

Passed by both Houses



New South Wales

# Charitable Fundraising Amendment Bill 2018

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Legislative Council*  
2018

*Clerk of the Parliaments*



New South Wales

## **Charitable Fundraising Amendment Bill 2018**

Act No , 2018

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An Act to amend the *Charitable Fundraising Act 1991* to make further provision with regard to the regulation of public fundraising for charitable purposes; and for other purposes.

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

**1 Name of Act**

This Act is the *Charitable Fundraising Amendment Act 2018*.

**2 Commencement**

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

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

- [1] **Whole Act (except in Division 1 of Part 3, sections 4 (1), 41B (1) (a), 41C, 41S (1) (d) and 49 and Schedule 2)**

Omit “inspector” wherever occurring. Insert instead “officer”.

- [2] **Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

*ACNC registered entity* has the same meaning as *registered entity* has in the *Australian Charities and Not-for-profits Commission Act 2012* of the Commonwealth.

*annual return* means a return lodged or required to be lodged under section 23.

*Department* means the Department of Finance, Services and Innovation.

*Secretary* means:

- (a) the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or
- (b) if there is no person employed as Commissioner for Fair Trading—the Secretary of the Department of Finance, Services and Innovation.

- [3] **Section 4 (1)**

Omit the definition of *authorised inspector*. Insert in alphabetical order:

*authorised officer* means:

- (a) a person appointed as an authorised officer under section 25A, or
- (b) a person appointed as an investigator under section 18 of the *Fair Trading Act 1987*, or
- (c) a police officer authorised under section 25A to exercise the functions of an authorised officer.

- [4] **Sections 9 and 10**

Omit the sections. Insert instead:

### 9 Conducting unlawful fundraising

- (1) A person must not conduct a fundraising appeal unless the person:
  - (a) is the holder of an authority authorising the person to conduct the appeal, or
  - (b) is a member of an organisation, or an employee or agent of a person or organisation, that holds such an authority and is authorised, by the person or organisation that holds the authority, to conduct the appeal, or
  - (c) is authorised under subsection (2) to conduct the appeal without an authority.Maximum penalty: 200 penalty units.
- (2) The following may conduct a fundraising appeal without being the holder of an authority:
  - (a) an organisation or person, or one of a class of organisations or persons, authorised by the regulations,

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

**10 Participating in unlawful fundraising**

- (1) A person must not participate in a fundraising appeal which the person knows is being conducted unlawfully.  
Maximum penalty: 50 penalty units.
- (2) For the purposes of this section, a fundraising appeal is being conducted unlawfully if it is being conducted:
  - (a) by a person in contravention of section 9, or
  - (b) contrary to a condition of an authority.

**[5] Section 11 Appeals conducted by persons engaged in business or otherwise deriving benefit**

Omit “50 penalty units” from section 11 (1). Insert instead “200 penalty units”.

**[6] Section 11 (2) (a1)**

Insert after section 11 (2) (a):

- (a1) the trader and the person or organisation that holds the authority to conduct the appeal must enter into a written agreement that complies with any requirements specified in the regulations regarding the conduct of the appeal,

**[7] Section 11 (2A)**

Insert after section 11 (2):

- (2A) The regulations may make provision for or with respect to the following matters:
  - (a) written agreements between traders and persons or organisations that hold authorities to conduct appeals, including matters that must be included in the written agreements,
  - (b) matters that must be publicly disclosed by a trader when conducting an appeal in accordance with this section.

**[8] Section 11 (3)**

Omit “Minister’s”. Insert instead “Secretary’s”.

**[9] Section 12 Advertising unlawful appeals**

Omit “50 penalty units” from section 12 (1). Insert instead “200 penalty units”.

**[10] Section 13 False representations in conduct of fundraising appeal**

Omit “50 penalty units or imprisonment for 6 months, or both” from section 13 (2).

Insert instead “200 penalty units or imprisonment for 12 months, or both”.

**[11] Sections 13A (1), 14 (5) and 16 (2)**

Omit “Minister” wherever occurring. Insert instead “Secretary”.

**[12] Section 16 Dealing with applications**

Insert before section 16 (2):

- (1) The Secretary may grant an authority only if:
  - (a) the Secretary is satisfied that all the persons proposing to conduct the appeal, and all the persons associated with the proposed appeal, are fit and proper persons to administer, or to be associated with, a fundraising appeal for charitable purposes, or
  - (b) the applicant is an ACNC registered entity.

