

DORMANT FUNDS ACT.

Act No. 25, 1942.

An Act to make provision for and in relation to certain funds donated, collected or acquired for charitable and other public purposes; to provide for the appointment of a Commissioner of Dormant Funds and of Charity Referees; and for purposes connected therewith. [Assented to, 18th November, 1942.]

George VI.
No. 25, 1942.

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 New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Dormant Funds Act, 1942."

Short title
and
citation.

(2)

Dormant Funds Act.**No. 25, 1942.**

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Definitions.

2. (1) In this Act unless the context or subject matter otherwise indicates or requires—

“Charitable purpose” includes any benevolent or philanthropic or patriotic purpose.

“Commissioner” means the Commissioner of Dormant Funds.

“Fund” means any property, real or personal, which has been donated to or collected or otherwise acquired by trustees for any charitable purpose or any purpose of a public character.

“Prescribed” means prescribed by this Act or by regulations made under this Act.

“Purpose of a public character” means any purpose (not being a charitable purpose) which is directed to the benefit of the public or a section of the public; and without prejudice to the generality of the foregoing provisions of this definition includes any of the following purposes:—

- (a) the provision of any war memorial or other public memorial whether such provision is to be made by the erection, extension or alteration of any structure or building or by the furnishing of moneys or in any other way whatsoever;
- (b) the granting of relief or assistance or comforts to persons (whether resident in New South Wales or elsewhere) adversely affected by circumstances arising out of the existence of a state of war or arising in any other way whatsoever;
- (c) the provision of parks, gardens and the like;
- (d) the establishment, provision, conducting or carrying on of an institution as defined in the Trustees of Schools of Arts Enabling Act, 1902.

(2)

(2) A fund or, where the fund has been partly ^{No. 25, 1942.} utilised or applied for the purposes for which it was donated, collected or acquired, the residue of the fund, shall be a dormant fund within the meaning of this Act if the Commissioner is satisfied that—

- (a) during a period of six years or upwards (whether such period commenced before or commences after the commencement of this Act) the trustees have not operated in the bona-fide utilisation or application of the fund or residue for the purposes for which it was donated, collected or acquired; or
- (b) it is not practicable or is no longer practicable to utilise or apply the fund or residue for such purposes; or
- (c) it is not likely that such purposes will be attainable within a reasonable time; or
- (d) the trusts or the objects of the trusts or the purposes for which the fund was donated, collected or acquired are uncertain or cannot be ascertained; or
- (e) in a case where the fund or residue is held in respect of an institution as defined in the Trustees of Schools of Arts Enabling Act, 1902, the institution is not functioning as such an institution.

For the purposes of paragraph (a) of this subsection the fund or residue shall not be deemed to have been so utilised or applied merely by reason of the fact that the same is invested or that the proceeds of such investments are placed on deposit or added to the fund or residue.

(3) Any person dissatisfied with a determination of the Commissioner under subsection two of this section may appeal to the Charity Referees.

Every such appeal shall be in the nature of a rehearing and shall be made in the manner and within the time prescribed.

(4) (a) If an appeal is made under subsection three of this section the determination of the Charity Referees on such appeal shall be final and conclusive.

(b)

Dormant Funds Act.

No. 25, 1942.

(b) If no such appeal is made under subsection three of this section the determination of the Commissioner shall be final and conclusive.

(5) No determination under this section of the Commissioner or of the Charity Referees shall be liable to be challenged, appealed against, reviewed, quashed or called in question by any court of judicature on any account whatsoever.

No writ of prohibition or certiorari shall lie in respect of any determination under this section of the Commissioner or of the Charity Referees.

(6) Notwithstanding anything in the foregoing provisions of this section the fund known as the "Sir Joseph Banks Memorial Fund" shall be deemed not to be a dormant fund within the meaning of this Act.

Certain
Acts not
affected.

3. (1) Nothing in this Act shall affect the operation of the National Relief Fund Act, 1914, or the Unclaimed Moneys Act, 1917.

