

FIRST PRINT

## CHARITABLE FUNDRAISING BILL 1991

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to provide for the regulation of the charitable fundraising activities of charitable and other organisations. The proposed Act will repeal the Charitable Collections Act 1934, abolishing the system of registration of charitable organisations.

Under the proposed Act, any person or organisation that satisfies the Chief Secretary, in terms of criteria specified in the proposed Act, that the appeal is bona fide and will be honestly and regularly conducted may obtain an authority to conduct a fundraising appeal for a charitable purpose. Conducting such an appeal without authority is prohibited by the proposed Act except if it is conducted by a religious or other organisation exempted by clause 7.

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### PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days.

Clause 3 is a statement of the objects of the proposed Act.

Clause 4 defines "charitable purpose" and other terms used in the proposed Act.

Clause 5 defines "fundraising appeal" for the purposes of the proposed Act.

Clause 6 defines what it means to conduct, and to participate in, a fundraising appeal.

Clause 7 provides that certain religious organisations are exempt from the operation of the proposed Act and provides for the exemption by regulations of other religious organisations.

Clause 8 states that the proposed Act will bind the Crown.

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**PART 2—FUNDRAISING APPEALS****Division 1—Offences**

Clause 9 prohibits the conducting of a fundraising appeal except by the holder of an authority from the Minister which authorises the appeal or by certain other persons in limited circumstances. The clause also makes it an offence to contravene the conditions of an authority to conduct fundraising.

Clause 10 prohibits participation in a fundraising appeal that is being conducted unlawfully.

Clause 11 imposes certain conditions with respect to a fundraising appeal to be conducted by a person in connection with a business carried on by the person or from which the person derives some benefit. The conditions require disclosure of the person's identity and of the intended distribution of the proceeds of the appeal and require the appeal to be conducted jointly by the person and another person, or an organisation, that holds an authority to conduct fundraising appeals.

Clause 12 prohibits advertising of an unlawful fundraising appeal.

Clause 13 prohibits the making of any false statements in a notice or application under the proposed Act.

**Division 2—Authority to conduct fundraising appeals**

Clause 14 provides for the making of applications to the Minister for an authority to conduct a fundraising appeal. Applications may be made by one or more individuals or by organisations.

Clause 15 provides for the form of applications.

Clause 16 states that the Minister may grant an application by issuing an authority that is unconditional or to which conditions are attached. The Minister may instead request further information in connection with the application or may refuse to grant it on specified grounds.

Clause 17 states that an authority may be granted so as to authorise one or several fundraising appeals or an indefinite number of such appeals.

Clause 18 provides that, unless sooner revoked, an authority remains in force for a period to be specified in it (or, if the authority does not specify such a period, it remains in force until revoked).

Clause 19 provides that an authority may be granted subject to conditions and that the Minister may vary the conditions to which an authority is subject.

**Division 3—Application of funds raised**

Clause 20 prohibits application of the proceeds of a fundraising appeal in a different manner from the manner indicated by the promoters of the appeal at the time it was being conducted. The clause allows regulations to be made in relation to what constitutes lawful and proper expenses payable in connection with fundraising appeals. It allows application of the proceeds of a fundraising appeal to beneficiaries outside the



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State unless such application is unlawful or, in the public interest, is prohibited by the authority under which the appeal was conducted.

Clause 21 requires the proceeds of a fundraising appeal, if not immediately required to be applied, to be invested in any way in which trust funds may lawfully be invested.

**Division 4—Requirements to be met by fundraisers**

Clause 22 requires the holder of a fundraising authority to keep certain records relating to each fundraising appeal conducted under the authority.

Clause 23 requires unincorporated authority-holders to lodge periodic returns.

Clause 24 requires authority-holders to have their fundraising accounts audited and imposes a duty on the auditor to disclose irregularities to the Minister.

Clause 25 allows regulations to be made exempting persons or bodies from the operation of the proposed Division.

**PART 3—POWERS OF THE MINISTER IN RESPECT OF FUNDRAISERS****Division 1—Investigations**

Clause 26 authorises the Minister to conduct an inquiry into any person known or reasonably suspected to be engaging, or to have been engaged, in fundraising.

Clause 27 confers power on the Minister or an inspector to require production of accounts and statements and other evidence relevant to the inquiry.

Clause 28 confers power on an authorised inspector to enter premises and inspect documentary evidence.

Clause 29 provides for the issue of a search warrant to allow an authorised inspector to search premises for documents relevant to an inquiry under the proposed Act.

Clause 30 provides that it is an offence not to comply with any lawful requirement of the Minister or an authorised inspector or to alter, destroy or conceal a document that is relevant to an inquiry.

**Division 2—Revocation of authority and disposition of funds**

Clause 31 allows the Minister, in certain circumstances, to revoke an authority to conduct fundraising appeals.

Clause 32 allows the Minister to apply to the Supreme Court for an order for the disposition of the assets of a person or organisation whose authority to conduct fundraising appeals has been revoked or which has been conducting one or more fundraising appeals without authority.

**Division 3—Administration of fundraising organisations by administrator**

Clause 33 allows the Minister to appoint an administrator to conduct the affairs and activities of a charitable or non-profit fundraising organisation, or the fundraising-related

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activities of any other organisation, which has been guilty of persistent contraventions of the proposed Act or whose finances have been misappropriated or whose circumstances are such that, in the public interest, such an administrator should be appointed.

Clause 34 requires notice of the appointment of an administrator to be served on the organisation affected. On service of such a notice, the persons holding office as members of the governing body of the organisation cease to hold office and contracts of employment with the organisation may be terminated.

Clause 35 vests in the administrator the functions of the governing body of the organisation concerned. It also requires the Minister, before revoking the appointment of an administrator, to see that a properly constituted governing body has been appointed to take over when a period of administration ends.

Clause 36 continues the requirements of the law relating to the auditing of company accounts during any period of administration by an administrator.

Clause 37 provides for payment of the costs of administration.

Clause 38 protects an administrator against liability for loss or damage arising from his or her administration unless the loss or damage arises from the administrator's wilful misconduct, gross negligence or wilful disregard of the proposed Act or the regulations or of the constitution of the organisation concerned. The Crown and the Minister are protected against all liability arising from administration.

#### **Division 4—Miscellaneous provisions**

Clause 39 allows the Minister to remit to the Attorney General a case in which, in the Minister's opinion, proceedings should be instituted with respect to an organisation.

Clause 40 empowers the Auditor-General, at the request of the Minister, to act as (or provide a member of the Auditor-General's staff to act as) an inspector for the purposes of the proposed Act. The power must be exercised if the Minister requires it.

Clause 41 allows the Minister to direct payment to the Auditor-General of the expenses incurred by the Auditor-General as a result of inquiries under the Act.

#### **PART 4—JUDICIAL REVIEW**

Clause 42 provides for an appeal to the District Court against a refusal by the Minister of an application for an authority to conduct a fundraising appeal or against the conditions imposed on an authority.

Clause 43 provides for an appeal to the District Court against a revocation by the Minister of an authority to conduct a fundraising appeal.

Clause 44 provides for an appeal to the District Court against a variation by the Minister of the conditions attached to an authority.

Clause 45 provides that the District Court, having regard to the provisions of the proposed Act and the public interest, is to decide all such appeals brought before it.

Clause 46 states that the decision of the District Court is final and binding on the parties.



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**PART 5—MISCELLANEOUS**

Clause 47 requires a person or organisation involved in fundraising to supply information prescribed by the regulations to members of the public on request. The organisation may charge a prescribed fee for this service. The clause also empowers the Minister to supply the same kind of information.

Clause 48 allows the paid appointment of directors of charitable organisations if the Minister has approved of the appointment generally or in relation to a particular appointee, or if the appointee serves as an *ex officio* director because he or she is a minister of religion or a member of a religious order.

Clause 49 provides for the appointment of inspectors.

Clause 50 provides that proceedings for an offence against the proposed Act may be disposed of summarily in a Local Court. Any such proceedings may be commenced within 3 years after the offence was allegedly committed.

Clause 51 provides for the prosecution of directors of corporations which have contravened the proposed Act.

Clause 52 provides for certificate evidence to be given in relation to fundraising authorities.

Clause 53 allows the Minister to delegate any of the Minister's functions under the proposed Act to any public servant.

Clause 54 provides for the service of documents for the purposes of the proposed Act.

Clause 55 provides for the making of regulations under the proposed Act.

Clause 56 repeals the Charitable Collections Act 1934 (and another Act that amended that Act) and regulations in force under those Acts.

Clause 57 gives effect to a Schedule of amendments to other Acts as a consequence of the repeal of the Charitable Collections Act 1934.

Clause 58 gives effect to a Schedule of savings and transitional provisions consequent on the repeal of the Charitable Collections Act 1934 and the enactment of the proposed Act.

**SCHEDULE 1—CONSEQUENTIAL AMENDMENTS**

This Schedule amends certain Acts as a consequence of the repeal of the Charitable Collections Act 1934.

**SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS**

This Schedule enacts certain savings and transitional provisions and provides for other such provisions to be made by the regulations.

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SCHEDULE 1—CONSEQUENTIAL AMENDMENTS

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

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# CHARITABLE FUNDRAISING BILL 1991

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No. , 1991

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## A BILL FOR

An Act to regulate public fundraising for charitable purposes; to repeal the Charitable Collections Act 1934 and to amend certain other Acts; and for other purposes.

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The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Charitable Fundraising Act 1991.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Objects**

3. The objects of this Act are:
- (a) to promote proper and efficient management and administration of fundraising appeals for charitable purposes; and
  - (b) to ensure proper keeping and auditing of accounts in connection with such appeals; and
  - (c) to prevent deception of members of the public who desire to support worthy causes.

**Definitions**

4. (1) In this Act:

“**authorised inspector**” means a person appointed under this Act as an inspector or a person authorised by or under this Act to exercise the functions of an authorised inspector;

“**authority**” means an authority in force under Part 2;

“**charitable purpose**” includes any benevolent, philanthropic or patriotic purpose;

“**conducting a fundraising appeal**” is defined in section 6;

“**fundraising appeal**” is defined in section 5;

“**organisation**” includes any board of trustees or other body of persons, whether incorporated or unincorporated;

“**participating in a fundraising appeal**” is defined in section 6;

“**registered office**” of a person or organisation, or branch of an organisation, that conducts fundraising appeals pursuant to an authority means the address stated in the application form referred to in section 15.

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(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

**Meaning of "fundraising appeal"**

5. (1) For the purposes of this Act, the soliciting or receiving by any person of any money, property or other benefit constitutes a fundraising appeal if, before or in the course of any such soliciting or receiving, the person represents:

- (a) that the purpose of that soliciting or receiving; or
- (b) that the purpose of an activity or enterprise of which that soliciting or receiving is a part,

is or includes a charitable purpose.

(2) It does not matter whether the money or benefit concerned is solicited or received:

- (a) in person or by other means (such as by post, telephone or facsimile transmission); or
- (b) as a donation or otherwise (such as by participation in a lottery, art union or competition; by sponsorship in connection with a walkathon, telethon or other similar event; in connection with the supply of food, entertainment or other goods or services; or in connection with any other commercial undertaking).

(3) The following do not, however, constitute a fundraising appeal for the purposes of this Act:

- (a) a request for, or the receipt of, an amount required in good faith as the fee for renewal of membership of an organisation;
- (b) an appeal by an organisation to (or the receipt of money or a benefit from) members of the organisation;
- (c) a request that any property be devised or bequeathed, or the giving of any information as to the means by which any property may be devised or bequeathed;
- (d) an appeal conducted exclusively or predominantly among persons sharing a common employer or place of work by one of those persons (being an appeal for a charitable purpose connected directly with another of those persons or any such other person's immediate family) and the receipt of money or a benefit from any such appeal;



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- (e) an appeal to (or the receipt of money or a benefit from) any Commonwealth, State or local government authority;
- (f) anything prescribed by the regulations.

**Meaning of “conducting” or “participating in” a fundraising appeal**

6. (1) For the purposes of this Act, a person conducts a fundraising appeal if the person organises the appeal, whether alone or with others, whether in person or by an agent or employee and whether on the person's own behalf or as an officer or member of the governing body of an organisation.

(2) For the purposes of this Act, a person participates in a fundraising appeal if the person solicits or receives any money, property or other benefit in the course of the appeal, or assists in organising the appeal.

(3) For the purposes of this Act, a person who participates in a fundraising appeal does not conduct the appeal if the person participates in it solely as the agent, employee or collector (whether voluntary or not) of or for another person who is conducting the appeal.

(4) For the purposes of this Act, a person does not participate in an appeal merely because the person gives any money or benefit in the course of the appeal.

**Religious organisations exempt from Act**

7. (1) This Act (apart from section 48) does not apply to:

- (a) a religious body or a religious organisation in respect of which a proclamation is in force under section 26 of the Marriage Act 1961 of the Commonwealth or a religious body, or an organisation or office, within a denomination in respect of which such a proclamation is in force; or
- (b) a religious body or religious organisation prescribed by the regulations; or
- (c) any body or organisation that is certified in writing by the principal or executive officer of a body or organisation referred to in paragraph (a) or (b) to be affiliated with and approved by the organisation or body so referred to; or
- (d) a member or employee of a body or organisation referred to in paragraph (a), (b) or (c), or any other person, who is acting with its authority.

(2) The Minister may, by order published in the Gazette, declare that, despite subsection (1), this Act and the regulations apply (or apply to the



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extent specified in the order) to a person, body or organisation specified in the order, and such an order has effect accordingly.

(3) By way of example of the power conferred by subsection (2), an order under that subsection may apply the provisions of Part 3 to a person, body or organisation that has failed to give a satisfactory reply to a request by the Minister for information concerning any fundraising appeal conducted by the person, body or organisation.

**Crown bound by this Act**

8. This Act binds the Crown not only in right of New South Wales but also, in so far as the legislative power of Parliament permits, in all its other capacities.

**PART 2—FUNDRAISING APPEALS****Division 1—Offences****Conducting unlawful fundraising**

9. (1) A person who conducts a fundraising appeal is guilty of an offence unless the person:

- (a) is the holder of an authority authorising the person to conduct the appeal; or
- (b) is a member of an organisation, or an employee or agent of a person or organisation, that holds such an authority and is authorised, by the person or organisation that holds the authority, to conduct the appeal; or
- (c) is authorised under subsection (3) to conduct the appeal without an authority.

Maximum penalty: 50 penalty units.

(2) A person who conducts a fundraising appeal in contravention of any condition attached to an authority authorising the appeal is guilty of an offence.

Maximum penalty: 50 penalty units.

(3) The following may conduct a fundraising appeal without being the holder of an authority:

- (a) an organisation or person, or one of a class of organisations or persons, authorised by the regulations;
- (b) an organisation established by an Act and subject to the control and direction of a Minister;

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- (c) a member, employee or agent of any organisation or other person referred to in paragraph (a) or (b) who is authorised by the organisation or other person to conduct the appeal;
- (d) a person who, in accordance with section 11, conducts the appeal in conjunction with the holder of an authority.

**Participating in unlawful fundraising**

10. A person who participates in a fundraising appeal which the person knows, or could reasonably be expected to know, is being conducted unlawfully is guilty of an offence.

Maximum penalty: 50 penalty units.

**Appeals conducted by persons engaged in business or otherwise deriving benefit**

11. (1) A person (in this section called the “trader”) must not conduct a fundraising appeal:

- (a) in connection with the supply of goods or services in the course of any trade or business carried on by the person; or
- (b) otherwise partly for the person’s benefit,

except in accordance with this section.

Maximum penalty: 50 penalty units.

(2) Such an appeal must be conducted in accordance with the following conditions:

- (a) the appeal must be conducted jointly by the trader and a person or organisation that holds an authority to conduct the appeal;
- (b) any advertisement, notice or information concerning the appeal must identify the trader and the holder of the authority;
- (c) any such advertisement, notice or information must give details (to the extent required by the conditions of the authority) of the intended distribution of funds raised in the appeal or of any guaranteed minimum payment, or proportion of profits, to be paid by the trader to any person or organisation as a result of the appeal.

(3) Nothing in this section affects the Minister’s discretionary power to attach any other condition to an authority.

**Publicity**

12. (1) A person who publishes any advertisement, notice or information relating to any fundraising appeal which the person knows,



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or could reasonably be expected to know, is being conducted unlawfully is guilty of an offence.

