

CONSULTATION DRAFT

(Prepared by Parliamentary Counsel's Office)

Charitable Collections Regulations 2003

Subordinate Law SL2003-

The Australian Capital Territory Executive makes the following regulations under the *Charitable Collections Act 2003*.

Dated 2003.

Minister

Minister

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made under the

Charitable Collections Act 2003

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Part 1 Preliminary

1 Name of regulations

These regulations are the *Charitable Collections Regulations 2003*.

2 Commencement

These regulations commence on the commencement of the *Charitable Collections Act 2003*, section 3.

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

3 Dictionary

The dictionary at the end of these regulations is part of these regulations.

Note 1 The dictionary at the end of these regulations defines certain terms used in these regulations, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*motor vehicle*—see the *Road Transport (General) Act 1999*, dictionary.’ means that the term ‘motor vehicle’ is defined in that dictionary and the definition applies to these regulations.

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

4 Notes

A note included in these regulations is explanatory and is not part of these regulations.

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

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5 Offences against regulations—application of Criminal Code etc

Other legislation applies in relation to offences against these regulations.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against these regulations (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 Exempt collections

6 What are not collections—Act, s 7 (3) (g)

- (1) The following are declared not to be a collection:
 - (a) the soliciting or receiving of money by a school if the money is—
 - (i) a genuine fee or charge by the school for educational purposes; or
 - (ii) a voluntary fee or charge by the school for educational purposes that is solicited or received from a person with parental responsibility for a child who is enrolled at the school;
 - (b) the soliciting or receiving of money or a benefit by an entity if the proceeds received from collections conducted by the entity is less than \$15 000 in a financial year;
 - (c) the receiving of money or a benefit by an entity that—
 - (i) is not solicited by the entity; or
 - (ii) is not received by the entity because of a collection conducted by the entity;
 - (d) the soliciting or receiving of money or a benefit by a non-government organisation accredited with the Australian Agency for International Development (AusAID) (whether or not the money or benefit is used, or intended to be used, solely for aid in a foreign country);
 - (e) the solicitation or receipt of sponsorship from a corporation.

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Part 2 Exempt collections

Regulation 6

(2) In this regulation:

school means an entity that provides education at the pre-school, primary school, high school or secondary college level.

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Part 3 Conduct of collections

7 Meaning of *licensee* for pt 3

In this part:

licensee, for a collection, means—

- (a) if the licence to conduct the collection is issued to an individual or a corporation—the holder of the licence; or
- (b) if the licence to conduct the collection is issued to an unincorporated body—the body.

Note Under the Act, the licensee for an unincorporated body is the nominated person for the body (see the Act, s 31).

8 Complying identifying tags—Act, s 16 (4), def *complying identifying tag*, par (b)

Note The requirements below are additional to anything else required by the conditions of the licence for the collection, see the def, par (a).

The following requirements are prescribed for a person taking part in a collection:

- (a) the person's surname or a unique number given to the person by a person who conducts the collection;
- (b) either—
 - (i) the licensee's name; or
 - (ii) if the licensee has a logo that is reasonably well known by the general public—the logo;

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- (c) if the applicable information mentioned in paragraph (b) does not indicate the purpose of the collection—the purpose of the collection;
- (d) if the person has received, or will receive, money or a benefit for taking part in the collection—a statement that the collector is a ‘Paid collector’.

9 Required information—Act, s 17 (3), def *required information*, par (b)

Note The requirements below are additional to anything else required by the conditions of the licence for the collection, see the def, par (a).

- (1) The following information is required for a collection carried out personally:
 - (a) the purpose of the collection;
 - (b) how and where the net proceeds of the collection will be spent;
 - (c) a business telephone number for the licensee.
- (2) The following information is required for a collection carried out by telephone:
 - (a) the purpose of the collection;
 - (b) if the purpose of the collection does not indicate the licensee’s name—the licensee’s name;
 - (c) if the person soliciting or receiving money or a benefit for the purposes of the collection has received, or will receive, money or a benefit for taking part in the collection—the person is a ‘paid collector’;
 - (d) how and where the net proceeds of the collection will be spent;
 - (e) a business telephone number for the licensee.

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- (3) The following information is required for a collection carried out by a written request:
- (a) the licensee's name;
 - (b) the purpose of the collection;
 - (c) how and where the net proceeds of the collection will be spent;
 - (d) a business telephone number for the licensee.

Examples of written requests

- 1 a request personally addressed to a person
- 2 a request sent to 'The Occupier' or 'The Householder' of premises
- 3 a pamphlet asking for donations handed to a person or left in a person's letterbox
- 4 a fax sent to a person or a group of people

Note An example is part of the regulations, 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) The following information is required for a collection carried out through a collection bin:
- (a) the licensee's name;
 - (b) if the purpose of the collection is not indicated by the licensee's name—the purpose of the collection;
 - (c) a business telephone number for the licensee.
- (5) In this regulation:
- net proceeds*, of a collection—see regulation 13 (2).

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10 Statutory conditions about children taking part in collections—sch 1

A licence, or a document stated by the licence to form part of the licence, may indicate that the conditions mentioned in schedule 1 apply to a collection conducted under the licence.

Note For provisions about the employment of children, see the *Children and Young People Act 1999*, pt 10.

Part 4 Proceeds of collections

11 Issue of receipts

- (1) A person (the *collector*) commits an offence if—
 - (a) the collector takes part in a collection; and
 - (b) while taking part in the collection, the collector personally receives more than \$2 in cash from someone else (the *donor*) for the purposes of the collection; and
 - (c) the collector does not give, or offer to give, the donor an authorised receipt for the amount received by the collector.

Maximum penalty: 10 penalty units.

