# Charitable Fundraising Act 1991 No 69

[1991-69]

New South Wales

## Status Information

## Currency of version

Historical version for 27 June 2017 to 13 August 2017 (accessed 28 April 2024 at 22:47)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**
  *Charitable Fundraising Amendment (Inquiries) Bill 2017*

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the Interpretation Act 1987.

File last modified 3 August 2017

# Charitable Fundraising Act 1991 No 69

New South Wales

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# Charitable Fundraising Act 1991 No 69

New South Wales

An Act to regulate public fundraising for charitable purposes; to repeal the *Charitable Collections Act 1934* and to amend certain other Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Charitable Fundraising Act 1991*.

### 2 Commencement

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

### 3 Objects

The objects of this Act are:

(a) to promote proper and efficient management and administration of fundraising appeals for charitable purposes, and

(b) to ensure proper keeping and auditing of accounts in connection with such appeals, and

(c) to prevent deception of members of the public who desire to support worthy causes.

### 4 Definitions

(1) In this Act:

***authorised inspector*** means a person appointed under this Act as an inspector or a person authorised by or under this Act to exercise the functions of an authorised inspector.

***authority*** means an authority in force under Part 2.

***charitable purpose*** includes any benevolent, philanthropic or patriotic purpose.

***conducting a fundraising appeal*** is defined in section 6.

***fundraising appeal*** is defined in section 5.

***organisation*** includes any board of trustees or other body of persons, whether incorporated or unincorporated.

***participating in a fundraising appeal*** is defined in section 6.

***registered office*** of a person or organisation, or branch of an organisation, that conducts fundraising appeals pursuant to an authority means the address stated in the application form referred to in section 15.

(2) 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.

**5 Meaning of "fundraising appeal"**

(1) For the purposes of this Act, the soliciting or receiving by any person of any money, property or other benefit constitutes a fundraising appeal if, before or in the course of any such soliciting or receiving, the person represents:

(a) that the purpose of that soliciting or receiving, or

(b) that the purpose of an activity or enterprise of which that soliciting or receiving is a part,

is or includes a charitable purpose.

(2) It does not matter whether the money or benefit concerned is solicited or received:

(a) in person or by other means (such as by post, telephone or facsimile transmission), or

(b) as a donation or otherwise (such as by participation in a lottery, art union or competition; by sponsorship in connection with a walkathon, telethon or other similar event; in connection with the supply of food, entertainment or other goods or services; or in connection with any other commercial undertaking).

(3) The following do not, however, constitute a fundraising appeal for the purposes of this Act:

(a) a request for, or the receipt of, an amount required in good faith as the fee for renewal of membership of an organisation,

(b) an appeal by an organisation to (or the receipt of money or a benefit from) members of the organisation,

(c) a request that any property be devised or bequeathed, or the giving of any information as to the means by which any property may be devised or bequeathed,

(d) an appeal conducted exclusively or predominantly among persons sharing a common employer or place of work by one of those persons (being an appeal for a charitable purpose connected directly with another of those persons or any such other person's immediate family) and the receipt of money or a benefit from any such appeal,

(e) an appeal to (or the receipt of money or a benefit from) any Commonwealth, State or local government authority,

(f) anything prescribed by the regulations.

**6 Meaning of "conducting" or "participating in" a fundraising appeal**

(1) For the purposes of this Act, a person conducts a fundraising appeal if the person organises the appeal, whether alone or with others, whether in person or by an agent or employee and whether on the person's own behalf or as an officer or member of the governing body of an organisation.

(2) For the purposes of this Act, a person participates in a fundraising appeal if the person solicits or receives any money, property or other benefit in the course of the appeal, or assists in organising the appeal.

(3) For the purposes of this Act, a person who participates in a fundraising appeal does not conduct the appeal if the person participates in it solely as the agent, employee or collector (whether voluntary or not) of or for another person who is conducting the appeal.

(4) For the purposes of this Act, a person does not participate in an appeal merely because the person gives any money or benefit in the course of the appeal.

**7 Religious organisations exempt from Act**

(1) This Act (apart from section 48) does not apply to:

(a) a religious body or a religious organisation in respect of which a proclamation is in force under section 26 of the *Marriage Act 1961* of the Commonwealth or a religious body, or an organisation or office, within a denomination in respect of which such a proclamation is in force, or

(b) a religious body or religious organisation prescribed by the regulations, or

(c) any body or organisation that is certified in writing by the principal or executive officer of a body or organisation referred to in paragraph (a) or (b) to be affiliated with and approved by the organisation or body so referred to, or

(d) a member or employee of a body or organisation referred to in paragraph (a), (b) or (c), or any other person, who is acting with its authority.