Maximum penalty: 50 penalty units.

(2) In this section, "**publishing**" includes:

- (a) causing to be published; and
- (b) publishing by spoken words, whether directly or through any electronic medium; and
- (c) transmitting by facsimile machine.

**False statements etc.**

13. (1) A person who:

- (a) in an application or notice made or given under this Act; or
- (b) in any record or document relating to a fundraising appeal,

makes any statement that the person knows, or could reasonably be expected to know, is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

(2) A person:

- (a) who is conducting or is proposing to conduct a fundraising appeal; or
- (b) who is acting on behalf of a person who is conducting or is proposing to conduct a fundraising appeal,

must not represent to an employee, agent or collector (whether voluntary or not) that any thing required or permitted by this Act to be done, or any condition precedent to a fundraising appeal to be complied with, has been done or complied with when in fact it has not.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

**Division 2—Authority to conduct fundraising appeals**

**Application for authority**

14. (1) A person or organisation that wants to conduct fundraising appeals may apply to the Minister for an authority to do so.

(2) Persons or organisations may combine to make one application if each such person or organisation is separately identified in the application.

(3) An application may relate to a particular appeal or appeals or to appeals generally.

(4) An application made by an organisation may request that the authority issued in pursuance of the application authorise the conduct of fundraising appeals by members of specified branches of the organisation.

(5) An authority may be issued in terms requested under subsection (4) if the Minister is satisfied that each of the branches concerned is responsible to, and is under the direction and control of, the governing body of the applicant organisation. In such a case, the governing body of each branch is taken, for the purposes of this Act, to be the holder of the authority.

#### **Form of application**

15. (1) An application for an authority is to be in the form approved by the Minister.

(2) A form approved for such an application is to require the applicant to state in the application an address in New South Wales to which any notices or other documents can be forwarded for the purposes of this Act. The address so stated is, for the purposes of this Act, the registered office of the applicant.

(3) If the authority is to authorise the conducting of one or more fundraising appeals by branches of an organisation, the form of application must require an address in New South Wales to be stated for each such branch. In such a case, each such branch is taken, for the purposes of this Act, to have its registered office at the address specified in respect of it, and any requirement of this Act in relation to the registered office of the holder of an authority applies accordingly.

#### **How application dealt with**

16. (1) On receiving an application for an authority, the Minister may:

- (a) grant the application unconditionally, or grant the application subject to conditions; or
- (b) refuse the application.

(2) The Minister may refuse an application for an authority if the Minister is not satisfied as to any one or more of the following matters:

- (a) that the proposed appeal will be conducted in good faith for charitable purposes;



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- (b) that all of the persons proposing to conduct the appeal, and all persons associated with the proposed appeal, are fit and proper persons to administer, or to be associated with, a fundraising appeal for charitable purposes;
  - (c) that the proposed appeal will be administered in a proper manner;
  - (d) that the grant of an authority would not facilitate the contravention of any Act;
  - (e) that the applicant can and will ensure that persons conducting or participating in the proposed appeal will comply with the provisions of this Act and the regulations and the conditions of the authority;
  - (f) that the applicant has furnished all the information required to be furnished in relation to the proposed appeal;
  - (g) that, having regard to the purposes and activities, or likely activities, of the applicant, names, designations or titles proposed to be used in connection with the proposed appeal are appropriate and not misleading;
  - (h) that it is in the public interest to grant the authority.
- (3) If the Minister refuses an application for an authority, the Minister is required to advise the applicant of the reasons for the refusal.
- (4) The Minister may decline to deal with an application for an authority until the applicant furnishes the Minister with such information relating to the application as the Minister requires.
- (5) Receipt by the Minister of an application for an authority, or of any further information required under subsection (4), is to be acknowledged by notice (a **"receipt notice"**) to the applicant.
- (6) If the Minister has not disposed of an application for an authority within a period of 60 days after the date of the receipt notice for the application (or—if further information is sought under subsection (4) during that period—within 60 days after the date of the receipt notice for that information) the application is taken to have been approved. In such a case, the authority is taken to have been duly granted subject only to such conditions as may be prescribed by regulations made for the purposes of this subsection.
- (7) Nothing in subsection (6) affects the power of the Minister to vary the conditions of an authority in accordance with the provisions of this Part.

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**Right conferred by authority**

17. An authority may be granted so as to authorise a single fundraising appeal or a specified number of such appeals or an indefinite number of such appeals.

**Duration of authority**

18. (1) Unless sooner revoked, an authority remains in force for the period specified in the authority.

(2) If the authority does not specify such a period, the authority remains in force until revoked.

**Conditions of authority**

19. (1) The Minister may attach to an authority any condition that, having regard to the objects and purposes of this Act and the public interest, the Minister thinks ought to be imposed in the particular case.

(2) The conditions for the time being attached to an authority may be varied by the Minister by notice in writing served on the holder of the authority.

(3) For the purposes of this Act:

- (a) the imposition of a condition on an authority to which no conditions were previously attached; or
- (b) the imposition of any new condition on an authority; or
- (c) the amendment of a condition of an authority; or
- (d) the removal of a condition of an authority,

is a variation of its conditions.

**Division 3—Application of funds raised****Proceeds of appeal**

20. (1) Any money or benefit received in the course of a fundraising appeal conducted by the holder of an authority is to be applied according to the objects or purposes represented by or on behalf of the persons conducting the appeal as the purposes or objects of the appeal.

(2) Subsection (1) does not operate:

- (a) so as to prevent the deduction of lawful and proper expenses in accordance with the authority under which the appeal is conducted; or



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(b) so as to prejudice the operation of the Dormant Funds Act 1942 or of any Act or other law relating to the cy-pres application or other application of trust money.

(3) The regulations may specify, or make provision for or with respect to the determination (by the decision of the Minister or otherwise) of, what constitutes a lawful and proper expense in connection with particular fundraising appeals or any class or description of fundraising appeals or fundraising appeals generally.

(4) Any relevant Act or other law relating to the cy-pres application or other application of trust money applies to any money (not being trust money) that is subject to subsection (1).

(5) Money or any benefit received in the course of a fundraising appeal may be applied outside New South Wales, except to the extent that:

- (a) to apply it in that way would contravene subsection (1) or any other law; or
- (b) the Minister, having regard to the public interest, prohibits the application of any such money or benefit by a condition of an authority authorising the appeal concerned.

(6) Any money received in the course of a fundraising appeal, before the deduction of any expenses, is to be paid immediately into an account at a bank or building society or at any other institution prescribed (or of a class prescribed) by the regulations. The account is to consist only of money raised in the fundraising appeal concerned, or in that and other such appeals conducted by the same persons. The account is to be kept in the name of or on behalf of the person conducting the appeal and is to be operated by not fewer than 2 persons jointly. This subsection, however, has effect subject to the conditions of any particular authority.

(7) A person conducting a fundraising appeal, or any member of the governing body of an organisation on whose behalf such an appeal is conducted, who:

- (a) by act or omission is in any way directly or indirectly concerned in or party to a contravention of this section; or
- (b) aids, abets, counsels or procures a contravention,

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

(8) A person convicted of an offence under this section in connection with a fundraising appeal conducted on behalf of an organisation is, in addition to any liability for the offence, liable to the organisation for the loss incurred by the organisation as a result of the offence.

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(9) An amount for which a person is liable under subsection (8) may be recovered by the organisation concerned as a debt in any court of competent jurisdiction.

**Investment**

21. (1) Money received in the course of a fundraising appeal which is not immediately required to be applied to the purposes or objects of the appeal may be invested only in a manner for the time being authorised by law for the investment of trust funds.

(2) This section is subject to the provisions of the Public Authorities (Financial Arrangements) Act 1987 or any other Act which confers special powers of investment on the person or organisation concerned.

**Division 4—Requirements to be met by fundraisers****Keeping of records**

22. (1) A person or organisation that conducts or has conducted a fundraising appeal must keep, in accordance with this section, records of income and expenditure in relation to each such appeal.

(2) The records must:

- (a) be kept in writing in the English language or so as to enable the records to be readily accessible and readily convertible into writing in the English language; and
- (b) include any particulars required by the regulations; and
- (c) subject to the conditions of any authority, be kept at all times at the registered office of the person conducting the appeal; and
- (d) be kept for a period of at least 7 years (or such shorter period as the Minister may approve) after the receipt of the income or the incurring of the expenditure to which they relate.

(3) A person or organisation that contravenes this section is guilty of an offence. In the case of an unincorporated organisation, every trustee or other person who, at the time of the offence, was a member of the governing body of the organisation is guilty of an offence.

Maximum penalty: 50 penalty units.

**Periodic return by holder of authority (other than incorporated organisation)**

23. (1) A natural person or unincorporated organisation that for the time being holds an authority to conduct a fundraising appeal must send to the Minister returns giving details of the application of the proceeds of



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any fundraising appeals conducted by the person or organisation since the last such return was furnished (or, if no such returns have been lodged previously, since the authority was granted).

(2) The returns are to be sent at such intervals as may be specified in the authority, at such times as may be so specified (or within such further time as the Minister may allow).

(3) Each such return is to be in a form approved by the Minister and must show:

- (a) the gross amounts received from each appeal; and
- (b) the net amount received after the deduction of expenses.

(4) A person or organisation that contravenes this section is guilty of an offence. In the case of an unincorporated organisation, every trustee or other person who, at the time of the offence, was a member of the governing body of the organisation is guilty of an offence.

Maximum penalty: 50 penalty units.

**Audit**

24. (1) The accounts of any person or organisation that for the time being holds an authority to conduct a fundraising appeal, in so far as those accounts relate to receipts and expenditure in connection with any such appeals, must be audited annually by a person qualified to audit accounts for the purposes of the Corporations Law or having other qualifications or experience approved by the Minister.

(2) The auditor must report on:

- (a) whether the accounts show a true and fair view of the financial result of fundraising appeals for the year to which they relate; and
- (b) whether the accounts and associated records have been properly kept during that year in accordance with this Act and the regulations; and
- (c) whether money received as a result of fundraising appeals conducted during that year has been properly accounted for and applied in accordance with this Act and the regulations; and
- (d) the solvency of the person or organisation.

(3) If the auditor, in the course of the performance of the auditor's duties for the purposes of this section, is satisfied that:

- (a) there has been a contravention of this Act or the regulations; and

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(b) the circumstances are such that, in the auditor's opinion, the matter has not been or will not be adequately dealt with by comment in the auditor's report on the accounts or by bringing the matter to the notice of the person concerned or of the trustees or members of the governing body of the organisation concerned (as the case may be), the auditor must immediately report the matter to the Minister.

(4) A person or organisation that fails to have accounts audited as required by this section is guilty of an offence. In the case of an unincorporated organisation, every trustee or other person who, at the time of offence, was a member of the governing body of the organisation is guilty of an offence.

Maximum penalty: 50 penalty units.

(5) The requirements of this section are in addition to the requirements of any other law (including the Corporations Law).

(6) The whole or any part of a report prepared for the purposes of this section in respect of a corporation may be included in an auditor's report prepared for the purposes of the Corporations Law or any other law in respect of the corporation.

**Exemptions**

25. (1) The regulations may make provision for or with respect to the exemption of a person or organisation (or of a class of persons or organisations) from all or any of the provisions of this Division, other than any provision relating to the keeping of records.

(2) If a person or organisation referred to in subsection (1) enters into a contract or arrangement with another person by which that other person will or might receive any remuneration or benefit for conducting or participating in a fundraising appeal, that other person is not, by virtue of this section or any regulation, exempt from any of the provisions of this Division.

**PART 3—POWERS OF THE MINISTER IN RESPECT OF FUNDRAISERS****Division 1—Investigations****Minister may inquire into fundraisers**

26. (1) The Minister may, with respect to any matter arising under this Act, inquire into any person or organisation that:



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(a) is conducting or has conducted, or is participating or has participated in, a fundraising appeal; or

(b) the Minister has reason to believe is conducting or has conducted, or is participating or has participated in, a fundraising appeal.

(2) The Minister may cause an inquiry under this section to be made by an authorised inspector, either with respect to a particular matter or with respect to any matter.

**Power of Minister to require accounts etc.**

27. (1) For the purposes of any inquiry under this Part, the Minister or an authorised inspector may require any person to do any one or more of the following:

(a) to furnish accounts and statements in writing with respect to any matter in question at the inquiry, being a matter about which the person has or can reasonably obtain information;

(b) to provide answers in writing to any questions addressed to the person on any such matter;

(c) to verify any such account, statement or answer by statutory declaration;

(d) to attend at a specified time and place and give evidence or produce documents in the person's custody or under the person's control which relate to any matter in question at the inquiry;

(e) to furnish copies of or extracts from any document in the person's custody or under the person's control which relates to any matter in question at the inquiry or to make any such document available for inspection.

(2) Any requirement under this section is to be made by notice in writing served on the person concerned and specifying a reasonable time within which the requirement is to be complied with.

(3) For the purposes of any inquiry under this Part, evidence may be taken on oath and the person conducting the inquiry may for that purpose administer oaths.

(4) The person conducting the inquiry may take possession of documents produced to the person for such period as the person considers necessary for the purposes of the inquiry and may make copies of or take extracts from them. During that period the person conducting the inquiry must permit a person who would be entitled to inspect any one or more of those documents if they were not in the possession of the person conducting the inquiry to inspect at all reasonable times such of those documents as that person would be entitled to inspect.

**Power of entry and inspection**

28. (1) If an authorised inspector believes on reasonable grounds that any documents relevant to an inquiry under this Part are likely to be found on any premises, the authorised inspector may:

- (a) enter the premises; and
- (b) require production of the documents; and
- (c) take copies of or extracts from the documents or take possession of the documents for such period as he or she considers necessary for the purposes of the inquiry.

(2) Section 27 (4) applies to documents taken under subsection (1) (c).

(3) A power conferred by this section:

- (a) may not be exercised in relation to any premises used as a dwelling, or in relation to a part of any premises so used, except with the consent of the occupier of the premises or part or by the authority of a search warrant; and
- (b) may be exercised only at reasonable times and on reasonable notice to the occupier of any affected premises, except where the Minister has certified that, in the circumstances, the power may be otherwise exercised (in which case it may be exercised in accordance with the Minister's directions).

(4) A power conferred by this section may not be exercised unless the person exercising it is in possession of a certificate issued by the Minister which:

- (a) states that it is issued under this Act; and
- (b) gives the name of the person to whom it is issued; and
- (c) describes the nature of the powers conferred; and
- (d) bears the signature of the Minister.

(5) A person exercising a power to enter premises must produce his or her certificate to the occupier of the premises.

(6) If damage is caused by a person exercising a power to enter premises, a reasonable amount of compensation is recoverable as a debt owed by the Crown to the owner of the premises unless the occupier hindered or obstructed the exercise of the power.

**Search warrant**

29. (1) An authorised inspector may apply to an authorised justice (within the meaning of the Search Warrants Act 1985) for a search warrant if the inspector has reasonable grounds for believing that



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documents relating to any matter in question at an inquiry being conducted under this Act 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 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) The authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised inspector named in the warrant to enter the place and to search for and take possession of documents of a kind specified in the warrant.

(3) An authorised inspector who enters any place by virtue of such a warrant may take with him or her such other persons as may be necessary, and on leaving any unoccupied place so entered must, as far as practicable, leave it as effectively secured against trespassers as he or she found it.

(4) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

**Offences in relation to inquiries**

30. A person who:

- (a) neglects or fails to comply with a requirement duly made by a notice under this Division within the time specified in the notice; or
- (b) alters, destroys or conceals any document referred to in section 27 (1) (e); or
- (c) refuses to take an oath required to be taken under this Division; or
- (d) hinders or obstructs the Minister or any authorised inspector in the exercise of his or her functions under this Division,

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

**Division 2—Revocation of authority and disposition of funds****Revocation of authority**

31. (1) The Minister may, by order published in the Gazette, revoke an authority if the Minister is satisfied:

- (a) that any fundraising appeal conducted by the holder of the authority has not been conducted in good faith for charitable purposes; or
  - (b) that any of the persons who have conducted a fundraising appeal by virtue of the authority, or any persons associated with any such appeal, are not fit and proper persons to administer, or to be associated with, a fundraising appeal for charitable purposes; or
  - (c) that any fundraising appeal conducted by virtue of the authority has been improperly administered; or
  - (d) that, in connection with any fundraising appeal conducted by virtue of the authority, the provisions of this Act or the regulations or the conditions of the authority were not complied with by any person conducting or participating in the appeal; or
  - (e) that the holder has not conducted a fundraising appeal within the previous 24 months; or
  - (f) that, in the public interest, the authority should be revoked.
- (2) The revocation of an authority is not stayed by lodgment of an appeal against the revocation.
- (3) The revocation of an authority does not have effect until notice of the revocation, and of the reasons for it, is served on the holder of the authority.
- (4) Notice of the revocation of an authority is to be published by the Minister in one or more newspapers circulating throughout New South Wales.
- (5) If the Minister has revoked an authority, the Minister may subsequently, if the Minister thinks fit, issue a further authority (whether in the same terms or otherwise) to the same person or organisation without the need for further application.

