



# Dormant Funds Regulation 2004

under the

Dormant Funds Act 1942

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Dormant Funds Act 1942*.

BOB DEBUS, M.P.,  
Attorney General

## Explanatory note

The object of this Regulation is to repeal and remake, with no substantial changes, the *Dormant Funds Regulation 1999*. This Regulation provides for the following matters:

- (a) requiring the giving of notice of determination under section 5A of the Act (determination that a fund is a dormant fund) and prescribing the procedure for making an appeal against such a determination,
- (b) prescribing the time within which the Returned Services League must nominate its representative on the Charity Referees,
- (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,
- (d) fixing the fees payable with respect to the formulation of proposals for dormant funds,
- (e) fixing the travelling and sustenance allowances payable to Charity Referees,
- (f) providing for the service of notices,
- (g) providing for other minor, consequential or ancillary matters.

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

## **2004 No 194**

Dormant Funds Regulation 2004

Explanatory note

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

This Regulation relates to matters of a machinery nature and matters not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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## 2004 No 194

Clause 1          Dormant Funds Regulation 2004

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### **Dormant Funds Regulation 2004**

under the

Dormant Funds Act 1942

#### **1 Name of Regulation**

This Regulation is the *Dormant Funds Regulation 2004*.

#### **2 Commencement**

This Regulation commences on 1 May 2004.

#### **3 Definitions**

In this Regulation:

*Prothonotary* means the Prothonotary of the Supreme Court.

*the Act* means the *Dormant Funds Act 1942*.

#### **4 Determination and appeals**

- (1) The Commissioner must cause notice of any determination under section 5A 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 a newspaper determined by the Commissioner, in any other case.
- (2) On revoking a determination under section 5A of the Act, the Commissioner must:
  - (a) cause notice of the revocation to be given to at least one of the trustees or former trustees of the fund concerned, or

- (b) if the Commissioner is not aware of the name and address of at least one of those trustees or former trustees, cause notice of the revocation to be published in a newspaper determined by the Commissioner.
- (3) An appeal under section 15B of the Act must be made:
  - (a) within 30 days after the date on which notice is given as referred to in subclause (1) or (2), and
  - (b) by means of a notice of appeal (in triplicate) lodged with the Commissioner.
- (4) A notice of appeal must state an address for service of notices on the appellant.
- (5) The Commissioner must cause any notice of appeal lodged with the Commissioner under subclause (3) to be referred to the Prothonotary.
- (6) 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.
- (7) If the proceedings of the Charity Referees are adjourned under section 16A (2) of the Act, the Prothonotary must give notice in writing of the adjournment to the parties to the proceedings.
- (8) For the purposes of section 15B (1) of the Act, the prescribed period is the period referred to in subclause (3) (a).

#### **5 Nomination of Charity Referee by State Executive of the RSL**

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.

#### **6 Request for referral to the Charity Referees of Commissioner's proposal**

- (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.

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- (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.

### **7 Fee for formulation of proposal**

- (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.
- (3) However, the Minister may reduce or waive the fee if, in any particular case, the Minister considers that it is just and reasonable to do so.

### **8 Travelling and sustenance allowances**

- (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 Employment and Management Act 2002* in similar circumstances.
- (3) The chairperson of the Charity Referees is not entitled to any allowance under this clause.

### **9 Service of notices**

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.

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**10 Repeal and Savings**

- (1) The *Dormant Funds Regulation 1999* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Dormant Funds Regulation 1999*, had effect under that Regulation is taken to have effect under this Regulation.