(2) (a) The jurisdiction and powers of the Supreme Court shall not be exercisable in relation to any matter or thing in respect of which powers, authorities, duties or functions are conferred or imposed on the Commissioner or the Charity Referees by this Act:

Provided that any action, proceeding or thing which is pending or uncompleted in the Supreme Court at the commencement of this Act, in relation to the establishment of a scheme for the administration of a charity, may be carried on and completed as if this paragraph had not been enacted.

(b) Except to the extent provided in paragraph (a) of this subsection nothing in this Act shall affect the jurisdiction and powers of the Supreme Court.

Commis-
sioner of
Dormant
Funds.

4. (1) There shall be a Commissioner of Dormant Funds who shall have and may exercise and discharge all the powers, authorities, duties and functions conferred and imposed on the Commissioner by or under this Act.

(2) The person for the time being holding the office of Public Trustee shall be the Commissioner of Dormant Funds.

5.

5. (1) The Charity Referees shall be constituted as provided in this section from four persons appointed for the purpose by the Governor. No. 25, 1942.
Charity
Referees.

(2) One of such persons shall be a judge of the Supreme Court who shall be appointed on the nomination of the Chief Justice.

The person so appointed shall be the chairman of the Charity Referees.

(3) One other of such persons shall be appointed on the nomination of the State Executive of The Returned Sailors, Soldiers and Airmen's Imperial League of Australia (New South Wales Branch) or, if no such nomination is received within the time prescribed, the Governor may appoint any person to be the representative of the Returned Sailors, Soldiers and Airmen's Imperial League of Australia (New South Wales Branch).

(4) (a) One other of such persons shall be an officer of the Public Service who shall be appointed on the nomination of the Attorney-General.

(b) One other of such persons shall be an officer of the Public Service who shall be appointed on the nomination of the Minister of Public Instruction.

(5) For the purpose of exercising or discharging any power, authority, duty or function conferred or imposed on the Charity Referees by this Act, the Charity Referees shall be constituted by three of the persons appointed under this section, of whom one shall be the chairman, one other shall be the member referred to in subsection three of this section and the third shall be—

(a) where the matter arising before the Charity Referees relates to a dormant fund in respect of an institution as defined in the Trustees of Schools of Arts Enabling Act, 1902—the person referred to in paragraph (b) of subsection four of this section;

(b) in every other case—the person referred to in paragraph (a) of subsection four of this section.

(6) The decision of the chairman upon any question of law or procedure which may arise in any matter before the Charity Referees shall be the decision of the Charity Referees.

No. 25, 1942.

(7) Where the Charity Referees are divided in opinion as to the decision to be given on any question (not being a question to which subsection six of this section relates), the question shall be decided according to the opinion of the majority.

Returns as
to funds.

6. (1) The Commissioner may require the trustees or other persons by whom any fund is held or in whom any fund is vested to furnish or cause to be furnished within the time specified in the requirement a return setting forth such particulars relating to the fund or to the trustees of the fund as may be specified in the requirement.

Any such requirement may be made in relation to all funds or funds of a specified class or description or all funds other than funds of a specified class or description.

Any such requirement may be made by notice published in one or more newspapers, or may be made by notice in writing served personally or by post on the trustee or person concerned.

(2) Any trustee or person who, without reasonable cause, neglects or fails to furnish such return within the time so specified or who furnishes a return which is false or misleading in any material particular shall be guilty of an offence and shall be liable to a penalty not exceeding ten pounds.

Power to
require
accounts
and state-
ments.
cf. 18 and
19 Vict.,
c. 124, s. 6.

7. (1) The Commissioner may require written accounts and statements and answers to inquiries relating to any dormant fund to be rendered or made to him by any of the following persons, that is to say—

- (a) the trustees or other persons by whom the dormant fund is held or in whom the dormant fund is vested;
- (b) agents of any such trustees or persons;
- (c) depositories of any funds, securities or moneys comprising or forming part of the dormant fund;
- (d) persons having the possession or control of any documents concerning or relating to the dormant fund or the trusts thereof or the purposes for which the dormant fund was to be utilised or applied.

