the figure may be extended to sums not exceeding \$100.

<sup>17</sup> *Revised Uniform Disposition of Unclaimed Property Act*, s 12(c).

<sup>18</sup> In Queensland, unclaimed money held by private trustee companies (of which there are now four) are treated in the same manner as non-trust money. That is, the money must be advertised in the *Gazette* unless it does not exceed \$50, or \$100 with the Public Trustee's consent - *Public Trustee Act 1978*, ss 98 and 100.

<sup>19</sup> This is the case under the United States of America uniform proposals - *Revised Uniform Disposition of Unclaimed Property Act*, s 12(a). The procedure is that abandoned property is reported to the Treasurer and he advertises in an English language newspaper of general circulation.

advertise such details in February. The advertisement should list, in alphabetical order, the names of persons to whom the money is owed, their last known address, the name and address of the person who owes the money, and it should specify a three month period for the money to be claimed before it is paid to the Treasurer. Any money which remains unclaimed after three months from the date of the advertisement should be paid to the Treasurer. Such payment would be in June which would enable accounting adjustments to be made before the end of the financial year.

4.24 It would be reasonable for the Treasurer to introduce a procedure to enable the cost of advertising to be deducted from money paid out to successful claimants. This would, however, be a complex operation and might not be justified in economic terms.<sup>20</sup> Unclaimed money paid to the Treasurer each year for use for public purposes should greatly exceed advertising costs.<sup>21</sup>

4.25 There would be an advantage for persons who are owed money if advertising were carried out before the money became unclaimed money within the meaning of the Act, that is before the expiration of six years from the date it was owed. To encourage early advertising by a person who owes money the Commission has considered whether special provision should be made in a revised *Unclaimed Moneys Act* to allow reasonable advertising costs to be deducted from money owed. The difficulty, however, is that such a provision may be open to abuse. A person who knows he is owed money and who realises that he has six years in which to claim it would be unimpressed to find that his successful claim is subject to a large deduction for advertising costs. The Commission therefore does not favour special provision for deduction of advertising costs incurred before money becomes unclaimed. The result would be that a person who wishes to advertise such money would remain free to do so at his own expense, or he could adopt the procedure recommended by the Commission for

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<sup>20</sup> The difficulty would be to calculate an appropriate amount to deduct. Some apportionment would be needed but there are several possibilities. For example, the sum could be calculated having regard to -

- (a) the amount of the successful claim in relation to the total received by the Treasurer;
- (b) the number or value of sums advertised ;
- (c) the number or value of sums advertised on behalf of the relevant person who owed the money;
- (d) the number or value of payments received by the Treasurer.

<sup>21</sup> It is unlikely that more than one page of newspaper space would be required. At present rates the cost of a one page notice in *The West Australian* is approximately \$2,000. On average the Treasurer has recently received \$70,000 per annum under the *Unclaimed Moneys Act* and an increase in the amount of exempt money from \$10 to \$50 will not greatly alter this average -see paras 4.7 to 4.8 above.

voluntary payment of unclaimed money to the Treasurer after it has been owing for two years.<sup>22</sup> In the latter case advertising would be carried out by the Treasurer.

4.26 Careful consideration has been given to the suggestion by Perpetual Trustees Ltd that unclaimed trust money should be given additional publicity after payment to the Treasurer. One difficulty is that any such requirement would necessitate a decision on whether or not a particular sum of money paid to the Treasurer was trust money. Such a decision may often be difficult to make. For reasons given above<sup>23</sup> the Commission takes the view that separate provisions for trust and non-trust money should be avoided if possible. In the Commission's view, the benefits to be gained from special advertising provisions for trust money, even if limited to large sums, would be outweighed by the administrative inconvenience and complexity which would result.

4.27 *The Commission therefore **recommends** that persons who are compelled or who wish to pay unclaimed money to the Treasurer should provide details of such money to the Treasurer before the end of January each year. The Treasurer should advertise, in alphabetical order, the names of persons to whom money is owed and their last known address and the names and addresses of persons from whom the money can be claimed within a period of three months. The advertisement should be placed in the Government Gazette and in a newspaper with a wide circulation in Western Australia. At the end of the three month period, money remaining unclaimed should be paid to the Treasurer.*

### **Use Of Unclaimed Money For Public Purposes**

4.28 Under existing law unclaimed money paid to the Treasurer is paid into a trust fund. Money paid under the *Unclaimed Moneys Act* is paid into the Unclaimed Moneys Fund. Unclaimed trust money is paid into the Testamentary and Trust Fund. The *Unclaimed Moneys Act* expressly provides that interest earned on money in the Unclaimed Moneys Fund is payable into Consolidated Revenue for use for public purposes.<sup>24</sup> There is no provision expressly permitting the capital to be used in this manner.<sup>25</sup> Neither is there any provision dealing with the disposal of unclaimed trust money in the Testamentary and Trust Fund. The

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<sup>22</sup> See para 4.13 above.

<sup>23</sup> See para 4.2.

<sup>24</sup> *Unclaimed Moneys Act*, s 6(2).

<sup>25</sup> The *Parliamentary Debates* on the Act reveal an intention for the capital to remain indefinitely in the Unclaimed Moneys Fund - see Working Paper at 29, para 22

Government's practice, relying on provisions in the *Audit Act 1904*, is to pay capital into the Consolidated Revenue Fund after it has remained in the relevant funds for six years. Whilst this practice might seem to be sensible, there are doubts whether the *Audit Act 1904* provisions are intended to apply to money held in these separate trust funds.

4.29 In the Commission's view, provided recognition is given to the rights of a person to claim from the Treasurer money alleged to be owing to him,<sup>26</sup> unclaimed money paid to the Treasurer should be available for use for public purposes. Existing uncertainties in the law on this point should be removed.

4.30 In most other comparable jurisdictions, unclaimed money once paid to Treasury is available immediately for public purposes.<sup>27</sup>

4.31 In its submission on the Working Paper the Treasury Department suggested that the existing procedures whereby unclaimed money is set aside in separate unclaimed moneys funds for six years should be retained. However, on further discussion with that Department it has been agreed that *it would be preferable for unclaimed money, including trust money, to be paid directly into Consolidated Revenue. The Commission recommends accordingly.*

### **Claims To Money Which Has Been Paid To The Treasurer**

4.32 It is clear from Parliamentary Debates on the *Unclaimed Moneys Act* that it was intended that a person should be able to recover money, without interest, from the Treasurer at any time if he could satisfy the Treasurer that the money was owing to him.<sup>28</sup> However, it is not clear whether the legislation achieves this result.<sup>29</sup> Time limits are imposed on a beneficiary's entitlement to recover from the Treasurer trust money paid under the provisions

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<sup>26</sup> See paras 4.32 to 4.41 below.

<sup>27</sup> Queensland and Victoria are the only exceptions. In Queensland the position is similar to Western Australia. The money is paid into the "Unclaimed Moneys Fund" administered by the Public Trustee. Capital may be invested in Government securities and interest is payable into Consolidated Revenue - *Public Trustee Act 1978*, s 25. In Victoria a recent amendment to the *Unclaimed Moneys Act 1962* provides that unclaimed money is payable into Consolidated Revenue after three months - *Unclaimed Moneys Act 1979*, s 2. Previously the money was required to be held in an Unclaimed Moneys Fund for six years.

<sup>28</sup> See Working Paper at 28-29, para 21.

<sup>29</sup> The difficulty is caused by s 11 which provides that money may be recovered by the claimant at any time before it is paid to the Treasurer but not afterwards, any rule of law to the contrary notwithstanding. Apparently this was intended to refer only to a claim against the person who owed the money and not to a claim against the Treasurer, but this is not made clear.

of the *Audit Act 1904*<sup>30</sup> and the private trustee company Acts,<sup>31</sup> and it is uncertain in some cases whether a beneficiary may claim interest.<sup>32</sup>

4.33 The law relating to the admission of a claim against the Treasurer varies. In some cases a court order is required.<sup>33</sup> In some cases the Treasurer himself makes the decision.<sup>34</sup> In cases where the decision is made by the Treasurer there is no provision made for appeal or for an independent review of that decision. The law is not clear on the Treasurer's liability in the event of making a payment to the wrong person. Much depends on whether the Treasurer should be regarded in law as a trustee in relation to unclaimed trust money.<sup>35</sup>

4.34 In the Commission's view a person should have a right to claim money which has been paid to the Treasurer under unclaimed moneys legislation. The question is who should make the decision whether or not to allow a claim? In the Working Paper the Commission questioned whether, in view of his interest in the money, the Treasurer would be the appropriate person to make such a decision. As alternatives it was suggested that the decision could be made by the person who paid the money to the Treasurer, or it could be made by an independent body such as the Ombudsman or a court. Further possibilities are that a decision by an independent body could be required where the amount concerned exceeds, say, \$200,<sup>36</sup> or the decision could be made by the Treasurer but reserving a right for a claimant to appeal or seek an independent review.

4.35 No commentator on the Working Paper suggested that there should be any limitation on a person's right to claim money which has been paid to the Treasurer. The Treasury

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<sup>30</sup> Section 29(2) by implication recognises a beneficiary's right to recover trust money within six years of its payment into "The Trust Fund" but not when it is paid after six years into Consolidated Revenue. A proviso, however, gives the Governor authority to approve payment to a late applicant.

<sup>31</sup> A beneficiary has twelve years from the date of payment into the "Testamentary and Trust Fund" to recover money paid by Perpetual Trustees Ltd and six years in the case of money paid by West Australian Trustees Ltd - see s 23 of the respective Acts. There is no discretion given to approve late payments.

<sup>32</sup> The private trustee company Acts require the Treasurer to invest trust money in Government debentures or stock. The two Acts contain differing provisions as to the entitlement to interest on such monies prior to such investment. The Treasurer must account to the beneficiary for interest if a claim is made. The *Public Trustee Act 1941* is silent on the question of interest, as is the *Audit Act 1904* in respect of the period while trust money remains in "The Trust Fund". The duty imposed generally on trustees to invest trust money on behalf of the beneficiaries might, however, apply to the Treasurer - see Working Paper at 91-92, para 141.

<sup>33</sup> This applies to unclaimed money paid to the Treasurer by the private trustee companies.

<sup>34</sup> He is expressly authorised to do so under the *Unclaimed Moneys Act*, s 8(1). The practice in the case of money paid by the Public Trustee is for the Treasurer to make the decision whether to admit a claim, but he does so in consultation with the Public Trustee.

<sup>35</sup> See Working Paper at 91-92, para 141 and at 94-95, para 148.

<sup>36</sup> During the period from 1 July 1978 to 30 June 1980 there were 175 sums advertised under the *Unclaimed Moneys Act* which exceeded this amount: see para 4.7 above.

Department and the Law Society of Western Australia considered that the decision should be made by the Treasurer.<sup>37</sup> The Commission is not aware of any complaints which have arisen under existing law or practice where the decision has been made by the Treasurer.

4.36 In other jurisdictions the law varies. In most cases a court order is required for recovery of trust money, but there are some cases where the decision is made by the Treasurer.<sup>38</sup> There are also cases where the decision is left to the trustee who was responsible for payment to the Treasurer.<sup>39</sup> There is greater consistency, however, regarding the recovery of non-trust money. In all jurisdictions in Australia and in New Zealand a person can recover such money if he can satisfy the Treasurer that it was owed to him.