#### **Application of funds in absence of authority**

**32.** (1) If the Minister has revoked the authority of any person or organisation or if the Minister is satisfied that a person or organisation is conducting or has conducted a fundraising appeal without lawful authority or in a manner contrary to the person's or organisation's authority to do so, the Minister may apply to the Supreme Court for an order for the disposition of assets of the person or organisation which the Supreme Court is satisfied are, or are traceable to, the proceeds of any fundraising appeal conducted by the person or organisation.



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(2) More than one such application may be made in respect of the same person or organisation.

(3) Having regard to the purposes or objects of any fundraising appeals to which any such assets are referable, the Supreme Court may make such order for their disposition as it thinks fit.

(4) The Supreme Court in any such case may make such consequential or ancillary orders as it thinks fit.

**Division 3—Administration of fundraising organisations by administrator**

**Appointment of administrator**

33. (1) The Minister may, by instrument in writing, appoint an administrator:

- (a) to conduct the affairs and activities of any non-profit organisation that is conducting or has conducted one or more fundraising appeals, or that has or had as one of its objects a charitable purpose; or
- (b) to conduct such of the affairs and activities of any other organisation that is conducting or has conducted one or more fundraising appeals as relate to the administration, application and management of funds raised in any such appeal.

(2) An administrator is not to be appointed unless the Minister believes on reasonable grounds that:

- (a) after the organisation has been notified by the Minister of any contravention of a provision of this Act or the regulations or a condition imposed on the organisation by or under this Act:
  - (i) the organisation has failed to remedy the contravention to the extent that it is capable of remedy; or
  - (ii) the organisation has committed a further contravention of the provision or condition; or
  - (iii) the contravention of the provision or condition has continued; or
- (b) an examination or inquiry under this Act in relation to the organisation has disclosed reasonable grounds to suspect a misappropriation of funds of the organisation or of mismanagement of the organisation; or
- (c) for other reasons it is in the public interest that the administrator be appointed.



**Notice of appointment**

**34.** (1) The Minister must serve notice of the appointment of an administrator on the organisation concerned.

(2) When a notice under this section is served on a non-profit organisation:

- (a) the members of the governing body of the organisation cease to hold office; and
- (b) if the notice so provides, all contracts of employment with the organisation are terminated; and
- (c) if the notice so provides, all contracts for the provision of secretarial or administrative services to the organisation are terminated.

**Administration**

**35.** (1) An administrator has the functions of the governing body of the organisation and no appointment of a person to that body may be made while the administrator holds office, except as required by this section.

(2) Before revoking the appointment of an administrator for an organisation (otherwise than for the purpose of appointing a new administrator), the Minister must:

- (a) ensure that the members of the governing body of the organisation have been appointed in accordance with the constitution of the organisation; or
- (b) appoint those members.

(3) Members of the governing body of an organisation appointed by the Minister under this section are taken to have been appointed in accordance with the constitution of the organisation.

(4) Any members so appointed:

- (a) take office on revocation of the appointment of the administrator; and
- (b) hold office in accordance with the constitution of the organisation concerned.

**Audit requirements while administrator holds office**

**36.** (1) For so long as an administrator holds office, the provisions of any relevant Act or law relating to the appointment and re-appointment of

auditors and the functions of auditors (being provisions which would have been applicable to the organisation concerned if the administrator had not been appointed) continue to apply to the organisation.

(2) For the purposes of the application of those provisions, a reference in those provisions to the directors of a company is to be construed as a reference to the administrator of the organisation.

#### **Expenses of administration**

37. (1) The expenses of and incidental to the administration of the affairs and activities of an organisation by an administrator appointed under this Division are payable by the organisation.

(2) The remuneration of an administrator of an organisation who is not an employee of the Crown is an expense to which this section applies and is to be fixed by the Minister.

(3) Where an administrator is an employee of the Crown, the reimbursement of the Crown of an amount certified by the Minister in respect of the remuneration of that employee is an expense to which this section applies and is recoverable from the organisation in a court of competent jurisdiction as a debt due to the Crown.

#### **Liability for losses incurred during administration**

38. (1) An administrator appointed under this Division is not liable for any loss incurred by the organisation during the administrator's term of office unless the loss was attributable to:

- (a) wilful misconduct of the administrator; or
- (b) gross negligence of the administrator; or
- (c) wilful failure of the administrator to comply with any provision of this Act or the regulations or of the constitution of the organisation (in so far as any such provision of the constitution is applicable to the members of the governing body of the organisation).

(2) Neither the Crown nor the Minister is liable for any loss incurred by the organisation during the term of office of an administrator, whether or not the administrator is so liable.

### **Division 4—Miscellaneous provisions**

#### **Remission of cases to the Attorney General**

39. (1) If the Minister is of the opinion:



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- (a) that legal proceedings should be instituted with respect to any person or organisation that has conducted fundraising appeals or with respect to any assets or affairs of such a person or organisation; and
- (b) that under the circumstances it is desirable that such proceedings should be instituted by the Attorney General,

the Minister may remit the case to the Attorney General, together with such statements and particulars (if any) as in the opinion of the Minister are necessary for the explanation of the case.

(2) The Attorney General may institute and prosecute such legal proceedings as the Attorney General, on consideration of the circumstances, considers proper in the circumstances of the case.

**Auditor-General to act as or provide inspector**

40. (1) For the purposes of this Act, the Auditor-General may (and on the request of the Minister, is required to):

- (a) exercise the functions of an authorised inspector under this Act or the regulations or assist and advise the Minister on any matter arising in the execution of this Act or the regulations; or
- (b) provide some suitably qualified member or members of the Auditor-General's staff to do so.

(2) The Auditor-General or such a member of staff has the functions of an authorised inspector under this Act and the regulations.

**Recovery of certain expenses**

41. (1) If the Minister so directs, the whole or any part of the expenses incurred by the Auditor-General in or in connection with the exercise by the Auditor-General or a member of the Auditor-General's staff of any of the functions of an authorised inspector in relation to a particular organisation is payable by the organisation and recoverable from the organisation by the Auditor-General as a debt in a court of competent jurisdiction.

(2) If the Minister so directs, the remuneration of and any expenses incurred by an authorised inspector who is not an employee of the Crown are, where the remuneration and expenses are referable to the exercise of any of the functions of the inspector under this Act in relation to a particular person or organisation, payable by the person or organisation and recoverable in a court of competent jurisdiction as a debt due to the Crown.



(3) The amount recoverable from a person or organisation under subsection (1) is an amount certified by the Auditor-General to be the amount so recoverable.

(4) The amount recoverable from a person or organisation under subsection (2) is an amount certified by the Minister to be the amount so recoverable.

(5) If the organisation concerned is an unincorporated organisation, the trustees or persons who are members of the governing body of the organisation are jointly and severally liable for any debts of the organisation under this section.

#### **PART 4—JUDICIAL REVIEW**

##### **Appeal against refusal to grant authority or against conditions imposed on authority**

42. An applicant for an authority who is dissatisfied with any decision of the Minister with respect to the application may, within 30 days of receiving notice of the decision, appeal to the District Court against the decision.

##### **Appeal against revocation of authority**

43. A person or organisation whose authority is revoked may, within 30 days after the revocation, appeal to the District Court against the revocation.

##### **Appeal against variation of authority**

44. A person or organisation that holds an authority may, within 30 days after any variation of the conditions attached to the authority, appeal to the District Court against the variation.

##### **Hearing of appeals**

45. The District Court, in hearing an appeal under this Act, is to inquire into and decide the appeal having regard to the provisions of this Act and the public interest.

##### **Effect of determination**

46. A decision made by the District Court in any appeal under this Act is final and binding on all parties to the appeal and, in cases where the appeal is allowed, it is the duty of the Minister to give effect to the District Court's decision.

**PART 5—MISCELLANEOUS****Public access to information**

47. (1) A person or organisation that is (or, within the previous 12 months, was) the holder of an authority must, within 30 days after being requested to do so by any person, furnish the person with:

- (a) any audited financial statements requested by the person concerning fundraising appeals conducted by the person or organisation concerned during its last financial year and, to the extent that the regulations so require, during previous financial years; and
- (b) in the case of an organisation—such information as the regulations may prescribe concerning the objects and constitution (including the names and addresses of members of the governing body of the organisation) of the organisation.

Maximum penalty: 5 penalty units.

(2) Any such information and financial statements may, at the request of any person, be supplied to the person by or on behalf of the Minister.

(3) A person is not entitled to be supplied with information or financial statements under this section unless the person has paid any relevant fee prescribed by the regulations.

**Remuneration of board members of charitable organisations**

48. (1) A person is not prohibited (despite any law to the contrary) from holding office or acting as a member of the governing body of a non-profit organisation having as one of its objects a charitable purpose merely because the person receives any remuneration or benefit from the organisation if:

- (a) the Minister, by order published in the Gazette, has declared that this section applies to that office; or
- (b) the Minister has given prior approval of a person who receives any such remuneration or benefit holding that office or acting in that capacity; or
- (c) the person concerned holds that office or acts in that capacity by virtue of his or her office as a minister of religion or a member of a religious order.

(2) An approval under this section is subject to any conditions imposed by the Minister when giving the approval.



(3) An approval under this section is to be in writing. Applications for such approvals must be addressed in writing to the Minister by the organisation concerned.

(4) For the purposes of this section, every body, organisation or office referred to in section 7 (1) is taken to be a non-profit organisation having among its objects one or more charitable purposes.

#### **Authorised inspectors**

49. (1) The Minister may appoint any person to be an inspector for the purposes of this Act.

(2) The Minister may authorise a police officer or other person to exercise such of the functions of an authorised inspector under this Act as the Minister may direct.

(3) The regulations may authorise police officers of or above any specified rank to exercise all or any specified functions of an authorised inspector under this Act.

#### **Proceedings for offences**

50. (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

(2) Any such proceedings may be commenced at any time within 3 years after the offence was allegedly committed.

#### **Offences by corporations**

51. (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.



**Evidence of certain matters**

52. A certificate purporting to be signed by the Minister or by an officer prescribed by the regulations and stating:

- (a) that, at times specified in the certificate, a person or organisation named in the certificate was the holder of an authority; or
- (b) that, at times specified in the certificate, a person or organisation named in the certificate was not the holder of an authority; or
- (c) that, at times specified in the certificate, conditions specified in the certificate were attached to a particular authority,

is admissible in any legal proceedings and is evidence of the matter stated in the certificate.

**Delegation**

53. The Minister may delegate to any public servant any of the Minister's functions under this Act or the regulations (other than this power of delegation).

**Service of documents**

54. (1) A document required or permitted by or under this Act to be served on a person may, if the person is a natural person, be served:

- (a) by delivering the document to the person; or
- (b) by sending the document by post addressed to the person at the person's last known place of residence or at the person's registered office; or
- (c) by leaving the document at the person's last known place of residence with some person apparently resident at that place and apparently not less than 16 years of age; or
- (d) by leaving the document at the person's last known place of business or at the person's registered office with someone apparently in the service of the person and apparently not less than 16 years of age.

(2) A document required or permitted by or under this Act to be served on a person may, if the person is a corporation, be served:

- (a) by sending the document by post addressed to the corporation at its registered office or principal place of business in New South Wales; or
- (b) by leaving it at the registered office or principal place of business in New South Wales of the corporation with some person apparently employed in connection with the business of the corporation and apparently not less than 16 years of age.

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(3) A document required or permitted by or under this Act to be served on an organisation may, if the organisation is not incorporated, be served:

- (a) by sending the document by post addressed to the trustees or members of the governing body of the organisation at its registered office; or
- (b) by serving it on any such trustee or member of the governing body in any manner that, by this section or otherwise according to law, constitutes sufficient service on a natural person.

(4) The provisions of this section are in addition to, and do not prejudice the operation of, any other law prescribing procedures sufficient for service of documents.

**Regulations**

55. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

**Repeals**

56. (1) The following Acts are repealed:

Charitable Collections Act 1934 No. 59

Charitable Collections (Amendment) Act 1985 No. 2

(2) The Charitable Collections Regulations and any other regulations in force under those Acts are repealed.

**Consequential amendments**

57. Each Act specified in Schedule 1 is amended as set out in that Schedule.

**Savings and transitional provisions**

58. Schedule 2 has effect.

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**SCHEDULE 1—CONSEQUENTIAL AMENDMENTS**

(Sec. 57)

**Aboriginal Land Rights Act 1983 No. 42**

Omit section 51 (6).

**Auctioneers and Agents Act 1941 No. 28**

Omit section 4 (4), insert instead:

(4) This Act does not apply to a sale by auction made for the purposes of or in the course of a fundraising appeal within the meaning of the Charitable Fundraising Act 1991 if the appeal is made, and the proceeds of sale are applied, in accordance with that Act.

**Federation of New South Wales Police-Citizens Youth Clubs (Reconstitution) Act 1989 No. 163**

Omit section 12 (3) and (4).

**Lotteries and Art Unions Act 1901 No. 34**

(a) Omit section 4 (2) (a), insert instead:

(a) the lottery is conducted by or under the authority of a non-profit organisation; and

(b) From section 4 (3) (b) and (e), omit "charity or" wherever occurring.

(c) Omit section 4A (2) (a), insert instead:

(a) the game of chance is conducted in the course of a fundraising appeal within the meaning of the Charitable Fundraising Act 1991 (not being an appeal conducted in contravention of that Act) or is conducted by or under the authority of an organisation that:

(i) was, immediately before the repeal of the Charitable Collections Act 1934, a charity within the meaning of that Act and registered or exempted from registration under that Act; and

(ii) has not, since the repeal of that Act, altered its constitution in so far as its constitution relates to its charitable objects; and

(d) From section 4A (3) (c), omit "in aid of the charity", insert instead "for the charitable purposes of the organisation".

(e) From section 4A (3) (g) and (5A), omit "charity" wherever occurring, insert instead "organisation".



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SCHEDULE 1—CONSEQUENTIAL AMENDMENTS—*continued*

**Motor Vehicles Taxation Act 1988 No. 111**

Omit section 3 (2) (c) (iii), insert instead:

- (iii) a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose; or

**New South Wales Institute of Psychiatry Act 1964 No. 44**

Omit section 19 (2).

**Pay-roll Tax Act 1971 No. 22**

Omit section 10 (1) (j), insert instead:

- (j) by a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose;
- (j1) by an organisation that:
  - (i) was, immediately before the repeal of the Charitable Collections Act 1934, a charity within the meaning of that Act and registered or exempted from registration under that Act; and
  - (ii) has not, since the repeal of that Act, altered its constitution in so far as its constitution relates to its charitable objects;

**Prevention of Cruelty to Animals Act 1979 No. 200**

From paragraph (b) of the definition of "charitable organisation" in section 4 (1), omit "registered, or exempted from registration, as a charity, by or under the Charitable Collections Act 1934", insert instead "a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose".

**Search Warrants Act 1985 No. 37**

In section 10, insert in alphabetical order:  
section 29 of the Charitable Fundraising Act 1991;

**Second-hand Dealers and Collectors Act 1906 No. 30**

Omit paragraph (g) of the Seventh Schedule, insert instead:

- (g) Clothing, waste paper and other second-hand goods of any kind collected, acquired or sold for the purposes of a fundraising appeal within the meaning of the Charitable Fundraising Act 1991, being a fundraising appeal that is lawfully conducted under that Act.

