



AUSTRALIAN CAPITAL TERRITORY

Hawkers Act 2003

A2003-10

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AUSTRALIAN CAPITAL TERRITORY

Hawkers Act 2003

A2003-10

An Act to regulate the activities of hawkers in public places, and for other purposes

*Notified under the Legislation Act 2001 on 27 March 2003
(see www.legislation.act.gov.au)*

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

Part 1 Preliminary

1 Name of Act

This Act is the *Hawkers 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 Objects of Act

- (1) The objects of this Act are to ensure that—
 - (a) people carrying on business as hawkers in a public place do not have a significant, adverse effect on any of the following in or near the public place:
 - (i) public safety;
 - (ii) the free movement of people and vehicles;
 - (iii) the accessibility of premises, including commercial premises;
 - (iv) the accessibility of public amenities; and
 - (b) people carrying on business as hawkers in a public place do not have a significant, adverse effect on the appearance or amenity of the public place; and

- (c) adequate and appropriate public amenities (for example, rubbish bins and toilets) are available at or near the location where a person carries on business as a hawker.

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) For subsection (1), it does not matter whether the adverse effect is direct or indirect.

4 Conduct excluded from Act

This Act does not apply to any of the following:

- (a) the sale of goods or services in accordance with—
- (i) a licence under the *Land (Planning and Environment) Act 1991*; or
 - (ii) a permit under the *Roads and Public Places Act 1937*; or
 - (iii) a permit under the *Trespass on Territory Land Act 1932*;
- (b) the operation of a public passenger service under the *Road Transport (Public Passenger Services) Act 2001* or a public vehicle under the *Road Transport (General) Act 1999*, part 10;
- (c) the sale of a ticket or share in an approved lottery or exempt lottery under the *Lotteries Act 1964*;
- (d) the sale, delivery or distribution of newspapers by a child in accordance with the *Children and Young People Act 1999*, chapter 10 (Employment of children and young people);
- (e) busking;
- (f) a collection under the *Collections Act 1959*;
- (g) conduct declared by the regulations to be conduct to which the Act does not apply.

5 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 ‘*public place*—see section 9.’ means that the expression ‘public place’ is defined in section 9 and the definition applies to this Act.

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)).

6 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.

7 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 Hawking in public places

8 Meaning of *carrying on business as a hawker*

For this Act, a person *carries on business as a hawker*—

- (a) if the person carries on an itinerant business selling—
 - (i) goods carried by the person, or by a vehicle used by the person; or
 - (ii) services provided by the person, or provided from a vehicle used by the person; or
- (b) if the person sells goods or services for a person mentioned in paragraph (a).

Note *Vehicle* includes an animal, see dict.

9 Meaning of *public place*

In this Act:

public place means a place that is unleased Territory land (including a road) that the public are entitled to use or that is open to, or used by, the public.

10 Hawkers not to obstruct or endanger public

- (1) A person who is carrying on business as a hawker in a public place commits an offence if—
 - (a) the person hinders or obstructs the free movement of people or vehicles in or near the public place; or
 - (b) the person endangers the safety of members of the public in or near the public place.

Maximum penalty: 30 penalty units.

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

11 Unlicensed hawkers limited to 30 minutes standing

- (1) A person commits an offence if—
- (a) the person carries on business as a hawker at a location in a public place for more than 30 minutes at a time; and
 - (b) the person is not licensed to sell goods or services at the location.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if—
- (a) the person carries on business as a hawker at a location in a public place that is less than 180m from the same or another location in a public place where the person carried on business as a hawker earlier the same day; and
 - (b) the total of the periods the person spent at the locations is more than 30 minutes; and
 - (c) the person is not licensed to sell goods or services at each of those locations.

Maximum penalty: 10 penalty units.

- (3) This section does not apply to a person who carries on business as a hawker for a licensed hawker in accordance with the licence.
- (4) An offence against this section is a strict liability offence.

12 Licensed hawkers to comply with licence

- (1) A licensed hawker commits an offence if the licensee carries on business as a hawker in contravention of the licence.

Maximum penalty: 10 penalty units.

- (2) A licensed hawker commits an offence if someone else carries on business as a hawker for the licensee in contravention of the licence.

Maximum penalty: 10 penalty units.

