

CHARITABLE COLLECTIONS ACT.

Act No. 59, 1934.

An Act to provide for the regulation of collections for charitable purposes and for the keeping and audit of accounts relating to such collections; to provide for the registration of charities; to extend the jurisdiction of the Supreme Court in its equitable jurisdiction; to make certain provisions relating to the promotion of syndicates to purchase tickets in a State lottery; to amend the Lotteries and Art Unions Act, 1901, the Audit Act, 1902, the State Lotteries Act, 1930, and certain other Acts; and for purposes connected therewith. [Assented to, 31st December, 1934.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the “Charitable Collections Act, 1934.” Short title.

(2) This Act shall except where otherwise expressly provided commence on a day to be appointed by the Governor, and notified by proclamation published in the Gazette.

2. (1) In this Act, unless the context or subject-matter otherwise requires,— Interpretation.

“Appeal for support” in relation to any charity or charitable purpose includes the taking of any collection and any invitation (expressed or implied) designed to obtain money for the charity or charitable purpose.

“Charitable

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- “ Charitable purpose ” includes any benevolent or philanthropic purpose.
- “ Charity ” means any organisation or association established for or which has as one of its objects a charitable purpose.
- “ Collection ” means the taking of money or articles from the public whether by means of contributions or by the sale of articles or otherwise; and “ collect ” has a corresponding meaning.
- “ Court ” means the Supreme Court of New South Wales in its equitable jurisdiction.
- “ Place of public refreshment ” means any place (including any shop) to which the public are permitted to resort for the purpose of purchasing food or drink for consumption on the premises.
- “ Prescribed ” means prescribed by this Act or by the regulations.
- “ Regulations ” means the regulations made under this Act.
- “ Shop ” includes any premises wherein any retail trade or business is carried on.

(2) This Act shall not extend to any activity of any church where such activity is wholly intended for the advancement of religion but shall extend to any activity of a church wholly or mainly intended for any other charitable purpose.

(3) Nothing in this Act shall affect any of the provisions of the Local Government Act, 1919, as amended by subsequent Acts, or any ordinance made thereunder and for the time being in force.

Charities to
be regis-
tered.

3. (1) It shall not be lawful for any person to make any appeal for support of any charity unless—

- (a) the charity is one which is registered under this Act or is exempted from registration by or under this Act;
- (b) the appeal for support is sanctioned in the prescribed manner by the governing body of the charity or by some officer thereof authorised in that behalf or by the Minister or by some other prescribed authority; and

(c)

(c) the conditions (if any) attached to any such sanction and the provisions of this Act and the regulations are complied with.

(2) This section shall not extend to—

(a) any person concerned in a general appeal to the public at a public meeting called to establish a charity or in furtherance of the objects of a charity where such meeting is called with the prescribed approval;

(b) any person concerned in any collection at divine service in a place of public worship;

(c) any registered trade or industrial union or friendly society concerned in an appeal on behalf of distressed members where such appeal is conducted in accordance with the regulations.

(3) If any person contravenes any of the provisions of this section he shall be liable for the first offence to a penalty not exceeding fifty pounds or to imprisonment for a term not exceeding three months, and for a second or subsequent offence to a penalty not exceeding one hundred pounds or to imprisonment for a term not exceeding six months.

(4) This section shall come into force upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

Such date shall be not earlier than two months after the day appointed for the commencement of this Act.

4. (1) A charity may apply to the Minister in the prescribed manner to be registered by him under this Act or to be exempted from such registration or from any of the provisions of this Act or the regulations.

Registration
of charities.

(2) The Minister may, before granting any registration or any exemption as aforesaid make such inquiries with respect to the charity as he thinks fit, but shall not refuse to register any charity unless he is satisfied that the charity is not established in good faith for charitable purposes, or will not comply with the conditions imposed by or under this Act, or that the charity will not be properly administered, or that the proposed purpose of the charity is already covered by existing charities.

(3) An appeal from a refusal by the Minister to register or to grant exemption to any charity shall lie to
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the district court judge of the district in which the responsible committee or other body is administering the charity, and the order of such judge shall be given effect to.

(4) The Minister shall give to such charity so registered by or under this Act a certificate of registration in or to the effect of the prescribed form.

(5) The Minister shall cause to be compiled and kept in the prescribed manner a register of charities registered or exempted under this Act, and lists of all charities which are refused registration.

Conditions to be complied with by registered charities.

