

Collections for Charitable Purposes Act 1939

Improving Regulation – Issues Paper

February 2010



**Government of
South Australia**

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1 Introduction and Background

1.1 Introduction

The *Collections for Charitable Purposes Act 1939* (the Act) provides for:

- the control of persons soliciting money or goods for certain charitable purposes; and
- the licensing of both collections and entertainments for charitable purposes.

Amendments to the Act commenced operation on 1 September 2008. These amendments were the subject of an extensive consultation.

A copy of the final consultation report is available on the publications page of <http://www.treasury.sa.gov.au/gamblingpolicy>.

The objective of the amendments was to improve transparency to donors of charitable collections, without creating any unreasonable administrative burden on the licensed charity sector.

The September 2008 amendments included:

- enhanced disclosure requirements for licensed charities and licensed or authorised collectors;
- establishment of a centralised website for display of licensed charity disclosure statements; and
- improved provisions relating to delegation and inspectorial powers.

The Minister's functions under the Act are delegated to the Liquor and Gambling Commissioner. In December 2008, the Liquor and Gambling Commissioner established <http://www.charities.sa.gov.au> to provide a central location for donors to examine the financial statements of those who are licensed to collect for charitable purposes.

This consultation aims to improve the regulatory framework established by the Liquor and Gambling Commissioner under the Act and, where appropriate, to consider amendments to the Act.

1.2 Evaluation of Regulatory Improvements

The Government is committed to ensuring collectors understand their obligations and that donors know their rights and where they can gain information about licensed charities. This will encourage informed decision making and confidence in the licensed charity sector.

The Office of the Liquor and Gambling Commissioner with the Department of Treasury and Finance is conducting this consultation.

This consultation will identify and consider possible improvements to the regulatory framework against the following regulatory objectives:

- **integrity** – collection activities are undertaken and disclosed in a way which generates confidence amongst donors;

- **disclosure** – donors have the opportunity to understand who they are donating to and are confident in their donation decisions;
- **respect** – that donors rights to privacy and to not donate are respected by collectors and that collectors rights are respected by licensed charities; and
- **minimal red tape** – that the measures proposed to achieve integrity and disclosure are done in a way that minimises red tape to charitable organisations.

Work to improve regulation will be undertaken in the context where the Productivity Commission, in its October 2009 draft research report on the *Contribution of the Not-For-Profit Sector*, has made a draft recommendation for the implementation of harmonised fundraising regulation and mutual recognition across Australia.

Options for improving the regulatory framework have been grouped under the following headings:

- Definition of Charitable Purpose
- Collecting from the Public
- Promotion, Disclosure and Record Keeping of Collection Activities
- Integrity of Collection Activities
- Protecting Collectors

Each of these topics will be considered in turn in the following chapters of this Issues Paper.

1.3 Consultation

Each chapter contains questions regarding the implementation of possible improvements to the licensed charity regulation.

Interested parties are encouraged to make a submission that answers all or some of the questions posed in this Issues Paper or other issues that are considered relevant to the improvement of licensed charity regulation.

Submissions should be sent by e-mail or post by **Friday 19 March 2010** to:

- e-mail: charitiesconsultation@sa.gov.au
- post: Charities Consultation
Revenue and Economics Branch
Department of Treasury and Finance
GPO Box 1045
Adelaide SA 5001

Submissions should include contact details of the person making the submission. It should be noted that submissions may be placed on the charities website and/or quoted in subsequent policy and/or consultation papers.

Additional copies of this Issues Paper can be downloaded from:

<http://www.charities.sa.gov.au>

2 Definition of Charitable Purpose

2.1 Introduction

The Act defines charitable purpose as:

- *the affording of relief to diseased, disabled, sick, infirm, incurable, poor, destitute, helpless, or unemployed persons, or to the dependents of any such persons;*
- *the relief of distress occasioned by war, whether occasioned in South Australia or elsewhere;*
- *the affording of relief, assistance, or support to persons who are or have been members of the armed forces of Australia or to the dependents of any such persons; and*
- *the provision of welfare services for animals.*

The definition was last amended in 1999 when the “provision of welfare services for animals” was added to the definition of charitable purpose.

