



New South Wales

Charitable Fundraising Amendment (Inquiries) Bill 2017

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 *Charitable Fundraising Act 1991* to enable public inquiries to be conducted under the Act.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 **Amendment of Charitable Fundraising Act 1991 No 69**

Schedule 1 [6] inserts a new Part in the *Charitable Fundraising Act 1991* (the *principal Act*) concerning the establishment and conduct of public inquiries under the principal Act. It includes the following provisions:

- (a) **Proposed section 41A** sets out definitions for the new Part.
- (b) **Proposed section 41B** enables the Minister to appoint a qualified person (to be called a *public inquirer*) to conduct a public inquiry into certain persons, organisations and other matters if the Minister and the Premier consider that it is in the public interest for a public inquiry to be conducted. A person is a qualified person if the person is an existing or former Judge of an Australian Supreme Court or of the Federal Court or a current or former Justice of the High Court. Members of Australian Parliaments will be excluded from appointment.

- (c) **Proposed section 41C** enables the Minister in certain circumstances to reconstitute an existing inquiry under Part 3 of the principal Act as a public inquiry. The power to reconstitute extends to existing inquiries that were begun (but not completed) before the commencement of the new Part.
- (d) **Proposed section 41D** provides that a public inquirer has, in the exercise of functions under the new Part as a public inquirer, the same protection and immunity as a Judge of the Supreme Court.
- (e) **Proposed section 41E** enables the Minister to require a public inquirer to prepare and provide reports on a public inquiry. The Minister will be able to publish these reports, including by tabling them in Parliament.
- (f) **Proposed section 41F** enables a public inquirer to hold hearings in connection with a public inquiry. A hearing will generally be held in public, unless the public inquirer considers that it is desirable to hold a hearing (or part of a hearing) in private.
- (g) **Proposed section 41G** enables an Australian legal practitioner appointed by the Crown to assist the public inquirer to appear before a public inquiry. It also enables a public inquirer to allow persons affected by the public inquiry to appear and be represented.
- (h) **Proposed section 41H** enables a public inquirer to summon witnesses to appear before a public inquiry.
- (i) **Proposed section 41I** enables a public inquirer to take evidence on oath or affirmation.
- (j) **Proposed section 41J** enables a public inquirer to allow witnesses to be examined and cross-examined by persons authorised or required to appear at a public inquiry and their representatives.
- (k) **Proposed section 41K** enables a public inquirer to give directions preventing or restricting the publication of evidence given or provided to a public inquiry.
- (l) **Proposed section 41L** makes further provision relating to requirements to provide records, documents or things, give information or evidence or to answer questions, including the circumstances in which such records, documents, things, information, evidence or answers are not admissible in civil or criminal proceedings.
- (m) **Proposed section 41M** confers on a public inquirer certain powers, rights and privileges of the Supreme Court (and Judges of the Supreme Court) in connection with witnesses and contempt.
- (n) **Proposed section 41N** enables certain investigative powers available for inquiries under Part 3 of the principal Act to be exercised in public inquiries.
- (o) **Proposed section 41O** enables a public inquirer to direct an authorised inspector to obtain a search warrant for documents or things relevant to a public inquiry.
- (p) **Proposed section 41P** enables a public inquirer to issue warrants for the apprehension of witnesses who do not answer a summons to attend a public inquiry.
- (q) **Proposed section 41Q** extends the offence provisions for inquiries under Part 3 of the principal Act to public inquiries. It also makes it an offence to contravene certain directions of a public inquirer.
- (r) **Proposed section 41R** excludes the liability of the Crown and the personal liability of certain other persons in connection with the conduct of a public inquiry.
- (s) **Proposed section 41S** requires the Minister to review the operation of the new Part after 3 years after its commencement.

Schedule 1 [1] and [2] make consequential amendments.

Schedule 1 [3]–[5] enable the Minister to direct that the costs of an inquiry under Part 3 of the principal Act or a public inquiry are payable by a particular person or organisation (or by 2 or more persons or organisations in the proportions directed).