4.37 One of the advantages of allowing the Treasurer to make a decision whether to admit a claim is that it is expedient and simple. For this reason the Commission takes the view that the decision whether to admit a claim to unclaimed money, including trust money, should be made by the Treasurer. In practice few claims are made once money has been paid to the Treasurer<sup>40</sup> and in most cases the amount concerned will be small, or the question will simply be one of identity. In some cases, however, the sum involved may be significant and disputes could arise, or claims to entitlement might be complex. In the Commission's view some provision for an independent review would be desirable.

4.38 There would appear to be no procedure under existing law for an appeal against a decision made by the Treasurer, and the Commission does not recommend that appeal provisions should be established. It recommends that a person who is aggrieved by a decision

<sup>37</sup> The Law Society's comments were directed towards unclaimed trust money. A fortiori they would apply also to claims to non-trust money paid to the Treasurer. One commentator on the Working Paper suggested that because of the difficulty of proving entitlement to unclaimed trust money through death or absence of witnesses the authority of the Governor should be required. The Commission does not consider that it would be appropriate for the Governor to be involved in such matters. He is not accustomed to performing such functions and he does not have the benefit of procedures available to a court to make such a decision.

<sup>38</sup> For example, in Victoria (*Unclaimed Moneys Act 1962*, s 14) and in the Australian Capital Territory (*Administration and Probate Ordinance 1929*, s 109(1)). Queensland is similar in so far as the decision is made by the person administering the fund, in this case the Public Trustee - *Public Trustee Act 1978*, s 117.

<sup>39</sup> For example, in New South Wales (*Public Trustee Act 1913*, s 53(1)A(a)) and South Australia (*Administration and Probate Act 1919*, s 117(4)).

<sup>40</sup> The following figures illustrate the point –

	Received by Treasury	Payments
1974	\$10,336.93	\$589.93
1975	\$87,912.26	\$1,073.13
1976	\$28,202.03	\$1,176.19
1977	\$37,407.81	\$672.01
1978	\$64,927.27	\$935.24

made by the Treasurer, whether it relates to admission of his claim, or to whether the amount recovered should include interest,<sup>41</sup> should be able to make an application to a court for appropriate directions. There should also be a provision for the Treasurer himself to make such an application in cases of doubt or where there are competing claims.

4.39 A related issue is whether the Treasurer should be protected against further liability in cases where he makes payment by mistake. Existing law in Western Australia is not clear on this point. The Law Society of Western Australia suggested, in relation to trust money, that the Treasurer should not be indemnified against liability for making payment to the wrong person. In other jurisdictions where provision is made for the Treasurer to make the decision whether to admit a claim he is expressly indemnified against any further liability.

4.40 The Treasurer should, of course, be protected against liability for mistaken payments if he is acting pursuant to court directions. In the Commission's view, however, he should also be indemnified against liability in the event of making a payment by mistake where no court directions have been obtained. Otherwise the Treasurer might be reluctant to make payments without a court order, thereby adding to the administrative inconvenience and cost of dealing with unclaimed money. The provision of an indemnity for the Treasurer should not affect the rights of a person in law to trace property which that person claims to belong to him.

4.41 *The Commission therefore **recommends** that a decision whether to admit a claim by a person for money paid to the Treasurer should be made by the Treasurer. In practice the Treasurer would seek assistance from the person who paid him the money. In cases of doubt he should be given power to seek directions from a court. The same power should be given to any person aggrieved by a decision made by the Treasurer. If the Treasurer makes a payment which is subsequently discovered to have been made by mistake he should be given express indemnity against further liability. This should not affect the rights of any person to trace property which that person claims to belong to him.*

## **Recovery Of Interest**

4.42 Existing law is uncertain on whether a beneficiary is entitled to interest on a successful claim for trust money.<sup>42</sup> No interest is allowed on claims for non-trust money. In the Working

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<sup>41</sup> See paras 4.42 to 4.47 below.

<sup>42</sup> See para 4.32 above

Paper<sup>43</sup> the Commission suggested that it would be desirable to make provision for a person to receive interest on trust money, at least where the sum is large, say \$100 or more. It suggested that no interest should be allowed on a successful claim for non-trust money.

4.43 Commentators on the Working Paper generally agreed that trust money recovered from the Treasurer should include interest. Perpetual Trustees Ltd suggested that interest should be allowed at R & I Bank savings account rates, but that a 1% charge should be deductible as an administration charge. The Treasury Department said that it would be anomalous to allow interest on money forming part of revenue,<sup>44</sup> and that it could involve administrative inconvenience which might be out of proportion to the little benefit it derives from the use of trust money. It accepts, however, that some advantage would result to the Treasury if money could be paid immediately into Consolidated Revenue<sup>45</sup> and that it would be in keeping with a beneficiary's rights to allow interest on trust money. It also appreciates that if payment to the Treasurer were made voluntarily provision for interest would be desirable. No commentator suggested that interest should be allowed on claims to non-trust money.

4.44 In other jurisdictions there is express provision in most cases that interest should not be allowed on unclaimed trust money after it has been paid to the Treasurer. New South Wales and Tasmania are exceptions. In these jurisdictions a beneficiary is entitled to recover interest from the Treasurer.<sup>46</sup> In no jurisdiction is interest allowed on non-trust money.

4.45 Having regard to the above matters the Commission takes the view that in certain circumstances interest should be allowed on unclaimed money. The test, however, should not be whether the money is trust money. One reason is that it might not always be appropriate to allow interest on unclaimed trust money.<sup>47</sup> Another reason is that such a test would necessitate a decision on whether certain money is trust money. This would introduce complexity which in the Commission's view would be unnecessary and should be avoided.<sup>48</sup> The criterion for interest to be allowed on claims for unclaimed money should simply be whether, at the time

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<sup>43</sup> At 93, para 144.

<sup>44</sup> Consolidated Revenue is treated as a spending fund and not an earning fund.

<sup>45</sup> See para 4.31 above.

<sup>46</sup> *Trustees Companies Act 1964* (NSW), s 26(6) and *Trustee Companies Act 1953* (Tas), s 35(5). Victoria is silent on the matter.

<sup>47</sup> For example, money in a solicitor's trust account does not earn interest for a client. It would be anomalous if it did so after the money was paid to the Treasurer.

<sup>48</sup> See paras 4.2 above.

of payment to the Treasurer, the money was owed in circumstances giving rise to a duty on the trustee or debtor at law or in equity to pay to, or ensure that interest was earned on the money for, the person to whom it was owed. The Commission agrees with Perpetual Trustees Ltd that interest allowed from time to time on ordinary savings accounts with the R & I Bank would be a reasonable rate for the Treasurer to adopt.

4.46 A further issue is whether the Treasurer should be required to pay interest on claims for all money which qualifies for interest or whether small sums should be excluded. In the Commission's view there is a need to strike a balance to avoid imposing excessive administrative burdens on the Treasury Department. Some benefits to Treasury would result from the Commission's recommendation for removal of the Testamentary and Trust Fund.<sup>49</sup> Trust money would no longer need to be invested separately in this fund, with interest accruing, as is required under existing law in the case of money paid by the private trustee companies. The money would be available immediately for public purposes. From a practical point of view, however, the Commission considers that it would be desirable to limit interest to sums of \$100 or more.

4.47 *The Commission therefore **recommends** that where money totalling \$100 or more which has been paid to the Treasurer as unclaimed money is subsequently claimed and such money was or should have been earning interest at the time it was paid to the Treasurer, the amount recovered should bear interest from the date it was received by the Treasurer till the date it was paid to the successful claimant. Interest should be allowed at the rate payable from time to time on ordinary savings accounts with the R & I Bank. The Commission does not consider that an administration charge should be imposed. In cases of doubt, or if a dispute arises whether interest should be allowed, the Treasurer, or a person aggrieved by the Treasurer's decision, should be entitled to seek directions from a court.*

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<sup>49</sup> See para 4.31 above.

## CHAPTER 5

### EFFECT OF A REVISED UNCLAIMED MONEYS ACT ON OTHER STATUTORY PROVISIONS IN WESTERN AUSTRALIA DEALING WITH UNCLAIMED MONEY

5.1 There are statutory provisions, other than the *Unclaimed Moneys Act*, the *Public Trustee Act 1941*, the private trustee company Acts and the *Audit Act 1904*, which relate to unclaimed money owing in specific circumstances. They vary in a number of respects. Different periods for retention by the person who owes the money are allowed.<sup>1</sup> In some cases the money is not payable to the Treasurer.<sup>2</sup> There are different provisions for admission and payment of claims by persons alleging that the money is owing to them.<sup>3</sup> The Commission has considered the desirability of bringing the various provisions into line with a common procedure under a revised *Unclaimed Moneys Act*, particularly where the money is payable to the Treasurer.

5.2 The Commission's view is that existing statutory provisions relating to unclaimed money arising in particular circumstances should not be incorporated into a revised *Unclaimed Moneys Act*. The various procedures in most cases reflect a particular policy. This, for example, explains why a person is given a longer period to claim money in a savings bank account than a person who is seeking to recover betting winnings or money held by a pound keeper, it explains why unclaimed coal miners' pensions are retained as part of the pension fund and not paid to the Treasurer, and it explains why late claims to betting winnings and lottery prizes are expressly excluded. These policy considerations should not be altered simply for the sake of achieving some measure of uniformity in the manner in which unclaimed money should be disposed of.

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<sup>1</sup> For example, the *Bankruptcy Act 1966* (Cwth), s 254 applies to dividends unclaimed for six months or more; *Local Government Act 1960*, s 457 applies to unclaimed money held by a pound keeper for thirty-five days; seven years is allowed for unclaimed savings deposits with the R & I Bank (*Rural and Industries Bank Act 1944*, s 65V) and s 23 of the *Totalisator Agency Board Betting Act 1960* applies to bets unpaid after seven months

<sup>2</sup> This applies to unclaimed coal mine workers' pensions, money in the hands of a local authority pound keeper, interest on savings bank deposits and lottery prizes. In these cases the unclaimed money forms part of the funds of the body or association concerned.

<sup>3</sup> In many cases no express provision is made for recovery by the person to whom the money was owed. This applies to unclaimed coal mine workers' pensions after they have been added to the pensions fund, and unclaimed money held by a pound keeper after it is added to council funds. In the case of unclaimed betting winnings a claim is expressly barred after seven months. In other cases a claim may be admitted, but for some (for example, under the *Bankruptcy Act 1966* (Cwth)) a court order is required.

5.3 Furthermore, with one exception relating to unclaimed money owing to Aborigines dealt with separately below,<sup>4</sup> the Commission has not been informed of any difficulties which have arisen from the operation of the various statutory provisions involved.

5.4 *The Commission therefore **recommends** that a revised Unclaimed Moneys Act should not affect existing statutory provisions relating to the disposal of unclaimed money other than Unclaimed Moneys Act, the Audit Act 1904, the Public Trustee Act 1941 and the private trustee company Acts.*

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<sup>4</sup> See Chapter 7.

## **CHAPTER 6**

### **MONEY WHICH HAS BEEN LOST, AND FOUND BY SOMEONE OTHER THAN THE OWNER**

6.1 If legislation were to compel certain persons to pay unclaimed money to the Treasurer as the Commission recommends,<sup>1</sup> the legal and logical bases for extending this to persons who find money may, at first sight, seem difficult to refute. Money which has been found may be claimed by the true owner or by some other person (such as the owner of premises where the money is found) who is entitled by law to it. If it remains unclaimed why should the finder benefit from such a windfall? Why should he not be required to publicise his find and, if the money remains unclaimed, pay it to the Treasurer? One commentator on the Working Paper suggested that such a procedure should apply to persons who find large sums of money, say sums exceeding \$100. The Commission is not aware, however, of any jurisdiction where unclaimed money provisions have been applied to persons who have found money.

