

**Review of the *Collections for Charitable Purposes (Miscellaneous)*
*Amendment Bill 2005***

Final Report

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1 Introduction and Background

The *Collections for Charitable Purposes Act 1939* (the Act) provides for the control of persons soliciting money or goods for certain charitable purposes.

The Act provides for the licensing of both collections and entertainments for charitable purposes under sections 6 and 7 respectively.

The *Collections for Charitable Purposes (Miscellaneous) Amendment Bill 2005* has been changed and a revised Bill, the *Collections for Charitable Purposes (Miscellaneous) Amendment Bill 2006* is attached.

1.1 Review Background

This review was initiated after representations were made to the Government regarding the *Collections for Charitable Purposes (Miscellaneous) Amendment Bill 2005* (the Amendment Bill). Officers from the Gambling Policy Section in the Department of Treasury and Finance have conducted this review.

The Amendment Bill arose from public concern regarding the lack of disclosure by charities and their collectors. Information about the cost of collections is generally not provided or made available to donors. Concern had been expressed about the application of donations to the charitable purpose and whether collectors are volunteers or not.

In mid 2004, an initial consultation process was undertaken with all licensees under the Act on the issue of disclosure. The Amendment Bill was subsequently drafted.

The Amendment Bill provides for increased disclosure requirements for charity collections and entertainments and a number of other administrative and technical amendments. The new disclosure requirements for charities in the Amendment Bill focus on the overall use of funds by the charity and improved disclosure for donors at the point of collection.

The Amendment Bill was introduced into the House of Assembly on 14 September 2005. Debate on the Amendment Bill was adjourned at second reading on 28 November 2005.

During debate on the Amendment Bill in the House of Assembly, some charities raised concerns over the proposed disclosure requirements for the conduct of events and entertainments under section 7 of the Act. The proposed disclosure for section 7 licensees was not part of the initial proposal and consultation with licensees but was included in the Amendment Bill when concerns were raised about a charitable event with a high profile speaker.

The Office of the then Minister for Gambling, the Honourable Michael Wright, MP, decided that there would be further consultation on the Amendment Bill. In February 2006, the Department of Treasury and Finance sent a consultation letter to around 70 licensees. Submissions on the consultation closed on 31 March 2006. A total of 12 submissions were received.

The consultation specifically sought comment on the increased disclosure proposed in the Amendment Bill for entertainments and events held by charities under section 7 of the Act.

This paper will address the submissions received in relation to both sections 6 and 7 licence requirements.

The discussion on each issue identified will comprise:

- **Background** – an outline of the issue;
- **Comment** – an exploration of the matters raised in submissions received from charities; and
- **Policy Position** – a statement of the proposed change to the Amendment Bill, if any.

In exploring the matters raised in the submissions and arriving at a policy position, this paper will take as the primary objective the need to improve transparency to donors of charity fundraising. This objective must be balanced with the need to not unreasonably increase the administrative burden on the charity sector.

Principles applied in arriving at a policy position are:

- consistency in disclosure requirements across the range of collecting activities; and
- lowered cost of compliance; and
- elimination of possible duplication of effort.

1.2 Next Steps

The proposed next steps are:

- a six week consultation period on the draft amendments and the report for those charities that made submissions;
- change the draft amendments, if necessary, on the basis of further submissions;
- Parliamentary debate; and
- Passage of Bill with an anticipated commencement date of early 2007.

2 Section 6 of the *Collections for Charitable Purposes Act 1939*

2.1 Background

Section 6 of the Act provides for the licensing of collecting for a charitable purpose. The Amendment Bill proposes that collectors have information available to provide to prospective donors when soliciting for donations whether through door to door collections, by telephone canvassing or by the sale of badges, etc. in public places. The prescribed information is:

- 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;
- 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;
- 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;
- a copy of the last annual financial 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
- any other information or document prescribed by regulation.

