



New South Wales

Dormant Funds Amendment Act 1995 No 64

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Dormant Funds Amendment Act 1995 No 64

Act No 64, 1995

An Act to amend the *Dormant Funds Act 1942* with respect to the functions of the Commissioner of Dormant Funds and to appeals to the Charity Referees against decisions of that Commissioner, and for other purposes.
[Assented to 12 December 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Dormant Funds Amendment Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Dormant Funds Act 1942 No 25

The *Dormant Funds Act 1942* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Part 1, heading

Insert “Part 1 Preliminary” before section 1.

[2] Section 2 Definitions

Insert in alphabetical order in section 2 (1):

Dormant fund means a fund determined under section 5A to be a dormant fund.

[3] Section 2 (1)

Insert “, and, in the case of a fund that has been partly used for the purposes for which it was donated, collected or otherwise acquired, means the residue of the fund” after “public character”, in the definition of “Fund” in section 2 (1).

[4] Section 2 (2)–(6)

Omit section 2 (2)–(6).

[5] Section 3 Certain Acts not affected

Omit “*Unclaimed Moneys Act 1917*” from section 3 (1).
Insert instead “*Unclaimed Money Act 1982*”.

[6] Part 2, heading

Insert “**Part 2 Administration**” after section 3.

[7] Section 5 Charity Referees

Omit “Minister for the time being administering the Education and Public Instruction Act 1987” from section 5 (4) (b).
Insert instead “Minister for Education and Training”.

[8] Section 5 (7)

Insert after section 5 (7):

- (8) This section is subject to section 16A (Matter can be dealt with in the absence of Charity Referee in certain cases).

[9] Part 3, heading

Insert “**Part 3 Functions of Commissioner**” after section 5.

[10] Section 5A

Insert before section 6:

5A Commissioner may determine fund to be dormant

- (1) The Commissioner may determine a fund to be a dormant fund if satisfied that:
- (a) for at least the immediately preceding 6 years, the trustees have not used the fund genuinely for the purposes for which it was donated, collected or otherwise acquired, or
 - (b) it is not practicable to use the fund for those purposes, or
 - (c) it is unlikely that those purposes will be achieved 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 otherwise acquired are uncertain or cannot be ascertained, or
 - (e) if the fund is held for an institution within the meaning of the *Trustees of Schools of Arts Enabling Act 1902*—the institution is not functioning as such an institution.

A fund is not to be regarded as having been used as referred to in paragraph (a) merely because the fund is invested or merely because the proceeds of investment have been placed on deposit or have been added to the fund.

- (2) The Commissioner may revoke a determination under this section if, after making the determination, the Commissioner decides that the determination was based on inadequate, misleading or incorrect information. However, such a determination is not revocable after the Commissioner has made an order under this Act in respect of the fund to which the determination relates.
- (3) The revocation of a determination under this section does not prevent the Commissioner from making a further determination under this section with respect to the fund.
- (4) Subject to any appeal under section 15B, a determination or decision of the Commissioner under this section cannot for any reason be challenged before, or be reviewed, quashed or called into question by, any court. No proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of any determination or decision of the Commissioner under this section.

[11] Section 12 Proposals—dormant fund not exceeding \$10,000

Omit “\$2,000” from section 12 (1). Insert instead “\$10,000”.

[12] Section 13 Proposals—dormant fund exceeding \$10,000

Omit section 13 (1). Insert instead:

- (1) If the Commissioner has formulated proposals under section 11 in relation to a dormant fund the value of which exceeds \$10,000, the Commissioner must publish in the Gazette and in at least one newspaper a notice that:
 - (a) indicates that proposals have been formulated under this Act in relation to the dormant fund, and
 - (b) specifies a place where the proposals can be inspected, and

- (c) fixes a date (being not earlier than 30 days 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 fund may lodge with the Commissioner a request in writing that the Commissioner refer the proposals to the Charity Referees, and
 - (d) specifies an address at which any such request can be lodged.
- (1A) However, if the value of the dormant fund does not exceed \$50,000 and the Commissioner considers that the proposals so formulated are clearly appropriate, the Commissioner may dispense with the publication of the notice in a newspaper. If the Commissioner does so, the Commissioner must send a copy of the notice to the persons who are or were formerly the trustees of the fund (but only in so far as they are still alive and their whereabouts are known to the Commissioner).
- (1B) For the purposes of subsection (1), a notice may be published in any newspaper circulating throughout the State or, if the dormant fund was established and operated in a particular area of the State only, in any newspaper circulating throughout the State or that area.

[13] Section 15 Effect of order

Omit subsections (7) and (8) from section 15.

[14] Section 15A

Insert after section 15:

15A Register of orders to be kept

- (1) The Commissioner must establish and keep a register of all orders made under this Act.