(2) The Minister may, by order published in the Gazette, declare that, despite subsection (1), this Act and the regulations apply (or apply to the extent specified in the order) to a person, body or organisation specified in the order, and such an order has effect accordingly.

(3) By way of example of the power conferred by subsection (2), an order under that subsection may apply the provisions of Part 3 to a person, body or organisation that has failed to give a satisfactory reply to a request by the Minister for information concerning any fundraising appeal conducted by the person, body or organisation.

**8 Crown bound by this Act**

This Act binds the Crown not only in right of New South Wales but also, in so far as the legislative power of Parliament permits, in all its other capacities.

## Part 2 Fundraising appeals

## Division 1 Offences

**9 Conducting unlawful fundraising**

(1) A person who conducts a fundraising appeal is guilty of an offence 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 (3) to conduct the appeal without an authority.

Maximum penalty: 50 penalty units.

(2) A person who conducts a fundraising appeal in contravention of any condition attached to an authority authorising the appeal is guilty of an offence.

Maximum penalty: 50 penalty units.

(3) 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**

A person who participates in a fundraising appeal which the person knows, or could reasonably be expected to know, is being conducted unlawfully is guilty of an offence.

Maximum penalty: 50 penalty units.

**11 Appeals conducted by persons engaged in business or otherwise deriving benefit**

(1) A person (in this section called the ***trader***) must not conduct a fundraising appeal:

(a) in connection with the supply of goods or services in the course of any trade or business carried on by the person, or

(b) otherwise partly for the person's benefit,

except in accordance with this section.

Maximum penalty: 50 penalty units.

(2) Such an appeal must be conducted in accordance with the following conditions:

(a) the appeal must be conducted jointly by the trader and a person or organisation that holds an authority to conduct the appeal,

(b) any advertisement, notice or information concerning the appeal must identify the trader and the holder of the authority,

(c) any such advertisement, notice or information must give details (to the extent required by the conditions of the authority) of the intended distribution of funds raised in the appeal or of any guaranteed minimum payment, or proportion of profits, to be paid by the trader to any person or organisation as a result of the appeal.

(3) Nothing in this section affects the Minister's discretionary power to attach any other condition to an authority.

**12 Publicity**

(1) A person who publishes any advertisement, notice or information relating to any fundraising appeal which the person knows, or could reasonably be expected to know, is being conducted unlawfully is guilty of an offence.

Maximum penalty: 50 penalty units.

(2) In this section, ***publishing*** includes:

(a) causing to be published, and

(b) publishing by spoken words, whether directly or through any electronic medium, and

(c) transmitting by facsimile machine.

**13 False representations in conduct of fundraising appeal**

(1) (Repealed)

(2) A person:

(a) who is conducting or is proposing to conduct a fundraising appeal, or

(b) who is acting on behalf of a person who is conducting or is proposing to conduct a fundraising appeal,

must not represent to an employee, agent or collector (whether voluntary or not) that any thing required or permitted by this Act to be done, or any condition precedent to a fundraising appeal to be complied with, has been done or complied with when in fact it has not.

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

## Division 2 Authority to conduct fundraising appeals

**13A Application to authorities of Licensing and Registration (Uniform Procedures) Act 2002**

(1) The Minister may grant authorities for the purposes of this Act.

(2) Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* (***the applied Act***) applies to and in respect of an authority, subject to the modifications and limitations prescribed by or under this Act.

(3) For the purpose of applying Part 2 of the applied Act to an authority:

(a) the authority may be amended under that Act, and

(b) the reference to 14 days in section 14 (3) of that Act (as to the period within which further information must be provided) is to be read as a reference to 3 months, and

(c) section 17 (1) of that Act does not have effect, and

(d) the reference to 14 days in section 24 (1) of that Act (as to the period within which changed particulars must be notified) is to be read as a reference to 28 days.

(4) Subject to this section, the regulations may make provision for or with respect to such matters concerning an authority as are relevant to the operation of Part 2 of the applied Act.

**14 Special applications**

(1) (Repealed)

(2) Persons or organisations may combine to make one application for an authority if each such person or organisation is separately identified in the application.

(3) An application may relate to a particular appeal or appeals or to appeals generally.

(4) An application made by an organisation may request that the authority issued in pursuance of the application authorise the conduct of fundraising appeals by members of specified branches of the organisation.

(5) An authority may be issued in terms requested under subsection (4) if the Minister is satisfied that each of the branches concerned is responsible to, and is under the direction and control of, the governing body of the applicant organisation. In such a case, the governing body of each branch is taken, for the purposes of this Act, to be the holder of the authority.