The annual financial statement proposed for section 15(2)(b) in the Amendment Bill includes:

- the amount of money collected or received by the licensee during the last ending statement period;
- the costs associated with collection or receipt of the money;
- the manner in which the money has been dealt with; and
- any other information required by the Minister.

Charity collectors would also be required to wear a badge indicating if they are a volunteer or a paid charity collector, or disclose whether they are being paid in the case of telephone canvassers.

The above disclosure requirements focus on the overall use of funds by the charity and improved transparency at the point of collection of funds.

In addition, the Amendment Bill requires licensed charities to place the annual Income and Expenditure Statement on the Office of the Liquor and Gambling Commissioner (OLGC) web site to further improve transparency for donors.

2.2 Comment

While the consultation specifically sought comment on the proposed disclosure for section 7 licensees, a number of charities provided comment on the proposed disclosure for section 6 licensees. The following discussion deals with these comments.

The submissions commented on a range of topics that have been grouped as follows:

- Financial Information Disclosure;
- Identification of Collectors;
- Definition of Paid Collectors; and
- Legislated Minimum Return to Charities.

Financial Information Disclosure

Charities raised concerns that the financial information disclosure requirement would increase the complexity of collection, significantly increase administrative burden and provide little benefit to many donors.

Increased Complexity for Collectors

Retina Australia (SA) Incorporated is concerned about the proposal to require a collector to produce for inspection a copy of the last annual financial statement (if any) submitted under section 15(2)(b) by the holder of the section 6 licence. *Retina Australia (SA) Incorporated* stated:

I write to record my concern about proposed articles 6B(4)(b) and 6B(6) which would require paid collectors to carry and if requested, present complex financial information about the charity for which they are collecting (article 15(2)(b) is also relevant).

My primary concern about these new requirements is that upon receipt of the prescribed financial information, the recipient is very likely to ask the collector a question about that information which he/she will not be able to answer, nor have the authority to answer.

While I have no problem with donors being able to obtain information about how much charities collect, spend and dispense for charitable purposes, I firmly believe that the explanation of such data should be the responsibility of the managing body and not just left to the paid collector to deal with.

As the proposed legislation requires collectors to always carry the name and contact details of the holder of the section 6 licence, I suggest the safest course would be for the person seeking financial information about a charity to be given the direct contact details so they may seek from an authoritative source, whatever information they require.

Further the amendments somewhat change the role of the collector and place a higher level of responsibility on them. They are no longer just responsible for collecting but also communicating the financial outcomes of the charity.

This will require collectors to have a further set of skills and knowledge which many of them may not have, which may require additional training imposing additional cost on the charity. It may also increase the risk of information being misrepresented.

Administrative Burden

The requirement that a collector make available a copy of the last annual financial statement for charities imposes an additional administrative burden on the charity.

On this issue the *Legacy Club of Adelaide Incorporated* said:

It is the Sub section 6B(4) requirement for 15(2) documentation availability that has the potential to so significantly add to our administrative requirements that it could make the above activities almost unworkable. If as an alternative a charitable organisation such as ourselves were permitted to provide when requested such documentation subsequently by mail it would minimise the administration aspects while still meeting the disclosure principle of the Bill.

From the submissions it is accepted that the proposed financial disclosure requirements will place an increased administrative burden on charities and collectors (voluntary and paid).

Benefit to Donors

The question is whether the cost associated with the increased burden is justified by the benefits.

In developing a disclosure policy with respect to financial information for potential donors, the administrative cost of any requirement must be balanced against the benefit to the donor and, ultimately, the community.

On the benefit of financial information to donors, the *Spina Bifida and Hydrocephalus Association of South Australia Incorporated* said:

We are happy to provide the information but I think it would be better for us and the potential donor to make the offer of sending out something from the office. This would allow the potential donor time to study the material if truly interested and start a dialogue with us in the office where we understand the financial structures and can be expected to answer any questions.

