

**CHARITABLE COLLECTIONS (AMENDMENT) ACT, 1985, No. 2**

**New South Wales**



ANNO TRICESIMO QUARTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 2, 1985.**

An Act to amend the Charitable Collections Act, 1934, in relation to the conduct of appeals for support of charities, the inspection of charities, the appointment of administrators of charities and in certain other respects; and for other purposes. [Assented to, 19th March, 1985.]

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**BE** it enacted by the Queen'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:—

**Short title.**

1. This Act may be cited as the "Charitable Collections (Amendment) Act, 1985".

**Commencement.**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Principal Act.**

3. The Charitable Collections Act, 1934, is referred to in this Act as the Principal Act.

**Schedules.**

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

**Amendment of Act No. 59, 1934.**

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

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6. (1) Sections 3 (3), 12 (1) and 17 of the Principal Act apply to and in respect of an offence against the Principal Act committed before the day appointed and notified under section 2 (2) as if the Principal Act had not been amended by this Act.

(2) Section 13 (4) of the Principal Act applies, as if that subsection had not been amended by this Act, to proceedings in respect of an offence under the Principal Act or the regulations under the Principal Act where the facts concerning the offence first came to the knowledge of the Minister administering the Principal Act before the day appointed and notified under section 2 (2).

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SCHEDULE 1.

(Sec. 5.)

**AMENDMENTS TO THE PRINCIPAL ACT.**

(1) Section 2 (1), definition of "Inspector"—

After the definition of "Court", insert:—

"Inspector" means a person (whether or not a public servant) appointed by the Minister to be an inspector for the purposes of this Act.

(2) Section 2A—

After section 2, insert:—

**Delegation by the Minister.**

2A. (1) The Minister may, by instrument in writing, delegate to an officer of the Public Service the exercise of such of the functions conferred or imposed on the Minister by sections 3A, 4, 5, 8, 9 and 16A as may be specified in the instrument of delegation, and may, by a like instrument, revoke any such delegation.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) A function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time by the delegate in accordance with the terms of the delegation.

(3) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any of the functions delegated, or as to time or circumstances, as may be specified in the instrument of delegation.

(4) Notwithstanding any delegation under this section, the Minister may continue to exercise any function delegated.

(5) Any act or thing done or suffered by a delegate acting in the exercise of a delegation under this section has the same force and effect as it would have if it had been done or suffered by the Minister and shall be deemed to have been done or suffered by the Minister.

(6) An instrument purporting to have been signed by a person in his or her capacity as a delegate of the Minister shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument duly executed by the Minister and shall, until the contrary is proved, be deemed to be an instrument signed by a delegate of the Minister.

(3) (a) Section 3 (1) (a1)—

After “charity”, insert “and indicates whether the charity is registered under this Act or is exempted from registration by or under this Act”.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 3 (1A) (b)—

Omit “and”.

(c) Section 3 (1A) (b1)—

After section 3 (1A) (b), insert:—

(b1) the person making the appeal for support indicates whether that charity is registered under this Act or is exempted from registration by or under this Act; and

(d) Section 3 (1AA)—

After section 3 (1A), insert:—

(1AA) A requirement of subsection (1) (a1) or (1A) (b1) that a person making an appeal for support indicate whether a charity is registered under this Act or is exempted from registration by or under this Act does not apply in such cases or circumstances, or in such classes of cases or circumstances, as may be prescribed.

(e) Section 3 (2) (a)—

Omit “in furtherance of the objects of a charity where such meeting is called with the prescribed approval”, insert instead “called in furtherance of the objects of a charity which is registered under this Act or is exempted from registration by or under this Act”.

(f) Section 3 (3)—

Omit the subsection, insert instead:—

(3) A person who contravenes a provision of this section shall be liable on summary conviction to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or to both such penalty and imprisonment.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Section 4 (2AA)—

After section 4 (2), insert:—

(2AA) Notwithstanding subsection (2), the Minister may refuse to register or to grant exemption to a charity if the Minister is of the opinion that, having regard to the purposes, objects, activities or likely activities of the charity, any name, designation or title used or proposed to be used by the charity is or would be misleading or inappropriate.