Schedule 1 [8] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of an Act that amends the principal Act (including the proposed Act).

Schedule 1 [9] updates an outdated reference to the publication of regulations of a savings or transitional nature in the Gazette. All regulations are now published on the NSW legislation website.

Schedule 1 [11] provides for the reconstitution as a public inquiry of the current inquiry under Part 3 of the principal Act into RSL NSW and certain related organisations and persons.

Schedule 1 [7] and [10] make consequential amendments.



New South Wales

Charitable Fundraising Amendment (Inquiries) Bill 2017

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New South Wales

Charitable Fundraising Amendment (Inquiries) Bill 2017

No. , 2017

A Bill for

An Act to amend the *Charitable Fundraising Act 1991* to enable public inquiries to be conducted under the Act.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Charitable Fundraising Amendment (Inquiries) Act 2017*.

3

2 Commencement

4

This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Charitable Fundraising Act 1991 No 69	1 2
[1] Section 4 Definitions		3
	Insert in alphabetical order in section 4 (1):	4
	<i>public inquirer</i> , in relation to a public inquiry, means the person appointed under Part 3A to conduct the public inquiry.	5 6
	<i>public inquiry</i> means a public inquiry under Part 3A.	7
[2] Section 29 Search warrant		8
	Omit “conducted under this Act” from section 29 (1).	9
	Insert instead “conducted under this Part or Part 3A”.	10
[3] Section 41 Recovery of certain expenses		11
	Insert “or public inquirer (or their agents)” after “authorised inspector” in section 41 (2).	12
[4] Section 41 (2)		13
	Insert “or inquirer” after “the inspector”.	14
[5] Section 41 (2A) and (2B)		15
	Insert after section 41 (2):	16
	(2A) In addition to the Minister’s powers under subsections (1) and (2), the Minister may direct that the costs of an inquiry under Part 3 or a public inquiry are payable by 2 or more persons or organisations in the proportions that the Minister considers appropriate. The costs are payable by those persons or organisations in the proportions directed and are recoverable from each of them in a court of competent jurisdiction as a debt due to the Crown.	17 18 19 20 21 22
	(2B) Subsection (2A) extends to:	23
	(a) an inquiry under Part 3 that began (but was not completed) before the commencement of the subsection, and	24 25
	(b) if an inquiry began under Part 3 and then became a public inquiry—the costs of both the inquiry under Part 3 and the public inquiry.	26 27
[6] Part 3A		28
	Insert after Part 3:	29
	Part 3A Public inquiries	30
	Division 1 Preliminary	31
	41A Definitions	32
	In this Part:	33
	<i>existing non-public inquiry</i> —see section 41C (1).	34
	<i>qualified person</i> —see section 41B (3).	35

Division 2	Establishment of public inquiries	1
41B	Appointment of public inquirers to conduct public inquiries	2
(1)	The Minister may appoint a qualified person to conduct a public inquiry into:	3
(a)	any person, organisation or matter into which the Minister may cause an inquiry to be made by an authorised inspector under Part 3, or	4 5
(b)	any other matter associated with fundraising appeals.	6
(2)	The Minister may appoint a public inquirer only if the Minister and the Premier consider that it is in the public interest for a public inquiry to be conducted.	7 8 9
(3)	A person is a <i>qualified person</i> only if the person holds or has held office as:	10
(a)	a Judge of the Supreme Court of the State or any other State or a Territory, or	11 12
(b)	a Judge of the Federal Court of Australia, or	13
(c)	a Justice of the High Court.	14
(4)	However, a person is not a qualified person if the person is a member of the Legislative Council or of the Legislative Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth.	15 16 17 18
41C	Reconstitution of existing non-public inquiry as public inquiry	19
(1)	The Minister may appoint an authorised inspector conducting an inquiry under Part 3 (an <i>existing non-public inquiry</i>) to be a public inquirer for that inquiry if:	20 21 22
(a)	the inspector is a qualified person, and	23
(b)	the Minister and the Premier consider that it is in the public interest for a public inquiry to be conducted.	24 25
(2)	If such an appointment is made:	26
(a)	the existing non-public inquiry is, on and from the time of the appointment, to be conducted as a public inquiry under this Part, and	27 28
(b)	the public inquiry is to be in relation to the same matters as the existing non-public inquiry unless the instrument of appointment provides differently, and	29 30 31
(c)	any matters requiring compliance under Division 1 of Part 3 in relation to the existing non-public inquiry that have not yet been complied must still be complied with, and	32 33 34
(d)	any search warrant issued under Division 1 of Part 3 in relation to the existing non-public inquiry remains valid and can be executed, and	35 36
(e)	any person who was engaged to assist the authorised inspector conducting the existing non-public inquiry, or allowed to represent a person in the existing non-public inquiry, may continue to assist or represent in the public inquiry, and	37 38 39 40
(f)	any information or evidence that was obtained under Division 1 of Part 3 in relation to the existing non-public inquiry may be used in and for the purposes of the public inquiry, and	41 42 43
(g)	any other matter or thing that had effect in relation to the existing non-public inquiry continues to have effect in relation to the public inquiry.	44 45 46

