

## **Legislative Council—No 166**

As received from the House of Assembly and read a first time, 26 October 2021

South Australia

# **Unclaimed Money Bill 2021**

A BILL FOR

An Act to make provision for the publication of information about, and the repayment of, unclaimed money, to provide for the payment of unclaimed money into the Consolidated Account, to make related amendments to various Acts, to repeal the *Unclaimed Moneys Act 1891* and for other purposes.

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**The Parliament of South Australia enacts as follows:**

**1—Short title**

This Act may be cited as the *Unclaimed Money Act 2021*.

**2—Commencement**

5 This Act comes into operation on a day to be fixed by proclamation.

**3—Interpretation**

In this Act, unless the contrary intention appears—

*corporation* includes the liquidator, administrator or receiver of a corporation;

10 *owner* of money means the person who is entitled to the money and includes the person's executors, administrators and assigns and the legal representative or agent of the person, executor, administrator or assign;

*prescribed amount* means—

- 15 (a) \$50; or  
(b) if another amount is prescribed by regulation for the purposes of this definition—that amount;

*repealed Act* means the *Unclaimed Moneys Act 1891*;

*unclaimed money* means any sum of money (including, but not limited to, principal, interest, dividends, bonuses and profits) that—

- 20 (a) has come into the possession of a corporation by virtue of a transaction with the owner of the money occurring in this State; and  
(b) has been held by the corporation for at least 5 years; and  
(c) in respect of which there has been no claim by the owner against the corporation.

**4—Register of unclaimed money**

- 25 (1) A corporation to which this section applies must—  
(a) maintain a register of unclaimed money in a form determined by the Treasurer; and  
(b) make the register available, free of charge—

- (i) on the corporation's website; or
- (ii) on a website approved by the Treasurer for the purposes of this subsection; and

(c) by 31 January each year, enter into the register the particulars determined by the Treasurer relating to unclaimed money exceeding the prescribed amount held by the corporation as at 1 January in that year.

Maximum penalty: \$5 000.

(2) This section applies to a corporation that carries on business in this State other than—

- (a) a corporation established on a non-profit basis; or
- (b) an ADI; or
- (c) a superannuation provider within the meaning of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth; or
- (d) a corporation of a prescribed kind.

### **5—Unclaimed money to be paid to Treasurer**

(1) Unclaimed money that has not been paid by a corporation to the owner of the money before the second anniversary of the day on which notice of the unclaimed money first appeared on a register of unclaimed money maintained by the corporation (whether under this Act or the repealed Act) must be paid by the corporation to the Treasurer within 4 months after that anniversary.

Maximum penalty: \$5 000.

(2) Money paid to the Treasurer under subsection (1) must be credited to the Consolidated Account.

### **6—Other money may be paid to Treasurer**

(1) If—

(a) a person (not being a corporation to which section 4 applies) has been in possession of money, of an amount not less than the prescribed amount, for at least 1 year; and

(b) the owner of the money cannot be found,

the person may pay the money to the Treasurer.

(2) A person making a payment to the Treasurer under subsection (1) must provide, in the manner and form approved by the Treasurer, such information as the Treasurer may require in relation to the payment.

(3) Money paid to the Treasurer under subsection (1) must be credited to the Consolidated Account.

(4) If the Treasurer receives money under this section, the person who paid the money is discharged from any further liability in respect of the money.

## 7—Treasurer may pay money to lawful claimant

- 5 (1) If the Treasurer is satisfied, on application made in a manner and form approved by the Treasurer, that the applicant is the owner of money that has been paid to the Treasurer under this Act or the repealed Act, the Treasurer may pay the money to the applicant.
- (2) An application under subsection (1) may not be made—
- (a) for an amount that is less than the prescribed amount; or
- (b) more than 25 years after—
- 10 (i) in the case of an application relating to unclaimed money—the day on which notice of the money first appeared on a register of unclaimed money (whether under this Act or the repealed Act); or
- (ii) in any other case—the day on which the money was received by the Treasurer (under this Act or the repealed Act).
- (3) Subsection (2)(a) does not apply in relation to an application for transitional money made within 5 years of the commencement of this section.
- 15 (4) Subsection (2)(b) does not apply in relation to an application for transitional money made within 5 years of the commencement of this section if, on that commencement, 25 years have passed since the day on which notice of the money first appeared on a register of unclaimed money or the money was received by the Treasurer.
- 20 (5) No interest is payable in respect of a payment made under subsection (1).
- (6) A payment under subsection (1) is to be made from the Consolidated Account, which is appropriated to the necessary extent.
- (7) If a payment is made to a person under this section, the Crown has no further liability in respect of the money that constituted the payment.
- 25 (8) Subsection (7) does not prevent another person claiming to be the owner of the money from taking action for recovery of the money from the person to whom the payment was made.
- (9) In this section—
- transitional money* means—
- 30 (a) unclaimed money that was, on the commencement of this section, listed on a register of unclaimed money maintained under the repealed Act; or
- (b) money that was paid to the Treasurer under section 7A of the repealed Act.

## 8—Treasurer's power to require information

- 35 (1) The Treasurer may, at any time, examine accounts of a corporation relating to unclaimed money referred to in the corporation's register of unclaimed money.
- (2) For the purposes of subsection (1), the Treasurer may, by written notice given to a person, require the person to—
- (a) give the Treasurer, within a time and in a manner stated in the notice (which must be reasonable), information in the person's possession that the Treasurer reasonably requires; and
- 40

(b) verify the information by statutory declaration.

Maximum penalty: \$5 000.

(3) A notice to be given to a person under subsection (2) may—

(a) be given to the person personally; or

(b) be posted in an envelope addressed to the person's last known address; or

(c) be transmitted by email to the person's email address (in which case the notice will be taken to have been given or served at the time of transmission).

