

# Charitable Fundraising Act 1991 No 69

[1991-69]



New South Wales

## Status Information

### Currency of version

Current version for 20 August 2024 to date (accessed 16 February 2025 at 22:56)

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—

- **Does not include amendments by**
  - [Licensing and Registration \(Uniform Procedures\) Amendment Act 2022 No 2](#) (not commenced)
  - [Customer Service Legislation Amendment Act 2024 No 4](#) (not commenced)

### 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 20 August 2024

# 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—

**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.

**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.

**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.

**Department** means the Department of Customer Service.

**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.

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

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

**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.

**Secretary** means—

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

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

(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.

(3) Notes included in this Act do not form part of this Act.

## **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 electronic means), 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 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.

## **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—200 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,
    - (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,
  - (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.
- (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.
- (3) Nothing in this section affects the Secretary's discretionary power to attach any other condition to an authority.

## **12 Advertising unlawful appeals**

- (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—200 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 other electronic means.

### **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—200 penalty units or imprisonment for 12 months, or both.

## **Division 2 Authority to conduct fundraising appeals**

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

- (1) The Secretary 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) (Repealed)
  - (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 Secretary 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 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 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 Dealing with applications**

- (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.

(2) The Secretary may refuse an application for an authority if the Secretary 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) (Repealed)

(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,

(i) any other matter prescribed by the regulations.

(3), (4) (Repealed)

(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.

(6), (7) (Repealed)

### **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 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.

**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.

### **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 held by the holder of the authority concerned at an authorised deposit-taking institution.

(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—200 penalty units or imprisonment for 2 years, 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.

(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 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 Part 6 of the [Government Sector Finance Act 2018](#) 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 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.
- (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 if the trustee or person knowingly authorised or permitted the contravention.  
  
Maximum penalty—50 penalty units.

### **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 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 in accordance with the regulations.

(2), (3) (Repealed)

- (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.

### **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.

#### **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 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 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.
- (2A) A police officer may accompany an authorised officer who enters premises and searches for evidence under a search warrant as if the police officer were named in the warrant.
- (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.

### **250 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 make publicly available, on a NSW Government website or by other appropriate electronic means—
  - (a) notice of a decision to accept an undertaking, and
  - (b) the reasons for the 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 make notice of the withdrawal or variation of an undertaking publicly available on a NSW Government website or by other appropriate electronic means.

#### **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.

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

### **Divisions 1, 2**

#### **26-32 (Repealed)**

### **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 officer**

- (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 officer 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 officer 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 officer 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 officer or public inquirer (or their agents) 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 officer or inquirer 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.
- (2A) In addition to the Minister's powers under subsections (1) and (2), the Minister may direct that the costs of an inquiry under Part 3 or a public inquiry are payable by 2 or more persons or organisations in the proportions that the Minister considers appropriate. The costs are payable by those persons or organisations in the proportions directed and are recoverable from each of them in a court of competent jurisdiction as a debt due to the Crown.
- (2B) Subsection (2A) extends to—
- (a) an inquiry under Part 3 that began (but was not completed) before the commencement of the subsection, and
  - (b) if an inquiry began under Part 3 and then became a public inquiry—the costs of both the inquiry under Part 3 and the public inquiry.

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

## **Part 3A Public inquiries**

### **Division 1**

#### **41A (Repealed)**

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

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

- (1) The Minister may appoint a qualified person to conduct a public inquiry into 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.
- (2) The Minister may appoint a public inquirer only if the Minister and the Premier consider that it is in the public interest for a public inquiry to be conducted.
- (3) A person is a **qualified person** only if the person holds or has held office as—
  - (a) a Judge of the Supreme Court of the State or any other State or a Territory, or
  - (b) a Judge of the Federal Court of Australia, or
  - (c) a Justice of the High Court.
- (4) However, a person is not a qualified person if the person is a member of the Legislative Council or of the Legislative Assembly or is a member of a House of

Parliament or legislature of another State or Territory or of the Commonwealth.

**41C (Repealed)**

**41D Protection from liability**

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

**41E Reports on public hearings**

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

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

- (1) A public inquirer is to issue guidelines relating to the conduct of the public inquiry if the public inquirer considers it in the public interest to do so.

