

**House of Assembly—No 133**

As laid on the table and read a first time, 14 September 2005

South Australia

**Collections for Charitable Purposes  
(Miscellaneous) Amendment Bill 2005**

A BILL FOR

An Act to amend the *Collections for Charitable Purposes Act 1939*.

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### Schedule 1—Statute law revision amendment of *Collections for Charitable Purposes Act 1939*

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**The Parliament of South Australia enacts as follows:**

### **Part 1—Preliminary**

#### **1—Short title**

This Act may be cited as the *Collections for Charitable Purposes (Miscellaneous) Amendment Act 2005*.

#### **5 2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

#### **3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of *Collections for Charitable Purposes Act 1939*

### 4—Amendment of section 4—Interpretation

Section 4, definitions of *collection contract* and *Minister*—delete the definitions and substitute:

*collection contract* means a contract under which a person agrees to act as a paid collector for a person, society, body or association;

*collector*—a person acts as a collector if the person—

- (a) collects or attempts to collect money or property wholly or partly for a charitable purpose; or
- (b) obtains or attempts to obtain money wholly or partly for a charitable purpose by the sale of a disc, badge, token, flower, ribbon or other device; or
- (c) obtains or attempts to obtain a bequest, devise or other grant of money or property wholly or partly for a charitable purpose;

*inspector* means a person appointed by the Minister as an inspector under section 15A;

*paid collector*—a person acts as a paid collector if the person receives valuable consideration to act as a collector;

*property* includes real and personal property;

### 5—Substitution of sections 6, 6A and 7

Sections 6, 6A and 7—delete the sections and substitute:

#### 5—Delegation by Minister

- (1) The Minister may, by notice in the Gazette, delegate any of the Minister's powers or functions under this Act—
  - (a) to a particular person or body; or
  - (b) to the person for the time being occupying a particular position.
- (2) A delegation under this section—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the Minister to act in any matter; and
  - (c) may be varied or revoked by the Minister by subsequent notice in the Gazette.
- (3) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.



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- (i) the nature of the relevant charitable purpose, the name of the person, society, body or association that is to receive the money or property and any specific program that is to benefit from the money or property;
- (ii) the name of, and contact details for, the holder of the section 6 licence under which the person is authorised to act as a collector and the licence number;
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- (iii) the name of, and contact details for, the holder of the section 6A licence (if any) under which the person is authorised to act as a collector and the licence number;
- (iv) any other information prescribed by regulation; and
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- (b) produce for inspection by the person—
- (i) a copy of the last statement (if any) submitted under section 15(2)(b) by the holder of the section 6 licence under which the person is authorised to act as a collector; and
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- (ii) any other document prescribed by regulation.
- (5) A person acting as a paid collector who contravenes or fails to comply with subsection (4) is guilty of an offence.  
Maximum penalty: Division 7 fine.
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- (6) The holder of a section 6 licence must take reasonable steps to ensure that each person authorised to act as a collector by the holder of the licence is aware of his or her obligations under this section and is provided with the information and documents referred to in subsection (4).  
Maximum penalty: Division 6 fine.
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- (7) The holder of a section 6A licence must take reasonable steps to ensure that each person employed or engaged (whether or not for valuable consideration) to act as a collector by the holder of the licence is aware of his or her obligations under this section and is provided with the information and documents referred to in
- 35
- subsection (4).  
Maximum penalty: Division 6 fine.

### **7—Licence required in relation to certain entertainments**

- (1) This section applies to an entertainment if—
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- (a) a charge is made for admission to the entertainment; and
- (b) it is held out that the proceeds, or part of the proceeds, of the entertainment are to be devoted to a charitable purpose.

- (2) A person must not—
- (a) conduct an entertainment to which this section applies; or
  - (b) sell or attempt to sell a ticket for admission to an entertainment to which this section applies,

5 unless the person holds, or is authorised by the holder of, a section 7 licence.

Maximum penalty: Division 6 fine.

