

LEGISLATIVE ASSEMBLY

Read 1^o 26¹ November 1981

(Brought from the Legislative Council)

A BILL

for

An Act to amend the *Charities Act 1978* to enable Investigations of the Affairs of Charities to be carried out, and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. (1) This Act may be cited as the *Charities (Amendment) Act 1981*. Short title.

(2) In this Act the *Charities Act 1978* is called the Principal Act. Principal Act No. 9227.

10 (3) This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

2. After section 1 of the Principal Act there shall be inserted the following section and expression: Amendment of No. 9227. New section 1A.

“1A. This Act is divided into Parts as follows:

15 Part I.—The Application of the *Cy Près* Doctrine to Charities.

Part II.—Supervision of Charities.

PART I.—THE APPLICATION OF THE CY PRÈS DOCTRINE TO CHARITIES.”

Amendment of
No. 9227.
New Part.

3. After section 7 of the Principal Act there shall be inserted the following Part:

‘PART II.—SUPERVISION OF CHARITIES

Interpretations.

8. In this Part unless inconsistent with the context or subject-matter—

“Charitable estate.”

“Charitable estate” means an estate of a deceased person where, when the administration of the estate is complete—

(a) a charity will be entitled to participate in the distribution of the assets of the estate; or

(b) the whole or any part of the estate is to be used for the establishment of a charity.

“Charity.”

“Charity” means any institution which is established for purposes which according to the law of Victoria are charitable.

“Document.”

“Document” has the same meaning as in the *Evidence Act* 1958.

“Executor.”

“Executor” includes an administrator of the estate of a deceased person.

“Institution.”

“Institution” means any trust or other undertaking whether corporate or unincorporate.

Method of
conducting
inquiry.

9. (1) The Attorney-General may—

(a) of his own motion; or

(b) upon the application of another person—

appoint an inspector to inquire (in the manner specified in the inspector’s terms of appointment) into the administration or management of any charity or charitable estate or the value, condition, management or application of the property or income belonging to that charity or charitable estate or to which that charity or charitable estate is or will become entitled.

(2) Where an application is made under paragraph (b) of sub-section (1) the applicant shall—

(a) furnish such information in connexion with the application as the Attorney-General requires to enable him to determine whether there are reasonable grounds for making the inquiry; and

(b) where the Attorney-General so requires give security of such amount and in such manner as he determines for payment of the expenses of and incidental to the inquiry.

Powers of
inspector.

10. (1) The inspector, for the purposes of conducting an inquiry under section 9, shall have and may exercise in respect of the summoning and examining of persons and the production of

documents

documents the same powers as are by the *Evidence Act 1958* conferred on a board appointed by the Governor in Council and the provisions of sections 14 to 16 of the *Evidence Act 1958* with such adaptations as are necessary shall apply accordingly.

5 (2) Where any documents are produced under sub-section (1) the Inspector may take possession of those documents for the period he considers necessary for the purposes of the inquiry.

(3) A person examined under sub-section (1) shall not be excused from answering a question put to him by the inspector on the ground that the answer might tend to incriminate him but, where that person claims before answering that question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under this section or in relation to a charge of perjury in respect of the answer.

(4) An inspector may permit a document which is in his possession to be inspected at all reasonable times by any person who would be entitled to inspect that document if it were not in his possession.

20 11. (1) An inspector may cause an examination made by him under section 10 to be recorded in writing or by means of shorthand, a stenotype machine or recording apparatus. Record of examination.

(2) Where an examination has been recorded other than in writing the inspector shall cause the record of that examination to be transcribed into writing.

25 (3) The inspector shall cause the record of the examination to be read to or by the person examined and he may request that person to sign that record.

(4) Where a person does not comply with a request to sign under sub-section (3) the inspector may certify that the record of the examination is correct.

(5) The record of an examination which has been either signed by the person examined or certified by the inspector to be correct may, subject to this section, be used in evidence in any legal proceedings against that person.

35 (6) A copy of the record signed by a person shall be furnished without charge to that person upon request made by him in writing.

(7) Any part of a record of an examination made under this section that relates to a question the answer to which a person has claimed might tend to incriminate him shall not be used as evidence in criminal proceedings other than in proceedings under section 10 or in relation to a charge of perjury in respect of that answer.

(8) Nothing in this section affects or limits the admissibility of other written or oral evidence.

(9) Where

(9) Where a report is made under section 12 a record of an examination made under this section relating to that report shall be furnished with the report.

Report.

12. (1) Where an inspector has completed an inquiry he shall prepare a report which shall be forwarded to the Attorney-General. 5

(2) An inspector may at any time during the progress of the investigation and shall if so directed by the Attorney-General make an interim report to the Attorney-General.