In 1995 the following were removed from the definition of charitable purposes:

- *the supply of equipment to any of His Majesty’s naval, military, or air forces, including the supply of ambulances, hospitals and hospital ships; and*
- *the supply of comforts or conveniences to members of said forces.*

The definition contained in the Act has not been reviewed for some time. It may now be appropriate for the definition of charitable purpose to be updated in order to ensure **integrity** of the regulatory framework and to provide consistent **disclosure** and collection requirements across the charity sector.

2.2 Discussion

In the October 2009 draft research report on *Contribution of the Not-For-Profit Sector*, the Productivity Commission recommended that:

The Australian Government should adopt a statutory definition of charitable purpose in accordance with the recommendations of the 2001 Inquiry into the definition of charities and other organisations.

While this recommendation focussed on tax concessions status, the recommended definition may be appropriate for inclusion in future amendments to the *Collections for Charitable Purposes Act 1939*.

The recommended definition of charitable purposes from the *2001 Inquiry* was that charitable purposes shall be:

- *the advancement* of health, which without limitation includes:*
 - *the prevention and relief of sickness, disease or of human suffering;*
- *the advancement* of education;*
- *the advancement* of social and community welfare, which without limitation includes:*
 - *the prevention and relief of poverty, distress or disadvantage of individuals or families;*
 - *the care, support and protection of the aged and people with a disability;*
 - *the care, support and protection of children and young people;*

- *the promotion of community development to enhance social and economic participation; and*
- *the care and support of members or former members of the armed forces and the civil defence forces and their families;*

- *the advancement* of religion;*
- *the advancement* of culture, which without limitation includes:*
 - *the promotion and fostering of culture; and*
 - *the care, preservation and protection of the Australian heritage;*
- *the advancement* of the natural environment; and*
- *other purposes beneficial to the community, which without limitation include:*
 - *the promotion and protection of civil and human rights; and*
 - *the prevention and relief of suffering of animals.*

In this definition of charitable purpose, advancement is “taken to include protection, maintenance, support, research, improvement or enhancement.”

There may be concerns about the application of the “advancement of religion” and “advancement of education” purposes in relation to collections from the members of a church or school to cover the costs of running the church or school. One approach to addressing these concerns is to exempt organisations collecting for the purpose of the “advancement of religion” or “advancement of education” from the obligation to be licensed.

It is possible to limit the exemption so it only applies where collections are from a person associated with the organisation. Alternatively, it is possible to apply some of the regulatory framework, e.g. collection hours and locations and disclosure requirements, to those organisations which are exempt from licensing but collect from the public.

More information about the *2001 Inquiry*, including other options for the definition of charitable purpose, can be found at <http://www.cdi.gov.au/>.

Questions for Consultation

Given that the 2001 definition was prepared in the context of determining tax concession status, is it appropriate to apply it to determining which fundraising activities are subject to regulation?

If not, how should the recommended definition of charitable purposes, in the fundraising regulation context, be amended?

Is it appropriate to provide an exemption for collecting for the purpose of advancing religion or advancing education, where those collections are from persons associated with the church or school and are to be applied to cover the running costs of the church or school? Are other exemptions warranted?

Which parts of the regulatory framework, if any, should be applied to exempt organisations?

3 Collecting from the Public

3.1 Introduction

Licensed or authorised collectors can seek donations for charitable purposes under the Act. The Act does not contain any specific restrictions on collecting from the public, but it does provide the power for the Minister, by way of a Code of Practice, licence condition or regulation, to impose restrictions.

Public collection activities should **respect** the donor's right to privacy and the right to not donate. Donors should also be able to readily understand which collection activities are legitimate, supporting the **integrity** of the charity sector.

In considering whether some restrictions are appropriate, the Government will need to balance the interests of charitable collections and **minimising red tape** against respecting the rights of donors to privacy.

This section will consider issues relating to:

- Hours and Location of Collection Activities;
- Identification Requirements for Collectors; and
- Ongoing Collection Agreements.

3.2 Hours and Location of Collection Activities

The simplest option for restricting collection activities would be to implement universal times for all collection activities. For example, between 9am and 8pm on weekdays, 9am and 5pm on Saturdays, midday and 5pm on Sundays and, except by prior appointment, no collections on Easter Sunday, Good Friday or Christmas Day.

It may be appropriate that collecting at residential premises must cease at 6pm or sunset, whichever comes first.