**15 Application to nominate registered office**

(1) (Repealed)

(2) An application for an authority is to require the applicant to state in the application an address in New South Wales to which any notices or other documents can be forwarded for the purposes of this Act. The address so stated is, for the purposes of this Act, the registered office of the applicant.

(3) If the authority is to authorise the conducting of one or more fundraising appeals by branches of an organisation, the form of application must require an address in New South Wales to be stated for each such branch. In such a case, each such branch is taken, for the purposes of this Act, to have its registered office at the address specified in respect of it, and any requirement of this Act in relation to the registered office of the holder of an authority applies accordingly.

**16 How application dealt with**

(1) (Repealed)

(2) The Minister may refuse an application for an authority if the Minister is not satisfied as to any one or more of the following matters:

(a) that the proposed appeal will be conducted in good faith for charitable purposes,

(b) that all of the persons proposing to conduct the appeal, and all persons associated with the proposed appeal, are fit and proper persons to administer, or to be associated with, a fundraising appeal for charitable purposes,

(c) that the proposed appeal will be administered in a proper manner,

(d) that the grant of an authority would not facilitate the contravention of any Act,

(e) that the applicant can and will ensure that persons conducting or participating in the proposed appeal will comply with the provisions of this Act and the regulations and the conditions of the authority,

(f) that the applicant has furnished all the information required to be furnished in relation to the proposed appeal,

(g) that, having regard to the purposes and activities, or likely activities, of the applicant, names, designations or titles proposed to be used in connection with the proposed appeal are appropriate and not misleading,

(h) that it is in the public interest to grant the authority.

(3), (4) (Repealed)

(5) Receipt by the Minister of an application for an authority, or of any further information required, is to be acknowledged by notice (a ***receipt notice***) to the applicant.

(6) If the Minister has not disposed of an application for an authority within a period of 60 days after the date of the receipt notice for the application (or—if further information is sought during that period—within 60 days after the date of the receipt notice for that information) the application is taken to have been approved. In such a case, the authority is taken to have been duly granted subject only to such conditions as may be prescribed by regulations made for the purposes of this subsection.

(7) Nothing in subsection (6) affects the power of the Minister to vary the conditions of an authority in accordance with the provisions of this Part.

**17 Right conferred by authority**

An authority may be granted so as to authorise a single fundraising appeal or a specified number of such appeals or an indefinite number of such appeals.

**18 (Repealed)**

**19 Conditions of authority**

(1) The Minister may attach to an authority any condition that, having regard to the objects and purposes of this Act and the public interest, the Minister thinks ought to

be imposed in the particular case.

(2) The conditions for the time being attached to an authority may be varied by the Minister by notice in writing served on the holder of the authority.

(3) For the purposes of this Act:

(a) the imposition of a condition on an authority to which no conditions were previously attached, or

(b) the imposition of any new condition on an authority, or

(c) the amendment of a condition of an authority, or

(d) the removal of a condition of an authority,

is a variation of its conditions.

## Division 3 Application of funds raised

### 20 Proceeds of appeal

(1) Any money or benefit received in the course of a fundraising appeal conducted by the holder of an authority is to be applied according to the objects or purposes represented by or on behalf of the persons conducting the appeal as the purposes or objects of the appeal.

(2) Subsection (1) does not operate:

(a) so as to prevent the deduction of lawful and proper expenses in accordance with the authority under which the appeal is conducted, or

(b) so as to prejudice the operation of the *Dormant Funds Act 1942* or of any Act or other law relating to the cy-pres application or other application of trust money.

(3) The regulations may specify, or make provision for or with respect to the determination (by the decision of the Minister or otherwise) of, what constitutes a lawful and proper expense in connection with particular fundraising appeals or any class or description of fundraising appeals or fundraising appeals generally.

(4) Any relevant Act or other law relating to the cy-pres application or other application of trust money applies to any money (not being trust money) that is subject to subsection (1).

(5) Money or any benefit received in the course of a fundraising appeal may be applied outside New South Wales, except to the extent that:

(a) to apply it in that way would contravene subsection (1) or any other law, or

(b) the Minister, having regard to the public interest, prohibits the application of any

such money or benefit by a condition of an authority authorising the appeal concerned.

(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 at a bank, building society or credit union or at any other institution prescribed (or of a class prescribed) by the regulations. The account is to consist only of money raised in the fundraising appeal concerned, or in that and other such appeals conducted by the same persons. The account is to be kept in the name of or on behalf of the person conducting the appeal and is to be operated by not fewer than 2 persons jointly. This subsection, however, has effect subject to the conditions of any particular authority.