(3) An inspector may when making a report under this section, give to the Attorney-General any documents which he has taken possession of under sub-section (2) of section 10 and the Attorney-General— 10

(a) may retain the documents for such period as he considers to be necessary to enable a decision to be made as to whether or not any legal proceedings ought to be instituted in relation to the charity or charitable estate; 15

(b) may retain the documents for such further period as he considers to be necessary to enable any such proceedings to be instituted and prosecuted;

(c) may permit other persons to inspect the documents while they are in his possession; 20

(d) may permit the use of the documents for the purposes of any legal proceedings;

(e) shall permit a person who would be entitled to inspect any one or more of the documents if they were not in the possession of the Attorney-General to inspect at all reasonable times such of the documents as that person would be so entitled to inspect. 25

(4) The Attorney-General may where he thinks fit forward any report made under this section— 30

(a) to the charity or to the executor of any charitable estate to which the report relates; and

(b) to any other person having an interest in the outcome of the inquiry where that person has requested that the report be forwarded to him. 35

Court may order removal of trustee or executor.

13. In addition to any other powers which the court has with respect to charities or charitable estates the court may where an inspector has reported that a trustee of a charity or the executor of a charitable estate should be removed from his position as trustee or executor order the removal of the trustee or executor. 40

Power to delegate.

14. (1) An inspector may by instrument in writing delegate all or any of his powers or functions under this Part other than—

(a) the power to administer oaths; or

(b) the power to examine on oath.

(2) The

(2) The inspector may by instrument in writing vary or revoke a delegation made by him.

(3) A power or function delegated by an inspector shall be exercised or performed in accordance with the instrument of delegation.

(4) The delegation of a power or function by the inspector does not prevent the exercise of that power or the performance of that function by the inspector.

(5) A delegate shall, on the request of a trustee of a charity or the executor of a charitable estate, the affairs of which are being inquired into under this Part, produce the instrument of delegation for inspection.

(6) Where two or more inspectors have been appointed, whether by the same instrument or by different instruments, to investigate the affairs of a charity or charitable estate, each of those inspectors may exercise his powers or perform his functions under this Part independently of the other inspector or inspectors.

15. (1) Where an inquiry has been carried out under this Part the Attorney-General may determine the costs of conducting that inquiry (including any expenses incurred and payable by the Attorney-General in any proceedings brought by him) and may—

(a) apply to the court for an order that those costs or any part of them be paid by any trustee of the charity or any executor of the charitable estate which was the subject of the inquiry.

(b) direct that the costs or any part of them should be paid from the funds of the charity or charitable estate which was the subject of the inquiry; or

(c) direct that, in the case of a person who has given security for costs under section 9 (2) (b), the costs or any part of them be paid by that person.

(2) Where an application has been made under sub-section (1) (a) the court may—

(a) make an order in the terms sought by the Attorney-General; or

(b) where it considers it just and equitable to do so vary the order as it sees fit.

16. (1) A person who—

(a) conceals, destroys, mutilates or alters any of the documents which have been or may be required to be produced under this Part; or

(b) sends, causes to be sent or conspires with another person to send out of the State any of those documents—

shall be guilty of an offence.

(3) Notwithstanding

(2) An offence against sub-section (1) is an indictable offence the penalty in respect of which is a term of imprisonment for a period not exceeding five years.

(3) Notwithstanding that an offence against sub-section (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings for an offence against sub-section (1) if the court is satisfied that it is proper to do so and where the court convicts a person of an offence against sub-section (1) that person shall be liable to a penalty of a term of imprisonment for a period not exceeding two years. 5 10

(4) In a prosecution for an offence under sub-section (1) it is a defence if the person charged with the offence proves that he did not act with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an inquiry under this Part.

Exemption
from Part.

17. (1) The Attorney-General may only appoint an inspector to inquire into— 15

- (a) a registered benevolent society;
- (b) an incorporated institution; or
- (c) a scheduled hospital—

within the meaning of the *Hospitals and Charities Act 1958* where he has first obtained the consent of the Minister for Health. 20

(2) Notwithstanding sub-section (1) where the Attorney-General has under section 9 appointed an inspector to inquire into the affairs of a charity (other than a body which is of a type specified in sub-section (1)) the inspector may summons or examine pursuant to section 10 any person who is involved in the management of or employed by a body which is of a type specified in sub-section (1) or require any person who is involved in the management of or employed by a body which is of a type specified in sub-section (1) to produce documents, and for the purposes of summoning or examining that person or requiring those documents to be produced the inspector shall have and may exercise all the powers conferred on him by this Part. 25 30



