CHARITABLE FUNDRAISING AMENDMENT (INQUIRIES) BILL 2017

First Reading

Bill introduced on motion by Mr Matt Kean, read a first time an d printed.

Second Reading

Mr MATT KEAN (Hornsby—Minister for Innovation and Better Regulation) (10:24): I move:

That this bill be now read a second time.

I am pleased to introduce the Charitable Fundraising Amendment (Inquiries) Bill 2017. The object of the bill is to amend the Charitable Fundraising Act 1991 and to put consumers first by enhancing the existing powers in the Act to inquire into fundraisers. I am pleased to say that the vast majority of charities act with complete integrity, without any concerns of fraud or non-compliance, and continue to deserve our confidence as they provide critical support and service to our fellow citizens, including to our most vulnerable citizens. However, I am sure that members of this House are aware of a number of high-profile cases in this State and other jurisdictions that have raised significant concerns in the community about the alleged misuse of funds raised for charity. In some of these cases, allegations have been made that are so serious that they threaten the integrity of the charitable sector and damage the high level of trust bestowed by the donating public.

There are more charities operating in New South Wales than in any other jurisdiction in Australia and these wonderful charities, run by hardworking and honest people, contribute in such a significant way to the fabric of our community—take, for example, beyondblue, which does so much to promote good mental health. The Australian Bureau of Statistics has estimated that three million Australians are currently experiencing anxiety or depression. Beyondblue gives people the confidence to support others, tackling the stigma and prejudice surrounding mental health. Beyondblue places the community at the centre of its work in order to reduce the impact of mental health conditions and improve access to support and services. In addition, beyondblue consistently rates highly in the AMR Charity Reputation Index.

However, accusations of financial impropriety by charities or persons involved in charities are increasingly coming to the attention of the public. In fact, allegations made against certain former councillors, office bearers and directors of RSL entities, including RSL NSW, RSL LifeCare, and the RSL Welfare and Benevolent Institution (DefenceCare), were so serious that, on the 15 May this year, and with the advice and support of my colleague the Minister for Veterans Affairs, I appointed former Supreme Court Justice the Hon. Patricia Bergin, SC, to inquire into those RSL entities. The RSL NSW has long been a highly regarded and respected organisation in our community, and I am sure that all members of this House acknowledge the important work it does to support the men and women of our defence forces—men and women who deserve not only our support, but also our enduring respect for the sacrifice they make for our nation.

Many of us choose to acknowledge the important contribution of those who serve and pay our respects by donating money for the delivery of the most appropriate support programs and services. It is important that the public can have confidence that those who hold fundraising authorities have the necessary governance and oversight of their fundraising activities. We must put consumers first on this issue—and I am talking about both the consumers who donate and those who are in desperate need of the help that comes from donations. We must put them first. If the money we donate is not used to support that organisation's activities, and is instead used to line the pockets of a contemptuous few, then our trust has been well and truly breached.

The New South Wales donating public and the beneficiaries of our charities deserve to be put first. Indeed, with the integrity of such well-known charities in question, there is a real danger that

public confidence and trust in all charities in New South Wales has already diminished, and a substantial drop in donations across the charity sector could easily occur after this loss of trust. This could have a disastrous impact on charities that do incredibly important work for people in this State. Take, for example, the Royal Flying Doctor Service and the amazing job it does in providing medical services to people who live in rural and remote parts of the country. The service plays a critical role in ensuring that all Australians and New South Wales citizens living in rural locations have the same services and high standards of care as those of us who live in metropolitan areas.

It is vital that the confidence of the public to donate to such a worthy charity is not eroded as a result of the malfeasance of a few in other charities. We need to strengthen the Act to give people confidence that the money they are donating is going to its intended purpose. When I was appointed Minister, strengthening this Act was one of the first things I discussed with my department. I want to make sure people who do the right thing are protected and that consumers are put first.

Since that time we have announced the inquiry into New South Wales RSL and related entities under section 26 of the Charitable Fundraising Act to investigate alleged financial irregularities that may involve millions of dollars. While amending the Act was always intended, it is fortunate that that inquiry will be able to take advantage of these new enhanced powers.

The amendments contained in the bill before the House will broaden and strengthen the inquiry powers under the Charitable Fundraising Act, making sure that current and future inquiries of high significance and public importance can be conducted thoroughly and in public. The bill proposes to improve the inquiry powers of the Act by providing an alternative for an inquiry to be held as a public inquiry, providing a robust framework to inquire into cases of importance and of public interest. This is a very important point. It is envisaged that these new powers and protections will be used only for the most serious of cases. The bill also contains a framework of crucial safeguards so that the enhanced powers are used appropriately. The ability to hold a public inquiry will be only where, in the opinion of the Minister of the day, it is in the public interest to do so, and will require the approval of the Premier.

There is truth in the old saying that sunlight is the best disinfectant. By holding a public inquiry, transparency is assured and the public has greater visibility of the conduct of the inquiry and confidence that no stone will be left unturned, and that any issues and behaviour of concern, and the consequences of that behaviour, will be revealed. The powers contained in this bill do not derogate from the existing powers of inquiry in the current Act. This means that inquiries that do not meet the high threshold of the level of importance required for a public inquiry can continue to be carried out as they currently are.

