

Legislative Council—No 93

As introduced and read a first time, 3 December 2015

South Australia

Statutes Amendment (Commonwealth Registered Entities) Bill 2015

A BILL FOR

An Act to amend the *Associations Incorporation Act 1985* and the *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 *Statutes Amendment (Commonwealth Registered Entities) Act 2015*.

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 *Associations Incorporation Act 1985*

4—Insertion of sections 33 to 34B

Before section 35 insert:

33—Preliminary

In this Division—

Commonwealth Act means the *Australian Charities and Not-for-profits Commission Act 2012* of the Commonwealth;

Commonwealth Commissioner means the Commissioner of the Australian Charities and Not-for-profits Commission established under the Commonwealth Act;

Commonwealth registered entity means an entity registered under the Commonwealth Act;

relevant prescribed association means a prescribed association that is a Commonwealth registered entity.

34—Application of Division to relevant prescribed associations

- (1) Subject to this section, if a relevant prescribed association has, in respect of a particular period—
- (a) submitted to the Commonwealth Commissioner an information statement that the association is required to prepare under the Commonwealth Act and, if relevant, a financial report together with any auditor's report or reviewer's report that the association is required to obtain under that Act; and
 - (b) submitted to the Commission any other information relevant to the affairs of the association required by the Commission,
- the association is exempt from this Division in relation to that period.

- (2) Despite subsection (1), a relevant prescribed association must cause—
- (a) the information statement and any reports referred to in subsection (1)(a); and
 - (b) a report of a committee of the association prepared in accordance with section 35(5) (as modified by subsection (3)),

to be laid before the members of the association at the annual general meeting of the association or, if an annual general meeting is not to be held, within 6 months of the end of the financial year to which the reports relate.

- (3) Despite subsection (1), section 35(5) applies to the committee of a relevant prescribed association as if a reference to the financial year to which the accounts relate were a reference to the financial year to which the information statement that the association is required to prepare under the Commonwealth Act relates.
- (4) A document or information required to be provided to the Commission under this section must be provided in accordance with any requirements specified by the Commission (including requirements as to the form and verification of the document or information, or the time or manner in which it is to be provided).
- (5) If a relevant prescribed association contravenes or fails to comply with this section, the association is guilty of an offence.
- Maximum penalty: \$5 000.

34A—Disclosure of information relating to relevant prescribed associations

The Commission may enter into an agreement with the Commonwealth Commissioner in relation to—

- (a) the manner in which relevant prescribed associations may provide information for the purposes of this Act; and
- (b) the provision of information obtained under the Commonwealth Act to the Commission for the purposes of this Act.

34B—Commission may provide information to Commonwealth Commissioner

Despite any other Act or law, the Commission is authorised to provide to the Commonwealth Commissioner (whether at the request of the Commonwealth Commissioner or otherwise) such documents and other information in the possession or control of the Commission that may be reasonably required by the Commonwealth Commissioner in connection with the performance or exercise of its functions or powers under the Commonwealth Act.

5—Amendment of section 39—Annual general meeting

Section 39(1)—delete subsection (1) and substitute:

- (1) Subject to this section, a prescribed association must hold an annual general meeting—
 - (a) if the prescribed association is a relevant prescribed association (within the meaning of section 33)—within 6 months; or
 - (b) in any other case—within 5 months, after the end of the financial year of the association.

6—Amendment of section 67—Regulations

Section 67(2)—after paragraph (a) insert:

- (ab) modify or exclude the application of this Act in relation to Commonwealth registered entities (within the meaning of section 33); and

Part 3—Amendment of *Collections for Charitable Purposes Act 1939*

7—Amendment of section 4—Interpretation

- (1) Section 4, definition of *charitable purpose*, before paragraph (a) insert:
 - (aa) the provision of, or assistance or support to the provision of, health services (within the meaning of the *Health Care Act 2008*) or research in the field of health or such health services;
- (2) Section 4, definition of *charitable purpose*, (a)—after "relief" insert:

