

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1930.

A BILL

To provide for the regulation of collections for charitable purposes and for the keeping and audit of accounts relating to such collections; to provide for the registration of charities; to extend the jurisdiction of the Supreme Court in its equitable jurisdiction; to amend the Audit Act, 1902, and certain other Acts; and for purposes connected therewith.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Charitable Collections Act, 1930."

(2) This Act shall commence on a day to be appointed by the Governor, and notified by proclamation published in the Gazette.

2. (1) In this Act, unless the context or subject-matter otherwise requires,— Interpretation.

“Appeal for support” in relation to any charity or charitable purpose includes the taking of any collection and any invitation (expressed or implied) designed to obtain money for the charity or charitable purpose.

“Charitable purpose” includes any benevolent or philanthropic purpose.

“Charity” means any organisation or association established for or which has as one of its objects a charitable purpose.

“Collection” means the taking of money or articles from the public whether by means of contributions or by the sale of articles or otherwise; and “collect” has a corresponding meaning.

“Court” means the Supreme Court of New South Wales in its equitable jurisdiction.

“Place of public refreshment” means any place (including any shop) to which the public are permitted to resort for the purpose of purchasing food or drink for consumption on the premises.

“Prescribed” means prescribed by this Act or by the regulations.

“Regulations” means the regulations made under this Act.

“Shop” includes any premises wherein any retail trade or business is carried on.

(2) This Act shall not extend to the University of Sydney or to any college affiliated thereto.

(3) This Act shall not extend to any activity of any church where such activity is wholly intended for the advancement of religion but shall extend to any activity of a church wholly or mainly intended for any other charitable purpose.

3. (1) It shall not be lawful for any person to make any appeal for the support of any charity unless— Collecting charities to be registered

- (a) the charity is one which is registered under this Act or is one which is exempted from registration by or under this Act;
- (b) the appeal for support is sanctioned in the prescribed manner by the governing body of the charity or by some officer thereof authorised in that behalf or by the Minister or by some other prescribed authority; and
- (c) the conditions (if any) attached to any such sanction and the provisions of this Act and the regulations are complied with.

(2) This section shall not extend to—

- (a) any person concerned in a general appeal to the public at a public meeting called to establish a charity or in furtherance of the objects of a charity;
- (b) any person who promotes or assists in an appeal made by means of any raffle, art union, or lottery conducted in accordance with the Lotteries and Art Unions Act, 1901-1929;
- (c) any person concerned in any collection for ambulance purposes sanctioned by or on behalf of the New South Wales Ambulance Transport Board; or
- (d) any person concerned in any collection for any hospital or institution mentioned in the schedules to the Public Hospitals Act, 1929, where the collection is made with the sanction of the board of the hospital or institution, or in any collection made by or on behalf of the Hospital Saturday Fund where the collection is made under the control and for the objects of that fund; or
- (e) any person concerned in any collection at divine service in a place of public worship; or
- (f) any person concerned in any collection for any charity exempted from this section by or under the regulations.

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(3) If any person contravenes any of the provisions of this section he shall be liable to a penalty not exceeding *fifty* pounds.

(4) This section shall come into force upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

Such date shall be not earlier than two months after the day appointed for the commencement of this Act.

4. (1) A charity may apply to the Minister in the prescribed manner to be registered by him under this Act or to be exempted from the provisions thereof as to registration. Registration of charities.

(2) The Minister may, before granting any registration or exemption therefrom, make such inquiries with respect to the charity as he thinks fit, but shall not refuse to register any charity unless he is satisfied that the charity is not established in good faith for charitable purposes, or will not comply with the conditions imposed by or under this Act, or that the charity will not be properly administered.

(3) An appeal from a refusal by the Minister to register any charity shall lie to a district court judge nominated in that behalf by the Governor, and the order of such judge shall be given effect.

(4) The Minister shall give to such charity so registered or exempted a certificate of registration or exemption in or to the effect of the prescribed form.

(5) The Minister shall cause to be compiled and kept in the prescribed manner a register of charities registered under this Act and of all charities which apply for and receive an exemption from registration, and lists of all charities which are refused registration or exemption.

5. (1) Subject to this section, charities registered under this Act shall comply with the following conditions :— Conditions to be complied with by registered charities.

