

Western Australia

**Unclaimed Money (Superannuation and RSA  
Providers) Act 2003**

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As at 17 Apr 2003

No. 19 of 2003

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# Unclaimed Money (Superannuation and RSA Providers) Act 2003

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Western Australia

## **Unclaimed Money (Superannuation and RSA Providers) Act 2003**

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**No. 19 of 2003**

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**An Act to enable unclaimed money held by certain superannuation  
and RSA providers to be paid to the Treasurer, to provide for a  
register of such unclaimed money, and for related purposes.**

*[Assented to 17 April 2003]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Unclaimed Money (Superannuation and RSA Providers) Act 2003*.

### **2. Commencement**

This Act comes into operation at the beginning of the first half-year after this Act receives the Royal Assent.

### **3. Overview of this Act**

- (1) The *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth requires superannuation providers to give information about unclaimed money to the Commonwealth Commissioner of Taxation and to make payments of unclaimed money to the Commissioner.
- (2) However, that Act allows superannuation providers to give that information and pay that money to an authority of the State instead if a law of the State imposes on superannuation providers certain obligations as to providing that information and paying that money.
- (3) This Act imposes those obligations on superannuation providers.

### **4. Meaning of terms used in this Act**

In this Act, unless the contrary intention appears —

**“approved deposit fund”** has the meaning given by the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

**“approved form”** means a form approved by the Treasurer under section 22 for the purposes of the provision in which the term is used;

**“authorised officer”** means a person who has been authorised by the Treasurer under section 24 for the purposes of the provision in which the term is used;

**“Commonwealth Act”** means the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth;

**“Commonwealth Commissioner of Taxation”** means the person holding, or acting in, the office of Commissioner of Taxation under the *Taxation Administration Act 1953* of the Commonwealth;

**“half-year”** means a period of 6 months ending on 30 June or 31 December;

**“member”** means —

- (a) a member of a regulated superannuation fund;
- (b) a member of a regulated exempt public sector superannuation scheme;
- (c) a depositor with an approved deposit fund; or
- (d) a holder of an RSA;

**“protected document”** means a document that —

- (a) contains information about a person; and
- (b) is obtained or made by a person referred to in section 16(1) in the course of, or because of, the person’s duties under or in relation to this Act;

**“protected information”** means information that —

- (a) concerns a person; and
- (b) is disclosed to, or obtained by, a person referred to in section 16(1) in the course of, or because of, the person’s duties under or in relation to this Act;

**“registered office”**, in relation to a corporation registered under the *Corporations Act 2001* of the Commonwealth, means the corporation’s registered office under that Act;

**“regulated exempt public sector superannuation scheme”** has the meaning given by Part 25A of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

**“regulated superannuation fund”** has the meaning given by the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

**“RSA”** or **“retirement savings account”** has the meaning given by the *Retirement Savings Accounts Act 1997* of the Commonwealth;

**“superannuation provider”** means a superannuation provider, within the meaning given by the Commonwealth Act, that or who is —

- (a) a body corporate that has its registered office or principal place of business in the State; or
- (b) a natural person who has his or her principal place of business in the State;

Note: A superannuation provider includes a trustee of a regulated superannuation fund, a trustee of an approved deposit fund and an RSA provider, see section 8 of the Commonwealth Act.

**“tax file number”** has the meaning given by the *Income Tax Assessment Act 1936* of the Commonwealth;

**“Treasurer”** means the Treasurer of the State;

**“trustee”** has the meaning given by the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

**“unclaimed money”** has the meaning given by sections 12 and 14 of the Commonwealth Act.

## **5. Status of notes**

Notes in this Act are provided to assist understanding and do not form part of the Act.



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## **Part 2 — Obligations of superannuation providers**

### **6. Statement of unclaimed money (Commonwealth Act s.18(4) and (5) table items 1 and 2)**

- (1) A superannuation provider must give to the Treasurer a statement of all unclaimed money as at the end of each half-year.
- (2) The statement must contain the information required by the Treasurer and be in an approved form.

Note: Section 25(2) of the Commonwealth Act provides that the superannuation provider may be required to set out in the approved form —

- (a) the tax file number of the superannuation provider; and
- (b) the tax file number of any member of the fund to whom the statement relates and who has quoted his or her tax file number to the superannuation provider.

