

# WELFARE BILLS

by a lawyer.

The future activities of a large number of organizations of all kinds will be severely affected if three Bills published last year are passed by Parliament in their present form.

These Bills are the Social Workers and Associated Professions Act, The National Welfare Act and the Fundraising Act. Their origins are to be found in the report of the Van Rooyen Commission.

The three proposed statutes will replace the National Welfare Act. They are not directly inter-related; the fact that an organization is registered under the National Welfare Act does not automatically give it the right to raise funds from the public. A special authority under the Fundraising Act is required for the receipt of funds.

On the other hand the definition of Social Worker in the Social Workers and Associated Professions Act is so broad that it covers the activities envisaged by the definition of Social Welfare Services in the National Welfare Act. The result may be that all persons working for welfare organizations will have to be registered social workers or associated professions.

This article will however concentrate on some facets of the Fundraising Act as this proposed legislation will have perhaps the severest effect on charitable, welfare, educational or other bodies, funds and trusts.

The proposed legislation creates a new bureaucratic official called the Director of Donations Funds who in addition to other powers specifically granted to him may "take such steps as he may deem necessary or desirable to regulate or co-ordinate the collection of contributions properly".

Whilst he is subject to the "administrative control" of the Secretary for Social Welfare & Pensions, the Director in fact has full powers although there is a certain limited right of an appeal to an Appeal Committee. The granting of the necessary written authority to collect funds from the public is however in his discretion.

The Fundraising Act provides a definition of "collect" in relation to the receipt of funds which does not refer either to social work or social welfare services but to the "rendering of material assistance". It thus covers a vast range of activities having nothing to do with social work, welfare or charitable organizations of any kind.

In short "collecting" means soliciting, accepting, collecting or obtaining from the public (or any portion of the public) in any manner any goods or money on the understanding that the goods and money are intended to be used to promote any object relating to the rendering of material assistance to any other person.

No person may collect funds without the authority of a permit and persons collecting for permitted bodies must be armed with a Power of Attorney.

There are certain exceptions to the prohibition on collecting or accepting contributions without permits. These relate to the collecting of contributions —

- By or for an Institution managed or maintained exclusively by the State, Local Authority or a Hospital Board;
- From any person by virtue of his bona fide membership of the Organization collecting the contribution;
- From, by or on behalf of a bona fide religious body during the religious service or in terms of the written authority of such body and exclusively for the purpose of promoting the religious work of such body;
- From the parent or guardian of a student or scholar for the educational institution in which the child is a student or scholar;
- For and on behalf of a political party;
- Under the supervision and control of the senate of the University for the purposes of the development of the University.

These exceptions seem to pinpoint some of the bizarre consequences of this proposed legislation. Except under the authority of a permit, a school cannot have a fete nor can a former student give a donation to his previous school unless his child is a pupil at the school; a legacy cannot be left to a University or Hospital; Round Table cannot collect from its members for its activities; a donation posted to a Church for its religious work cannot be accepted.

If the Director believes that any contributions have been collected in contravention of any provisions of the Act he may order that the person who has collected the contributions furnish him with the name and address and any other information which he requires to identify or trace any other collector of the contributions or who has the contributions in his possession and control. Thereafter he can direct any person who has the contributions in his control to retain possession until a further order has been made to him to deliver the contributions to the Director.

The Director can then order any person who has the contribution under his control to return it if practicable to each contributor who is known and to deliver the balance if any to the Director. If the return of the contribution is not practicable the Director may dispose of it in such manner as the Minister may determine.

Furthermore if any person receives any unsolicited contribution from any other person in contravention of the provisions of this Act the contribution must immediately be returned and if this is not practicable he shall deal with it in such manner as the Minister may determine in the case concerned. Thus a body which is not registered as a fundraising body cannot receive an unsolicited anonymous donation.

The object of part of this proposed legislation may have been praiseworthy, namely to protect the public against

fraudulent collections, professional fund-raising bodies which fawn on charities and the abuse by the charities themselves of their funds. The effect however — like that of the two other proposed Acts — is to include a far wider range of activities than is necessary for these purposes.

Accordingly, sporting bodies, welfare, library and educational trusts, boy scouts and other bodies will be hit by this Law.

The Bill sets out a cumbersome and costly procedure to be adopted for an application for permission to collect.

This involves inter alia that the application be available for public inspection and for notices to be published. Temporary authorities can be granted pending the final authority.

A registration certificate or authority may be withdrawn and in the discretion of the Director who, after conducting an investigation in a manner "to be prescribed", may be amended for any reason. He has vast and extensive powers to control organizations by the threat of withdrawal of the authority to collect.

One result of the proposed Section 8 is that a Director can force an organization to devote its funds to a purpose never contemplated by a fundraising organisation.

Apart from the Director, the Minister may, if he deems it to be in the public interest, prohibit the collection of contributions from the public for any purposes or in any manner mentioned in the Notice. This power if utilised could cripple organisations.

A very serious in-road into what still remains of freedom in this country is provided for in Section 29(6). In terms of this Section the Director or his Inspectors may without warrant at any time enter any premises and search for money, records and documents. These may be removed and explanations may be demanded and persons may be interrogated under oath. The whole tenor of Section 29 is to give authoritarian powers even in excess of those given to the police and bear an unfortunate resemblance to those of a liquidator of Unlawful Organisations under the Internal Security Act.

Penalties are very severe involving fines of up to R1 500,00 with or without imprisonment for up to three years in the case of contraventions of a number of sections including the section relating to the collection from the public.

It should be noted that in Section 9 which deals with Appeals against the Director's decisions, the Courts are excluded. This is a feature which appears in the other two

proposed laws and in effect can try a person who is alleged to have performed Social Work whilst not being a registered Social Worker. There is NO APPEAL to the Courts against its finding and the fine it can impose.

The proposed trio of laws in general is extremely serious and could have a far-reaching effect on welfare and other services. As an illustration, the definition of social work in the Social Workers Act means:

"any professional act, activity or method directed at diagnosing, eliminating, preventing or treating social malfunctioning in man or at promoting social stability in man and includes the rendering of any material assistance with a view thereto".

The effect of this definition (if its full implications can be understood) is that part of the work of the medical profession, churchworkers, town planners, researchers, educationalists, lecturers, criminologists, lawyers and other professions would be affected and persons engaged in these professions and other activities would not be able to conduct their professions unless registered as social workers.

Thus workers at Legal Aid Bureaux, Citizen Advice Bureaux, and other organisations would have to be social workers. It would affect research done by non-registered social workers into such matters as migratory labour, race discrimination, poverty, crime, mass education and social disorder.

Objections to this Act commence from this very definition which is vague and uncertain. It is completely unsatisfactory that persons who are concerned with social problems should be faced with possible penalties because they are unable to determine whether or not their activities fall within definitions which should be intended to make matters clear but in fact tend to obscure the meaning of a particular term.

Whilst it may be desirable that Social Workers should be registered and organised, the effect of this Bill is that Welfare and Charitable organisations and a lot of the work of the Clergy will become the sole preserve of registered social and associated workers. The effect that this will have on such bodies is obvious.

These proposed Bills have met with opposition from a wide range of organisations and bodies, but fundamentally they express the philosophy of the bureaucratic state and whilst details may ultimately be amended it is likely that the principles enshrined in these bills will find their place in the final statutes. □

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