



Australian Capital Territory

# Charitable Collections Act 2003

A2003-17

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Australian Capital Territory

# Charitable Collections Act 2003

A2003-17

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An Act to regulate collections for charities, and for other purposes

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*Notified under the Legislation Act 2001 on 9 April 2003  
(see [www.legislation.act.gov.au](http://www.legislation.act.gov.au))*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Charitable Collections Act 2003*.

### 2 Commencement

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*collection*—see section 7.' means that the expression 'collection' is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Part 2 Objects and key concepts

### 6 Objects of Act

The objects of this Act are—

- (a) to promote proper management and administration of collections; and
- (b) to ensure proper record-keeping and auditing of accounts for collections; and
- (c) to ensure that the public has access to information about collections.

### 7 What is a *collection*

- (1) For this Act, a *collection* is the soliciting or receiving by a person of money or a benefit if, before or during the soliciting or receiving, the person represents that the purpose of the soliciting or receiving, or that the purpose of an activity or enterprise of which the soliciting or receiving is part, is or includes a charitable purpose.
- (2) For subsection (1), it is immaterial whether the money or benefit is solicited or received—
  - (a) in person; or
  - (b) by post, telephone, email, fax or other means; or
  - (c) as a donation or otherwise.

#### Examples for par (c)

- 1 by participation in a lottery, art union or competition
- 2 by placing clothing in a clothing bin operated by a charity
- 3 by giving goods to an op-shop
- 4 by sponsorship for a walkathon, telethon or similar event
- 5 in relation to the supply of food, entertainment or other goods or services

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) A *collection* does not include the following:

- (a) soliciting or receiving money or a benefit from the carrying out of an approved lottery or exempt lottery, other than an exempt lottery for a charitable purpose;
- (b) soliciting or receiving a bequest under a will;
- (c) soliciting a person to become a member of an entity or to pay the joining or membership fee of an entity;

*Note* **Entity** includes an individual, corporation and unincorporated body, see Legislation Act, dict, pt 1, defs **entity** and **person**.

- (d) soliciting or receiving money or a benefit by, or on behalf of, an entity on premises owned or leased by the entity from members and guests solely or mainly for the entity's purposes;
- (e) soliciting or receiving money or a benefit solely or mainly from people sharing a common employer, principal or workplace by one of those people for a purpose connected directly with another of those people or with a relative or domestic partner of another of those people;

*Note* **Domestic partner** is defined in the Legislation Act, s 169.

- (f) soliciting or receiving money or a benefit from an Australian government (including a local government) or a public entity created by, or that represents in any capacity, an Australian government (including a local government);
- (g) anything else declared under the regulations not to be a collection.

**Example for par (d)**

a collection taken up during a church service

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) In this section:

**approved lottery** means an approved lottery under the *Lotteries Act 1964* or a lottery, scheme or competition approved under a corresponding State law.

*exempt lottery* means—

- (a) an exempt lottery under the *Lotteries Act 1964*; or
- (b) a lottery, scheme or competition that is exempt under a corresponding State law.

## 8 Who *conducts* a collection

- (1) For this Act, a person *conducts* a collection if the person organises or manages, or assists in organising or managing, the collection in any capacity other than as an employee or agent.

*Note* A person acting in the capacity of an employee or agent *takes part* in a collection, see s 9 (1) (b).

- (2) For subsection (1), it is immaterial whether the person—
- (a) is a volunteer or is being paid; or
  - (b) is the only person taking part in the collection; or
  - (c) acts in person or by an employee or agent; or
  - (d) is acting on the person’s own behalf or as an executive officer of an entity.

*Note* *Entity* includes an individual, corporation and unincorporated body, see Legislation Act, dict, pt 1, defs *entity* and *person*.

- (3) Despite subsection (1), if a commercial fundraiser conducts all or part of a collection for someone else (the *principal*) who is conducting the collection, a reference in this Act to a person who *conducts* the collection includes a reference to the commercial fundraiser in relation to any aspect of the collection conducted by the commercial fundraiser.
- (4) To remove any doubt, subsection (3) does not prevent the application of this Act to the principal in relation to any aspect of the collection (including any aspect conducted by the commercial fundraiser), and, in particular, does not relieve the principal of the principal’s obligation to ensure that this Act is fully complied with in relation to the collection.

**9 Who *takes part* in a collection**

- (1) For this Act, a person *takes part* in a collection if—
- (a) the person solicits or receives money or a benefit for the purposes of the collection; or
  - (b) the person organises or manages, or assists in organising or managing, the collection as an employee or agent.
- (2) To remove any doubt, a person who conducts a collection also *takes part* in the collection if the person solicits or receives money or a benefit for the purposes of the collection.

**10 Meaning of *proceeds* of a collection**

For this Act, the *proceeds* of a collection means—

- (a) money or benefits received for the purposes of the collection; and
- (b) money or benefits obtained, directly or indirectly, because of the carrying out of the collection; and
- (c) money or benefits derived, whether completely or partly or directly or indirectly, from money or benefits mentioned in paragraph (a) or (b).

**11 Meaning of *benefit***

For this Act, *benefit* includes—

- (a) property (other than money); and
- (b) any gain or reward.

*Note* *Property* is defined in the Legislation Act, dict, pt 1.

**12 Meaning of *commercial fundraiser***

For this Act, a *commercial fundraiser*, for a collection, is a person who is engaged on a commercial basis by a person conducting the collection to conduct all or part of the collection for the other person.

**13 Meaning of *licensee***

For this Act, a *licensee* is the holder of a licence.

*Note* For the application of this Act to a licence issued to an unincorporated body, see div 4.2 (Unincorporated bodies).

## Part 3 Collections—offences

### 14 Unlawfully conducting collections

- (1) A person commits an offence if—
  - (a) the person conducts a collection; and
  - (b) the person is not authorised by a licence to conduct the collection.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) This section does not apply if the person is authorised to conduct the collection by the licensee for the licence authorising the conduct of the collection.
- (3) An offence against this section is a strict liability offence.

### 15 Unlawfully taking part in collections

- (1) A person commits an offence if—
  - (a) the person takes part in a collection; and
  - (b) the person is not authorised by the relevant licensee to take part in the collection; and
  - (c) either—
    - (i) the person knows that he or she is not authorised to take part in the collection; or
    - (ii) the person is reckless about whether he or she is authorised to take part in the collection.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) This section does not apply to the licensee for the licence authorising the conduct of the collection.