## 9—Exemptions

The Treasurer may exempt a specified person, or class of persons, from the application of this Act or provisions of this Act, absolutely or subject to conditions.

## 10—Delegation

(1) The Treasurer may delegate a power or function vested in or conferred on the Treasurer by or under this Act—

(a) to a particular person or body; or

(b) to the person for the time being holding or acting in a particular office or position.

(2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation—

(a) may be absolute or conditional; and

(b) does not derogate from the power of the delegator to act in a matter; and

(c) is revocable at will by the delegator.

## 11—Continuing offence

(1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—

(a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and

(b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

(2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

## 12—Regulations

(1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

- (2) The regulations may—
- (a) be of general or limited application; and
  - (b) make different provision according to the persons, things or circumstances to which they are expressed to apply.

## **Schedule 1—Related amendments and repeal**

### **Part 1—Preliminary**

#### **1—Amendment provisions**

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### **Part 2—Amendment of *Correctional Services Act 1982***

#### **2—Amendment of section 31—Prisoner allowances and other money**

Section 31(5a)(e)—delete "as unclaimed money for the purposes of the *Unclaimed Moneys Act 1891*" and substitute:

under section 6 of the *Unclaimed Money Act 2021*

### **Part 3—Amendment of *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007***

#### **3—Amendment of section 20—Disposal of vehicles**

Section 20(6)(b)(iii)—delete "section 7A of the *Unclaimed Moneys Act 1891*" and substitute:

section 6 of the *Unclaimed Money Act 2021*

### **Part 4—Amendment of *Emergency Services Funding Act 1998***

#### **4—Amendment of section 20—Sale of land for non-payment of levy**

Section 20(10)—delete "as unclaimed money under the *Unclaimed Moneys Act 1891*" and substitute:

in accordance with section 6 of the *Unclaimed Money Act 2021* as money the owner of which cannot be found

### **Part 5—Amendment of *Fines Enforcement and Debt Recovery Act 2017***

#### **5—Amendment of section 42—Power to dispose of uncollected seized vehicles**

- (1) Section 42(5)(a)—delete "section 7A of the *Unclaimed Moneys Act 1891*" and substitute:

section 6 of the *Unclaimed Money Act 2021*

- (2) Section 42(5)(b)—delete "section 7A of the *Unclaimed Moneys Act 1891*" and substitute:

section 6 of the *Unclaimed Money Act 2021*

## **Part 6—Amendment of *Ground Water (Qualco-Sunlands) Control Act 2000***

### **6—Amendment of section 59—Sale of land for non-payment**

5 Section 59(10)—delete "as unclaimed money under the *Unclaimed Moneys Act 1891*" and substitute:

in accordance with section 6 of the *Unclaimed Money Act 2021* as money the owner of which cannot be found

## **Part 7—Amendment of *Irrigation Act 2009***

### **7—Amendment of section 52—Sale of land for non-payment of charges**

10 Section 52(10)—delete "as unclaimed money under the *Unclaimed Moneys Act 1891*" and substitute:

in accordance with section 6 of the *Unclaimed Money Act 2021* as money the owner of which cannot be found

## **Part 8—Amendment of *Landscape South Australia Act 2019***

### **8—Amendment of section 86—Sale of land for non-payment of a levy**

15 Section 86(10)—delete "as unclaimed money under the *Unclaimed Moneys Act 1891*" and substitute:

in accordance with section 6 of the *Unclaimed Money Act 2021* as money the owner of which cannot be found

### **9—Amendment of section 158—Effect of cancellation of water management authorisations**

20 Section 158(7)—delete "as unclaimed money under the *Unclaimed Moneys Act 1891*" and substitute:

25 in accordance with section 6 of the *Unclaimed Money Act 2021* as money the owner of which cannot be found

## **Part 9—Amendment of *Local Government Act 1999***

### **10—Amendment of section 184—Sale of land for non-payment of rates**

30 Section 184(12)—delete "as unclaimed money under the *Unclaimed Moneys Act 1891*" and substitute:

in accordance with section 6 of the *Unclaimed Money Act 2021* as money the owner of which cannot be found

### **11—Amendment of Schedule 1B—Building upgrade agreements**

35 Schedule 1B, clause 9(3)—delete "as unclaimed money under the *Unclaimed Moneys Act 1891*" and substitute:

in accordance with section 6 of the *Unclaimed Money Act 2021* as money the owner of which cannot be found



## **Part 10—Amendment of *Native Vegetation Act 1991***

### **12—Amendment of section 33I—Sale of land for non-payment**

Section 33I(10)—delete "as unclaimed money under the *Unclaimed Moneys Act 1891*" and substitute:

5                               in accordance with section 6 of the *Unclaimed Money Act 2021* as money the owner of which cannot be found

## **Part 11—Amendment of *Renmark Irrigation Trust Act 2009***

### **13—Amendment of section 54—Sale of land for non-payment of charges**

10                               Section 54(10)—delete "as unclaimed money under the *Unclaimed Moneys Act 1891*" and substitute:

                                  in accordance with section 6 of the *Unclaimed Money Act 2021* as money the owner of which cannot be found

## **Part 12—Amendment of *South Australian Water Corporation Act 1994***

### **14—Amendment of section 18D—Power to sell land**

Section 18D(11)—delete "as unclaimed money under the *Unclaimed Moneys Act 1891*" and substitute:

                                  in accordance with section 6 of the *Unclaimed Money Act 2021* as money the owner of which cannot be found

## **Part 13—Repeal of *Unclaimed Moneys Act 1891***

### **15—Repeal of Act**

The *Unclaimed Moneys Act 1891* is repealed.