(3)	A public inquirer for a public inquiry that was previously an existing non-public inquiry may give such directions as the public inquirer considers appropriate to facilitate the reconstitution of the existing non-public inquiry as a public inquiry.	1 2 3 4
(4)	This section extends to existing non-public inquiries that began (but were not completed) before the commencement of this Part.	5 6
41D	Protection from liability	7
	A public inquirer has, in the exercise of functions under this Part as a public inquirer, the same protection and immunity as a Judge of the Supreme Court.	8 9
41E	Reports on public hearings	10
(1)	The Minister may, in the instrument of appointment of a public inquirer, require the public inquirer to prepare and provide to the Minister one or more reports on a public inquiry (including reports before the public inquiry is concluded) on specified matters within a specified time.	11 12 13 14
(2)	The public inquirer must prepare any report required by the Minister.	15
(3)	The Minister may cause a copy of a report provided to the Minister to be published in any way that the Minister considers appropriate, including by publishing it on a website or tabling it in one or both Houses of Parliament.	16 17 18
(4)	A copy of a report to be tabled in a House of Parliament may be presented to the Clerk of the House if the House is not sitting when it is sought to be tabled.	19 20
(5)	A copy of a report presented under subsection (4):	21
(a)	is, on presentation and for all purposes, taken to have been laid before the House, and	22 23
(b)	may be printed by authority of the Clerk of the House, and	24
(c)	if so printed, is taken to be a document published by or under the authority of the House, and	25 26
(d)	is to be recorded:	27
(i)	in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and	28 29
(ii)	in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,	30 31
	on the first sitting day of the House after receipt of the copy of the report by the Clerk.	32 33
Division 3	Hearings	34
41F	Hearings	35
(1)	A public inquirer may hold hearings in connection with a public inquiry.	36
(2)	A hearing is to be held in public unless the public inquirer directs differently.	37
(3)	The public inquirer may direct that a hearing (or part of a hearing) be held in private if satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason.	38 39 40
(4)	If the public inquirer directs that a hearing (or part of a hearing) is to be held in private, the public inquirer may give directions as to the persons who may be present at the hearing (or that part of the hearing).	41 42 43