(2)

(2) The Commissioner may require the trustees or persons rendering or making any such account, statement or answer to verify the same by statutory declaration. No. 25, 1942.

(3) Nothing in this section shall extend to give the Commissioner any power of requiring from any person holding or claiming to hold any property adversely to the trustees of the dormant fund or free or discharged from the trusts attaching to the dormant fund, any information or the production of any deed or document whatsoever in relation to the property so held or claimed adversely or any trusts alleged to affect the same.

S. (1) The Commissioner may require all or any such trustees and persons as are referred to in section seven of this Act to attend before him, or before an officer appointed by him for the purpose, at such times and places as may reasonably be appointed, for the purpose of being examined in relation to the dormant fund, the trusts thereof, the purposes for which the dormant fund was to be utilised or applied, and to produce on such examination all books and documents in their custody and control relating to the dormant fund. Power to require attendance of trustees and persons. cf. 18 and 19 Vict., c. 124, s. 7.

(2) For the purposes of any examination under this section the Commissioner or the officer appointed to conduct the examination shall have the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part II of the Royal Commissions Act, 1923, as amended by subsequent Acts, and shall be deemed to be a sole commissioner within the meaning of that Division.

The provisions of the Royal Commissions Act, 1923, as amended by subsequent Acts, with the exception of section thirteen and Division 2 of Part II, shall, mutatis mutandis, apply to the examination and to any witness or person summoned by or appearing before the Commissioner or the officer conducting the examination.

9. (1) Any requirement of the Commissioner under section seven or section eight of this Act may be made by notice in writing served personally or by post on the trustee or person concerned. Notice of requirement under sec. 7 or sec. 8.

(2) Any trustee or person who refuses or neglects or fails to comply with any requirement of the Commissioner under section seven or section eight of this Act within

No. 25, 1942. within the time specified in the notice shall be guilty of an offence and shall be liable to a penalty not exceeding one hundred pounds.

Certificate
as to value
of dormant
fund.

10. (1) The Commissioner shall as soon as practicable after he has completed his investigations in relation to any dormant fund issue a certificate under his hand as to the value of the property comprised in the dormant fund.

(2) Such certificate shall be filed in the office of the Commissioner and shall be available for inspection by any person interested in the dormant fund or in the trusts thereof or in the purposes for which the dormant fund was to be utilised or applied.

(3) A certificate of the Commissioner issued under this section shall, for all purposes of this Act, be conclusive evidence of the value of the property comprised in the dormant fund.

Proposals
for applica-
tion of
dormant
fund.

11. (1) Where the Commissioner considers it reasonable so to do he may formulate proposals for the utilisation or application of any dormant fund.

(2) Such proposals shall be in the form of a draft order—

- (a) authorising the trustees of the dormant fund to apply the same or the income thereof or the proceeds of the realisation thereof for some or one of the trusts thereof or of the purposes for which the same was to be utilised or applied exclusively of the other or others of such trusts or purposes; or
- (b) for the establishment of a scheme for the administration of the dormant fund, the appointment of trustees for that purpose and the vesting of the dormant fund in such trustees; or
- (c) directing the transfer of the dormant fund to such trustees as may be specified in the order and authorising such trustees to apply the dormant fund or the income thereof or the proceeds of the realisation thereof as if it were part of the trust property of which such trustees are the trustees.

The

The Public Trustee and any existing trustee of the dormant fund shall be eligible for appointment as trustee under paragraph (b) of this subsection. No. 25, 1942.

(3) Before formulating proposals under this section the Commissioner shall give due consideration to any representations or suggestions made by the trustees or other persons interested in the dormant fund, or in the trusts thereof or in the purposes for which the dormant fund was to be utilised or applied.

12. (1) Where the Commissioner has formulated proposals under section eleven of this Act in relation to a dormant fund the value of which does not exceed one hundred pounds he shall forward a copy of such proposals to the Attorney-General. Proposals—
dormant
fund not
exceeding
£100.

(2) The Attorney-General may approve or disapprove of any proposals forwarded to him under this section or may refer them back to the Commissioner for further consideration.

