

LEGISLATIVE ASSEMBLY

Read 1^o 30 September, 1975.

(Brought from the Legislative Council.)

A BILL

INTITULED

AN ACT

To amend the *Second-hand Dealers Act* 1958 to Control and License Collectors of Articles for or on behalf of Charitable Organizations and for other purposes, to amend the *Hospitals and Charities Act* 1958 and the *Local Government Act* 1958, to repeal the *Second-hand Dealers (Charity Collectors) Act* 1970 and the *Second-hand Dealers (Charitable Collectors) Act* 1972 and for other purposes.

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

5

1. (1) This Act may be cited as the *Second-hand Dealers (Charity Collectors) Act* 1975. Short title.

(2) In this Act the *Second-hand Dealers Act* 1958 is called the Principal Act.

Principal Act
No. 6363.
Reprinted with
amendments to
No. 7529.
Subsequently
amended by
Nos. 7732, 7876,
8030, 8179,
8351.

Commence-
ment.

(3) The several provisions of this Act shall come into operation on a day or the respective days to be fixed by proclamation or successive proclamations of the Governor in Council published in the *Government Gazette*.

Repeal of
Nos. 8030, 8351.

2. The *Second-hand Dealers (Charity Collectors) Act 1970* and the *Second-hand Dealers (Charitable Collectors) Act 1972* are hereby repealed. 5

3. (1) After section 29 of the Principal Act there shall be inserted the following Part :—

‘PART II.—COLLECTIONS FOR CHARITIES. 10

29A. In this Part unless inconsistent with the context or subject-matter—

“ Agreement.”

“ Agreement ” means an agreement between a recognized organization and a charity collector as prescribed for the purposes of this Part. 15

“ Approved.”

“ Approved ” means approved in writing by the Minister, so long as that approval is not revoked.

“ Article.”

“ Article ” does not include money.

“ Charity
collector.”

“ Charity collector ” means a person who carries on or holds himself out in any way as carrying on the business of collecting articles for or on behalf of a recognized organization but does not include a recognized organization or the members of the governing body or the staff of a recognized organization collecting articles on behalf of the organization. 20

“ Charity
sub-collector.”

“ Charity sub-collector ” means a person engaged in collecting articles for or on behalf of a charity collector, but does not include— 25

(a) a scout or girl guide collecting articles without remuneration in connexion with the Scout Association of Australia or the Girl Guides Association of Victoria or a person assisting that scout or girl guide in that collection without remuneration ; or 30

(b) a member of an approved youth club or youth organization collecting articles without remuneration in connexion with that youth club or youth organization or a person assisting that member in that collection without remuneration ; or 40

(c) a member of any other approved organization collecting articles without remuneration in connexion with that organization or a person assisting that member in that collection without remuneration. 45

“ Hospitals

“Hospitals and Charities Commission” means the Hospitals and Charities Commission constituted under the *Hospitals and Charities Act 1958*. “Hospitals and Charities Commission.”

“Net proceeds of sale” means— “Net proceeds of sale.”

5 (a) where a charity collector collects the articles—
the total proceeds of the sale less the reasonable costs of collection sale and disposal incurred by him ; or

10 (b) where the articles are collected for or on behalf of the charity collector by a charity sub-collector—the total proceeds of the sale less the amount paid to the sub-collector and the reasonable costs of sale and disposal of the articles incurred by the charity collector.

15 “Recognized organization” means— “Recognized organization.”

(a) an institution or a benevolent society which is registered under the *Hospitals and Charities Act 1958* ; or

20 (b) an organization which for the purposes of this Part is recognized in writing by the Hospitals and Charities Commission as an organization the objects of which are such that it warrants assistance by the collection of articles, so long as that recognition is not withdrawn.

25 29B. (1) A person shall not act as a charity collector unless— Charity collector's licence.
(a) he is the holder of a charity collector's licence ; and
(b) the organization for or on behalf of which he collects articles is a recognized organization.

Penalty : \$500.