There may, however, be good reasons to not treat all collection activities the same. Collection activities can be broadly grouped under five classes:

- **unsolicited collection at residential premises** – these are the typical door-to-door collections for which it could be appropriate to apply a prohibition on collection times consistent with proposed Australian Consumer Law provisions. An exception to this, however, could be collections on Sundays and on public holidays (other than Easter Sunday, Good Friday or Christmas Day).

Some of the major licensed charitable collections are undertaken over specific weekends and are supported by a concentrated public relations effort. Preventing collections on Sundays and public holidays has the potential to significantly reduce the effectiveness of charitable collections of this nature.

Appropriate hours for collecting at residential premises could be between 9am and 6pm (or sunset) on weekdays, 9am and 5pm on Saturdays and public holidays (other than Easter Sunday, Good Friday or Christmas Day), and midday and 5pm on Sundays.

- **unsolicited collection by telephone** – these are the typical telemarketing campaigns for which it could be appropriate to apply collection times consistent with the Australian Communications and Media Authority's *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007*. These times already apply to telemarketing calls including those authorised by a charity. The Industry Standard is available from <http://www.acma.gov.au/>
- **unsolicited collection at non-residential premises** – these are collections by collectors from people who are attending a place of business or some other community organisation. The collector could be seeking to collect from customers, employees or participants.

The appropriate hours for collection are unlikely to be consistent with the hours proposed in Australian Consumer Law and hours that are appropriate are likely to vary from place to place.

For example, the times for collecting from patrons of a front bar at a hotel are likely to be substantially different from collecting from patrons of a library. It is unlikely that any common times specified in the regulatory framework would be effective.

An appropriate way to address this issue is to prohibit collections at non-residential premises unless authorised by a responsible person at the non-residential premises.

- **unsolicited collection in a public space** – these are the typical street-corner collections.

Appropriate hours for collecting in public place could be between of 9am and 6pm (or sunset) on weekdays, 9am and 5pm on Saturdays and public holidays (other than Easter Sunday, Good Friday or Christmas Day), and midday and 5pm on Sundays.

These hours, however, would prevent collections from being conducted in a public place before 9am; significantly disadvantaging some charities that rely on badge days for collecting. Badge days collect a significant proportion from morning commuters.

- **collection at an event** – if an event has been organised by a licensee or authorised by a licensee partially or wholly for the purpose of collecting for a charitable purpose then it is appropriate to allow collections for that licensee without restriction at that event.

The different classes of collecting outlined above demonstrate the need for a flexible approach to regulating collecting from the public. Flexibility can be further supported by the existing power for the Minister to grant an exemption for collections outside of the restrictions set out in a Code of Practice, if justified.

Questions for Consultation

Are there other classes of collection activity that should be provided for in a Code of Practice?

Are the proposed hours of 9am and 6pm (or sunset) on weekdays, 9am and 5pm on Saturdays and public holidays (other than Easter Sunday, Good Friday or Christmas Day), and midday and 5pm on Sundays appropriate for **unsolicited collection at residential premises**?

Are the existing restrictions under the Australian Communications and Media Authority's *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* appropriate in relation to **unsolicited collection by telephone**?

Is the proposal that **unsolicited collection at non-residential premises** only be allowed if authorised by a responsible person at the non-residential premises appropriate? What is an appropriate definition of a responsible person?

Are the proposed hours of 9am and 6pm (or sunset) on weekdays, 9am and 5pm on Saturdays and public holidays (other than Easter Sunday, Good Friday or Christmas Day), and midday and 5pm on Sundays appropriate for **unsolicited collection in a public space** or should these collections be permitted to commence earlier on weekdays?

Is the proposal that there be no restrictions on hours for **collection at an event** organised or authorised by a licensee appropriate?

Are there alternative approaches that can be implemented that represent a better balance between the interests of charitable collections and minimising red tape against respecting the rights of donors to privacy?

3.3 Identification Requirements for Collectors

The September 2008 amendments to the Act introduced minimum mandatory disclosure requirements for collectors. A collector must disclose:

- his or her name or other unique identifier; and
- whether the person is acting as a paid collector.

This provision applies to both in-person collections and telephone collections. Section 6C(2) allows the collector to display a badge in a prominent position which is likely to be the preferred approach for in-person collections. Section 6C is provided below.

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).*

Under section 6C(4), a collector must, if requested, also disclose:

- the name of, and contact details for the licensee; and
- details of the website where a disclosure statement (see section 15(2)(b)) can be viewed.