6.2 The Commission's view is that the scope of provisions compelling payment of money to the Treasurer should be limited to circumstances where there is a need to give publicity to money owing to others. Such circumstances usually arise where money is held on behalf of other persons who are unaware of or have forgotten this fact. The Commission considers that there are reasons for excluding persons who find money from compulsory provisions in unclaimed money legislation. They are as follows -

- (a) Social attitudes towards the rights of a person who finds money and a person who owes money, for example, as unclaimed wages, differ. The former, provided he takes reasonable measures to locate the owner, is traditionally regarded as being entitled to keep his find. A different attitude is taken towards profits such as those derived from work performed which is not paid for.
- (b) Unclaimed money legislation is difficult to enforce, but in most cases a check is possible through audit of accounts. It would be virtually impossible to enforce the same obligations upon persons who find money.

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<sup>1</sup> See Chapter 3.

- (c) The knowledge that money which has been found will be returned to him if the owner cannot be found encourages openness and honesty on the part of the finder. If he were required to pay the money to the Treasurer there might be a tendency towards greater secrecy on the part of finders and, as a consequence, fewer cases where the money is returned to the owner.
- (d) One explanation for unclaimed moneys legislation is that it operates to provide revenue on a selective basis within the business community.<sup>2</sup> This would not be so if the obligation were extended to persons who found money.

6.3 The law relating to finding of property may not be completely satisfactory. There are cases in this area which are difficult to reconcile. However, for the reasons given above, the Commission does not consider that it would be desirable to recommend that unclaimed moneys legislation should be extended to persons who find money, whatever the sum involved. Neither does the Commission recommend that unclaimed moneys legislation, and the accompanying procedure, should apply to the two situations where money which is found is payable to the Treasurer under existing legal principles.<sup>3</sup> Such legal principles have been in existence for a long time and, to the Commission's knowledge, no difficulty has arisen in their application.

6.4 *The Commission, therefore, **recommends** that a revised Unclaimed Moneys Act should not affect in any way the law relating to the rights and liabilities of persons who find money. Such persons should, however, be entitled to pay the money to the Treasurer on a voluntary basis under the Act if they so wish.*

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<sup>2</sup> It applies, for example to companies and persons or firms in business as traders and acting as agent or banker for any person - see para 1.4 above. See also Chapter 3 for the Commission's recommendations on who should be governed by revised legislation.

<sup>3</sup> See para 1.8 above.

## CHAPTER 7

### UNCLAIMED MONEY OWING TO ABORIGINES

7.1 In Western Australia there are special provisions relating to the disposal of unclaimed money owing to Aborigines. The relevant provisions, sections 35 and 36 of the *Aboriginal Affairs Planning Authority Act 1972*, require persons who owe money to Aborigines to pay the money to the Public Trustee.<sup>1</sup> The Public Trustee holds the money in a special fund for a specified period and if it remains unclaimed it is paid to the Aboriginal Affairs Planning Authority for use for purposes under the Authority's Act.

7.2 These special provisions relating to unclaimed money owing to Aborigines raise several problems. The compulsory procedure prescribed by sections 35 and 36 of the *Aboriginal Affairs Planning Authority Act 1972* raises the same issue outlined above in relation to the operation of the *Unclaimed Moneys Act* and provisions applying to the Public Trustee and the private trustee companies; namely is there a need to compel persons to account for unclaimed money?<sup>2</sup> Other special problems arise, however, in regard to enforcement, administrative inconvenience and the purposes for which money obtained should be used. No doubt it is a combination of the absence of enforcement machinery coupled with the administrative burdens imposed on a person owing money to an Aborigine which explains why the requirements of section 36 are not currently being observed in relation to non-trust money.<sup>3</sup>

7.3 First, with regard to enforcement, section 36 of the *Aboriginal Affairs Planning Authority Act 1972* was carried over from section 33 of the *Native Welfare Act 1963*. Under the latter section, unclaimed wages or property owing to a "native" were payable to the Commissioner of Native Welfare. The money was paid by him into a special trust account and held for three years pending a claim by a "native". Thereafter it was available for use for the benefit of "natives" generally. The Department of Native Welfare, established under the Act, played a direct role in caring for the welfare of Aborigines in general and for particular Aborigines. With officers in the field it was in a position to detect, administer and enforce cases where unclaimed money was owing to an Aborigine.

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<sup>1</sup> Section 35 applies where an Aborigine dies intestate and there are no next of kin. Section 36 applies to both trust and non-trust money. In the case of trust money it applies typically where money is owed to an Aboriginal beneficiary who is missing and where an order under s 66 of the *Trustees Act 1962* authorising distribution to other beneficiaries is inappropriate.

<sup>2</sup> See Chapter 3 and in particular paras 3.1 to 3.19.

<sup>3</sup> See para 1.12 above.

7.4 The *Native Welfare Act 1963* was repealed by the *Aboriginal Affairs Planning Authority Act 1972* and the Department of Native Welfare ceased functioning. Responsibility for the welfare of Aborigines was taken over by the Department for Community Welfare. The Aboriginal Affairs Planning Authority has a more general role. It is concerned with Aborigines generally rather than individually, and is concerned with the development of community groups. It is not geared to administer or enforce section 36 of the Act dealing with unclaimed money.<sup>4</sup> The result is that there is no body which has been clearly delegated the task of enforcing section 36.

7.5 With regard to administrative inconvenience, a special provision for money owing to an Aborigine creates particular problems for the person owing the money. He is required to determine whether or not unclaimed money is owed to an Aborigine. Having made that decision, which in some cases might be a difficult one to make, he is then faced with one procedure for money owing to Aborigines, and another procedure for money owing to non-Aborigines. A failure to comply with the prescribed procedure could lead to the imposition of a penalty. The problem applies both to trust and non-trust money, but from a practical point of view it is a bigger problem in the case of non-trust money.

7.6 Finally, with regard to use of the money, the question arises whether money which was originally owing to an Aborigine should for that reason be applied for "Aboriginal purposes", or whether it should be paid to the Treasurer for use for public purposes along with other unclaimed money. It might be argued that there is a trend, both legally and socially, towards recognition of equal rights and responsibilities for Aborigines and towards removal of legislation which treats them differently in any way. The absorption of the Native Welfare Department into the Department for Community Welfare could be regarded as one example of this process. Adopting this argument, sections 35 and 36 of the *Aboriginal Affairs Planning Authority Act 1972* could be regarded as discriminatory, paternalistic and anachronistic, and should be removed.

7.7 On the other hand, it could be argued that sections 35 and 36 of the *Aboriginal Affairs Planning Authority Act 1972*, if properly enforced, could provide revenue and thereby

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<sup>4</sup> It does not have the manpower to provide a welfare service, and it does not have the administrative facilities to deal with money collected. This was recognised when the Act was passed giving responsibility for money collected to the Public Trustee - see para 1.11 above.

perform a desirable social service for Aborigines generally as an under-privileged class of persons. If this view were adopted it could be argued that the principle of sections 35 and 36 is sound, and that the provisions should be retained, at least for unclaimed trust money.

7.8 On giving the matter further consideration the Commission takes the view that the procedure in sections 35 and 36 of the *Aboriginal Affairs Planning Authority Act 1972* should continue to apply to persons who owe unclaimed trust money to Aboriginal beneficiaries. The practical result of repealing these provisions would be an annual loss of approximately \$5,000 to the Aboriginal Lands Trust. The Commission has no wish to bring about such a consequence. It has not been informed of any difficulty caused by the operation of sections 35 and 36 in relation to trust money. To its knowledge excessive administrative burdens or enforcement problems have not arisen.

7.9 Different considerations apply, however, to the application of section 36 to non-trust money. At present the Aboriginal Affairs Planning Authority receives no money from this source and the Commission has been informed that its application to such money would cause administrative and enforcement difficulties if an attempt were made to enforce it. With regard to enforcement, one possibility would be to make it clear that this should be undertaken by the Department for Community Welfare. That Department now has responsibility generally for Aboriginal welfare. It also has specific tasks under the *Aboriginal Affairs Planning Authority Act*.<sup>5</sup> A directive could be issued to Department officers drawing attention to the requirements of section 36 in relation to unclaimed money owing to Aborigines. Explanatory circulars could also be issued to other interested bodies or persons such as the Aboriginal Legal Service, Aboriginal Affairs Planning Authority and leaders or elders of Aboriginal communities. The administrative burden imposed by section 36 on persons who owe money to Aborigines would, however, remain. Such persons would, for example, be required to determine whether money is owed to a person of Aboriginal descent and then account separately for such money to the Public Trustee.

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<sup>5</sup> For example, under s 35 of the *Aboriginal Affairs Planning Authority Act 1972* property belonging to an Aborigine dying intestate vests in the Public Trustee to be distributed to the next of kin according to the laws of the State governing administration of estates of persons dying intestate. If such next of kin cannot be ascertained it is distributable to persons who may be entitled by regulation, based on Aboriginal customary law. A certificate from the Director of the Department for Community Welfare is conclusive evidence of any such persons so entitled by regulation to succeed to the estate.

7.10 On balance it is the Commission's view that the procedure in section 36 of the *Aboriginal Affairs Planning Authority Act 1972* should not apply to unclaimed non-trust money owing to Aborigines.

7.11 *The Commission recommends that the procedures in sections 35 and 36 of the Aboriginal Affairs Planning Authority Act should continue to apply to persons who owe unclaimed trust money to Aboriginal beneficiaries. The Public Trustee should invest any unclaimed trust money owing to an Aborigine which he receives in his "Common Fund". If no claim is made for the money within two years in the case of money held under section 35, three years in the case of money held under section 36, the Public Trustee should be required to advertise the money as if it were unclaimed trust money governed by the Commission's proposed Unclaimed Moneys Act.<sup>6</sup> If the money remains unclaimed for a reasonable period, say three months, following such advertisement it should be paid to the Aboriginal Affairs Planning Authority for use for purposes prescribed under the Aboriginal Affairs Planning Authority Act 1972. The Public Trustee and the person who paid the money to him should be protected against further liability. The right of a beneficiary to recover the money should cease once payment has been made to the Aboriginal Affairs Planning Authority. Unclaimed money other than trust money owing to an Aborigine should be treated in the same manner as unclaimed money owing to a person who is not an Aborigine.*

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<sup>6</sup> See para 4.27 above for the Commission's recommendations on advertising of unclaimed money.

## CHAPTER 8

### INCIDENTAL REFORMS

8.1 During its investigation on unclaimed money two related matters have arisen which, in the Commission's view, require attention. The first relates to unclaimed trust money forming part of an estate which is owing to a beneficiary who is missing and the trustee seeks an order under section 66 of the *Trustees Act 1962* to distribute the relevant share to other beneficiaries. The second relates to the distribution of an intestate estate where it is not known whether the deceased was survived by any next of kin. Each is considered in turn.