Examples of contraventions for s (1) and s (2)

- 1 selling goods or services at a location, or from a vehicle, not shown on the licence
- 2 selling goods or services not shown on the licence
- 3 selling goods or services outside the period or periods shown on the licence during which goods or services may be sold
- 4 selling goods or services in contravention of a condition shown on the licence

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

13 Licensed hawkers to display licence

- (1) A licensed hawker commits an offence if—
- (a) the licensee carries on business as a hawker in a public place; and
 - (b) the licence is not displayed at the point of sale.

Maximum penalty: 10 penalty units.

- (2) A licensed hawker commits an offence if—
- (a) someone else carries on business as a hawker for the licensee in a public place; and
 - (b) the licence (or a copy of the licence) is not displayed at the point of sale.

Maximum penalty: 10 penalty units.

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

14 Restriction on hawking near commercial premises

- (1) A person commits an offence if—
- (a) the person carries on business as a hawker at a location in a public place within 180m of commercial premises; and

- (b) the person is not an exempt person for the premises.

Maximum penalty: 10 penalty units.

Note An exempt person may carry on business as a hawker within 180m of the commercial premises to which the exemption applies (see s 14 and s 28).

- (2) This section does not apply to a person who carries on business as a hawker for an exempt person in accordance with the exemption.
- (3) An offence against this section is a strict liability offence.

15 Commercial premises—exempt people to comply with exemption

- (1) An exempt person commits an offence if the person carries on business as a hawker in contravention of the exemption.

Maximum penalty: 10 penalty units.

Note An exempt person may carry on business as a hawker within 180m of the commercial premises to which the exemption applies (see s 14 and s 28).

- (2) An exempt person commits an offence if someone else carries on business as a hawker for the exempt person in contravention of the exemption.

Maximum penalty: 10 penalty units.

Example of contravention of exemption for s (1) and s (2)

selling goods or services in contravention of a condition shown on the exemption

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

16 Commercial premises—exemption to be displayed

- (1) This section does not apply to a licensed hawker.

Note A licensed hawker must display the licence, which must show any exemption held by the licensee, see s 13 and s 21.

- (2) An exempt person for commercial premises commits an offence if—
- (a) the person carries on business as a hawker at a location in a public place within 180m of the premises; and
 - (b) the exemption is not displayed at the point of sale.

Maximum penalty: 5 penalty units.

Note An exempt person may carry on business as a hawker within 180m of the commercial premises to which the exemption applies (see s 14 and s 28).

- (3) An exempt person for commercial premises commits an offence if—
- (a) someone else carries on business as a hawker for the exempt person at a location in a public place; and
 - (b) the location is within 180m of the premises to which the exemption applies; and
 - (c) the exemption (or a copy of the exemption) is not displayed at the point of sale.

Maximum penalty: 5 penalty units.

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

Part 3 Hawkers licences

17 Application for licence

- (1) A person may apply in writing to the chief executive for a licence.

Note 1 If a form is approved under s 46 (Approved forms) for an application, the form must be used.

Note 2 A fee may be determined under s 45 (Determination of fees) for this section.

- (2) The chief executive may, by written notice given to the 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.
- (3) If the applicant fails to comply with a requirement under subsection (2), the chief executive may refuse to consider the application further.

18 Decision on application for licence

- (1) The chief executive must issue, or refuse to issue, the licence.
- (2) In deciding whether to issue a licence, the chief executive must act in accordance with the objects of this Act.
- (3) Without limiting subsection (2), the chief executive may also have regard to any of the following matters:
- (a) whether the applicant has contravened this Act (whether or not the applicant has been convicted or found guilty of an offence for the contravention);
 - (b) if the applicant proposes to use other people to carry on business as a hawker for the applicant—whether the applicant can and will ensure that each other person will comply with this Act;

Note A licensed hawker commits an offence if another person carries on business as a hawker for the licensee and contravenes the licence or does not display the licence, see s 12 (2) and s 13 (2).

- (c) whether the applicant or anyone else who is concerned with, or takes part in, the applicant's management has been convicted or found guilty of an offence against any of the following provisions of the *Crimes Act 1900* or a corresponding offence against the law of a State or another Territory:
 - (i) section 105 (Handling stolen property);
 - (ii) section 109 (Delivery of stolen property held by dealers).
- (4) A licence is subject to the conditions (if any) stated in the licence.

19 Term of licence

A licence is issued for the period (not longer than 1 year) stated in the licence.

20 Licence not transferable

A licence is not transferable.