**[13] Section 16 (2) (b)**

Omit the paragraph.

**[14] Section 16 (2) (i)**

Insert after section 16 (2) (h):

- (i) any other matter prescribed by the regulations.

**[15] Section 16 (5)**

Omit section 16 (5)–(7). Insert instead:

- (5) Without limiting the circumstances in which a person may be found not to be a fit and proper person for the purposes of this section, the regulations may specify circumstances in which a person is not a fit and proper person.

**[16] Sections 18 and 18A**

Insert after section 17:

**18 Duration of authority**

- (1) An authority has effect for the term specified in the authority (not exceeding 5 years) unless it is sooner cancelled.
- (2) The suspension of an authority does not affect the term of the authority.
- (3) This section does not affect the term of any authority granted under this Act and in force immediately before the insertion of this section by the *Charitable Fundraising Amendment Act 2018*.

**18A Renewal of authority**

- (1) An authority may be renewed on application to the Secretary made before or within 3 months after the expiry of the authority.
- (2) Subject to this section, this Act applies to an application for the renewal of an authority in the same way as it applies to an application for an authority.
- (3) The Secretary may refuse an application to renew an authority if the Secretary is satisfied of either or both of the following:
  - (a) that the applicant has not complied with the requirements of this Act or the regulations,
  - (b) that the applicant has failed to comply with a condition of the authority that is to be renewed.

- (4) If an application to renew an authority is made within the period of 3 months after the expiry of the authority, the original authority is taken to have remained in force, and to remain in force, until the determination of that application.

**[17] Sections 19 and 19A**

Omit section 19. Insert instead:

**19 Conditions of authority**

- (1) An authority may be granted unconditionally or subject to conditions and is subject to any conditions imposed by the regulations.
- (2) The Secretary may, by notice in writing given to the holder of an authority, impose a condition on the authority or amend or revoke a condition of the authority (other than a condition imposed by the regulations).
- (3) The regulations may provide that a contravention of a specified condition is an offence punishable by a penalty not exceeding 50 penalty units.

**19A Suspension or cancellation of authority**

- (1) The Secretary may suspend or cancel an authority on the following grounds:
  - (a) the holder of the authority has not complied with the requirements of this Act or the regulations,
  - (b) the holder of the authority has failed to comply with a condition of the authority,
  - (c) in the opinion of the Secretary, any person who has conducted a fundraising appeal under the authority, or any person associated with any such appeal, is not a fit and proper person to administer, or to be associated with, a fundraising appeal for charitable purposes,
  - (d) the holder of the authority made a statement or provided information to the Secretary or an authorised officer that was false or misleading in a material particular,
  - (e) the holder of the authority is bankrupt, in liquidation or under external administration,
  - (f) the holder of the authority gives the Secretary a written request for the suspension or cancellation,
  - (g) other grounds prescribed by the regulations for the purposes of this subsection.
- (2) The regulations may make provision for or with respect to the following:
  - (a) procedures relating to the proposed suspension or cancellation of an authority,
  - (b) reviews of or appeals against the suspension or cancellation of an authority.

**[18] Section 20 Proceeds of appeal**

Omit section 20 (6). Insert instead:

- (6) Any money received in the course of a fundraising appeal, before the deduction of any expenses, is to be paid immediately into an account held by the holder of the authority concerned at an authorised deposit-taking institution.

**[19] Section 20 (7)**

Omit “50 penalty units or imprisonment for 6 months, or both”.

Insert instead “200 penalty units or imprisonment for 2 years, or both”.

**[20] Section 20 (10)**

Insert after section 20 (9):

- (10) The regulations may make provision for or with respect to the following:
  - (a) the identification of payments into and out of accounts and the fundraising appeals that the payments relate to,
  - (b) controls on expenditure, including expenditure on administration costs and the engagement of agents, employees or collectors,
  - (c) the giving of receipts,
  - (d) other matters relating to dealing with money or benefits received in the course of a fundraising appeal.

**[21] Section 22 Keeping of records**

Omit section 22 (2). Insert instead:

- (2) The records must be kept and maintained in the manner, and for the period, specified in the regulations.
- (2A) The regulations may make provision for or with respect to the auditing of the records.

