



New South Wales

# Charitable Fundraising Amendment (Inquiries) Act 2017 No 36

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New South Wales

# **Charitable Fundraising Amendment (Inquiries) Act 2017 No 36**

Act No 36, 2017

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An Act to amend the *Charitable Fundraising Act 1991* to enable public inquiries to be conducted under the Act. [Assented to 14 August 2017]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Charitable Fundraising Amendment (Inquiries) Act 2017*.

**2 Commencement**

This Act commences on the date of assent to this Act.

## **Schedule 1      Amendment of Charitable Fundraising Act 1991 No 69**

### **[1]    Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

*public inquirer*, in relation to a public inquiry, means the person appointed under Part 3A to conduct the public inquiry.

*public inquiry* means a public inquiry under Part 3A.

### **[2]    Section 29 Search warrant**

Omit “conducted under this Act” from section 29 (1).

Insert instead “conducted under this Part or Part 3A”.

### **[3]    Section 41 Recovery of certain expenses**

Insert “or public inquirer (or their agents)” after “authorised inspector” in section 41 (2).

### **[4]    Section 41 (2)**

Insert “or inquirer” after “the inspector”.

### **[5]    Section 41 (2A) and (2B)**

Insert after section 41 (2):

(2A) In addition to the Minister’s powers under subsections (1) and (2), the Minister may direct that the costs of an inquiry under Part 3 or a public inquiry are payable by 2 or more persons or organisations in the proportions that the Minister considers appropriate. The costs are payable by those persons or organisations in the proportions directed and are recoverable from each of them in a court of competent jurisdiction as a debt due to the Crown.

(2B) Subsection (2A) extends to:

- (a) an inquiry under Part 3 that began (but was not completed) before the commencement of the subsection, and
- (b) if an inquiry began under Part 3 and then became a public inquiry—the costs of both the inquiry under Part 3 and the public inquiry.

### **[6]    Section 41 (6)**

Insert after section 41 (5):

- (6) When deciding whether to direct a person or organisation to make payments under this section, the Minister must take into account the financial viability of the person or organisation.

### **[7]    Part 3A**

Insert after Part 3:

## **Part 3A Public inquiries**

### **Division 1      Preliminary**

#### **41A Definitions**

In this Part:

*existing non-public inquiry*—see section 41C (1).

*qualified person*—see section 41B (3).

## **Division 2 Establishment of public inquiries**

### **41B Appointment of public inquirers to conduct public inquiries**

- (1) The Minister may appoint a qualified person to conduct a public inquiry into:
  - (a) any person, organisation or matter into which the Minister may cause an inquiry to be made by an authorised inspector under Part 3, or
  - (b) any other matter associated with fundraising appeals.
- (2) The Minister may appoint a public inquirer only if the Minister and the Premier consider that it is in the public interest for a public inquiry to be conducted.
- (3) A person is a *qualified person* only if the person holds or has held office as:
  - (a) a Judge of the Supreme Court of the State or any other State or a Territory, or
  - (b) a Judge of the Federal Court of Australia, or
  - (c) a Justice of the High Court.
- (4) However, a person is not a qualified person if the person is a member of the Legislative Council or of the Legislative Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth.

### **41C Reconstitution of existing non-public inquiry as public inquiry**

- (1) The Minister may appoint an authorised inspector conducting an inquiry under Part 3 (an *existing non-public inquiry*) to be a public inquirer for that inquiry if:
  - (a) the inspector is a qualified person, and
  - (b) the Minister and the Premier consider that it is in the public interest for a public inquiry to be conducted.
- (2) If such an appointment is made:
  - (a) the existing non-public inquiry is, on and from the time of the appointment, to be conducted as a public inquiry under this Part, and
  - (b) the public inquiry is to be in relation to the same matters as the existing non-public inquiry unless the instrument of appointment provides differently, and
  - (c) any matters requiring compliance under Division 1 of Part 3 in relation to the existing non-public inquiry that have not yet been complied must still be complied with, and
  - (d) any search warrant issued under Division 1 of Part 3 in relation to the existing non-public inquiry remains valid and can be executed, and
  - (e) any person who was engaged to assist the authorised inspector conducting the existing non-public inquiry, or allowed to represent a person in the existing non-public inquiry, may continue to assist or represent in the public inquiry, and
  - (f) any information or evidence that was obtained under Division 1 of Part 3 in relation to the existing non-public inquiry may be used in and for the purposes of the public inquiry, and