41G	Right of appearance	1
(1)	Any Australian legal practitioner appointed by the Crown to assist a public inquirer may appear before a public inquiry.	2 3
(2)	If it is shown to the satisfaction of the public inquirer that any person is substantially and directly interested in any subject-matter of a public inquiry, the public inquirer may allow the person (the <i>affected person</i>) to appear at the public inquiry or a specified part of the public inquiry.	4 5 6 7
(3)	The public inquirer may allow the affected person to be represented by an Australian legal practitioner or any other person that the public inquirer considers capable of representing the affected person.	8 9 10
(4)	The public inquirer may give such directions as the public inquirer considers appropriate concerning the representation of an affected person allowed under this section.	11 12 13
41H	Witnesses	14
	A public inquirer may issue a summons to a person to appear before the public inquirer at a time and place named in the summons:	15 16
(a)	to give evidence, or	17
(b)	to produce such documents or other things (if any) as are referred to in the summons,	18 19
	or both.	20
41I	Evidence on oath or affirmation	21
	A public inquirer may, at a hearing of a public inquiry, take evidence on oath or affirmation and for that purpose:	22 23
(a)	the public inquirer may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the public inquirer, and	24 25 26
(b)	the public inquirer, or any other person authorised by the public inquirer, may administer an oath or affirmation to a person so appearing at the hearing.	27 28 29
41J	Examination and cross-examination of witnesses	30
(1)	A person authorised or required to appear at a public inquiry, or an Australian legal practitioner or other person allowed to represent a person at a public inquiry, may, with the leave of the public inquirer, examine or cross-examine any witness on any matter that the public inquirer considers relevant.	31 32 33 34
(2)	If an Australian legal practitioner is appointed to assist the public inquirer at a public inquiry, the Australian legal practitioner may examine or cross-examine any witness on any matter that the public inquirer considers relevant.	35 36 37 38
(3)	Any witness examined or cross-examined under this section has the same protection and is subject to the same liabilities as if examined by the public inquirer.	39 40 41
41K	Restrictions on publication of evidence	42
	A public inquirer may give directions preventing or restricting the publication of evidence given before the public inquirer or of matters contained in documents obtained or received by the public inquirer.	43 44 45

41L Protection from incrimination	1
(1) Self-incrimination not an excuse	2
A person is not excused from a requirement under this Part to produce a record, document or thing, to give information or evidence or to answer a question on the ground that the record, document, thing, information, evidence or answer might incriminate the person or make the person liable to a penalty.	3 4 5 6
(2) Answer, information or evidence not admissible if objection made	7
However, any record, document or thing produced, or information, evidence or answer given, by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in civil or criminal proceedings (except as provided by subsection (3)) if:	8 9 10 11
(a) the person objected at the time to doing so on the ground that it might incriminate the person, or	12 13
(b) the person was not warned at an appropriate time that the person may object to producing the record, document or thing, or giving information, evidence or answer, on the ground that it might incriminate the person.	14 15 16 17
(3) Subsection (2) does not prevent any record, document or thing produced, or information, evidence or answer given, by a natural person in compliance with a requirement under this Part from being admitted in evidence in:	18 19 20
(a) proceedings for an offence against this Part (including section 30 as extended to this Part by section 41Q), or	21 22
(b) proceedings for contempt in relation to a public inquiry, or	23
(c) proceedings in connection with the revocation or refusal of an authority or the variation, revocation or imposition of conditions on an authority under this Act.	24 25 26
(4) Appropriate time for giving warning about incrimination	27
An <i>appropriate time</i> for warning a person is any of the following times:	28
(a) the time when the requirement to produce the record, document or thing, or give the information, evidence or answer, is made,	29 30
(b) in the case of evidence required to be given when appearing before a public inquirer, any time after the start of the appearance before the inquirer,	31 32 33
(c) at or about the time immediately before the person produces the record, document or thing or gives the information, evidence or answer.	34 35
(5) Further information	36
Further information obtained as a result of a record, document or thing produced or information, evidence or answer given in compliance with a requirement under this Part is not inadmissible on the ground:	37 38 39
(a) that the record, document, thing, information, evidence or answer had to be produced or given, or	40 41
(b) that the record, document, thing, information, evidence or answer might incriminate the person.	42 43
(6) Application of section to reconstituted existing non-public inquiries	44
This section (except subsection (2) (b)) extends to a requirement made under Division 1 of Part 3 in relation to an existing non-public inquiry before it was	45 46

reconstituted as a public inquiry if the requirement had not yet been complied with when it was reconstituted.

Note. Section 41C (2) (c) operates to require compliance with requirements made under Division 1 of Part 3 in relation to an existing non-public inquiry that becomes a public inquiry if the requirements have not yet been complied with.