*Charitable Fundraising 1991*SCHEDULE 1—CONSEQUENTIAL AMENDMENTS—*continued*

## Stamp Duties Act 1920 No. 47

- (a) Omit section 87 (c), insert instead:
  - (c) insurance taken out by or on behalf of:
    - (i) a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose;
    - (ii) an organisation that:
      - (A) was, immediately before the repeal of the Charitable Collections Act 1934, a charity within the meaning of that Act and registered or exempted from registration under that Act; and
      - (B) has not, since the repeal of that Act, altered its constitution in so far as its constitution relates to its charitable objects;
- (b) Omit section 98LA (3) (b) (iv), insert instead:
  - (iv) a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose;
  - (iva) an organisation that:
    - (A) was, immediately before the repeal of the Charitable Collections Act 1934, a charity within the meaning of that Act and registered or exempted from registration under that Act; and
    - (B) has not, since the repeal of that Act, altered its constitution in so far as its constitution relates to its charitable objects;

## SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 58)

## Regulations

1. (1) The regulations may contain provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication.

*Charitable Fundraising 1991*

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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Certain organisations taken to hold authorities**

2. (1) An organisation which, immediately before the repeal of the Charitable Collections Act 1934, was registered under that Act as a charity or was exempt from registration under that Act is taken to be the holder of an authority authorising the organisation to conduct any number of fundraising appeals.

(2) Section 19, and the other provisions of this Act, apply to an authority created by the operation of subclause (1).

(3) Subclause (1) ceases to apply to an organisation:

- (a) when its authority is revoked under this Act; or
- (b) when it alters its constitution in so far as its constitution relates to its charitable objects; or
- (c) at the end of a period of 2 years commencing on the repeal of the Charitable Collections Act 1934,

whichever happens first.

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**THE CHARITABLE FUNDRAISING BILL 1991**  
**SECOND READING SPEECH**  
**LEGISLATIVE COUNCIL**

MR PRESIDENT,

I MOVE:

THAT THIS BILL BE NOW READ A SECOND TIME.

THE PURPOSE OF THE CHARITABLE FUNDRAISING BILL IS TO UPDATE THE LAWS GOVERNING APPEALS TO THE PUBLIC FOR CHARITABLE PURPOSES.

HONOURABLE MEMBERS ARE ALL WELL AWARE OF THE VITAL CONTRIBUTION MADE BY CHARITIES TO THE WELL-BEING OF OUR SOCIETY. CHARITIES PROVIDE UNFAILING SUPPORT TO THOSE IN NEED, THE DISADVANTAGED, THE ILL AND THE POOR.

MOST CHARITIES SHARE A COMMON FEATURE IN THAT MUCH OF THEIR FUNDS ARE RAISED FROM APPEALS TO THE PUBLIC FOR SUPPORT.

CHARITABLE APPEALS RELY...





CHARITABLE APPEALS INVOLVE TRUST. PEOPLE WHO MAKE A DONATION CANNOT MONITOR EXACTLY HOW THE FUNDS HAVE BEEN APPLIED. LIKEWISE, A POTENTIAL BENEFICIARY HAS NO LEGAL RIGHT TO DEMAND PAYMENT OR TO CONTROL THE DISTRIBUTION OF THE PROCEEDS OF AN APPEAL.

GOVERNMENTS HAVE LONG HAD A RESPONSIBILITY TO PROTECT THE PUBLIC INTEREST AND ENSURE THAT THE TRUST OF THE COMMUNITY IS NOT ABUSED.

THE PRESENT LAW GOVERNING CHARITABLE APPEALS IS THE CHARITABLE COLLECTIONS ACT. IT WAS INTRODUCED IN 1934 TO COUNTER A NUMBER OF IDENTIFIED ABUSES BY SOME CHARITIES OF THE TIME.

AT THAT TIME, IT WAS KNOWN THAT IN SOME INSTANCES LARGE AMOUNTS OF MONEY HAD BEEN COLLECTED FROM THE PUBLIC, OF WHICH ONLY A SMALL PROPORTION HAD FOUND ITS WAY TO THE INTENDED BENEFICIARIES OF THE APPEAL.

THE 1934 ACT REGULATES CHARITABLE APPEALS BY REQUIRING ANY ORGANISATION WHICH WISHES TO SOLICIT CHARITABLE FUNDS FROM THE PUBLIC TO BE FIRST REGISTERED OR EXEMPTED FROM REGISTRATION AS A CHARITY.

SINCE 1934, SOME...



SINCE 1934, SOME 27,500 ORGANISATIONS HAVE BEEN REGISTERED AS CHARITIES, AND IT IS ESTIMATED THAT ABOUT 12,500 CHARITABLE ORGANISATIONS ARE STILL FUNCTIONING IN THIS STATE.

NOT ONLY HAS THE SIZE OF THE CHARITY INDUSTRY GROWN, BUT THE NATURE OF THE INDUSTRY AND THE LEVEL OF CONTROL OVER IT HAS CHANGED DRAMATICALLY.

WHEN THE CHARITABLE COLLECTIONS ACT WAS INTRODUCED IN 1934 THERE WERE FEW STATUTES REGULATING THE OPERATIONS OF ORGANISATIONS SUCH AS CHARITIES. SINCE THEN, A NUMBER OF LAWS HAVE BEEN ENACTED SPECIFICALLY TO REGULATE THE OPERATIONS AND ADMINISTRATION OF COMPANIES, ASSOCIATIONS AND CO-OPERATIVES.

THIS HAS LED TO A SITUATION NOW WHERE A CHARITY MAY, DEPENDING ON ITS STRUCTURE AND ACTIVITIES, BE REQUIRED TO ACCOUNT TO A NUMBER OF GOVERNMENT AGENCIES AND AUTHORITIES, GENERATING ADDED AND UNNECESSARY COSTS TO THE ORGANISATIONS THEMSELVES AND TO GOVERNMENT.

THE LAW ALSO ...





THE LAW ALSO NEEDS TO BE REVISED TO KEEP PACE WITH THESE CHANGES AND OTHER TRENDS. INCREASINGLY, CHARITIES ARE ADOPTING MORE SOPHISTICATED AND COMMERCIALY-ORIENTED FUNDRAISING METHODS.

THERE IS A GREATER INVOLVEMENT OF COMMERCIAL FUNDRAISERS IN CHARITABLE APPEALS.

THE DEVELOPMENT OF THE REGULATORY CHANGES CONTAINED IN THE CHARITABLE FUNDRAISING BILL 1991 HAS INVOLVED EXTENSIVE CONSULTATION WITH THE CHARITY SECTOR, OTHER GOVERNMENT AGENCIES AND THE WIDER COMMUNITY.

THE CONSULTATIVE PROCESS HAS BEEN LONG AND THOROUGH.

IT BEGAN IN SEPTEMBER 1989 WITH THE RELEASE OF A DISCUSSION PAPER BY THE CHIEF SECRETARY'S DEPARTMENT. THIS PAPER, ENTITLED, "FUNDRAISING APPEALS FOR CHARITABLE PURPOSES IN NEW SOUTH WALES", WAS WIDELY DISTRIBUTED IN THE COMMUNITY.

IT CANVASSED A NUMBER ...





IT CANVASSED A NUMBER OF OPTIONS TO REFORM THE LAW, WITH THE INTENTION OF SIMPLIFYING THE LAW, REMOVING THE DUPLICATION OF BUREAUCRATIC CONTROLS AND APPLYING PUBLIC RESOURCES MORE EFFECTIVELY.

IN THE MAIN, THE RESPONSES RECEIVED WERE MOST FAVOURABLE, WITH A NUMBER OF ORGANISATIONS STATING THAT A REVIEW OF THE CURRENT LEGISLATION WAS TIMELY AND OF BENEFIT TO THE CHARITABLE SECTOR.

SUBSEQUENTLY, A DRAFT BILL CALLED "THE FUNDRAISING APPEALS BILL" WAS ISSUED FOR PUBLIC COMMENT. RELEASED IN JANUARY THIS YEAR, IT ALSO WAS WIDELY DISTRIBUTED TO CHARITABLE, SOCIAL-WELFARE AND SERVICE ORGANISATIONS, COMMUNITY GROUPS, GOVERNMENT AGENCIES AND INTERESTED MEMBERS OF THE COMMUNITY.

THE REACTION WAS POSITIVE AND ENCOURAGING.

THE CONSULTATIVE PROCESS CONTINUED - MEETINGS WERE HELD, FURTHER DRAFT BILLS WERE PREPARED - LEADING TO THE CHARITABLE FUNDRAISING BILL WHICH IS NOW BEFORE THIS HOUSE.

I AM PLEASED ...



I AM PLEASED TO SAY THE BILL HAS RECEIVED THE SUPPORT OF THE MAJOR CHURCHES, MAJOR CHARITIES AND PEAK BODIES, INCLUDING THE AUSTRALASIAN INSTITUTE OF FUNDRAISERS, A GROUP MADE UP OF REPRESENTATIVES OF MANY OF THE CHARITABLE AND COMMUNITY WELFARE ORGANISATIONS.

IT IS APPROPRIATE THAT I ACKNOWLEDGE THE SUPPORT AND ASSISTANCE THESE BODIES HAVE PROVIDED IN DEVELOPING THIS BILL.

I TURN NOW TO THE REGULATORY SCHEME TO BE ESTABLISHED BY THE CHARITABLE FUNDRAISING BILL.

THE BILL, THOUGH BASED ON THE CHARITABLE COLLECTIONS ACT, PROVIDES A MORE FLEXIBLE REGULATORY APPROACH. FLEXIBILITY IS CRUCIAL IN VIEW OF THE WIDE DIFFERENCES BETWEEN CHARITIES.

THE 1934 ACT REQUIRES AN ORGANISATION THAT WISHES TO APPEAL TO THE PUBLIC FOR A CHARITABLE PURPOSE TO BE REGISTERED AS A CHARITY. TO BE ENTITLED TO REGISTRATION, AN ORGANISATION NEEDS TO HAVE ONLY ONE CHARITABLE OBJECT. REGISTRATION IS ALMOST AUTOMATIC.

THIS APPROACH IS ...





THIS APPROACH IS INAPPROPRIATE BECAUSE AN ORGANISATION HAVING ONLY ONE CHARITABLE PURPOSE IS ABLE TO REPRESENT ITSELF TO THE COMMUNITY AS A "CHARITY" EVEN THOUGH THE BULK OF ITS OBJECTS, BY DEFINITION, ARE NON-CHARITABLE.

REGISTRATION ENABLES THE ORGANISATION TO APPROACH THE PUBLIC FOR FUNDS AT ANY TIME, EVEN YEARS AFTER REGISTRATION OR THE RUNNING OF THE LAST ACTIVE APPEAL.

THE KEY TO THE NEW SCHEME IS THE ABOLITION OF THE CONCEPT OF REGISTRATION AS A CHARITY, AND ITS REPLACEMENT WITH THE NOTION OF AN AUTHORITY TO RAISE FUNDS. AN AUTHORITY IS AKIN TO A LICENCE OR A PERMIT AND MAY BE ISSUED FOR AN INDEFINITE PERIOD FOR AN INDEFINITE NUMBER OF APPEALS.

IT IS INTENDED THAT AUTHORITIES WILL BE ISSUED FOR, ON AVERAGE, A PERIOD OF FIVE YEARS, ENABLING THE AUTHORITY-HOLDER TO CONDUCT AN INDEFINITE NUMBER OF APPEALS DURING THAT PERIOD.

WELL-KNOWN ORGANISATIONS MAY BE ISSUED WITH FUNDRAISING AUTHORITIES OF LONGER DURATION, AND GROUPS THAT SIMPLY WANT TO CONDUCT A ONE-OFF APPEAL WILL BE ISSUED WITH AN AUTHORITY FOR JUST THAT APPEAL.

IT IS IMPORTANT ...





IT IS IMPORTANT TO STRESS THAT THE HOLDER OF A BLANKET FUNDRAISING AUTHORITY WILL NOT BE REQUIRED TO SEEK APPROVAL OR AUTHORISATION FOR EACH AND EVERY APPEAL, OR EACH AND EVERY ACTIVITY CONDUCTED DURING THE CURRENCY OF THE AUTHORITY.

AUTHORITY HOLDERS WILL BE EMPOWERED TO AUTHORISE OTHER PERSONS OR GROUPS TO COLLECT FUNDS ON THEIR BEHALF.

A KEY POINT IS THAT THIS PROPOSAL WILL NOT EXTEND GOVERNMENT REGULATION INTO NEW OR WIDER AREAS. ANY GROUP WHICH WOULD BE SUBJECT TO THE PROPOSED ACT IS PRESENTLY SUBJECT TO THE CHARITABLE COLLECTIONS ACT.

I TURN NOW TO SOME OF THE KEY ELEMENTS OF THE CHARITABLE FUNDRAISING BILL.

THE REQUIREMENT THAT A PERSON OR ORGANISATION CONDUCTING AN APPEAL FOR A CHARITABLE PURPOSE HOLD A FUNDRAISING AUTHORITY IS FOUND IN CLAUSE 9.

AN EXEMPTION TO ...



AN EXEMPTION TO THIS BASIC REQUIREMENT IS PROVIDED TO ORGANISATIONS WHICH ARE ESTABLISHED BY ANOTHER ACT OF PARLIAMENT AND ARE ALREADY SUBJECT TO THE DIRECTION AND CONTROL OF A MINISTER.

THE DEFINITION OF THE APPEALS WHICH ARE TO BE SUBJECT TO THIS ACT IS FOUND IN CLAUSE 5. THESE ARE DESCRIBED IN THE BILL AS "FUNDRAISING APPEALS". THE CLAUSE BEGINS WITH THE BASIC PROPOSITION THAT THE SOLICITING OF ANY MONEY OR PROPERTY FOR A CHARITABLE PURPOSE IS A FUNDRAISING APPEAL. THE CLAUSE THEN PROVIDES A LIMITED CLASS OF EXCEPTIONS.

THE FIRST EXCEPTION IS MEMBERSHIP RENEWAL FEES. THE ORIGINAL MEMBERSHIP DRIVE FOR AN ORGANISATION HAVING A CHARITABLE OBJECT IS TO BE MADE SUBJECT TO THIS ACT BECAUSE OF THE INCREASING TENDENCY OF ORGANISATIONS TO STYLE REQUESTS FOR DONATIONS AS INVITATIONS TO PAY A MEMBERSHIP FEE.

MEMBERSHIP RENEWAL FEES ARE EXEMPTED BECAUSE EXISTING MEMBERS ARE ABLE TO INVOKE THE PROTECTION GIVEN TO THEM BY THE CONSTITUTION OF THE ORGANISATION.

SIMILARLY, APPEALS TO ...





SIMILARLY, APPEALS TO THE MEMBERS OF AN ORGANISATION ARE EXCLUDED FROM THE DEFINITION.

ADVICE AS TO HOW BEQUESTS MAY BE MADE IS ALSO TO BE EXCLUDED. BEQUESTS LACK THE IMMEDIACY OF DIRECT APPEALS TO THE PUBLIC. A DONOR HAS THE TIME TO CONSIDER THE POTENTIAL BEQUEST, IS ABLE TO SEEK PROFESSIONAL ADVICE AND IS ABLE TO ALTER HIS OR HER DECISION AT A LATER DATE.

ANOTHER EXEMPTION CONCERNS APPEALS MADE AT A WORKPLACE TO RAISE FUNDS TO ASSIST A COLLEAGUE OR HIS OR HER FAMILY.

THIS IS CONSISTENT WITH THE APPROACH TAKEN WITH RESPECT TO APPEALS TO MEMBERS OF AN ORGANISATION. AN APPEAL AT A WORKPLACE IS ABLE TO BE OVERSEEN BY THE PERSONS WHO MADE THE DONATIONS.

AS THE DEFINITION OF FUNDRAISING APPEALS INCLUDES THE TERM "CHARITABLE PURPOSE", IT IS NECESSARY TO DEFINE THAT TERM AS WELL.

THE DEFINITION OF ...





THE DEFINITION OF "CHARITABLE PURPOSE" CONTAINED IN CLAUSE 4 IS BASED ON THE COMMON LAW DEFINITION OF A CHARITABLE PURPOSE, BUT ADDS BENEVOLENT, PHILANTHROPIC AND PATRIOTIC PURPOSES.

THE DEFINITION IS A CONTINUATION OF THE PRESENT DEFINITION FOUND IN THE CHARITABLE COLLECTIONS ACT.

ANOTHER IMPORTANT EXEMPTION RELATES TO RELIGIOUS BODIES, WHICH ARE TO BE EXEMPT FROM THE PROVISIONS OF THE ACT UNDER CLAUSE 7.