**[22] Section 22 (3)**

Insert “if the trustee or person knowingly authorised or permitted the contravention” after “the organisation is guilty of an offence”.

**[23] Section 23**

Omit the section. Insert instead:

**23 Annual returns**

- (1) Within the period of 6 months after the end of each financial year, the holder of an authority is to lodge with the Secretary an annual return that:
  - (a) is in a form approved by the Secretary, and
  - (b) contains a statement that the return is true and correct, and
  - (c) includes the information that is required by the regulations, and
  - (d) is accompanied by the documents that are prescribed by the regulations (if any).Maximum penalty: 50 penalty units.
- (2) If the holder of an authority that contravenes subsection (1) is an unincorporated organisation, each trustee or other person who, at the time of the contravention, was a member of the governing body of the organisation is also guilty of the offence if the trustee or person knowingly authorised or permitted the contravention.
- (3) For the avoidance of doubt, an annual return must be lodged even if, during the financial year concerned:
  - (a) no money, property or other benefits were received by the holder of the authority, or



- (b) no fundraising appeal was conducted by the holder of the authority.
- (4) The Secretary may, by order in writing, exempt a person or organisation or class of persons or organisations, either unconditionally or subject to conditions, from compliance with a provision of this section.
- (5) The holder of an authority must not lodge an annual return that is false or misleading in a material particular.  
Maximum penalty: 200 penalty units.
- (6) In this section, *financial year* means:
  - (a) in the case of a corporation—the financial year of the corporation fixed in its constituting document (if any), and
  - (b) in any other case—the year ending on 30 June.

**[24] Section 24 Audit**

Omit section 24 (1)–(3). Insert instead:

- (1) The accounts of any person or organisation that for the time being holds an authority to conduct a fundraising appeal, in so far as those accounts relate to receipts and expenditure in connection with any such appeals, must be audited annually in accordance with the regulations.

**[25] Sections 24A and 24B**

Insert after section 24:

**24A Authority holders to notify Secretary of certain matters**

- (1) A holder of an authority must notify the Secretary in the approved form if any of the following circumstances exist:
  - (a) the holder's name has changed,
  - (b) the holder's address has changed,
  - (c) the charitable purpose for which the appeal is being or is to be conducted has changed,
  - (d) if the authority was granted under section 16 (1) (b)—the registration of the holder as an ACNC registered entity has been revoked,
  - (e) the holder becomes aware that information or a document provided in an annual return under section 23 was misleading or deceptive in a material particular,
  - (f) if the holder is a natural person—the person becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with the person's creditors or makes an assignment of the person's remuneration for the creditors' benefit,
  - (g) if the holder is an unincorporated association—a trustee or other person who is a member of the governing body of the organisation becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with the person's creditors or makes an assignment of the person's remuneration for the creditors' benefit,
  - (h) if the holder is a corporation—the corporation becomes insolvent, is placed in liquidation or under external administration or is wound up,
  - (i) a person who is the holder, or a member of the governing body of the holder, is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months,

- (j) any other circumstances specified by the regulations.
- (2) The notification must be given:
  - (a) as soon as practicable, and
  - (b) no later than 28 days after the person or organisation first becomes aware of the circumstances mentioned in subsection (1).
- (3) To avoid doubt, 2 or more notifications may be included in the same document.
- (4) A person or organisation that contravenes this section is guilty of an offence. In the case of an unincorporated organisation, each trustee or other person who, at the time of the contravention, was a member of the governing body of the organisation is guilty of an offence if the trustee or person knowingly authorised or permitted the commission of the contravention.  
Maximum penalty: 200 penalty units.