(3) In this section:

*relevant licensee*, for a person taking part in a collection, means the licensee for the licence authorising the conduct of the collection.

## **16 Identifying tags to be displayed when collecting personally**

(1) A person commits an offence if—

- (a) the person takes part in a collection; and
- (b) while taking part in the collection, the person personally solicits or receives money or a benefit from someone else for the purposes of the collection; and
- (c) the person is not displaying a complying identifying tag while the person solicits or receives the money or benefit.

Maximum penalty: 50 penalty units.

(2) This section does not apply to a person who takes part in a collection by post or telephone, email, fax or other electronic means.

(3) An offence against this section is a strict liability offence.

(4) In this section:

*complying identifying tag*, for a person taking part in a collection, means a badge or tag that—

- (a) does not contravene any conditions of the licence authorising the conduct of the collection; and
- (b) complies with any requirements prescribed under the regulations.

## **17 Required information to be given for collections**

(1) A person commits an offence if—

- (a) the person takes part in a collection; and
- (b) the person solicits or receives money or a benefit from someone else for the purposes of the collection; and

- (c) before soliciting or receiving the money or benefit the person fails to make available, or offer to make available, the required information (if any) in an approved way to the person from whom the money or benefit is solicited or received.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.  
(3) In this section:

**approved way**, for a collection, means—

- (a) any way required by the conditions of the licence authorising the conduct of the collection; and  
(b) any way prescribed under the regulations.

**required information**, for a collection, means—

- (a) any information about the collection required by the conditions of the licence authorising the conduct of the collection; and  
(b) any information prescribed under the regulations.

**Examples**

- 1 A charity holds a licence authorising it to conduct collections in conjunction with retail businesses. A fast food company is authorised by the charity to conduct a collection for the charity based on sales over a particular period. The licence conditions require each advertisement for the collection to state the following information (the **required information**):

- the amount per sale or item sold that will be given to the charity
- the period over which the collection will be carried out
- the collection is authorised by the charity.

The licence conditions also require the fast food company to display brightly coloured triangular signs of a certain size (the **approved way**) containing the information in each outlet for the period of the collection.

- 2 A charity holds a licence authorising it to conduct a particular collection. The charity engages a commercial fundraiser to conduct the collection for it. The licence conditions provide that if the licensee engages a commercial fundraiser, each advertisement for the collection must state the following information (the **required information**):

- the licensee has engaged a named commercial fundraiser for the collection

- the amount of remuneration payable to the commercial fundraiser or how the remuneration is to be calculated.

The licence conditions also require each person taking part in the collection to display, in addition to (or as part of) a complying identifying tag (the *approved way*), a statement to the effect that the collection is being conducted by the named commercial fundraiser.

- 3 A charity holds a licence to conduct collections through clothing bins located in shopping centres. The licence conditions require the clothing bins to display a statement (the *required information*) in a particular form (the *approved way*) about who benefits from the collection.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## 18 False or misleading information about collections etc

- (1) A person commits an offence if—
- (a) the person is conducting or taking part in a collection; and
  - (b) the person gives information about the collection, or something required or permitted to be done under this Act in relation to the collection, to someone else; and
  - (c) the person does so knowing that the information—
    - (i) is false or misleading; or
    - (ii) omits something without which the information is misleading.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

*Note 1* For other offences about false or misleading statements to the chief executive in relation to applications etc, see s 60.

*Note 2* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) A person commits an offence if—
- (a) the person is conducting or taking part in a collection; and
  - (b) the person gives information about the collection, or something required or permitted to be done under this Act in relation to the collection, to someone else; and
  - (c) the person is reckless about whether the statement—
    - (i) is false or misleading; or
    - (ii) omits something without which the information is misleading.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (3) Subsections (1) (c) (i) and (2) (c) (i) do not apply if the information is not false or misleading in a material particular.
- (4) Subsections (1) (c) (ii) and (2) (c) (ii) do not apply if the omission does not make the information misleading in a material particular.
- (5) In this section:  
*collection* includes proposed collection.

## **19 False or misleading documents about collections etc**

- (1) A person commits an offence if—
- (a) the person is conducting or taking part in a collection; and
  - (b) the person produces a document to someone else; and
  - (c) the person does so knowing the document is false or misleading; and

- (d) the document contains information about the collection or something required or permitted to be done under this Act in relation to the collection.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

*Note 1* For other offences about false or misleading statements to the chief executive in relation to applications etc, see s 60.

*Note 2* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) Subsection (1) does not apply if the document is not false or misleading in a material particular.
- (3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a signed statement—
- (a) stating that the document is, to the signing person's knowledge, false or misleading in a material particular; and
  - (b) setting out, or referring to, the material particular in which the document is, to the signing person's knowledge, false or misleading.
- (4) The statement under subsection (3) must be signed by—
- (a) the person; or
  - (b) if the person who produces the document is a corporation—by a competent officer of the corporation.
- (5) A person commits an offence if—
- (a) the person is conducting or taking part in a collection; and
  - (b) the person produces a document to someone else; and
  - (c) the person is reckless about whether the document is false or misleading; and

- (d) the document contains information about the collection or something required or permitted to be done under this Act in relation to the collection.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (6) Subsection (5) does not apply if the document is not false or misleading in a material particular.

- (7) In this section:

*collection* includes proposed collection.

*document* includes a badge or tag.

*produce* includes display.

## **20 Alternative verdicts for offences against s 18 and s 19**

- (1) This section applies if, in a prosecution for an offence against section 18 (1) or 19 (1) (a *primary offence*), the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of—
- (a) for a prosecution for an offence against section 18 (1)—an offence against section 18 (2) (an *alternative offence*); or
  - (b) for a prosecution for an offence against section 19 (1)—an offence against section 19 (5) (also an *alternative offence*).
- (2) The trier of fact may find the defendant guilty of the relevant alternative offence but only if the defendant has been given procedural fairness in relation to that finding of guilt.

## Part 4 Licences to conduct collections

### Division 4.1 Issue and surrender of licences

#### 21 Application for licence

- (1) An entity may apply in writing to the chief executive for a licence authorising the entity to conduct a collection.