#### **Orders Under Section 66 of The *Trustees Act 1962***

8.2 The Commission agrees with the procedure in section 66 of the *Trustees Act 1962*. As it recommended above<sup>1</sup> a trustee should be able to seek an exemption for this purpose from provisions compelling payment of unclaimed trust money to the Treasurer.<sup>2</sup> However, the procedure for obtaining an order under section 66 of the *Trustees Act 1962* for distribution of a missing beneficiary's share involves expense. The Commission has been informed that, for this reason, the procedure is not adopted for small amounts of unclaimed trust money, that is sums not exceeding say \$200. The Public Trustee and private trustee companies pay such sums to the Treasurer. Other trustees pay such sums into the Supreme Court. The result is that there is no satisfactory provision made for dealing with small amounts of unclaimed trust money.

8.3 West Australian Trustees Ltd suggested that a simple procedure for the disposal of small amounts of unclaimed trust money should be introduced. It suggested that the Master of the Supreme Court could be given power to make orders for the distribution of any sum less than \$2,000 owing to a beneficiary presumed to be missing or dead.

8.4 The Commission agrees that a simplified procedure for disposing of small amounts of unclaimed trust money owing to a missing beneficiary would be desirable. The object would be to reduce costs where the amount at stake does not justify the formality and associated

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<sup>1</sup> See para 3.8.

<sup>2</sup> In effect a requirement to account for unclaimed trust money would then arise only where there were no other beneficiaries, or no beneficiaries who would be entitled to take the share belonging to the missing beneficiary.

expense of a court order. The circumstances appear, to some extent, to be analogous to those underlying section 55 of the *Administration Act 1903* whereby the Principal Registrar<sup>3</sup> of the Supreme Court is able to grant authority to administer an estate where the assets do not exceed \$10,000. There is a difference, however, in that the Principal Registrar is required to furnish the applicant with information necessary for the purpose of completing the forms. It would be impracticable to impose such a requirement on the Master of the Supreme Court in respect of applications by a trustee pursuant to section 66 of the *Trustees Act 1962*. Any savings in cost should come from the summary nature of a hearing before the Master rather than from his direct assistance in the completion of forms.

8.5 *The Commission, recommends that the Master of the Supreme Court should be given jurisdiction to make orders under section 66 of Trustees Act 1962 for the distribution of sums not exceeding \$2,000 owing to a beneficiary who is presumed to be missing or dead. It also recommends that a summary procedure should be introduced to govern applications for such orders.* Section 167(1)(c) of the *Supreme Court Act 1935* empowers the Judges of the Supreme Court to make rules prescribing part of their jurisdiction to be exercised by the Master. Section 167(1)(a) empowers the Judges to make rules prescribing relevant procedures. The Master has been granted jurisdiction in respect of applications under sections 98 and 99 of the *Trustees Act 1962*.<sup>4</sup> It would appear that the Commission's recommendations for the Master to have jurisdiction to make orders under section 66 of the *Trustees Act 1962* could be given effect by appropriate amendments to the *Rules of the Supreme Court*.

### **Payment To The Treasurer In The Absence Of Beneficiaries**

8.6 The law relating to intestate succession can also pose difficulties for a trustee. If there are no apparent next of kin it is not clear what he should do with the property. Unlike other jurisdictions in Australia and in England and New Zealand there is no express authority to pay money which is unclaimed in these circumstances to the Crown as bona vacantia. In Western Australia the Crown's right to intestate property is based on English common law principles

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<sup>3</sup> The jurisdiction passed from the Master to the Principal Registrar pursuant to s 44 of the *Acts Amendment (Master, Supreme Court) Act 1979*.

<sup>4</sup> *Rules of the Supreme Court 1971*, Order 60 rule 1(1)(x). Sections 98 and 99 of the *Trustees Act 1962* relate to orders for remuneration of trustees and for the disbursement of trust money paid into court. The Commission's recommendation is that s 99 should no longer be used for the disposal of unclaimed trust money - see paras 1.13(f) and 3.2 above.

and is anachronistic and obscure.<sup>5</sup> In the Commission's view it would be desirable to replace these common law rights by a statutory direction to pay trust property for which there is no beneficiary to the Treasurer.

8.7 In 1973 the Commission recommended changes to the law relating to intestacy which would have simplified the matter for persons administering deceased intestate estates. It recommended the introduction of a defined category of relatives who should share an intestate estate, and a provision that if no relative within the specified category survived, the estate should pass to the Crown.<sup>6</sup> Some changes to the *Administration Act 1903* resulted from the Commission's report, but the class of potential beneficiaries remains open<sup>7</sup> and there is no express provision for payment to the Treasurer. The position therefore remains that trust money could be exhausted in tracing remote next of kin unless it is claimed as bona vacantia or by way of escheat by the Crown.

8.8 The Commission maintains the view it expressed in 1973. *It recommends that a defined class of potential beneficiaries to an intestacy should be created and that there should be an express provision requiring payment to the Treasurer in the absence of any beneficiaries within such a defined class. The Treasurer should be given power to make payments in his discretion from the estate to persons who have a valid claim, moral or otherwise, to the estate or any part of it.*

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<sup>5</sup> See generally Hardingham, *The Law of Intestate Succession in Australia and New Zealand*, (1978) at 5-15, paras 201-204 and at 45, para 902 and 47 para 906. The Crown has a right to personal property which is bona vacantia, but its claim against an executor, as opposed to an administrator, may depend on the intention of the deceased: id at 11-12, para 202. The procedure of escheat applies to real estate. It is a right whereby land which no longer has a tenant reverts to the grantor of the tenure. In Australia all tenants of freehold land hold their titles immediately of the Crown, because of the fact that upon British settlement all land vested in the Crown: id at 12, para 203, particularly fn 57.

<sup>6</sup> Law Reform Commission of Western Australia, *Report on Distribution on Intestacy*, Project No 34 Part 1, at 12-13. The specified category of beneficiaries included the deceased's immediate family, grandchildren, parents, brothers and sisters and their issue, grandparents and uncles and aunts and their issue.

<sup>7</sup> See *Administration Act Amendment Act 1976*. The precise wording is that if the deceased dies: "leaving no husband or wife and no issue, parent, brother, sister or child of a brother or sister the next of kin of the intestate shall be entitled to the whole of the intestate property".

## **CHAPTER 9**

### **SUMMARY OF THE COMMISSION'S RECOMMENDATIONS**

#### **Consolidation Of Legislation**

1. There should be a revised *Unclaimed Moneys Act* to deal with the payment of unclaimed trust and non-trust money to the Treasurer. Such a revised Act should replace the *Unclaimed Moneys Act* and relevant provisions in the *Public Trustee Act 1941*, the private trustee company Acts and the *Audit Act 1904*.

(paragraph 3.46)

#### **Compulsory Payment Of Unclaimed Money To The Treasurer**

2. There should be provisions compelling the following to pay unclaimed money to the Treasurer -

- (a) trustees in respect of money held on express, implied, resulting or constructive trust for a beneficiary including money currently held in the Public Trustee's Common Fund which has been paid into the Supreme Court under section 99 of the *Trustees Act 1962* or its earlier equivalent;

(paragraph 3.7)

- (b) (i) company liquidators, receivers, accountants, legal practitioners, settlement agents, finance brokers, insurance brokers, business agents, auctioneers, real estate agents, travel agents, sharebrokers, motor vehicle dealers and any other person, company or body carrying on a trade, business or profession in the ordinary course of which money is held on behalf of others, in respect of that money;

(paragraphs 3.27 to 3.28)

- (ii) any statutory authorities nominated by the Governor in Council which hold money in similar circumstances;

(paragraph 3.29)

- (c) persons, other than trading banks, savings banks and building societies, whose business is comprised wholly or in part of the borrowing of money, in respect of money so borrowed;

(paragraph 3.30)

- (d) companies carrying on business in Western Australia for gain in respect of unclaimed wages, superannuation and pensions .

(paragraphs 3.31 to 3.33)

### **Exemptions From Compulsory Provisions**

- 3. A compulsory procedure for payment of unclaimed money to the Treasurer should not apply to the following money -

- (a) money deposited with trading banks, savings banks and building societies ;

(paragraphs 3.36 and 3.41)

- (b) travellers cheques;

(paragraph 3.44)

- (c) any sum which does not exceed \$50.

(paragraph 4.8)

### **Voluntary Payment Of Unclaimed Money To The Treasurer**

- 4. There should be a provision to enable any person who is not compelled to pay unclaimed money to the Treasurer to do so if the money has been unclaimed for at least two years.

(paragraphs 3.1, 3.9 and 4.12)

### **Ancillary Matters Relating To The Payment Of Unclaimed Money To The Treasurer**

5. An obligation to pay money to the Treasurer should apply only where liability is undisputed, the money owed is certain in quantum, is owing in Western Australia and has been unclaimed for six years.  

(paragraphs 3.24, 4.11 and 4.13)
  
6. The legislation should clearly specify the circumstances under which borrowed money should be regarded as unclaimed and should provide that money may be owing even though, as between the parties, a notice or demand is required before the money is owing or payable.  

(paragraph 4.13)
  
7. A reasonable period should be allowed before proclamation of legislation compelling payment of unclaimed money to the Treasurer to enable accounting and administrative adjustments to be made.  

(paragraph 3.12)
  
8. Provision should be made to enable a trustee to apply in writing to the Master of the Supreme Court for a letter or certificate of exemption from the obligation to pay unclaimed trust money to the Treasurer.  

(paragraph 3.8)
  
9. Where a liability arises to pay the same unclaimed money to two or more Treasurers in separate jurisdictions, one of which being Western Australia, it should be paid according to the law in the jurisdiction where the person to whom the money is owed had his last known address.  

(paragraph 4.14)
  
10. A person making payment of unclaimed money to the Treasurer, including payments made before the expiration of the limitation period, should have a statutory defence to any further claim in respect of such sum paid.  

(paragraph 4.12)

## **The Procedure For Disposal Of Unclaimed Money To The Treasurer**

### *Advertising*

11. Persons who are compelled or who wish to pay unclaimed money to the Treasurer should provide details of such money to the Treasurer before the end of January each year.

The Treasurer should advertise in the *Government Gazette* and in a newspaper with a wide circulation in Western Australia a list, in alphabetical order, of the names of persons to whom the money is owed and their last known addresses, and the names and addresses of persons from whom the money can be claimed.

After three months, money which remains unclaimed should be paid to the Treasurer.

(paragraphs 4.22 to 4.23)

### *Use Of Unclaimed Money For Public Purposes*

12. Unclaimed money which has been paid to the Treasurer should be available immediately for use for public purposes.

(paragraph 4.31)

### *Claims To Money Which Has Been Paid To The Treasurer*

13. A person should be entitled to claim money owing to him from the Treasurer at any time.

(paragraph 4.34)

14. The decision to admit a claim by a person for money paid to the Treasurer should be made by the Treasurer but there should be power for him or for any person aggrieved by a decision he makes to seek directions from a court.

(paragraphs 4.37 to 4.38)

15. The Treasurer should be indemnified against any liability for making payment by mistake but without affecting the rights of a person to trace property which that person claims.

(paragraph 4.40)

#### *Interest*

16. Interest at the rate payable from time to time on ordinary savings accounts with the R & I Bank should be allowed by the Treasurer on successful claims for money totalling \$100 or more if such money was or should have been earning interest at the time it was paid to the Treasurer.

(paragraphs 4.45 to 4.46 )

#### *Other Statutory Provisions Dealing With Unclaimed Money*

17. There should be no alteration to statutory provisions (other than the *Unclaimed Moneys Act*, the *Audit Act 1904*, the *Public Trustee Act 1941* and the private trustee company Acts) which deal with the disposal of unclaimed money in specific circumstances.

