



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.