For small donations, it is expected that the proportion of donors that would be interested in analysing such information would be small.

It is reasonable to expect larger donations to be made after a period of research and consideration of relevant information by a donor.

It is important that information about the charity be readily available. The provision of immediate financial information is not considered to be a necessity and, based upon comments from charities, will significantly increase administrative burden.

It is proposed to change the Amendment Bill to:

- remove the requirement that the collector must have available financial information on the licensee for the donor when they solicit for a donation; and
- require collectors of section 6 and section 6A licensees to provide information on where a donor can collect or request a copy of the last annual financial statement of the licensee.

Identification of Collectors

The Amendment Bill requires that a person who acts as a collector must wear a badge. The badge must indicate whether the collector is paid by the charity.

Comments from charities highlighted that funds are collected using a variety of methods such as the sale of goods or by way of an unattended collection box through otherwise commercial entities such as banks and retail stores. Unattended collection boxes are also often found at volunteer locations such as sporting clubs and at other recreational facilities.

On this issue the *Legacy Club of Adelaide Incorporated* was concerned that many business operators that sell Christmas puddings and have collection boxes located in their premises will also be required to wear volunteer badges. Their submission said:

for business proprietors who agree to sell Xmas puddings over the last few months of the year and others who host a counter box all year round, while the availability of a Bookmark handout will meet much of the requirement, it would seem unrealistic for them to be expected to wear a volunteers' badge.

The Act applies to when money is obtained, or attempt to be obtained, by the sale of any disc, badge, token, flower or other device. The disclosure provisions proposed in the Amendment Bill will not apply to circumstances raised by the *Legacy Club of Adelaide Incorporated* such as the sale of Christmas puddings by business operators.

With respect to collections in general at commercial locations such as by way of an unattended collection box, it is not reasonable to expect employees or volunteers of an entity, for which the primary purpose is not fundraising, to wear badges. This requirement will be removed.

It is reasonable to expect that donors at such locations should have access to information on where further information about the charity can be accessed.

It is proposed that section 6 and 6A licensees that collect by way of an unattended collection box at any location make available information on where a donor can collect or request a copy of the last annual financial statement of the licensee.

On the issue of identification of collectors generally, it is also proposed that badges and the identification process (for telephone collectors) be required to include either the collector's name or another form of identification such as a collector number. This will enhance disclosure and provide a mechanism by which a collector may be identified if a potential donor wishes to report to a charity the activities of a particular collector.

Definition of "Paid Collectors"

Spina Bifida and Hydrocephalus Association of South Australia Incorporated with respect to the issue of "paid collectors" said:

There seems to be an assumption in the later text where paid collectors are only mentioned in the context of Section 6A licences & commercial/contract relationships. This may only be an issue of my interpretation but I feel it needs to be clear that paid collectors exist, are acceptable and should be acknowledged under section 6 licences. In broad terms Fundraising Managers & direct reporting staff could also be seen as paid collectors as we all ask for donations and my internal call centre staff are certainly not all volunteers.

As one of the few organisations operating our own doorknock and call centre programs I think there is a potential for misinterpretation regarding "paid collectors". I feel that the current wording has evolved from a point of view that paid collectors are all employed by contracted

commercial collectors & this does not take into consideration any staff employed directly by a charity.

I would suggest that a clear distinction is made between “paid collectors” who are either a contracted third party or those paid by such an entity and those who are direct employees of a charitable organisation.

Spina Bifida and Hydrocephalus Association of South Australia Incorporated requests that the Amendment Bill distinguish between collectors that are paid by a collection agency as opposed to those that are employed by the charity.

The purpose of the Amendment Bill is to inform potential donors if a collector is being paid to collect on behalf of the charity, it does not matter who pays them. The disclosure provisions in the Amendment Bill do not require employees to identify if they are paid or not when undertaking tasks on behalf of the charity other than collecting.

It is not proposed to change the Amendment Bill.

