

South Australia

# Health Services Charitable Gifts Act 2011

An Act to establish the Health Services Charitable Gifts Board; to provide for the administration of gifts to public health entities; to repeal the *Public Charities Funds Act 1935*; and for other purposes.

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## Legislative history

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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 *Health Services Charitable Gifts Act 2011*.

#### 2—Commencement

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

#### 3—Interpretation

In this Act—

**Board** means the Health Services Charitable Gifts Board established under section 5;

**charitable assets** means the property vested in, or transferred to, the Board under section 16 or transferred to the Board under section 17;

**Commissioner**—see section 5(3);

**HAC** means a Health Advisory Council established under the *Health Care Act 2008*;

**health service** has the same meaning as in the *Health Care Act 2008*;

**prescribed research body** means a person or organisation that is involved in health or medical research and is prescribed by regulation for the purposes of this definition;

**property** means real or personal property including—

- (a) a chose in action; and

(b) a legal or equitable estate or interest in the property;

*public health entity*—see section 4;

*repealed Act* means the *Public Charities Funds Act 1935*.

#### 4—Public health entity

- (1) Subject to subsection (2), the Governor may by proclamation declare an entity, or part of an entity, engaged in the provision of a health service to be a public health entity for the purposes of this Act.
- (2) A proclamation under this section may not declare—
  - (a) a HAC; or
  - (b) a prescribed research body; or
  - (c) a private hospital within the meaning of the *Health Care Act 2008*; or
  - (d) an entity, or part of an entity, that is not eligible, under the *Income Tax Assessment Act 1997* of the Commonwealth, to receive income tax deductible gifts,

to be a public health entity for the purposes of this Act.

## Part 2—Health Services Charitable Gifts Board

### 5—Establishment of Board

- (1) The Commissioners of Charitable Funds established as a body corporate under the repealed Act continues in existence as the *Health Services Charitable Gifts Board*.
- (2) The Board—
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) is capable of suing and being sued; and
  - (d) has all the powers of a natural person that are capable of being exercised by a body corporate; and
  - (e) has the functions and powers assigned or conferred by or under this or any other Act.
- (3) The Board consists of 3 members (the *Commissioners*) nominated by the Minister and appointed by the Governor of whom—
  - (a) 1 must have legal expertise and experience deemed suitable by the Minister; and
  - (b) 2 must have expertise in the area of trusts or financial management, or other expertise, knowledge or experience deemed suitable by the Minister.
- (4) A Commissioner will hold office for a period of 3 years on conditions approved by the Governor.
- (5) A Commissioner is eligible for re-appointment to the Board at the expiration of a term of office.

## 6—Removal from office

The Governor may remove a Commissioner from office—

- (a) for breach of, or non-compliance with, a condition of appointment; or
- (b) for misconduct; or
- (c) for failure or incapacity to carry out official duties satisfactorily.

## 7—Casual vacancies

- (1) The office of a Commissioner becomes vacant if the Commissioner—
  - (a) dies; or
  - (b) completes a term of office and is not re-appointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
  - (e) is removed from office under section 6.
- (2) If the office of a Commissioner becomes vacant before the expiration of his or her term of office, the person who fills the vacancy will hold office for the balance of that term.

## 8—Acting Commissioner

- (1) If—
  - (a) the office of a Commissioner has become vacant; or
  - (b) a Commissioner has been, or is to be, absent from 2 or more consecutive meetings of the Board,the Minister may nominate a person for appointment as an acting Commissioner.
- (2) An acting Commissioner will be appointed by the Governor on conditions approved by the Governor.
- (3) An acting Commissioner—
  - (a) in the case of an acting Commissioner appointed under subsection (1)(a)—holds office until a person is appointed under section 5 to fill the vacancy; or
  - (b) in the case of an acting Commissioner appointed under subsection (1)(b)—holds office for the duration of the absence of the Commissioner referred to in subsection (1)(b).
- (4) Sections 6 and 7 apply to an acting Commissioner as if he or she were appointed under section 5.

## 9—Procedures

- (1) The Commissioners must appoint 1 of their number as the Chair of the Board.
- (2) A quorum of the Board consists of 2 Commissioners.
- (3) A decision carried by a majority of the votes cast by the Commissioners present at a meeting of the Board is a decision of the Board.