(a) the charity shall be administered by a responsible committee or other body consisting of not less than three persons ;

(b)

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- (b) minutes shall be kept of the meetings of the committee or other body in which shall be recorded the business transacted ;
- (c) proper books of account shall be kept, and such accounts shall include the total receipts and the total expenditure of any collection, and of any bazaar, sale, entertainment, or exhibition held with the approval of the governing body of the charity, and the accounts shall be audited at such intervals as may be prescribed by regulations under this Act by some person or persons holding the prescribed qualifications, or approved by the Minister, and copies of the accounts so audited shall be sent to the Minister ;
- (d) all moneys received by the charity shall be paid into a separate account at such bank or banks as may be specified in respect of the charity in the register ;
- (e) such particulars with regard to accounts and other records as may be prescribed, or as the Minister may require, shall be furnished to the Minister, and the books and accounts of the charity shall be open to inspection at any time by any person duly authorised by the Minister or the Auditor-General.

(2) In the case of a church, the registration of the church as a whole applied for by the head of the denomination in the State or by such other person as the Minister approves shall be deemed a sufficient registration to include any charitable activity conducted by that church, and paragraph (a) of subsection one of this section shall be read as applying to each particular activity.

(3) The regulations may modify the conditions stated in subsection one of this section in the case of any church or in the case of any other charity in which the circumstances of the case render their strict application difficult or unduly onerous.

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6. (1) The Minister if satisfied that any charity registered under this Act is not being carried on in good faith for charitable purposes, or is not complying with any of the conditions imposed under this Act, or is not being properly administered, may, in the manner and subject to the notices and conditions prescribed, call upon the persons who by the register appear to be the governing body of the charity or upon such of them as it is possible to find to show cause why the charity should not be removed by him from the register, and if he so removes it he shall give the prescribed public notice of its removal :

Removal
from the
register.

Provided that an appeal shall lie to a judge of a district court nominated by the Governor against the decision of the Minister to remove a charity from the register.

(2) Where any charity is removed from the register and, notwithstanding that an appeal is pending or where proceedings to so remove a charity are initiated, the Minister may in the prescribed manner order any bank or other person who holds money or securities on behalf of the charity not to part with such money or securities without the authority of the Minister or of the Supreme Court in its equitable jurisdiction.

If any person fails to comply with any such order he shall, without prejudice to any other liability, be liable on summary conviction to a penalty not exceeding *one hundred pounds*.

7. (1) Where the court is satisfied that there is reasonable ground for believing that any unregistered charity is not being or has not been carried on in good faith for charitable purposes, or is not complying or has not complied with conditions substantially corresponding with the conditions imposed on registered charities by or under this Act, or is not being or has not been properly administered, the court may exercise as respects the charity any of the powers which are exercisable by them with respect to a charity which, having been registered under this Act, has been removed from the register.

Powers as to
unregistered
charities.

The

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The court shall not exercise the power of establishing a scheme for the regulation of any charity without giving the charity a full opportunity of being heard.

(2) This section shall apply to unregistered charities whether or not an application for registration has been made, and to charities registration of which has been refused.

8. (1) A judge of the district court, for the purposes of an appeal under this Act, shall, in relation to charities registered or applying to be registered under this Act, have all such powers with respect to requiring accounts, statements, written answers to inquiries, the attendance of persons for examination on oath or otherwise, the production of documents, the furnishing of copies and extracts from documents, the examination of registers and records, and the transmission of documents for examination, as are exercisable under this Act, by the Minister or an inspector.

Powers of district court judge on appeals.

(2) The judges of the district courts, or a majority of them, may make rules of court governing the manner and procedure of any appeal to be made to a judge of the district court in pursuance of any provision of this Act.

9. (1) The Minister may from time to time as he in his discretion sees fit, examine and inquire into any charity in New South Wales, and the nature and objects, administration, management, and application of the estates, funds, property, and income belonging thereto.

Minister may inquire into condition and management of charities. 15 & 16 Vic., c. 137, s. 9.

(2) The Minister may cause any such examination or inquiry to be made by an inspector authorised in that behalf by the Minister generally, or to make any particular examination or inquiry.

(3) The production of the Gazette containing a notification of his appointment shall be sufficient evidence of the authority of any person to act as an inspector for the purposes of this Act.