While the Act provides clear disclosure requirements for collectors, it does not set out the form in which this information should be presented on a badge. As a result, it may be difficult for a donor to determine whether the person seeking a donation is indeed acting for a licensed charity. To ensure **integrity** of the charitable collections sector it is important for donors to be confident that they are donating to a licensed charity.

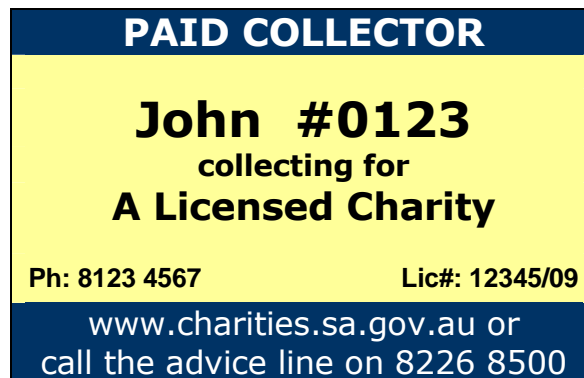
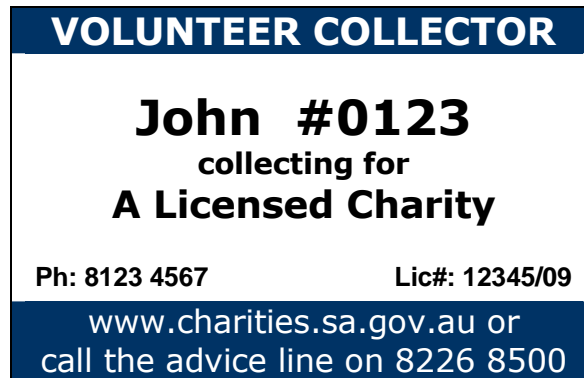
There are two broad approaches that could be adopted:

- **centralised badge preparation** – an agency like the Office of the Liquor and Gambling Commissioner could be made responsible for the preparation of all collector identification badges. The badges would be prepared like a driver's licence in a hard plastic form and would be very difficult to duplicate. While this would address **integrity**, it would at the same time impose additional costs on licensees and collectors both in terms of time and cost. The cost of the identification badge with a photograph would be in the order of \$20.
- **standardised template badges** – licensees would be required to prepare badges in accordance with an approved template. This template would be prepared by the Office of the Liquor and Gambling Commissioner and made available to licensees. This proposal has less **red tape** but suffers the disadvantage of being easier to duplicate. **Integrity** can, however, be maintained through the combination of contact details, licence number and the unique identifiers for collectors being present on the badge. A donor with concerns could verify:
 - that the collector is authorised by contacting the licensed charity; or
 - that the “charity” is licensed by contacting the Office of the Liquor and Gambling Commissioner.

Regardless of which approach is selected to standardise badges, the badges should contain the following information:

- name, contact details and licence number for the charity;
- name or unique identifier for the collector;
- whether the collector is paid or a volunteer; and
- details about the SA Government charities website and advice line.

Mock-ups of each badge are provided below for discussion.



Currently, it is not obligatory for a collector to wear a badge, provided a collector discloses the mandatory information verbally. It may be appropriate to make the obligation to wear a badge mandatory for:

- unsolicited collecting at a residential premises;
- unsolicited collecting at a non-residential premises; and
- unsolicited collecting in a public place.

Questions for Consultation

Does the standardised template approach adequately address the question of integrity and confidence in the charitable collections sector?

Is there any additional information not included in the mock-ups that should be included on the standardised badge?

Is it appropriate to make the wearing of a standardised badge mandatory for collectors who are collecting on an unsolicited basis at residential premises, non-residential premises or in a public place?

3.4 Ongoing Collection Agreements

An effective method for a licensed charity to secure ongoing funding is to seek an ongoing arrangement with the donor for a regular donation by credit card or direct debit. To achieve **integrity** for the charity sector and to **respect** donor's rights, the Code of Practice could include minimum standard requirements in relation to ongoing collection contracts across the sector.

In relation to door-to-door selling, there is an obligation for a 10-day cooling-off period for the sale of goods and services under existing South Australian consumer protection laws. One approach to ongoing collection agreements by telemarketing is to implement a 10-day cooling-off period.