- (g) any other matter or thing that had effect in relation to the existing non-public inquiry continues to have effect in relation to the public inquiry.
- (3) A public inquirer for a public inquiry that was previously an existing non-public inquiry may give such directions as the public inquirer considers appropriate to facilitate the reconstitution of the existing non-public inquiry as a public inquiry.
- (4) This section extends to existing non-public inquiries that began (but were not completed) before the commencement of this Part.

**41D Protection from liability**

A public inquirer has, in the exercise of functions under this Part as a public inquirer, the same protection and immunity as a Judge of the Supreme Court.

**41E Reports on public hearings**

- (1) The Minister may, in the instrument of appointment of a public inquirer, require the public inquirer to prepare and provide to the Minister one or more reports on a public inquiry (including reports before the public inquiry is concluded) on specified matters within a specified time.
- (2) The public inquirer must prepare any report required by the Minister.
- (3) The Minister may cause a copy of a report provided to the Minister to be published in any way that the Minister considers appropriate, including by publishing it on a website or tabling it in one or both Houses of Parliament.
- (4) A copy of a report to be tabled in a House of Parliament may be presented to the Clerk of the House if the House is not sitting when it is sought to be tabled.
- (5) A copy of a report presented under subsection (4):
  - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if so printed, is taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the copy of the report by the Clerk.

**41F Procedural guidelines relating to public inquiries**

- (1) A public inquirer is to issue guidelines relating to the conduct of the public inquiry if the public inquirer considers it in the public interest to do so.
- (2) Without limiting subsection (1), the guidelines may provide guidance on the following aspects of the conduct of the public inquiry:
  - (a) the investigation of evidence that might exculpate relevant persons,
  - (b) the disclosure of exculpatory and other relevant evidence to relevant persons,
  - (c) the opportunity to cross-examine witnesses as to their credibility,

- (d) providing relevant persons and other witnesses with access to relevant documents and a reasonable time to prepare before giving evidence,
  - (e) any other matter the public inquirer considers necessary to ensure procedural fairness.
- (3) The public inquirer is to ensure that the guidelines are made publicly available.
- (4) In this section:  
*relevant person* means a person against whom substantial allegations have been made in the course of or in connection with the public inquiry.

### **Division 3      Hearings**

#### **41G    Hearings**

- (1) A public inquirer may hold hearings in connection with a public inquiry.
- (2) A hearing is to be held in public unless the public inquirer directs differently.
- (3) The public inquirer may direct that a hearing (or part of a hearing) be held in private if satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason.
- (4) When deciding whether to direct that a hearing be held in private (and without limiting subsection (3)), one of the matters that the public inquirer must take into account is the effect of a public hearing on the reputation of any persons appearing before the public inquiry.
- (5) If the public inquirer directs that a hearing (or part of a hearing) is to be held in private, the public inquirer may give directions as to the persons who may be present at the hearing (or that part of the hearing).

#### **41H    Right of appearance**

- (1) Any Australian legal practitioner appointed by the Crown to assist a public inquirer may appear before a public inquiry.
- (2) If it is shown to the satisfaction of the public inquirer that any person is substantially and directly interested in any subject-matter of a public inquiry, the public inquirer may allow the person (the *affected person*) to appear at the public inquiry or a specified part of the public inquiry.
- (3) The public inquirer may authorise:
  - (a) a person giving evidence at a public inquiry, or
  - (b) an affected person,to be represented by an Australian legal practitioner at the public inquiry or a specified part of the public inquiry.
- (4) The public inquirer is required to give a reasonable opportunity for a person giving evidence at a public inquiry to be legally represented.