(paragraphs 5.2 to 5.4)

#### **Money Which Has Been Lost And Found**

18. There should be no alteration to the law relating to persons who find money which has been lost and is not claimed by the owner.

(paragraph 6.3)

#### **Money Owing To Aborigines**

19. With some modifications, unclaimed money owing to Aborigines should continue to be governed by sections 35 and 36 of the *Aboriginal Affairs Planning Authority Act 1972*.

(paragraph 7.8)

20. The modifications are that -

- (a) Section 36 should no longer apply to non-trust money.
- (b) The Commission's recommendations on advertising of unclaimed money under a revised Unclaimed Moneys Act should apply to the Public Trustee as a condition of payment of money to the Aboriginal Affairs Planning Authority.
- (c) The person paying unclaimed money to the Public Trustee should be discharged from further liability in respect of the money, and the Public Trustee should be protected from liability for payments made by mistake.
- (d) A person's right to claim money alleged to be owing to him should cease once the money has been paid to the Aboriginal Affairs Planning Authority.

(paragraphs 7.9 to 7.11)

## **Incidental Reforms**

### *Summary procedure for orders under section 66 of the Trustees Act 1962*

21. The Master of the Supreme Court should be given jurisdiction to make orders under section 66 of the *Trustees Act 1962* pursuant to a summary procedure in respect of amounts not exceeding \$2,000.

(paragraph 8.5)

### *Distribution of intestate estate in the absence of next of kin*

22. A defined class of next of kin entitled to succeed to an intestate estate should be created and there should be an express provision requiring payment to the Treasurer in the absence of any persons within the defined class.

The Treasurer should be given power to make payments in his discretion from the estate to persons who have a valid claim, moral or otherwise, to the estate or any part of it .

(paragraph 8.8)

(Signed) David K Malcolm, QC

Chairman

Eric Freeman

Member

H H Jackson

Member

Charles Ogilvie

Member

19 December 1980

Note: Mr Proksch was overseas on leave of absence from the Commission when this report was signed.

**APPENDIX I**  
**THE UNCLAIMED MONEYS ACT 1912-1947**

Approved for reprint 24th March, 1958

WESTERN AUSTRALIA

No.34 of 1912.

[As amended by Acts No. 2 of 1924,<sup>(a)</sup>; and No. 8 of 1947,<sup>(b)</sup>; and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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AN ACT to provide for giving publicity to information relating to Unclaimed Funds and for other purposes.

[Assented to 10th October, 1912.]

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title.  
No.34 of 1912,  
s.1, amended  
by No.8 of 1947, s.2.

1. This Act may be cited as the *Unclaimed Moneys Act, 1912-1947*.

Interpretation  
s.2 amended by  
No.2 of 1924,  
s.2, and No.8  
of 1947, s.3.  
Vic. No.2051, s.2.

2. In this Act, unless the context otherwise requires -

"Company" means -

- (a) Every company which, having for its object the acquisition of gain, is registered or incorporated in Western Australia under any Act relating to companies; and
- (b) Every company which, having for its object the acquisition of gain, and carrying on business in Western Australia, is registered or incorporated elsewhere than in Western Australia; and includes

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<sup>(a)</sup> Assented to 3rd October, 1924.

<sup>(b)</sup> Assented to 10th October, 1947.

- (c) Every banking or life assurance company or association, howsoever or wheresoever registered or incorporated, carrying on business within Western Australia.
- [N.Z. 1898, No.201, s.2.]
- (d) Every person or firm carrying on business as traders in Western Australia, and acting as agents or private bankers for individuals or companies.
- (e) The liquidator of any company.
- [Original para. (f) omitted by No.2 of 1924 s.2; New para. (f) added by No.8 of 1947, s.3. ]
- (f) A society registered under the *Building Societies Act, 1920* (No. 20 of 1920), as amended by the *Building Societies Act Amendment Act, 1921* (No. 16 of 1921).
- "Owner" means the person entitled to any unclaimed moneys, and includes his executors, administrators, or assigns, or his or their lawful attorney or agent in Western Australia.
- "Public Officer" means any person employed by the Government of Western Australia.
- "Treasurer" means the Colonial Treasurer of Western Australia.
- [Cf. N.Z. 1908, No.201, s.2; Vict. No.2051, s.2.]
- "Unclaimed moneys" means all principal and interest money, and all dividends, bonuses, profits, and sums of money whatsoever, which have been owing to any person (notwithstanding that the recovery thereof may be barred by lapse of time) since the first day of January, One thousand nine hundred and six, and not before, or which shall at any time after the commencement of this Act become owing to any person and which, on the commencement of this Act or at any time thereafter, have been payable by the company for a period of six years or upwards after the time when the same became payable, or when payment thereof might have been demanded or enforced, and in respect whereof no claim has, for a period of six years, been made by the owner, or any person lawfully claiming under him, against the company.
- Register of unclaimed moneys to be kept.
- [Vic. No.2051, s.3. Schedule 1. Cf. N.Z., 1908, No.201, s.3.]
3. (1) It shall be the duty of every company, in the month of January in each year, to enter all unclaimed moneys of not less than five pounds in any one account in a register to be made up to the thirty-first day of December last preceding and kept by such company at its head or principal office in Western Australia, in the form set forth in the first schedule to this Act, and with the particulars therein specified.
- (2) From and after the last day of January in each year such register shall be open to the inspection of all persons at such head or principal office, during the hours within which the company transacts its ordinary business, on payment of a fee of one shilling.

Register to be published and declaration filed.

Schedule 2.

[See Vic . No.2051, s.4.]

4. Every company shall, before the fifteenth day of February in each year -

(a) publish a copy of such register in the *Government Gazette*; and

(b) file at the Treasury in Perth a statutory declaration made by an officer of the company, in the form set forth in the second schedule to this Act.

Penalty for neglect in keeping register, etc.

[Vic. No. 2051, s.5.]

5. Any company which fails to keep such register, or to publish such copy, or file such declaration or which refuses inspection of the register, shall be liable to a penalty not exceeding two pounds for every day during which such default or refusal continues.

Unclaimed moneys to be paid to the Treasurer.

[Vic. No. 2051, s.6. Cf. N.Z. 1908, No.201, s.6.]

6. (1) All unclaimed moneys which shall not have been paid by the company to the owner thereof within one year after the publication of such notice in the *Government Gazette* shall be paid by the company to the Treasurer to be placed to the credit of a fund to be called the "Unclaimed Moneys Fund," and the company shall thereafter be relieved from all further liability in respect of the moneys so paid.

(2) The Governor may direct that the whole or part of the moneys paid to the credit of the said fund shall be invested in the purchase of Government debentures or stock, and the interest arising from such investment shall be paid into the consolidated revenue.

(3) The company may deduct out of all unclaimed moneys payable by the company to the Treasurer, or to any claimant, the expenses paid by the company in the publication of the register.

[See Vic. No. 2051, s.7.]

(4) If a company fails to pay any unclaimed money to the Treasurer as required by this section, such money shall be deemed a debt due to the Crown, and be recoverable accordingly, and the company shall, in addition, be liable to a penalty not exceeding two pounds for every day during which such default continues.

Treasurer may examine accounts, etc.

[Vic. No.2051 s .8. ]

7. The Treasurer may at any time after any publication of the register as aforesaid, examine the register, and any of the accounts relating to the unclaimed moneys in such register referred to, and may for that purpose require the production before him, or before such public officer as he may appoint, of any book, vouchers or documents referring to such moneys; and if any error shall be found in any register or the copy thereof as published, he may direct the register, or the copy thereof as published, or both of them, to be amended.

Treasurer may pay lawful claimant.  
[Vic. No. 2051 s.9., Cf. N.Z. 1908, No.201, s.8.]

8. If any claimant shall make any demand against the Treasurer for any money paid to him under this Act, the Treasurer, upon being satisfied that the claimant is the owner of the money demanded by him, shall order and direct payment thereof to be made to him. Provided that the claimant shall not be entitled to any interest arising from the investment of such money by the Treasurer.

Treasurer not responsible for payments in certain cases.  
[Vic. No.2051, s.10]

9. Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person, the Treasurer shall not be responsible for the payment of the same, but such person may have recourse against the claimant to whom the Treasurer has paid the unclaimed moneys.

Act not to apply to certain unclaimed moneys.  
No.34 of 1912, s.10, amended by No.2 of 1924, s.2.  
[Vic. No.2051, s.11.]

10. This Act shall not apply to the accounts in the Government Savings Bank, nor to any unclaimed moneys which any trustee company is required by law to pay to the Treasurer, nor to any - unclaimed moneys which any company, or the liquidator of any company, or any trustee of any bankrupt estate, is required by law to pay into his Majesty's Treasury.

Effect of entry in register and its publication.  
[Vic. No. 2051, s.12.]

11. Any rights of the owner in respect of such moneys which may exist at the time of such entry in the register, and the publication of the register as aforesaid, shall not be prejudiced or affected by such entry or publication, and such moneys may be recovered by such owner at any time before the same shall be paid to the Treasurer under section six, but not afterwards, any rule of law to the contrary notwithstanding.

Repeal.

12. Sections thirty-two and thirty-three of the *Government Savings Bank Act, 1906*, are repealed.\*

\* The *Unclaimed Moneys Act Amendment Act, 1924* (Act No.2 of 1924), s.2(3) provides as follows:- "(3) Sections thirty-two and thirty-three of the *Government Savings Bank Act, 1906*, are re-enacted, and shall have effect as if those sections had not been repealed by section twelve of the principal Act. "

See also Acts No.13 of 1926 and No.26 of 1931.

Section 3.

FIRST SCHEDULE.

.....Company (or Bank, etc.)

Register of unclaimed money held by the.....  
(here insert name of Company.)

Name and last known address of owner on books	Total amount due to owner	Description of unclaimed money	Date of last claim
	£ s d		
James Murray Hay Street Perth	350 0 0	First dividend on 600 shares in the Electric Light Company, Limited	27 <sup>th</sup> April, 1906
Thomas Hutt of Hannan Street, Kalgoorlie	437 0 0	Deposit, or balance of account in the Bank of Australasia (or such other particulars as may be a sufficient description of the money)	26 <sup>th</sup> Nov., 1906

Section 4.

SECOND SCHEDULE.

*The Unclaimed Moneys Act, 1912.*

I [insert name, address, and occupation] do solemnly and sincerely declare

1. That I am officer of [insert name of company] hereinafter referred to as the said company.
2. That in accordance with the provisions of "The Unclaimed Moneys Act, 1912," the said company has duly entered all unclaimed moneys in the register kept by the said company at its head or principal office in Western Australia.
3. That a copy of the said register was published in the *Government Gazette* on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.
4. That the said register correctly and completely sets forth particulars of all unclaimed moneys, within the meaning of the said

Act, of the said company of not less than £5 in any one account.

And I make this solemn declaration by virtue of Section 106 of the *Evidence Act, 1906*.

Declared at \_\_\_\_\_ this \_\_\_\_\_ day of  
19 \_\_\_\_\_,  
before me.

C.D.,  
Justice of the Peace.