(5) (a) Section 5 (1)—

After “Act” where secondly occurring, insert “or exempted from registration by or under this Act”.

(b) Section 5 (1) (g)—

Omit the paragraph, insert instead:—

(g) any proposed alteration of the constitution of the charity shall be notified to the Minister in the prescribed manner;

(c) Section 5 (1) (i)—

After section 5 (1) (h), insert:—

(i) the charity shall comply with any direction to the charity under section 5A and with the provisions of section 16A.

(d) Section 5 (1A)—

After section 5 (1), insert:—

(1A) Unless the Minister otherwise directs by instrument in writing addressed to the charity and sent by post or delivered to any person who appears from the register to be a member

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

of the governing body of the charity, nothing in subsection (1) requires a charity which is exempted from registration by or under this Act to comply with—

- (a) the condition specified in subsection (1) (c) requiring copies of audited accounts to be sent to the Minister; or
- (b) the condition specified in subsection (1) (e) requiring particulars with regard to accounts and other records to be furnished to the Minister.

(6) Sections 5A, 5B—

After section 5, insert:—

**Name, etc., of charity.**

5A. Where the Minister is of the opinion that, having regard to the purposes, objects, activities or likely activities of a charity which is registered under this Act or is exempted from registration by or under this Act, any name, designation or title used by the charity is misleading or inappropriate, the Minister may, by notice in writing addressed to the charity and sent by post or delivered to any person who appears from the register to be a member of the governing body of the charity, direct the charity to change the name, designation or title to a name, designation or title specified in the notice, within a period so specified.

**Alteration of constitution of charity.**

5B. (1) Where a proposed alteration of the constitution of a charity which is registered under this Act or is exempted from registration by or under this Act is notified to the Minister under section 5 (1) (g), the Minister may, for such reason as the Minister having regard to the public interest thinks fit, approve or refuse to approve the proposed alteration and shall, by notice in writing addressed to the charity and sent by post or delivered to any person who appears from the register to be a member of the governing body of the charity, inform the charity of that approval or refusal.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) An alteration or purported alteration of the constitution of a charity which is registered under this Act or is exempted from registration by or under this Act is of no force or effect unless and until it is approved by the Minister under subsection (1).

(7) Section 10 (3)—

Omit the subsection, insert instead:—

(3) In this section, a reference to an inspector includes a reference to a member of the police force of or above the rank of sergeant.

(8) Section 11—

Omit “appointed by the Minister”.

(9) Section 11A—

After section 11, insert:—

**Recovery of certain expenses.**

11A. (1) Where the Minister so directs, the whole or any part of the expenses incurred by the Auditor-General in or in connection with the exercise of any of the functions of the Auditor-General or a member of the Auditor-General’s staff under section 11, in relation to a charity, is payable by the charity and recoverable from the charity by the Auditor-General as a debt in a court of competent jurisdiction.

(2) The remuneration of and any expenses incurred by an inspector who is not a public servant 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 charity and where the Minister so directs, payable by the charity and recoverable from the charity in a court of competent jurisdiction as a debt due to the Crown.



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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (3) The amount recoverable from a charity—
- (a) under subsection (1) is an amount certified by the Auditor-General to be the amount so recoverable; and
  - (b) under subsection (2) is an amount certified by the Minister to be the amount so recoverable.

(10) (a) Section 12 (1)—

Omit “one hundred dollars 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”, insert instead “\$1,000 or imprisonment for a period not exceeding 6 months, or to both such penalty and imprisonment”.

(b) Section 12 (3)—

After section 12 (2), insert:—

(3) In this section, a reference to an inspector includes a reference to a member of the police force of or above the rank of sergeant.