- (3) A person who conducts an entertainment to which this section applies must not cause or permit an advertisement relating to the entertainment to be published by radio, television, newspaper or in any other way or a ticket for admission to the entertainment to be sold unless the advertisement or ticket contains a statement disclosing—

- 15 (a) the amount of money that is estimated, in accordance with any guidelines issued by the Minister, to be devoted to a charitable purpose out of the gross proceeds of the entertainment; and
- 20 (b) the percentage of the gross proceeds of the entertainment that is estimated, in accordance with any guidelines issued by the Minister, to be devoted to a charitable purpose; and
- (c) the manner in which the amount to be devoted to a charitable purpose is to be calculated; and
- 25 (d) any other particulars required by the Minister by notice in writing given to the person.

Maximum penalty: Division 6 fine.

## **6—Amendment of section 12—Conditions of licence etc**

- (1) Section 12(1) to (3)—delete subsections (1) to (3) (inclusive) and substitute:

- 30 (1) A licence granted by the Minister under this Act remains in force for the period or periods specified in the licence or until revoked by the Minister.
- (2) A licence may be granted subject to any conditions the Minister thinks fit including (without limitation)—
  - 35 (a) conditions limiting the proportion of the proceeds of collections and entertainments which may be applied as commission or other remuneration to persons acting as collectors under the licence or to other persons concerned in the collections or entertainments to which the licence applies; and
  - 40 (b) conditions requiring the holder of the licence or any other person authorised by the holder of the licence, to comply with the provisions of a code of practice issued by the Minister.

(3) The Minister may, at any time, vary or revoke the conditions on which a licence was granted under this Act or add conditions to a licence granted under this Act.

(2) Section 12(4)—delete "exercise his power to"

5 (3) Section 12(4)(b)—delete "in respect of the collection of donations in pursuance of the licence out of the proceeds of the collection" and substitute:

acting as a collector under the licence, or acting in connection with the conduct of an entertainment to which the licence relates, out of the proceeds of the collection or entertainment (as the case may be)

10 (4) Section 12(4)(ba)—after "licence" insert:

or a requirement under this Act

### **7—Substitution of section 15**

Section 15—delete the section and substitute:

#### **15—Accounts, statements and audit**

15 (1) If the holder of a licence under this Act collects or receives money for a charitable purpose during a financial year or other period specified in the licence (the *statement period*), the holder of the licence must—

(a) keep proper accounts relating to the money; and

20 (b) after the end of the statement period, have the accounts audited by a person who is authorised to audit the accounts of a prescribed association under Part 4 Division 2 of the *Associations Incorporation Act 1985* or is approved by the Minister for the purposes of this section.

25 (2) The holder of a licence under this Act must, at the time or times fixed in the licence, provide to the Minister—

(a) a copy of the audited accounts for the last ending statement period; and

(b) a statement setting out—

30 (i) the amount of money collected or received by the licensee during the last ending statement period; and

(ii) the costs associated with collection or receipt of the money; and

35 (iii) the manner in which the money has been dealt with; and

(iv) any other information required by the Minister.

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- (3) The Minister may at any time, by notice in writing to the holder of a licence, require the holder of the licence to provide to the Minister, within a specified time—
- (a) a statement setting out specified information relating to money or property collected or received by the holder of the licence for charitable purposes; or
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- (b) specified documents (which may include a written record reproducing in an understandable form information stored by computer, microfilm or other process) in the custody or control of the holder of the licence that relate to money or property collected or received by the holder of the licence for charitable purposes.
- (4) A statement required to be provided to the Minister under this section must be verified in a manner required by the Minister.
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- (5) If the holder of a licence under this Act sells, or otherwise converts into money, any property collected or received by the holder of the licence for a charitable purpose, the money so obtained is, for the purposes of this section, money collected or received by the holder of the licence for a charitable purpose.
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- (6) The Minister may publish on a website maintained by the Minister—
- (a) the name of, and contact details for, any person who holds a licence under this Act; and
- (b) the contents of any statement submitted to the Minister under this section or a summary of, or extract from, any such statement.
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- (7) If the holder of a licence contravenes or fails to comply with a provision of this section—
- (a) in the case of a licence held by a natural person—the person is guilty of an offence; or
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- (b) in the case of a licence held by a body corporate—the body corporate and each member of the governing body of the body corporate are guilty of an offence; or
- (c) in the case of a licence held by an unincorporated body—each member of the body is guilty of an offence.
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- Maximum penalty: Division 6 fine.
- (8) It is a defence to a charge of an offence under this section if the defendant proves that the offence occurred without the defendant's knowledge or consent.