Legislated Minimum Return to the Charitable Purpose

One charity, *World Vision of Australia*, raised the notion of mandatory minimum returns from charities to the charitable purpose. Their submission said:

We also encourage the Minister, when setting guidelines, to take account of the fact that it is often difficult for charities to accurately determine at the outset of an appeal, exactly how much will be raised. This will therefore affect the ability of the charity to accurately estimate the amount which will be able to be devoted to the charitable purpose. We urge the Minister to set guidelines which would be limited to simply specifying a percentage of the proceeds which must be devoted to the charitable purpose. This would be line with, for example, the Victorian legislation.

Mandatory minimum returns to the charitable purpose were not supported by the majority of charities during the initial consultation process on the basis of the difficulty in establishing an appropriate threshold for a diverse range of charitable activities.

It is not proposed to change the Amendment Bill.

2.3 Policy Position

It is proposed to change the Amendment Bill to:

- remove the requirement that the collector must have available financial information on the licensee for the donor when they solicit for a donation;
- require collectors of section 6 and section 6A licensees to provide information on where a donor can collect or request a copy of the last annual financial statement of the licensee;
- require badges and the identification process (for telephone collectors) include either the collector’s name or another form of identification such as a collector number to enable the identification of the specific collector;
- not require employees of a commercial or any other entity, for which the primary purpose is not fundraising, to wear badges if they are raising funds for a charity by way of an unattended collection box; and

- make it a requirement that section 6 and 6A licensees that collect through any location by way of an unattended collection box to make information available on where a donor can collect or request a copy of the last annual financial statement of the licensee.

3 Section 7 of the *Collections for Charitable Purposes Act 1939*

3.1 Background

Section 7 of the Act provides for the licensing of the conduct of an event or entertainment for a charitable purpose.

The consultation sought comment specifically on the proposed disclosure in the Amendment Bill for section 7 licensees following adjournment of the Amendment Bill at second reading on 28 November 2005.

For section 7 licensees, the Amendment Bill proposes to make it a requirement that when a charity conducts an event, the tickets and the advertising of the event must display the estimated amount and the proportion of intended sales revenue that will be provided to the specified charity.

Specifically, the Amendment Bill proposes to make it a requirement that when an organisation conducts an event or an entertainment where proceeds are for a charitable purpose, the advertising and tickets must display the following information:

- *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*
- *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*
- *the manner in which the amount to be devoted to a charitable purpose is to be calculated; and*
- *any other particulars required by the Minister by notice in writing given to the person.*

The proposed section 7 disclosure in the Amendment Bill attempts to overcome many of the issues that were raised by the public with respect to the lack of information on the use of funds and the amount available for the charitable purpose once all expenses associated with an event or an entertainment have been paid.

3.2 Comment

The submissions commented on a range of topics that have been grouped as follows:

- Financial Information Disclosure;
- Networking and Profile Raising Events;
- Applicability Thresholds; and
- Television and Radio Advertising.

Financial Information Disclosure

Support was received from some charities for the proposed disclosure requirements for section 7 licensees such as the *Returned & Services League of Australia (S.A. Branch) Incorporated* and the *Royal Automobile Association of South Australia Incorporated*, which said:

I advise that the RAA has no issue with the changes proposed under Section 7 of the *Collections for Charitable Purposes Act 1939*.

Other charities like the *South Australian Commandery of the Order of Saint Lazarus* were concerned about the administrative burden of the proposed disclosure requirements for section 7 licensees. The *South Australian Commandery of the Order of Saint Lazarus* said:

I submit that these are complicated and repressive requirements for a fundraiser such as the Order to inform attendees.

The points made about the administrative burden of the proposed financial disclosure on section 6 and section 6A licensees are also relevant for section 7 licensees.

The disclosure proposals for section 7 will impose a significant administrative burden on charities for little benefit to many donors. They are also very complicated and may be difficult to understand.