(3) If —

- (a) the superannuation provider pays any of the unclaimed money to a person who is entitled to it; and
- (b) the payment is made between the end of the half-year and the day on which the statement is given to the Treasurer,

the statement must also contain the particulars relating to the amounts paid that are required by the Treasurer, as set out in the approved form.

(4) A statement under subsection (1) must be given —

- (a) in relation to a half-year ending on 30 June in a calendar year — before 1 November in that calendar year; or
- (b) in relation to a half-year ending on 31 December in a calendar year — before 1 May in the following calendar year.

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- (5) The Treasurer may, in writing, provide for a later day to apply under subsection (4)(a) or (b) which may be done before, on or after the day specified in the paragraph concerned.
- (6) A superannuation provider commits an offence if the superannuation provider fails to comply with an obligation set out in subsection (1), (2), (3) or (4).  
Penalty: \$11 000.
- (7) To the extent that it relates to subsection (4), subsection (6) does not apply if —
  - (a) the Treasurer has provided under subsection (5) for a later day to apply under subsection (4)(a) or (b); and
  - (b) the superannuation provider gave the statement under subsection (1) before that later day.

**7. Payment of unclaimed money to the Treasurer  
(Commonwealth Act s.18(4) table item 3)**

- (1) On giving the statement to the Treasurer, the superannuation provider must pay to the Treasurer the amount worked out using the following formula —

$$\frac{\text{Amount of unclaimed money specified in statement}}{\text{Unclaimed money paid by provider}}$$

where —

**“amount of unclaimed money specified in statement”** means the amount specified in the statement in accordance with section 6(1);

**“unclaimed money paid by provider”** means any amounts specified in the statement in accordance with section 6(3).

- (2) A superannuation provider commits an offence if the superannuation provider fails to comply with the obligation set out in subsection (1).

Penalty: \$11 000.

**8. Records of superannuation providers**

- (1) A superannuation provider must keep records that record and explain all transactions and other acts engaged in by the provider, or required to be engaged in by the provider, under this Act.
- (2) The records must be —
  - (a) kept in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and
  - (b) kept at the superannuation provider's registered office or principal place of business.
- (3) A superannuation provider who has possession of any records kept or obtained under or for the purposes of this Act must retain them until the later of —
  - (a) the end of 5 years after they were prepared or obtained; or
  - (b) the completion of the transactions or acts to which those records relate.
- (4) This section does not require a superannuation provider to retain records if the Treasurer has notified the provider that the retention of the records is not required.
- (5) A superannuation provider commits an offence if the superannuation provider fails to comply with an obligation set out in this section.  
Penalty: \$6 600.

**9. Discharge of superannuation providers from liability**

Upon payment to the Treasurer of an amount as required by this Act, the superannuation provider is discharged from further liability in respect of that amount.

**10. Superannuation providers not in breach of trust**

Nothing done by a superannuation provider in accordance with this Act is to be regarded for any purpose as constituting a breach of trust by the superannuation provider.

## Part 3 — Administration

### Division 1 — The register, and payment of unclaimed money by the Treasurer

**11. Register of unclaimed money (Commonwealth Act s.18(4) table item 4)**

- (1) The Treasurer must keep a register that contains particulars of —
- (a) unclaimed money paid by a superannuation provider to the Treasurer under this Act; and
  - (b) each member in respect of whom unclaimed money has been paid to the Treasurer.

Note: The register may contain a person's tax file number (see section 27 of the Commonwealth Act).

- (2) The register may contain information —
- (a) originally contained in the register referred to in section 19 of the Commonwealth Act and kept by the Commonwealth Commissioner of Taxation; and
  - (b) given to the Treasurer by the Commissioner.
- (3) The register may contain other information given to the Treasurer that is of the type contained in the register.
- (4) The register may contain the following —
- (a) information relating to members of a regulated exempt public sector superannuation scheme;
  - (b) particulars that, if the scheme were a regulated superannuation fund, would be particulars of unclaimed money in respect of the scheme;
  - (c) information given to the Treasurer by the trustee of the scheme.

