

## Unclaimed Money

### Terms of Reference

In 1973 the Commission was asked to consider and report upon the subject of unclaimed money.

### Background of Reference

Prior to the reference, the law in Western Australia relating to unclaimed money differed depending on how a potential claim to the money might arise. The law could conveniently be divided into four categories:

- (a) where money was owed, normally in the form of debt. This was governed by the *Unclaimed Moneys Act 1912–1947 (WA)* ("the Act");
- (b) where money had been lost but found. This was governed by legal principles derived from case law;
- (c) where money owed by a trustee to a beneficiary remained unclaimed; and
- (d) unclaimed money owing under special circumstances dealt with by specific statutes.

Under each category, there existed provision for money to be paid to the Treasurer where it remained unclaimed for a certain period of time. However the requisite period of time before such payment was required differed in respect of each category. Further, upon receiving a payment, the Treasurer was required to deal with the money differently depending on which category the payment arose from. There was an obvious need for consolidation of the law.

There were also specific concerns arising from provisions of the Act. Prior to the reference the Treasurer would hold unclaimed moneys paid to the state for six years before paying them into the Consolidated Revenue. Payment into the Consolidated Revenue was being justified under certain provisions of the *Audit Act 1904 (WA)*; however it was not clear that these provisions were intended to apply to unclaimed moneys. This uncertainty as to the disposition of capital was a primary reason for the reference.<sup>1</sup>

In 1976 the Commission issued a working paper that discussed the issues involved and examined the law in other jurisdictions. It was found that there was a large amount of variation between jurisdictions. It was also noted that the Act had been passed in response to concerns regarding unclaimed money in bank accounts. These concerns were to a large extent no longer relevant as moneys held in trading accounts were now governed by the *Banking Act 1959 (Cth)*.

### Nature and Extent of Consultation

Consultation was broad ranging. Copies of the working paper were sent to (amongst others): members of the legal profession; judges of the Supreme and District Courts; magistrates; legal academics; banks; various statutory bodies; the Institute of Chartered Accountants; private trustee companies; and several large Western Australian corporations. Public comment was also sought by a notice placed in *The West Australian* newspaper. After considering the responses to the working paper the Commission submitted its final report in December 1980.<sup>2</sup>

### Recommendations

The Commission recommended that the Act be repealed and that a revised Act be passed to deal with the payment of unclaimed trust money and non-trust money to the Treasurer. The new Act would replace the provisions currently dealing with such payments under the *Public Trustee Act 1941 (WA)*, the various private trustee company Acts, and the *Audit Act 1904 (WA)*.

<sup>1</sup> Law Reform Commission of Western Australia, *Unclaimed Money*, Project No 51 (1980) 6.

<sup>2</sup> *Ibid.*

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The Commission's primary recommendations were that:

- The new Act should contain provisions compelling certain categories of person to pay unclaimed money to the Treasurer.
- The new Act should contain a provision enabling the voluntary payment of unclaimed money to the Treasurer.
- The legislation should be clear in defining when money is unclaimed, and the circumstances under which an obligation to pay the money to the Treasurer would arise.
- Prior to the payment of unclaimed money to the Treasurer, notice of the money and the persons to whom it is owed should be advertised.
- Unclaimed moneys paid to the Treasurer should be available immediately for public use.
- A person should be able to claim money owing to him from the Treasurer at any time.
- There should be no change to the law relating to persons who find money that has been lost and remains unclaimed.
- With several modifications, unclaimed money owing to Aborigines should continue to be governed by the *Aboriginal Affairs Planning Authority Act 1972 (WA)* ss 35–36.

A comprehensive outline of the Commission's recommendations may be found at pages 68–73 of the final report.

### Legislative or Other Action Undertaken

In 1990 Parliament passed the *Unclaimed Money Act 1990 (WA)* which substantially implemented the Commission's recommendations. The only recommendations not implemented by the legislation were those incidental to the main focus of the report. These dealt with reforms to the *Aboriginal Affairs Planning Authority Act 1972 (WA)* and to the jurisdiction of Supreme Court Masters to make orders under s 66 of the *Trustees Act 1962 (WA)*.