*Note 1* **Entity** includes an individual, corporation and unincorporated body, see Legislation Act, dict, pt 1, defs **entity** and **person**.

*Note 2* A fee may be determined under s 63 (Determination of fees) for this section.

*Note 3* If a form is approved under s 64 (Approved forms) for an application, the form must be used.

- (2) If the entity is an unincorporated body, the application must—
- (a) be made by an executive officer of the body on behalf of the body; and
  - (b) include the full name, address and contact telephone number of an individual who is to be the nominated person for the body in relation to the licence; and
  - (c) include, or be accompanied by, the written consent of the individual to be the nominated person for the body in relation to the licence.

*Note* **Nominated person** is defined in s 30.

- (3) An application may relate to a particular collection or collections, particular kinds of collections, or collections generally.
- (4) A single application may be made by 2 or more entities for licences authorising each of them to conduct a collection or collections if each entity is identified in the application.

## 22 Further information etc

- (1) The chief executive may, by written notice given to an applicant, require the applicant to give the chief executive further stated information or a stated document that the chief executive reasonably needs to decide the application.

*Note* For how documents may be given, see Legislation Act, pt 19.5.

- (2) If the applicant fails to comply with a requirement under subsection (1), the chief executive may refuse to consider the application further.

## 23 Decision on application for licence

- (1) On application for a licence, the chief executive must issue, or refuse to issue, the licence.
- (2) The chief executive must refuse to issue a licence—
  - (a) if satisfied that the purposes of the proposed collection to which the application relates are not for, or do not include, a charitable purpose; or
  - (b) for an application in relation to an entity that is not the applicant—unless satisfied the entity has agreed to the application.

### Example for par (b)

A fast food company applies for a licence to conduct a sales promotion that includes a payment to a charity for each sale of a particular kind made by the company. The chief executive can issue the licence only if satisfied that the charity has agreed to the application.

*Note 1* **Entity** includes an individual, corporation and unincorporated body, see Legislation Act, dict, pt 1, defs **entity** and **person**.

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The chief executive may refuse to issue a licence if satisfied that the proposed collection to which the application relates will not be conducted or carried out in a proper way (including in relation to the supervision of people taking part in the collection).

- (4) The chief executive may also refuse to issue a licence if satisfied that—
- (a) for an application by an individual—
    - (i) the person, or an associate of the person, has committed a disqualifying act; or
    - (ii) the person is taking the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) any part of the person's income is assigned for the benefit of the person's creditors; or
  - (b) for an application by a body—
    - (i) an executive officer, or an associate of an executive officer, of the body has committed a disqualifying act; or
    - (ii) the body is an externally-administered body corporate; or
    - (iii) if the body is an unincorporated body—the nominated person for the body has committed a disqualifying act.
- (5) This section does not limit the matters to which the chief executive may have regard in making a decision on an application for a licence.
- (6) In this section:

**associate**—a person is an **associate** of someone else in relation to an application for a licence if the person can, or will be able to, have a significant influence over, or in relation to, the carrying out of a collection to which the application relates.

**commit** a disqualifying act includes engaging in a disqualifying act.

**disqualifying act** means—

- (a) a contravention of this Act or a corresponding State law, whether or not the contravention is an offence; or
- (b) an offence involving fraud or dishonesty of which the person has been convicted or found guilty; or

(c) a contravention of a condition of a licence.

*Note 1* For the meaning of *found guilty*, see Legislation Act, dict, pt 1.

*Note 2* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

*externally-administered body corporate*—see the Corporations Act, section 9.

## **24 Conditions of licence**

A licence is subject to the conditions (if any) stated in the licence or in a document stated by the licence to form part of the licence.

## **25 Term of licence**

A licence is issued for the period (not longer than 5 years) stated in the licence.

## **26 Licence not transferable**

A licence is not transferable.

## **27 Form of licence**

- (1) A licence must include the following information:
  - (a) the licensee's full name, address and contact telephone number;
  - (b) if the licensee is a nominated person for an unincorporated body—the name of the body;
  - (c) the collection or collections the licensee is authorised to conduct under the licence;
  - (d) the purposes of the collection or collections authorised by the licence;
  - (e) the date (or dates) when, or the period (or periods) over which, the collection or collections are to be carried out;

- (f) the form the collection or collections are to take;
- (g) the period for which the licence is issued;
- (h) any other information prescribed under the regulations.

**Examples for par (f)**

- 1 door-to-door
- 2 public place
- 3 clothing bin
- 4 telephone
- 5 letter

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A licence may also include any other information the chief executive considers appropriate.
- (3) To remove any doubt, a licence may authorise a particular collection or collections, particular kinds of collections, or collections generally.

## **28 Replacement of licence**

- (1) The chief executive may issue a replacement licence to a licensee if satisfied that the licence has been lost, stolen or destroyed.
- (2) Before acting under subsection (1), the chief executive may require the licensee to give the chief executive a statement, verified by a statutory declaration signed by the licensee, that the licence has been lost, stolen or destroyed.

*Note 1* A fee may be determined under s 63 (Determination of fees) for this section.

*Note 2* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

*Note 3* For how documents may be given, see Legislation Act, pt 19.5.

## 29 Surrender of licence

- (1) A licensee may apply in writing to the chief executive to surrender the licence.
- (2) The application must be accompanied by the licence.
- (3) However, if the licence has been lost, stolen or destroyed, the licensee must give the chief executive a statement, verified by a statutory declaration signed by the licensee, that the licence has been lost, stolen or destroyed.

*Note 1* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

*Note 2* For how documents may be given, see *Legislation Act*, pt 19.5.

- (4) On receiving the application, the chief executive may—
  - (a) accept the surrender of the licence; or
  - (b) refuse to accept the surrender of the licence if—
    - (i) action is being taken under division 4.3 (Amendment, suspension and cancellation of licences) to suspend or cancel a licence; or
    - (ii) the licensee has failed to comply with part 5 (Application of proceeds of collections).
- (5) If the chief executive accepts the surrender of the licence, the licence is taken to have ended.