5. (1) Subject to this Act, charities registered under this Act shall comply with the following conditions:—

- (a) the charity shall be administered by a responsible committee or other body consisting of not less than three persons;
- (b) minutes shall be kept of the meetings of the committee or other body in which shall be recorded the business transacted;
- (c) proper books of account shall be kept in or to the effect of a form prescribed by the regulations, and such accounts shall include the detail of receipts and the detail of expenditure of any collection, and of any bazaar, sale, entertainment, or exhibition held with the approval of the governing body of the charity, and the accounts shall be audited at such intervals as may be prescribed by regulations under this Act by some person or persons holding the prescribed qualifications or approved by the Minister, and copies of the accounts so audited shall be sent to the Minister;
- (d) all moneys received by the charity without deduction for expenses or commission shall be paid into a separate account at such bank or banks as may be specified in respect of the charity in the register;
- (e) such particulars with regard to accounts and other records as may be prescribed, shall be furnished to the Minister, and the books and accounts

accounts of the charity shall be open to inspection at any time by any person duly authorised by the Minister or the Auditor-General.

(2) In the case of a church, the registration or the exemption of the church as a whole applied for by the head of the denomination in the State or by such other person as the Minister approves shall be deemed a sufficient registration or exemption to include any charitable activity conducted by that church, and paragraph (a) of subsection one of this section shall be read as applying each particular activity.

(3) The regulations may modify the conditions stated in subsection one of this section in the case of any church or in the case of any other charity or in the case of an appeal for support the duration of which is limited to a period not exceeding one month in which the circumstances of the case render their strict application difficult or unduly onerous or in the opinion of the Minister unnecessary.

6. (1) The Minister if satisfied that any charity registered or exempted under this Act is not being carried on in good faith for charitable purposes, or is not complying with any of the conditions imposed under this Act, or is not being properly administered, may, in the manner and subject to the notices and conditions prescribed, call upon the persons who by the register appear to be the responsible committee or governing body of the charity or upon such of them as it is possible to find to show cause why the charity should not be removed by him from the register or its exemption withdrawn, as the case may be, and if he so removes it or withdraws its exemption he shall give the prescribed public notice of its removal or of such withdrawal, as the case may be:

Removal
from the
register.

Provided that an appeal shall lie to the judge of a district court of the district in which the responsible committee or other body is administering the charity against the decision of the Minister to remove a charity from the register or to withdraw its exemption.

7. (1) A judge of the district court, for the purposes of an appeal under this Act, shall have all such powers with respect to requiring accounts, statements, written answers to inquiries, the attendance of persons for examination

Powers of
district
court judge
on appeals.

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examination on oath or otherwise, the production of documents, the furnishing of copies and extracts from documents, the examination of registers and records, and the transmission of documents for examination, as are necessary to hear and determine the matter.

(2) The judges of the district courts, or a majority of them, may make rules of court governing the manner and procedure of any appeal to be made to a judge of the district court in pursuance of any provision of this Act.

Minister may inquire into condition and management of charities.
15 & 16 Vic., c. 137, s. 9.

8. (1) The Minister may from time to time as he in his discretion sees fit, examine and inquire into any charity in New South Wales, and the nature and objects, administration, management, and application of the estates, funds, property, and income belonging thereto.

(2) The Minister may cause any such examination or inquiry to be made by an inspector authorised in that behalf by the Minister generally, or to make any particular examination or inquiry.

(3) The production of the Gazette containing a notification of his appointment shall be sufficient evidence of the authority of any person to act as an inspector for the purposes of this Act.

Powers of Minister to require accounts, etc.
15 & 16 Vic., c. 137, s. 10.
18 & 19 Vic., c. 124, s. 6.

9. (1) The Minister may require any trustee or person acting or having any concern in the management or administration of any charity or the property or income thereof to render to the Minister an account and statement in writing in relation to such charity or the property or income thereof, or the administration, management, and application of such property or income, and may also require any such trustee or person to return answers in writing to any question or inquiry addressed to him by the direction of the Minister relating to the matters aforesaid.

(2) An account, statement, or answer to inquiry relating to the matters aforesaid may be required to be rendered or made to the Minister by any of the following persons, that is to say:—

(a) by any trustee or person acting or concerned in the administration of the charity, its property or income, or in the receipt or payment of any moneys thereof;

(b)

- (b) by any agent of any such trustee or person;
- (c) by any bank, company or person from whom any debt is due, owing or accruing to the charity or by whom any money or security is held for or on behalf of the charity;
- (d) by any person in the beneficial receipt of any funds thereof or of any income or salary therefrom;
- (e) by any person having the possession or control of any document concerning the charity or any property thereof.