30 (2) A person shall not act as a charity sub-collector unless Charity sub-collector's licence.
he is the holder of a charity sub-collector's licence.

Penalty : \$250.

29C. A charity collector's licence or charity sub-collector's licence shall not be granted to or held by— Licences not to be granted to certain persons.

35 (a) a licensed second-hand dealer under this Act ;
(b) a licensed collector or dealer under the *Marine Stores and Old Metals Act 1958* ;
(c) any person employed by a person referred to in paragraph (a) or paragraph (b).

40 29D. (1) Any articles collected by a charity collector for or on behalf of a recognized organization shall be held by him on trust for sale for the recognized organization. Articles collected and proceeds of sale held on trust.

(2) A charity

(2) A charity collector shall hold on trust for the recognized organization an amount equal to the net proceeds of the sale of any article less an amount equal to the amount calculated for the purposes of section 29G.

(3) A charity collector shall within the time specified in the agreement deliver to the recognized organization the amount held on trust pursuant to sub-section (2) and any article collected by himself or a charity sub-collector employed by him which is not sold or otherwise disposed of in accordance with the agreement. 5

(4) A charity sub-collector shall deliver to the charity collector by whom he is engaged any articles collected by him. 10

(5) A charity collector shall be deemed to hold the articles collected by a charity sub-collector engaged by him on trust for the recognized organization from the time of collection by the charity sub-collector. 15

Conditions of collection.

29E. (1) The collection of articles by a charity collector or a charity sub-collector shall be carried out in conformity with the following conditions :—

(a) The collection of articles shall be carried out in accordance with the prescribed agreement between the recognized organization and the charity collector ; 20

(b) The collection of articles within any municipality shall be made only in such areas and on such days and during such hours as the council of the municipality permits in writing ; 25

(c) Records shall be kept by the charity collector as prescribed ;

(d) Returns shall be made by the charity collector to the recognized organization as prescribed ; 30

(e) The charity collector shall at such times as are specified in the agreement pay to the recognized organization the prescribed percentage which shall be not less than 50 per centum or such lesser percentage as is determined under sub-section (2) of the net proceeds of any sale during the period to which the payment relates of articles collected by him or delivered to him by a charity sub-collector engaged by him. 35

(2) Where the Hospitals and Charities Commission, after considering the special circumstances of a particular case, determines that as a special case the minimum percentage payable by the charity collector pursuant to paragraph (e) of sub-section (1) should be reduced to a stated percentage less than 50 per centum, the determined percentage shall be the minimum percentage so payable. 40 45

29F (1) The

29F. (1) The following provisions shall apply with respect to an agreement between a charity collector and an unincorporated recognized organization :—

- 5 (a) A recognized organization may enter into an agreement which shall be sufficiently evidenced on behalf of the recognized organization if signed by not less than two members of the governing body of the recognized organization authorized to enter such an agreement ;
- 10 (b) For the purposes of any legal proceedings arising out of the agreement—
- 15 (i) any member or members of the governing body of the recognized organization authorized by a resolution of the governing body may bring any such proceedings and may sue in the proper names of any such member without any other description than the title of his office ;
- 20 (ii) no proceedings shall abate by the death resignation or removal from office of any such member in whose name proceedings have been taken or suit brought but the same may be proceeded in by any successor of such member as if such death resignation or removal had not taken place and any such successor shall pay or receive the like costs as if the proceedings had been commenced in his name for the benefit of the recognized organization ;
- 25 (iii) any person bringing or continuing any proceedings shall be entitled to be reimbursed by the recognized organization in respect of any liability incurred by him in such proceedings ; and
- 30 (iv) any money or other property received or recovered by a person in any proceeding brought or continued by him pursuant to this section shall be held on trust for the recognized organization and delivered or transferred (as the case requires) to the
- 35 recognized organization forthwith.
- 40

(2) The

(2) The governing body of a recognized organization or any member thereof shall not be liable in respect of any matter or thing arising out of an agreement beyond the property and assets of the organization.