- (4) A conference by telephone or other electronic means between the Commissioners will, for the purposes of this section, be taken to be a meeting of the Board at which the participating Commissioners are present if—
  - (a) notice of the conference is given to all Commissioners in the manner determined by the Board for the purpose; and
  - (b) each participating Commissioner is capable of communicating with every other participating Commissioner during the conference.
- (5) A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—
  - (a) notice of the proposed resolution is given to all Commissioners in accordance with procedures determined by the Board; and
  - (b) a majority of the Commissioners express concurrence in the proposed resolution by letter, fax, email or other written communication setting out the terms of the resolution.
- (6) The Board must have accurate minutes kept of its meetings.
- (7) Subject to this Act, the Board may determine its own procedures.

#### **10—Vacancies or defects in appointment of Commissioners**

An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a Commissioner.

#### **11—Remuneration**

A Commissioner is entitled to remuneration, allowances and expenses determined by the Governor.

#### **12—Executive officer**

- (1) There will be an executive officer of the Board.
- (2) The executive officer will be appointed by the Board on terms and conditions determined by the Board.

#### **13—Staff of Board**

- (1) The Board may appoint staff for the purposes of this Act.
- (2) The terms and conditions of employment of a person appointed under subsection (1) will be determined by the Board after consultation with the Chief Executive of the administrative unit of the Public Service that is, under the Minister, responsible for the administration of the *Health Care Act 2008*.
- (3) Staff of the Board are subject to the direction of the executive officer.
- (4) The Board may, by arrangement with the relevant body, make use of the services of the staff, equipment or facilities of an administrative unit or an instrumentality or agency of the Crown.

## **14—Payment of remuneration, expenses etc**

- (1) Any—
  - (a) remuneration, allowance or expense payable to a Commissioner, the executive officer or staff of the Board; or
  - (b) expense incurred by the Board in the performance of its functions under this Act,

is to be paid out of the funds or trusts held by the Board under this Act.

- (2) Amounts to be paid under subsection (1) must be deducted from the funds or trusts in accordance with guidelines, determined by the Board and published in the Gazette, relating to the payment of such amounts.

## **Part 3—Functions of Board**

### **15—Functions**

The functions of the Board are as follows:

- (a) to prudentially manage the charitable assets and apply such assets for the benefit of public health entities or otherwise in accordance with this Act;
- (b) to act as a trustee in relation to certain other property in accordance with this Act;
- (c) to determine, after consultation with any person or body considered appropriate by the Board, appropriate investment strategies for the charitable assets and other property vested in the Board under this Act;
- (d) to consult with any person or body considered appropriate by the Board on the application of funds by the Board under this Act and, in the case of funds to be applied for the purposes of clinical equipment or research, to consult with any prescribed research body and any advisory committee established under this Act for the purpose of advising the Board on such an application of funds;
- (e) to fulfil any fiduciary and other duties that arise out of the functions of the Board under this Act;
- (f) to provide advice to the Minister as may be appropriate;
- (g) to carry out other functions assigned to the Board by or under this or any other Act, or by the Minister.

### **16—Certain gifts vest in Board as part of charitable assets**

- (1) Subject to this section, a prescribed gift vests in the Board as part of the charitable assets.
- (2) Where a prescribed gift consists of property given by deed, will, or otherwise, to an executor, trustee or other person in trust—
  - (a) the property must be transferred to the Board by the executor, trustee or other person; and

- (b) the Board must provide a receipt for the property so transferred (and provision of the receipt by the Board discharges the executor, trustee or other person in respect of the property).
- (3) Subsection (1) does not apply to property given to a public health entity in the following circumstances:
  - (a) if the property is a chattel of a tangible nature and given to a public health entity for the use of staff or patients of the entity (unless the public health entity has made a written request to the Board that the gift, or gifts of that class, be subject to subsection (1));
  - (b) if the property is of a prescribed kind and given to a public health entity in a prescribed manner (unless the Minister and the entity agree that the property is to be subject to subsection (1)).
- (4) A public health entity may apply to the Minister for an exemption from subsection (1) in respect of gifts made from an organisation whose primary purpose is to benefit the particular public health entity.
- (5) The Minister may grant an exemption under subsection (4) if the Minister considers it appropriate to do so in the circumstances.
- (6) An exemption granted under subsection (4) may be made subject to conditions determined by the Minister.
- (7) In this section—

*prescribed gift* means—

  - (a) property given to a public health entity; or
  - (b) property given (or purportedly given) to a body specified in Schedule 1 clause 1; or
  - (c) property given by deed, will or otherwise, to an executor, trustee or other person in trust for a public health entity; or
  - (d) property given (or purportedly given) by deed, will or otherwise, to an executor, trustee or other person in trust for a body specified in Schedule 1 clause 1.
- (8) To avoid doubt, this section only applies to prescribed gifts occurring after the commencement of this Act.