## Division 4.2 Unincorporated bodies

### 30 Who is the *nominated person*?

For this Act, the *nominated person* for an unincorporated body in relation to a licence, or an application for a licence, is—

- (a) the individual named in the application for the licence as the individual who is to be the nominated person for the body in relation to the licence; or
- (b) if under section 33 (Change of nominated person) another individual is the nominated person for the body in relation to the licence—that individual.

### **31 Unincorporated bodies—nominated person is licensee**

- (1) If a licence is issued to an unincorporated body, the nominated person for the body in relation to the licence is taken to be the licensee.

#### **Examples**

- 1 If a notice or other document is required (or permitted) to be given under this Act to the licensee of a licence issued to an unincorporated body, the notice or other document must (or may) be given to the nominated person for the body in relation to the licence to which the notice or document relates.
- 2 If, under this Act, something must be done by the licensee of a licence issued to an unincorporated body, the nominated person for the body in relation to the licence to which the thing relates is required to do the thing. If failure to do the thing is an offence, the nominated person commits the offence.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) However, if at any time there is not a nominated person for the unincorporated body in relation to the licence, the executive officers of the body are jointly and severally taken to be the licensee.

#### **Examples**

- 1 The notice or other document mentioned in s (1), example 1 must (or may) be given to any executive officer of the body.
- 2 For a thing to which s (1), example 2 applies, each executive officer of the body is required to do the thing (or ensure that it is done). If failure to do the thing is an offence, each executive officer commits the offence.

### **32 Resignation of nominated person**

- (1) This section applies to an individual who is the nominated person for an unincorporated body in relation to a licence.
- (2) The individual may resign as nominated person by written notice given to—
- (a) the chief executive; and
  - (b) an executive officer of the body.

*Note* For how documents may be given, see Legislation Act, pt 19.5.

- (3) The executive officer who is given a notice under subsection (2) must give written notice of the resignation to each other executive officer of the unincorporated body as soon as practicable (but within 7 days) after the day the officer receives the notice of resignation.

Maximum penalty: 5 penalty units.

- (4) An offence against this section is a strict liability offence.

### **33 Change of nominated person**

- (1) An unincorporated body may, by written notice given to the chief executive, nominate an individual (the *relevant person*) to be the nominated person for the body in relation to a licence issued to the body.

*Note* For how documents may be given, see Legislation Act, pt 19.5.

- (2) The notice must—
- (a) be given by an executive officer of the body on behalf of the body; and
  - (b) include the relevant person's full name, address and contact telephone number; and
  - (c) include, or be accompanied by, the written consent of the relevant person to be the nominated person for the body in relation to the licence.
- (3) On receipt of the notice by the chief executive, the relevant person becomes the nominated person for the body in relation to the licence, and anyone who was the nominated person for the body in relation to the licence immediately before receipt of the notice ceases to be the nominated person.



**35 Amendment, suspension or cancellation of licence—  
other grounds**

- (1) The chief executive may amend, suspend or cancel a licence—
- (a) if satisfied, on reasonable grounds, that a circumstance mentioned in section 23 (2), (3) or (4) (Decision on application for licence) that would allow the chief executive to refuse to issue a licence applies in relation to the licence; or
  - (b) if the licensee contravenes a condition of the licensee's licence.

**Examples for par (a)**

- 1 a collection authorised to be conducted under the licence is not, or is no longer, for a charitable purpose
- 2 the licensee has committed an offence against this Act

*Note 1* For the power to require information or documents, see s 53.

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) If the chief executive proposes to amend, suspend or cancel a licence (the ***proposed action***), the chief executive must give the licensee a written notice that—
- (a) states the proposed action, including any proposed amendment of the licence or suspension period; and
  - (b) states the grounds for the proposed action; and
  - (c) tells the licensee that the licensee may, within 14 days beginning the day after the day the licensee receives the notice, give a written response to the chief executive about the matters in the notice.

*Note* For how documents may be given, see Legislation Act, pt 19.5.

- (3) If the licensee is a nominated person for an unincorporated body, the chief executive must also give a copy of the notice to an executive officer of the body.
- (4) In deciding whether to amend, suspend or cancel the licence, the chief executive must consider any response given to the chief executive in accordance with subsection (2) (c).

- (5) If the chief executive is satisfied that grounds for taking the proposed action have been established, the chief executive may—
- (a) if the proposed action is to cancel the licence—cancel the licence, suspend the licence for a period of not longer than 1 year or amend the licence; or
  - (b) if the proposed action includes suspending the licence for a stated period—suspend the licence for a period of not longer than that period or amend the licence; or
  - (c) if the proposed action includes amending the licence—amend the licence in a way that is no more onerous than the proposed amendment.
- (6) To remove any doubt, the amendment of a licence under this section may include the imposition of a condition on the licence and the amendment of a condition to which the licence is subject.

### **36 Notice and operation of decision to amend etc licence**

- (1) The chief executive must give the licensee written notice of—
- (a) the chief executive's decision under section 35 (5); and
  - (b) if the chief executive suspends or cancels the licence—the effect of section 38 (Action to be taken by former licensee when licence suspended or cancelled).
- (2) If the licensee is a nominated person for an unincorporated body, the chief executive must also give a copy of the notice to an executive officer of the body.
- (3) The amendment, suspension or cancellation of the licence takes effect 14 days after the day when notice of the amendment, suspension or cancellation is given to the licensee or, if the notice states a later date of effect, that date.
- (4) If the chief executive amends a licence under section 35, the chief executive must give the licensee an amended licence for the remainder of the term of the licence amended.

*Note* A licensee must return the licence for amendment if required, see s 39.

**37 Directions to licensee given notice of proposed suspension or cancellation**

- (1) This section applies to a licensee if—
  - (a) the licensee is given a notice under section 35 (2) (Amendment, suspension or cancellation of licence—other grounds); and
  - (b) the notice states that the chief executive proposes to suspend or cancel the licensee’s licence.
- (2) The chief executive may, in the notice or by later written notice, give the licensee written directions in relation to any of the following:
  - (a) the carrying out of any collection that the licensee has begun to carry out, including, for example, stopping the carrying out of the collection;
  - (b) the carrying out of any other collection, including, for example, not beginning to carry out a new collection;
  - (c) the paying out or otherwise distributing or dealing with any proceeds of a collection.