29G. A charity collector may retain from the net proceeds of sale the balance remaining after deduction of an amount equal to the amount required to be paid to the recognized organization under paragraph (e) of sub-section (1) of section 29E. 5

Certain provisions to extend and apply to Part II.

29H. (1) Sections 6 to 15, 18 to 21, 23 to 29 and the Third, Fourth and Fifth Schedules shall with such modifications as are necessary extend and apply to and with respect to this Part, and without affecting the generality of the foregoing, in particular with the modifications that— 10

(a) a reference to a second-hand dealer shall be construed as a reference to a charity collector or a charity sub-collector (whichever is applicable), and where the reference is applicable to both, as a reference to both ; 15

(b) a reference to the premises of a second-hand dealer shall be construed as a reference to the premises of a charity collector ; 20

(c) a reference to a second-hand dealer's licence shall be construed as a reference to a charity collector's licence or a charity sub-collector's licence (whichever is applicable) and where the reference is applicable to both, as a reference to both ; 25

(d) a reference to second-hand wares shall be construed as a reference to articles ;

(e) a reference to a form in or to the effect of a form in a schedule shall be construed as a reference to a form in or to the effect of the form in that schedule as amended or substituted from time to time ; 30

(f) a reference to the production of a purchases book shall be construed as a reference to the production of such records of a charity collector as are prescribed ; 35

(g) in respect of a charity sub-collector—

(i) a reference to the carrying on of the business of a second-hand dealer shall be construed as a reference to the collecting of articles as a charity sub-collector ; 40

(ii) references in sections 6 and 7 to the court nearest the place where the business of a person who is or proposes to be a

second-hand

second-hand dealer is carried on shall be construed as references to the court nearest the residence of the person who holds or proposes to hold a charity sub-collector's licence ;

5

(iii) reference in the Third and Fourth Schedules to premises where business is carried on shall be omitted, but there shall be inserted in an appropriate place in each schedule a reference to the place of residence of the person applying for or being granted a charity sub-collector's licence.

10

(2) Notwithstanding anything in sub-section (1) a reference in section 25 to "second-hand dealer" shall not be construed as a reference to a charity sub-collector.'

15

(2) Section 87 of the *Hospitals and Charities Act* 1958 shall be amended as follows :—

Amendment of No. 6274 s. 87.

(a) In paragraph (a) of sub-section (1) the words "or goods" are hereby repealed ;

20

(b) In paragraph (a) of sub-section (4) the words "collected or" are hereby repealed.

(3) In sub-paragraph (a) of paragraph (xxxi) of sub-section (1) of section 197 of the *Local Government Act* 1958 the words "of waste materials or" are hereby repealed.

Amendment of No. 6299 s. 197 (1) (xxxi) (a). Consequential amendment relating to s. 29E (b).

25

4. The Principal Act shall be amended as follows :—

Consequential and general amendments s. 1.

(a) In section 1—

(i) after the expression "1." there shall be inserted the expression "(1)";

30

(ii) at the end of the section there shall be inserted the following expression :—

"(2) This Act is divided into Parts as follows :—

Part I.—Second-hand Dealers ss. 5–29.

Part II.—Collections for Charities ss. 29A–29H.

35

Part III.—General ss. 30–31.";

(b) In sub-section (3) of section 4 for the words "this Act" there shall be substituted the expression "any of the provisions of this Act other than section 30A";

40

(c) Before section 5 there shall be inserted the following heading :—

Headings for new Parts.

"PART I.—SECOND-HAND DEALERS.";

(d) Before

(d) Before section 30 there shall be inserted the following heading :—

“PART III.—GENERAL.”;

(e) For sub-section (1) of section 30 there shall be substituted the following sub-section :—

‘(1) The following fees shall be paid under this Act, namely :—

(a) For the issue or renewal of a licence to carry on the business of a second-hand dealer or a charity collector in the premises in respect of which the licence is granted—\$10 ;

(b) For the issue or renewal of a charity sub-collector’s licence—\$4 ;

(c) For a duplicate of a licence lost or destroyed —\$1 ;

(d) For the transfer of a licence because of removal to new premises—\$1 ;

(e) For the transfer of a licence to a transferee —\$1.’;

(f) After section 30 there shall be inserted the following sections :—

‘30A. (1) A person shall not hold himself out as carrying on a business wholly or mainly for the benefit of a charitable philanthropic benevolent or public purpose or organization unless the person is carrying on the business wholly or mainly for the benefit of the purpose or organization as held out.