**APPENDIX II****Details of unclaimed money paid to the Treasurer during the period 1 January 1974 to 30 June 1976**

Name of holder	Details	1974 \$	1975 \$	1976 \$
Aetna Life of Australia & NZ Ltd Western Australia	?	23.00		
Albany Superphosphate Co Pty Ltd	wages			16.93
Alcoa of Australia (WA) Ltd	wages	13.34	26.52	
APA Life Assurance Ltd	refund of premium			17.64
Associated Products & Distribution Pty Ltd	unpresented cheque			13.83
Australian Guarantee Corporation Ltd	Cheque received no claim made		49.98	
Bechtel Pacific Corpn Ltd	wages		251.66	
Boans Ltd	? Interest on debentures and refunds on shares	24.00		123.75
BP Refinery Kwinana Pty Ltd	wages		117.20	
BP Australia Ltd	wages refund of credit		57.96	21.54
Boulder Mines Ltd	wages	254.86	94.17	122.13
Central Norseman Gold Corpn NL	wages			140.19
Challenger Mining Group Ltd	dividend of Dec 1968 dividend of Dec 1969	317.00	21.60	
Chamberlain Holdings Ltd	dividend	264.00	49.06	175.48

Chamberlain John Deere Pty Ltd	wages	389.31		106.48
Clough & Son Pty Ltd	wages (no order alphabetical, chronological or otherwise)	2167.85		
Cockburn Cement Ltd	dividends			114.65
Co-operative Bulk Handling Ltd	debenture redemptions rebate distributions and wages	204,899.87		3921.05
Cresco Fertilisers Pty Ltd	wages			28.53
CSBP and Farmers Ltd	wages	100.67	150.43	291.72
Elder Smith Goldsborough Mort Ltd	unpresented cheques	63.50	103.22	386.20
	skin & hide proceeds for persons unknown	235.52	5380.46	3384.81
	various cash for persons unknown		454.61	246.50
	wages		235.88	283.88
Esperance Fertilisers Pty Ltd	wages	39.77		34.89
Fremantle Gas & Coke Co Ltd	dividend			13.08
Hammersley Iron Pty Ltd	wages	558.28	337.99	444.50
Hawker Siddeley Building Supplies Pty Ltd	wages	110.54	342.64	488.15
Hill 50 Gold Mine No Liability	wages (under \$10 total \$277.70)	305.10		
	(under \$10 total			

	\$322.82)		377.90	
	(under \$10 total \$204.30)			243.50
Hunts Canning Co Pty Ltd	wages		54.87	
Kalgoorlie Lake View Pty Ltd	wages			319.86
Lake View and Star Ltd	wages	500.23		
Len Hearn Furnishings Pty Ltd	overpayment of account	20.00		
McIlwraith's Transport Pty Ltd	wages		87.72	
Mercantile Stevedores (WA) as managing agents for Port Hedland watersiders' Consolidated Pay Office	wages		650.66	121.39
Mobil Oil Australia Ltd WA	refund of credit	220.58		294.22
	drum returns		243.24	50.56
	wages			24.88
Mt Newman Mining Co Pty Ltd	wages			540.83
Passiona Bottling Co (Perth) Ltd	dividend		20.00	12.00
Perpetual Executors Trustees and Agency Co (WA) Ltd	refund balance of tenants' deposits	490.77	670.93	1299.23
Perth Building Society	investment shares	1509.00	2379.00	2358.44
Ready Lime Putty Pty Ltd	wages unpresented cheque			24.48 191.65
Robert Olivier & Co	balance held after completion of sale of houses			159.26

Shell Company of Australia Ltd	claim for damages			41.25
	wages			66.47
	refund credit balance			80.40
Swan Brewery Co Ltd	dividends	109.50	50.91	67.37
Swan Portland Cement Ltd	wages	38.21		55.81
The R & I Bank	current accounts	568.54	787.59	157.23
	unidentified deposits		649.90	404.26
Thiess Bros Pty Ltd	wages (Mt Hart station)		187.98	177.68
Tomlinson Steel Ltd	wages	65.20	13.57	
	dividends	150.00	65.00	
Vickers Hoskins Pty Ltd	wages	115.00		
WA Sandalwood Co Ltd	dividend	113.00	28.58	36.00
Westralian Farmers Co-op Ltd	dividend	739.66	1299.92	1184.35
Westralian Farmers Superphosphates Ltd	dividend	121.95	675.75	138.16
Westralian Sands Ltd	June '67 dividend	630.00		
	Oct '67 dividend	630.00		
	Nov '68 dividend		707.16	
Western Collieries Ltd	dividend	24.00		
Western Mining Corpn Ltd	wages	93.31	998.38	2341.42
Wigmores Ltd	overpayment of parts account			24.04
	balance of ship owners advance fund			443.86

### APPENDIX III

#### Legislation dealing with unclaimed money in specific circumstance

<p><i>Albany Port Authority Act 1926</i></p>	<p>s 27: Goods left on a wharf to be sold and the proceeds paid to the owner, but in the meantime to be paid to the Treasurer.</p> <p>Identical provisions appear in legislation governing other Port Authorities in Western Australia, viz: <i>Bunbury Port Authority Act 1909</i>, s 27; <i>Fremantle Port Authority Act 1902</i>, s 29; <i>Esperance Port Authority Act 1968</i>, s 29; <i>Port Hedland Port Authority Act 1970</i>, s 28; <i>Geraldton Port Authority Act 1968</i>, s 29.</p>
<p><i>Banking Act 1959 (Cwth)</i></p>	<p>s 69: Applies to money held by a trading bank, viz: the Banks of Adelaide, China, New South Wales, New Zealand and Queensland, the Commercial Bank of Australia Ltd, the Commercial Banking Co of Sydney Ltd, the National Bank of Australasia Ltd, the Banque Nationale de Paris, the Australian and New Zealand Banking Group Ltd, the Commonwealth Development Bank and the Australian Resources Development Bank Ltd.</p> <p>Money held the recovery of which is barred by lapse of time including money which has not been operated upon by way of deposit or withdrawal for a period of seven years, is paid to the Commonwealth, credited to a Trust Fund and after the expiry of six years is transferred into the Consolidated Revenue Fund. Amounts of \$20 or more are advertised in the <i>Gazette</i> before transfer to Consolidated Revenue.</p> <p>A claim to recover can be made at any time through the bank which originally held the deposit, the Treasurer refunding the money for that purpose.</p>
<p><i>Bankruptcy Act 1966 (Cwth)</i></p>	<p>s 254: Dividends unclaimed for six months or more and money proposed not to be paid to any person is paid into the Consolidated Revenue Fund. A person claiming to be entitled can recover from the Treasurer at any time but must first obtain a court order.</p>
<p><i>Coal Mine Workers (Pensions) Act 1943</i></p>	<p>s 20(6): Any refunds or pensions unclaimed within six years become part of the fund.</p>
<p><i>Companies Act 1961</i></p>	<p>ss 185(9) and (10) : Deal with money derived from the transfer of shares of minority shareholders in a take-over arrangement and provide for such money as remains unclaimed for two years to be paid to the Treasurer within ten years as money falling within the <i>Unclaimed Moneys Act</i>.</p> <p>s 286: Unclaimed assets in the hands of a liquidator to be paid to Commissioner for Corporate Affairs. He holds the money in account for six years and it is then paid to the Consolidated Revenue. A claimant can recover the amount of his claim at any time from the</p>

	<p>Commissioner and any person can appeal to the court if dissatisfied by the Commissioner's decision in this respect.</p> <p>s 364: Shares belonging to persons whose whereabouts after reasonable diligence are unknown for at least ten years may be advertised in the newspaper, and after a further month may be transferred to the Commissioner for Corporate Affairs. The Commissioner shall sell them and deal with the proceeds as if they were money to which the <i>Unclaimed Moneys Act</i> applied.</p>
<p><i>Commonwealth Banks Act 1959 (Cwth)</i></p>	<p>s 53: Money in a deposit account with the Commonwealth Savings Bank shall, if not operated upon for seven years and the passbook has not been presented to the bank (unless the account is in the name of an infant), be transferred to the Depositor's Unclaimed Fund and ceases to bear interest. Details are advertised in the <i>Gazette</i> within six months of transfer to the fund.</p>
<p><i>Disposal of Uncollected Goods Act 1970</i></p>	<p>Claims to recover the money can be made within ten years of the transfer to the fund but thereafter the money becomes the property of the bank. However, the bank may allow payment of a late claim if satisfied that special reasons for the payment exist.</p>
<p><i>Disposal of Uncollected Goods Act 1970</i></p>	<p>s 28: If goods are sold and there is an excess over and above the amount required to pay the holder's charges, such excess is recoverable by the owner. If he does not claim it within 28 days it is paid to the Treasurer. The owner may make a claim through the Treasurer at any time for a return of the money.</p>
<p><i>Escheat (Procedure) Act 1940</i></p>	<p>Under this Act property of deceased persons both real and personal may be escheated to the Crown.</p>
<p><i>Life Insurance Act 1945 (Cwth)</i></p>	<p>s 106: Applies to money which is payable by a life insurance company pursuant to a policy in circumstances where the time allowed for proceedings to recover it has expired or, in the case of endowment policies, where seven years has expired since maturity. This money is payable to the Commonwealth Treasurer. The Treasurer advertises in the <i>Gazette</i> sums of not less than \$20. A claimant may subsequently recover the money from the Treasurer via the insurance company which originally held the money.</p>
<p><i>Local Government Act 1960</i></p>	<p>s 457: Unclaimed money held by the public pound keeper after thirty-five days is paid to the Council into a Trust Fund. After two years in the Trust Fund it is paid to the Municipal Fund and becomes the property of the Council.</p> <p>s 526(2)(b): Money held by a council by way of deposit or in trust for a person is held in a trust fund. If it is unclaimed for ten years it may be transferred into any other fund, such as a municipal fund, provided the council repays it to a person establishing his right to it.</p> <p>s 589: Money left over from the sale of a property to pay rates is</p>

<p><i>Lotteries Regulations 1967</i></p>	<p>payable to the owner within twelve months and if not so paid is payable to the Master of the Supreme Court. If no claim is made within six years it is payable to the Treasurer as public moneys under the <i>Audit Act 1904</i>.</p> <p>Regulation 9: The right to recover unclaimed prizes extinguishes after seven years and prize money falls into the Commission's Revenue.</p> <p>Regulation 13: The Commission may make provision for unclaimed private lottery prizes.</p>
<p><i>Rural and Industries Bank Act 1944</i></p>	<p>s 65V: Depositors' unclaimed money (defined as a savings account not operated on for seven years and passbook not produced) to be paid to the Depositors' Unclaimed Fund. The money is available for lending by the bank and any interest becomes part of the general profit of the Savings Bank Division of the bank.</p> <p>If the Commissioners are of opinion that any person is entitled to the money, it shall be paid, without interest for the period it remained in the fund, to that person.</p>
<p><i>Totalisator Agency Board Revenue Betting Act 1960</i></p>	<p>s 23(3): Bets unpaid after seven months are paid to the Treasurer into the Consolidated Fund. Thereafter, the owner has no enforceable claim.</p>
<p><i>Warehousemen's Liens Act 1952</i></p>	<p>s 10: Surplus money after disposition of goods is paid to the Treasurer who shall pay it into the Public Account. A claimant has six years in which to make a claim for the money.</p>

## APPENDIX IV

### Analysis of comparable legislation relating to unclaimed money in other jurisdictions

#### A. UNCLAIMED TRUST MONEY REQUIRED TO BE PAID TO THE TREASURER

Legislation	Definition	Procedure for disposal	Recovery by owner
<p><b>VICTORIA</b> <i>Unclaimed Moneys Act 1962</i> (s 13A as inserted in 1973 Amendment)</p>	Trust property held by any trustee (defined as executor, administrator, trustee, receiver, committee or guardian and includes the Public Trustee and any trustee company) and unclaimed for six years	Money and income paid to receiver of revenue into Unclaimed Moneys Fund. The Registrar of unclaimed moneys may extend the period for payment into the Fund. After three months money in the Fund is paid to Consolidated Fund.	At any time upon the Treasurer being satisfied that the claimant is the owner. Indemnity to Treasurer for mistaken payments (s 14).
<p><i>Legal Profession Practice Act 1958</i> (s 40A as amended by <i>Unclaimed Moneys Act 1973</i> (s 3))</p>	Money held in solicitor's trust account where owner after due inquiry cannot be found.	Shall be paid to receiver of revenue and falls within provisions of <i>Unclaimed Moneys Act 1962</i> .	As above.
<p><b>NEW SOUTH WALES</b> <i>Public Trustee Act 1913</i> (s 53)</p>	Money in intestate estate administered by Public Trustee lying for six years and no information as to beneficiaries.	Paid to Treasury into a special trust account. Available to acquire land and building and carry out repairs for the purposes of the Public Trust Office (s 53A).	At any time on proof to the satisfaction of the Public Trustee (s 53(1)A(a)) or by order of the court (s 53(2)) but without interest (s 53(1)A(b)).