*Note 1* For how documents may be given, see Legislation Act, pt 19.5.

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) A person commits an offence if the person contravenes a direction given to the person under subsection (2).  
Maximum penalty: 100 penalty units, imprisonment for 1 year or both.
- (4) To remove any doubt, a direction given under subsection (2) to a person while the person is a licensee continues to apply to the person even if the person ceases to be a licensee.
- (5) This section is in addition to, and not limited by, section 38 and section 51 (Chief executive may order distribution of proceeds).
- (6) An offence against this section is a strict liability offence.

**38 Action to be taken by former licensee when licence suspended or cancelled**

- (1) If the chief executive suspends or cancels a licence under section 35 (Amendment, suspension or cancellation of licence—other grounds), the person who is or was the licensee (the *former licensee*)—
- (a) must stop carrying out any collection that the former licensee was carrying out under the licence immediately before the suspension or cancellation took effect; and
  - (b) if the licence is suspended—must not resume carrying out any collection authorised by the licence that the former licensee had stopped carrying out, or begin to carry out any new collection under the licence, until the suspension ends; and
  - (c) if the licence is cancelled—must not resume carrying out any collection authorised by the licence that the former licensee had stopped carrying out, or begin to carry out any new collection under the licence; and
  - (d) must, within 3 days after the day the suspension or cancellation takes effect, give the chief executive a statement of the proceeds of each collection carried out by the former licensee under the licence, whether or not the proceeds are still held by, or under the control of, the former licensee; and

*Note* If a form is approved under s 64 (Approved forms) for the statement, the form must be used.

- (e) must not pay out or otherwise distribute or deal with any proceeds held by, or under the control of, the former licensee of a collection carried out by the former licensee under the licence except with the chief executive's written agreement and in accordance with any written directions of the chief executive; and
- (f) must pay out or otherwise distribute or deal with any proceeds held by, or under the control of, the former licensee of a collection carried out by the former licensee under the licence

in accordance with any written directions of the chief executive.

- (2) The former licensee commits an offence if the former licensee contravenes subsection (1).

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) An offence against this section is a strict liability offence.

### **39 Failing to return amended, suspended or cancelled licence**

- (1) A licensee commits an offence if—
- (a) the licence is amended, suspended or cancelled; and
  - (b) the chief executive gives the licensee a written notice requiring the licensee to return the licence to the chief executive within a stated reasonable time; and
  - (c) the person does not comply with the requirement.

Maximum penalty: 5 penalty units.

*Note* For how documents may be given, see Legislation Act, pt 19.5.

- (2) An offence against this section is a strict liability offence.

## **Division 4.4 Register of licences**

### **40 Register of licences**

- (1) The chief executive must keep a register of licences.
- (2) For each licence, the chief executive must enter in the register the information mentioned in section 27 (1) (Form of licence).
- (3) The register may also include any other information the chief executive considers appropriate.
- (4) The register may be kept in the form of, or as part of, 1 or more computer databases or in any other form the chief executive considers appropriate.
- (5) The chief executive may correct any mistake, error or omission in the register, subject to the requirements (if any) of the regulations.

**41 Public access to register**

- (1) Anyone may, without charge, inspect the register during ordinary office hours.
- (2) A person may obtain a copy of all or part of the register on payment of reasonable copying costs.

**42 Licensee to notify change of name and address**

- (1) A licensee commits an offence if—
  - (a) the licensee's name, address or contact telephone number shown on the licence changes; and
  - (b) the licensee does not, as soon as practicable (but within 7 days) after the change happens—
    - (i) tell the chief executive, in writing, of the change; and
    - (ii) return the licence to the chief executive for amendment.

Maximum penalty: 5 penalty units.

- (2) The chief executive must give the licensee an amended licence for the remainder of the period of the licence amended.
- (3) An offence against this section is a strict liability offence.

## Part 5                      Application of proceeds of collections

### 43      Definitions for pt 5

In this part:

*ends*, for a licence, includes the ending of the licence by cancellation or surrender of the licence.

*licensee* includes a person who has ceased to be a licensee.

### 44      Proceeds of collections

- (1) A licensee commits an offence if the licensee fails to ensure that the proceeds of a collection conducted by the licensee are applied only for the purposes of the collection.

Maximum penalty: 50 penalty units.

*Note*      An offence against this subsection is a strict liability offence, see s (8).

- (2) A licensee commits an offence if—
- (a) a person (including the licensee) receives proceeds of a collection conducted by the licensee; and
  - (b) the proceeds are applied other than for the purposes of the collection; and
  - (c) the licensee knows that, or is reckless about the fact that, the proceeds are so applied.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (3) This section does not apply to the deduction of lawful and proper expenses in accordance with the conditions (if any) of the licensee's licence or the regulations.
- (4) The regulations may make provision in relation to the expenses that are, or are not, lawful and proper expenses for collections.

- (5) This section is subject to any other Territory law (including the doctrine of cy pres) about the application of trust property (including money).

*Note* If a donor's charitable intention is impossible or impracticable to give effect to, under the cy pres doctrine the courts will allow the intention to be given effect to as nearly as possible.

- (6) Any other Territory law about trust property (including the doctrine of cy pres) applies to any proceeds mentioned in subsection (1) that is not trust property as if the proceeds were trust property.
- (7) The proceeds of a collection may be applied outside the ACT, except to the extent that to apply the proceeds in that way would contravene—
- (a) a Territory law (including this section); or
  - (b) a condition of the licence authorising the conduct of the collection.
- (8) An offence against subsection (1) is a strict liability offence.

#### **45 Payment into trust bank account**

- (1) A licensee commits an offence if—
- (a) the licensee receives money (including any proceeds of a benefit) for the purposes of a collection conducted by the licensee; and
  - (b) the licensee fails to pay the money, in full and without any deductions for expenses, into an account in accordance with this section.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) The licensee must pay the money into a trust bank account that is used exclusively for money received for the purposes of the collection or of collections that include the collection.
- (3) The money must be paid into the account as soon as practicable (but within 5 banking days) after the day the licensee receives it.