(2) A person shall not cause or permit premises to be used for the carrying on of a business purporting to be a business carried on for the benefit of a charitable philanthropic benevolent or public purpose or organization unless the premises are being used wholly or mainly for such a business.

(3) In a prosecution under sub-section (1) or sub-section (2) the onus of proof that the business is carried on wholly or mainly for the purpose held out or that the premises are used wholly or mainly for the carrying on of a business for the purpose held out shall be on the defendant.

(4) A person

New s. 30A,
30a and 30c.

Business
conducted for
charitable
purposes.

(4) A person shall not be guilty of an offence under sub-section (2) by reason only that he is the owner of an estate or interest in the premises.

30B (1) A person in charge of any business where second-hand wares are sold shall not cause or permit the words "opportunity shop" or any abbreviation thereof—

Use of words
"opportunity
shop."

(a) to be or to remain painted affixed or placed on or in the premises where the business is carried on or in such close proximity to those premises that it could reasonably be inferred that the words are used in respect of that business ; or

(b) to be used in any advertisement or document relating or referring to that business—

unless the Hospitals and Charities Commission has given written permission (which has not been withdrawn) that the words may be so used in connexion with that business and those premises.

(2) Any person who contravenes or fails to comply with any of the provisions of sub-section (1) shall be liable to a penalty of not more than \$100 and to a further penalty of \$20 for each day the offence continues after conviction.

30C. (1) A person who wilfully makes any false or misleading statement or wilfully furnishes any false or misleading information in or with respect to an application for a licence under this Act shall be liable to a penalty of not more than \$500.

False
information.

(2) A person who wilfully falsifies any record or return required to be kept or made by or under this Act shall be liable to a penalty of not more than \$100 ;

Falsifying
records or
returns.

(g) In sub-section (1) of section 31—

(i) after the words "may make regulations" there shall be inserted the words "for or with respect to" ;

(ii) after paragraph (b) there shall be inserted the following paragraphs :—

"(ba) identification tags or discs to be worn or carried by charity collectors and charity sub-collectors ;

S. 31.
Regulations.

(bb) the

(bb) the naming on vehicles and containers used for the collection of articles by charity collectors or charity sub-collectors of the organization in respect of which the relevant collection is being made, and any matters relating to or concerning such naming ;” ; 5

(iii) in paragraph (c)—

after the word “ books ” there shall be inserted the word “ records ” ; 10

for the words “ register-books ” there shall be substituted the words “ registers books and records ” ;

(iv) after paragraph (c) there shall be inserted the following paragraph :— 15

“(ca) the terms and conditions which may be included in an agreement between a charity collector and a registered organization for the purposes of Part II. and the form of the agreement.” ; 20

(v) in paragraph (g) after the word “ things ” there shall be inserted the words “ authorized or required to be prescribed by this Act or ” ; 25

Regulations.

Second
Schedule.

(h) In clause 7 of the Second Schedule for the expression “ section 87 of the *Hospitals and Charities Act 1958* ” there shall be substituted the expression “ Part II. of the *Second-hand Dealers Act 1958* ”. 30

Amendment of
No. 6363.

5. The Principal Act shall be amended as follows :—

(a) In section 14—

(i) the word “ lunatic ” is hereby repealed ;

(ii) for the expression “ *Mental Hygiene Act 1958* ” there shall be substituted the expression “ *Mental Health Act 1959* ” ; and 35

(b) In section 27 for the expression “ one hundred and forty-one of the *Justices Act 1958* ” there shall be substituted the expression “ 75 of the *Magistrates' Courts Act 1971* ”. 40