- (2) Without limiting subsection (1), the guidelines may provide guidance on the following aspects of the conduct of the public inquiry—
  - (a) the investigation of evidence that might exculpate relevant persons,
  - (b) the disclosure of exculpatory and other relevant evidence to relevant persons,
  - (c) the opportunity to cross-examine witnesses as to their credibility,
  - (d) providing relevant persons and other witnesses with access to relevant documents and a reasonable time to prepare before giving evidence,
  - (e) any other matter the public inquirer considers necessary to ensure procedural fairness.
- (3) The public inquirer is to ensure that the guidelines are made publicly available.
- (4) In this section—

**relevant person** means a person against whom substantial allegations have been made in the course of or in connection with the public inquiry.

## Division 3 Hearings

### 41G Hearings

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

### 41H Right of appearance

- (1) Any Australian legal practitioner appointed by the Crown to assist a public inquirer may appear before a public inquiry.
- (2) If it is shown to the satisfaction of the public inquirer that any person is substantially

and directly interested in any subject-matter of a public inquiry, the public inquirer may allow the person (the **affected person**) to appear at the public inquiry or a specified part of the public inquiry.

(3) The public inquirer may authorise—

- (a) a person giving evidence at a public inquiry, or
- (b) an affected person,

to be represented by an Australian legal practitioner at the public inquiry or a specified part of the public inquiry.

(4) The public inquirer is required to give a reasonable opportunity for a person giving evidence at a public inquiry to be legally represented.

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

(1) A witness who is appearing or about to appear before a public inquiry may apply to the Minister for legal or financial assistance.

(2) The Minister may approve the provision of legal or financial assistance to the applicant if the Minister is of the opinion that this is appropriate, having regard to any one or more of the following—

- (a) the prospect of hardship to the witness if assistance is declined,
- (b) the significance of the evidence that the witness is giving or appears likely to give,
- (c) any other matter relating to the public interest.

(3) On giving the approval, the Minister may authorise the provision to the witness of legal or financial assistance determined by the Minister in respect of the witness's appearance before the public inquiry. The assistance is to be provided out of money provided by Parliament for the purpose.

(4) The assistance may be provided unconditionally or subject to conditions determined by the Minister.

(5) The Minister may delegate one or more of the Minister's functions under this section to the Secretary.

#### **41J Witnesses**

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

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

or both.

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

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

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

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

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

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

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

#### **41N Protection from incrimination**

- (1) **Self-incrimination not an excuse** A person is not excused from a requirement under this Part to produce a record, document or thing, to give information or evidence or to answer a question on the ground that the record, document, thing, information, evidence or answer might incriminate the person or make the person liable to a penalty.
- (2) **Answer, information or evidence not admissible if objection made** However, any record, document or thing produced, or information, evidence or answer given, by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in civil or criminal proceedings (except as provided by subsection (3)) if—
  - (a) the person objected at the time to doing so on the ground that it might

incriminate the person, or

- (b) the person was not warned at an appropriate time that the person may object to producing the record, document or thing, or giving information, evidence or answer, on the ground that it might incriminate the person.
- (3) Subsection (2) does not prevent any record, document or thing produced, or information, evidence or answer given, by a natural person in compliance with a requirement under this Part from being admitted in evidence in—
- (a) proceedings for an offence against this Part (including section 25L as extended to this Part by section 41S), or
  - (b) proceedings for contempt in relation to a public inquiry, or
  - (c) proceedings in connection with the revocation or refusal of an authority or the variation, revocation or imposition of conditions on an authority under this Act.
- (4) **Appropriate time for giving warning about incrimination** An **appropriate time** for warning a person is any of the following times—
- (a) the time when the requirement to produce the record, document or thing, or give the information, evidence or answer, is made,
  - (b) in the case of evidence required to be given when appearing before a public inquirer, any time after the start of the appearance before the inquirer,
  - (c) at or about the time immediately before the person produces the record, document or thing or gives the information, evidence or answer.
- (5) **Further information** Further information obtained as a result of a record, document or thing produced or information, evidence or answer given in compliance with a requirement under this Part is not inadmissible on the ground—
- (a) that the record, document, thing, information, evidence or answer had to be produced or given, or
  - (b) that the record, document, thing, information, evidence or answer might incriminate the person.
- (6) (Repealed)

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

### **410 Powers of public inquirer generally**

- (1) A public inquirer has, for the purposes of a public inquiry, all the powers, rights and privileges that the Supreme Court (or any Judge of the Supreme Court) has in, or in relation to, any proceedings concerning each of the following matters—

- (a) compelling the attendance of witnesses,
  - (b) compelling witnesses to answer questions that the public inquirer considers to be relevant to the public inquiry,
  - (c) compelling the production of documents or other things,
  - (d) punishing persons guilty of contempt or of disobedience of any direction, order or summons made or issued by the public inquirer.
- (2) This section is in addition to, and does not limit, any other power, right or privilege conferred on a public inquirer by another provision of this Part.