, assistance or support
- (3) Section 4—after the definition of *charitable purpose* insert:

code of practice means a code of practice issued by the Minister and published in the Gazette for the purpose of regulating licensees and those authorised by licensees under this Act;
- (4) Section 4, definition of *collector*—delete the definition and substitute:

collector—a person acts as a collector if the person (either personally or through the agency of another person)—

 - (a) collects, or attempts to collect, money or property wholly or partly for a charitable purpose; or
 - (b) charges, or attempts to charge, for admission to an entertainment in relation to which it is held out that the proceeds are to be devoted wholly or partly to a charitable purpose; or
 - (c) 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

- (d) obtains, or attempts to obtain, a bequest, devise or other grant of money or property wholly or partly for a charitable purpose;

Commonwealth Act means the *Australian Charities and Not-for-profits Commission Act 2012* of the Commonwealth;

5 **Commonwealth Commissioner** means the Commissioner of the Australian Charities and Not-for-profits Commission established under the Commonwealth Act;

Commonwealth registered entity means an entity registered under the Commonwealth Act;

10 (5) Section 4, definition of **section 6A licence**—delete the definition

(6) Section 4, definition of **section 7 licence**—delete the definition

8—Amendment of section 6—Collectors must be authorised by licence

(1) Section 6(1)—delete "subsection (2)" and substitute:

this section

15 (2) Section 6—after subsection (2) insert:

(3) A Commonwealth registered entity is, on giving written notice to the Minister (in accordance with any requirements of the Minister) of its intention to act as a collector, taken to hold a section 6 licence for the purposes of this Act while the entity remains a Commonwealth registered entity.

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(4) The Minister may keep a list of entities who give notice to the Minister under subsection (3) on a website maintained by the Minister.

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(5) A Commonwealth registered entity's authority to act as a collector under subsection (3) is subject to—

(a) the condition that the entity or any other person authorised by the holder of the licence to act as a collector comply with the code of practice (as in force from time to time); and

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(b) any other condition imposed by the Minister by notice in writing to the entity.

(6) The Minister may, by notice in writing to the entity, vary or revoke a condition imposed under subsection (5)(b) or add conditions to the entity's authority to act as a collector.

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(7) The Minister may, by notice in writing to the entity, suspend or revoke a Commonwealth registered entity's authority to act as a collector on any of the following grounds:

(a) that donations (whether of money or goods) received for charitable purposes by the entity have been mismanaged or misapplied;

- 5
- (b) that excessive commission or remuneration has been, or is to be, paid to any person acting as a collector under the authority of the entity, or acting in connection with an entertainment conducted under the authority of the entity, out of the proceeds of the collection or entertainment (as the case may be), or that the proportion of those proceeds that is, or is to be, applied towards charitable purposes is for any other reason inadequate;
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- (c) the entity's contravention of or failure to comply with a condition of the entity's authority to act as a collector or a requirement under this Act;
- (d) that any other circumstances exist that justify, in the opinion of the Minister, suspension or revocation of the entity's authority to act as a collector.
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- (8) Suspension of a Commonwealth registered entity's authority to act as a collector under this section may be for a specified period or until the fulfilment of stipulated conditions or until further notice by the Minister.
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- (9) If the Minister revokes a Commonwealth registered entity's authority to act as a collector under this section, the Minister may prohibit the entity from giving notice under subsection (3) for a specified period or until the fulfilment of stipulated conditions or until further notice by the Minister.
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- (10) In addition, the following provisions apply in connection with the operation of subsection (3):
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- (a) the entity will be treated, for the purposes of this Act, as if it had been granted a section 6 licence on the day on which the notice under subsection (3) was given to the Minister (subject to any express provision to the contrary);
- (b) the entity's authority to act as a collector under subsection (3) continues until—
- 35
- (i) it is suspended or revoked in accordance with subsection (7); or
- (ii) the entity's registration is revoked under the Commonwealth Act (and in such case the entity ceases to be taken to hold a section 6 licence for the purposes of this Act on the day on which the revocation is made);
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- (c) any section 6 licence held by the entity (by virtue of the grant of a licence pursuant to an application under section 11) (an *existing licence*) in operation at the time of the giving of notice under subsection (3) is cancelled by force of this section;

- (d) despite paragraph (c), the requirements of section 15 continue to apply in relation to money collected or received under the existing licence during the financial year or statement period (within the meaning of section 15) in which the existing licence is cancelled.