- (2) The Commissioner must keep available for inspection at the Commissioner's office the register and the orders made under this Act. Any person who calls at the Commissioner's office during ordinary office hours and asks to do so is entitled, without charge, to inspect the register or any order made under this Act.
- (3) The regulations may make provision for or with respect to the keeping and inspection of the register and orders made under this Act.

[15] Part 4, heading

Insert "**Part 4 Functions of Charity Referees**" after section 15A:

[16] Section 15B

Insert before section 16:

15B Appeals to Charity Referees

- (1) Any person who is dissatisfied with a determination under section 5A, or the decision of the Commissioner revoking a determination under that section, may appeal to the Charity Referees against the determination or decision. An appeal must be lodged within the period prescribed by the regulations.
- (2) An appeal is to be dealt with by way of a new hearing. Fresh evidence, or evidence in addition to or substitution for the evidence on which the determination or decision appealed from was based, may, with the leave of the Charity Referees, be given at the hearing of an appeal.
- (3) A person who has lodged an appeal may withdraw the appeal at any time before the Charity Referees have decided it.

- (4) In deciding an appeal, the Charity Referees may:
- (a) confirm the determination or decision appealed from, or
 - (b) quash that determination or decision and, in the case of a determination, substitute such other determination as the Commissioner could have made on the matter to which the appeal relates, or
 - (c) remit the matter to the Commissioner to be dealt with as ordered by the Charity Referees.

The quashing of a decision made under section 5A has the effect of reinstating the determination to which the decision relates.

- (5) The decision of the Charity Referees on an appeal made under this section is final.
- (6) A decision of the Charity Referees under this section cannot for any reason be challenged before, or reviewed, quashed or called into question by, any court. No proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of any decision of the Charity Referees under this section.

[17] Section 16 Procedure of Charity Referees

Omit “section 2 (3)” from section 16 (2) (a).
Insert instead “section 15B”.

[18] Section 16 (4) (a)

Omit section 16 (4) (a). Insert instead:

- (a) an appeal under section 15B, and

[19] Section 16 (6)

Omit “section 2 (3)” from section 16 (6). Insert instead “section 15B”.

[20] Section 16A

Insert after section 16:

16A Matter can be dealt with in the absence of Charity Referee in certain cases

- (1) If, while the Charity Referees are dealing with a matter arising under this Act, one of the persons constituting those Referees (other than the chairman) ceases to hold office or for any reason becomes unable to continue with the matter, the matter may, if the chairman so decides, continue to be dealt with by the remaining 2 persons who constitute the Charity Referees.
- (2) If, while the Charity Referees are dealing with a matter arising under this Act, the chairman ceases to hold office or for any reason becomes unable to continue with the matter, the remaining persons who constitute those Referees may adjourn the matter.
- (3) A decision of the Charity Referees is not invalid only because, at the time they pronounce the decision, they are constituted differently from the way they were constituted when the decision was made.

[21] Part 5, heading

Insert “**Part 5 Miscellaneous**” after section 16A.

[22] Section 19 Regulations

Insert after section 19 (2) (c):

- (d) prescribe the practice and procedure for proceedings held by the Commissioner and by the Charity Referees.

[23] Section 20

Insert after section 19:

28 Savings and transitional provisions

Schedule 1 has effect.

[24] Schedule 1 Savings and transitional provisions

Insert after section 20:

Schedule 1 Savings and transitional provisions

(Section 20)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Dormant Funds Amendment Act 1995*.
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to that Act or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

Part 2 Provisions consequent on enactment of Dormant Funds Amendment 1995

2 Determinations of Commissioner

A determination of the Commissioner in force under section 2 (2) immediately before the commencement of section 5A is taken to be a determination in force under section 5A.

3 Appeals to Charity Referees

An appeal to the Charity Referees made under section 2 (3) before the commencement of section 15B and not determined before that commencement is taken to be an appeal made under section 15B.

4 Proposals—dormant fund exceeding \$2,000

- (1) Section 13 of this Act (as in force immediately before it was amended by Schedule 1 [12] to the *Dormant Funds Amendment Act 1995*) continues to apply to proposals formulated under section 11 of this Act before the commencement of that amendment as if that amendment had not commenced.
- (2) Section 13 of this Act (as in force immediately before it was amended by Schedule 1 [12] to the *Dormant Funds Amendment Act 1995*) continues to apply to notices published under that section before the commencement of that amendment as if that amendment had not commenced.

5 Index of orders

The index of orders kept under section 15 of this Act (as in force immediately before the commencement of Schedule 1 [14] to the *Dormant Funds Amendment Act 1995*) is taken to form part of the register established under section 15A of this Act.

6 Matters pending before the Charity Referees

Section 16A of this Act extends to matters that the Charity Referees were dealing with at the commencement of that section.

[Minister's second reading speech made in—
Legislative Council on 21 September 1995
Legislative Assembly on 12 October 1995]