**41P Investigative powers under Division 1 of Part 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.

**41Q Search warrant**

- (1) The public inquirer may direct an authorised officer to apply to an authorised officer (within the meaning of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#)) for a search warrant if the public inquirer has reasonable grounds for believing that documents or things relating to a matter relevant to a public inquiry are kept at a particular place and that—
- (a) the place is used as a dwelling, or
  - (b) a person having custody or control of those documents or things has neglected or failed to comply with a requirement under this Act to produce them or to furnish copies of or extracts from them, or
  - (c) the place is unoccupied or the occupier is temporarily absent.
- (2) A direction under this section operates to authorise the authorised officer to make an application under section 25I even if the officer does not have the kind of belief referred to in section 25I (1).
- (3) To avoid doubt, a search warrant issued under section 25I on an application directed

under this section may extend to things as well as documents.

## **Division 5 Miscellaneous**

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

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

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

- (1) Section 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.
- (2) A person must not contravene—
  - (a) a direction of a public inquirer that prohibits the person from being present at a hearing (or part of a hearing) of a public inquiry, or
  - (b) a direction of a public inquirer that prevents or restricts the publication of evidence given before the public inquirer or of matters contained in documents obtained or received by the public inquirer.

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

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

- (1) No liability is incurred by the Crown, and no personal liability is incurred by any of the following persons, for any act done or omitted, or for any statement made or issued, by any of them in good faith for the purposes of establishing or conducting a public inquiry—
  - (a) the Minister,
  - (b) the Secretary,
  - (c) a person employed in the Public Service or engaged to assist the public inquirer to conduct a public inquiry.
- (2) No liability is incurred by a person for publishing in good faith—
  - (a) a statement referred to in subsection (1), or
  - (b) a fair report or summary of such a statement.
- (3) (Repealed)
- (4) An Australian legal practitioner assisting a public inquirer or representing a person before a public inquirer has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.
- (5) Subject to this Part, a person summoned to attend or appearing before a public inquirer as a witness, or producing a document or other thing to the public inquiry, has the same protection as a witness in proceedings in the Supreme Court.
- (6) No criminal or civil liability (apart from under the provisions of this Act) attaches to a person for compliance, or purported compliance in good faith, with any requirement made under this Part.
- (7) In particular, if a person gives any statement of information or produces any document or other thing under a production requirement, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.
- (8) In this section—

**barrister** has the same meaning as in the [Legal Profession Uniform Law \(NSW\)](#).

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

The Minister is to ensure that the operation of this Part during the 3 years after its commencement is reviewed and that a report on the outcome of the review is published

within 12 months after the end of that 3 year period.

## **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 cancellation of authority**

A person or organisation whose authority is cancelled 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 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.

#### **49-51 (Repealed)**

#### **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.

### **53 Delegation**

- (1) 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).
- (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.

### **54 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods—
  - (a) in the case of an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
  - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
  - (e) by email to an email address specified by the person for the service of documents of that kind,
  - (e1) by other electronic means to an address or location specified by the person for the service of documents of that kind,

(f) by any other method authorised by the regulations for the service of documents of that kind.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.

(3) In this section, **serve** includes give or send.

## **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 50 penalty units.

(3) Without limiting subsection (1), the regulations may impose requirements with respect to registered offices (including requirements with respect to the location of registered offices).

## **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)

## **Part 1 General**

### **1 Regulations**

(1) The regulations may contain provisions of a saving or transitional nature consequent on the enactment of this Act or any Act that amends 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 on the NSW legislation website, 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.
- (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.

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

### **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.

## **Part 3 Provisions consequent on enactment of *Charitable Fundraising***

## Amendment (Inquiries) Act 2017

### 3 RSL inquiry reconstituted as public inquiry

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

**amending Act** means the *Charitable Fundraising Amendment (Inquiries) Act 2017*.