Under an ongoing collection agreement the donor is agreeing to make a donation on an ongoing basis, there is no cost of supplying goods or services involved and as a result, no direct cost to be incurred by the licensed charity if an agreement is terminated.

An alternative approach to a cooling-off period is to ensure that all donors have the right to cease making a donation under an ongoing collection contract at any time.

In addition, it may also be appropriate to impose some minimum conditions that should be imposed on ongoing collection agreements. For example:

- the agreement must be in writing, and if agreed to over the telephone must be provided by e-mail or post to the donor;
- the donor must be provided with written information outlining the donor's right to cease donations at any time and how to cease donations; and
- if the donor ceases making donations within the first 10 days of the ongoing collection agreement the licensed charity must refund any donations received.

Questions for Consultation

Are there likely to be problems with implementing a minimum requirement for ongoing collection agreements that allows the donor to terminate at any time?

Beyond providing a copy of the ongoing collection agreement in writing and information about how to cease donations and the 10-day cooling-off period, are there additional minimum conditions that should be imposed on ongoing collection agreements?

3.5 Other Restrictions on Collections Activities

The Act provides powers for the Minister for Gambling to establish a Code of Practice. It is possible to include other restrictions on collection activities. It is, however, considered that the restrictions on the location, hours, identification requirements and ongoing collection contracts discussed in the preceding sections are sufficient to address integrity, the donor's right to privacy and the donor's right to not donate.

Questions for Consultation

Are there any other restrictions on collection activities of licensees that should be included in the Code of Practice?

4 Promotion, Disclosure and Record Keeping of Collection Activities

4.1 Introduction

Donors have contact with licensed charities through a number of means. To achieve the objectives of **integrity** and **disclosure** it is important that information about the licensed charity be communicated to donors in a consistent manner that is easy to understand.

The September 2008 amendments to the *Collections for Charitable Purposes Act 1939* introduced consistent disclosure requirements and required, for the first time, the establishment of the www.charities.sa.gov.au website. This helps donors make informed decisions about donations.

The Government is considering introducing some additional requirements to reinforce South Australia's disclosure arrangements. This section will consider options for:

- Promotion of Collection Activities;
- Disclosure of Collection Activities;
- Disclosure by Collection Agents;
- Disclosure by Collectors; and
- Record Keeping of Collection Activities.

4.2 Promotion of Collection Activities

The September 2008 amendments introduced a range of disclosure requirements for collectors and licensed charities. The Government is considering extending these basic disclosure requirements to include:

- **licensed charity websites** – it is proposed that any licensed charity website should include, in a prominent position on the home page, the licensed charity name, contact details, the South Australian licence number, and a link to the www.charities.sa.gov.au website;
- **display promotional material** – it is proposed that all display material promoting collection activities include details of the licensed charity name, contact details, the South Australian licence number, and the website of the licensed charity or the www.charities.sa.gov.au website; and
- **radio advertising** – it is proposed that radio advertising include details of the licensed charity name, contact details and the website of the licensed charity or the www.charities.sa.gov.au website.

Questions for Consultation

Are there any practical obstacles to the implementation of the proposals outlined above?

Are there any additional disclosure obligations that should be included?

4.3 Disclosure of Collection Activities

The September 2008 amendments introduced the obligation for licensed charities to submit a disclosure statement under section 15(2)(b) of the Act and for the Government to publish it on the www.charities.sa.gov.au website.

The first disclosure statement under these amendments focused on identifying:

- the amount of money collected under the licence;
- the costs associated with collecting that money under the licence; and
- the amount of money available to the charitable purpose.

The first disclosure statement provides basic information about the charitable collection. It does not, however, provide sufficient detail about the operation of the licensed charity or an understanding of how the funds have been distributed.

In the October 2009 draft research report on *Contribution of the Not-For-Profit Sector*, the Productivity Commission recommended that:

To promote confidence in the not-for-profit sector and reduce regulatory burden, Australian governments, initially through the COAG Business Regulation and Competition Working Group, should:

...

- *endorse the adoption by all governments of the Standard Chart of Accounts for reporting by not-for-profits in receipt of government grants or service contracts.*

...

The Queensland University of Technology notes that:

The Standard Chart of Accounts provides a common approach to the capture of accounting information by community organisations for the use by the nonprofits, government agencies and other interested parties. It is a tool designed primarily for small to medium nonprofits which typically do not have an accounting department or a sophisticated accounting system. Larger nonprofits have adopted the data dictionary component of the standard chart of accounts aligning their system to comply with a consistency across the sector.