(7) A person conducting a fundraising appeal, or any member of the governing body of an organisation on whose behalf such an appeal is conducted, who:

(a) by act or omission is in any way directly or indirectly concerned in or party to a contravention of this section, or

(b) aids, abets, counsels or procures a contravention,

is guilty of an offence.

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

(8) A person convicted of an offence under this section in connection with a fundraising appeal conducted on behalf of an organisation is, in addition to any liability for the offence, liable to the organisation for the loss incurred by the organisation as a result of the offence.

(9) An amount for which a person is liable under subsection (8) may be recovered by the organisation concerned as a debt in any court of competent jurisdiction.

### 21 Investment

(1) Money received in the course of a fundraising appeal which is not immediately required to be applied to the purposes or objects of the appeal may be invested only in a manner for the time being authorised by law for the investment of trust funds.

(2) This section is subject to the provisions of the *Public Authorities (Financial Arrangements) Act 1987* or any other Act which confers special powers of investment on the person or organisation concerned.

## Division 4 Requirements to be met by fundraisers

### 22 Keeping of records

(1) A person or organisation that conducts or has conducted a fundraising appeal must keep, in accordance with this section, records of income and expenditure in relation to

each such appeal.

(2) The records must:

(a) be kept in writing in the English language or so as to enable the records to be readily accessible and readily convertible into writing in the English language, and

(b) include any particulars required by the regulations, and

(c) subject to the conditions of any authority, be kept at all times at the registered office of the person conducting the appeal, and

(d) be kept for a period of at least 7 years (or such shorter period as the Minister may approve) after the receipt of the income or the incurring of the expenditure to which they relate.

(3) A person or organisation that contravenes this section is guilty of an offence. In the case of an unincorporated organisation, every trustee or other person who, at the time of the offence, was a member of the governing body of the organisation is guilty of an offence.

Maximum penalty: 50 penalty units.

**23 Periodic return by holder of authority (other than incorporated organisation)**

(1) A natural person or unincorporated organisation that for the time being holds an authority to conduct a fundraising appeal must send to the Minister returns giving details of the application of the proceeds of any fundraising appeals conducted by the person or organisation since the last such return was furnished (or, if no such returns have been lodged previously, since the authority was granted).

(2) The returns are to be sent at such intervals as may be specified in the authority, at such times as may be so specified (or within such further time as the Minister may allow).

(3) Each such return is to be in a form approved by the Minister and must show:

(a) the gross amounts received from each appeal, and

(b) the net amount received after the deduction of expenses.

(4) A person or organisation that contravenes this section is guilty of an offence. In the case of an unincorporated organisation, every trustee or other person who, at the time of the offence, was a member of the governing body of the organisation is guilty of an offence.

Maximum penalty: 50 penalty units.

**24 Audit**

(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 by a person qualified to audit accounts for the purposes of the *Corporations Act 2001* of the Commonwealth or having other qualifications or experience approved by the Minister.

(2) The auditor must report on:

(a) whether the accounts show a true and fair view of the financial result of fundraising appeals for the year to which they relate, and

(b) whether the accounts and associated records have been properly kept during that year in accordance with this Act and the regulations, and

(c) whether money received as a result of fundraising appeals conducted during that year has been properly accounted for and applied in accordance with this Act and the regulations, and

(d) the solvency of the person or organisation.

(3) If the auditor, in the course of the performance of the auditor's duties for the purposes of this section, is satisfied that:

(a) there has been a contravention of this Act or the regulations, and

(b) the circumstances are such that, in the auditor's opinion, the matter has not been or will not be adequately dealt with by comment in the auditor's report on the accounts or by bringing the matter to the notice of the person concerned or of the trustees or members of the governing body of the organisation concerned (as the case may be),

the auditor must immediately report the matter to the Minister.

(4) A person or organisation that fails to have accounts audited as required by this section is guilty of an offence. In the case of an unincorporated organisation, every trustee or other person who, at the time of offence, was a member of the governing body of the organisation is guilty of an offence.

Maximum penalty: 50 penalty units.

(5) The requirements of this section are in addition to the requirements of any other law (including the *Corporations Act 2001* of the Commonwealth).

(6) The whole or any part of a report prepared for the purposes of this section in respect of a corporation may be included in an auditor's report prepared for the purposes of the *Corporations Act 2001* of the Commonwealth or any other law in respect of the

corporation.

(7) Nothing in subsection (6) is intended to provide for the inclusion of any matter in an auditor's report for the purposes of the *Corporations Act 2001* of the Commonwealth or any other law of the Commonwealth if the inclusion of that matter would be contrary to the provisions of that Act or law.