(4) An inspector acting under the authority of the Minister and in execution of his duties under this Act may search in any court or office, and examine papers and records therein, and take copies of or extracts therefrom without the payment of any fee.

10. (1) The Minister may require any trustee or person acting or having any concern in the management or administration of any charity or the property or income thereof to render to the Minister an account and statement in writing in relation to such charity or the property or income thereof, or the administration, management, and application of such property or income, and may also require any such trustee or person to return answers in writing to any question or inquiry addressed to him by the direction of the Minister relating to the matters aforesaid.

Powers of
Minister to
require
accounts, &c.
15 & 16 Vic.,
c. 137, s. 10.
18 & 19 Vic.,
c. 124, s. 6.

(2) An account, statement, or answer to inquiry relating to the matters aforesaid may be required to be rendered or made to the Minister by any of the following persons, that is to say :—

- (a) by any trustee or person acting or concerned in the administration of the charity, its property or income, or in the receipt or payment of any moneys thereof ;
- (b) by any agent of any such trustee or person ;
- (c) by any depository of any funds or moneys of the charity ;
- (d) by any person in the beneficial receipt of any funds thereof or of any income or salary therefrom ;
- (e) by any person having the possession or control of any document concerning the charity or any property thereof.

(3) The Minister may require the person rendering or making any such account, statement, or answer to verify the same by statutory declaration.

(4) This section shall not extend to give the Minister any power of requiring from any person holding or claiming to hold any property adversely to any charity or free or discharged from any charitable trust or charge any information or the production of any deed or document whatever in relation to the property so held or claimed adversely or any charitable trust or charge alleged to affect the same.

11. (1) An inspector acting under the authority of the Minister may, by writing under his hand, subject to the regulations, require any such trustee or person as aforesaid to attend before him at such time and place as may be reasonably appointed for the purpose of being examined in relation to the charity, and to answer such questions as may be proposed to him, and to produce any documents in his custody or power relating to the charity or the property thereof.

An inspector may require the attendance of witnesses and examine on oath.

(2) The inspector may examine upon oath any such trustee or person and any person voluntarily attending and may administer such oath.

(3) No person shall be obliged to travel in obedience to such requisition more than ten miles from his place of abode.

12. The Auditor-General, upon the request of the Minister, shall either himself undertake the functions of an inspector under this Act or provide some competent member of his staff to undertake such functions, or to assist and advise the Minister upon any matter arising in the execution of this Act.

Auditor-General.

13. (1) Where any trustee or person from whom the Minister is authorised to require any account or statement or an answer to any question or inquiry or whose attendance an inspector is authorised to require—

Penalties.

- (a) refuses or wilfully neglects to render to the Minister, or district court judge on appeal, such account or statement, or to make answers to such question or inquiry, or to attend in obedience to any lawful requisition of an inspector or district court judge, or to give evidence before such inspector or district court judge; or
- (b) wilfully alters, destroys, withholds or refuses to produce any document which may be lawfully required to be produced before an inspector or district court judge,

such person so offending shall be liable on summary conviction to a penalty not exceeding *fifty* pounds and for any repetition of such refusal shall be deemed to be guilty

guilty of a contempt of the court and shall be liable to be fined, attached, and committed by the court on summary application by the Minister to the court or to any judge exercising the jurisdiction thereof, and shall pay such costs attending such contempt as the court or judge directs.

The court may at any time discharge on such terms as it may deem just, any person attached and committed on any such application.

(2) Where any such person wilfully renders a false account or statement or makes an untrue answer to any question or gives false evidence upon any examination under this Act he shall be deemed guilty of a misdemeanour and be punishable accordingly.

14. (1) Where the Minister is of opinion that the institution of legal proceedings is requisite or desirable with respect to any charity, or the estates, funds, property, or affairs thereof, and that under the circumstances it is desirable that such proceedings should be instituted by the Attorney-General, he may certify such case to the Attorney-General, together with such statements and particulars (if any) as in the opinion of the Minister are requisite or proper for the explanation of the case.

(2) The Attorney-General, if upon consideration of the circumstances he thinks fit, shall institute and prosecute such legal proceedings as he considers requisite or proper under the circumstances of such case.

15. It shall be lawful for the Attorney-General, for the time being acting ex officio, to make application by petition to the court with respect to any charity under the provisions of the Imperial Act entitled the Charities Procedure Act, 1812, passed in the fifty-second year of King George III, chapter one hundred and one, and the court may in its discretion upon such application exercise any power which the court may exercise under that Act or in a suit.