(3) Where the Attorney-General disapproves of proposals the Commissioner may formulate further proposals a copy of which shall thereupon be forwarded to the Attorney-General.

(4) Where the Attorney-General refers proposals back to the Commissioner for further consideration the Commissioner may vary or modify such proposals or formulate other proposals, and a copy of the proposals as so varied or modified or formulated shall thereupon be forwarded to the Attorney-General.

(5) Where the Attorney-General has approved of any proposals forwarded to him under this section, the Commissioner shall sign the draft order which shall thereupon have effect as an order made under this Act.

13. (1) Where the Commissioner has formulated proposals under section eleven of this Act in relation to a dormant fund the value of which exceeds one hundred pounds he shall publish in the Gazette and in one or more newspapers a notice of the nature referred to in this subsection. Proposals—
dormant
fund exceed-
ing £100.

Every such notice shall intimate that proposals have been formulated under this Act in relation to the dormant fund, shall specify a place at which a copy of such proposals may be inspected, and shall appoint a date, not being

No. 25, 1942. being earlier than three months after the date of publication of the notice in the Gazette, on or before which any person interested in the administration, utilisation or application of the dormant fund, may deliver or send to the Commissioner a request in writing that the proposals be referred to the Charity Referees, and an address at or to which any such request may be delivered or sent.

(2) (a) If within the time limited in the notice any such request is received by the Commissioner he shall refer the proposals to the Charity Referees, and shall forward to the Attorney-General a copy of the request.

(b) Where proposals are referred to the Charity Referees under this section the Charity Referees may consider the proposals and any representations made to them by or on behalf of the person making the request, or the Commissioner or the Attorney-General, and may thereupon approve the proposals or vary or amend the proposals or formulate new proposals.

(c) The proposals as finally approved by the Charity Referees shall be in the form of a draft order which may make provision for any of the matters referred to in subsection two of section eleven of this Act, and which, upon being signed by the Charity Referees, shall have effect as an order made under this Act.

(3) (a) If within the time limited in the notice no such request is received by the Commissioner he shall forward a copy of the proposals to the Attorney-General.

(b) The Attorney-General may approve of the proposals or may refer them back to the Commissioner for further consideration or may request the Commissioner to refer the proposals to the Charity Referees.

(c) Where the Attorney-General has approved of the proposals (whether as originally submitted or after they have been referred back for further consideration by the Commission), the Commissioner shall sign the draft order which shall thereupon have effect as an order made under this Act.

(d)

(d) Where the Attorney-General requests that the proposals be referred to the Charity Referees the Commissioner shall refer the proposals accordingly, and thereupon the provisions of paragraphs (b) and (c) of subsection two of this section shall apply. No. 25, 1942.

14. (1) Where an order under this Act is made by the Commissioner or by the Charity Referees the authority making such order may, by the same order, or the Commissioner may, by a subsequent order, give such directions as to him or them seem fit for the assurance, transfer, payment or vesting of any real or personal property comprising or forming part of the dormant fund. Supplementary order as assurance, transfer, etc.

(2) Any person who refuses or neglects to comply with the directions in any such order shall be guilty of an offence and shall be liable to a penalty not exceeding fifty pounds and to a further penalty not exceeding five pounds for every day during which the offence continues.

(3) Where any person directed by any such order to execute or make any assurance, transfer, payment or vesting of property, has refused or neglected to do so for a period of twenty-eight days, the Commissioner or the Charity Referees, as the case may be, may appoint any other person to execute or make such assurance, transfer, payment or vesting in the name of such first-mentioned person and to do all acts necessary to give validity and operation thereto. cf. Act No. 24, 1901, s. 90.

(4) The execution or making of such assurance, transfer, payment or vesting, and the assurance, transfer, payment or vesting so executed or made by the person so appointed shall, in all respects, have the same force or validity as if the same had been executed or made by the person directed by the order to execute or make the same.

15. (1) Every order made under this Act shall be binding upon and shall be complied with and carried into effect by the trustees or persons named or described therein. Effect of order.