## **17—Public health entity may transfer property to the Board**

- (1) A public health entity may, with the agreement of the Board, transfer designated property to the Board and on such transfer the property becomes part of the charitable assets for the purposes of this Act.
- (2) In this section—

*designated property* means property given to a public health entity before the commencement of this Act or before the entity was declared to be a public health entity under this Act.

## 18—Application of charitable assets

- (1) Subject to this Act, the Board may apply the charitable assets for the benefit of a public health entity or a prescribed research body.
- (2) Once a gift by a donor to, or for the benefit of, an entity or body (the *donee*) has become part of the charitable assets by virtue of this Act, the Board—
  - (a) holds the gift free from any trust to which the gift may have been subject prior to becoming part of the charitable assets; and
  - (b) may give the whole or part of the gift to any public health entity or prescribed research body (provided that, in so doing, the Board complies with the requirements of subsection (3)).
- (3) In managing and applying a portion of the charitable assets attributable to a particular donor, the Board—
  - (a) must consider the intent, as far as it may be reasonably ascertained, of the donor; and
  - (b) so far as is reasonably practicable, must apply the portion in a manner that the Board considers is most likely to achieve the intention of the donor; and
  - (c) if the donee remains in existence at the relevant time as a public health entity or prescribed research body—may only apply the portion to some other public health entity or prescribed research body if the Board first consults the donee in such manner as the Board thinks fit.
- (4) In managing and applying the charitable assets the Board does not act as a trustee but the regulations may specify fiduciary and other duties to be observed by the Board in managing and applying such assets.

## 19—HAC may apply to transfer property to Board

- (1) A HAC may make a request in writing to the Minister for permission to transfer property to the Board to hold on trust for the benefit of a specified public health entity, or part of a public health entity.
- (2) The Minister may grant a request if the Minister considers it appropriate to do so in the circumstances.
- (3) If the Minister grants a request under this section, the property is, on such grant, vested in the Board by operation of this section.
- (4) Despite any other provision of this Act, property vested in the Board under this section—
  - (a) is free from any trust to which the property may have been subject prior to being so vested; and
  - (b) is held on trust by the Board for the benefit of the entity, or part of the entity, specified in the request.



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- (5) The Minister may, on application by the HAC or on his or her own initiative, revoke a decision under subsection (2) and require the Board to—
- (a) if none of the property has been applied in accordance with this Act—transfer to the HAC the property (or an amount of money determined by the Minister to be equal to the value of the property) and an amount representing interest earned by the Board on the property (determined by the Minister after consultation with the Board); or
  - (b) if part of the property has been applied in accordance with this Act—transfer to the HAC the remaining part of the property (or an amount of money determined by the Minister to be equal to the value of that part of the property) and an amount representing interest earned by the Board on that part of the property (determined by the Minister after consultation with the Board).
- (6) To avoid doubt, a revocation by the Minister under subsection (5) does not revive any trust to which the property was subject prior to being vested in the Board.

## **20—Board may establish charitable health trusts**

- (1) The Minister may direct the Board to establish a trust on terms determined by the Minister (a *charitable health trust*).
- (2) The Minister may transfer property of the Crown to the Board to hold on trust for the purposes of a charitable health trust.
- (3) The Board may only invest any funds transferred to the Board in accordance with subsection (2) in a manner determined by the Minister with the agreement of the Treasurer.
- (4) The Minister may determine that prescribed property should, instead of being held by the Board as part of the charitable assets, be held by the Board on trust for the purposes of a particular charitable health trust (and, on such a determination being made, the property will be taken to be held by the Board for the purposes of the charitable health trust and will not form part of the charitable assets).
- (5) The Minister may—
  - (a) vary the terms of a charitable health trust; or
  - (b) direct the Board to wind up a charitable health trust in accordance with any requirements prescribed by the regulations and any other directions of the Minister.
- (6) The Board must, at the request of the Minister, provide advice to the Minister in relation to a charitable health trust.
- (7) A person nominated by the Minister, or a delegate of that person, may be present at a meeting of the Board when the Board is discussing matters relating to a beneficiary of a charitable health trust at the meeting.
- (8) The regulations may make further provision in relation to the establishment of charitable health trusts generally, or a particular charitable health trust.

(9) In this section—

*prescribed property* means property that—

- (a) is prescribed by regulation and was given in a manner prescribed by regulation; and
- (b) was held by the Commissioners of Charitable Funds immediately before the commencement of Schedule 2 (and vested in the Board as part of the charitable assets on the commencement of Schedule 2),

but does not include property given (or purportedly given) to or for the benefit of a body specified in Schedule 1 clause 1.

