

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.

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

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.

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.