Division 4 Powers of public inquirer

41M Powers of public inquirer generally

- (1) A public inquirer has, for the purposes of a public inquiry, all the powers, rights and privileges that the Supreme Court (or any Judge of the Supreme Court) has in, or in relation to, any proceedings concerning each of the following matters:
 - (a) compelling the attendance of witnesses,
 - (b) compelling witnesses to answer questions that the public inquirer considers to be relevant to the public inquiry,
 - (c) compelling the production of documents or other things,
 - (d) punishing persons guilty of contempt or of disobedience of any direction, order or summons made or issued by the public inquirer.
- (2) This section is in addition to, and does not limit, any other power, right or privilege conferred on a public inquirer by another provision of this Part.

41N Investigative powers under Division 1 of Part 3

- (1) The provisions of sections 27 (Power of Minister to require accounts etc) and 28 (Power of entry and inspection) extend to public inquiries.
- (2) For this purpose:
 - (a) any reference to an inquiry under Part 3 is to be read as including a reference to a public inquiry, and
 - (b) any reference to the purposes of any inquiry under Part 3 is to be read as including a reference to the purposes of any public inquiry, and
 - (c) any reference to the Minister is to be read as including a reference to a public inquirer.

41O Search warrant

- (1) The public inquirer may direct an authorised inspector to apply to an authorised officer (within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*) for a search warrant if the public inquirer has reasonable grounds for believing that documents or things relating to a matter relevant to a public inquiry are kept at a particular place and that:
 - (a) the place is used as a dwelling, or
 - (b) a person having custody or control of those documents or things has neglected or failed to comply with a requirement under this Act to produce them or to furnish copies of or extracts from them, or
 - (c) the place is unoccupied or the occupier is temporarily absent.
- (2) A direction under this section operates to authorise the authorised inspector to make an application under section 29 even if the inspector does not have the kind of belief referred to in section 29 (1).
- (3) To avoid doubt, a search warrant issued under section 29 on an application directed under this section may extend to things as well as documents.

Division 5	Miscellaneous	1
41P	Apprehension of witnesses	2
(1)	If a person served with a summons to attend a public inquiry as a witness fails to attend in answer to the summons, the public inquirer may, on proof by statutory declaration of the service of the summons, issue a warrant for the apprehension of the witness.	3 4 5 6
(2)	A warrant under this section authorises the apprehension of the witness and his or her being promptly brought before the public inquirer and detained in a correctional centre or elsewhere for that purpose until released by order of the public inquirer.	7 8 9 10
(3)	A warrant issued under this section may be executed by any police officer, or by any person to whom it is addressed, and the person executing it may use such force as is reasonably necessary for the purpose of entering any premises for the purpose of executing it.	11 12 13 14
(4)	The issue of a warrant or the apprehension of a witness does not relieve the witness from any liability incurred by the witness for non-compliance with a summons.	15 16 17
41Q	Offences in relation to public inquiries	18
(1)	Section 30 (Offences in relation to inquiries) extends to public inquiries with the following modifications:	19 20
(a)	the reference in section 30 (a) to a notice under Division 1 of Part 3 is to be read as including a reference to a notice under this Part (including a notice given in exercise of the powers conferred by section 41N),	21 22 23
(b)	the reference in section 30 (b) to a document referred to in section 27 (1) (e) is to be read as including a reference to a document that relates to any matter in question in a public inquiry,	24 25 26
(c)	the reference in section 30 (c) to an oath required to be taken under Division 1 of Part 3 is to be read as including a reference to an oath or affirmation required under this Part,	27 28 29
(d)	the reference in section 30 (d) to the exercise of functions under Division 1 of Part 3 by the Minister or an authorised inspector is to be read as including a reference to the exercise of functions under this Part by a public inquirer or an authorised inspector.	30 31 32 33
(2)	A person must not contravene:	34
(a)	a direction of a public inquirer that prohibits the person from being present at a hearing (or part of a hearing) of a public inquiry, or	35 36
(b)	a direction of a public inquirer that prevents or restricts the publication of evidence given before the public inquirer or of matters contained in documents obtained or received by the public inquirer.	37 38 39
	Maximum penalty (subsection (2)): 10 penalty units.	40
41R	Exclusion of personal liability	41
(1)	No liability is incurred by the Crown, and no personal liability is incurred by any of the following persons, for any act done or omitted, or for any statement made or issued, by any of them in good faith for the purposes of establishing or conducting a public inquiry:	42 43 44 45
(a)	the Minister,	46
(b)	the Secretary of the Department of Finance, Services and Innovation,	47