**24B Authority holders to give written statements regarding compliance with legislation**

- (1) Within 6 months after the end of each financial year, the holder of an authority is to give a written statement in accordance with this section that the holder has, during that financial year, taken reasonable steps to ensure the holder has complied with the following:
  - (a) this Act,
  - (b) the regulations,
  - (c) the conditions of the authority.
- (2) The statement:
  - (a) is to be in a form approved by the Secretary, and
  - (b) subject to subsections (3) and (4), is to be included in the holder's annual return.
- (3) If the holder of an authority is an ACNC registered entity, the statement is instead to be included in the annual information statement the holder gives to the Commissioner of the Australian Charities and Not-for-profits Commission under the *Australian Charities and Not-for-profits Commission Act 2012* of the Commonwealth.
- (4) If the holder of an authority is not an ACNC registered entity and is not required to lodge an annual return, the holder must give the statement to the Secretary.
- (5) If the holder of an authority that contravenes this section is an unincorporated organisation, each trustee or other person who, at the time of the contravention, was a member of the governing body of the organisation is also guilty of the offence if the trustee or person knowingly authorised or permitted the contravention.  
Maximum penalty: 50 penalty units.

**[26] Part 2A**

Insert after Part 2:

## **Part 2A Enforcement**

### **Division 1 Investigation powers**

#### **25A Authorised officers**

- (1) The Secretary may, by instrument in writing, appoint a person to be an authorised officer for the purposes of this Act.
- (2) The regulations may authorise police officers of or above a specified rank to exercise any or all of the functions of an authorised officer.

#### **25B Identity cards**

- (1) The Secretary must issue an authorised officer with an identity card.
- (2) The identity card must:
  - (a) be in the form approved by the Secretary, and
  - (b) contain a recent photograph of the person.
- (3) An authorised officer must not exercise a function conferred by or under this Act unless an identity card has been issued to the authorised officer by the Secretary.
- (4) A person who has ceased to be an authorised officer must not, without reasonable excuse, fail to return to the Secretary, within the period specified by the Secretary in a request for the return of the card, any identity card issued to the person by the Secretary.

Maximum penalty: 10 penalty units.
- (5) This section does not apply to an authorised officer who is a police officer authorised under section 25A (2).

#### **25C Identity cards to be shown**

- (1) An authorised officer must:
  - (a) carry the officer's identity card at all times when exercising a power under this Act to enter premises or a power that may be exercised after entering premises, and
  - (b) produce the identity card if requested to do so by a person in relation to whom the authorised officer is exercising, or about to exercise, the power.
- (2) A person appointed as an investigator under section 18 of the *Fair Trading Act 1987* complies with this section if the person carries and produces the investigator's certificate of identification issued under that Act.
- (3) This section does not apply to a power conferred by a search warrant or to a power exercised by an authorised officer who is a police officer authorised under section 25A (2).

#### **25D Exercise of investigation powers**

The Secretary or an authorised officer may exercise a power conferred by this Division if the Secretary or authorised officer reasonably believes that it is

necessary to determine whether there has been a contravention of this Act or the regulations or an authority issued under this Act.

**25E Power of entry**

- (1) An authorised officer may enter premises (other than premises or any part of premises used only for residential purposes) without the occupier's consent and without obtaining a search warrant.
- (2) An authorised officer may enter any premises with the occupier's consent or the authority of a search warrant.

**25F Times for entry**

- (1) An authorised officer may enter premises under this Division only at any of the following times and after giving the occupier reasonable notice:
  - (a) at any reasonable time during the day,
  - (b) at any time at which a fundraising appeal is being conducted on the premises,
  - (c) at any time the premises are open for entry,
  - (d) at any time permitted by the occupier or a search warrant authorising the entry.
- (2) An authorised officer is not required to comply with subsection (1) if the Secretary has certified that, in the circumstances, an authorised officer need not comply with any or all of the requirements of that subsection.
- (3) An authorised officer must comply with any direction of the Secretary as to entry to premises under subsection (2).

**25G Powers to do things at premises**

An authorised officer may, at any premises lawfully entered, do any of the following:

- (a) make inquiries of any person employed at the premises,
- (b) require documents to be produced for inspection,
- (c) examine and inspect any documents,
- (d) copy any documents or parts of documents,
- (e) take photos and make recordings (including photographs, audio, video, digital or other recordings) of the premises or anything on the premises,
- (f) seize any documents that the authorised officer reasonably considers relevant to an inquiry under this Division or determining whether there has been a contravention of this Act or the regulations.