The disclosure requirements in the Amendment Bill with respect to the provision of financial information on tickets and advertising for individual section 7 events and entertainments will be removed.

Instead, it is proposed to change the Amendment Bill so that potential donors are provided with information about how to access the charity's financial statements on the tickets and advertising.

Given that the issue of disclosure for section 7 licensees arose when concerns were raised about a charitable event with a high profile speaker, it is proposed that attendees to events and entertainments should also be able to find out from the charity the fee paid to a speaker or entertainer (if any) when the fee is greater than \$5000. This will improve the transparency of such section 7 events.

Networking and Profile Raising Events

In their submissions a number of charities stated that the proposed disclosure arrangements for events and entertainments do not provide for the range of events conducted by charities.

For example, it is understood that some charities conduct events for the purpose of networking and to raise the profile of the charity amongst a particular community group.

Sometimes these events do not immediately provide funds for the charitable purpose but the networks developed and the profile raised by such events may benefit the charity in the medium to longer term.

On this issue the *International Campaign to Ban Landmines – Australian Network Incorporated* said:

The section applies to persons who conduct an "entertainment" but there is no definition of "entertainment". If an organisation was to hold a dinner with a guest speaker advocating

support for the organisation, it could hardly be called an entertainment within the dictionary definition of the word. Is it intended that such a function is to be excluded from the provisions of Section 7? If not then a definition of the word "entertainment" should be provided or a more appropriate word used.

While understanding the reasoning for clauses 3A and 3B we cannot see the need for clause 3C. Surely a simple statement showing the estimated amount and the percentage of gross proceeds to be devoted to charitable purposes would be what the public wants. If a special function is organised with a higher than usual cost structure, then in addition to supplying 3A and 3B information, it will be in the charity's best interests to supply an explanation for the estimated lower percentage return, or risk a lack of support. In normal circumstances, including the proposed clause 3C statement on advertising material and tickets, would significantly add to the words to be used and tend to complicate what should be a relatively simple statement.

The submission from *Charity Direct* on this issue said:

Many members undertake planning of major fundraising events on a long term basis. An example would be a major community fundraising event planned to last for 5 – 8 years such as the 'Walk against Want' or 'Daffodil Day'. In most cases the amount of planning and organisation required to establish an event in the first year often means the event itself may only break even or perhaps run at a loss initially, however in the longer term, say over 5 years it has the capacity to generate significant income to invest in community need activities.

This concept of long term event management and promotion is a challenging concept for the general public to understand and it would be counterproductive in the long term to require event organisers to advertise that the event will in fact either raise no initial proceeds or even perhaps run at an initial loss and should be considered an investment for the future.

In other cases some members facilitate events that not only raise funds but also raise the profile of their stakeholder's special needs. In areas such as Children's Services, Medical Research, Aged Care Services, Disability Services and Long Term Illness & Disorders event promotion is often the most effective method of communicating need to the general public and to highlighting the outcomes of previous public investment. If an event has the dual purpose of both raising funds and raising profile, the charitable organisation often aims to generate income from sources other than ticket entry prices such as auctions, pledges or bequests.

The following comment was received from *Charities for SA* on this issue:

Charities are very concerned by the proposed changes on the Bill as 'entertainments' are multi-purpose with objectives of increasing awareness, building networks and engaging supporters, many times with the direct fundraising factor as only a minor component of the 'entertainment' and not reflected in the 'entry' costs.

The *South Australian Commandery of the Order of Saint Lazarus* is concerned whether the definition of entertainments covers:

..complementary functions for fundraising eg. a dinner at which an auction for fundraising is held.

With respect to the issue *Spina Bifida and Hydrocephalus Association of South Australia Incorporated* said:

In all forms of fundraising we plan to make profits & do so to reduce the demands on the limited Government funding that is available. Decision makers must be aware that start up programs & first run events may not be very profitable in the short term. Where the event is planned as an ongoing program, whether monthly or annually, there will be initial set up costs.

