



New South Wales

Dormant Funds Regulation 2009

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*.

JOHN HATZISTERGOS, MLC
Attorney General

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Dormant Funds Regulation 2004* which is repealed on 1 September 2009 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the time within which the Returned Services League must nominate its representative on the Charity Referees,
- (b) the giving of notice of a determination that a fund is a dormant fund and the procedure for making an appeal against such a determination,
- (c) the fees payable with respect to the formulation of proposals for dormant funds,
- (d) the procedure for referring to the Charity Referees a proposal that has been formulated by the Commissioner of Dormant Funds with respect to a dormant fund,
- (e) the allowances payable to Charity Referees,
- (f) the service of notices under this Regulation,
- (g) savings and formal matters.

This Regulation is made under the *Dormant Funds Act 1942*, including sections 5 (3), 15B (1) and 19 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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1 Name of Regulation

This Regulation is the *Dormant Funds Regulation 2009*.

2 Commencement

This Regulation commences on 1 September 2009 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Dormant Funds Regulation 2004* which is repealed on 1 September 2009 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Interpretation

- (1) In this Regulation:

Prothonotary means the Prothonotary of the Supreme Court.

the Act means the *Dormant Funds Act 1942*.

- (2) Notes included in this Regulation do not form part of this Regulation.

4 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.

5 Determination and appeals

- (1) The Commissioner must cause notice of any determination that a fund is a dormant fund under section 5A of the Act and notice of any revocation of a determination under that section:

- (a) to be given to at least one of the trustees of the fund, or
- (b) if there are no trustees of the fund—to be given to at least one person who was formerly a trustee of the fund, or

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- (c) if the Commissioner is not aware of the name and address of any of the persons specified in paragraph (a) or (b)—to be published in a newspaper determined by the Commissioner.
 - (2) For the purposes of section 15B (1) of the Act, the prescribed period within which an appeal must be lodged is within 30 days after the date on which notice is given as referred to in subclause (1).
 - (3) An appeal is to be made 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.

6 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.

7 Request for referral to the Charity Referees of Commissioner's proposal

- (1) A request, under section 13 of the Act, 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.

8 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 subsistence allowances as are payable to a public servant 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.

10 Savings

Any act, matter or thing that, immediately before the repeal of the *Dormant Funds Regulation 2004*, had effect under that Regulation continues to have effect under this Regulation.