**25H Provision of information and documents**

- (1) The Secretary or an authorised officer may, by written notice given to a person, require the person to do one or more of the following within the period specified in the notice:
  - (a) produce, in accordance with the notice, accounts and statements relating to any matter for which a power may be exercised under this Division,
  - (b) provide written answers to questions about any matter for which a power may be exercised under this Division,
  - (c) verify by statutory declaration an account, statement or answer that is produced or provided,

- (d) attend at a specified time and place and give evidence or produce documents in the person's custody with respect to any matter for which a power may be exercised under this Division,
  - (e) furnish copies of, or extracts from, a document in the person's custody or under the person's control that relates to any matter for which a power may be exercised under this Division.
- (2) The notice must specify a reasonable time for compliance with the notice and may specify the manner in which the accounts, statements or documents are to be produced.
- (3) A person to whom a document or thing is produced under this Division:
- (a) must provide a receipt for the document or thing, and
  - (b) may make copies of, or take extracts from, the document or thing, and
  - (c) may examine the document or thing, and
  - (d) must make the document or thing available for inspection by any other person who would be entitled to inspect the document or thing if it were not in the possession of the person conducting the inquiry.

#### **25I Search warrants**

- (1) An authorised officer may apply to an issuing officer for a search warrant if the applicant has reasonable grounds for believing that:
- (a) a provision of this Act or the regulations or a condition of an authority has been or is being contravened on premises, or
  - (b) there are on the premises documents relevant to an inquiry under this Division and a person having custody or control of the documents has failed to comply with a requirement under this Act to produce those documents or to provide copies of them or extracts from them.
- (2) An issuing officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant, when accompanied by a police officer, and any other person named in the warrant:
- (a) to enter the premises concerned, and
  - (b) to search the premises for evidence of a contravention of this Act or the regulations or a condition of an authority.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:  
**issuing officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

#### **25J Care to be taken**

- (1) An authorised officer must do as little damage as possible when exercising a function under this Act.
- (2) If damage is caused by a person exercising a power to enter premises, a reasonable amount of compensation is recoverable as a debt owed by the Crown to the owner of the premises, unless the occupier hindered or obstructed the exercise of that power.

#### **25K Recovery of expenses**

- (1) The Minister may direct that a specified person or organisation is liable to pay the remuneration of, and any expenses incurred by, an authorised officer that are referable to the exercise of functions under this Part in relation to the person or organisation.
- (2) The Minister may give a direction only if the remuneration was payable, or expenses were incurred, in relation to an offence of which a person has been found guilty.
- (3) The amount payable by the specified person or organisation is the amount certified by the Minister.
- (4) The amount payable is recoverable in a court of competent jurisdiction as a debt due to the Crown.
- (5) If the functions were exercised in relation to an organisation, the trustees or persons who are members of the governing body of the organisation are jointly and severally liable for the amount payable.
- (6) A trustee or person is not so liable unless the trustee or person knowingly authorised or permitted the offence to be committed.

#### **25L Offences relating to inquiries and inspections**

A person must not:

- (a) hinder or obstruct an authorised officer in the exercise of functions under this Act or the regulations, or
- (b) fail to comply with a requirement made by a notice given under this Division within the period (if any) specified by the notice, or
- (c) fail to answer questions or provide information when required to do so by an authorised officer in the exercise of the authorised officer's functions under this Act or the regulations, or
- (d) fail to produce for inspection any document or other thing when required to do so by an authorised officer in the exercise of the authorised officer's functions under this Act or the regulations, or
- (e) alter, conceal or destroy any document required to be produced under a notice given under this Division, or
- (f) refuse to take an oath, or make an affirmation, required to be taken or made under this Division.

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

### **Division 2 General civil enforcement powers**

#### **25M Compliance notices**

- (1) This section applies if an authorised officer reasonably believes that a person or organisation conducting or proposing to conduct a fundraising appeal:
  - (a) is contravening a provision of this Act or the regulations or a condition of an authority, or
  - (b) has contravened a provision or condition in circumstances that make it likely that the contravention will continue or be repeated.
- (2) The authorised officer may give the person or organisation a written notice (a **compliance notice**) requiring the person or organisation to:
  - (a) remedy the contravention, or

- (b) prevent a likely contravention from occurring, or
  - (c) remedy the things or operations causing the contravention or likely contravention.
- (3) A compliance notice must state:
- (a) the grounds on which the notice is given, including the particular contravention or contraventions on which the notice is based, and
  - (b) the day by which the person or organisation is required to comply with the notice.
- (4) A compliance notice may include directions as to the measures to be taken to remedy the contravention or prevent the likely contravention, or the matters or activities causing the contravention or likely contravention, to which the notice relates.
- (5) The day specified for compliance must be reasonable in all the circumstances.
- (6) A person to whom a compliance notice is given must comply with the notice within the period specified in the notice.  
Maximum penalty: 50 penalty units.
- (7) If an organisation fails to comply with a compliance notice, each trustee or other person who was a member of the governing body of the organisation at the time of the failure is guilty of an offence if the trustee or person knowingly authorised or permitted that failure to comply.  
Maximum penalty: 50 penalty units.