**APPENDIX IV (cont)**

<b>Legislation</b>	<b>Definition</b>	<b>Procedure for disposal</b>	<b>Recovery by owner</b>
<b>NEW SOUTH WALES (cont)</b> <i>Trustee Companies Act 1964 (ss 26-27)</i>	Money forming part of an estate unclaimed for five years (s 26(1)).	Paid with interest to Treasurer into Testamentary and Trust Fund (s 26(1)) and available for investment in Government securities (s 26(4)). Interest earned is kept in separate account (s 26(5)) and shall be allowed on balances at credit of the account of any estate in the Testamentary and Trust Fund (s 26(6)).	On a court order at any time (ss 26(7) and 27).
<b>SOUTH AUSTRALIA</b> <i>Administration and Probate Act 1919 (ss 116-117)</i>	Money held by the Public Trustee to the credit of an intestate estate and money not exceeding \$1000 held in any other estate (in both cases excluding money held for persons not sui juris) which is unclaimed for six years (s 116(1)).	Paid to the Treasurer for public revenue (s 116(1)).	On a court order (s 117(1)) or on the Public Trustee's certificate (s 117(4)), at any time but without interest for the time it is held by the Treasurer (s 117(3)).
<b>QUEENSLAND</b> <i>Public Trustee Act 1978</i>	Money held by the Public Trustee to the credit of any estate or trust under administration by him and unclaimed for six years (s 116).	Transferred to Unclaimed Moneys Fund (s 116) and invested in Government securities, the interest payable to Consolidated Revenue Fund (s 25).	At any time from Unclaimed Moneys Fund if Public Trustee is satisfied that claimant is the owner and with the consent of Minister (s 117(1)). Indemnity to Public Trustee against liability for later claim (s 117(2)).

Note: Money held by trustee companies is treated in the manner as unclaimed non-trust money – page 84 below.

**APPENDIX IV (cont)**

<b>Legislation</b>	<b>Definition</b>	<b>Procedure for disposal</b>	<b>Recovery by owner</b>
<b>QUEENSLAND (cont)</b> <i>Trust Accounts Act 1973 (s 33)</i>	Money held by a trustee (defined as any solicitor, conveyancer or public account engaged in the practice of his profession and every person who is a trustee under any other Act or law or rule of law) which is received in the course of such practice upon trust or upon terms requiring him to account (s 33(10)) and which is unclaimed for one year (s 33(1)) in circumstances where the beneficiary or his whereabouts are not known, or it is not known whether he is dead or alive or who his executors are (s 33(2)).	Return to be made each year on 30 September to Under Secretary for Justice (s 33(1) and he may require the money to be paid to Public Trustee (s 33(5) which then falls within the <i>Public Trustee Act</i> . The Public Trustee shall without delay use every endeavour to ascertain the beneficiaries (s 33(8)). The Trustee is entitled to deduct costs as approved by the Public Trustee (s 33(9)).	As above.
<b>TASMANIA</b> <i>Public Trust Office Act 1930 (s 36A as inserted by 1967 Amendment)</i>	Money forming part of an estate and unclaimed for five years	May be paid into Common Fund but after six years shall be paid to the Treasurer to the credit of Consolidated Revenue	By Supreme Court order only once paid into Common Fund and no later than ten years after payment into Consolidated Revenue.

**APPENDIX IV (cont)**

<b>Legislation</b>	<b>Definition</b>	<b>Procedure for disposal</b>	<b>Recovery by owner</b>
<p><b>TASMANIA (cont)</b> <i>Trustee Companies Act 1953</i> (ss 32-37)</p> <p><b>ACT</b> <i>Trustee Companies Ordinance 1947</i> (ss 28-29)</p> <p><i>Administration and Probate Ordinance 1929</i> (ss 108-109 as inserted by 1965 amendment)</p>	<p>Money forming part of an estate and unclaimed for five years (s 32(1)).</p> <p>Money in an estate and unclaimed for five years (s 28(1)).</p> <p>Money held by the Curator of Estates of Deceased Persons for six years with no knowledge of the existence or address of a person entitled to claim or share in distribution (s 108(2)).</p>	<p>Shall be paid to Public Trustee (s 32(1)) to form part of his common fund (s 32(4)). Interest is compounded quarterly (s 32(6)) after six years paid to Treasurer to the credit of Consolidated Revenue (s 37).</p> <p>Paid to Attorney General into Testamentary and Trust Fund which is a trust account within the meaning of the <i>Audit Act 1901</i> (s 28).</p> <p>Paid to Treasurer on or before 31 January each year (s 108(1)) and goes into Consolidated Revenue (s 108(7)).</p>	<p>By Supreme Court order only once paid to Common Fund (ss 32(5) and 35). Court can order interest to be paid to claimant even on money paid to the Treasurer (s 35(5)) but claim must be made within ten years of payment into Consolidated Revenue (s 35(6)(b)).</p> <p>At any time by order of the court (s 29(1)(a) an (b)) but without interest from the time of payment to the Attorney General (s 29(1)(c)).</p> <p>At any time if Treasurer is satisfied that the claimant is entitled to the money (s 109(1)) and also by order of the court (s 109(2)) but without interest from the time paid to the Treasurer (s 109(4))</p>
<p><b>NORTHERN TERRITORY</b> <i>Administration and Probate Ordinance 1928</i></p>	<p>As in South Australia</p>		

## APPENDIX IV (cont)

Legislation	Definition	Procedure for disposal	Recovery by owner
NEW ZEALAND	No mandatory provisions		

## B. OTHER MONEY REQUIRED TO BE PAID TO THE TREASURER

<p><b>VICTORIA</b> <i>Unclaimed Moneys Act 1962</i></p>	<p>(1) Money or security paid into court to be subject to a court order and no claim for fifteen years, plus an extension for persons known to be suffering a legal incapacity (s 6).</p> <p>(2) Principal and interest, dividends, bonuses, profits, salaries and wages and all sums of money whatsoever (s 9(1)) unclaimed for twelve months (s 12(1)) held by companies within the meaning of the <i>Companies Act 1961</i> including any Board within the meaning of the <i>Marketing of Primary Products Act 1958</i>, the Australian Barley Board, Victorian Inland Meat Authority, building societies, societies under the <i>Industrial and Provident Societies Act 1958</i>, the Co-</p>	<p>Money and interest paid into Consolidated Revenue (s 6).</p> <p>Each year before March details entered in a register (s 11(1)) and the sums of not less than \$10 advertised in the <i>Gazette</i> (s 11(3)). Advertised money unclaimed for further twelve months (s 12(1)(a)) is paid less advertising costs (s 12(3)) to the receiver of revenue. Unadvertised money is paid to the receiver within twelve months of the entry in the register (s 12(1)(b)). All money is paid into Unclaimed Moneys Fund (s 12(1)) and after three months transferred to Consolidated Revenue (s 12(2)).</p>	<p>At any time by order of the court (s 8) but without interest from the date paid into Consolidated Revenue (s 8(2)).</p> <p>At any time upon the Treasurer being satisfied that the claimant is the owner (s 14(1)). Treasurer is indemnified against liability for mistaken payments (s 14(2)).</p>
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**APPENDIX IV (cont)**

<b>Legislation</b>	<b>Definition</b>	<b>Procedure for disposal</b>	<b>Recovery by owner</b>
<b>VICTORIA (cont)</b> <i>Unclaimed Moneys Act 1962</i>	<i>operation Act 1958 and the Co-operative Housing Societies Act 1958 and any other society declared by the Governor and any unincorporated body of persons associated together for the purpose of carrying on business (s 9(1)).</i>		
<b>NEW SOUTH WALES</b> <i>Unclaimed Moneys Act 1917</i>	Principal and interest, dividends, bonuses, profits and sums of money whatever the recovery of which is barred by operation of law (s 2) held by companies incorporated or carrying on business in New South Wales including every bank, (except the Commonwealth Bank of Australia and the Government Savings Bank of New South Wales), life assurance company or association, the liquidator of any company and every person or firm carrying on business as traders in New South Wales and acting as agents, trade assignees or private bankers for individuals or companies (s 2).	Details of unclaimed money held in an account not operated on for six years entered in alphabetical order in a register (s 3) and published in <i>Gazette</i> (s 4). After one year paid to Colonial Treasurer for public revenue (s 6).	At any time upon proving his ownership to the Treasurer (s 9). The Treasurer is not indemnified against liability for mistaken payments (s 10).