## **21—Board may act as trustee or co-trustee**

The Board may act as a trustee or co-trustee in respect of a trust where the Board is named or otherwise asked to act as a trustee or co-trustee.

## **22—Trusts administered by Board**

To avoid doubt, if property is held on trust by the Board under section 19, 20 or 21—

- (a) the property does not form part of the charitable assets; and
- (b) the *Trustee Act 1936* (subject to any exclusions or modifications prescribed by regulation) applies in relation to such trusts.

## **23—Board to meet with public sector employee nominated by Minister**

- (1) The Minister must, with the agreement of the Treasurer, nominate a public sector employee (with expertise, knowledge or experience deemed suitable by the Minister) for the purposes of this section.
- (2) The Board must, on a quarterly basis, meet with the person nominated by the Minister for the purpose of receiving advice and recommendations from the nominee on the exercise of the Board's functions in relation to the Board's investment portfolio, investment objectives and strategies, and related matters.
- (3) For the purposes of a meeting under subsection (2), the Board must provide the nominee with such information or records in the possession or control of the Board as the nominee may require in such manner and form as the nominee may require, by no later than 1 month prior to the meeting.

## **Part 4—Miscellaneous**

### **24—Advisory committees**

- (1) The Board may, subject to subsection (2), establish committees to provide advice on any matter affecting the administration of this Act as the Board thinks fit.
- (2) If the Minister directs the Board to establish a committee to advise it on the application of funds for the purposes of clinical equipment or research, the Board must establish such a committee (and the regulations may make provision in relation to the establishment of the committee and any procedure to be followed by the committee).
- (3) A member of an advisory committee will be appointed by the Minister on the nomination of the Board and the member holds office on terms and conditions determined by the Minister with the agreement of the Board.

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- (4) The procedures to be observed in relation to the conduct of the business of an advisory committee will be—
- (a) as prescribed by regulation; or
  - (b) insofar as the procedure is not prescribed under paragraph (a), as determined by the Board; or
  - (c) insofar as the procedure is not prescribed under paragraph (a) or determined under paragraph (b), as determined by the relevant committee.

### **25—Town Acre 86 fund**

The land described as "Town Acre 86, City of Adelaide, Hundred of Adelaide", being the whole of the land comprised in Certificate of Title Volume 5191 Folio 871, held by the Commissioners of Charitable Funds under the repealed Act continues to be held by the Board under this Act in perpetuity for the benefit of the Royal Adelaide Hospital.

### **26—Board to transfer specified property to HAC on application**

- (1) A HAC may, with the agreement of the Minister, apply to the Board for the transfer of specified property forming part of the charitable assets if the property was, immediately before the commencement of this Act, held on trust by the Commissioners of Charitable Funds under the repealed Act for the benefit of a particular health service.
- (2) The Board must, on receipt of an application under subsection (1), transfer the specified property to the HAC in accordance with any requirements of the Minister or the HAC.

### **27—Duty of Registrar-General**

- (1) The Registrar-General must, on application by the Board or a HAC, and on being satisfied that an interest in land has vested in the Board or the HAC under this Act, and on production of duplicate certificates of title (if any) relating to the land, issue such new certificates of title, or make such entries and notations on existing certificates of title, as may be necessary to evidence vesting of the relevant interest.
- (2) If an application has been made under this section, the Registrar-General may require the applicant to furnish—
  - (a) any instrument evidencing former title to the land or any existing or former interest in the land; and
  - (b) a plan of the land to which the application relates, certified by a licensed surveyor.

### **28—No duty or tax payable**

No duty or tax is payable under a law of the State in respect of any vesting, transfer, assignment, receipt given or anything else done under this Act.

### **29—Accounts and audit**

- (1) The Board must keep proper accounting records in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.

- (2) The Auditor-General must, in respect of each financial year, audit the accounts of the Board.

### **30—Reports**

- (1) The Board must, on or before 31 October in each year, deliver to the Minister separate reports on the operations of—
- (a) the Board; and
  - (b) subject to the regulations, any trust established under section 20, during the financial year ending on the preceding 30 June.
- (2) Each report must include the audited accounts of the Board or trust (as the case may be) for the relevant financial year.
- (3) The report on the operations of the Board under subsection (1)(a) must include the following:
- (a) if the Board has, in the relevant financial year, applied a portion of the charitable assets that is attributable to a gift to or for the benefit of an entity or body to some other entity or body, a statement of reasons for the Board's decision to so apply the portion;
  - (b) a summary of any advice given, or recommendations made, by the public sector employee under section 23 in the relevant financial year;
  - (c) any other information prescribed by regulation.
- (4) The Minister must, within 12 sitting days after receiving each report under this section, have copies of the report laid before both Houses of Parliament.