**25N Extension of time for complying with compliance notice**

- (1) An authorised officer may, by written notice given to a person or organisation, extend the compliance period for a compliance notice.
- (2) However, the authorised officer may extend the compliance period only if the period has not ended.
- (3) In this section:  
*compliance period* means the period ending on the day stated in the compliance notice by which a person or organisation is required to comply with the notice and includes that period as extended under this section.

**25O Other provisions relating to notices**

- (1) An authorised officer may make minor changes to a compliance notice:
  - (a) for clarification, or
  - (b) to correct errors or references, or
  - (c) to reflect changes of address or other circumstances.
- (2) The Secretary may revoke or vary a compliance notice.
- (3) A compliance notice is not invalid only because of:
  - (a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice, or
  - (b) a failure to use the correct name of the person or organisation to whom the notice is issued if the notice sufficiently identifies the person or organisation and is given to the person or organisation in accordance with this Act.

**25P Secretary may make order prohibiting conduct of fundraising appeal**

- (1) The Secretary may, by order in writing given to a person or organisation conducting or proposing to conduct a fundraising appeal, prohibit the conduct of the fundraising appeal, if the Secretary is satisfied that:
  - (a) it is likely that the provisions of this Act or the regulations or the conditions of an authority have not been, or will not be, complied with in relation to the fundraising appeal, or
  - (b) it would otherwise be against the public interest for the fundraising appeal to be conducted.
- (2) A person must not fail to comply with an order given to the person under this section.  
Maximum penalty: 50 penalty units.
- (3) If an organisation fails to comply with an order given to the organisation under this section, each trustee or other person who was a member of the governing body of the organisation at the time of the failure is guilty of an offence if the trustee or person knowingly authorised or permitted that failure to comply.  
Maximum penalty: 50 penalty units.
- (4) A person, or a trustee or member of the governing body of an organisation, given an order under this section may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision by the Secretary to make the order.
- (5) An order may be given whether or not a compliance notice has been given to the person or organisation under this Part.

**25Q Secretary may prohibit person or organisation from conducting fundraising appeals**

- (1) The Secretary may, by order in writing given to a person or organisation, prohibit the person or organisation from conducting any fundraising appeals for a period not exceeding 2 years after the order is given to the person or organisation, if the Secretary is satisfied that the person or organisation:
  - (a) has persistently failed to comply with the provisions of this Act or the regulations or the conditions of an authority, and
  - (b) is likely to continue to do so.
- (2) A person must not fail to comply with an order given to the person under this section.  
Maximum penalty: 50 penalty units.
- (3) If an organisation fails to comply with an order given to the organisation under this section, each trustee or other person who was a member of the governing body of the organisation at the time of the offence is guilty of an offence if the trustee or person knowingly authorised or permitted that failure to comply.  
Maximum penalty: 50 penalty units.
- (4) A person, or a trustee or member of the governing body of an organisation, given an order under this section may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision by the Secretary to make the order.
- (5) An order may be given whether or not a compliance notice has been given to the person or organisation under this Part.



### **Division 3      Enforceable undertakings**

#### **25R      Secretary may accept undertakings**

- (1) The Secretary may accept a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act or the regulations.
- (2) The giving of an undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates.
- (3) The Secretary may make a written undertaking publicly available.
- (4) An undertaking takes effect and becomes enforceable when the Secretary's decision to accept the undertaking is given to the person who made the undertaking or at any later date specified by the Secretary.

#### **25S      Notice of decision and reasons for decision**

- (1) The Secretary must give the person seeking to give an undertaking written notice of the Secretary's decision to accept or reject the undertaking and of the reasons for the decision.
- (2) The Secretary must publish, on a publicly accessible website maintained by the Department, notice of a decision to accept an undertaking and the reasons for that decision.