(3) The Minister may require the person rendering or making any such account, statement, or answer to verify the same by statutory declaration.

(4) This section shall not extend to give the Minister any power of requiring from any person holding or claiming to hold any property adversely to any charity or freed or discharged from any charitable trust or charge any information or the production of any deed or document whatever in relation to the property so held or claimed adversely or any charitable trust or charge alleged to affect the same.

10. (1) An inspector acting under the authority of the Minister may, by writing under his hand, subject to the regulations, require any such trustee or person as aforesaid to attend before him at such time and place as may be reasonably appointed for the purpose of being examined in relation to the charity, and to answer such questions as may be proposed to him, and to produce any documents in his custody or power relating to the charity or the property thereof.

An inspector may require the attendance of witnesses and examine on oath.

(2) The inspector may examine upon oath any such trustee or person and any person voluntarily attending and may administer such oath.

(3) No person shall be obliged to travel in obedience to such requisition more than ten miles from his place of abode.

11. The Auditor-General may of his own motion, and upon the request of the Minister shall, either himself undertake the functions of an inspector under this Act or provide some competent member of his staff to undertake such functions, or to assist and advise the Minister upon any matter arising in the execution of this Act. The Auditor-General

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Auditor-General or such member of his staff shall have and may exercise the powers of an inspector appointed by the Minister under this Act.

Penalties.

12. (1) Where any trustee or person from whom the Minister is authorised to require any account or statement or an answer to any question or inquiry or whose attendance an inspector is authorised to require—

(a) refuses or wilfully neglects to render to the Minister, or district court judge on appeal, or inspector, or to the Auditor-General or member of his staff acting as aforesaid, such account or statement, or to make answers to such question or inquiry, or to attend in obedience to any lawful requisition of an inspector or district court judge, or to give evidence before such inspector or district court judge; or

(b) wilfully alters, destroys, withholds or refuses to produce any document which may be lawfully required to be produced before an inspector or district court judge;

such person so offending shall be liable on summary conviction to a penalty not exceeding fifty pounds and for any repetition of such refusal shall be deemed to be guilty of a contempt of the court and shall be liable to be fined, attached, and committed by the court on summary application by the Minister to the court or to any judge exercising the jurisdiction thereof, and shall pay such costs attending such contempt as the court or judge directs.

The court may at any time discharge on such terms as it may deem just, any person attached and committed on any such application.

(2) Where any such person wilfully renders a false account or statement or makes an untrue answer to any question or gives false evidence upon any examination under this Act he shall be deemed guilty of a misdemeanour and be punishable accordingly.

Legal proceedings.

13. (1) Where the Minister is of opinion that the institution of legal proceedings is requisite or desirable with respect to any charity, or the estates, funds, property, or affairs thereof, and that under the circumstances it is desirable that such proceedings should be instituted by the Attorney-General, he may certify such case

case to the Attorney-General, together with such statements and particulars (if any) as in the opinion of the Minister are requisite or proper for the explanation of the case.

(2) The Attorney-General, if upon consideration of the circumstances he thinks fit, shall institute and prosecute such legal proceedings as he considers requisite or proper under the circumstances of such case.

(3) Where the court is satisfied that there is reasonable ground for believing that any unregistered charity is not being or has not been carried on in good faith for charitable purposes, or is not complying or has not complied with the conditions substantially corresponding with the conditions imposed on registered charities by or under this Act, or is not being or has not been properly administered, the court may exercise as respects the charity any of the powers exercisable by them with respect to a charity which, having been registered under this Act, has been removed from the register.

The court shall also have the power to establish a scheme for the regulation of any such charity but shall not exercise that power without giving the charity a full opportunity of being heard.

This subsection shall apply to unregistered charities whether or not an application for registration has been made and to charities registration of which has been refused.

14. It shall be lawful for the Attorney-General, for the time being acting ex officio, to make application by petition to the court with respect to any charity, and for the purposes of such application the provisions of the Imperial Act entitled the Charities Procedure Act, 1812, passed in the fifty-second year of King George III, chapter one hundred and one, shall, mutatis mutandis, be applicable, and the court may in its discretion upon such application exercise any power which the court may exercise under that Act or in a suit in relation to any charity.

Attorney-General may proceed ex officio under Sir Samuel Rorally's Act.

The court may, if it thinks fit, direct that such suit or other proceeding be brought in relation to the subject-matter of the application as the court deems proper in the circumstances of the case.