#### **41I    Legal and financial assistance for witness**

- (1) A witness who is appearing or about to appear before a public inquiry may apply to the Minister for legal or financial assistance.
- (2) The Minister may approve the provision of legal or financial assistance to the applicant if the Minister is of the opinion that this is appropriate, having regard to any one or more of the following:
  - (a) the prospect of hardship to the witness if assistance is declined,

- (b) the significance of the evidence that the witness is giving or appears likely to give,
  - (c) any other matter relating to the public interest.
- (3) On giving the approval, the Minister may authorise the provision to the witness of legal or financial assistance determined by the Minister in respect of the witness's appearance before the public inquiry. The assistance is to be provided out of money provided by Parliament for the purpose.
- (4) The assistance may be provided unconditionally or subject to conditions determined by the Minister.
- (5) The Minister may delegate one or more of the Minister's functions under this section to the Secretary of the Department of Finance, Services and Innovation.

#### **41J Witnesses**

A public inquirer may issue a summons to a person to appear before the public inquirer at a time and place named in the summons:

- (a) to give evidence, or
  - (b) to produce such documents or other things (if any) as are referred to in the summons,
- or both.

#### **41K Evidence on oath or affirmation**

A public inquirer may, at a hearing of a public inquiry, take evidence on oath or affirmation and for that purpose:

- (a) the public inquirer may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the public inquirer, and
- (b) the public inquirer, or any other person authorised by the public inquirer, may administer an oath or affirmation to a person so appearing at the hearing.

#### **41L Examination and cross-examination of witnesses**

- (1) A person authorised or required to appear at a public inquiry, or an Australian legal practitioner or other person allowed to represent a person at a public inquiry, may, with the leave of the public inquirer, examine or cross-examine any witness on any matter that the public inquirer considers relevant.
- (2) If an Australian legal practitioner is appointed to assist the public inquirer at a public inquiry, the Australian legal practitioner may examine or cross-examine any witness on any matter that the public inquirer considers relevant.
- (3) Any witness examined or cross-examined under this section has the same protection and is subject to the same liabilities as if examined by the public inquirer.

#### **41M Restrictions on publication of evidence**

A public inquirer may give directions preventing or restricting the publication of evidence given before the public inquirer or of matters contained in documents obtained or received by the public inquirer.



**41N Protection from incrimination**

**(1) Self-incrimination not an excuse**

A person is not excused from a requirement under this Part to produce a record, document or thing, to give information or evidence or to answer a question on the ground that the record, document, thing, information, evidence or answer might incriminate the person or make the person liable to a penalty.

**(2) Answer, information or evidence not admissible if objection made**

However, any record, document or thing produced, or information, evidence or answer given, by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in civil or criminal proceedings (except as provided by subsection (3)) if:

- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
- (b) the person was not warned at an appropriate time that the person may object to producing the record, document or thing, or giving information, evidence or answer, on the ground that it might incriminate the person.

**(3) Subsection (2) does not prevent any record, document or thing produced, or information, evidence or answer given, by a natural person in compliance with a requirement under this Part from being admitted in evidence in:**

- (a) proceedings for an offence against this Part (including section 30 as extended to this Part by section 41S), or
- (b) proceedings for contempt in relation to a public inquiry, or
- (c) proceedings in connection with the revocation or refusal of an authority or the variation, revocation or imposition of conditions on an authority under this Act.

**(4) Appropriate time for giving warning about incrimination**

An *appropriate time* for warning a person is any of the following times:

- (a) the time when the requirement to produce the record, document or thing, or give the information, evidence or answer, is made,
- (b) in the case of evidence required to be given when appearing before a public inquirer, any time after the start of the appearance before the inquirer,
- (c) at or about the time immediately before the person produces the record, document or thing or gives the information, evidence or answer.

**(5) Further information**

Further information obtained as a result of a record, document or thing produced or information, evidence or answer given in compliance with a requirement under this Part is not inadmissible on the ground:

- (a) that the record, document, thing, information, evidence or answer had to be produced or given, or
- (b) that the record, document, thing, information, evidence or answer might incriminate the person.