**25 Exemptions**

(1) The regulations may make provision for or with respect to the exemption of a person or organisation (or of a class of persons or organisations) from all or any of the provisions of this Division, other than any provision relating to the keeping of records.

(2) If a person or organisation referred to in subsection (1) enters into a contract or arrangement with another person by which that other person will or might receive any remuneration or benefit for conducting or participating in a fundraising appeal, that other person is not, by virtue of this section or any regulation, exempt from any of the provisions of this Division.

## Part 3 Powers of the Minister in respect of fundraisers

## Division 1 Investigations

**26 Minister may inquire into fundraisers**

(1) The Minister may, with respect to any matter arising under this Act, inquire into any person or organisation that:

(a) is conducting or has conducted, or is participating or has participated in, a fundraising appeal, or

(b) the Minister has reason to believe is conducting or has conducted, or is participating or has participated in, a fundraising appeal.

(2) The Minister may cause an inquiry under this section to be made by an authorised inspector, either with respect to a particular matter or with respect to any matter.

**27 Power of Minister to require accounts etc**

(1) For the purposes of any inquiry under this Part, the Minister or an authorised inspector may require any person to do any one or more of the following:

(a) to furnish accounts and statements in writing with respect to any matter in question at the inquiry, being a matter about which the person has or can reasonably obtain information,

(b) to provide answers in writing to any questions addressed to the person on any such matter,

(c) to verify any such account, statement or answer by statutory declaration,

(d) to attend at a specified time and place and give evidence or produce documents in the person's custody or under the person's control which relate to any matter in question at the inquiry,

(e) to furnish copies of or extracts from any document in the person's custody or under the person's control which relates to any matter in question at the inquiry or to make any such document available for inspection.

(2) Any requirement under this section is to be made by notice in writing served on the person concerned and specifying a reasonable time within which the requirement is to be complied with.

(3) For the purposes of any inquiry under this Part, evidence may be taken on oath and the person conducting the inquiry may for that purpose administer oaths.

(4) The person conducting the inquiry may take possession of documents produced to the person for such period as the person considers necessary for the purposes of the inquiry and may make copies of or take extracts from them. During that period the person conducting the inquiry must permit a person who would be entitled to inspect any one or more of those documents if they were not in the possession of the person conducting the inquiry to inspect at all reasonable times such of those documents as that person would be entitled to inspect.

**28 Power of entry and inspection**

(1) If an authorised inspector believes on reasonable grounds that any documents relevant to an inquiry under this Part are likely to be found on any premises, the authorised inspector may:

(a) enter the premises, and

(b) require production of the documents, and

(c) take copies of or extracts from the documents or take possession of the documents for such period as he or she considers necessary for the purposes of the inquiry.

(2) Section 27 (4) applies to documents taken under subsection (1) (c).

(3) A power conferred by this section:

(a) may not be exercised in relation to any premises used as a dwelling, or in relation to a part of any premises so used, except with the consent of the occupier of the premises or part or by the authority of a search warrant, and

(b) may be exercised only at reasonable times and on reasonable notice to the

occupier of any affected premises, except where the Minister has certified that, in the circumstances, the power may be otherwise exercised (in which case it may be exercised in accordance with the Minister's directions).

(4) A power conferred by this section may not be exercised unless the person exercising it is in possession of a certificate issued by the Minister which:

(a) states that it is issued under this Act, and

(b) gives the name of the person to whom it is issued, and

(c) describes the nature of the powers conferred, and

(d) bears the signature of the Minister.

(5) A person exercising a power to enter premises must produce his or her certificate to the occupier of the premises.

(6) 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 the power.

**29 Search warrant**

(1) An authorised inspector may apply to an authorised officer (within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*) for a search warrant if the inspector has reasonable grounds for believing that documents relating to any matter in question at an inquiry being conducted under this Act 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 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) The authorised officer to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised inspector named in the warrant to enter the place and to search for and take possession of documents of a kind specified in the warrant.

(3) An authorised inspector who enters any place by virtue of such a warrant may take with him or her such other persons as may be necessary, and on leaving any unoccupied place so entered must, as far as practicable, leave it as effectively secured against trespassers as he or she found it.

(4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*

applies to a search warrant issued under this section.

**30 Offences in relation to inquiries**

A person who:

(a) neglects or fails to comply with a requirement duly made by a notice under this Division within the time specified in the notice, or

(b) alters, destroys or conceals any document referred to in section 27 (1) (e), or

(c) refuses to take an oath required to be taken under this Division, or

(d) hinders or obstructs the Minister or any authorised inspector in the exercise of his or her functions under this Division,

is guilty of an offence.

