

1996
THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY

UNCOLLECTED GOODS BILL 1996

EXPLANATORY MEMORANDUM

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Attorney General**



ACT GOVERNMENT

UNCOLLECTED GOODS BILL 1996

OUTLINE

The objective of this Bill is to replace both the common law and existing statutory provisions relating to the disposal of lost or abandoned goods with a comprehensive set of rules. The Bill will enable a bailee in possession of goods, but unable to locate the bailor or to persuade the bailor to pay a debt or collect the goods, to lawfully dispose of those goods. The Bill also rationalises existing rules relating to the collection of certain categories of uncollected goods, such as goods left at public baths by collecting them into one piece of legislation.

Key elements in this Bill are:

- a comprehensive definition of uncollected goods
- categorisation of goods by reference to their net value or other distinctive features
- establishment of procedures relating to the disposal of the various categories of uncollected goods
- specification of rights and responsibilities of goods left on Territory land or in Territory premises

DETAILS OF THE BILL

PART I—PRELIMINARY

Short title and Commencement

Clauses 1 & 2 Clauses 1 and 2 are formal requirements. Clause 1 refers to the short title of the Bill, and clause 2 sets out the date of commencement of the Bill as being the date the Act is notified in the Gazette.

Application

Clause 3 This clause specifies that the proposed Act will apply to goods in a person's possession with exception to certain unclaimed prizes, cheques or other written documents which are

designed to secure the payment of money, goods or property
Animals under the *Dog Control Act 1976* or the *Pounds Act 1928* are specifically exempt as well

Interpretation

Clause 4

This clause defines a number of terms used in the Bill

Goods refers to moveable personal property and includes animals and food

Goods of low value refers to goods having a net value of more than \$20 but less than \$500

Goods of no value have a net value of \$20 or less

Goods of significant value have a net value of \$500 or more

"net value" is the difference of the market value of the goods less the reasonable costs involved in selling the goods

PART II - UNCOLLECTED GOODS

Goods deemed uncollected

Clause 5

Uncollected goods are defined for the purposes of the Bill
Goods are uncollected when they are ready for delivery but not collected or unable to be delivered, or the possessor has a lien on the goods which is due, the owner of the goods has refused to or failed to comply with a request to collect them, or goods were lost or abandoned at a public bath on public or unleased land

Application

Clause 6

Clauses 7 and 8 applies only to goods where there is no agreement regarding collection or where the goods are of no value or are perishable.

Request to collect goods

Clause 7

This clause sets out the procedure by which a request to collect goods may be made. The possessor of goods may request the goods to be collected within 7 days of the request being made

A request must be in writing and must include a description of the goods, an address where the goods may be collected, the time when the good may be collected, a statement saying that the goods may be disposed of if not collected within 7 days of the date of the request and a statement of costs the possessor

is claiming that the owner must meet before the goods will be released

The request must be sent to the owner's last known address. If that is not known and not ascertainable then the request may be published in a daily newspaper printed and circulating in the Territory.

Uncollected goods - goods not collected when requested

Clause 8 This clause entitles a possessor to dispose of uncollected goods if, after being notified, the owner has refused or fails to comply with a request.

Goods lost or abandoned at public baths

Clauses 9 - 11 Apply to goods lost or abandoned at public baths. Special provision is made in relation to this case because of the increased likelihood that younger children leave articles of clothing.

Clause 9 A manager or attendant of a public bath must take possession of goods left there. Any person finding goods there must hand them to the manager or attendant.

Lost property register

Clause 10 This clause requires the manager or attendant of a public bath to enter details of lost or abandoned goods onto a lost property register.

Claims for lost property

Clause 11 This clause enables a person to recover his or her goods which are in the possession of a manager or attendant of a public bath.

A person can only be given goods if he or she satisfies the manager or attendant that he or she is entitled to possession of those goods and only after he or she signs the register and enters his or her address into the register.

Uncollected goods - public baths

Clause 12 This clause entitles a manager or attendant of a public bath to dispose of goods 3 months after they came into his or her possession.

Application

- Clause 13 Clauses 14 - 17 apply to goods lost or abandoned on unleased and public land.