Rules

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Rules of court may prescribe a summary method of procedure in lieu of the procedure by petition and any other matter or thing necessary or convenient to be prescribed in relation to any proceeding before the Court.

Falsifying
books, etc.

15. Whosoever with intent to defraud or deceive any other person—

- (a) alters or falsifies any books, documents, or vouchers relating to a collection for charitable purposes; or
- (b) makes or concurs in the making of any false or fraudulent entry in any book, document, or voucher relating to such collection; or
- (c) omits or concurs in omitting any material particular from any book, document, voucher, or balance-sheet relating to such collection,

shall be liable on conviction on indictment to imprisonment for a term not exceeding five years, or on summary conviction to imprisonment for a term not exceeding twelve months.

Converting
moneys
raised.

16. Whosoever is concerned in conducting a collection for charitable purposes, and converts to his own use any of the moneys raised by means of such collection, shall be liable on conviction on indictment to imprisonment for a term not exceeding five years, or on summary conviction to imprisonment for a term not exceeding twelve months.

False state-
ments, etc.

17. If any person in any application for registration or exemption or in any notification of any change requiring alterations in the registered particulars makes any false statement or false representation, or if any person falsely represents himself to be an officer or agent of a charity, or if he fails to send any notification which he is required under this Act to send, he shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months.

Regulations.

18. (1) The Governor may make regulations prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect

effect to the provisions of this Act, and in particular, without limiting the generality of the foregoing power, for—

- (a) prescribing the forms for applications under this Act and the particulars to be contained therein;
- (b) prescribing the form of the registers to be kept under this Act and the particulars to be entered therein;
- (c) providing for the inspection of registers and lists kept under this Act, and the making and the furnishing and certification of copies thereof and extracts therefrom;
- (d) prescribing the fees for making or obtaining copies of, and extracts from, registers and lists;
- (e) requiring notification to the registration authority of any changes requiring alterations in the particulars entered in the register;
- (f) regulating the granting by the Minister of any exemption under section four of this Act and prescribing notwithstanding anything contained in that section the conditions under which and the grounds upon which any such exemption may be granted;
- (g) prohibiting the use by any charity of a name, designation or title substantially similar to that of any existing established charity, or which is calculated to mislead the public or to induce the public to believe that it is associated with any existing established charity;
- (h) prescribing the conditions under which—
 - (i) persons may be permitted to make or cause to be made visits from house to house for the purpose of making appeals for support for any charity;
 - (ii) persons may be permitted to make or cause to be made in any street, road or public place collections for any charity;
 - (iii) persons may be permitted to make or cause to be made in places of public entertainment or public refreshment collections for any charity;

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(iv) any charity may cause collecting boxes to be exhibited in any shop for the purpose of making appeals for support for the charity.

Moneys collected to be paid into a bank.

Payment of commission and expenses.

(2) (a) The regulations may provide that in certain cases specified in the regulations moneys collected for charitable purposes shall forthwith be paid without any deduction therefrom to the credit of a trust account in a bank, and that in such cases moneys for commissions or expenses in connection with the collection shall to the extent authorised by the regulations be paid out of the proceeds of cheques drawn on such trust account and not otherwise.

(b) The regulations may also provide for the regulation of the distribution or disposal of any particular article, emblem or artificial flower, in connection with an appeal for any charity and for the assignment to any charity or group of charities the exclusive right to distribute or dispose of any such article, emblem or flower in aid of an appeal by or on behalf of such charity or group, and for the imposition of penalties on any person distributing or disposing of such article, emblem or flower in contravention of the regulations.

Penalty.

(3) The regulations may impose a penalty not exceeding fifty pounds for any breach thereof.

Publication.

(4) The regulations and any rules of any court made in pursuance of this Act shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations or rules;

(c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution at any time within fifteen sitting days after such regulations or rules have been laid before such House disallowing any regulation or rule or part thereof, such regulation, rule, or part shall thereupon cease to have effect.

19. Any pecuniary penalty imposed by this Act or the regulations thereunder may be recovered before a stipendiary or police magistrate or any two justices in petty sessions.

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Recovery of penalties.

20. (1) The State Lotteries Act, 1930, is amended—

Amendment of Act No. 51, 1930.

(a) by inserting next after section six the following new section:—

New s. 6A.

6A. (1) Any person who for hire, gain or reward promotes or takes part in the formation of a syndicate for the purchase of a ticket in a State lottery shall be liable on summary conviction to a penalty not exceeding one hundred pounds.