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

## Division 2 Revocation of authority and disposition of funds

**31 Revocation of authority**

(1) The Minister may, by order published in the Gazette, revoke an authority if the Minister is satisfied:

(a) that any fundraising appeal conducted by the holder of the authority has not been conducted in good faith for charitable purposes, or

(b) that any of the persons who have conducted a fundraising appeal by virtue of the authority, or any persons associated with any such appeal, are not fit and proper persons to administer, or to be associated with, a fundraising appeal for charitable purposes, or

(c) that any fundraising appeal conducted by virtue of the authority has been improperly administered, or

(d) that, in connection with any fundraising appeal conducted by virtue of the authority, the provisions of this Act or the regulations or the conditions of the authority were not complied with by any person conducting or participating in the appeal, or

(e) that the holder has not conducted a fundraising appeal within the previous 24 months, or

(f) that, in the public interest, the authority should be revoked.

(2) The revocation of an authority is not stayed by lodgment of an appeal against the revocation.

(3) The revocation of an authority does not have effect until notice of the revocation, and of the reasons for it, is served on the holder of the authority.

(4) Notice of the revocation of an authority is to be published by the Minister in at least one newspaper circulating throughout New South Wales (whether published in print or on a publicly accessible website) or at least one publicly accessible website that, in the opinion of the Minister, is appropriate to cause the notice to come to the attention of the public.

(5) If the Minister has revoked an authority, the Minister may subsequently, if the Minister thinks fit, issue a further authority (whether in the same terms or otherwise) to the same person or organisation without the need for further application.

### 32 Application of funds in absence of authority

(1) If the Minister has revoked the authority of any person or organisation or if the Minister is satisfied that a person or organisation is conducting or has conducted a fundraising appeal without lawful authority or in a manner contrary to the person's or organisation's authority to do so, the Minister may apply to the Supreme Court for an order for the disposition of assets of the person or organisation which the Supreme Court is satisfied are, or are traceable to, the proceeds of any fundraising appeal conducted by the person or organisation.

(2) More than one such application may be made in respect of the same person or organisation.

(3) Having regard to the purposes or objects of any fundraising appeals to which any such assets are referable, the Supreme Court may make such order for their disposition as it thinks fit.

(4) The Supreme Court in any such case may make such consequential or ancillary orders as it thinks fit.

## Division 3 Administration of fundraising organisations by administrator

### 33 Appointment of administrator

(1) The Minister may, by instrument in writing, appoint an administrator:

(a) to conduct the affairs and activities of any non-profit organisation that is conducting or has conducted one or more fundraising appeals, or that has or had as one of its objects a charitable purpose, or

(b) to conduct such of the affairs and activities of any other organisation that is conducting or has conducted one or more fundraising appeals as relate to the administration, application and management of funds raised in any such appeal.

(2) An administrator is not to be appointed unless the Minister believes on reasonable grounds that:

(a) after the organisation has been notified by the Minister of any contravention of a provision of this Act or the regulations or a condition imposed on the organisation by or under this Act:

(i) the organisation has failed to remedy the contravention to the extent that it is capable of remedy, or

(ii) the organisation has committed a further contravention of the provision or condition, or

(iii) the contravention of the provision or condition has continued, or

(b) an examination or inquiry under this Act in relation to the organisation has disclosed reasonable grounds to suspect a misappropriation of funds of the organisation or of mismanagement of the organisation, or

(c) for other reasons it is in the public interest that the administrator be appointed.

**34 Notice of appointment**

(1) The Minister must serve notice of the appointment of an administrator on the organisation concerned.

(2) When a notice under this section is served on a non-profit organisation:

(a) the members of the governing body of the organisation cease to hold office, and

(b) if the notice so provides, all contracts of employment with the organisation are terminated, and

(c) if the notice so provides, all contracts for the provision of secretarial or administrative services to the organisation are terminated.

**35 Administration**

(1) An administrator has the functions of the governing body of the organisation and no appointment of a person to that body may be made while the administrator holds office, except as required by this section.

(2) Before revoking the appointment of an administrator for an organisation (otherwise than for the purpose of appointing a new administrator), the Minister must:

(a) ensure that the members of the governing body of the organisation have been appointed in accordance with the constitution of the organisation, or

(b) appoint those members.

(3) Members of the governing body of an organisation appointed by the Minister under this section are taken to have been appointed in accordance with the constitution of the organisation.

(4) Any members so appointed:

(a) take office on revocation of the appointment of the administrator, and

(b) hold office in accordance with the constitution of the organisation concerned.