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**Part 3** Administration

**Division 1** The register, and payment of unclaimed money by the Treasurer

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- (5) A trustee of a regulated exempt public sector superannuation scheme may, in the approved form, give the information referred to in subsection (4) to the Treasurer.

Note: Section 26(2) of the Commonwealth Act provides that the trustee may set out in the approved form —

- (a) the tax file number of the scheme; and
- (b) the tax file number of any member of the scheme who has quoted his or her tax file number to the trustee.

**12. Publication etc. of information in the register**

- (1) The Treasurer may authorise information in the register mentioned in section 11 to be —
- (a) published in the *Gazette*;
  - (b) made available to the public (whether or not on the payment of a fee) in such other manner as the Treasurer determines; or
  - (c) made available to a particular person (whether or not on the payment of a fee) in such manner as the Treasurer determines.
- (2) The authorisation may extend to so much of the information in the register as the Treasurer considers appropriate.
- (3) Subsection (1) does not apply to tax file numbers.

**13. Payment of unclaimed money by the Treasurer (Commonwealth Act s.18(5) table items 3 and 4)**

- (1) The Treasurer must pay unclaimed money to a person if —
- (a) unclaimed money has been paid to the Treasurer under section 7 by a superannuation provider; and
  - (b) the Treasurer is satisfied, on application made in the approved form by the person, that the superannuation provider would have paid the unclaimed money to the person had the money not been paid to the Treasurer.

- (2) If a superannuation provider satisfies the Treasurer that an amount paid to the Treasurer under section 7 exceeds the amount that would have been paid to the person concerned, the Treasurer must refund to the superannuation provider the amount of the excess.
- (3) Payments under this section are charged to the Consolidated Fund which is appropriated accordingly.

### **Division 2 — Access to information**

#### **14. Access to premises**

- (1) For the purposes of this Act, an authorised officer —
  - (a) may, at any reasonable time, enter and remain on any premises;
  - (b) is entitled to full and free access at any reasonable time to all documents; and
  - (c) may inspect, examine, make copies of, or take extracts from, any documents.
- (2) An authorised officer is not entitled to enter or remain on any premises if, after having been requested by the occupier to produce proof of his or her authority, the authorised officer does not produce a written authority signed by the Treasurer stating that the officer is authorised to exercise powers under this section.
- (3) If an authorised officer enters premises, or proposes to enter premises, the occupier must provide the officer with all reasonable facilities and assistance for the effective exercise of the officer's powers under this section.
- (4) An occupier commits an offence if the occupier fails to comply with the obligation set out in subsection (3).

Penalty: \$1 100.

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**15. Obtaining information and documents**

- (1) The Treasurer may, for the purposes of this Act, by written notice, require a person —
  - (a) to give to the Treasurer, within a reasonable period, and in a reasonable manner, stated in the notice, any information that the Treasurer requires;
  - (b) to attend before the Treasurer, or an authorised officer, at a reasonable time and place stated in the notice, and answer questions; and
  - (c) to produce to the Treasurer, or an authorised officer, at a reasonable time and place stated in the notice, any documents in the custody or under the control of the person.
- (2) The Treasurer may require the information or answers to be verified or given on oath or affirmation, and either orally or in writing, and, for that purpose, the Treasurer or an authorised officer may administer an oath or affirmation.
- (3) The oath to be taken or affirmation to be made by a person is an oath or affirmation that the information or answers the person will give will be true.
- (4) The regulations are to prescribe scales of expenses to be allowed to persons required to attend under this section.
- (5) A person commits an offence if the person fails to comply with a requirement under subsection (1) or (2).

Penalty: \$2 200.



## **Part 4 — Privacy**

### **16. Persons to whom this Part applies**

- (1) This Part applies to a person who is or has been —
  - (a) the Treasurer;
  - (b) a person to whom the Treasurer has delegated a function or power under this Act;
  - (c) the holder of an office in the Public Service; or
  - (d) otherwise appointed or employed by the State or a provider of services for the State.
- (2) A person to whom this Part applies must, if and when required by the Treasurer to do so, make an oath or declaration to maintain secrecy in accordance with this Part.
- (3) The Treasurer may determine, in writing —
  - (a) the form of the oath or declaration; and
  - (b) the manner in which the oath or declaration must be made.