21 Form of licence

- (1) A licence must show the following information:
 - (a) the full name, address and contact telephone number of the licensee;
 - (b) the goods or services that may be sold under the licence;
 - (c) the locations where a person may carry on business as a hawker under the licence;
 - (d) the period or periods during which a person may carry on business as a hawker under the licence;
 - (e) whether the goods or services must be sold from a vehicle;

- (f) if the goods or services must be sold from a vehicle—the make, model and registration number of the vehicle;
 - (g) the conditions (if any) to which the licence is subject;
 - (h) any exemption given to the licensee under section 28 (Hawking near commercial premises—giving of exemption);
 - (i) the licence number allocated to the licensee;
 - (j) when the term of the licence ends.
- (2) A licence may also include any other information the chief executive considers appropriate.

22 Amendment of licence—application by hawker

- (1) A licensed hawker may apply in writing to the chief executive for the amendment of the licence.

Examples of amendments

- 1 to amend or revoke a condition to which the licence is subject
- 2 to change the locations where a person may carry on business as a hawker under the licence

Note 1 If a form is approved under s 46 (Approved forms) for an application, the form must be used.

Note 2 A fee may be determined under s 45 (Determination of fees) for this section.

Note 3 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) The chief executive may, by written notice given to the 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.
- (3) If the applicant fails to comply with a requirement under subsection (2), the chief executive may refuse to consider the application further.

- (4) The chief executive must amend the licence or refuse to amend the licence.
- (5) In deciding whether to amend the licence the chief executive must have regard to the matters mentioned in section 18 (2) and (3) (Decision on application for licence).
- (6) If the chief executive amends a licence under this section, 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 26.

- (7) An amendment has effect only if the amendment is stated in the licence to which the amendment relates.

23 Temporary amendment or suspension of licence—Roads and Public Places Act

- (1) The chief executive may, in writing, temporarily amend or suspend a licence if satisfied on reasonable grounds that a location where a person may carry on business as a hawker under the licence is, or will be—
 - (a) closed under the *Roads and Public Places Act 1937*, section 4 (Temporary closing of roads); or
 - (b) affected by a permission under the *Roads and Public Places Act 1937*, section 9 (Permission to place culverts etc across, and to interfere with the surfaces of, public places).
- (2) The chief executive must give written notice to the licensee of—
 - (a) the date when the amendment or suspension takes effect; and
 - (b) the date when the amendment or suspension end; and
 - (c) for a licence that is amended—how the licence is amended.
- (3) The date of effect must not be earlier than 7 days after the day the notice is given to the licensee.

24 Amendment, suspension or cancellation of licence—other grounds

The chief executive may act under section 25 to amend, suspend or cancel a licence if satisfied, on reasonable grounds, that—

- (a) carrying on business as a hawker in accordance with the licence is not, or will not be, consistent with the objects of this Act; or
- (b) the licensee has committed an offence against this Act (whether or not the licensee has been convicted or found guilty of an offence for the contravention); or

Note A licensed hawker commits an offence if another person carries on business as a hawker for the licensee and contravenes the licence or does not display the licence, see s 12 (2) and s 13 (2).

- (c) the licensee or anyone else who is concerned with, or takes part in, the licensee's management has been convicted or found guilty of an offence against any of the following provisions of the *Crimes Act 1900* or a corresponding offence against the law of a State or another Territory:
 - (i) section 105 (Handling stolen property);
 - (ii) section 109 (Delivery of stolen property held by dealers).

25 Procedure for amendment etc of licence—other grounds

- (1) If the chief executive proposes to act under this section in relation to a licence, 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.

- (2) 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 (1) (c).
- (3) If the chief executive is satisfied that grounds for taking action under this section have been established, the chief executive may—
 - (a) if the proposed action was 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 included 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 included amending the licence—amend the licence in a way that is no more onerous than the proposed amendment.
- (4) 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.
- (5) The chief executive must give the licensee written notice of the chief executive's decision.
- (6) 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.
- (7) If the chief executive amends a licence under this section, the chief executive must give the licensee an amended licence for the remainder of the term of the licence amended.

26 Failing to return amended, suspended or cancelled licence

- (1) A licensed hawker 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.

- (2) This section does not apply to the amendment or suspension of a licence under section 23 (Temporary amendment or suspension of licence—Roads and Public Places Act).
- (3) An offence against this section is a strict liability offence.