**(6) Application of section to reconstituted existing non-public inquiries**

This section extends to a requirement made under Division 1 of Part 3 in relation to an existing non-public inquiry before it was reconstituted as a

public inquiry if the requirement had not yet been complied with when it was reconstituted.

**Note.** Section 41C (2) (c) operates to require compliance with requirements made under Division 1 of Part 3 in relation to an existing non-public inquiry that becomes a public inquiry if the requirements have not yet been complied with.

## **Division 4 Powers of public inquirer**

### **41O Powers of public inquirer generally**

- (1) A public inquirer has, for the purposes of a public inquiry, all the powers, rights and privileges that the Supreme Court (or any Judge of the Supreme Court) has in, or in relation to, any proceedings concerning each of the following matters:
  - (a) compelling the attendance of witnesses,
  - (b) compelling witnesses to answer questions that the public inquirer considers to be relevant to the public inquiry,
  - (c) compelling the production of documents or other things,
  - (d) punishing persons guilty of contempt or of disobedience of any direction, order or summons made or issued by the public inquirer.
- (2) This section is in addition to, and does not limit, any other power, right or privilege conferred on a public inquirer by another provision of this Part.

### **41P Investigative powers under Division 1 of Part 3**

- (1) The provisions of sections 27 (Power of Minister to require accounts etc) and 28 (Power of entry and inspection) extend to public inquiries.
- (2) For this purpose:
  - (a) any reference to an inquiry under Part 3 is to be read as including a reference to a public inquiry, and
  - (b) any reference to the purposes of any inquiry under Part 3 is to be read as including a reference to the purposes of any public inquiry, and
  - (c) any reference to the Minister is to be read as including a reference to a public inquirer.

### **41Q Search warrant**

- (1) The public inquirer may direct an authorised inspector to apply to an authorised officer (within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*) for a search warrant if the public inquirer has reasonable grounds for believing that documents or things relating to a matter relevant to a public inquiry 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 or things 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) A direction under this section operates to authorise the authorised inspector to make an application under section 29 even if the inspector does not have the kind of belief referred to in section 29 (1).
- (3) To avoid doubt, a search warrant issued under section 29 on an application directed under this section may extend to things as well as documents.

## **Division 5      Miscellaneous**

### **41R    Apprehension of witnesses**

- (1) If a person served with a summons to attend a public inquiry as a witness fails to attend in answer to the summons, the public inquirer may, on proof by statutory declaration of the service of the summons, issue a warrant for the apprehension of the witness.
- (2) A warrant under this section authorises the apprehension of the witness and his or her being promptly brought before the public inquirer and detained in a correctional centre or elsewhere for that purpose until released by order of the public inquirer.
- (3) A warrant issued under this section may be executed by any police officer, or by any person to whom it is addressed, and the person executing it may use such force as is reasonably necessary for the purpose of entering any premises for the purpose of executing it.
- (4) The issue of a warrant or the apprehension of a witness does not relieve the witness from any liability incurred by the witness for non-compliance with a summons.

### **41S    Offences in relation to public inquiries**

- (1) Section 30 (Offences in relation to inquiries) extends to public inquiries with the following modifications:
  - (a) the reference in section 30 (a) to a notice under Division 1 of Part 3 is to be read as including a reference to a notice under this Part (including a notice given in exercise of the powers conferred by section 41P),
  - (b) the reference in section 30 (b) to a document referred to in section 27 (1) (e) is to be read as including a reference to a document that relates to any matter in question in a public inquiry,
  - (c) the reference in section 30 (c) to an oath required to be taken under Division 1 of Part 3 is to be read as including a reference to an oath or affirmation required under this Part,
  - (d) the reference in section 30 (d) to the exercise of functions under Division 1 of Part 3 by the Minister or an authorised inspector is to be read as including a reference to the exercise of functions under this Part by a public inquirer or an authorised inspector.
- (2) A person must not contravene:
  - (a) a direction of a public inquirer that prohibits the person from being present at a hearing (or part of a hearing) of a public inquiry, or
  - (b) a direction of a public inquirer that prevents or restricts the publication of evidence given before the public inquirer or of matters contained in documents obtained or received by the public inquirer.