**APPENDIX IV (cont)**

<b>Legislation</b>	<b>Definition</b>	<b>Procedure for disposal</b>	<b>Recovery by owner</b>
<b>SOUTH AUSTRALIA</b> <i>Unclaimed Moneys Act 1891</i>	<p>Principal and interest, dividends, bonuses, profits and sums of money whatever unclaimed for six years and arising out of any dealing had within South Australia with any company and with the exception of the Bank of South Australia, includes every bank and life assurance company and the liquidator of a company (s 2).</p>	<p>Amounts exceeding \$10 entered in a register (s 3) and published in <i>Gazette</i> (s 4). After two years, paid, less advertising costs (s 6(2)), to the Treasurer for the use of public revenue (s 6(1)).</p>	<p>At any time upon Treasurer being satisfied that the claimant is the true owner (s 8). Indemnity against Treasurer's liability for mistaken payments (s 9).</p>
<b>QUEENSLAND</b> <i>Public Trustee Act 1978</i>	<p>Principal and interest and all dividends, bonuses, profits and sums of money whatever unclaimed for six years and held by an "accountable person" viz: a person or body having as an object the carrying on of any trade, business or profession in the ordinary course of which money is held for payment to others and includes a receiver, statutory authorities, trustee companies and others as the Governor may appoint (s 98).</p>	<p>Entered in register and the contents are advertised in February in the <i>Gazette</i> but no advertising is necessary for sums which do not exceed \$50 or \$100 with the Public Trustee's written consent (s 100). After one year paid to Public Trustee into Unclaimed Moneys Fund less advertising expenses (s 102). Money in this fund may be invested in Government securities and interest is paid to the Consolidated Revenue (s 25).</p>	<p>At any time upon Public Trustee being satisfied that the claimant is the owner and with the approval of the Minister (s 117(1)). Indemnity against further liability of Public Trustee for mistaken payments (s 117(2)).</p>

## APPENDIX IV (cont)

Legislation	Definition	Procedure for disposal	Recovery by owner
<b>TASMANIA</b> <i>Unclaimed Moneys Act 1918</i>	Principal interest, dividends, bonuses, profits and sums of money whatsoever the recovery of which is barred by operation of law and held by every company, banking or life assurance company or association except the Commonwealth Bank of Australia, every person or firm carrying on business as traders and acting as agents or private bankers for individuals or companies, every liquidator and any person conducting or controlling lotteries (s 2).	Amounts not less than \$6 entered in alphabetical register (s 3(1)) and published in <i>Gazette</i> (s 4). One year later paid to Treasurer for use of Consolidated Revenue less advertising costs (s 6).	At any time upon Treasurer being satisfied that claimant is the owner but without interest (s 8). Indemnity to Treasurer against liability for mistake payments (s 9).
<b>ACT &amp; NT (ACT)</b> <i>Unclaimed Moneys Ordinance 1950 (NT)</i> <i>Companies (Unclaimed Assets and Moneys) Ordinance 1963</i>	(1) Dividends or money in the hands of a liquidator, unclaimed for six months or remaining after final distribution (s 4 ACT; s 6 NT). (2) Deposits with, securities of any company and dividends, bonuses, profits or other money payable to a member of the company or co-operative society, the recovery whereof being barred by operation of law (s 6 ACT; s 8 NT).	Paid to Treasurer into Consolidated Revenue Fund) s 4 ACT; s 6 NT).  Entered in alphabetical register (s 7 ACT; s 9 NT) copy sent to Treasurer and he arranges publication in the <i>Gazette</i> (s 8 ACT; s 10 NT). One year later paid by Treasurer to Consolidated Revenue Fund (s 10 ACT; s 12 NT).	At any time on Supreme Court order, or where Treasurer is otherwise satisfied that claimant is entitled (s 5 ACT; s 7 NT). At any time on Supreme Court order, or where Treasurer is otherwise satisfied that claimant is entitled (s 13 ACT).  At any time if Treasurer is satisfied the person is entitled (s 15 NT).

**APPENDIX IV (cont)**

<b>Legislation</b>	<b>Definition</b>	<b>Procedure for disposal</b>	<b>Recovery by owner</b>
<p><b>NEW ZEALAND</b> <i>Unclaimed Money Act 1971</i></p>	<p>Money situated in New Zealand (s 2) in the following circumstances –</p> <p>Interest bearing deposit for a fixed term – unclaimed for six years following expiry of term.</p> <p>Interest bearing deposit for no fixed term – unclaimed for twenty-five years.</p> <p>Non interest bearing deposit in savings bank – no operation on account for six years.</p> <p>Non interest bearing deposit in any other case – no operation on account for six years.</p> <p>Life insurance money – unclaimed for six years from date of maturity, or reason to suspect death.</p> <p>Any other money unclaimed for six years (s 4(1)).</p> <p>But in every case excluding –</p> <p>(a) sums of less than \$20 (s 4(1)(i));</p>	<p>Entered in alphabetical register (s 6(1)) and letter sent by 30 June each year to owners of money at their last known address (s 7).</p> <p>One year later paid to the Commissioner of Inland Revenue into the Consolidated Revenue Account (s 8).</p>	<p>At any time upon Commissioner's satisfaction that the claimant is the owner (s 11(1)) but without interest (s 11(5)). Indemnity against Commissioner's liability for mistaken payments (s 11(4)).</p>

**APPENDIX IV (cont)**

<b>Legislation</b>	<b>Definition</b>	<b>Procedure for disposal</b>	<b>Recovery by owner</b>
<b>NEW ZEALAND (cont)</b> <i>Unclaimed Money Act 1971 (cont)</i>	(a) see p 87. (b) dividends (other than those payable by a mutual association in relation to money deposited with the association); (c) rebates payable by a mutual association whether incorporated or not (other than arising from a deposit with the association); (d) benefits payable from any pension or superannuation fund (s 4(2)) and which is held by any company, bank, building society, money lender or borrower in respect of money borrowed, insurance office, auctioneer in respect of any balance of an auction sale, real estate agent in respect of money held in a trust account, sharebroker in respect of money held on behalf of clients, accountant in respect of clients' money and motor vehicle dealers in respect of money held on behalf of any person for whom the dealer has acted as agent (s 5).		

**APPENDIX IV (cont)**

Legislation	Definition	Procedure for disposal	Recovery by owner
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**C. PROVISIONS ENABLING DISPOSAL OF UNCLAIMED MONEY**

<p><b>VICTORIA</b> <i>Unclaimed Moneys Act 1962 (s 15)</i></p>	<p>All unclaimed money held by any other person.</p>	<p>May be paid to the Treasurer as if the holder was required to do so under the Act.</p>	<p>At any time upon the Treasurer being satisfied that the claimant is the owner (s 14(1)). Treasurer is indemnified against liability for mistaken payments (s 14(2)).</p>
<p><b>SOUTH AUSTRALIA</b> <i>Unclaimed Moneys Act 1891 (s 7a as inserted in 1962 amendment)</i></p>	<p>Any person not being a company having money unclaimed for one year.</p>	<p>May be paid to Treasurer for public revenue accompanied by a declaration setting forth details of the money, the circumstances in which it came into the holder's possession and stating that the owner cannot be found.</p>	<p>At any time upon Treasurer being satisfied that the claimant is the true owner (s 8). Indemnity against Treasurer's liability for mistaken payments (s 9).</p>
<p><b>NEW ZEALAND</b> <i>Trustee Act 1956 (s 77-79)</i></p>	<p>Money belonging to a trust and held by trustees (s 77), extended to include implied and constructive trustees (s 2).</p>	<p>An affidavit describing the instrument creating the trust and details of the beneficiaries is filed in court and the money paid to the Crown to be placed in a deposit account administered by Treasury (s 77(1)). The Secretary to the Treasury may require trustees to give information as to the steps taken</p>	<p>At any time at the order of the court (ss 78(3) and 79) but may be paid by the Secretary to the Treasury to the person entitled on his establishing a claim thereto, or to the person from whom the money was received to be held again on trust if that person wishes (s 78(3)). The Treasury may deduct</p>

**APPENDIX IV (cont)**

<b>Legislation</b>	<b>Definition</b>	<b>Procedure for disposal</b>	<b>Recovery by owner</b>
<p><b>NEW ZEALAND</b> <i>Trustee Act 1956</i> (s 77-79) (cont)</p> <p><i>Unclaimed Money Act 1971</i> (s 5(2)).</p> <p><i>Law Practitioners Act 1955</i> (s 72)</p>	<p>Any unclaimed money held by any person, firm, body or institution not required under the Act to pay the money to the Commissioner of Inland Revenue.</p> <p>Money held in a solicitor's trust account, the owner of which cannot be found</p>	<p>to notify the beneficiaries (s 77(8)). Each year the Secretary to the Treasury publishes details in the <i>Gazette</i> (s 78(1)) until after six years the money is transferred to Consolidated Revenue (s 78(4)).</p> <p>May elect to pay the money under the Act as if required to do so.</p> <p>May be paid to Commissioner of Inland Revenue and shall be deemed to be money paid under the provisions of the <i>Unclaimed Money Act</i>.</p>	<p>costs reasonably incurred (s 78(3)) and no interest is payable whilst the money has been held by the Crown (s 78(7)). Indemnity to the Crown and Secretary to the Treasury against liability for subsequent claims (s 78(8)).</p> <p>At any time upon Commissioner's satisfaction that the claimant is the owner (s11(1)) but without interest (s 11(5)). Indemnity against Commissioner's liability for mistaken payments (s 11(4)).</p> <p>As above.</p>
<b>NSW, QLD, TAS, ACT and NT</b>	No enabling provisions		

## **APPENDIX V**

### **Legislation in Western Australia dealing with unclaimed trust money**

#### **The Public Trustee Act 1941, s 45**

**Scope** Money in the hands of the Public Trustee to the credit of any trust or estate under administration by him.

**Length of time unclaimed** Six years.

**Procedure** The Public Trustee must advertise details of unclaimed money at least twice at intervals of fourteen days in a newspaper circulated in Perth in practice at the end of the six year period awaiting claims. Then on or before 31 March each year if the Public Trustee has no information or knowledge of the existence of any person entitled or claiming to be entitled, unclaimed money is to be paid to the Treasury for public service. With the consent of the Minister, the Public Trustee may retain in any estate such amount as he considers likely to be required to answer payment to be made out of such estate.

#### **The West Australian Trustees Limited Act 1893, ss 22 and 23**

**Scope** Money forming part of an estate of which the Company is executor, administrator, trustee, receiver, committee, trustee in bankruptcy or guardian.

**Length of time unclaimed** Five years.

**Procedure** After five years awaiting claims, the money is paid into the Testamentary and Trust Fund administered by Treasury. Such sums shall bear interest at the rate of three percent but the Treasurer may invest in Government debentures or stock.

The beneficiary may by order of the Supreme Court on an application made within six years from the date of payment into the Testamentary and Trust Fund, recover his money plus interest earned. No person can make application to the Court after the expiry of the six year period, but time does not run against an infant, feme covert, a person of unsound mind or while a person is beyond seas.

#### **The Perpetual Trustees Ltd Act 1922, ss 22 and 23**

**Scope** Money forming part of an estate of which the company is executor, administrator or trustee.

**Length of time unclaimed** Five years.

**Procedure** After five years awaiting claims, the money is paid into the Testamentary and Trust Fund administered by the Treasury and shall be invested in Government debentures and stock.

The procedure whereby the beneficiary can recover his money and interest is identical to that laid down in the West Australian *Trustee Executor and Agency Co Ltd Act*, except that a period of twelve years is permitted for recovery with the same exceptions for persons under a disability.

### **The Audit Act 1904, ss 26-29**

**Scope**

- (a) Money payable to the Treasurer pursuant to any act and falling into the hands of a public servant by virtue of his office service or employment for or on account or for the use and benefit of any other person.
- (b) Other money paid to a public servant by virtue of his office service or employment for or on account or for the use and benefit of any other person.

**Length of time unclaimed**

- (a) Six years
- (b) Six years and three months.

**Procedure**

- (a) Money is paid into the Trust Fund as directed by the Treasurer.
- (b) Money is paid into a bank account, interest being payable to the Consolidated Revenue Fund, but before the expiry of three months shall be paid into the Trust Fund.

All money remaining in the Trust Fund as shall be unclaimed for six years is transferred to the Consolidated Revenue Fund.

No person is then entitled to recover the money if unclaimed for six years but time does not run against a person while he is an infant or of unsound mind. The Governor has authority to order payment without interest at any time to a person establishing a claim to the money.

## **APPENDIX VI**

### **Persons who commented on the Working Paper**

Aboriginal Affairs Planning Authority

Corporate Affairs Office

Mr D S Francis

Law Society of Western Australia

Perpetual Trustee Ltd

Treasury Department

West Australian Trustees Ltd

The Chairman of the State Legislation Review Committee of the Western Australian Branch of the Institute of Chartered Accounts in Australia.