

# House of Assembly

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South Australia

## Collections for Charitable Purposes (Miscellaneous) Amendment Bill 2007

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 2007*.

### **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.

### **6—Collectors must be authorised by licence**

- (1) Subject to subsection (2), a person must not act as a collector unless the person holds, or is authorised by the holder of, a section 6 licence.

Maximum penalty: Division 6 fine.

- (2) Subsection (1) does not apply if—
  - (a) the person—
    - (i) only collects or attempts to collect money or property from persons known to the person or with whom the person regularly associates; and
    - (ii) provides all of the money or property so collected to the holder of a section 6 licence; and
    - (iii) is not a paid collector; or
  - (b) the person—
    - (i) only collects or attempts to collect property for the purpose of affording relief to a particular person or to the dependants of a particular person; and
    - (ii) provides all of the property so collected to that person or to those dependants; and
    - (iii) is not a paid collector.

### **6A—Licence requirements where collection contract entered into**

A paid collector must not employ or engage another person (whether or not for valuable consideration) to act as a collector in performance of the paid collector's obligations under a collection contract unless the paid collector is the holder of a section 6A licence.

Maximum penalty: Division 6 fine.

### **6B—Disclosure requirements for collectors—unattended collection boxes**

- (1) A person who acts as a collector by placing an unattended collection box in a public place must ensure that the collection box is marked, in a reasonably prominent position, with the following information:
  - (a) 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, if the holder of that licence has previously submitted a statement under section 15(2)(b), particulars of the website maintained by the Minister under section 15(6) or any other website at which the last such statement submitted by the holder of that licence can be inspected;
  - (b) any other information prescribed by regulation.
- (2) A paid collector who contravenes or fails to comply with subsection (1) is guilty of an offence.  
Maximum penalty: Division 7 fine.
- (3) 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 referred to in subsection (1).  
Maximum penalty: Division 6 fine.
- (4) 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 referred to in subsection (1).  
Maximum penalty: Division 6 fine.
- (5) For the purposes of this section, a collection box that is not attended by any person who is the holder of a section 6 licence in respect of the collection, or authorised by the holder of such a licence, will be taken to be an unattended collection box.
- (6) In this section—  
**collection box** includes any form of receptacle for the collection of money, whether the money is to be placed in the receptacle as a donation or for the purchase of a disc, badge, token, flower, ribbon or other device.

**6C—Disclosure requirements for collectors—other collections**

- (1) A person who acts as a collector must tell each person from whom money or property, or a bequest, devise or other grant of money or property, is collected or obtained or attempted to be collected or obtained—
  - (a) his or her name or, if the person is issued with a unique identifier by the holder of the section 6 licence under which the person is authorised to act as a collector, that unique identifier; and
  - (b) whether or not the person is acting as a paid collector.
- (2) However, subsection (1) does not apply to a person acting as a collector if the person—
  - (a) can be seen by the persons from whom money or property, or a bequest, devise or other grant of money or property, is collected or obtained or attempted to be collected or obtained; and
  - (b) is wearing a badge, in a reasonably prominent position, which contains the information specified in subsection (1).
- (3) A paid collector who contravenes or fails to comply with subsection (1) is guilty of an offence.  
Maximum penalty: Division 7 fine.
- (4) A person who acts as a collector must, at the request of a person from whom money or property, or a bequest, devise or other grant of money or property, is collected or obtained or attempted to be collected or obtained, provide the following information to the person:
  - (a) 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, if the holder of that licence has previously submitted a statement under section 15(2)(b), particulars of the website maintained by the Minister under section 15(6) or any other website at which the last such statement submitted by the holder of that licence can be inspected;
  - (b) any other information prescribed by regulation.
- (5) A paid collector who contravenes or fails to comply with subsection (4) is guilty of an offence.  
Maximum penalty: Division 7 fine.
- (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 referred to in subsection (4).  
Maximum penalty: Division 6 fine.

- (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 referred to in subsection (4).

Maximum penalty: Division 6 fine.

- (8) This section does not apply to a person who acts as a collector in the manner described in section 6B.

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

- (1) This section applies to an entertainment if—
- (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,

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

Maximum penalty: Division 6 fine.

- (3) If any speaker or other performer at an entertainment to which this section applies is to be paid a fee or commission of an amount that exceeds, or is likely to exceed, the prescribed amount, the holder of the section 7 licence under which a person is authorised to conduct the entertainment must, at the request of any person, tell the person the amount, or likely amount, of any such fee or commission.

Maximum penalty: Division 6 fine.

- (4) For the purposes of subsection (3), the value of any non-monetary consideration to be provided to a person (including the value of any travel or accommodation costs to be paid in respect of the person's attendance at the relevant entertainment) must be taken into account in determining the amount of the fee or commission that is to be paid to the person.

- (5) 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 the following information:
- (a) the name of, and contact details for, the holder of the section 7 licence under which the person is authorised to conduct the entertainment and, if the holder of that licence has previously submitted a statement under section 15(2)(b), particulars of the website maintained by the Minister under section 15(6) or any other website at which the last such statement submitted by the holder of that licence can be inspected;
  - (b) if subsection (3) applies—a statement indicating that performers payment details can be obtained from the holder of the section 7 licence;
  - (c) any other information prescribed by regulation.

Maximum penalty: Division 6 fine.

- (6) In this section—
- prescribed amount* means—
- (a) if an amount is prescribed by regulation for the purposes of this definition—that amount;
  - (b) if no amount is prescribed by regulation for the purposes of this definition—\$5 000.

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

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

- (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
  - (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.
- (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—
    - (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
    - (iii) the manner in which the money has been dealt with; and
    - (iv) any other information required by the Minister.



- (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
  - (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.
- (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.
- (6) The Minister must 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.
- (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
  - (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.

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**

- (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**

- (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).
- (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:
  - (a) inspect or search the place or anything in the place;
  - (b) require a person in the place to—
    - (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;
  - (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—
  - (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
  - (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 <i>Collections for Unemployment Act 1930</i> " 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

<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>

**Collections for Charitable Purposes (Miscellaneous) Amendment Bill 2007**

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 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