**36 Audit requirements while administrator holds office**

(1) For so long as an administrator holds office, the provisions of any relevant Act or law relating to the appointment and re-appointment of auditors and the functions of auditors (being provisions which would have been applicable to the organisation concerned if the administrator had not been appointed) continue to apply to the organisation.

(2) For the purposes of the application of those provisions, a reference in those provisions to the directors of a company is to be construed as a reference to the administrator of the organisation.

**37 Expenses of administration**

(1) The expenses of and incidental to the administration of the affairs and activities of an organisation by an administrator appointed under this Division are payable by the organisation.

(2) The remuneration of an administrator of an organisation who is not an employee of the Crown is an expense to which this section applies and is to be fixed by the Minister.

(3) Where an administrator is an employee of the Crown, the reimbursement of the Crown of an amount certified by the Minister in respect of the remuneration of that employee is an expense to which this section applies and is recoverable from the organisation in a court of competent jurisdiction as a debt due to the Crown.

**38 Liability for losses incurred during administration**

(1) An administrator appointed under this Division is not liable for any loss incurred by the organisation during the administrator’s term of office unless the loss was attributable to:

(a) wilful misconduct of the administrator, or

(b) gross negligence of the administrator, or

(c) wilful failure of the administrator to comply with any provision of this Act or the regulations or of the constitution of the organisation (in so far as any such

provision of the constitution is applicable to the members of the governing body of the organisation).

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

## Division 4 Miscellaneous provisions

### 39 Remission of cases to the Attorney General

(1) If the Minister is of the opinion:

(a) that legal proceedings should be instituted with respect to any person or organisation that has conducted fundraising appeals or with respect to any assets or affairs of such a person or organisation, and

(b) that under the circumstances it is desirable that such proceedings should be instituted by the Attorney General,

the Minister may remit the case to the Attorney General, together with such statements and particulars (if any) as in the opinion of the Minister are necessary for the explanation of the case.

(2) The Attorney General may institute and prosecute such legal proceedings as the Attorney General, on consideration of the circumstances, considers proper in the circumstances of the case.

### 40 Auditor-General to act as or provide inspector

(1) For the purposes of this Act, the Auditor-General may (and on the request of the Minister, is required to):

(a) exercise the functions of an authorised inspector under this Act or the regulations or assist and advise the Minister on any matter arising in the execution of this Act or the regulations, or

(b) provide some suitably qualified member or members of the Auditor-General’s staff to do so.

(2) The Auditor-General or such a member of staff has the functions of an authorised inspector under this Act and the regulations.

### 41 Recovery of certain expenses

(1) If the Minister so directs, the whole or any part of the expenses incurred by the Auditor-General in or in connection with the exercise by the Auditor-General or a member of the Auditor-General’s staff of any of the functions of an authorised inspector in relation to a particular organisation is payable by the organisation and

recoverable from the organisation by the Auditor-General as a debt in a court of competent jurisdiction.

(2) If the Minister so directs, the remuneration of and any expenses incurred by an authorised inspector who is not an employee of the Crown 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 particular person or organisation, payable by the person or organisation and recoverable in a court of competent jurisdiction as a debt due to the Crown.

(3) The amount recoverable from a person or organisation under subsection (1) is an amount certified by the Auditor-General to be the amount so recoverable.

(4) The amount recoverable from a person or organisation under subsection (2) is an amount certified by the Minister to be the amount so recoverable.

(5) If the organisation concerned is an unincorporated organisation, the trustees or persons who are members of the governing body of the organisation are jointly and severally liable for any debts of the organisation under this section.

## Part 4 Administrative reviews by Civil and Administrative Tribunal

### 42 Administrative review of refusal to grant authority or against conditions imposed on authority

An applicant for an authority who is dissatisfied with any decision of the Minister with respect to the application may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.

### 43 Administrative review of revocation of authority

A person or organisation whose authority is revoked may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the revocation.

### 44 Administrative review of variation of authority

A person or organisation that holds an authority may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of any variation of the conditions attached to the authority.

### 45 Determination by Civil and Administrative Tribunal of applications

The Civil and Administrative Tribunal, in determining an administrative review for the purposes of this Part, is to inquire into and decide the application having regard to the provisions of this Act and the public interest.

### 46 (Repealed)

## Part 5 Miscellaneous

### 47 Public access to information

(1) A person or organisation that is (or, within the previous 12 months, was) the holder of an authority must, within 30 days after being requested to do so by any person, furnish the person with:

(a) any audited financial statements requested by the person concerning fundraising appeals conducted by the person or organisation concerned during its last financial year and, to the extent that the regulations so require, during previous financial years, and

(b) in the case of an organisation—such information as the regulations may prescribe concerning the objects and constitution (including the names and addresses of members of the governing body of the organisation) of the organisation.