- (4) However, if the money is paid by direct deposit or electronic transfer into another account kept by the licensee, the licensee must pay the money into an account mentioned in subsection (2) on the next banking day after the day the licensee becomes aware of the payment.
- (5) An offence against this section is a strict liability offence.
- (6) In this section:

**banking day**, for an account that is kept at a branch of an authorised deposit-taking institution, means a day (other than a Saturday or Sunday) when the branch is open for business.

*Note* For the meaning of **authorised deposit-taking institution**, see Legislation Act, dict, pt 1.

**trust bank account** means a trust account that—

- (a) is kept with an authorised deposit-taking institution; and
- (b) has a name that indicates that it contains the proceeds of a collection; and
- (c) can only be operated by the signature of at least 2 people.

#### **46 Investment of collection money**

Money (including any proceeds of a benefit) received by a licensee for the purposes of a collection that is not immediately required to be applied for those purposes is held by the licensee as trustee and may be invested only in a way authorised by law for the investment of trust funds.

#### **47 Finalised accounts**

- (1) A licensee commits an offence if—
- (a) the licensee conducts a collection; and
  - (b) the collection is carried out over a period of 1 year or less; and
  - (c) the licensee fails to ensure that the required accounts are finalised within 90 days after the earlier of the following events:
    - (i) the day the collection ends;

(ii) the day the licence ends.

Maximum penalty: 50 penalty units.

- (2) A licensee commits an offence if—
- (a) the licensee conducts a collection; and
  - (b) the collection is carried out over a period of longer than 1 year; and
  - (c) the licensee fails to ensure that the required accounts are finalised within 90 days after the end of each 12-month period for which the collection is carried out.

Maximum penalty: 50 penalty units.

- (3) A licensee commits an offence if—
- (a) the licensee conducts a collection; and
  - (b) the collection is carried out over a period of longer than 1 year; and
  - (c) the licensee fails to ensure that the required accounts are finalised within 90 days after the earlier of the following events:
    - (i) the day the collection ends;
    - (ii) the day the licence ends.

Maximum penalty: 50 penalty units.

**Examples**

- 1 Charity Inc is issued with a licence for 1 year. The licence authorises 2 collections: a doorknock appeal to be carried out over a weekend shortly after the licence is issued and an ongoing collection to be carried out over the period of the licence by donation tins placed on selected shop counters.  
Under section 47, the required accounts for the doorknock must be finalised within 90 days after the day the doorknock appeal ends and the required accounts for the donation tins must be finalised within 90 days after the day the licence ends.  
Under section 48, a report about both collections must be given to the chief executive within 120 days after the day the licence ends.
- 2 Charity Corp is issued with a licence for a period of 18 months to conduct a collection over that period. However, the collection is actually carried out only over the first 16 months of the period of the licence.

Under section 47, the required accounts for the first 12-month period the collection is carried out must be finalised within 90 days after the end of the 12-month period. The required accounts for the remaining period for which the collection is carried out must be finalised within 90 days after the day the collection ends (rather than within 90 days after the day the licence ends because the ending of the collection is the earlier of the 2 events mentioned in section 47 (3) (c)).

Under section 48, a report about the collection must be given to the chief executive within 120 days after the end of the first 12-month period the collection is carried out. A report about the collection for the remaining period of the collection must be given to the chief executive within 120 days after the licence ends.

- 3 If Charity Corp's 18 month licence is surrendered 3 months after it is issued, the required accounts under section 47 must be finalised within 90 days after the day the licence ends and the report under section 48 must be given to the chief executive within 120 days after the day the licence ends.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) To remove any doubt, the accounts required by subsection (2) are annual accounts.
- (5) An offence against this section is a strict liability offence.
- (6) In this section:

*required accounts*, for a collection, means—

- (a) any accounts required by the conditions of the licence authorising the conduct of the collection; and
- (b) any accounts required under the regulations.

#### **48 Reports by licensee to chief executive**

- (1) A licensee must, in accordance with this section, give the chief executive a report about all the collections conducted under the licence.

Maximum penalty: 50 penalty units.

- (2) The report must include the required information for each collection to which the licence relates.

*Note* If a form is approved under s 64 (Approved forms) for the return, the form must be used.

- (3) A report under this section must be given to the chief executive—
- (a) for a licence issued for a period of 1 year or less—within 120 days after the day the licence ends; and
  - (b) for a licence issued for a period of longer than 1 year—
    - (i) within 120 days after the end of each 12-month period for which the licence is in force; and
    - (ii) within 120 days after the day the licence ends.

**Examples**

See section 47 (3), examples.

*Note 1* For how documents may be given, see Legislation Act, pt 19.5.

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) An offence against this section is a strict liability offence.
- (5) In this section:

*required information* includes any information required under the regulations.

**49 Audit reports**

- (1) The chief executive may, by written notice given to a licensee, direct the licensee to give the chief executive, within a stated reasonable time, an auditor's report complying with this section about the accounts and records kept in relation to a collection conducted by the licensee.

*Note* For how documents may be given, see Legislation Act, pt 19.5.

- (2) The licensee commits an offence if—
- (a) the licensee is given a notice under subsection (1); and

(b) the licensee intentionally fails to comply with the notice.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

(3) The licensee commits an offence if—

(a) the licensee is given a notice under subsection (1); and

(b) the licensee fails to comply with the notice.

Maximum penalty: 50 penalty units.

*Note* An offence against this subsection is a strict liability offence, see s (7).

(4) The report must be prepared by—

(a) a registered company auditor under the Corporations Act; or

(b) an auditor approved in writing by the chief executive for this section.

(5) The auditor's report must contain the auditor's opinion about—

(a) whether money (including any proceeds of a benefit) received during, or for the purposes of, the collection has been properly accounted for and applied in accordance with this Act; and

(b) whether the accounts and records for the collection have been properly kept; and

(c) whether the accounts show a true and fair view of income and expenditure in relation to the collection.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

(6) To remove any doubt—

(a) a single auditor's report under this section may be required for 2 or more collections; and

(b) an auditor's report under this section may be required for part of the period for which a collection is carried out.

(7) An offence against subsection (3) is a strict liability offence.

## **50 Keeping of records**

(1) A licensee commits an offence if—

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- (a) the licensee carries out (or begins to carry out) a collection; and
- (b) the licensee fails to keep, in accordance with this section, records for the collection.

Maximum penalty: 50 penalty units.