I will now address the amendments in turn. The amendments confer on the Minister of the day the power to cause a public inquiry into any matter under section 26, including any matter associated with the conduct of a fundraising appeal under the Act. As per the existing powers, these matters would include matters such as the governance of the charity, whether funds raised in an appeal are being applied as represented, and whether those who are associated with the conduct of fundraising appeals are fit and proper persons.

Section 41 (2) of the Charitable Fundraising Act currently allows the Minister of the day to recover the costs incurred by an authorised inspector who is not an employee of the Crown from the person or organisation related to the inquiry. This is an existing power within the Act and the amendments do not seek to extend that power. Rather, the amendments in new section 41 (2A) of the bill seek to clarify how the existing power would apply in circumstances where a number of entities are the subject of the inquiry, whether an inquiry under section 26 of the Act or a public inquiry. This will provide certainty to all parties involved.

The amendments seek to clarify how the remuneration and expenses of the authorised inspector, public inquirer or their agents would be apportioned when there are two or more parties the subject of the inquiry by providing that the Minister can direct those costs to be paid in clear proportions. These amendments will improve the certainty of the operation of this existing power. New section 41B will constrain the power to hold a public inquiry to those circumstances where the Minister of the day and the Premier of New South Wales are of the opinion that it is in the public interest to do so.

To ensure that only a person with the appropriate experience, qualifications and capacity can be appointed to undertake an inquiry and use the enhanced powers contained in this bill, the appointed person must be a current or former judge of the Supreme Court of New South Wales or any other Australian State, the Federal Court of Australia, or the High Court of Australia. Only allowing the inquiry to be conducted by such an appointee provides assurance to the Government, charities and donors of New South Wales that the enhanced powers are being exercised in a responsible and judicious way. In addition, to ensure complete impartiality and to mirror the prohibitions in the Special Commissions of Inquiry Act, the amendment specifically provides that, despite such experience and qualifications, a serving member of a Parliament cannot be appointed to the position of public inquirer.

The enhanced powers contained in this bill provide the necessary framework for the appointed person to be afforded appropriate powers, immunities and protections to properly conduct an inquiry. New section 41D provides a public inquirer with the same protections and immunities as a judge of the Supreme Court in the exercise of their functions as a public inquirer. Given the importance and public nature of a public inquiry, new section 41E provides the Minister with the authority to require the public inquirer to report on the inquiry, as prescribed in the instrument of appointment. This includes allowing the Minister to table a copy of the report in both Houses of Parliament when the Minister considers this is the most appropriate way of publishing the report under the circumstances. There may be public inquiries where tabling the report will provide the necessary transparency and accountability for the persons or organisations being inquired into.

As I have said, the existing RSL inquiry is one that can benefit from the proposed powers. New section 41C will allow an inquiry already commenced under section 26 of the Charitable Fundraising Act to be reconstituted as a public inquiry when the Minister and the Premier of New South Wales consider it is in the public interest for a public inquiry to be conducted. A number of complaints have been received over the years about alleged misappropriation of funds by persons involved in charitable organisations. Inquiries into those allegations have experienced some limitations. When RSL National commissioned KordaMentha to report on the alleged financial irregularities affecting RSL entities, there were claims by some of those requested for information that certain documents could not be provided. The powers contained in new section 41M will ensure this will not be able to happen in a public inquiry. Those wishing to escape being held to account for their conduct will no longer be able to do so.

It is vitally important that when an inquiry is meritorious enough to be held as a public inquiry the public inquirer has the necessary powers to compel the attendance of witnesses and the production of documents and other things. To ensure the authority of the public inquiry and the public inquirer is respected, new section 41M also provides that those who are guilty of contempt or disobedience with directions, orders or summons of the public inquirer will be able to be punished. New section 41H allows the public inquirer to issue a summons to a person to appear before the public inquiry. Further, new section 41O will allow the appointed person to issue a warrant for the apprehension of a witness that has failed to attend a hearing.

Witnesses who may have information that is relevant to the inquiry must provide all answers, documents and other things deemed relevant. New section 41O provides the ability for the public inquirer to issue a search warrant if they have reasonable grounds for believing that

documents relating to any matter in question are being held in a residence. This will make certain that all relevant evidence can be examined and considered and will ensure that any serious or systemic issues can be properly inquired into and all wrongdoings unearthed. This power will ensure the integrity of the public inquiry is not frustrated by witnesses failing to provide relevant evidence that may be highly probative.

New section 41F also confers the power on the public inquirer to control how the inquiry, examinations and hearings will be conducted. This is an important provision as it allows the judicial officer to create the ideal environment for the giving of evidence. To provide witnesses with representation where it is appropriate, new section 41G allows the public inquirer to allow the affected person to be represented by an Australian legal practitioner or any other person the inquirer considers capable of representing the affected person. This provides fairness in the process and will assist in ensuring that hearings are run professionally and proficiently.