THE ADVANCEMENT OF RELIGION IS INCLUDED UNDER THE COMMON LAW DEFINITION OF A "CHARITABLE PURPOSE". ON A STRICT READING OF THE CHARITY LAWS, THIS WOULD MEAN THAT ALL OF THE ACTIVITIES OF ANY CHURCH OR RELIGIOUS BODY WOULD BE SUBJECT TO THE CHARITY LAWS.

THE PURPOSE OF THE CHARITY LAWS HAS NOT BEEN AND SHOULD NEVER BE TO ENABLE THE STATE TO CONTROL THE ADMINISTRATION AND OPERATION OF CHURCHES AND OTHER RELIGIOUS BODIES.

UNDER THE CURRENT LAW ...



UNDER THE CURRENT LAW, AN EXEMPTION IS AFFORDED TO COLLECTIONS FOR RELIGIOUS ACTIVITIES, AND THE CHURCHES HAVE STEADFASTLY ARGUED THAT THE EXEMPTION SHOULD BE PRESERVED.

HOWEVER, THE DISTINCTION BETWEEN RELIGIOUS AND OTHER CHARITABLE ACTIVITIES IS, AT TIMES, ARTIFICIAL AND IMPOSSIBLE TO ADMINISTER. MANY CHURCHES CLAIM ALL OF THEIR ACTIVITIES ARE RELIGIOUS.

THE BILL STRIKES A BALANCE BETWEEN THE RIGHT FOR CHURCHES TO OPERATE FREE OF CONTROL AND THE NEED FOR SOME SUPERVISION OF CHARITABLE COLLECTIONS FROM THE PUBLIC.

SHOULD THE NEED ARISE, THE MINISTER MAY BY MINISTERIAL ORDER DECLARE THE ACT OR PART OF IT TO APPLY TO A SPECIFIC GROUP OR ORGANISATION WITHIN A DENOMINATION.

IT IS NOT EXPECTED THAT RECOURSE TO THE MINISTERIAL ORDER PROVISIONS WILL BE REQUIRED. THE MAJOR CHURCHES HAVE AGREED TO COMPLY WITH THE SPIRIT OF THE ACT.

A SIGNIFICANT FEATURE ...





A SIGNIFICANT FEATURE OF THE BILL IS ITS EMPHASIS ON DISCLOSURE TO THE PUBLIC - THE REQUIREMENT FOR THE PUBLIC TO BE FULLY INFORMED OF WHO IS TO BENEFIT FROM AN APPEAL.

CLAUSE 11 IS ONE OF THE SECTIONS WHICH DEMONSTRATES THIS PRINCIPLE. IT REQUIRES A PERSON WHO, OR AN ORGANISATION WHICH, CONDUCTS AN APPEAL IN CIRCUMSTANCES WHEREBY THAT PERSON OR ORGANISATION MAY DERIVE A PERSONAL PROFIT OR BENEFIT FROM THE APPEAL, TO DISCLOSE THAT INTEREST.

IT IS UNFORTUNATE THAT THERE HAVE BEEN OCCASIONS WHERE THE PUBLIC HAS NOT BEEN INFORMED THAT A PRIVATE BENEFIT IS TO BE RECEIVED BY AN ORGANISATION OR INDIVIDUAL.

CLAUSE 11 APPLIES TO PERSONS WHO CONDUCT AN APPEAL. A PRIVATE BENEFIT MAY ALSO BE DERIVED BY PERSONS WHO PARTICIPATE IN AN APPEAL - THE MOST OBVIOUS EXAMPLE BEING THAT OF THE PAID CHARITY COLLECTOR.

THE GOVERNMENT BELIEVES ...





THE GOVERNMENT BELIEVES A MEMBER OF THE PUBLIC HAS A RIGHT TO KNOW WHEN A PERCENTAGE OF ANY DONATION IS TO BE RETAINED BY THE COLLECTOR BY WAY OF WAGE OR COMMISSION, AND SIMILAR DISCLOSURE PROVISIONS ARE TO BE MADE IN THE REGULATIONS CONCERNING PARTICIPANTS IN AN APPEAL.

A FURTHER EXAMPLE OF THIS PRINCIPLE IS FOUND IN CLAUSE 47, WHICH PROVIDES THAT ANY PERSON WILL HAVE THE RIGHT TO REQUIRE A PERSON OR ORGANISATION WHICH IS SUBJECT TO THIS MEASURE, AND WHICH HAS CONDUCTED A FUNDRAISING APPEAL, TO PROVIDE A COPY OF A PRESCRIBED AUDITED STATEMENT CONCERNING THE APPEAL.

THIS STATEMENT WILL ENABLE THE PERSON TO DISCOVER THE AMOUNT RAISED, THE COSTS INCURRED AND THE APPLICATION OF THE FUNDS RAISED IN THE APPEAL.

THE PROCEDURE FOR PROCESSING AN APPLICATION FOR A FUNDRAISING AUTHORITY IS TO BE KEPT AS SIMPLE AS POSSIBLE. AS AN ILLUSTRATION, AN APPLICATION FOR AN AUTHORITY MAY BE MADE ON BEHALF OF AN ORGANISATION AND ON BEHALF OF THE SPECIFIED BRANCHES OF AN ORGANISATION.

LIKEWISE, AN AUTHORITY...



LIKEWISE, AN AUTHORITY MAY BE ISSUED FOR AN INDEFINITE PERIOD FOR AN INDEFINITE NUMBER OF APPEALS. THIS FLEXIBLE APPROACH WILL REDUCE UNNECESSARY BUREAUCRATIC COSTS.

CLAUSE 16 SPECIFICALLY STATES THAT IF AN APPLICATION HAS NOT BEEN DEALT WITH WITHIN 60 DAYS IT IS DEEMED TO BE APPROVED. THIS IS TO ENSURE THERE IS NO POSSIBILITY OF AN APPEAL BEING HAMPERED OR OBSTRUCTED BY BUREAUCRATIC DELAY.

THE CRITERIA WHICH THE MINISTER IS AUTHORISED TO TAKE INTO ACCOUNT IN CONSIDERING AN APPLICATION ARE SPELT OUT IN CLAUSE 16. THE CRITERIA EXCLUSIVELY CONCERN MATTERS AFFECTING THE INTEGRITY OF THE APPEAL.

THERE CAN BE NO SUGGESTION THAT A MINISTER IS ABLE TO BE SWAYED BY POLITICAL CONSIDERATIONS AND HAMPER THE ACTIVITIES OF POSSIBLE POLITICAL CRITICS BY REFUSING TO ISSUE A FUNDRAISING AUTHORITY.

HONOURABLE MEMBERS WILL NOTE THAT THE MINISTER IS REQUIRED TO GIVE REASONS FOR ANY REFUSAL TO ISSUE AN AUTHORITY.

CLAUSE 19 EMPOWERS ...





CLAUSE 19 EMPOWERS THE MINISTER TO IMPOSE CONDITIONS ON AN AUTHORITY. THE CONDITIONS WILL BE TAILORED ACCORDING TO THE SCALE AND NATURE OF THE APPEAL.

IT WILL BE A STANDARD CONDITION OF AN AUTHORITY TO FUNDRAISE THAT THE MINISTER BE ADVISED OF THE RETENTION OF COMMERCIAL FUNDRAISERS.

THIS WILL ALLOW THE MINISTER TO CONSIDER THE FACTS OF EACH CASE AND DETERMINE WHETHER, FOR EXAMPLE, THE DETAILS OF THE FINANCIAL ARRANGEMENTS BETWEEN THE CHARITABLE ORGANISATION AND THE COMMERCIAL FUNDRAISER SHOULD BE SUBMITTED TO THE MINISTER.

IT WILL ALSO BE A STANDARD CONDITION OF AN AUTHORITY THAT THE MINISTER BE ADVISED OF ANY CHANGE TO THE OBJECTS, NON-PROFIT CLAUSE OR WINDING-UP CLAUSE OF AN ORGANISATION'S CONSTITUTION.

CLAUSE 20 REQUIRES THE PROCEEDS OF AN APPEAL TO BE APPLIED TO THE NOMINATED CAUSE.

IT IS SIMPLY NOT OPEN TO AN ORGANISATION TO GO TO THE PUBLIC FOR FUNDS FOR ONE CAUSE AND THEN TO DECIDE AT A LATER TIME THAT THE MONEY SHOULD BE APPLIED ELSEWHERE.

ORGANISATIONS WHICH FIND IT ...





ORGANISATIONS WHICH FIND IT INEXPEDIENT OR IMPRACTICAL TO APPLY THE FUNDS TO THE NOMINATED PURPOSE MAY SEEK THE APPROVAL OF THE COURT TO APPLY THE FUNDS IN A DIFFERENT MANNER.

SUBCLAUSE (3) OF CLAUSE 20 AUTHORISES THE MAKING OF REGULATIONS TO DEFINE WHAT IS A LAWFUL AND PROPER EXPENSE IN AN APPEAL.

THE ISSUES OF WHAT ARE TO BE ACCEPTABLE ITEMS FOR APPEAL COSTS, AND HOW THESE ITEMS ARE TO BE DEALT WITH IN THE ACCOUNTS, ARE TO BE THE SUBJECT OF CONSULTATION WITH THE CHARITY SECTOR AND THE COMMUNITY.

THE AIM IS TO DEVELOP A MODERN APPROACH THAT ACCOMMODATES CURRENT PRACTICES BUT THAT PROVIDES COMMON STANDARDS AS TO WHAT ARE ACCEPTABLE EXPENSES AND THE METHOD OF ACCOUNTING FOR THEM.

CURRENTLY, ONLY PROPER AND LAWFUL EXPENSES ARE PERMITTED TO BE INCURRED IN AN APPEAL, TO A MAXIMUM OF SIXTY CENTS IN THE DOLLAR. THE LAW PROVIDES NO DISCRETION TO RELAX THIS AMOUNT. SOME CHANGES TO THESE CONTROLS SEEM WARRANTED.

FOR EXAMPLE, A RECENT ...



FOR EXAMPLE, A RECENT REQUEST FOR THE APPROVAL OF A CONCERT WHICH WOULD HAVE DONATED 20% OF THE PROCEEDS TO CHARITY, HAD TO BE DECLINED BECAUSE OF THE STATUTORY LIMIT ON EXPENSES.

PROVIDED THE PUBLIC IS INFORMED AS TO THE EXPECTED RETURN TO THE CHARITY, IT SEEMS UNREASONABLE TO DENY THE CHARITY THAT AMOUNT - INDEED, ANY REASONABLE AMOUNT - WHICH MAY BE DONATED. A SMALL PERCENTAGE OF SOMETHING MAYBE BETTER THAN ONE HUNDRED PERCENT OF NOTHING.

THE REQUIREMENTS TO BE MET BY FUNDRAISERS ARE COVERED IN DIVISION 4 OF PART 2. THE PRIMARY OBLIGATION IS TO MAINTAIN PROPER RECORDS.

IT WILL BE AN OFFENCE TO FAIL TO KEEP FULL AND ADEQUATE RECORDS AND I WOULD INDICATE THAT A BREACH OF THIS PROVISION WILL BE VIEWED MOST SERIOUSLY. THE BILL PROVIDES FOR A PENALTY OF UP TO \$5,000 TO BE IMPOSED FOR THIS OFFENCE.

CLAUSE 23 REQUIRES UNINCORPORATED ORGANISATIONS OR NATURAL PERSONS WHO HAVE CONDUCTED FUNDRAISING APPEALS, TO SUBMIT RETURNS TO THE MINISTER ON A REGULAR BASIS.

INCORPORATED BODIES ARE ...





INCORPORATED BODIES ARE ALREADY REQUIRED TO SUBMIT REPORTS TO THE AUSTRALIAN SECURITIES COMMISSION OR OTHER AGENCIES ADMINISTERING INCORPORATION LEGISLATION.

THIS PROVISION WILL CONTINUE TO ENSURE THAT AN ACCOUNT MUST BE MADE TO AT LEAST ONE GOVERNMENT AGENCY BY ALL FUNDRAISERS.

ONE OF THE PRIMARY CONTROLS OVER THE ACTIVITIES OF FUNDRAISERS WILL BE THE REQUIREMENT THAT THE ACCOUNTS BE INDEPENDENTLY AUDITED.

HONOURABLE MEMBERS WILL NOTE THE NEW REQUIREMENT THAT THE AUDITOR IS REQUIRED TO ADVISE THE MINISTER IMMEDIATELY OF ANY BREACH OF THE ACT THAT IS UNABLE TO BE DEALT WITH BY COMMENT IN THE AUDIT REPORT OR BY BRINGING THE MATTER TO THE NOTICE OF THE GOVERNING BODY OF THE ORGANISATION.

CLAUSE 25 ALLOWS EXEMPTIONS TO BE MADE FROM SOME OF THE REQUIREMENTS OF THIS DIVISION. CONSIDERATION WILL BE GIVEN TO APPROPRIATE EXEMPTIONS SUBJECT TO THE SCALE OF THE APPEAL, THE ACTIVITIES OF THE ORGANISATION AND THE REQUIREMENT IN QUESTION.





PART 3 OF THE BILL DETAILS THE POWER OF THE MINISTER TO INQUIRE INTO FUNDRAISERS. THIS IS AN IMPORTANT PART AND IS PIVOTAL TO THE SUCCESSFUL OPERATION OF THE SCHEME.

UNDER CLAUSE 26, THE MINISTER MAY INQUIRE INTO ANY PERSON WHO HAS CONDUCTED OR PARTICIPATED IN AN APPEAL. THIS POWER WILL OFTEN BE DELEGATED TO AUTHORISED INSPECTORS.

THE CHARITIES INSPECTORS ATTACHED TO THE CHARITIES ADMINISTRATION OF THE CHIEF SECRETARY'S DEPARTMENT CURRENTLY CONDUCT A REGULAR PROGRAM OF INSPECTIONS OF THE ACCOUNTS OF REGISTERED CHARITIES. THIS PROGRAM WILL CONTINUE UNDER THE NEW SCHEME.

THE INSPECTORS PLAY A DUAL ROLE OF EDUCATION AND ENFORCEMENT.

WHILE THEIR PRIMARY FUNCTION IS TO ENSURE THE REQUIREMENTS OF CHARITY LAWS ARE MET, THEY ALSO ASSIST ORGANISATIONS IN IDENTIFYING STRUCTURAL DEFICIENCIES OR PROBLEMS IN PROCEDURES THAT IF LEFT UNCHECKED MAY LEAD TO GREATER AND MORE SERIOUS PROBLEMS FOR ALL INVOLVED.

AT THE SAME TIME ...



AT THE SAME TIME, THE INSPECTORS PLAY A VITAL ROLE IN PROTECTING THE PUBLIC INTEREST. THEY INQUIRE INTO ALLEGATIONS OF MISMANAGEMENT AND REPORT TO THE MINISTER.

CLAUSE 28 DEFINES THE INSPECTORS' POWERS OF ENTRY AND INSPECTION. THIS CLAUSE FORMALISES PRESENT POWERS OR PRACTICES.

CLAUSE 30 ESTABLISHES CERTAIN OFFENCES IN RELATION TO INQUIRIES, ESPECIALLY IN RELATION TO CONCEALING OR DESTROYING DOCUMENTARY RECORDS.

DIVISION 2 OF PART 3 CONCERNS THE REVOCATION OF AN AUTHORITY TO RAISE FUNDS AND THE CONSEQUENCES OF REVOCATION.

DIVISION 3 OF PART 3 CONTAINS THE PROVISIONS RELATING TO THE APPOINTMENT OF AN ADMINISTRATOR. THESE PROVISIONS ARE, WITH SOME MINOR MODIFICATIONS, A TRANSFER OF EXISTING PROVISIONS FROM THE PRESENT CHARITABLE COLLECTIONS ACT.

CLAUSE 39 CONCERNS...





CLAUSE 39 CONCERNS THE REMISSION OF CASES TO THE ATTORNEY GENERAL. THE ATTORNEY GENERAL, REPRESENTING THE CROWN AS PARENS PATRIAE, HAS A DUTY TO ACT AS THE GUARDIAN OF CHARITY AND AS TRUSTEE OF MONEYS GIVEN TO CHARITY.

