

Legislative Council—No 25

As received from the House of Assembly and read a first time, 20 July 2010

South Australia

Trustee (Charitable Trusts) Amendment Bill 2010

A BILL FOR

An Act to amend the *Trustee Act 1936*.

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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 *Trustee (Charitable Trusts) Amendment Act 2010*.

2—Amendment provisions

- 5 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 *Trustee Act 1936*

3—Insertion of section 69D

After section 69C insert:

10 **69D—Trusts may be charitable despite connection to government**

- 15 (1) Any trust (whether constituted before or after the commencement of this section) to provide money, property or any other benefit to or for an entity (including the establishment of an entity) that would, but for its connection to government, be a charity is, despite that connection, a charitable trust.
- (2) For the purposes of subsection (1), an entity has a connection to government if—
 - 20 (a) the entity receives government funding; or
 - (b) the entity is required to implement government policy; or
 - (c) the entity or the governing body of the entity is comprised of or includes persons appointed by the Governor, a Minister or an agency or instrumentality of the Crown; or

(d) the entity or the governing body of the entity is subject to control or direction by a Minister.

(3) In this section—

government means Commonwealth, State or local government.

5 **Schedule 1—Transitional provisions**

1—Interpretation

In this Schedule—

principal Act means the *Trustee Act 1936*.

2—Validation of acts under trusts deemed charitable under section 69D

- 10 (1) The exercise or purported exercise of a power before the commencement of section 3 of this Act by a trustee in relation to the provision of money, property or any other benefit to or for an entity under a charitable trust under section 69D of the principal Act (as inserted by section 3 of this Act)—
- 15 (a) has the same force and effect as if section 69D had been in operation at the time at which the power was exercised or purportedly exercised; and
- (b) must be taken to be, and always to have been, a valid and lawful exercise of power by the trustee under the trust.
- 20 (2) The provision or purported provision before the commencement of section 69D of money, property or any other benefit to or for an entity under a charitable trust under section 69D of the principal Act (as inserted by section 3 of this Act)—
- (a) has the same force and effect as if section 69D had been in operation at the time at which the money, property or other benefit was provided or purportedly provided; and
- 25 (b) must be taken to be, and always to have been, a provision for a valid and lawful purpose of the trust.