The South Australian Government has committed, as part of its Council of Australian Governments (COAG) obligations, to the implementation of the Standard Chart of Accounts for the not-for-profit sector. The Competitiveness Council will be consulting with the not-for-profit sector regarding its roll-out in South Australia. It is, however, expected that the Standard Chart of Accounts will need to be amended to address regulatory disclosure requirements of licensed charities in South Australia.

The Productivity Commission recommendation relates to not-for-profits in receipt of government grants or service contracts. There may, however, be merit in making the disclosure statement (under section 15(2)(b)) consistent with the Standard Chart of Accounts. This approach would provide donors with a more complete picture of licensed charities on a comparable basis, increasing **integrity** and at the same time minimising **red tape**.

While work is being undertaken on the roll-out of the Standard Chart of Accounts, it is proposed to implement an interim disclosure statement which provides more detail on how the available funds have been applied. The interim disclosure statement would identify for the reporting period:

- payments to external organisations to achieve the charitable purpose;

- expenditure on and description of internal activities to achieve the charitable purpose; and
- the amount of funds retained or run-down.

Where a licensed charity uses a licensed collection agent, it is also proposed that the interim disclosure statement summarise for each collection agent engaged:

- the total value of collections from the public by the collection agent (A);
- the total value of payments from the collection agent to the licensed charity (B); and
- the amount retained by the collection agent (A)-(B).

Until the Standard Chart of Accounts work is finalised, it is also proposed to publish on the www.charities.sa.gov.au website audited accounts provided under section 15(2)(a) of the Act.

A disclosure statement and audited accounts may need some interpretation in order for donors to fully understand the position of the charity. The 2008 amendments provided for this by allowing charities to direct donors to their own website with supporting information, provided that the statements required for disclosure are also available for inspection. It is proposed, that the Government will allow charities to submit supporting statements for inclusion on the www.charities.sa.gov.au website.

Questions for Consultation

Is the Standard Chart of Accounts an appropriate tool for the purpose of disclosure in relation to charitable collections?

Are there any amendments that should be made to the Standard Chart of Accounts to accommodate licensed charities in South Australia?

Are there any additional items that should be included in the interim disclosure statement? Are there items that should not be included in the interim disclosure statement?

Are the provisions (i.e. own website and supporting statements) for providing supporting information to assist donors interpreting financial statements sufficient?

4.4 Disclosure by Collection Agents

Licensed collection agents provide an effective way for licensed charities to raise funds for their charitable purpose. There is, however, public interest in understanding the cost effectiveness of licensed collection agents.

In section 4.3 it is proposed to require a licensed charity to disclose information related to collection agents that have collected on their behalf. In order to assist licensed charities, it is proposed that collection agents have an obligation to provide disclosure statements to all licensed charities for which they collect, with a copy to also be provided to the Office of the Liquor and Gambling Commissioner. It is proposed that those disclosure statements:

- are provided at least once a year and at a time aligned with the lodgement requirements of the licensed charity's disclosure statement;
- show the total value of collections from the public by the collection agent (A) in relation to the relevant licensed charity;

- show the total value of payments from the collection agent to the relevant licensed charity (B); and
- show the amount retained by the collection agent (A)-(B) in relation to the relevant licensed charity.

Questions for Consultation

Are the proposed disclosure requirements for collection agents sufficient to support the disclosure requirements of licensed charities?

4.5 Disclosure by Collectors

The September 2008 amendments require collectors to have a range of information available for prospective donors. The prescribed information is:

- name or unique identifier of the collector;
- the name and contact details of the licence holder;
- whether the collector is a volunteer or is paid; and
- particulars of the website maintained by the Liquor and Gambling Commissioner (Minister’s delegation) or any other website at which the last statement showing the following details can be inspected:
 - 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.

It has been suggested that collectors should be aware of, and trained to, identify to prospective donors the percentage of donations returned to the charitable purpose for the licensed charity for which the collector is collecting. This would allow prospective donors to make an immediate assessment of the licensed charity and would support informed decision making about donations.

An alternative approach would be to require the licensed charity to prepare a disclosure pamphlet and to have this available from the collector. The disclosure pamphlet could include the following information:

- contact details for the licensed charity;
- description of the charitable purpose for the fundraising; and
- details of the most recent disclosure statement lodged on the www.charities.sa.gov.au website.