A NUMBER OF MATTERS HAVE BEEN BROUGHT TO THE ATTENTION OF THE ATTORNEY GENERAL AND, WHERE APPROPRIATE, LEGAL PROCEEDINGS HAVE BEEN INSTITUTED IN THE ATTORNEY'S NAME TO RECOVER MONIES OR OTHERWISE REMEDY A BREACH OF THE CHARITY LAWS.

CLAUSE 40 IS A TRANSFER OF THE EXISTING AUDITOR-GENERAL PROVISIONS IN THE CHARITABLE COLLECTIONS ACT.

PART 4 CONCERNS JUDICIAL REVIEW AND AFFORDS A RIGHT OF APPEAL FROM DECISIONS OF THE MINISTER. I WOULD DRAW THE ATTENTION OF HONOURABLE MEMBERS TO THE FACT THAT THESE PROVISIONS GIVE A RIGHT OF JUDICIAL APPEAL ON THE MERITS OF THE DECISION AND NOT JUST A REVIEW OF THE PROCEDURE FOLLOWED IN MAKING THE DECISION.

THIS IS A NEW AND ADDED RIGHT.

CLAUSE 48 IS ALSO ...



CLAUSE 48 IS ALSO A SIGNIFICANT CHANGE TO CURRENT PRACTICE.

PRESENTLY, NO "PAID DIRECTOR" OR OTHER PERSON WHO RECEIVES A BENEFIT FROM A CHARITABLE ORGANISATION IS PERMITTED TO SERVE ON THE GOVERNING BODY OF THE ORGANISATION.

MANY BOARDS OF CHARITABLE ORGANISATIONS, ESPECIALLY IN THE COMMUNITY-WELFARE FIELD, RELY HEAVILY ON PAID STAFF TO MAKE MANAGEMENT DECISIONS.

A NUMBER OF PERSONS ALSO RECEIVE SOME FORM OF BENEFIT FROM THE ORGANISATION OTHER THAN WAGES OR SALARIES.

IN LIFTING THE PRESENT PROHIBITION CARE MUST BE TAKEN TO AVOID CREATING A CONFLICT OF INTEREST.

FOR THIS REASON, THE PROHIBITION WILL ONLY BE LIFTED AFTER THE PRIOR APPROVAL OF THE MINISTER HAS BEEN RECEIVED AND IN ACCORDANCE WITH ANY CONDITIONS OF APPROVAL. TO ALLOW CARTE BLANCHE MAY CREATE MORE PROBLEMS THAN IT SOLVES.

THE REMAINING CLAUSES...





THE REMAINING CLAUSES ARE LARGELY PROCEDURAL OR MACHINERY MATTERS.

AS HONOURABLE MEMBERS ARE AWARE, CHARITABLE, CULTURAL AND OTHER BODIES ARE ENTITLED TO A NUMBER OF TAXATION AND OTHER CONCESSIONS. ALL EXISTING ENTITLEMENTS ENJOYED BY VARIOUS ORGANISATIONS WILL BE PRESERVED.

THIS WILL BE DONE BY TRANSFERRING THE SUBSTANCE OF THE EXISTING DEFINITION OF A CHARITY CONTAINED IN THE CHARITABLE COLLECTIONS ACT TO THOSE ACTS WHICH AFFORD CONCESSIONS.

THESE ACTS PRESENTLY REFER TO AN "ORGANISATION REGISTERED AS A CHARITY UNDER THE CHARITABLE COLLECTIONS ACT". THESE AMENDMENTS WILL ENSURE THAT AN ORGANISATION'S STATUS OR ENTITLEMENT TO CONCESSIONS IS NOT AFFECTED IN ANY WAY.

THE FINAL SCHEDULE CONCERNS THE TRANSITIONAL ARRANGEMENTS FOR THE NEW SCHEME. UNDER THESE PROVISIONS, ORGANISATIONS WHICH ARE CURRENTLY REGISTERED AS CHARITIES WILL BE DEEMED TO HOLD AN AUTHORITY TO RAISE FUNDS FOR TWO YEARS.

PRIOR TO THE END ...



PRIOR TO THE END OF THAT PERIOD, IT WILL BE NECESSARY TO APPLY FOR A FORMAL FUNDRAISING AUTHORITY.

THE FINAL COMMENTS I WOULD LIKE TO MAKE CONCERN THE REGULATIONS TO BE MADE UNDER THIS ACT.

REGULATIONS MADE UNDER THE CHARITY LAWS DEAL WITH MANY MINOR MACHINERY MATTERS; FOR EXAMPLE, THE NEED TO USE SEALED CONTAINERS FOR STREET COLLECTIONS OR THE REQUIREMENT THAT COLLECTORS DISPLAY A FORM OF IDENTIFICATION ISSUED BY THE RESPONSIBLE ORGANISATION.

THE MATTERS WILL CONTINUE TO BE DEALT WITH BY REGULATION UNDER THIS SCHEME.

THE REGULATIONS WILL ALSO DEAL WITH SUCH ISSUES AS THE FORM IN WHICH RECORDS MUST BE KEPT, THE PERMISSIBLE LEVELS OF ADMINISTRATIVE COSTS AND THE MANNER IN WHICH PARTICIPANTS IN AN APPEAL MUST DISCLOSE ANY PRIVATE BENEFIT OR PROFIT TO BE DERIVED FROM AN APPEAL.

ALL OF THE REGULATIONS TO BE MADE UNDER THIS ACT ARE TO BE DEVELOPED IN CONSULTATION WITH THE CHARITY SECTOR AND THE COMMUNITY.

THIS WILL ENSURE ...





THIS WILL ENSURE THAT THE ORGANISATIONS WHICH ARE TO BE SUBJECT TO THESE PROVISIONS WILL BE ABLE TO HAVE ANY CONCERNS FULLY AIRED, EXAMINED AND CONSIDERED BEFORE A REGULATION IS PUT IN PLACE.

IN CONCLUSION, I RECORD MY APPRECIATION OF THE EFFORTS OF A GREAT NUMBER OF ORGANISATIONS AND INDIVIDUALS WHO HAVE WORKED HARD IN PROVIDING ASSISTANCE TO THE GOVERNMENT IN DEVELOPING THIS BILL.

THEIR COMMENTS AND SUGGESTIONS HAVE BEEN OF ENORMOUS BENEFIT IN REFINING THIS BILL AND, I BELIEVE, WILL RESULT IN A SIMPLE, WORKABLE SCHEME THAT WILL HAVE THE SUPPORT OF THE COMMUNITY AND CHARITY SECTOR.

THE CHARITABLE FUNDRAISING BILL WILL SIGNIFICANTLY IMPROVE THE SYSTEM OF SUPERVISION OF CHARITABLE COLLECTIONS IN THIS STATE FOR THE BENEFIT OF ALL.

I COMMEND THE BILL.



# CHARITABLE FUNDRAISING ACT 1991 No. 69

NEW SOUTH WALES



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**CHARITABLE FUNDRAISING ACT 1991 No. 69**

**NEW SOUTH WALES**



**Act No. 69, 1991**

An Act to regulate public fundraising for charitable purposes; to repeal the Charitable Collections Act 1934 and to amend certain other Acts; and for other purposes. [Assented to 17 December 1991]

The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Charitable Fundraising Act 1991.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Objects**

3. The objects of this Act are:

- (a) to promote proper and efficient management and administration of fundraising appeals for charitable purposes; and
- (b) to ensure proper keeping and auditing of accounts in connection with such appeals; and
- (c) to prevent deception of members of the public who desire to support worthy causes.

**Definitions**

4. (1) In this Act:

“authorised inspector” means a person appointed under this Act as an inspector or a person authorised by or under this Act to exercise the functions of an authorised inspector;

“authority” means an authority in force under Part 2;

“charitable purpose” includes any benevolent, philanthropic or patriotic purpose;

“conducting a fundraising appeal” is defined in section 6;

“fundraising appeal” is defined in section 5;

“organisation” includes any board of trustees or other body of persons, whether incorporated or unincorporated;

“participating in a fundraising appeal” is defined in section 6;

“registered office” of a person or organisation, or branch of an organisation, that conducts fundraising appeals pursuant to an authority means the address stated in the application form referred to in section 15.



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*Date of last reprint: not yet reprinted*

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**Amendments not included in current print**

<b>Made by</b>	<b>Provisions affected</b>
Financial Institutions (Miscellaneous Amendments) Act 1996 No 24	s 20
Administrative Decisions Legislation Amendment Act 1997 No 77	Pt 4 (ss 42–45)

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AMENDMENTS ARE SHOWN IRRESPECTIVE OF WHETHER THEY ARE IN FORCE AT THE DATE OF ISSUE OF THIS SHEET. FOR FURTHER INFORMATION ABOUT THE EXACT STATUS OF LEGISLATION ETC PLEASE CONSULT THE MONTHLY ACTS TABLES OR CONTACT THE LEGISLATION INFORMATION SERVICE AT THE PARLIAMENTARY COUNSEL'S OFFICE ON (02) 9228 7139.





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(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

**Meaning of "fundraising appeal"**

5. (1) For the purposes of this Act, the soliciting or receiving by any person of any money, property or other benefit constitutes a fundraising appeal if, before or in the course of any such soliciting or receiving, the person represents:

- (a) that the purpose of that soliciting or receiving; or
- (b) that the purpose of an activity or enterprise of which that soliciting or receiving is a part,

is or includes a charitable purpose.

(2) It does not matter whether the money or benefit concerned is solicited or received:

- (a) in person or by other means (such as by post, telephone or facsimile transmission); or
- (b) as a donation or otherwise (such as by participation in a lottery, art union or competition; by sponsorship in connection with a walkathon, telethon or other similar event; in connection with the supply of food, entertainment or other goods or services; or in connection with any other commercial undertaking).

(3) The following do not, however, constitute a fundraising appeal for the purposes of this Act:

- (a) a request for, or the receipt of, an amount required in good faith as the fee for renewal of membership of an organisation;
- (b) an appeal by an organisation to (or the receipt of money or a benefit from) members of the organisation;
- (c) a request that any property be devised or bequeathed, or the giving of any information as to the means by which any property may be devised or bequeathed;
- (d) an appeal conducted exclusively or predominantly among persons sharing a common employer or place of work by one of those persons (being an appeal for a charitable purpose connected directly with another of those persons or any such other person's immediate family) and the receipt of money or a benefit from any such appeal;

- (e) an appeal to (or the receipt of money or a benefit from) any Commonwealth, State or local government authority;
- (f) anything prescribed by the regulations.

**Meaning of "conducting" or "participating in" a fundraising appeal**

6. (1) For the purposes of this Act, a person conducts a fundraising appeal if the person organises the appeal, whether alone or with others, whether in person or by an agent or employee and whether on the person's own behalf or as an officer or member of the governing body of an organisation.

(2) For the purposes of this Act, a person participates in a fundraising appeal if the person solicits or receives any money, property or other benefit in the course of the appeal, or assists in organising the appeal.

(3) For the purposes of this Act, a person who participates in a fundraising appeal does not conduct the appeal if the person participates in it solely as the agent, employee or collector (whether voluntary or not) of or for another person who is conducting the appeal.

(4) For the purposes of this Act, a person does not participate in an appeal merely because the person gives any money or benefit in the course of the appeal.

**Religious organisations exempt from Act**

7. (1) This Act (apart from section 48) does not apply to:

- (a) a religious body or a religious organisation in respect of which a proclamation is in force under section 26 of the Marriage Act 1961 of the Commonwealth or a religious body, or an organisation or office, within a denomination in respect of which such a proclamation is in force; or
- (b) a religious body or religious organisation prescribed by the regulations; or
- (c) any body or organisation that is certified in writing by the principal or executive officer of a body or organisation referred to in paragraph (a) or (b) to be affiliated with and approved by the organisation or body so referred to; or
- (d) a member or employee of a body or organisation referred to in paragraph (a), (b) or (c), or any other person, who is acting with its authority.

(2) The Minister may, by order published in the Gazette, declare that, despite subsection (1), this Act and the regulations apply (or apply to the



extent specified in the order) to a person, body or organisation specified in the order, and such an order has effect accordingly.

(3) By way of example of the power conferred by subsection (2), an order under that subsection may apply the provisions of Part 3 to a person, body or organisation that has failed to give a satisfactory reply to a request by the Minister for information concerning any fundraising appeal conducted by the person, body or organisation.

#### **Crown bound by this Act**

8. This Act binds the Crown not only in right of New South Wales but also, in so far as the legislative power of Parliament permits, in all its other capacities.

## **PART 2—FUNDRAISING APPEALS**

### **Division 1—Offences**

#### **Conducting unlawful fundraising**

9. (1) A person who conducts a fundraising appeal is guilty of an offence unless the person:

- (a) is the holder of an authority authorising the person to conduct the appeal; or
- (b) is a member of an organisation, or an employee or agent of a person or organisation, that holds such an authority and is authorised, by the person or organisation that holds the authority, to conduct the appeal; or
- (c) is authorised under subsection (3) to conduct the appeal without an authority.

Maximum penalty: 50 penalty units.

(2) A person who conducts a fundraising appeal in contravention of any condition attached to an authority authorising the appeal is guilty of an offence.

Maximum penalty: 50 penalty units.

(3) The following may conduct a fundraising appeal without being the holder of an authority:

- (a) an organisation or person, or one of a class of organisations or persons, authorised by the regulations;
- (b) an organisation established by an Act and subject to the control and direction of a Minister;

- (c) a member, employee or agent of any organisation or other person referred to in paragraph (a) or (b) who is authorised by the organisation or other person to conduct the appeal;
- (d) a person who, in accordance with section 11, conducts the appeal in conjunction with the holder of an authority.

### **Participating in unlawful fundraising**

10. A person who participates in a fundraising appeal which the person knows, or could reasonably be expected to know, is being conducted unlawfully is guilty of an offence.

Maximum penalty: 50 penalty units.

### **Appeals conducted by persons engaged in business or otherwise deriving benefit**

11. (1) A person (in this section called the "trader") must not conduct a fundraising appeal:

- (a) in connection with the supply of goods or services in the course of any trade or business carried on by the person; or
- (b) otherwise partly for the person's benefit,

except in accordance with this section.

Maximum penalty: 50 penalty units.

(2) Such an appeal must be conducted in accordance with the following conditions:

- (a) the appeal must be conducted jointly by the trader and a person or organisation that holds an authority to conduct the appeal;
- (b) any advertisement, notice or information concerning the appeal must identify the trader and the holder of the authority;
- (c) any such advertisement, notice or information must give details (to the extent required by the conditions of the authority) of the intended distribution of funds raised in the appeal or of any guaranteed minimum payment, or proportion of profits, to be paid by the trader to any person or organisation as a result of the appeal.

(3) Nothing in this section affects the Minister's discretionary power to attach any other condition to an authority.

### **Publicity**

12. (1) A person who publishes any advertisement, notice or information relating to any fundraising appeal which the person knows,

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or could reasonably be expected to know, is being conducted unlawfully is guilty of an offence.

Maximum penalty: 50 penalty units.

(2) In this section, "publishing" includes:

- (a) causing to be published; and
- (b) publishing by spoken words, whether directly or through any electronic medium; and
- (c) transmitting by facsimile machine.

**False statements etc.**

13. (1) A person who:

- (a) in an application or notice made or given under this Act; or
- (b) in any record or document relating to a fundraising appeal,

makes any statement that the person knows, or could reasonably be expected to know, is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

(2) A person:

- (a) who is conducting or is proposing to conduct a fundraising appeal; or
- (b) who is acting on behalf of a person who is conducting or is proposing to conduct a fundraising appeal,

must not represent to an employee, agent or collector (whether voluntary or not) that any thing required or permitted by this Act to be done, or any condition precedent to a fundraising appeal to be complied with, has been done or complied with when in fact it has not.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

**Division 2—Authority to conduct fundraising appeals**

**Application for authority**

14. (1) A person or organisation that wants to conduct fundraising appeals may apply to the Minister for an authority to do so.

(2) Persons or organisations may combine to make one application if each such person or organisation is separately identified in the application.



(3) An application may relate to a particular appeal or appeals or to appeals generally.

(4) An application made by an organisation may request that the authority issued in pursuance of the application authorise the conduct of fundraising appeals by members of specified branches of the organisation.

(5) An authority may be issued in terms requested under subsection (4) if the Minister is satisfied that each of the branches concerned is responsible to, and is under the direction and control of, the governing body of the applicant organisation. In such a case, the governing body of each branch is taken, for the purposes of this Act, to be the holder of the authority.