(c)	a person employed in the Public Service or engaged to assist the public inquirer to conduct a public inquiry.	1 2
(2)	No liability is incurred by a person for publishing in good faith:	3
(a)	a statement referred to in subsection (1), or	4
(b)	a fair report or summary of such a statement.	5
(3)	Subsections (1) and (2) extend to acts, omissions and statements occurring in connection with an existing non-public inquiry (including one begun before the commencement of this Part) that becomes a public inquiry under this Part.	6 7 8
(4)	An Australian legal practitioner assisting a public inquirer or representing a person before a public inquirer has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.	9 10 11
(5)	Subject to this Part, a person summoned to attend or appearing before a public inquirer as a witness, or producing a document or other thing to the public inquiry, has the same protection as a witness in proceedings in the Supreme Court.	12 13 14 15
(6)	No criminal or civil liability (apart from under the provisions of this Act) attaches to a person for compliance, or purported compliance in good faith, with any requirement made under this Part.	16 17 18
(7)	In particular, if a person gives any statement of information or produces any document or other thing under a production requirement, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.	19 20 21 22
(8)	In this section: <i>barrister</i> has the same meaning as in the <i>Legal Profession Uniform Law (NSW)</i> .	23 24 25
41S	Review of Part	26
	The Minister is to ensure that the operation of this Part during the 3 years after its commencement is reviewed and that a report on the outcome of the review is published within 12 months after the end of that 3 year period.	27 28 29
[7]	Schedule 2 Savings and transitional provisions	30
	Insert before clause 1:	31
	Part 1 General	32
[8]	Schedule 2, clause 1 (1)	33
	Insert “or any Act that amends this Act” after “this Act”.	34
[9]	Schedule 2, clause 1 (3)	35
	Omit “in the Gazette”. Insert instead “on the NSW legislation website”.	36

[10] Schedule 2	1
Insert after clause 1:	2
Part 2 Provisions consequent on enactment of this Act	3
[11] Schedule 2	4
Insert after clause 2:	5
Part 3 Provisions consequent on enactment of Charitable Fundraising Amendment (Inquiries) Act 2017	6
3 RSL inquiry reconstituted as public inquiry	8
(1) This clause applies in relation to the inquiry under Part 3 of this Act (the <i>RSL inquiry</i>) into the following persons and organisations for which the Minister appointed the Honourable Patricia Anne Bergin SC on 15 May 2017 (the <i>existing authorised inspector</i>) as the authorised inspector:	9
(a) The Returned and Services League of Australia (New South Wales Branch) (“RSL NSW”), including but not limited to the members of the governing body and officers of RSL NSW,	10
(b) the RSL Welfare and Benevolent Institution (also known as “RSL DefenceCare”) and its trustees (collectively, “WBI”), including but not limited to the members of the governing body and officers of WBI,	11
(c) RSL Life Care Limited (“LifeCare”), including but not limited to the members of the governing body and officers of LifeCare.	12
(2) The existing authorised inspector is taken, on and from the commencement of the amending Act, to have been appointed under section 41C (as inserted by the amending Act) to be a public inquirer for the RSL inquiry. As a result, section 41C (2) and (3) apply to the appointment as if the appointment had been duly made by the Minister under that section.	13
(3) In this clause:	14
<i>amending Act</i> means the <i>Charitable Fundraising Amendment (Inquiries) Act 2017</i> .	15
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