### **17. Information may be recorded or divulged only for the purposes of this Act**

A person to whom this Part applies is guilty of an offence if the person —

- (a) makes a record of any protected information; or
- (b) whether directly or indirectly, divulges or communicates to a person any protected information about another person,

and the record is made, or the information is divulged or communicated other than —

- (c) under or for the purposes of this Act; or
- (d) in the performance of duties, as a person to whom this Part applies, under or in relation to this Act.

Penalty: Imprisonment for 2 years.

**18. Courts may not require information or documents**

A person to whom this Part applies is not required —

- (a) to divulge or communicate protected information to a court; or
- (b) to produce a protected document in court,

except where it is necessary to do so for the purpose of implementing this Act.

**19. Information may be divulged to persons performing duties under this Act**

Nothing in this Act, or in any other Act of which the Treasurer has the general administration, prohibits the Treasurer or a person authorised by the Treasurer from divulging or communicating any information to a person performing, as a person to whom this Part applies, duties under or in relation to this Act for the purpose of enabling that person to perform those duties.

**20. Information may be divulged to a court for the purposes of this Act**

Nothing in this Act, or in any other Act of which the Treasurer has the general administration, prohibits the Treasurer, or a person authorised by the Treasurer, from —

- (a) divulging or communicating to a court any information obtained under or for the purposes of this Act; or
- (b) producing in court a document obtained or made under or for the purposes of this Act,

where it is necessary to do so for the purpose of implementing this Act.

**21. Information may be divulged with the consent of the superannuation provider or individual**

This Act does not prohibit the Treasurer, or a person authorised by the Treasurer, from divulging or communicating any protected information —

- (a) relating to the affairs of a superannuation provider or a trustee of a regulated exempt public sector superannuation scheme if the provider or trustee agrees in writing to the divulging or communicating of the information; or
- (b) relating to an individual if the individual agrees in writing to the divulging or communicating of the information.

## Part 5 — Miscellaneous

### 22. Approved forms

- (1) A notice, application, statement or other document is in the **“approved form”** if —
  - (a) it is in the form approved in writing by the Treasurer in relation to that kind of notice, application, statement or other document;
  - (b) it contains the information that the form requires, and is accompanied by such further information as the form requires; and
  - (c) it is lodged at the place and in the manner that the Treasurer requires.
- (2) An approval by the Treasurer of a form of notice, application, statement or other document for the purposes of subsection (1) may require or permit the document to be given on a specified kind of data processing device in accordance with specified software requirements.
- (3) The Treasurer may combine in the same approved form more than one notice, application, statement or other document.

### 23. Delegation by the Treasurer

- (1) The Treasurer may, either generally or as otherwise provided by the instrument of delegation, delegate to any Minister any functions or powers that the Treasurer has under this Act, other than this power of delegation.
- (2) The Treasurer or any Minister to whom any function has been delegated under subsection (1) may, either generally or as otherwise provided by the instrument of delegation, delegate to any officer of the Public Service any functions or powers that the Treasurer has under this Act or that the Minister has under the delegation, other than this power of delegation.

- (3) The delegation must be in writing signed by the Treasurer or Minister (which ever is relevant).
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Treasurer or Minister (which ever is relevant) to perform a function through an officer or agent.

**24. Authorised officers**

- (1) The Treasurer may, in writing, authorise a person who is the holder of a specified office in the Public Service to be an authorised officer for the purposes of the specified provision or provisions of this Act.
- (2) In this section —  
“**specified**” means specified in the authorisation.

**25. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may —
  - (a) prescribe fees, or a basis for calculating fees, in respect of any matter under this Act; and
  - (b) prescribe penalties, not exceeding a fine of \$550, for offences against the regulations.

**26. *Unclaimed Money Act 1990* amended**

- (1) The amendment in this section is to the *Unclaimed Money Act 1990*\*.

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[\* *Reprinted as at 5 November 1999.*]

- (2) After section 4(3)(a)(iv) the following subparagraph is inserted —

“

- (v) section 12 or 14 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*;

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