(11) Section 13 (4)—

Omit “six months”, insert instead “12 months”.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(12) Sections 13A–13D—

After section 13, insert:—

**Appointment of administrator.**

13A. (1) Subject to this section, the Minister may, by instrument in writing, appoint an administrator to conduct the affairs and activities of a charity and may in like manner revoke the appointment.

(2) An administrator shall not be appointed under this section to conduct the affairs and activities of a charity unless the Minister is satisfied that—

- (a) after the charity has been notified by the Minister of any contravention of or failure to comply with a condition imposed on the charity by or under this Act or with a provision of the charity's constitution—
- (i) the charity has failed to remedy the contravention to the extent that it is capable of remedy;
  - (ii) the charity has committed a further contravention of the condition or provision;
  - (iii) the failure to comply with the condition or provision has continued; or
  - (iv) there has been a further failure to comply with the condition or provision by the charity;
- (b) an examination or inquiry pursuant to this Act in relation to the charity has disclosed evidence of a misappropriation of funds of the charity or of mismanagement of the charity;  
**or**
- (c) for any other reason it is in the public interest that the administrator be appointed.

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(3) On the appointment of an administrator of a charity under this section, the Minister shall serve notice of that appointment on the charity by sending by post or delivering a copy of the instrument of appointment to any person who appears from the register to be a member of the governing body of the charity, and upon service of that notice—

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

(4) An administrator of a charity has the functions of the governing body of the charity and, subject to subsection (5), no appointment of a member of that body may be made while the administrator holds office.

(5) Before revoking the appointment of an administrator of a charity (otherwise than for the purpose of appointing a new administrator of the charity), the Minister shall—

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

(6) Members of the governing body of a charity appointed by the Minister under subsection (5) shall be deemed to have been appointed in accordance with the constitution of the charity.

(7) Members of the governing body of a charity appointed under subsection (5)—

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

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(8) Notwithstanding the appointment of an administrator of a charity under this section and for so long as the administrator holds office, the provisions of the Companies (New South Wales) Code relating to the appointment and re-appointment of auditors and the functions of auditors (being provisions which would have been applicable to the charity if the administrator had not been appointed) shall continue to apply to and in relation to the charity and for the purposes of the application of those provisions a reference in those provisions to the directors of a company shall be read and construed as a reference to the administrator of the charity.

**Expenses of administration.**

13B. (1) The expenses of and incidental to the administration of the affairs and activities of a charity by an administrator appointed under section 13A are payable by the charity.

(2) The remuneration of an administrator of a charity who is not a servant of the Crown is an expense referred to in subsection (1) and shall be fixed by the Minister.

(3) Where an administrator of a charity is a servant of the Crown, the reimbursement of the Crown of an amount certified by the Minister in respect of the remuneration of that servant is an expense referred to in subsection (1) and is recoverable from the charity in a court of competent jurisdiction as a debt due to the Crown.

**Liability for losses incurred during administration.**

13C. (1) An administrator of a charity appointed under section 13A is not liable for any loss incurred by the charity during the administrator's term of office unless the loss was attributable to the administrator's—

- (a) wilful misconduct;
- (b) gross negligence; or

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- (c) wilful failure to comply with any provision of this Act or the regulations or of the constitution of the charity (in so far as that provision of the constitution is applicable to the members of the governing body of the charity).

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

**Appeal—appointment of administrator.**

13D. (1) Where a copy of an instrument appointing an administrator of a charity has been served on the charity in accordance with section 13A (3), a majority of the persons who immediately before service of the copy of the instrument of appointment were the members of the governing body of the charity may, not later than 28 days after the date on which the copy of the instrument of appointment was served or within such further period as the District Court may allow, appeal to the District Court against the appointment.

(2) On the hearing of the appeal, the District Court may make an order confirming the appointment of the administrator if it is satisfied that the appointment is in the public interest but if it is not so satisfied the court may make an order revoking the appointment.

(3) An order under subsection (2) revoking the appointment of an administrator of a charity does not take effect until the governing body of the charity has resumed the management and control of the charity in accordance with directions under subsection (5).