#### **25T      Compliance with undertaking**

A person must not contravene an undertaking given by that person that is in effect.

Maximum penalty: 50 penalty units.

#### **25U      Contravention of undertaking**

- (1) The Secretary may apply to the Local Court for an order if a person contravenes an undertaking.
- (2) An application for an order must be made not later than 2 years after the contravention occurred.
- (3) If the Court is satisfied that the person who gave the undertaking has contravened the undertaking, the Court, in addition to the imposition of any penalty, may make 1 or both of the following orders:
  - (a) an order directing the person to comply with the undertaking for the period specified in the order,
  - (b) an order discharging the undertaking.
- (4) In addition to the orders referred to in subsection (3), the Court may make any other order that the Court considers appropriate in the circumstances, including orders directing the person to pay to the State:
  - (a) the costs of the proceedings, and
  - (b) the reasonable costs of the Secretary in monitoring compliance with the undertaking in the future.
- (5) Nothing in this section prevents proceedings being brought for the contravention or alleged contravention of this Act to which the undertaking relates.

**25V Withdrawal or variation of undertaking**

- (1) A person who has given an undertaking may, at any time, with the written agreement of the Secretary:
  - (a) withdraw the undertaking, or
  - (b) vary the undertaking.
- (2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of the Act.
- (3) The Secretary must publish, on a publicly accessible website maintained by the Department, notice of the withdrawal or variation of an undertaking.

**25W Proceedings for alleged contravention**

- (1) Subject to this section, no proceedings for a contravention or alleged contravention of this Act or the regulations may be brought against a person if an undertaking is in effect in relation to that contravention.
- (2) No proceedings may be brought for a contravention or alleged contravention of this Act or the regulations against a person who has given an undertaking in relation to that contravention and has completely discharged the undertaking.
- (3) The Secretary may accept an undertaking in relation to a contravention or alleged contravention before proceedings in relation to that contravention have been finalised.
- (4) If the Secretary accepts an undertaking before the proceedings are finalised, the Secretary must take all reasonable steps to have the proceedings discontinued as soon as possible.

**Division 4 Offences**

**25X Nature of proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be dealt with summarily before the Local Court.
- (2) Proceedings for an offence against this Act or the regulations may be commenced within, but not later than, 3 years after the date on which the offence is alleged to have been committed.

**25Y Offences by corporations**

- (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

**25Z Additional orders by courts in criminal proceedings**

- (1) A court may, in addition or as an alternative to imposing a penalty for an offence under this Act or the regulations, by order, suspend or revoke an authority, or vary an authority granted under the regulations.

- (2) A person must not fail to comply with an order made by the court under this section.  
Maximum penalty: 20 penalty units.
- (3) If an organisation fails to comply with an order made by the court under this section, each trustee or other person who was a member of the governing body of the organisation at the time of the failure to comply is guilty of an offence if the trustee or person knowingly authorised or permitted that failure to comply.  
Maximum penalty: 50 penalty units.

**25ZA Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the authorised officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.  
**Note.** The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this Act or any other Act relating to proceedings that may be taken in respect of offences.

**[27] Part 3, Divisions 1 and 2**

Omit the Divisions.

**[28] Part 3A, Division 1 Preliminary**

Omit the Division.

**[29] Section 41B Appointment of public inquirers to conduct public inquiries**

Omit section 41B (1). Insert instead:

- (1) The Minister may appoint a qualified person to conduct a public inquiry into the following:
  - (a) any person or organisation that:
    - (i) is conducting or has conducted, or is participating or has participated in, a fundraising appeal, or
    - (ii) the Minister has reason to believe is conducting or has conducted, or is participating or has participated in, a fundraising appeal,
  - (b) any other person, organisation or matter associated with fundraising appeals.

**[30] Section 41C Reconstitution of existing non-public inquiry as public inquiry**

Omit the section.

**[31] Section 41I Legal and financial assistance for witness**

Omit “of the Department of Finance, Services and Innovation” from section 41I (5).

**[32] Section 41N Protection from incrimination**

Omit “section 30” from section 41N (3) (a). Insert instead “section 25L”.