### **Form of application**

15. (1) An application for an authority is to be in the form approved by the Minister.

(2) A form approved for such an application is to require the applicant to state in the application an address in New South Wales to which any notices or other documents can be forwarded for the purposes of this Act. The address so stated is, for the purposes of this Act, the registered office of the applicant.

(3) If the authority is to authorise the conducting of one or more fundraising appeals by branches of an organisation, the form of application must require an address in New South Wales to be stated for each such branch. In such a case, each such branch is taken, for the purposes of this Act, to have its registered office at the address specified in respect of it, and any requirement of this Act in relation to the registered office of the holder of an authority applies accordingly.

### **How application dealt with**

16. (1) On receiving an application for an authority, the Minister may:

- (a) grant the application unconditionally, or grant the application subject to conditions; or
- (b) refuse the application.

(2) The Minister may refuse an application for an authority if the Minister is not satisfied as to any one or more of the following matters:

- (a) that the proposed appeal will be conducted in good faith for charitable purposes;



- (b) that all of the persons proposing to conduct the appeal, and all persons associated with the proposed appeal, are fit and proper persons to administer, or to be associated with, a fundraising appeal for charitable purposes;
- (c) that the proposed appeal will be administered in a proper manner;
- (d) that the grant of an authority would not facilitate the contravention of any Act;
- (e) that the applicant can and will ensure that persons conducting or participating in the proposed appeal will comply with the provisions of this Act and the regulations and the conditions of the authority;
- (f) that the applicant has furnished all the information required to be furnished in relation to the proposed appeal;
- (g) that, having regard to the purposes and activities, or likely activities, of the applicant, names, designations or titles proposed to be used in connection with the proposed appeal are appropriate and not misleading;
- (h) that it is in the public interest to grant the authority.

(3) If the Minister refuses an application for an authority, the Minister is required to advise the applicant of the reasons for the refusal.

(4) The Minister may decline to deal with an application for an authority until the applicant furnishes the Minister with such information relating to the application as the Minister requires.

(5) Receipt by the Minister of an application for an authority, or of any further information required under subsection (4), is to be acknowledged by notice (a "receipt notice") to the applicant.

(6) If the Minister has not disposed of an application for an authority within a period of 60 days after the date of the receipt notice for the application (or—if further information is sought under subsection (4) during that period—within 60 days after the date of the receipt notice for that information) the application is taken to have been approved. In such a case, the authority is taken to have been duly granted subject only to such conditions as may be prescribed by regulations made for the purposes of this subsection.

(7) Nothing in subsection (6) affects the power of the Minister to vary the conditions of an authority in accordance with the provisions of this Part.

**Right conferred by authority**

17. An authority may be granted so as to authorise a single fundraising appeal or a specified number of such appeals or an indefinite number of such appeals.

**Duration of authority**

18. (1) Unless sooner revoked, an authority remains in force for the period specified in the authority.

(2) If the authority does not specify such a period, the authority remains in force until revoked.

**Conditions of authority**

19. (1) The Minister may attach to an authority any condition that, having regard to the objects and purposes of this Act and the public interest, the Minister thinks ought to be imposed in the particular case.

(2) The conditions for the time being attached to an authority may be varied by the Minister by notice in writing served on the holder of the authority.

(3) For the purposes of this Act:

- (a) the imposition of a condition on an authority to which no conditions were previously attached; or
- (b) the imposition of any new condition on an authority; or
- (c) the amendment of a condition of an authority; or
- (d) the removal of a condition of an authority,

is a variation of its conditions.

**Division 3—Application of funds raised****Proceeds of appeal**

20. (1) Any money or benefit received in the course of a fundraising appeal conducted by the holder of an authority is to be applied according to the objects or purposes represented by or on behalf of the persons conducting the appeal as the purposes or objects of the appeal.

(2) Subsection (1) does not operate:

- (a) so as to prevent the deduction of lawful and proper expenses in accordance with the authority under which the appeal is conducted; or

(b) so as to prejudice the operation of the Dormant Funds Act 1942 or of any Act or other law relating to the cy-pres application or other application of trust money.

(3) The regulations may specify, or make provision for or with respect to the determination (by the decision of the Minister or otherwise) of, what constitutes a lawful and proper expense in connection with particular fundraising appeals or any class or description of fundraising appeals or fundraising appeals generally.

(4) Any relevant Act or other law relating to the cy-pres application or other application of trust money applies to any money (not being trust money) that is subject to subsection (1).

(5) Money or any benefit received in the course of a fundraising appeal may be applied outside New South Wales, except to the extent that:

- (a) to apply it in that way would contravene subsection (1) or any other law; or
- (b) the Minister, having regard to the public interest, prohibits the application of any such money or benefit by a condition of an authority authorising the appeal concerned.

(6) Any money received in the course of a fundraising appeal, before the deduction of any expenses, is to be paid immediately into an account at a bank or building society or at any other institution prescribed (or of a class prescribed) by the regulations. The account is to consist only of money raised in the fundraising appeal concerned, or in that and other such appeals conducted by the same persons. The account is to be kept in the name of or on behalf of the person conducting the appeal and is to be operated by not fewer than 2 persons jointly. This subsection, however, has effect subject to the conditions of any particular authority.

(7) A person conducting a fundraising appeal, or any member of the governing body of an organisation on whose behalf such an appeal is conducted, who:

- (a) by act or omission is in any way directly or indirectly concerned in or party to a contravention of this section; or
- (b) aids, abets, counsels or procures a contravention,

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

(8) A person convicted of an offence under this section in connection with a fundraising appeal conducted on behalf of an organisation is, in addition to any liability for the offence, liable to the organisation for the loss incurred by the organisation as a result of the offence.



(9) An amount for which a person is liable under subsection (8) may be recovered by the organisation concerned as a debt in any court of competent jurisdiction.

### **Investment**

21. (1) Money received in the course of a fundraising appeal which is not immediately required to be applied to the purposes or objects of the appeal may be invested only in a manner for the time being authorised by law for the investment of trust funds.

(2) This section is subject to the provisions of the Public Authorities (Financial Arrangements) Act 1987 or any other Act which confers special powers of investment on the person or organisation concerned.

### **Division 4—Requirements to be met by fundraisers**

#### **Keeping of records**

22. (1) A person or organisation that conducts or has conducted a fundraising appeal must keep, in accordance with this section, records of income and expenditure in relation to each such appeal.

(2) The records must:

- (a) be kept in writing in the English language or so as to enable the records to be readily accessible and readily convertible into writing in the English language; and
- (b) include any particulars required by the regulations; and
- (c) subject to the conditions of any authority, be kept at all times at the registered office of the person conducting the appeal; and
- (d) be kept for a period of at least 7 years (or such shorter period as the Minister may approve) after the receipt of the income or the incurring of the expenditure to which they relate.

(3) A person or organisation that contravenes this section is guilty of an offence. In the case of an unincorporated organisation, every trustee or other person who, at the time of the offence, was a member of the governing body of the organisation is guilty of an offence.

Maximum penalty: 50 penalty units.

#### **Periodic return by holder of authority (other than incorporated organisation)**

23. (1) A natural person or unincorporated organisation that for the time being holds an authority to conduct a fundraising appeal must send to the Minister returns giving details of the application of the proceeds of



any fundraising appeals conducted by the person or organisation since the last such return was furnished (or, if no such returns have been lodged previously, since the authority was granted).

(2) The returns are to be sent at such intervals as may be specified in the authority, at such times as may be so specified (or within such further time as the Minister may allow).

(3) Each such return is to be in a form approved by the Minister and must show:

- (a) the gross amounts received from each appeal; and
- (b) the net amount received after the deduction of expenses.

(4) A person or organisation that contravenes this section is guilty of an offence. In the case of an unincorporated organisation, every trustee or other person who, at the time of the offence, was a member of the governing body of the organisation is guilty of an offence.

Maximum penalty: 50 penalty units.

#### **Audit**

24. (1) The accounts of any person or organisation that for the time being holds an authority to conduct a fundraising appeal, in so far as those accounts relate to receipts and expenditure in connection with any such appeals, must be audited annually by a person qualified to audit accounts for the purposes of the Corporations Law or having other qualifications or experience approved by the Minister.

(2) The auditor must report on:

- (a) whether the accounts show a true and fair view of the financial result of fundraising appeals for the year to which they relate; and
- (b) whether the accounts and associated records have been properly kept during that year in accordance with this Act and the regulations; and
- (c) whether money received as a result of fundraising appeals conducted during that year has been properly accounted for and applied in accordance with this Act and the regulations; and
- (d) the solvency of the person or organisation.

(3) If the auditor, in the course of the performance of the auditor's duties for the purposes of this section, is satisfied that:

- (a) there has been a contravention of this Act or the regulations; and

(b) the circumstances are such that, in the auditor's opinion, the matter has not been or will not be adequately dealt with by comment in the auditor's report on the accounts or by bringing the matter to the notice of the person concerned or of the trustees or members of the governing body of the organisation concerned (as the case may be), the auditor must immediately report the matter to the Minister.

(4) A person or organisation that fails to have accounts audited as required by this section is guilty of an offence. In the case of an unincorporated organisation, every trustee or other person who, at the time of offence, was a member of the governing body of the organisation is guilty of an offence.

Maximum penalty: 50 penalty units.

(5) The requirements of this section are in addition to the requirements of any other law (including the Corporations Law).

(6) The whole or any part of a report prepared for the purposes of this section in respect of a corporation may be included in an auditor's report prepared for the purposes of the Corporations Law or any other law in respect of the corporation.

### **Exemptions**

25. (1) The regulations may make provision for or with respect to the exemption of a person or organisation (or of a class of persons or organisations) from all or any of the provisions of this Division, other than any provision relating to the keeping of records.

(2) If a person or organisation referred to in subsection (1) enters into a contract or arrangement with another person by which that other person will or might receive any remuneration or benefit for conducting or participating in a fundraising appeal, that other person is not, by virtue of this section or any regulation, exempt from any of the provisions of this Division.

## **PART 3—POWERS OF THE MINISTER IN RESPECT OF FUNDRAISERS**

### **Division 1—Investigations**

#### **Minister may inquire into fundraisers**

26. (1) The Minister may, with respect to any matter arising under this Act, inquire into any person or organisation that:

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- (a) is conducting or has conducted, or is participating or has participated in, a fundraising appeal; or
- (b) the Minister has reason to believe is conducting or has conducted, or is participating or has participated in, a fundraising appeal.

(2) The Minister may cause an inquiry under this section to be made by an authorised inspector, either with respect to a particular matter or with respect to any matter.

**Power of Minister to require accounts etc.**

27. (1) For the purposes of any inquiry under this Part, the Minister or an authorised inspector may require any person to do any one or more of the following:

- (a) to furnish accounts and statements in writing with respect to any matter in question at the inquiry, being a matter about which the person has or can reasonably obtain information;
- (b) to provide answers in writing to any questions addressed to the person on any such matter;
- (c) to verify any such account, statement or answer by statutory declaration;
- (d) to attend at a specified time and place and give evidence or produce documents in the person's custody or under the person's control which relate to any matter in question at the inquiry;
- (e) to furnish copies of or extracts from any document in the person's custody or under the person's control which relates to any matter in question at the inquiry or to make any such document available for inspection.

(2) Any requirement under this section is to be made by notice in writing served on the person concerned and specifying a reasonable time within which the requirement is to be complied with.

(3) For the purposes of any inquiry under this Part, evidence may be taken on oath and the person conducting the inquiry may for that purpose administer oaths.

(4) The person conducting the inquiry may take possession of documents produced to the person for such period as the person considers necessary for the purposes of the inquiry and may make copies of or take extracts from them. During that period the person conducting the inquiry must permit a person who would be entitled to inspect any one or more of those documents if they were not in the possession of the person conducting the inquiry to inspect at all reasonable times such of those documents as that person would be entitled to inspect.



**Power of entry and inspection**

28. (1) If an authorised inspector believes on reasonable grounds that any documents relevant to an inquiry under this Part are likely to be found on any premises, the authorised inspector may:

- (a) enter the premises; and
- (b) require production of the documents; and
- (c) take copies of or extracts from the documents or take possession of the documents for such period as he or she considers necessary for the purposes of the inquiry.

(2) Section 27 (4) applies to documents taken under subsection (1) (c).

(3) A power conferred by this section:

- (a) may not be exercised in relation to any premises used as a dwelling, or in relation to a part of any premises so used, except with the consent of the occupier of the premises or part or by the authority of a search warrant; and
- (b) may be exercised only at reasonable times and on reasonable notice to the occupier of any affected premises, except where the Minister has certified that, in the circumstances, the power may be otherwise exercised (in which case it may be exercised in accordance with the Minister's directions).

(4) A power conferred by this section may not be exercised unless the person exercising it is in possession of a certificate issued by the Minister which:

- (a) states that it is issued under this Act; and
- (b) gives the name of the person to whom it is issued; and
- (c) describes the nature of the powers conferred; and
- (d) bears the signature of the Minister.

(5) A person exercising a power to enter premises must produce his or her certificate to the occupier of the premises.

(6) If damage is caused by a person exercising a power to enter premises, a reasonable amount of compensation is recoverable as a debt owed by the Crown to the owner of the premises unless the occupier hindered or obstructed the exercise of the power.

**Search warrant**

29. (1) An authorised inspector may apply to an authorised justice (within the meaning of the Search Warrants Act 1985) for a search warrant if the inspector has reasonable grounds for believing that



documents relating to any matter in question at an inquiry being conducted under this Act 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 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) The authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised inspector named in the warrant to enter the place and to search for and take possession of documents of a kind specified in the warrant.

(3) An authorised inspector who enters any place by virtue of such a warrant may take with him or her such other persons as may be necessary, and on leaving any unoccupied place so entered must, as far as practicable, leave it as effectively secured against trespassers as he or she found it.

(4) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

#### **Offences in relation to inquiries**

30. A person who:

- (a) neglects or fails to comply with a requirement duly made by a notice under this Division within the time specified in the notice; or
- (b) alters, destroys or conceals any document referred to in section 27 (1) (e); or
- (c) refuses to take an oath required to be taken under this Division; or
- (d) hinders or obstructs the Minister or any authorised inspector in the exercise of his or her functions under this Division,

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

#### **Division 2—Revocation of authority and disposition of funds**

##### **Revocation of authority**

31. (1) The Minister may, by order published in the Gazette, revoke an authority if the Minister is satisfied:

- (a) that any fundraising appeal conducted by the holder of the authority has not been conducted in good faith for charitable purposes; or
  - (b) that any of the persons who have conducted a fundraising appeal by virtue of the authority, or any persons associated with any such appeal, are not fit and proper persons to administer, or to be associated with, a fundraising appeal for charitable purposes; or
  - (c) that any fundraising appeal conducted by virtue of the authority has been improperly administered; or
  - (d) that, in connection with any fundraising appeal conducted by virtue of the authority, the provisions of this Act or the regulations or the conditions of the authority were not complied with by any person conducting or participating in the appeal; or
  - (e) that the holder has not conducted a fundraising appeal within the previous 24 months; or
  - (f) that, in the public interest, the authority should be revoked.
- (2) The revocation of an authority is not stayed by lodgment of an appeal against the revocation.
- (3) The revocation of an authority does not have effect until notice of the revocation, and of the reasons for it, is served on the holder of the authority.
- (4) Notice of the revocation of an authority is to be published by the Minister in one or more newspapers circulating throughout New South Wales.
- (5) If the Minister has revoked an authority, the Minister may subsequently, if the Minister thinks fit, issue a further authority (whether in the same terms or otherwise) to the same person or organisation without the need for further application.

#### **Application of funds in absence of authority**

32. (1) If the Minister has revoked the authority of any person or organisation or if the Minister is satisfied that a person or organisation is conducting or has conducted a fundraising appeal without lawful authority or in a manner contrary to the person's or organisation's authority to do so, the Minister may apply to the Supreme Court for an order for the disposition of assets of the person or organisation which the Supreme Court is satisfied are, or are traceable to, the proceeds of any fundraising appeal conducted by the person or organisation.

(2) More than one such application may be made in respect of the same person or organisation.

(3) Having regard to the purposes or objects of any fundraising appeals to which any such assets are referable, the Supreme Court may make such order for their disposition as it thinks fit.

(4) The Supreme Court in any such case may make such consequential or ancillary orders as it thinks fit.