Part 4 Exemptions for hawking near commercial premises

27 Circumstances for exemption from s 14 (1)

- (1) The Minister may, in writing, determine circumstances when a person may be exempted from the operation of section 14 (1) (Restriction on hawking near commercial premises).
- (2) A determination is a disallowable instrument.

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

28 Hawking near commercial premises—giving of exemption

- (1) A person may, in writing, apply to the Minister for exemption from the operation of section 14 (1) (Restriction on hawking near commercial premises) in relation to particular commercial premises.

Note 1 If a form is approved under s 46 (Approved forms) for an application, the form must be used.

Note 2 A fee may be determined under s 45 (Determination of fees) for this section.

- (2) The application must state the grounds on which it is made.
- (3) If satisfied that a circumstance determined under section 27 applies to the person, the Minister may, in writing, exempt the person from the operation of section 14 (1) in relation to the commercial premises stated in the exemption.
- (4) An exemption is subject to the conditions (if any) stated in the exemption.
- (5) An exemption has effect—
 - (a) for a licensed hawker—only if the exemption is stated in the licence; or

Note A licensee must return the licence for amendment if required, see s 26.

- (b) for an unlicensed hawker—only if a copy of the exemption is given to the hawker exempted.

29 Exemption not transferable

An exemption is not transferable.

30 Amendment of exemption—application by exempt person

- (1) An exempt person may apply in writing to the Minister for the amendment of the exemption.

Examples of amendments

- 1 to amend or revoke a condition to which the exemption is subject
- 2 to change the locations where a person may carry on business as a hawker under the exemption

Note 1 If a form is approved under s 46 (Approved forms) for an application, the form must be used.

Note 2 A fee may be determined under s 45 (Determination of fees) for this section.

Note 3 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) The Minister may, by written notice given to the applicant, require the applicant to give the Minister further stated information or a stated document that the Minister reasonably needs to decide the application.
- (3) If the applicant fails to comply with a requirement under subsection (2), the Minister may refuse to consider the application further.
- (4) The Minister must amend the exemption or refuse to amend the exemption.

- (5) In deciding whether to amend the exemption the Minister must have regard to the circumstances determined under section 27 (Circumstances for exemption from s 14 (1)).
- (6) If the Minister amends an exemption under this section, the Minister must give the applicant an amended exemption.

Note A exempt person must return the exemption for amendment if required, see s 32.

- (7) An amendment has effect only if the amendment is stated in the exemption to which the amendment relates.

31 Hawking near commercial premises—amendment or revocation of exemption

- (1) The Minister may, in writing, amend or revoke an exemption if—
- (a) a circumstance determined under section 27 (Circumstances for exemption from s 14 (1)) no longer applies in relation to the exempt person; or
- (b) the exempt person has committed an offence against this Act (whether or not the person has been convicted or found guilty of the offence).

Note An exempt person commits an offence if another person carries on business as a hawker for the person and contravenes the exemption or does not display the exemption, see s 15 (2) and s 16 (3).

- (2) If the Minister proposes to act under this section in relation to an exemption, the Minister must give the exempt person a written notice that—
- (a) states the proposed action, including any proposed amendment of the exemption; and
- (b) states the grounds for the proposed action; and
- (c) tells the person that the person may, within 14 days beginning the day after the day the person receives the notice, give a written response to the Minister about the matters in the notice.

- (3) In deciding whether to amend or revoke the exemption, the Minister must consider any response given to the Minister in accordance with subsection (2) (c).
- (4) To remove any doubt, the amendment of an exemption under this section may include the imposition of a condition on the exemption and the amendment of a condition to which the exemption is subject.
- (5) The Minister must give the exempt person written notice of the Minister's decision.
- (6) The amendment or revocation of the exemption takes effect 14 days after the day when notice of the amendment or revocation is given to the exempt person or, if the notice states a later date of effect, that date.
- (7) If the Minister amends an exemption under this section, the Minister must give the exempt person an amended exemption.

32 Failing to return amended or revoked exemption

- (1) An exempt person commits an offence if—
 - (a) the exemption is amended or revoked; and
 - (b) the Minister gives the person a written notice requiring the person to return the exemption to the Minister within a stated reasonable time; and
 - (c) the person does not comply with the requirement.

Maximum penalty: 5 penalty units.