The court may, if it thinks fit, direct that such suit or other proceeding be brought in relation to the subject-matter of the application as the court deems proper in the circumstances of the case.

Rules

Rules of court may prescribe a summary method of procedure in lieu of the procedure by petition and any other matter or thing necessary or convenient to be prescribed in relation to any proceeding before the court.

16. Whosoever with intent to defraud or deceive any other person— Falsifying books, &c.

- (a) alters or falsifies any books, documents, or vouchers relating to a collection for charitable purposes; or
- (b) makes or concurs in the making of any false or fraudulent entry in any book, document, or voucher relating to such collection; or
- (c) omits or concurs in omitting any material particular from any book, document, voucher, or balance-sheet relating to such collection,

shall be liable on conviction on indictment to imprisonment for a term not exceeding *five* years, or on summary conviction to imprisonment not exceeding *twelve* months.

17. Whosoever is concerned in conducting a collection for charitable purposes, and converts to his own use any of the moneys raised by means of such collection, shall be liable on conviction on indictment to imprisonment for a term not exceeding *five* years. Converting moneys raised.

18. If any person in any application for registration or exemption or in any notification of any change requiring alterations in the registered particulars makes any false statement or false representation, or if any person falsely represents himself to be an officer or agent of a charity, or if he fails to send any notification which he is required under this Act to send, he shall be liable on summary conviction to a fine not exceeding *one hundred* pounds or to imprisonment for a term not exceeding three months. False statements, &c.

19. (1) The Governor, by regulation, may exempt collections in aid of any objects or purposes specified therein from the operation of any or all of the provisions of this Act, subject to such conditions (if any) as he may impose. Exemptions.

(2) Any person concerned in the wilful breach of any such condition shall be liable, on summary conviction, to a penalty not exceeding *one hundred* pounds.

20.

20. (1) The Governor may make regulations prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act, and in particular, without limiting the generality of the foregoing power, for—

Regulations
and rules.

- (a) prescribing the forms for applications under this Act and the particulars to be contained therein;
- (b) prescribing the form of the registers to be kept under this Act and the particulars to be entered therein;
- (c) providing for the inspection of registers and lists kept under this Act, and the making and the furnishing and certification of copies thereof and extracts therefrom;
- (d) prescribing the fee (not exceeding ten shillings) to be paid on registration, and the fees for making or obtaining copies of, and extracts from, registers and lists;
- (e) requiring notification to the registration authority of any changes requiring alterations in the particulars entered in the register;
- (f) providing for the exemption of charities from this Act and prescribing the grounds of exemption;
- (g) prescribing the conditions under which—
 - (i) persons may be permitted to make or cause to be made visits from house to house for the purpose of making appeals for support for any collecting charity;
 - (ii) persons may be permitted to make or cause to be made in places of public entertainment or public refreshment collections for any collecting charity;
 - (iii) any collecting charity may cause collecting boxes to be exhibited in any shop for the purpose of making appeals for support for the charity.

(2)

(2) The regulations may provide that in certain cases specified in the regulations moneys collected for charitable purposes shall forthwith be paid without any deduction therefrom to the credit of a trust account in a bank, and that in such cases moneys for commissions or expenses in connection with the collection shall to the extent authorised by the regulations be paid out of the proceeds of cheques drawn on such trust account and not otherwise.

Moneys collected to be paid into a bank.

Payment of commission and expenses.

(3) The regulations may impose a penalty not exceeding *fifty* pounds for any breach thereof.

Penalty.

(4) The regulations and any rules of any court made in pursuance of this Act shall—

Publication.

- (a) be published in the Gazette ;
- (b) take effect from the date of publication or from a later date to be specified in the regulations or rules ;
- (c) be laid before both Houses of Parliament within fourteen sitting days after such publication, or if Parliament is not then in session, within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution at any time within fifteen sitting days after such regulations or rules have been laid before such House disallowing any regulation or rule or part thereof, such regulation, rule, or part shall thereupon cease to have effect.

13. Any pecuniary penalty imposed by this Act or the regulations thereunder, may be recovered before a stipendiary or police magistrate or any two justices in petty sessions.

Recovery of penalties.