Also, it must be accepted that events for many organisations are run to achieve many purposes other than immediate cash result fundraising. These additional purposes can range from Public

Awareness and improving public recognition of the Charity name or “Brand”, to fostering a relationship with long term donors or establishing relationships with prospective donors. These additional purposes are very hard to quantify & an event run at minimal profit may have huge positive results in the future.

I feel this must be addressed in some way by either special allowance or modified percentage requirements for start-up events. Alternatively some form of amortisation of costs over a defined time period may work to cover any early capital or establishment costs. Alternatively, a structure addressing and accepting multiple purposes may need to be created.

The proposed disclosure requirements in the Amendment Bill for charity events and entertainments as currently drafted are not practical. They do not recognise that some events may not make an immediate and direct financial contribution to the charitable purpose but over the medium to longer term assist the charity in the achievement of their objectives.

As proposed in the previous section, the Amendment Bill will be changed to remove the requirement for financial information on tickets and advertising for individual events and entertainments. As a result, the fact that an event or an entertainment is being held as a networking or charity profile raising event will no longer be an issue.

Section 7 licensees will be required to provide on the ticket and advertising to the event or entertainment information on where a participant can collect or request a copy of the last annual financial statement of the licensee.

Applicability Thresholds

One charity proposed thresholds to which the new disclosure requirements should apply especially with regards to events and entertainments. This charity, the *Queen Elizabeth Hospital Research Foundation Incorporated* said:

To alleviate these problems for the smaller groups we believe that the legislation should specify the size of event that the new regulations apply to and our suggestion is that these requirements are for events where the gross takings are greater than Ten Thousand Dollars.

Licensees will now be required to provide information on where a donor can collect or request a copy of the charity’s last annual financial statement on the ticket and in advertising for the event or entertainment . This will apply to all events and entertainments regardless of size.

Television and Radio Advertising

The *Queen Elizabeth Hospital Research Foundation Incorporated* also said the following with respect to the disclosure requirements for television and radio advertising for events and entertainments:

If there is radio advertising for an event, the disclosure requirements will take up the whole thirty seconds of the ad and as such, the add will not be able to get its message across and will inhibit the organisers from attracting participants by this method.

Similarly, the cost increase in Television and press advertisements due to the increased content, will cause them to be less cost effective.

In these cases we believe that there does need to be reporting however it should be available if requested and only reported annually to the Minister up to a certain threshold. We believe that the threshold for this be, Two Hundred Thousand Dollars.

Any event over this size we believe does need to be reported to the participants but only that amount that is budgeted to be given to the section 7 charity.

The comment made by the *Queen Elizabeth Hospital Research Foundation Incorporated* suggests that due to the succinct nature of television and radio advertising, disclosure of the nature proposed in the Amendment Bill would be costly.

They also proposed that when section 7 licensees advertise an event or an entertainment on television or the radio that they provide information on where a participant can collect or request a copy of the financial information. This is supported.

3.3 Policy Position

It is proposed to change the Amendment Bill to:

- remove the requirement for the ticket and advertising to the event or entertainment to have the financial information on the individual event or entertainment disclosed; and
- require section 7 licensees to provide on the ticket and advertising to the event, information on where a donor can collect or request a copy of the last annual financial statement of the licensee and information on the fee paid to a speaker or entertainer at such an event (if any) when the fee is greater than \$5000.

4 Closing Remarks

The Department of Treasury and Finance would like to thank all charities for their contribution towards and assistance in preparing this review. The proposed next steps are:

- a six week consultation period on the draft amendments and the report for those charities that made submissions;
- change the draft amendments, if necessary, on the basis of further submissions;
- Parliamentary debate;
- Passage of Bill with an anticipated commencement date of early 2007.

If you have any enquiries about this Final Report or the proposed next steps you can contact the Department of Treasury and Finance by:

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