### **Division 3—Administration of fundraising organisations by administrator**

#### **Appointment of administrator**

33. (1) The Minister may, by instrument in writing, appoint an administrator:

- (a) to conduct the affairs and activities of any non-profit organisation that is conducting or has conducted one or more fundraising appeals, or that has or had as one of its objects a charitable purpose; or
- (b) to conduct such of the affairs and activities of any other organisation that is conducting or has conducted one or more fundraising appeals as relate to the administration, application and management of funds raised in any such appeal.

(2) An administrator is not to be appointed unless the Minister believes on reasonable grounds that:

- (a) after the organisation has been notified by the Minister of any contravention of a provision of this Act or the regulations or a condition imposed on the organisation by or under this Act:
  - (i) the organisation has failed to remedy the contravention to the extent that it is capable of remedy; or
  - (ii) the organisation has committed a further contravention of the provision or condition; or
  - (iii) the contravention of the provision or condition has continued; or
- (b) an examination or inquiry under this Act in relation to the organisation has disclosed reasonable grounds to suspect a misappropriation of funds of the organisation or of mismanagement of the organisation; or
- (c) for other reasons it is in the public interest that the administrator be appointed.



**Notice of appointment**

34. (1) The Minister must serve notice of the appointment of an administrator on the organisation concerned.

(2) When a notice under this section is served on a non-profit organisation:

- (a) the members of the governing body of the organisation cease to hold office; and
- (b) if the notice so provides, all contracts of employment with the organisation are terminated; and
- (c) if the notice so provides, all contracts for the provision of secretarial or administrative services to the organisation are terminated.

**Administration**

35. (1) An administrator has the functions of the governing body of the organisation and no appointment of a person to that body may be made while the administrator holds office, except as required by this section.

(2) Before revoking the appointment of an administrator for an organisation (otherwise than for the purpose of appointing a new administrator), the Minister must:

- (a) ensure that the members of the governing body of the organisation have been appointed in accordance with the constitution of the organisation; or
- (b) appoint those members.

(3) Members of the governing body of an organisation appointed by the Minister under this section are taken to have been appointed in accordance with the constitution of the organisation.

(4) Any members so appointed:

- (a) take office on revocation of the appointment of the administrator; and
- (b) hold office in accordance with the constitution of the organisation concerned.

**Audit requirements while administrator holds office**

36. (1) For so long as an administrator holds office, the provisions of any relevant Act or law relating to the appointment and re-appointment of



auditors and the functions of auditors (being provisions which would have been applicable to the organisation concerned if the administrator had not been appointed) continue to apply to the organisation.

(2) For the purposes of the application of those provisions, a reference in those provisions to the directors of a company is to be construed as a reference to the administrator of the organisation.

#### **Expenses of administration**

37. (1) The expenses of and incidental to the administration of the affairs and activities of an organisation by an administrator appointed under this Division are payable by the organisation.

(2) The remuneration of an administrator of an organisation who is not an employee of the Crown is an expense to which this section applies and is to be fixed by the Minister.

(3) Where an administrator is an employee of the Crown, the reimbursement of the Crown of an amount certified by the Minister in respect of the remuneration of that employee is an expense to which this section applies and is recoverable from the organisation in a court of competent jurisdiction as a debt due to the Crown.

#### **Liability for losses incurred during administration**

38. (1) An administrator appointed under this Division is not liable for any loss incurred by the organisation during the administrator's term of office unless the loss was attributable to:

- (a) wilful misconduct of the administrator; or
- (b) gross negligence of the administrator; or
- (c) wilful failure of the administrator to comply with any provision of this Act or the regulations or of the constitution of the organisation (in so far as any such provision of the constitution is applicable to the members of the governing body of the organisation).

(2) Neither the Crown nor the Minister is liable for any loss incurred by the organisation during the term of office of an administrator, whether or not the administrator is so liable.

#### **Division 4—Miscellaneous provisions**

##### **Remission of cases to the Attorney General**

39. (1) If the Minister is of the opinion:

- (a) that legal proceedings should be instituted with respect to any person or organisation that has conducted fundraising appeals or with respect to any assets or affairs of such a person or organisation; and
- (b) that under the circumstances it is desirable that such proceedings should be instituted by the Attorney General,

the Minister may remit the case to the Attorney General, together with such statements and particulars (if any) as in the opinion of the Minister are necessary for the explanation of the case.

(2) The Attorney General may institute and prosecute such legal proceedings as the Attorney General, on consideration of the circumstances, considers proper in the circumstances of the case.

#### **Auditor-General to act as or provide inspector**

40. (1) For the purposes of this Act, the Auditor-General may (and on the request of the Minister, is required to):

- (a) exercise the functions of an authorised inspector under this Act or the regulations or assist and advise the Minister on any matter arising in the execution of this Act or the regulations; or
- (b) provide some suitably qualified member or members of the Auditor-General's staff to do so.

(2) The Auditor-General or such a member of staff has the functions of an authorised inspector under this Act and the regulations.

#### **Recovery of certain expenses**

41. (1) If the Minister so directs, the whole or any part of the expenses incurred by the Auditor-General in or in connection with the exercise by the Auditor-General or a member of the Auditor-General's staff of any of the functions of an authorised inspector in relation to a particular organisation is payable by the organisation and recoverable from the organisation by the Auditor-General as a debt in a court of competent jurisdiction.

(2) If the Minister so directs, the remuneration of and any expenses incurred by an authorised inspector who is not an employee of the Crown are, where the remuneration and expenses are referable to the exercise of any of the functions of the inspector under this Act in relation to a particular person or organisation, payable by the person or organisation and recoverable in a court of competent jurisdiction as a debt due to the Crown.

(3) The amount recoverable from a person or organisation under subsection (1) is an amount certified by the Auditor-General to be the amount so recoverable.

(4) The amount recoverable from a person or organisation under subsection (2) is an amount certified by the Minister to be the amount so recoverable.

(5) If the organisation concerned is an unincorporated organisation, the trustees or persons who are members of the governing body of the organisation are jointly and severally liable for any debts of the organisation under this section.

#### **PART 4—JUDICIAL REVIEW**

##### **Appeal against refusal to grant authority or against conditions imposed on authority**

42. An applicant for an authority who is dissatisfied with any decision of the Minister with respect to the application may, within 30 days of receiving notice of the decision, appeal to the District Court against the decision.

##### **Appeal against revocation of authority**

43. A person or organisation whose authority is revoked may, within 30 days after the revocation, appeal to the District Court against the revocation.

##### **Appeal against variation of authority**

44. A person or organisation that holds an authority may, within 30 days after any variation of the conditions attached to the authority, appeal to the District Court against the variation.

##### **Hearing of appeals**

45. The District Court, in hearing an appeal under this Act, is to inquire into and decide the appeal having regard to the provisions of this Act and the public interest.

##### **Effect of determination**

46. A decision made by the District Court in any appeal under this Act is final and binding on all parties to the appeal and, in cases where the appeal is allowed, it is the duty of the Minister to give effect to the District Court's decision.



**PART 5—MISCELLANEOUS****Public access to information**

47. (1) A person or organisation that is (or, within the previous 12 months, was) the holder of an authority must, within 30 days after being requested to do so by any person, furnish the person with:

- (a) any audited financial statements requested by the person concerning fundraising appeals conducted by the person or organisation concerned during its last financial year and, to the extent that the regulations so require, during previous financial years; and
- (b) in the case of an organisation—such information as the regulations may prescribe concerning the objects and constitution (including the names and addresses of members of the governing body of the organisation) of the organisation.

Maximum penalty: 5 penalty units.

(2) Any such information and financial statements may, at the request of any person, be supplied to the person by or on behalf of the Minister.

(3) A person is not entitled to be supplied with information or financial statements under this section unless the person has paid any relevant fee prescribed by the regulations.

**Remuneration of board members of charitable organisations**

48. (1) A person is not prohibited (despite any law to the contrary) from holding office or acting as a member of the governing body of a non-profit organisation having as one of its objects a charitable purpose merely because the person receives any remuneration or benefit from the organisation if:

- (a) the Minister, by order published in the Gazette, has declared that this section applies to that office; or
- (b) the Minister has given prior approval of a person who receives any such remuneration or benefit holding that office or acting in that capacity; or
- (c) the person concerned holds that office or acts in that capacity by virtue of his or her office as a minister of religion or a member of a religious order.

(2) An approval under this section is subject to any conditions imposed by the Minister when giving the approval.



(3) An approval under this section is to be in writing. Applications for such approvals must be addressed in writing to the Minister by the organisation concerned.

(4) For the purposes of this section, every body, organisation or office referred to in section 7 (1) is taken to be a non-profit organisation having among its objects one or more charitable purposes.

#### **Authorised inspectors**

49. (1) The Minister may appoint any person to be an inspector for the purposes of this Act.

(2) The Minister may authorise a police officer or other person to exercise such of the functions of an authorised inspector under this Act as the Minister may direct.

(3) The regulations may authorise police officers of or above any specified rank to exercise all or any specified functions of an authorised inspector under this Act.

#### **Proceedings for offences**

50. (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

(2) Any such proceedings may be commenced at any time within 3 years after the offence was allegedly committed.

#### **Offences by corporations**

51. (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

**Evidence of certain matters**

52. A certificate purporting to be signed by the Minister or by an officer prescribed by the regulations and stating:

- (a) that, at times specified in the certificate, a person or organisation named in the certificate was the holder of an authority; or
- (b) that, at times specified in the certificate, a person or organisation named in the certificate was not the holder of an authority; or
- (c) that, at times specified in the certificate, conditions specified in the certificate were attached to a particular authority,

is admissible in any legal proceedings and is evidence of the matter stated in the certificate.

**Delegation**

53. The Minister may delegate to any public servant any of the Minister's functions under this Act or the regulations (other than this power of delegation).

**Service of documents**

54. (1) A document required or permitted by or under this Act to be served on a person may, if the person is a natural person, be served:

- (a) by delivering the document to the person; or
- (b) by sending the document by post addressed to the person at the person's last known place of residence or at the person's registered office; or
- (c) by leaving the document at the person's last known place of residence with some person apparently resident at that place and apparently not less than 16 years of age; or
- (d) by leaving the document at the person's last known place of business or at the person's registered office with someone apparently in the service of the person and apparently not less than 16 years of age.

(2) A document required or permitted by or under this Act to be served on a person may, if the person is a corporation, be served:

- (a) by sending the document by post addressed to the corporation at its registered office or principal place of business in New South Wales; or
- (b) by leaving it at the registered office or principal place of business in New South Wales of the corporation with some person apparently employed in connection with the business of the corporation and apparently not less than 16 years of age.

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(3) A document required or permitted by or under this Act to be served on an organisation may, if the organisation is not incorporated, be served:

- (a) by sending the document by post addressed to the trustees or members of the governing body of the organisation at its registered office; or
- (b) by serving it on any such trustee or member of the governing body in any manner that, by this section or otherwise according to law, constitutes sufficient service on a natural person.

(4) The provisions of this section are in addition to, and do not prejudice the operation of, any other law prescribing procedures sufficient for service of documents.

**Regulations**

55. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

**Repeals**

56. (1) The following Acts are repealed:

Charitable Collections Act 1934 No. 59

Charitable Collections (Amendment) Act 1985 No. 2

(2) The Charitable Collections Regulations and any other regulations in force under those Acts are repealed.

**Consequential amendments**

57. Each Act specified in Schedule 1 is amended as set out in that Schedule.

**Savings and transitional provisions**

58. Schedule 2 has effect.

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**SCHEDULE 1—CONSEQUENTIAL AMENDMENTS**

(Sec. 57)

**Aboriginal Land Rights Act 1983 No. 42**

Omit section 51 (6).

**Auctioneers and Agents Act 1941 No. 28**

Omit section 4 (4), insert instead:

(4) This Act does not apply to a sale by auction made for the purposes of or in the course of a fundraising appeal within the meaning of the Charitable Fundraising Act 1991 if the appeal is made, and the proceeds of sale are applied, in accordance with that Act.

**Federation of New South Wales Police-Citizens Youth Clubs (Reconstitution) Act 1989 No. 163**

Omit section 12 (3) and (4).

**Lotteries and Art Unions Act 1901 No. 34**

(a) Omit section 4 (2) (a), insert instead:

(a) the lottery is conducted by or under the authority of a non-profit organisation; and

(b) From section 4 (3) (b) and (c), omit "charity or" wherever occurring.

(c) Omit section 4A (2) (a), insert instead:

(a) the game of chance is conducted in the course of a fundraising appeal within the meaning of the Charitable Fundraising Act 1991 (not being an appeal conducted in contravention of that Act) or is conducted by or under the authority of an organisation that:

(i) was, immediately before the repeal of the Charitable Collections Act 1934, a charity within the meaning of that Act and registered or exempted from registration under that Act; and

(ii) has not, since the repeal of that Act, altered its constitution in so far as its constitution relates to its charitable objects; and

(d) From section 4A (3) (c), omit "in aid of the charity", insert instead "for the charitable purposes of the organisation".

(e) From section 4A (3) (g) and (5A), omit "charity" wherever occurring, insert instead "organisation".



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**SCHEDULE 1—CONSEQUENTIAL AMENDMENTS—continued**

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**Motor Vehicles Taxation Act 1988 No. 111**

Omit section 3 (2) (c) (iii), insert instead:

- (iii) a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose; or

**New South Wales Institute of Psychiatry Act 1964 No. 44**

Omit section 19 (2).

**Pay-roll Tax Act 1971 No. 22**

Omit section 10 (1) (j), insert instead:

- (j) by a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose;
- (j1) by an organisation that:
  - (i) was, immediately before the repeal of the Charitable Collections Act 1934, a charity within the meaning of that Act and registered or exempted from registration under that Act; and
  - (ii) has not, since the repeal of that Act, altered its constitution in so far as its constitution relates to its charitable objects;

**Prevention of Cruelty to Animals Act 1979 No. 200**

From paragraph (b) of the definition of "charitable organisation" in section 4 (1), omit "registered, or exempted from registration, as a charity, by or under the Charitable Collections Act 1934", insert instead "a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose".

**Search Warrants Act 1985 No. 37**

In section 10, insert in alphabetical order:

section 29 of the Charitable Fundraising Act 1991;

**Second-hand Dealers and Collectors Act 1906 No. 30**

Omit paragraph (g) of the Seventh Schedule, insert instead:

- (g) Clothing, waste paper and other second-hand goods of any kind collected, acquired or sold for the purposes of a fundraising appeal within the meaning of the Charitable Fundraising Act 1991, being a fundraising appeal that is lawfully conducted under that Act.

*Charitable Fundraising 1991***SCHEDULE 1—CONSEQUENTIAL AMENDMENTS—*continued*****Stamp Duties Act 1920 No. 47**

- (a) Omit section 87 (c), insert instead:
  - (c) insurance taken out by or on behalf of:
    - (i) a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose;
    - (ii) an organisation that:
      - (A) was, immediately before the repeal of the Charitable Collections Act 1934, a charity within the meaning of that Act and registered or exempted from registration under that Act; and
      - (B) has not, since the repeal of that Act, altered its constitution in so far as its constitution relates to its charitable objects;
- (b) Omit section 98LA (3) (b) (iv), insert instead:
  - (iv) a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose;
  - (iva) an organisation that:
    - (A) was, immediately before the repeal of the Charitable Collections Act 1934, a charity within the meaning of that Act and registered or exempted from registration under that Act; and
    - (B) has not, since the repeal of that Act, altered its constitution in so far as its constitution relates to its charitable objects;

**SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 58)

**Regulations**

1. (1) The regulations may contain provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication.

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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

## Certain organisations taken to hold authorities

2. (1) An organisation which, immediately before the repeal of the Charitable Collections Act 1934, was registered under that Act as a charity or was exempt from registration under that Act is taken to be the holder of an authority authorising the organisation to conduct any number of fundraising appeals.

(2) Section 19, and the other provisions of this Act, apply to an authority created by the operation of subclause (1).

(3) Subclause (1) ceases to apply to an organisation:

- (a) when its authority is revoked under this Act; or
- (b) when it alters its constitution in so far as its constitution relates to its charitable objects; or
- (c) at the end of a period of 2 years commencing on the repeal of the Charitable Collections Act 1934,

whichever happens first.

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[Minister's second reading speech made in—  
Legislative Assembly on 17 October 1991  
Legislative Council on 9 December 1991]