For the same reason, new section 41J allows, with leave, for witnesses to be examined or cross-examined. Leave will need to be granted in accordance with the dictates of procedural fairness. New Section 41J (3) also provides that witnesses will have the same protections and be subject to the same liabilities as if they were being examined by the public inquirer. The bill also puts in place powers that will assist the public inquirer in obtaining the most accurate and reliable evidence possible. To that end, new section 41I allows the public inquirer to take evidence on oath or affirmation.

To facilitate a robust inquiry, the suite of powers contained in this bill allows for the abrogation of the privilege against self-incrimination while including protections for witnesses when the privilege is abrogated and the witness is required to answer the question or furnish the information. Where it is determined that a public inquiry is appropriate, the primary objective is to uncover what is going on, whether the organisation can "clean up the mess" and to restore and maintain public confidence in giving donations for charitable purposes. That cannot be achieved if crucial witnesses decline to answer questions because they are concerned about breaching matters that might be commercial-in-confidence or being potentially complicit in what might be the criminal conduct of others.

New section 41L confers on the public inquirer the power to compel witnesses to give evidence, provide documents or oral answers, even if the evidence is self-incriminating. To protect witnesses, such evidence is inadmissible in evidence against the person in civil or criminal proceedings, with the exception of offences under the public inquiry provisions or fundraising authority decisions. The purpose of those exceptions is to protect an inquiry's integrity and to ensure that the Minister of the day is able to clean up any charities found to have done the wrong thing by imposing new conditions on a fundraising appeal authority or by cancelling or refusing such an authority.

The Government recognises that the abrogation of the privilege of self-incrimination should be used only where it is necessary and in the public interest to do so. I note that the Casino Control Act 1992, Combat Sports Act 2013 and the Fisheries Management Act 1994 all provide admissibility protections similar to those proposed in the bill. It is further proposed to introduce a new offence provision for failing to comply with certain inquiry requests under the Act. Section 30 of the Charitable Fundraising Act makes it an offence for a person or entity to not comply with a requirement made by a notice in the course of an inquiry. The current section 30 offence provisions will be extended to cover public inquiries.

New section 41Q also makes it an offence to fail to comply with a direction about attendance at a hearing and a direction about preventing or restricting the publication of evidence. And, once again, the maximum penalties for these new offences are consistent with and do not exceed those set out in legislation dealing with other types of inquiries. Finally, I will address the framework provisions contained in this bill that will allow the appointee to undertake their role with the

necessary support and resources. The bill limits liability for public servants or other people engaged to assist the public inquirer when performing the functions of the public inquiry in good faith.

In addition, new section 41R provides an Australian legal practitioner who assists the public inquirer, or represents a person, with the same immunity as a barrister appearing in proceedings in the Supreme Court. Finally, new section 41R also ensures that there is no criminal or civil liability, other than under the Act, for a person who complies with any of the public inquiry requirements. The new public inquiry powers contained in this bill will give the community confidence that the Government has the power to properly inquire into wrongdoing in the charitable sector.

I cannot stress how important it is that the confidence of the community in donating to our worthy charities is maintained. People who think they can get away with destroying the reputation of the charitable sector will be put on notice with this bill that if a public inquiry is held they will be found out. People in positions of trust must not take their responsibilities lightly. The provisions in this bill will put on notice those who would endanger the reputation of worthy charities. Take, for example, the former chief executive of a children's cancer charity who was sentenced to 18 months jail for misappropriation of almost $70,000 which could have been used for the benefit of children with cancer. That action had the potential to ruin 30 years of meaningful and important work in our community.

This Government has built and maintained a cohesive and mutually beneficial relationship with charities operating in New South Wales. The importance of and need for the hard work that charities undertake cannot be understated. Guide Dogs NSW-ACT is a leading provider of guide dogs and mobility services that assist people with impaired vision to get around their communities safely, providing valuable independence to our vision-impaired citizens. Charities like that should be supported by a robust regulatory framework that includes the power to properly inquire into allegations of misappropriation of charitable funds.

I have asked my department to consult actively with New South Wales charities and their representative bodies to identify innovative solutions to red tape while maintaining the important donor and community protections that put consumers first. NSW Fair Trading continues to work with the Commonwealth Government and colleagues from across the States and Territories to harmonise the reporting requirements for charities, especially for those incorporated associations that are charities registered with the Australian Charities and Not-for-profits Commission. This work aims to remove duplication of administrative effort for charities as reports will only have to be submitted to one government agency and shared with regulators through a direct data transfer governed by strict privacy controls.

There is more work to be done. For example, I recognise that fundraising regulation has not kept pace with new forms of fundraising, particularly as online campaigns for funds have grown through the use of third party websites. Futureproofing the regulatory system remains a high priority. The powers contained in this bill establish a futureproof framework for the holding of public inquiries to ensure that non-compliance, malfeasance and wrongdoing are revealed, deterred and discontinued at the earliest opportunity. This in turn will help ensure that the public can be confident in donating to the many worthy New South Wales charities. I commend the bill to the House.