### **15A—Appointment of inspectors**

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- (1) The Minister may appoint inspectors for the purposes of this Act.
- (2) The Minister must provide each inspector with an identity card which the inspector must produce on request.



### **15B—Powers of inspectors**

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- (1) For the purposes of ascertaining whether the provisions of this Act are being complied with and subject to this section, an inspector may enter any place in which the inspector suspects, on reasonable grounds, there may be evidence or records connected with an activity for which a licence is required under this Act.
- (2) An inspector must not enter a place used as a residence unless—
- (a) the occupier consents; or
  - (b) the inspector is authorised by warrant under subsection (3).
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- (3) A magistrate may, if satisfied on the application of an inspector that there is a proper ground for doing so, issue a warrant authorising an inspector to enter a place used as a residence.
- (4) While an inspector is in or on any place under this section, the inspector may do one or more of the following:
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- (a) inspect or search the place or anything in the place;
  - (b) require a person in the place to—
    - 20 (i) produce documents (which may include a written record reproducing in an understandable form information stored by computer, microfilm or other process) that are in the person's custody or control; and
    - (ii) answer any questions put by the inspector;
  - (c) inspect documents produced to the inspector and retain them for so long as is reasonably necessary for the purpose of copying or taking extracts from them;
  - (d) take photographs, films, audio, video or other recordings;
  - (e) if the inspector suspects on reasonable grounds that an offence has been committed, seize and retain anything that the inspector believes affords evidence of the offence;
  - 30 (f) give such directions as are reasonably necessary for, or as are incidental to, the effective exercise of the inspector's powers under this section.
- (5) A person who—
- 35 (a) hinders or obstructs an inspector in the exercise of powers under this section; or
  - (b) fails, without reasonable excuse, to comply with a requirement of an inspector under this section; or
  - 40 (c) fails, without reasonable excuse, to answer, to the best of the person's knowledge, information and belief, a question put by an inspector; or

- (d) falsely represents that he or she is an inspector, is guilty of an offence.

Maximum penalty: Division 6 fine.

- (6) An inspector may, in exercising powers under this section, be accompanied by such assistants as are reasonably necessary for the purpose.
- (7) A person may decline to answer a question put under this section if the answer would tend to incriminate the person of an offence.

### **15C—False and misleading statements**

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty: Division 6 fine.

### **15D—Dishonest, deceptive or misleading conduct**

A person who, in the conduct of an activity that is or is required to be authorised by a licence under this Act, acts in a dishonest, deceptive or misleading manner is guilty of an offence.

Maximum penalty: Division 5 fine or division 5 imprisonment.

## **8—Substitution of section 18**

Section 18—delete the section and substitute:

### **18—Exemptions**

- (1) The Minister may, on application by a person, society, body or association exempt the person, society, body or association from compliance with specified provisions of this Act.
- (2) An exemption is subject to the conditions (if any) imposed by the Minister.
- (3) The Minister may, at his or her discretion, vary or revoke an exemption.
- (4) The grant or a variation or revocation of an exemption may be published on a website maintained by the Minister.

### **18A—Immunity of persons engaged in administration of Act**

- (1) No personal liability attaches to a person engaged in the administration of this Act for an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of official powers or functions.
- (2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

**18B—Service of notices etc**

- (1) Subject to this Act, a notice or document required or authorised by this Act to be given to or served on a person may—
- (a) be served on the person personally; or
  - (b) be posted in an envelope addressed to the person at the person's last known address; or
  - (c) if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be given to or served on the person in accordance with that Act.
- (2) Without limiting the effect of subsection (1), a notice or document required or authorised by this Act to be given to or served on the holder of a licence under this Act may—
- (a) be posted in an envelope addressed to the licensee at the licensee's address for service; or
  - (b) be left for the licensee at the licensee's address for service with someone apparently over the age of 16 years; or
  - (c) be transmitted by facsimile transmission to a facsimile number provided by the licensee (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (3) The address for service of the holder of a licence under this Act is the address of which the Minister has been last notified in writing by the licensee as the licensee's address for service.

