

DORMANT FUNDS ACT 1942—REGULATION

(Dormant Funds Regulation 1994)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Dormant Funds Act 1942, has been pleased to make the Regulation set forth hereunder.

J. P. HANNAFORD, M.L.C.,
Attorney General.

Citation

1. This Regulation may be cited as the Dormant Funds Regulation 1994.

Commencement

2. This Regulation commences on 1 September 1994.

Definitions

3. In this Regulation:

“Prothonotary” means the Prothonotary of the Supreme Court;

“the Act” means the Dormant Funds Act 1942.

Determinations and appeals: sec. 2

4. (1) The Commissioner must cause notice of any determination under section 2 (2) of the Act (that is, a determination to the effect that a fund, or the residue of a fund, is a dormant fund):

(a) to be given to at least one of the trustees of the fund, if the Commissioner is aware of the name and address of at least one of those trustees; or

(b) to be published in such newspaper as the Commissioner may decide, in any other case.

(2) For the purposes of section 2 (3) of the Act, an appeal against a determination under section 2 (2) of the Act must be made:

- (a) within 30 days after the date on which notice is given as referred to in subclause (1); and
- (b) by means of a notice of appeal (in triplicate) lodged with the Commissioner.

(3) A notice of appeal must state an address for service of notices on the appellant.

(4) The Commissioner must cause any notice of appeal lodged with the Commissioner under subclause (2) to be referred to the Prothonotary.

(5) The Prothonotary must cause notice of the date fixed for the hearing of an appeal to be served on the Commissioner, the appellant and such other persons as, in the opinion of the Charity Referees, have an interest in the dormant fund the subject of the appeal.

Nomination of Charity Referee by State Executive of the RSL: sec. 5

5. For the purposes of section 5 (3) of the Act, the prescribed time within which the State Executive of The Returned Services League of Australia (New South Wales Branch) must nominate a person to fill a vacancy in the office of nominated member of the Charity Referees is 30 days after the date on which notice is given to the State Executive of the existence of the vacancy.

Request for referral to the Charity Referees of Commissioner's proposal: sec. 13

6. (1) A request under section 13 of the Act (that is, a request that a proposal formulated by the Commissioner in relation to a dormant fund be referred to the Charity Referees) must state an address for service of notices on the person by whom the request is made.

(2) The Commissioner must cause any such request received by the Commissioner to be referred to the Prothonotary.

(3) The Prothonotary must cause notice of the date fixed for the hearing of a request to be served on the Attorney General, the Commissioner, the person making the request and such other persons as appear, on the advice of the Charity Referees, to have an interest in the dormant fund the subject of the request.

Fee for formulation of proposal

7. (1) A fee is payable to the Commissioner with respect to any proposal for a dormant fund that is formulated by the Commissioner under section 11 of the Act.

(2) The amount of the fee is 5 per cent of the value of the dormant fund, as certified by the Commissioner under section 10 of the Act.

Fee for searching index of orders: sec. 15

8. For the purposes of section 15 (8) of the Act, the prescribed fee for searching the index of orders is \$5.

Travelling and sustenance allowances

9. (1) A Charity Referee is entitled to be reimbursed all reasonable expenses actually incurred in travelling between the City of Sydney and any place outside the City of Sydney where a meeting of the Charity Referees is held.

(2) If a meeting of the Charity Referees is held outside the County of Cumberland, a Charity Referee is also entitled to be paid the same sustenance allowances as are payable to public servants under the Public Sector Management Act 1988 in similar circumstances.

(3) The chairperson of the Charity Referees is not entitled to any allowance under this clause.

Service of notices

10. Any notice required by this Regulation to be served by the Prothonotary is to be served in such manner as the Charity Referees may direct, either generally or in the particular case.

Repeal

11. (1) All regulations in force under the Dormant Funds Act 1942 are repealed.

(2) Any act, matter or thing that, immediately before the repeal of the regulations referred to in subclause (1), had effect under those regulations continues to have effect under this Regulation.

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EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, without any changes in substance, the provisions of the regulations in force under the Dormant Funds Act 1942. The new Regulation makes provision with respect to the following matters:

- (a) requiring the giving of notice of determinations under section 2 of the Act (determinations that a fund is a dormant fund) and prescribing the procedure for making an appeal against such a determination (clause 4);
- (b) prescribing the time within which The Returned Services League must nominate its representative on the Charity Referees (clause 5);
- (c) prescribing the procedure for referring to the Charity Referees a proposal that has been formulated by the Commissioner with respect to a dormant fund (clause 6);
- (d) fixing the fees payable with respect to the formulation of proposals for dormant funds (clause 7);
- (e) fixing the fees for searching the index of orders kept under the Act (clause 8);
- (f) fixing the travelling and sustenance allowances payable to the Charity Referees (clause 9);
- (g) providing for the service of notices (clause 10);
- (h) providing for other minor, consequential and ancillary matters (clauses 1, 2, 3 and 11).

This Regulation is made under the Dormant Funds Act 1942, including section 19 (the general regulation making power) and sections 2, 5, 13 and 15.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