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

Part 5 **Decisions reviewable by AAT**

33 **Review of decisions by administrative appeals tribunal**

- (1) A person may apply to the administrative appeals tribunal for review of any of the following decisions of the Minister:
 - (a) refusing to give an exemption under section 28 (Hawking near commercial premises—giving of exemption);
 - (b) giving an exemption under section 28 subject to a condition;
 - (c) refusing to amend an exemption in a way requested by the exempt person under section 30 (Amendment of exemption—application by exempt person);
 - (d) amending or revoking an exemption under section 31 (Hawking near commercial premises—amendment or revocation of exemption).

- (2) A person may apply to the administrative appeals tribunal for review of any of the following decisions of the chief executive:
 - (a) refusing to issue a licence under section 18 (Decision on application for licence);
 - (b) issuing a licence under section 18 for a term different to that applied for;
 - (c) issuing a licence under section 18 subject to a condition;
 - (d) refusing to amend a licence in a way requested by the licensee under section 22 (Amendment of licence—application by hawker);
 - (e) amending, suspending or cancelling a licence under section 25 (Procedure for amendment etc of licence—other grounds).

34 Notification of reviewable decisions

- (1) The Minister must give written notice of each decision mentioned in section 33 (1) to the applicant for the exemption or the exempt person (as appropriate).
- (2) The chief executive must give written notice of each decision mentioned in section 33 (2) to the applicant for the licence or the licensee (as appropriate).
- (3) A notice under subsection (1) or (2) must be in accordance with the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

Part 6 Administration

35 Register of licensed hawkers and exempt people

- (1) The chief executive must keep a register of licensed hawkers and exempt people.
- (2) For each licence, the chief executive must enter in the register the information mentioned in section 21 (1) (Form of licence).
- (3) For each exemption, the chief executive must enter in the register—
 - (a) the full name, address and contact telephone number of the exempt person; and
 - (b) the commercial premises to which the exemption applies; and
 - (c) the conditions (if any) to which the exemption is subject.
- (4) The register may also include any other information the chief executive considers appropriate.
- (5) 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.
- (6) The chief executive may correct any mistake, error or omission in the register subject to the requirements (if any) of the regulations.

36 Public access to register

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

37 Licensed hawkers and exempt people to notify change of name and address

- (1) A licensed hawker commits an offence if—

- (a) the licensee's full name, address or contact telephone number shown on the licence changes; and
- (a) 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 term of the licence amended.
- (3) An exempt person commits an offence if—
 - (b) the person's full name, address or contact telephone number shown on the exemption changes; and
 - (a) the person 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 exemption to the chief executive for amendment.

Maximum penalty: 5 penalty units.

- (4) The chief executive must give the exempt person an amended exemption.
- (5) An offence against this section is a strict liability offence.

38 Replacement of licence or exemption

- (1) The chief executive may issue a replacement licence to a person if satisfied that the licence has been lost, stolen or destroyed.
- (2) The Minister may give a replacement exemption to a person if satisfied that the exemption has been lost, stolen or destroyed.

- (3) Before acting under subsection (1) or (2), the chief executive or Minister may require the person to give the chief executive or Minister a statement, verified by a statutory declaration signed by the person, that the licence or exemption has been lost, stolen or destroyed.

Note 1 A fee may be determined under s 45 (Determination of fees) for this section.

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

39 Surrender of licence or exemption

- (1) A licensed hawkker or an exempt person may, at any time, surrender the licence or exemption by returning the licence or exemption to the chief executive with a written statement that the licence or exemption is surrendered.
- (2) However, if the licence or exemption has been stolen, lost or destroyed, the person may give the chief executive a statement, signed by the person, that the licence or exemption has been stolen, lost or destroyed.

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

40 Authorised people

- (1) Each of the following is an authorised person for this Act:
- (a) a police officer;
 - (b) a roads and public places officer under the *Roads and Public Places Act 1937*;
 - (c) 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).

41 Identity cards

- (1) The chief executive must give each authorised person (other than a police officer or roads and public places officer) 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.
- (2) A person commits an offence if—
 - (a) the person was appointed as an authorised person under section 40 (2); and
 - (b) the person ceases to be an authorised person; and
 - (c) 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.

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

42 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.