**18C—Evidentiary**

In proceedings for an offence against this Act, an allegation in the complaint that a specified person was or was not—

- (a) the holder of a licence issued under a specified provision of this Act; or
- (b) authorised by the holder of a section 6 or 7 licence to carry out specified activities,

is, in the absence of proof to the contrary, proof of the matter alleged.

**Schedule 1—Statute law revision amendment of *Collections for Charitable Purposes Act 1939***

<b>Provision amended</b>	<b>How amended</b>
Long title	Delete "goods for certain charitable purposes, and to repeal the Collections for Unemployment Act 1930" and substitute: <p style="text-align: center;">property for certain charitable purposes; and for other purposes.</p>
Sections 2 and 3	Delete sections 2 and 3

**Collections for Charitable Purposes (Miscellaneous) Amendment Bill 2005**

Schedule 1—Statute law revision amendment of *Collections for Charitable Purposes Act 1939*

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<b>Provision amended</b>	<b>How amended</b>
Section 8(1)	Delete "under this Act"
Section 8(1)	Delete "by the Minister either generally or in any particular case. Any such approval may be revoked by the Minister." and substitute: <p style="text-align: center;">, from time to time, by the Minister either generally or in a particular case.</p>
Section 8(2)	Delete subsection (2) and substitute: <p style="text-align: center;">(2) An authority given by the holder of a section 6 or 7 licence may be subject to such conditions as the holder of the licence thinks fit.</p>
Section 9(1)	Delete "shall" and substitute: <p style="text-align: center;">must</p>
Section 9(1)	Delete "same to such first-mentioned person" and substitute: <p style="text-align: center;">written authority to such person, society, body or association</p>
Section 9(2)	Delete subsection (2) and substitute: <p style="text-align: center;">(2) A person who fails to produce and deliver a written authority as required by subsection (1) is guilty of an offence. Maximum penalty: Division 6 fine.</p>
Section 11(1)	Delete "shall" and substitute: <p style="text-align: center;">must</p>
Section 11(2)	Delete "any application for a section 6 or 7 licence the Minister, in addition to taking into account any other matters that he thinks fit, shall" and substitute: <p style="text-align: center;">an application for a section 6 or 7 licence, the Minister may take into account any matter the Minister thinks fit and must</p>
Section 11(3)	After "his" insert: <p style="text-align: center;">or her</p>
Section 11(3)	Delete "shall" and substitute: <p style="text-align: center;">will</p>
Section 14	Delete "shall" and substitute: <p style="text-align: center;">may</p>
Section 16	Delete "goods" wherever occurring and substitute in each case: <p style="text-align: center;">property</p>
Section 16(1)	Delete "were collected" and substitute: <p style="text-align: center;">was collected</p>
Section 17(1)	Delete "thereto" and substitute: <p style="text-align: center;">to the vesting</p>

<b>Provision amended</b>	<b>How amended</b>
Section 17(2), (3) and (4)	Delete subsections (2), (3) and (4) and substitute: <ul style="list-style-type: none"><li>(2) Subject to subsection (3), the moneys and securities vested in the Minister by a proclamation under this section will be held on the trusts on which they were held immediately before being vested in the Minister.</li><li>(3) The Governor may, by proclamation, vary the trusts and authorise the Minister to apply the moneys and securities, or any part of the moneys and securities, to charitable purposes specified in the proclamation.</li></ul>
Section 19(1)	Delete "shall" and substitute: may
Section 19(2)	Delete "shall" and substitute: is
Section 19(2)	Delete "be sufficient" and substitute: sufficient
Section 20(2)(a)	Delete "goods" wherever occurring and substitute in each case: property