

[Act 1995 No 64]



New South Wales

# Dormant Funds Amendment Bill 1995

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Dormant Funds Act 1942* so as:

- to enable the Commissioner of Dormant Funds to revoke a determination declaring a fund to be dormant where the determination was based on inaccurate, misleading or incorrect information, and
  - to confer on a person who is dissatisfied with a decision revoking such a determination the right to appeal to the Charity Referees against the decision, and
  - to provide that proposals for the application of a dormant fund do not have to be advertised unless the value of the fund is more than \$10,000 (instead of \$2,000 as at present), and
-

- to provide for a less stringent advertising procedure in the case of proposals involving a dormant fund valued at more than \$10,000 but not more than \$50,000 where the Commissioner of Dormant Funds is satisfied that there is an appropriate scheme to which the fund may be transferred, and
- to make other changes relating to administrative matters.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the proposed Act to commence on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments set out in Schedule 1.

## Schedule 1 Amendments

### Determinations of Commissioner of Dormant Funds

Section 2 (2) of the *Dormant Funds Act 1942* empowers the Commissioner of Dormant Funds (“the Commissioner”) to determine certain funds to be dormant funds for the purposes of the Principal Act. This subsection is to be replaced by proposed section 5A which, as well as empowering the Commissioner to determine a fund to be a dormant fund, will enable the Commissioner to revoke a determination if he or she subsequently becomes satisfied that the determination was based on inadequate, misleading or incorrect information. (See Schedule 1 [10].)

### Proposals for the application of dormant funds

Section 11 of the *Dormant Funds Act 1942* empowers the Commissioner to formulate proposals for the application of dormant funds. At present, proposals involving a dormant fund of not more than \$2,000 are referred to and determined by the Attorney General and are not advertised. Proposals involving a dormant fund of more than \$2,000 have to be advertised in the Gazette and in at least one newspaper. An amendment to section 12 of that

Act (which currently relates to proposals for the disposal of a dormant fund of not more than \$2,000) increases that amount to \$10,000. Amendments to section 13 of the Act (which currently deals with proposals for the disposal of a dormant fund of more than \$2,000) will empower the Commissioner, in the case of a dormant fund of more than \$10,000 but not more than \$50,000, to limit publication to a notice in the Gazette, providing the Commissioner is satisfied that the proposals for the fund are clearly appropriate and the Commissioner sends a copy of the notice to the persons who were formerly trustees of the fund. The existing procedure under section 13 will continue to apply to all other dormant funds of more than \$10,000. (See Schedule 1 [11] and [12].)

Another amendment to section 13 will reduce from 3 months to 30 days the period within which a person may make a request to the Commissioner to refer to the Charity Referees proposals that have been advertised under the section. (See Schedule 1 [12].)

### **Register of orders under the Dormant Funds Act 1942**

Section 15 of the *Dormant Funds Act 1942* deals with orders made under that Act. Subsections (7) and (8) of the section require the Commissioner to keep an index of all such orders and enable any person, on payment of a fee, to search the index and any such order. Those subsections are to be replaced by proposed section 15A, which will require the Commissioner to establish and maintain a register of orders made under that Act and keep it open for inspection during ordinary office hours. Any person will be entitled, without charge, to inspect the register and any order made under that Act. (See Schedule 1 [13] and [14].)

### **Appeals to Charity Referees**

Proposed section 15B replaces the provisions of section 2 (3)–(5) of the *Dormant Funds Act 1942*, which confer a right of appeal to the Charity Referees from a determination of the Commissioner. The proposed section will also enable a person to appeal to the Charity Referees against a decision of the Commissioner revoking such a determination. The proposed section will also make it clear that an appellant can withdraw an appeal under the section at any time before the appeal has been decided by the Charity Referees. (See Schedule 1 [4] and [16].)

### **Matter may be dealt with in absence of a Charity Referee in certain cases**

Proposed section 16A will enable a matter that the Charity Referees are dealing with (such as the hearing of an appeal under proposed section 15B) to be continued in the absence of one of them (other than the chairman) if the chairman so decides. The section will also allow the remaining Charity Referees to adjourn consideration of a matter that the Charity Referees are dealing with if the chairman ceases to hold office or for any other reason is unable to continue to deal with the matter. (See Schedule 1 [20].)

### **Miscellaneous matters**

The proposed Act makes other consequential and minor amendments. In particular, Schedule 1 [22] amends section 19 (Regulations) so as to make it clear that the Governor may make regulations prescribing the practice and procedure for proceedings before the Commissioner and before the Charity Referees. Schedule 1 [23] and [24] deal with savings and transitional matters arising from the amendments made by the proposed Act.