**[33] Section 41N (6)**

Omit the subsection (including the note to the subsection).

**[34] Section 41P**

Omit the section. Insert instead:

**41P Investigative powers under Division 1 of Part 2A**

- (1) The provisions of sections 25G and 25H extend to public inquiries.
- (2) For this purpose:
  - (a) any reference to an investigation or inquiry under Part 2A is to be read as including a reference to a public inquiry, and
  - (b) any reference to the purposes of any investigation or inquiry under Part 2A is to be read as including a reference to the purposes of any public inquiry, and
  - (c) any reference to an authorised officer is to be read as including a reference to a public inquirer.

**[35] Section 41Q Search warrant**

Omit “section 29” wherever occurring in section 41Q (2) and (3).

Insert instead “section 25I”.

**[36] Section 41S Offences in relation to public inquiries**

Omit section 41S (1). Insert instead:

- (1) Section 25L (Offences relating to inquiries and inspections) extends to public inquiries with all necessary modifications, including the following:
  - (a) the reference in that section to a notice under Division 1 of Part 2A 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 that section to an oath required to be taken, or affirmation required to be made, under Division 1 of Part 2A is to be read as including a reference to an oath or affirmation required under this Part,
  - (c) the reference in that section to the exercise of functions under this Act or the regulations by 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 officer.

**[37] Section 41T Exclusion of personal liability**

Omit section 41T (3).

**[38] Section 43 Administrative review of cancellation of authority**

Omit “revoked”. Insert instead “cancelled”.

**[39] Section 48**

Omit the section. Insert instead:

**48 Remuneration of board members of charitable fundraising organisations**

- (1) A person must not accept and keep any remuneration, payment or other benefit from an organisation that holds an authority under this Act if the person holds any office, or acts as a member of the governing body, of the organisation.  
Maximum penalty: 200 penalty units.
- (2) Subsection (1) does not apply if:
  - (a) the Minister, by order published in the Gazette, has declared that subsection (1) does not apply to the office or position concerned, or a class of offices or positions that includes the office or position concerned, or
  - (b) the Minister has given prior approval to a person accepting and keeping the remuneration, payment or other benefit despite subsection (1), or
  - (c) the person concerned holds the office or acts in the position by reason of the person's office as a minister of religion or a member of a religious order.
- (3) An approval under this section is subject to any conditions imposed by the Minister when giving the approval.
- (4) An approval under this section is to be in writing.
- (5) An application for approvals must be addressed in writing to the Minister by the organisation concerned.
- (6) In this section, *remuneration, payment or other benefit* does not include a travelling or subsistence allowance payable to a person.
- (7) The regulations may exempt an organisation, or a class of organisations, from the application of this section.

**[40] Section 49 Authorised inspectors**

Omit the section.

**[41] Section 50 Proceedings for offences**

Omit the section.

**[42] Section 51 Offences by corporations**

Omit the section.

**[43] Section 52**

Insert after section 51:

**52 Application of funds in absence of authority**

- (1) If an authority held by a person or organisation has been cancelled or if the Secretary is satisfied a person or organisation is conducting or has conducted a fundraising appeal without lawful authority or contrary to the person's or organisation's authority, the Secretary may apply to the Supreme Court for an order for the disposition of assets of the person or organisation that the Supreme Court is satisfied are, or are traceable to, the proceeds of a fundraising appeal conducted by the person or organisation.

- (2) More than one application may be made in respect of the same person or organisation.
- (3) Having regard to the purposes or objects of a fundraising appeal to which the assets are referable, the Supreme Court may make an order for the disposition of the assets as it thinks fit.
- (4) The Supreme Court may also make any consequential or ancillary orders as it thinks fit.

**[44] Section 53 Delegation**

Insert at the end of the section:

- (2) The Secretary may delegate the exercise of any function of the Secretary under this Act (other than this power of delegation) to:
  - (a) any person employed in the Department, or
  - (b) any other person, or other class of persons, authorised for the purposes of this section by the regulations.

**[45] Section 55 Regulations**

Omit “20 penalty units” from section 55 (2). Insert instead “50 penalty units”.

**[46] Schedule 2 Savings and transitional provisions**

Insert after clause 1 (3):

- (4) Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different savings and transitional provisions instead of including the provisions in the regulations.