Questions for Consultation

Are there any practical obstacles to the implementation of the proposals outlined above?

Is a disclosure pamphlet preferable to training collectors to be aware of the percentage of donations returned to the charitable purpose?

Is there any additional information that collectors should be required to provide?

4.6 Record Keeping of Collection Activities

While most licensed charities already offer receipts for donations \$2 and over, it is proposed to make this a mandatory minimum requirement. Further, to be consistent with other disclosure requirements it is proposed that the following details must be on the receipt:

- date receipt was issued;
- a unique receipt number;
- name and contact details for the licensed charity;
- the licence number; and
- the website of the licensed charity or the www.charities.sa.gov.au website.

Questions for Consultation

Are there any practical obstacles to the implementation of the proposals outlined above?

Is there any additional information that should be included on the receipt?

5 Integrity of Collection Activities

5.1 Introduction

The Government acknowledges that the success of licensed charities to raise funds to support charitable purposes is dependent on the confidence that potential donors have in the charity sector and the underlying regulatory framework.

The 2008 amendments introduced a disclosure regime which supports informed decision making and allows potential donors to consider the performance of the licensed charity. This Issues Paper identifies a range of suggestions to further improve the disclosure regime.

The Act also provides substantial powers to the Minister (and by way of delegation, the Liquor and Gambling Commissioner) that address **integrity**. For example the Minister can:

- refuse a licence application or revoke an existing licence;
- impose licence conditions, and vary or revoke those conditions;
- request documents relating to the collection activity;
- appoint inspectors; and
- administer funds collected if there has been maladministration.

5.2 Discussion

The Act provides substantial powers to the Minister to regulate the conduct of licensed charities. It does not, however, mandate a fit and proper person test for all persons of interest at the time of a licence application.

Under the *Liquor Licensing Act 1997* and the *Gaming Machines Act 1992*, the Liquor and Gambling Commissioner must be satisfied that the person, or in the case of a corporate entity each person who occupies a position of authority, is a fit and proper person to hold the licence. For the purpose of determining whether a person is a fit and proper person the Liquor and Gambling Commissioner:

- may cause the person's photograph and fingerprints to be taken;
- must consider the reputation, honesty and integrity (including creditworthiness) of the person; and
- must consider the reputation, honesty and integrity of the persons known associates.

Part of the process under the *Liquor Licensing Act 1997* and *Gaming Machines Act 1992* includes providing the licence application to the Commissioner of Police to identify criminal convictions or other information to which the Commissioner of Police has access.

While this approach would achieve a very high level of **integrity**, it comes at the cost of substantial **red tape** to both the charity seeking a licence and the Liquor and Gambling Commissioner and South Australia Police. The Government does not consider the charity sector to pose the same risks as commercial liquor and gaming venues.

An alternative approach is to enhance the powers available to the Minister (Liquor and Gambling Commissioner) in relation to charity licence compliance functions. These functions would be applied on the basis of a risk-based assessment informed by disclosure statements and complaints from members of the public.

The additional charity licence compliance powers could include:

- a stronger information provision power that allows the Minister to seek information relating a licensed charities activities, from the licensed charities or other unlicensed entities;
- provide a clear power to allow the Minister to seek information from the Commissioner of Police about criminal convictions or other information available to the Commissioner of Police in relation to licensed persons, applicants or persons in a position of authority; and
- provide a clear power to allow the Minister to suspend the collection activities of a licensee to allow an investigation to be undertaken. To support disclosure, the suspension of collection activities would be noted on the www.charities.sa.gov.au website.

Given the range of powers available and additional powers proposed that can address the integrity of licensed charities, there does not appear to be a strong reason to continue the current practice of issuing only one-year licences. Extending the licence period from one year to a multi-year licence (say 5 years) or to a perpetual licence would have the benefit of reducing **red tape** to licensed charities.

A licensed charity with a longer licence period would still be subject to the same annual disclosure requirements. Where there is non-compliance with the charity regulation framework collection activities under a perpetual or a multi-year licence could be suspended and/or the licence ultimately revoked.

Questions for Consultation

Are the proposed additional powers sufficient to reinforce integrity of the charity sector, or should all applications be subject to a fit and proper person test?

Is the proposal to extend the period of the licence reasonable? Is it appropriate to issue a perpetual licence?