Promotion of syndicates.

(2) Any person who by any means advertises that he will receive money for a share in a ticket to be purchased in a State lottery shall be liable on summary conviction to a penalty not exceeding one hundred pounds, and any person who prints or publishes any such advertisement shall be liable on summary conviction to a like penalty.

Advertising.

(b) by omitting section eight and by inserting in lieu thereof the following new section:—

Substituted s. 8.

8. (1) Such officers and employees as may be necessary for the due administration of this Act shall be appointed under and shall be subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts.

Officers.

(2) Any officer or servant appointed by the Director before the commencement of the Charitable Collections Act, 1934, and holding office immediately before such commencement, shall be deemed to have been employed under section forty-four of the Public Service Act, 1902, as amended by subsequent Acts, upon the date of such commencement.

(3) Any officer of the Public Service whose services had prior to the commencement of the Charitable Collections Act, 1934, been transferred to the Director shall have and retain any rights accrued or accruing to him under the Public Service Act, 1902, and any Acts amending the same, and shall continue to contribute to the

State

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State Superannuation Fund, and service with the Director shall be deemed continuous service within the meaning of the said Acts.

Sec. 9 (1).
(Regulations.)

(c) by inserting in subsection one of section nine after the words "with this Act" the words "or the Public Service Act, 1902, as amended by subsequent Acts."

Amendment
of Act No. 31,
1902, s. 5.
(Act not to
apply to
certain
officers.)

(2) The Public Service Act, 1902, as amended by subsequent Acts, is amended by inserting in section five after the words "the Public Trustee" the words "the Director of State Lotteries."

Amendment
of Act No. 34,
1901, ss. 5, 6,
10, 11, 12, 15.

21. (1) The Lotteries and Art Unions Act, 1901, as amended by subsequent Acts, is amended—

(a) by omitting from sections five, six, ten, eleven, twelve, and fifteen the word "Attorney-General" wherever occurring and by inserting in lieu thereof the word "Minister";

Sec. 4.
(Lotteries
and
raffles.)

(b) by inserting after subsection one of section four the following new subsection:—

(1A) (a) It shall be deemed a condition of every such permit that the whole of the profits derived from the raffles and lotteries conducted at the bazaar or fancy fair, or not less than fifty per centum of the gross takings in respect thereof, whichever is the greater, shall be paid into the funds of the institution in aid of which the bazaar or fancy fair is held.

(b) Upon application made to the Minister after the conclusion of the bazaar or fancy fair in respect of which the permit was granted, the Minister may, if he is satisfied that circumstances of an unusual nature have arisen since the grant of the permit, vary by writing under his hand the condition mentioned in paragraph (a) of this subsection, by reducing the percentage of gross takings mentioned in that paragraph.

The application shall be made by the person and in the manner and within the time prescribed by regulations made under this Act.

Where

Where a variation is made by the Minister in pursuance of this paragraph, he shall cause a report setting out the facts of the particular case and the reasons for the variation to be laid before both Houses of Parliament.

(c) Whosoever fails to comply with the condition mentioned in paragraph (a) of this subsection, or where such condition has been varied as aforesaid with the condition as so varied, shall be liable to a penalty not exceeding one hundred pounds.

(e) by inserting at the end of subsection one of section five the following new subsection:—

(1A) (a) It shall be deemed a term of the approval of the Minister under paragraph (b) of subsection one of this section that the whole of the takings of the voluntary association after payment thereof of all expenses properly payable shall be paid by the committee thereof to the object or institution for the aid or support of which the voluntary association was formed; and that if such takings after payment of such expenses amount to less than forty per centum of the whole of the takings or if such takings shall be equal to or less than such expenses, then and in any such case, forty per centum of the whole of such takings shall if demanded by the Minister be paid by the promoter and committee to the said object or institution.

(b) A balance-sheet showing the receipts, disbursements, and dispositions of all moneys received by or on behalf of any such association shall be lodged with the Minister in the manner and within the time prescribed by regulations made under this Act.

The Minister shall cause a copy of each such balance-sheet to be laid before both Houses of Parliament within fourteen sitting days after the receipt of such balance-sheet by him if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

(c)

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Sec. 5.
(Art
unions.)

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Lewisham Hospital and Church Lands Act.

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(c) Whosoever fails to comply with the term mentioned in paragraph (a) of this subsection shall be liable to a penalty not exceeding one hundred pounds.