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

Part 7 Miscellaneous

43 False or misleading statements in applications etc

- (1) 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 anything without which the statement is misleading; and
 - (c) the statement is made in, or in relation to—
 - (i) an application for the issue or amendment of a licence or an exemption; or
 - (ii) a response to the chief executive under section 25 (1) (Procedure for amendment etc of licence—other grounds); or
 - (iii) a response to the Minister under section 31 (2) (Hawking near commercial premises—amendment or revocation of exemption).

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

- (2) Subsection (1) (b) (i) does not apply if the statement is not false or misleading in a material particular.
- (3) Subsection (1) (b) (ii) does not apply if the omission does not make the statement misleading in a material particular.
- (4) 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 as to whether the statement—
 - (i) is false or misleading; or
 - (ii) omits anything without which the statement is misleading; and
- (c) the statement is made in, or in relation to—
 - (i) an application for the issue or amendment of a licence or an exemption; or
 - (ii) a response to the chief executive under section 25 (1) (Procedure for amendment etc of licence—other grounds); or
 - (iii) a response to the Minister under section 31 (2) (Hawking near commercial premises—amendment or revocation of exemption).

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

- (5) Subsection (4) (b) (i) does not apply if the statement is not false or misleading in a material particular.
- (6) Subsection (4) (b) (ii) does not apply if the omission does not make the statement misleading in a material particular.

44 Alternative verdict for offence under s 43

- (1) This section applies if, in a prosecution for an offence against section 43 (1), 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 43 (4).
- (2) The trier of fact may find the defendant not guilty of the offence against section 43 (1) but guilty of the offence against section 43 (4) only if the defendant has been given procedural fairness in relation to that finding of guilt.

45 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.

46 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.

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

- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

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

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

47 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 also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

Part 8 Transitional and other matters

48 Repeal of Hawkers Act 1936

The *Hawkers Act 1936* No 43 is repealed.

49 Repealed Act—permits to sell at authorised place

A permit in force under the *Hawkers Act 1936* (repealed), section 6B (2) immediately before the repeal of the Act continues in force for the remainder of the period stated in the permit as if it were a licence under this Act.

50 Repealed Act—consents to sell within 180m of shops

A consent in force under the *Hawkers Act 1936* (repealed), section 6A (1) immediately before the repeal of the Act is taken to be an exemption under this Act, section 28 (Hawking near commercial premises—giving of exemption).

51 Amendment of Roads and Public Places Act—sch 1

Schedule 1 amends the *Roads and Public Places Act 1937*.

52 Regulations modifying pt 8

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

53 Expiry of pt 8

This part expires 1 year after the day this section commences.

Schedule 1 Roads and Public Places Act 1937

(see s 51)

[1.1] Section 15A, new note

insert

Note A hawker who is licensed under the *Hawkers Act 2003* does not require a permit under this Act to park a vehicle in a public place if the person is carrying on the business of a hawker under that Act in accordance with the person's licence, see s 15U.

[1.2] New section 15U

insert

15U Occupation etc of public land under Hawkers Act licence

A person is not required to hold a permit under this Act to park a vehicle in a public place if—

- (a) the person holds a licence under the *Hawkers Act 2003* to use the vehicle to sell goods or services in the public place; and
- (b) the person is carrying on the business of a hawker under that Act in accordance with the licence.

Dictionary

(see s 5)

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:

- amend
- chief executive
- found guilty
- penalty unit
- public servant
- Territory land.

authorised person means a person who is an authorised person under section 40.

carry on business as a hawker—see section 8.

commercial premises means premises used for the sale of goods or services.

exemption means an exemption under section 28 (Hawking near commercial premises—giving of exemption).

exempt person means a person who is the holder of an exemption under section 28.

licence means a licence under this Act.

public place—see section 9.

sell includes—

- (a) barter, offer or attempt to sell; or
- (b) have in possession for sale; or
- (c) display for sale; or
- (d) dispose of by any method for valuable consideration; or

- (e) dispose of by way of raffle, lottery or other game of chance; or
- (f) offer as a prize or reward.

vehicle means any means of transport of people or goods, whether or not self-propelled or capable of being operated or moved in any way, and includes an animal.

Examples

a caravan, trailer and trolley

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).

Endnote

Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

[Presentation speech made in Assembly on 12 December 2002]

I certify that the above is a true copy of the Hawkers Bill 2003 which originated in the Assembly as the Hawkers Bill 2002 and was passed by the Legislative Assembly on 6 March 2003.

Clerk of the Legislative Assembly

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