9—Repeal of section 6A

Section 6A—delete the section

10—Amendment of section 6B—Disclosure requirements for collectors—unattended collection boxes

Section 6B(4)—delete subsection (4)

11—Amendment of section 6C—Disclosure requirements for collectors—other collections

(1) Section 6C(4)(a)—delete paragraph (a) and substitute:

- (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;
- (ab) —
- (i) in the case of the holder of a section 6 licence that 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; or
- (ii) in the case of a Commonwealth registered entity taken to hold a section 6 licence for the purposes of this Act that has submitted information under section 15(9)—particulars of the website maintained by the Commonwealth Commissioner under the Commonwealth Act or any other website at which the last such information submitted by the entity can be inspected;

(2) Section 6C(7)—delete subsection (7)

12—Amendment of section 7—Disclosure requirements for collectors—entertainments

(1) Section 7(2)—delete subsection (2)

(2) Section 7(3)—delete "section 7" and substitute:

section 6

(3) Section 7(5)(a)—delete paragraph (a) and substitute:

- (a) the name of, and contact details for, the holder of the section 6 licence under which the person is authorised to conduct the entertainment;
- (ab) —

- 5 (i) in the case of the holder of a section 6 licence that 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; or
- 10 (ii) in the case of a Commonwealth registered entity taken to hold a section 6 licence for the purposes of this Act that has submitted information under section 15(9)—particulars of the website maintained by the Commonwealth Commissioner under the Commonwealth Act or any other website at which the last such information submitted by the entity can be inspected;

- 15 (4) Section 7(5)(b)—delete "section 7" and substitute:
section 6

13—Amendment of section 8—Grant of authority by licensee

Section 8—delete "or 7" wherever occurring

14—Amendment of section 9—Revocation of authority by society etc

Section 9(1)—delete "or section 7"

20 **15—Amendment of section 11—Application for licence**

Section 11(2)—delete subsection (2)

16—Amendment of section 12—Conditions of licence etc

- (1) Section 12(1)—delete subsection (1) and substitute:
- 25 (1) Subject to this section, a licence granted by the Minister under this Act remains in force for the period or periods specified in the licence.
- (2) Section 12(2)(b)—delete "a code of practice issued by the Minister" and substitute:
the code of practice (as in force from time to time)
- (3) Section 12(3)—after "time," insert:
30 by notice in writing to the licensee,
- (4) Section 12(4)—after "may" insert:
, by notice in writing to the licensee, suspend or
- (5) Section 12(4)(c)—after "Minister," insert:
suspension or
- 35 (6) Section 12—after subsection (4) insert:
(5) Suspension of a licence under this section may be for a specified period or until the fulfilment of stipulated conditions or until further notice by the Minister.

- (6) This section does not apply to a licence that is, under section 6(3), taken to be held by a Commonwealth registered entity.

17—Insertion of sections 14A and 14B

After section 14 insert:

5 **14A—Provision of information to Minister by Commissioner of Police**

- (1) The Commissioner of Police must, at the Minister's request, make available to the Minister criminal history information of a kind specified by the Minister about an applicant for, or the holder of, a licence under this Act or a member of the committee or other governing body of a society, body or association that is an applicant for, or the holder of, such a licence.

- (2) In this section—

15 *criminal history information* about a person means information about criminal convictions and other information to which the Commissioner of Police has access relevant to the character and antecedents of the person.

20 **14B—Minister may require production of documents, records etc**

- (1) The Minister may, by written notice, require a person to produce records, documents or other information in the person's possession connected with an activity for which a licence is required under this Act, within a time and in a manner specified in the notice.
- (2) The Minister may retain the records, documents or other information for as long as is reasonably necessary for the purposes of copying or taking extracts from the records, documents or information.
- (3) A person who, without reasonable excuse (proof of which lies on the person), refuses or fails to comply with a requirement under this section is guilty of an offence.
- 30 Maximum penalty: \$8 000.