Maximum penalty (subsection (2)): 10 penalty units.

### **41T    Exclusion of personal liability**

- (1) No liability is incurred by the Crown, and no personal liability is incurred by any of the following persons, for any act done or omitted, or for any statement made or issued, by any of them in good faith for the purposes of establishing or conducting a public inquiry:
  - (a) the Minister,
  - (b) the Secretary of the Department of Finance, Services and Innovation,

- (c) a person employed in the Public Service or engaged to assist the public inquirer to conduct a public inquiry.
- (2) No liability is incurred by a person for publishing in good faith:
  - (a) a statement referred to in subsection (1), or
  - (b) a fair report or summary of such a statement.
- (3) Subsections (1) and (2) extend to acts, omissions and statements occurring in connection with an existing non-public inquiry (including one begun before the commencement of this Part) that becomes a public inquiry under this Part.
- (4) An Australian legal practitioner assisting a public inquirer or representing a person before a public inquirer has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.
- (5) Subject to this Part, a person summoned to attend or appearing before a public inquirer as a witness, or producing a document or other thing to the public inquirer, has the same protection as a witness in proceedings in the Supreme Court.
- (6) No criminal or civil liability (apart from under the provisions of this Act) attaches to a person for compliance, or purported compliance in good faith, with any requirement made under this Part.
- (7) In particular, if a person gives any statement of information or produces any document or other thing under a production requirement, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.
- (8) In this section:  
*barrister* has the same meaning as in the *Legal Profession Uniform Law (NSW)*.

#### **41U Review of Part**

The Minister is to ensure that the operation of this Part during the 3 years after its commencement is reviewed and that a report on the outcome of the review is published within 12 months after the end of that 3 year period.

#### **[8] Schedule 2 Savings and transitional provisions**

Insert before clause 1:

### **Part 1 General**

#### **[9] Schedule 2, clause 1 (1)**

Insert “or any Act that amends this Act” after “this Act”.

#### **[10] Schedule 2, clause 1 (3)**

Omit “in the Gazette”. Insert instead “on the NSW legislation website”.

#### **[11] Schedule 2**

Insert after clause 1:

### **Part 2 Provisions consequent on enactment of this Act**

[12] **Schedule 2**

Insert after clause 2:

**Part 3 Provisions consequent on enactment of Charitable Fundraising Amendment (Inquiries) Act 2017**

**3 RSL inquiry reconstituted as public inquiry**

- (1) This clause applies in relation to the inquiry under Part 3 of this Act (the *RSL inquiry*) into the following persons and organisations for which the Minister appointed the Honourable Patricia Anne Bergin SC on 15 May 2017 (the *existing authorised inspector*) as the authorised inspector:
  - (a) The Returned and Services League of Australia (New South Wales Branch) (“RSL NSW”), including but not limited to the members of the governing body and officers of RSL NSW,
  - (b) the RSL Welfare and Benevolent Institution (also known as “RSL DefenceCare”) and its trustees (collectively, “WBI”), including but not limited to the members of the governing body and officers of WBI,
  - (c) RSL Life Care Limited (“LifeCare”), including but not limited to the members of the governing body and officers of LifeCare.
- (2) The existing authorised inspector is taken, on and from the commencement of the amending Act, to have been appointed under section 41C (as inserted by the amending Act) to be a public inquirer for the RSL inquiry. As a result, section 41C (2) and (3) apply to the appointment as if the appointment had been duly made by the Minister under that section.
- (3) In this clause:  
*amending Act* means the *Charitable Fundraising Amendment (Inquiries) Act 2017*.

[Second reading speech made in—

Legislative Assembly on 3 August 2017

Legislative Council on 10 August 2017]