Maximum penalty: 5 penalty units.

(2) Any such information and financial statements may, at the request of any person, be supplied to the person by or on behalf of the Minister.

(3) A person is not entitled to be supplied with information or financial statements under this section unless the person has paid any relevant fee prescribed by the regulations.

### 48 Remuneration of board members of charitable organisations

(1) A person is not prohibited (despite any law to the contrary) from holding office or acting as a member of the governing body of a non-profit organisation having as one of its objects a charitable purpose merely because the person receives any remuneration or benefit from the organisation if:

(a) the Minister, by order published in the Gazette, has declared that this section applies to that office, or

(b) the Minister has given prior approval of a person who receives any such remuneration or benefit holding that office or acting in that capacity, or

(c) the person concerned holds that office or acts in that capacity by virtue of his or her office as a minister of religion or a member of a religious order.

(2) An approval under this section is subject to any conditions imposed by the Minister when giving the approval.

(3) An approval under this section is to be in writing. Applications for such approvals must be addressed in writing to the Minister by the organisation concerned.

(4) For the purposes of this section, every body, organisation or office referred to in

section 7 (1) is taken to be a non-profit organisation having among its objects one or more charitable purposes.

**49 Authorised inspectors**

(1) The Minister may appoint any person to be an inspector for the purposes of this Act.

(2) The Minister may authorise a police officer or other person to exercise such of the functions of an authorised inspector under this Act as the Minister may direct.

(3) The regulations may authorise police officers of or above any specified rank to exercise all or any specified functions of an authorised inspector under this Act.

**50 Proceedings for offences**

(1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily by the Local Court.

(2) Any such proceedings may be commenced at any time within 3 years after the offence was allegedly committed.

**51 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.

**52 (Repealed)**

**53 Delegation**

The Minister may delegate to any public servant any of the Minister’s functions under this Act or the regulations (other than this power of delegation).

**54 Service of documents**

(1) A document required or permitted by or under this Act to be served on a person may, if the person is a natural person, be served:

(a) by delivering the document to the person, or

(b) by sending the document by post addressed to the person at the person’s last

known place of residence or at the person's registered office, or

(c) by leaving the document at the person's last known place of residence with some person apparently resident at that place and apparently not less than 16 years of age, or

(d) by leaving the document at the person's last known place of business or at the person's registered office with someone apparently in the service of the person and apparently not less than 16 years of age.

(2) A document required or permitted by or under this Act to be served on a person may, if the person is a corporation, be served:

(a) by sending the document by post addressed to the corporation at its registered office or principal place of business in New South Wales, or

(b) by leaving it at the registered office or principal place of business in New South Wales of the corporation with some person apparently employed in connection with the business of the corporation and apparently not less than 16 years of age.

(3) A document required or permitted by or under this Act to be served on an organisation may, if the organisation is not incorporated, be served:

(a) by sending the document by post addressed to the trustees or members of the governing body of the organisation at its registered office, or

(b) by serving it on any such trustee or member of the governing body in any manner that, by this section or otherwise according to law, constitutes sufficient service on a natural person.

(4) The provisions of this section are in addition to, and do not prejudice the operation of, any other law prescribing procedures sufficient for service of documents.

**55 Regulations**

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

**56 Repeals**

(1) The following Acts are repealed:

*Charitable Collections Act 1934* No 59

*Charitable Collections (Amendment) Act 1985* No 2

(2) The *Charitable Collections Regulations* and any other regulations in force under those Acts are repealed.

**57 (Repealed)**

**58 Savings and transitional provisions**

Schedule 2 has effect.

## Schedule 1 (Repealed)

## Schedule 2 Savings and transitional provisions

(Section 58)

**1 Regulations**

(1) The regulations may contain provisions of a saving or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication.

**2 Certain organisations taken to hold authorities**

(1) An organisation which, immediately before the repeal of the *Charitable Collections Act 1934*, was registered under that Act as a charity or was exempt from registration under that Act is taken to be the holder of an authority authorising the organisation to conduct any number of fundraising appeals.

(2) Section 19, and the other provisions of this Act, apply to an authority created by the operation of subclause (1).

(3) Subclause (1) ceases to apply to an organisation:

(a) when its authority is revoked under this Act, or

(b) when it alters its constitution in so far as its constitution relates to its charitable objects, or

(c) at the end of a period of 2 years commencing on the repeal of the *Charitable Collections Act 1934*,

whichever happens first.