(4) Where the District Court makes an order under subsection (2), it may make such ancillary order or orders as the court considers appropriate in the circumstances of the case.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(5) Where the District Court makes an order under subsection (2) revoking the appointment of an administrator of a charity, the court may give such directions as it considers necessary for the appointment of the members of the governing body of the charity and for the resumption of the management and control of the charity by that governing body.

(6) An order under subsection (2) revoking the appointment of an administrator under section 13A does not affect the validity or effect of the appointment of the administrator or anything done or omitted to be done by the administrator in the exercise of any of the administrator's functions as administrator before the order takes effect.

(13) Section 16A—

After section 16, insert:—

**Application of money by charities.**

16A. (1) Where a charity which is registered under this Act or is exempted from registration by or under this Act receives money as a result of or in connection with an appeal for support, the charity shall, subject to this Act and the regulations and after any lawful deductions—

- (a) apply the money only in pursuance of a charitable purpose, as authorised by the charity's constitution; and
- (b) unless the Minister otherwise approves, so apply the money only within the State.

(2) A member of the governing body of a charity who aids, abets, counsels or procures or by act or omission is in any way directly or indirectly concerned in or party to a contravention of subsection (1) by the charity in relation to the application of an amount of money—

- (a) is liable to the charity for the amount; and

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) shall be liable on summary conviction to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or to both such penalty and imprisonment.

(3) Any amount for which a person is liable to a charity under subsection (2) is recoverable by the charity as a debt in a court of competent jurisdiction.

(14) Section 17—

Omit “fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months”, insert instead “penalty not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or to both such penalty and imprisonment”.

(15) Section 18 (3)—

Omit “one hundred dollars”, insert instead “\$1,000”.

(16) Section 19—

Omit the section, insert instead:—

**Proceedings for offences.**

19. Except as is otherwise expressly provided by this Act, proceedings for an offence against this Act or the regulations shall be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

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## SCHEDULE 2.

(Sec. 5.)

## AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

## (1) Long title—

Omit “in its equitable jurisdiction”.

## (2) (a) Section 2 (1), definition of “Court”—

Omit “in its equitable jurisdiction”.

## (b) Section 2 (1), definition of “Prescribed”—

Omit the definition.

## (c) Section 2 (3)—

Omit “as amended by subsequent Acts.”.

## (d) Section 2 (4)—

After section 2 (3), insert:—

## (4) 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.

## (3) Section 3 (4)—

Omit the subsection.

## (4) Section 3A (4)—

Omit “district court of the district in which the person making the appeal for support resides”, insert instead “District Court”.

## (5) Section 4 (3)—

Omit “district court judge of the district in which the responsible committee or other body is administering the charity, and the order of such judge”, insert instead “District Court, and the order of that court”.



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## (6) Section 5 (2)—

Omit “paragraph (a) of subsection (1) shall be read as applying”, insert instead “subsection (1) (a) shall be read as applying to”.

## (7) Section 6 (1)—

Omit “judge of a district court of the district in which the responsible committee or other body is administering the charity”, insert instead “District Court”.

## (8) (a) Section 7 (1)—

Omit “A judge of the district court”, insert instead “The District Court”.

## (b) Section 7 (2)—

Omit the subsection, insert instead:—

(2) Rules of the District Court may be made governing the manner and procedure of any appeal to be made to the District Court in pursuance of any provision of this Act.

## (9) (a) Section 12 (1) (a), (b)—

Omit “district court judge” wherever occurring, insert instead “the District Court”.

## (b) Section 12 (1) (c)—

Omit “Minister;”, insert instead “Minister,”.

## (c) Section 12 (2)—

Omit “deemed guilty of a misdemeanour and be punishable accordingly”, insert instead “liable on conviction on indictment to imprisonment for a period not exceeding 5 years”.

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION—*continued.*

(10) Section 13 (1)—

Omit “the recovery of a penalty imposed by”, insert instead “an offence against”.

(11) Section 17A—

Omit “the recovery of a penalty under”, insert instead “an offence against”.

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