- (2) This regulation does not apply if the donor receives goods or services of substantially the same value as the amount given to the collector.

Example

the purchase price of an item of food from a fast food company that includes a donation to a charity

Note An example is part of the regulations, 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 regulation is a strict liability offence.
- (4) In this regulation:

authorised receipt means a printed receipt or anything else given to the collector by a person conducting the collection for the purpose of acknowledging a donation of a particular amount.

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Example of something that is not a printed receipt

badges of different colours or designs to indicate the amount of a donation

12 Lawful and proper expenses—Act, s 44 (4)

The following are lawful and proper expenses for a collection:

- (a) the reasonable expenses incurred by the licensee in—
 - (i) conducting and carrying out the collection; and
 - (ii) administering and distributing the proceeds of the collection; and
 - (iii) complying with this Act; and
- (b) any other expenses stated in the application for the licence for the collection.

Example of other expenses for par (b)

how a commercial fundraisers fee is calculated

Note An example is part of the regulations, 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).

13 Finalised accounts—Act, s 47 (6), def *required accounts*, par (b)

- (1) The required accounts for a collection are accounts that show the following:
 - (a) the proceeds of the collection (including any amounts realised from benefits received for the purposes of the collection);
 - (b) the amount of lawful and proper expenses under the Act, section 44 (3) for the collection;
 - (c) the net proceeds of the collection;
 - (d) the amount applied for the purposes of the collection.

(2) In this regulation:

net proceeds, of a collection, means the amount obtained by subtracting the expenses mentioned in subregulation (1) (b) from the proceeds mentioned in subregulation (1) (a).

14 When annual audited accounts are required

- (1) This regulation applies to a licensee if the proceeds received in the ACT by the licensee from collections carried out partly or wholly in the ACT is, in any 12-month period, more than \$50 000.
- (2) The licensee must give the chief executive audited annual accounts for the year or years in which the collections were carried out.
- (3) However, if the annual accounts include the proceeds of collections carried out in both the ACT and a State, the accounts need not separately identify the amount collected in the ACT.

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Part 5 Miscellaneous

15 Internet access to material on register of licences

- (1) The chief executive may arrange for the material mentioned in the Act, section 40 (2) and (3) to be accessible on a website approved by the chief executive.
- (2) Access under subregulation (1) is to be provided without charge by the Territory.

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Schedule 1 Statutory conditions about children taking part in collections

(see reg 10)

1 Child under 6 years not to take part in collection

A child under 6 years old must not take part in a collection.

2 Consents to take part in collections

- (1) A child under 12 years old must not take part in a collection unless a person with parental responsibility for the child has given written consent to the child taking part in the collection.
- (2) A child who is at least 12 years old must not take part in a collection unless—
 - (a) the child has given his or her written consent to taking part in the collection; and
 - (b) a person with parental responsibility for the child has given written consent to the child taking part in the collection.

3 Contact by person with parental responsibility

A collection must be carried out in such a way as to give a person with parental responsibility for a child taking part in the collection a reasonable opportunity to contact the child.

4 Supervision generally

- (1) A child must be adequately supervised while taking part in a collection having regard to the age, sex and maturity of the child.
- (2) A person supervising a child taking part in a collection must—
 - (a) be an adult; and
 - (b) supervise no more than 6 children.
- (3) A person supervising a child taking part in a collection must, while the child is taking part in the collection—
 - (a) be in close proximity to each child being supervised; and
 - (b) know the whereabouts of each child; and
 - (c) make contact with each child at intervals of not longer than 30 minutes.
- (4) This clause does not apply if a child is accompanied by an adult while personally soliciting or receiving money or a benefit for the purposes of a collection.

5 Supervision—private dwellings and motor vehicles

- (1) A person supervising a child taking part in a collection must take all reasonable steps to ensure that the child does not—
 - (a) enter a private dwelling; or
 - (b) solicit or receive money or a benefit from a person in a motor vehicle.
- (2) This clause does not apply if a child is accompanied by an adult while personally soliciting or receiving money or a benefit for the purposes of a collection.

6 Working in pairs or with an adult

A child who is personally soliciting or receiving money or a benefit for the purposes of a collection must be accompanied by another child or an adult.

7 Hours of participation

- (1) A child must not take part in a collection—
 - (a) before 6am or sunrise (whichever is later); and
 - (b) after 7pm or sunset (whichever is earlier).
- (2) This clause does not apply if the child is accompanied by an adult while taking part in the collection.

8 Maximum periods

- (1) A child under 12 years old must not take part in a collection for more than 3 hours (including any rest breaks) on any 1 day.
- (2) A child who is at least 12 years old—
 - (a) must not take part in a collection for more than 7 hours (including any rest breaks) on any 1 day; and
 - (b) must not take part in a collection for more than 3 hours without at least a 30-minute rest break.

Dictionary

(see reg 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to these regulations.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- adult
- body
- chief executive
- financial year
- foreign country
- penalty unit
- State
- writing.

Note 3 Terms used in these regulations have the same meaning that they have in the *Charitable Collections Act 2003* (see Legislation Act, s 148). For example, the following terms are defined in the *Charitable Collections Act 2003*, dict:

- benefit
- collection
- commercial fundraiser
- conducts, for a collection
- licence
- proceeds, of a collection
- takes part, in a collection.

licensee, for part 3 (Conduct of collections)—see regulation 7.

motor vehicle—see the *Road Transport (General) Act 1999*, dictionary.

parental responsibility, for a child, means a person who has parental responsibility for the child under the *Children and Young People Act 1999*, section 18.

Endnotes

Penalty units

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

Notification

- 2 Notified under the Legislation Act on 2003.
(see www.legislation.act.gov.au)