18—Amendment of section 15—Accounts, statements and audit

- (1) Section 15(3) and (4)—delete subsections (3) and (4) and substitute:

- (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 statement setting out specified information relating to money or property collected or received by the holder of the licence for charitable purposes.

(2) Section 15(6)—delete subsection (6) and substitute:

(6) The Minister may publish on a website maintained by the Minister any information provided by the holder of a licence under this section and must publish—

- 5 (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 subsection (2)(b) or a summary of, or extract from, any such statement.

10 (3) Section 15—after subsection (8) insert:

(9) If a Commonwealth registered entity taken to hold a section 6 licence for the purposes of this Act has, in respect of a particular period—

- 15 (a) submitted to the Commonwealth Commissioner an information statement that the entity is required to prepare under the Commonwealth Act and, if relevant, a financial report together with any auditor's report or reviewer's report that the entity is required to obtain under that Act; and
- (b) submitted to the Minister any other information required by the Minister,

20 the entity is exempt from the operation of subsections (1), (2) and (7) in relation to that period.

(10) A document or information required to be provided to the Minister under this section must be provided in accordance with any requirements specified by the Minister (including requirements as to the form and verification of the document or information, or the time or manner in which it is to be provided).

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19—Amendment of section 15B—Powers of inspectors

Section 15B—after subsection (6) insert:

- 30 (6a) An inspector may require that the answer to a question under this section be verified by statutory declaration or given under oath.

20—Insertion of section 17A

After section 17 insert:

17A—Disclosure of information relating to Commonwealth registered entities

35 The Minister may enter into an agreement with the Commonwealth Commissioner in relation to—

- (a) the manner in which Commonwealth registered entities may provide information for the purposes of this Act; and
- 40 (b) the provision of information obtained under the Commonwealth Act to the Minister for the purposes of this Act.

17B—Disclosure of information—general

The Minister may disclose information gained in the course of the administration of this Act—

- (a) to authorities responsible for the administration of laws relating to acting as a collector in other States and Territories of the Commonwealth; and
- (b) to any other authorities that may require the information for the purpose of discharging duties of a public nature; and
- (c) to any other person, or in any other way, the Minister considers (in his or her absolute discretion) appropriate in the public interest.

21—Amendment of section 18C—Evidentiary

- (1) Section 18C—after "person" insert:

or body

- (2) Section 18C(a)—delete paragraph (a) and substitute:

(a) at a specified time the holder of a section 6 licence; or

- (3) Section 18C(b)—delete "or 7"

Schedule 1—Transitional provisions

1—Preliminary

In this Schedule—

principal Act means the *Collections for Charitable Purposes Act 1939*.

2—Repeal of section 6A—reporting requirements

- (1) Despite the repeal of section 6A of the principal Act, the requirements of section 15 of the principal Act will continue to apply to the holder of a section 6A licence in relation to money collected or received under the licence during the financial year in which the repeal occurs.

- (2) In this clause—

section 6A licence means a section 6A licence under the principal Act as in force immediately before the commencement of this clause.

3—Repeal of section 7—licences to continue as section 6 licences

The holder of a section 7 licence under the principal Act as in force immediately before the commencement of this clause will, after that commencement, be taken to be the holder of a section 6 licence under the principal Act, and such a licence will—

- (a) be held subject to the same conditions as the section 7 licence; and
- (b) remain in force for the period specified in that licence.

Schedule 2—Statute law revision amendments

Provision amended	How amended
Section 6(1) penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 6B(2) penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$4 000.
Section 6B(3) penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 6C(3) penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$4 000.
Section 6C(5) penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$4 000.
Section 6C(6) penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 7(3) penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 7(5) penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 9(2) penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 15(7) penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 15B(5) penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 15C penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$8 000.
Section 15D penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$15 000 or imprisonment for 4 years.
Section 20(2)(d)	Delete "a division 7 fine" and substitute: \$4 000