6 Protecting Collectors

6.1 Introduction

Collectors are important to the collection activities of licensed charities. The Government is committed to ensuring that the rights of collectors are **respected** and that they understand their obligations.

The September 2008 amendments to the Act increased disclosure requirements. Collectors are required to have information available to provide to prospective donors when soliciting for donations. The Act also requires that licence holders must take reasonable steps to ensure that collectors are aware of their obligations under the Act.

This section will consider options for measures to protect collectors in relation to:

- Health and Safety; and
- Collectors Information Pamphlet.

6.2 Health and Safety

Many licensed charities are subject to the *Occupational Health, Safety and Welfare Act 1986*. More information can be found at

http://www.safework.sa.gov.au/contentPages/docs/infosheet_ohs_events.pdf

A licensed charity's health and safety policies and procedures should include an explicit policy on collectors and collection activities in hot weather. These policies and procedures would apply to both paid and volunteer collectors.

It is proposed that in relation to volunteer collectors, collection activity should be suspended when the temperature in the location where the collection activity is being undertaken exceeds 35°C.

Another area of concern is collection activities undertaken by children. It is acknowledged that there are many collection activities that are supported by children and their schools. It is proposed that if children under the age of 15 are involved in collections they should be supervised by a responsible adult. It would be a requirement for licensed collectors that have collectors under the age of 15 to establish and make available a policy on under-age collectors.

Questions for Consultation

Is the proposed 35°C maximum temperature for collection activities by volunteer collectors appropriate? If not, what other measures should be implemented to manage heat stress?

Is the proposed age limit for supervision appropriate?

What is a practical definition for supervision by a responsible adult?

6.3 Collectors Information Pamphlet

The September 2008 amendments require collectors to have a range of information available for prospective donors. The prescribed disclosure requirements are:

- the name and contact details of the licence holder;
- particulars of the website maintained by the Liquor and Gambling Commissioner (Minister’s delegation) or any other website at which the last statement showing the following details can be inspected:
 - the amount of money collected or received by the licensee during the last ending statement period; and
 - the costs associated with collection or receipt of the money; and
 - the manner in which the money has been dealt with; and
 - any other information required by the Minister.
- where the collector is a telephone canvasser, the collector’s name or unique identifier, and whether or not the collector is acting as a paid collector;
- where the collector can be seen by the donor (e.g. door-to-door, badge sales), the collector must wear a badge displaying the collector’s name or unique identifier, and whether or not the collector is acting as a paid collector.

While the disclosure requirements are available in the Act, a short summary of the requirements for both paid and volunteer collectors consolidated in a collector information pamphlet prepared by the licensed charity would increase clarity for people wishing to act as collectors.

Furthermore, this Issues Paper canvasses a range of proposals that create obligations for collectors. It would be appropriate for the collector information pamphlet to set-out:

- disclosure requirements (discussed above);
- restrictions on collection in terms of hours and location;
- ongoing collection agreement requirements;
- a summary of the licensed charities Health and Safety policies and procedures (including the hot weather policy) and where these can be found;
- a summary of the licensed charities under-age collection policy and where the policy can be found; and
- contact details for a person at the licensed charity from whom the collector can seek additional advice during the agreed hours of collection.

The availability of a collector information pamphlet would create a single reference point for collectors regarding their obligations as a collector, and both the donor’s and the collector’s rights. It is proposed that it would be an obligation for the licensed charity to make available the collector information pamphlet to authorised collectors and generally on the licensed charity’s website.

Questions for Consultation

Is there additional information that should be included in the collector information pamphlet?

Are there alternative ways for ensuring collectors have an understanding of their rights and obligations?

7 Closing Remarks

Interested parties are encouraged to make a submission that answers all or some of the questions posed in this Issues Paper or other issues that are considered relevant to the improvement of licensed charity regulation.

Submissions should be sent by e-mail or post by **Friday 19 March 2010** to:

- e-mail: charitiesconsultation@sa.gov.au
- post: Charities Consultation
Revenue and Economics Branch
Department of Treasury and Finance
GPO Box 1045
Adelaide SA 5001

Submissions should include contact details of the person making the submission. It should be noted that submissions may be placed on the charities website and/or quoted in subsequent policy and/or consultation papers.

Additional copies of this Issues Paper can be downloaded from:

<http://www.charities.sa.gov.au>