

Charities (Amendment) Bill

NOTES ON CLAUSES

Clause 1 is a clause in the usual form containing provisions relating to the short title and commencement and cites the *Charities Act 1978* as the Principal Act.

Clause 2 amends the Principal Act by inserting a new section 1A which divides the Principal Act into Parts.

Clause 3 amends the Principal Act by inserting a new Part II., relating to the supervision of charities.

New section 8 is an interpretation provision which defines the meaning of several expressions used in the new Part II.

New section 9 empowers the Attorney-General to appoint an inspector to inquire into a charity or charitable estate.

Sub-section (1) provides that the Attorney-General may appoint an inspector to inquire into the conduct of the affairs of a charity or charitable estate either of his own motion or upon the application of another person.

Sub-section (2) provides that where another person applies under sub-section (1) he should give the Attorney-General such information and such security for payment of the expenses of the inquiry as the Attorney-General may require.

New section 10 sets out the powers of an inspector appointed by the Attorney-General.

Sub-section (1) confers on the inspector the powers that are exercisable by a Board appointed by the Governor in Council under the Evidence Act.

Sub-section (2) empowers the inspector to retain possession of documents produced to him for the purposes of the inquiry.

Sub-section (3) provides that a person cannot refuse to answer a question put to him by the inspector on the ground that the answer might tend to incriminate him. Any answer he makes to such a question shall not be admissible in evidence against him in criminal proceedings except under the section or in relation to a charge of perjury.

Sub-section (4) provides that where an inspector has taken possession of documents he shall permit any person who would ordinarily be entitled to inspect the documents to inspect them at all reasonable times.

New section 11 authorizes an inspector to record an examination made by him.

Sub-section (1) permits a record of an examination to be made in writing or by means of shorthand or recording apparatus.

Sub-section (2) requires a recorded examination to be transcribed into writing.

Sub-section (3) requires the inspector to read the record to the person being examined and to require that person to sign the record.

Sub-section (4) provides that where a person does not sign the record the inspector may certify that the record is correct.

Sub-section (5) provides that the record signed by the person or certified by the inspector may be used in evidence in legal proceedings against the person.

Sub-section (7) provides that the record of the answer to a question the person has claimed might tend to incriminate him shall not be used as evidence in criminal proceedings.

New section 12 provides for the making of reports and interim reports by the inspector.

Sub-section (1) provides the inspector shall report when he has completed his inquiry.

Sub-section (2) provides the inspector may make interim reports.

Sub-section (3) authorizes the inspector to forward any documents he has taken into his possession to the Attorney-General together with his report and empowers the Attorney-General to—

- (a) retain the documents while he considers the report;
- (b) retain the documents for any further period necessary for the institution and prosecution of legal proceedings;
- (c) permit other persons to inspect the documents;
- (d) permit the documents to be used for the purposes of any other legal proceedings instituted in relation to the charity or charitable estate; and
- (e) permit any person who would ordinarily be entitled to inspect the documents to inspect them.

Sub-section (4) authorizes the Attorney-General to forward a report to—

- (a) the charity or an executor of a charitable estate to which the report relates; and
- (b) to any person having an interest in the inquiry.

New section 13 empowers the court to remove any trustee or executor where an inspector has reported he should be removed.

New section 14 authorizes an inspector to delegate or vary or revoke the delegation of his powers and functions and regulates the exercise of the powers by the delegate.

New section 15 empowers the Attorney-General to determine the cost of conducting an inquiry including any expenses associated with proceedings brought by him and to direct that such costs should be paid out of the funds of the charity or charitable estate. It also empowers the court to order that the costs should be paid by a trustee or executor. A person who made application to the

Attorney-General for the institution of an inquiry and who was required to give security for the cost of the inquiry may also be directed to pay part or all of the costs.

New section 16 makes it an offence to destroy, conceal or send out of the State any documents required to be produced to the inspector and imposes a penalty of imprisonment for a term not exceeding five years.

New section 17 regulates the power to inquire into charitable bodies established under the *Hospitals and Charities Act* 1958

Sub-section (1) provides that the Attorney-General may only appoint an inspector to inquire into a registered benevolent society, an incorporated institution or a scheduled hospital if he first obtains the consent of the Minister of Health.

Sub-section (2) provides that an inspector appointed to inquire into a charity or charitable estate shall be able to examine persons involved in the management of or employed by a body of the sort mentioned in sub-section (1).