- (2) The records must—
  - (a) allow a true and fair view of income and expenditure for the collection to be worked out at any given time; and
  - (b) be kept in a way that allows them to be conveniently and properly audited; and
  - (c) without limiting paragraph (a), include the details prescribed under the regulations; and
  - (d) be kept by the licensee for 7 years (or, if the chief executive, in writing, allows a shorter period, that period) after receipt of the income or the incurring of the expenditure to which they relate.
- (3) If the collection is, or was, carried out as part of a collection that is carried out inside and outside the ACT, it is not necessary for the records to be kept in a way that allows information to be identified only in relation to the ACT.
- (4) An offence against this section is a strict liability offence.

## **51 Chief executive may order distribution of proceeds**

- (1) This section applies if—
  - (a) a licence ends while a collection is being carried out under the licence; or
  - (b) the collection ends before the licence authorising the conduct of the collection ends, but the proceeds of the collection are not distributed for the purposes of the collection within 90 days after the earlier of the following events:
    - (i) the day the collection ends;
    - (ii) the day the licence ends.

- (2) The chief executive may order the licensee to distribute all or any part of the proceeds of the collection for the purposes of the collection.
- (3) The order must—
- (a) be in writing; and
  - (b) be given to the licensee; and
  - (c) state a reasonable time within which the distribution is to be made; and
  - (d) contain a statement about the effect of this section.

*Note* For how documents may be given, see Legislation Act, pt 19.5.

- (4) A licensee commits an offence if the licensee—
- (a) is given an order under this section; and
  - (b) intentionally contravenes the order.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **52 Chief executive may appoint administrator**

- (1) This section applies if, in relation to a collection, a licensee contravenes—
- (a) a direction under section 37 (2) (Directions to licensee given notice of proposed suspension or cancellation); or
  - (b) section 38 (1) (Action to be taken by former licensee when licence suspended or cancelled); or
  - (c) an order under section 51 (2) (Chief executive may order distribution of proceeds).
- (2) The chief executive may, in writing, appoint a person as an administrator for the collection.
- (3) The administrator may—
- (a) take possession of all of the proceeds of the collection; or
  - (b) prepare any accounts required under this Act in relation to the collection; or

- (c) apply the proceeds mentioned in paragraph (a) for the purposes of the collection; or
  - (d) do anything else necessary to finalise the collection in accordance with—
    - (i) any conditions of the licence authorising the conduct of the collection; or
    - (ii) any requirements prescribed under the regulations.
- Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).
- (4) The administrator's costs under this section are to be paid out of the proceeds of the collection.
  - (5) To remove any doubt, an administrator may be appointed under this section for 2 or more collections.

## Part 6 Administration

### 53 Chief executive may require information or documents about collections

- (1) The chief executive may, by written notice given to a person, require the person to give the chief executive, within a reasonable time stated in the notice, stated information or documents that the chief executive considers necessary to decide whether the person has complied with this Act.

*Note 1* For how documents may be given, see Legislation Act, pt 19.5.

*Note 2* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) The notice may state in what form the information is to be given to the chief executive.

#### Example

The notice may require that the information be verified by a statutory declaration.

*Note 1* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The notice must—
- (a) state that the requirement is made under this section; and
  - (b) contain a statement about the effect of this section.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (4) A person commits an offence if the person contravenes a notice given to the person under this section.

Maximum penalty: 50 penalty units.

- (5) The chief executive may take copies of any document provided under this section.

- (6) An offence against this section is a strict liability offence.

#### **54 Authorised people**

- (1) Each of the following is an *authorised person* for this Act:
- (a) a police officer;
  - (b) a public servant appointed under subsection (2).
- (2) The chief executive may appoint a public servant as an authorised person for this Act.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

#### **55 Identity cards**

- (1) This section applies only to an authorised person appointed under section 54 (2).
- (2) The chief executive must give each authorised person an identity card that states the person's name and appointment as an authorised person, and shows—
- (a) a recent photograph of the person; and
  - (b) the date of issue of the card; and
  - (c) the date of expiry of the card; and
  - (d) anything else prescribed under the regulations.
- (3) A person commits an offence if—
- (a) the person ceases to be an authorised person; and
  - (b) the person does not return the person's identity card to the chief executive as soon as practicable (but within 7 days) after the day the person ceases to be an authorised person.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.

**56 Authorised person's power to require name and address**

- (1) An authorised person may require a person to state the person's name and address if the authorised person—
- (a) finds the person committing an offence against this Act; or
  - (b) has reasonable grounds for believing that the person has just committed an offence against this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) If an authorised person makes a requirement of a person under subsection (1), the authorised person must—
- (a) tell the person the reasons for the requirement; and
  - (b) as soon as practicable, record those reasons.
- (3) A person commits an offence if the person—
- (a) contravenes a requirement under subsection (1); or
  - (b) states a false name or address in purported compliance with a requirement under that subsection.

Maximum penalty: 5 penalty units.

- (4) However, a person is not required to comply with a requirement under subsection (1) if, when asked by the person, the authorised person does not produce his or her identity card for inspection by the person.
- (5) Subsection (4) does not apply in relation to an authorised person who is a police officer in uniform.
- (6) An offence against this section is a strict liability offence.

## Part 7                      Review of decisions

### 57      **Meaning of *reviewable decision* for pt 7**

In this part:

*reviewable decision* means a decision of the chief executive mentioned in an item in schedule 1, column 3 under a provision of this Act mentioned in the item, column 2.

### 58      **Notice of decisions**

- (1) If the chief executive makes a reviewable decision (other than a decision mentioned in section 35 (5)), the chief executive must give written notice of the decision to each person mentioned in schedule 1, column 4 in relation to the decision.

*Note*      Notice of a decision mentioned in s 35 (5) is dealt with in s 36 (1) and (2).

- (2) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (3) In schedule 1, column 4:

*licensee* includes a person who has ceased to be a licensee.

### 59      **Review by administrative appeals tribunal of reviewable decisions**

A person may apply in writing to the administrative appeals tribunal for review of a reviewable decision within 28 days after the day the person receives notice of the decision.