### **31—Delegations**

- (1) Subject to subsection (2), the Board may delegate a function or power conferred on the Board—
- (a) to a specified person or body; or
  - (b) to a person occupying or acting in a specified office or position.
- (2) A delegation—
- (a) may be made subject to conditions or limitations specified in the instrument of delegation; and
  - (b) may, if the instrument of delegation so provides, be further delegated; and
  - (c) is revocable at will and does not prevent the Board from acting in a matter.

### **32—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) The regulations may—
- (a) be of general or limited application; and
  - (b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and

- (c) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Board.

## **Schedule 1—Specified bodies**

### **1—Specified bodies (section 16)**

The following bodies are specified for the purposes of the definition of *prescribed gift* in section 16:

- (a) the body known as the "Hanson Institute" or the "Hanson Centre for Cancer Research" (however described in the terms attached to the gift);
- (b) the Institute of Medical and Veterinary Science established under the (repealed) *Institute of Medical and Veterinary Science Act 1982*.

## **Schedule 2—Repeal and transitional provisions**

### **Part 1—Repeal**

#### **1—Repeal of *Public Charities Funds Act 1935***

The *Public Charities Funds Act 1935* is repealed.

### **Part 2—Transitional provisions**

#### **2—Preliminary**

In this Part—

*Commissioners of Charitable Funds* means the body corporate established under the repealed Act.

#### **3—Commissioners continue in office**

- (1) A person who, immediately before the commencement of this Schedule, holds office as a Commissioner of Charitable Funds under the repealed Act is, on the commencement of this Schedule, taken to continue as a Commissioner under this Act in accordance with Part 2.
- (2) The term of office of a Commissioner continuing in office under subclause (1) expires on the day that the Commissioner's term was due to expire in accordance with his or her appointment under the repealed Act.
- (3) This clause applies despite any other provision of this Act.

#### **4—Vesting of property**

- (1) Any property vested, or apparently vested, in the Commissioners of Charitable Funds under the repealed Act immediately before the commencement of this Schedule is taken to be lawfully so vested.
- (2) All property vested in the Commissioners of Charitable Funds in accordance with subclause (1) vests in the Board as part of the charitable assets on the commencement of this Schedule.

## 5—Validation of past acts etc

- (1) In so far as the Commissioners of Charitable Funds has, before the commencement of this Act, acted in contravention of, or omitted to act in accordance with—
  - (a) the repealed Act; or
  - (b) the terms of a trust,the action or omission is taken to be valid and to always have been valid.
- (2) Property held by the Commissioners of Charitable Funds at any time before the commencement of this Act will be taken to have been properly held.

## 6—Intellectual Disability Services Council and Metropolitan Domiciliary Care Services trusts

- (1) The Board must, on the request of the Minister to whom the *Family and Community Services Act 1972* is committed, transfer to that Minister funds held immediately before the commencement of this Schedule by the Commissioners of Charitable Funds—
  - (a) for the benefit of the public charitable institution listed in Schedule 2 of the repealed Act known as the Strathmont Centre, including any funds held for the benefit of supported accommodation services provided by the Intellectual Disability Services Council; and
  - (b) for the benefit of Metropolitan Domiciliary Care, including funds held in the Metropolitan Domiciliary Care fund in the *23 series accounts*.
- (2) Subject to subclause (3), the Minister—
  - (a) holds the funds transferred under subclause (1) free from any trust to which the funds may have been subject prior to being transferred; and
  - (b) may apply the funds as the Minister sees fit, including to a body other than the body for whose benefit the funds were held by the Commissioners under the repealed Act, (provided that, in so doing, the Minister complies with the requirements of subsection (3)).
- (3) In managing and applying funds transferred under subclause (1) attributable to a particular donor the Minister must—
  - (a) consider the intent, as far as it may be reasonably ascertained, of the donor; and
  - (b) so far as is reasonably practicable, apply the funds attributable to the donor in a manner that the Minister considers is most likely to achieve the intention of the donor.

## 7—Other matters

The Governor may, by regulation, make any other provision of a saving or transitional nature consequent on the enactment of this Act, including further provisions relating to the vesting of property.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2011	15	<i>Health Services Charitable Gifts Act 2011</i>	26.5.2011	1.7.2011 ( <i>Gazette 30.6.2011 p2870</i> )
2015	8	<i>Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015</i>	18.6.2015	Pt 19 (ss 94 & 95)—1.7.2015 ( <i>Gazette 25.6.2015 p3076</i> )