(2) Every such order shall be a complete indemnity to all bankers or other depositories of any funds, securities or moneys comprising or forming part of the dormant fund, and to all trustees or persons named

Dormant Funds Act.

No. 25, 1942. named or described in the order for any act done pursuant to the order.

(3) No person named or described in the order shall be concerned to inquire as to the necessity for or propriety of such order or as to the authority of the Commissioner or of the Charity Referees to make the order.

(4) The making of an order under this Act shall, in favour of all trustees and other persons named or described in the order, and of any person deriving title through or under such trustees or persons, or by operation of the order, be conclusive evidence that all conditions precedent to the making of the order have been duly complied with and that the Commissioner or the Charity Referees, as the case may be, had jurisdiction to make such order.

(5) (a) Any order under this Act which provides for the appointment of trustees shall have the effect of an order made by the Supreme Court in its equitable jurisdiction, pursuant to section seventy of the Trustee Act, 1925-1940.

(b) Any order under this Act for the vesting of the dormant fund in trustees so appointed shall have the like effect as is provided in section seventy-eight of the Trustee Act, 1925-1940, in the case of a vesting order made by the Supreme Court in its equitable jurisdiction.

(6) All orders under this Act made by the Commissioner or by the Charity Referees shall be filed in the office of the Commissioner.

(7) The Commissioner shall keep an index of all orders made under this Act.

(8) Any person on payment of the prescribed fee may search in the index of orders and may inspect any order made under this Act.

**Procedure
of Charity
Referees.**

16. (1) The Charity Referees shall deal with any matter arising before them under this Act at public sittings.

(2) Where proposals have been referred to the Charity Referees under this Act the Charity Referees may require any person interested in the administration, utilisation or application of the dormant fund or in the proposals to attend before the Charity Referees for the purpose

purpose of being examined in relation to any matter arising out of such reference. No. 25, 1942.

(3) For the purposes of any such examination the Charity Referees and the chairman of the Charity Referees shall have the powers, authorities, protections and immunities conferred on commissioners and on the chairman of a commission respectively, by Division 1 of Part II of the Royal Commissions Act, 1923, as amended by subsequent Acts.

The provisions of the Royal Commissions Act, 1923, as amended by subsequent Acts, with the exception of section thirteen and Division 2 of Part II, shall, *mutatis mutandis*, apply to the examination and to any witness or person summoned by or appearing before the Charity Referees.

(4) Where, pursuant to a request under subsection two of section thirteen of this Act proposals are referred to the Charity Referees the costs of and incidental to such reference and of the proceedings thereon shall be in the discretion of the Charity Referees, but in no case shall costs be allowed out of the dormant fund.

The costs shall be subject to taxation by the taxing officers of the Supreme Court on the application of either party, but that taxation shall be subject to review by a judge of the Supreme Court.

The amount of the costs as taxed and allowed may be recovered as a debt in any court of competent jurisdiction.

17. In exercising and discharging any powers, authorities, duties and functions under this Act the Commissioner and the Charity Referees shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by any rules of evidence but may inform their minds on any matter in such manner as shall appear just. Commissioner and Charity Referees not bound by laws of evidence.

18. In formulating proposals under this Act the Commissioner and the Charity Referees shall give due consideration to the trusts of the dormant fund or the purposes for which the dormant fund may be utilised or applied but shall not be bound to comply with the principle known as the "Cy-pres principle." Commissioner and Charity Referees not bound to follow Cy-pres principle.

19.

No. 25, 1942.
Regulations.

19. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection one of this section the regulations may—

- (a) prescribe a scale of fees in respect of proceedings in relation to dormant funds before the Commissioner or the Charity Referees; and such scale may vary according to the amount or value of the dormant fund, the nature of the proceedings or according to any other circumstances which the Governor may consider relevant;
- (b) provide for the payment of travelling and sustenance expenses of the Charity Referees;
- (c) provide for the payment to the person referred to in subsection three of section five of this Act, of a fee for each meeting of the Charity Referees at which he is present.

(3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.