## Part 8                      Miscellaneous

### 60    **False or misleading statements in applications, returns etc to chief executive**

(1) In this section:

*relevant matter* means the following:

- (a) an application for the issue or amendment of a licence;
- (b) a response to the chief executive under section 35 (2) (Amendment, suspension or cancellation of licence—other grounds);
- (c) a response to a requirement made by the chief executive under section 53 (1) (Chief executive may require information or documents about collections);
- (d) information required or permitted to be given under this Act to the chief executive in relation to a licence or collection including, for example, anything required under part 5 (Application of proceeds of collections).

*Note 1*    A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

*Note 2*    An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) A person commits an offence if—

- (a) the person makes a statement (whether orally, in a document or in any other way); and
- (b) the person does so knowing that the statement—
  - (i) is false or misleading; or
  - (ii) omits something without which the statement is misleading; and

(c) the statement is made in, or in relation to, a relevant matter.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(3) Subsection (2) does not apply to a person who produces a document if the document is accompanied by a signed statement—

(a) stating that the document is, to the signing person's knowledge, false or misleading in a material particular; and

(b) setting out, or referring to, the material particular in which the document is, to the signing person's knowledge, false or misleading.

(4) The statement under subsection (3) must be signed by—

(a) the person; or

(b) if the person who produces the document is a corporation—by an executive officer of the corporation.

(5) A person commits an offence if—

(a) the person makes a statement (whether orally, in a document or in any other way); and

(b) the person is reckless about whether the statement—

(i) is false or misleading; or

(ii) omits something without which the statement is misleading; and

(c) the statement is made in, or in relation to, a relevant matter.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(6) Subsections (2) (b) (i) and (5) (b) (i) do not apply if the statement is not false or misleading in a material particular.

(7) Subsections (2) (b) (ii) and (5) (b) (ii) do not apply if the omission does not make the statement misleading in a material particular.

## **61 Alternative verdict for offence against s 60**

(1) This section applies if, in a prosecution for an offence against section 60 (2), the trier of fact is not satisfied that the defendant is

guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against section 60 (5).

- (2) The trier of fact may find the defendant guilty of the offence against section 60 (5) but only if the defendant has been given procedural fairness in relation to that finding of guilt.

## **62 Public statements and warnings**

- (1) The Minister may make a public statement or issue a public warning about any of the matters mentioned in subsection (2) if satisfied that it is in the public interest to do so.
- (2) For subsection (1), the matters are as follows:
  - (a) collection practices or activities generally or the collection practices or activities of an entity (including commercial fundraisers);
  - (b) income and expenditure details of a particular collection;
  - (c) the percentage of the proceeds raised in a particular collection that have been distributed for the purposes of the collection;
  - (d) any other issue in relation to collections that, in the Minister's opinion, adversely affects, or is likely to adversely affect, the interests of the public.

*Note* **Entity** includes an individual, corporation and unincorporated body, see Legislation Act, dict, pt 1, defs **entity** and **person**.

- (3) The statement or warning may identify a particular entity.
- (4) A civil proceeding does not lie against the Territory in relation to loss, damage or injury of any kind to anyone because of the honest making of a statement or warning under this section.

*Note* The *Civil Law (Wrongs) Act 2002*, s 59 provides a defence of truth and public benefit to civil defamation actions.

## **63 Determination of fees**

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

#### **64 Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

#### **65 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## Part 9                      Transitional and other provisions

### 66     **Repeal of Collections Act 1959**

The *Collections Act 1959* No 17 is repealed.

### 67     **Existing licences**

- (1) This section applies to a licence in force under the *Collections Act 1959*, section 4 (Licences) immediately before the repeal of the Act.
- (2) Despite the repeal of the Act, the licence continues in force, subject to this Act, for the remainder of the period stated in the licence as if it were a licence issued under this Act.

### 68     **Regulations modifying pt 9**

The regulations may modify the operation of this part to make provision in relation to any matter that is not, or is not in the Executive's opinion adequately, dealt with in this part.

### 69     **Expiry of pt 9**

This part expires 1 year after the day it commences.

### 70     **Hawkers Act 2003, section 4 (f)**

*omit*

*Collections Act 1959*

*substitute*

*Charitable Collections Act 2003*

## Schedule 1      Reviewable decisions

(see s 57)

column 1 item	column 2 Act provision	column 3 reviewable decision	column 4 person to be notified
1	23 (1)	refusing to issue licence	applicant for licence
2	23 (1) and 24	issuing licence subject to conditions	applicant for licence
3	23 (1) and 25	issuing licence for less than the period applied for	applicant for licence
4	23 (1) and 27 (1)	issuing licence for collections other than the collections applied for	applicant for licence
5	34 (4)	refusing to amend licence in way applied for	licensee
6	35 (5)	amending, suspending or cancelling licence	
7	37 (2)	giving a direction	licensee
8	49 (4) (b)	refusing to approve auditor	licensee

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the Legislation Act, dict, pt 1, defines the following terms:

- body
- contravene
- Corporation Act
- entity
- individual
- law
- person
- State.

*authorised person*—see section 54.

*benefit*—see section 11.

*charitable purpose* includes any benevolent, philanthropic or patriotic purpose.

*collection*—see section 7.

*commercial fundraiser*—see section 12.

*conducts*, for a collection—see section 8.

*ends*, for a licence and for part 5 (Application of proceeds of collections)—see section 43.

*executive officer* means—

- (a) for a corporation—a person (however described and whether or not the person is a director of the corporation) who is concerned with, or takes part in, the corporation's management; and
- (b) for an unincorporated body—a person (however described and whether or not the person is a member of the governing body (if any) of the unincorporated body) who is concerned with, or takes part in, the unincorporated body's management.

**licence** means a licence authorising an entity to conduct a collection or collections for the purpose or purposes stated in the licence.

**licensee**—

- (a) see section 13; and
- (b) for part 5 (Application of proceeds of collections)—see section 43.

**nominated person**—see section 30.

**proceeds**, of a collection—see section 10.

**reviewable decision**, for part 7 (Review of decisions)—see section 57.

**takes part**, in a collection—see section 9.

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## Endnote

### Republications of amended laws

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

*[Presentation speech made in Assembly on 6 March 2003]*

I certify that the above is a true copy of the Charitable Collections Bill 2003 which was passed by the Legislative Assembly on 1 April 2003.

Clerk of the Legislative Assembly

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