Goods lost or abandoned on public or unleased land

- Clause 14 An authorised officer is required to place goods found on public or unleased land into a retention area or place a notice on the goods that they may be disposed of if not removed within 7 days. If the goods are found by any other person they must be handed over to the police

This clause does not apply to goods that are allowed to be placed on public or unleased land or a vehicle which is parked on a public street or in an off street parking area unless it has been abandoned, constitutes an obstruction or hazard to other persons or is in breach of the *Motor Traffic Act 1936*.

Uncollected goods - public or unleased land

- Clause 15 Goods that have been moved to a retention area will be deemed uncollected and may be disposed of if not claimed within the time specified within the notice that has been sent to the owner or published in the newspaper

Appointment of authorised officer

- Clause 16 This clause is a formal provision enabling the Minister to appoint authorised officers

Retention areas

- Clause 17 The Minister may declare an area of land a retention area

PART IV - DISPOSAL OF UNCOLLECTED GOODS**Disposal generally**

- Clause 18 This clause enables a person to dispose of uncollected goods pursuant to this Part

References to time

- Clause 19 Reference to time or a period of time within Part IV commences from the time or period of time the goods become uncollected goods

Perishable goods

- Clause 20 Uncollected perishable goods may be disposed of at any time

Weapons and ammunition

- Clause 21 Weapons or ammunition may be disposed of by their surrender, at any time, to a police officer

Personal effects

- Clause 22 Personal effects may be disposed of by public auction after 3 months

Goods of no value

- Clause 23 Goods of no value may be disposed of by sale, appropriation or destruction after 1 week

Goods of low value

- Clause 24 Goods of low value may be disposed of after 1 month

Goods of significant value

- Clause 25 Goods of significant value may be disposed of after 3 months

Public auctions

- Clause 26 This clause requires that before the disposal of goods by public auction, advertisements setting out the time and place of the auction and the description of the goods must be placed in a newspaper printed and circulated within the Territory. Goods passed in at auction may be disposed of by the possessor

Claim by owner before disposal

- Clause 27 This clause permits the possessor to give goods to the owner at any time prior to the disposal. The owner may be required to pay the reasonable costs associated with complying with the proposed Act, or the amount of any rent or lien the possessor has over the goods

Review of possessor's costs

- Clause 28 The owner of goods has the right to apply to the Magistrates Court to review the amount of the costs the possessor is claiming

PART V - GOODS FOUND ON TERRITORY PREMISES OR PROPERTY**Goods lost or abandoned on Territory controlled premises etc.**

- Clause 29 This clause requires that goods found on Territory premises or on objects under the control of the Territory be handed to a public employee who is in charge of the place where the goods were found or to a police officer.

Disposal of goods found on Territory controlled premises

- Clause 30 This clause entitles public employees to dispose of goods found on Territory premises unless it is impracticable or not in the public interest to do so

PART VI - MISCELLANEOUS**Proceeds of sale**

- Clause 31 A possessor may retain the reasonable costs associated with complying with the proposed Act and the storage of goods or the amount to which he or she is legally owed by the owner of the goods from the proceeds of sale of goods under Part IV. The balance of the proceeds is payable to the Territory bank account.
- The costs incurred in storing, maintaining and selling goods found on Territory controlled premises will be paid into the Territory bank account. The balance of money obtained from the sale of those goods shall be paid into a trust bank account.
- Interest earned from the trust bank account will be used to meet the costs of administering the money paid into the account or for any other prescribed purpose.

Payments by Territory

- Clause 32 The Minister may pay to a person who had an interest in any goods prior to the sale of such goods the balance that was paid to the Minister from the sale of those goods.

Protection of possessors

- Clause 33 This clause indemnifies a possessor in relation to the taking, selling or destroying of goods if that action was taken pursuant to the Bill. Nor is the possessor liable for reasonable damage caused by the removal or retention of goods.

Possession of weapons and ammunition

- Clause 34 A person is not entitled to have any more rights than under the *Weapons Act 1991*

Rights not to be affected

- Clause 35 This clause preserves any other lien, power of sale or other right, and their enforcement, a possessor has separate from the operations of this Bill with respect to goods held by him or her

Evidence

- Clause 36 This is a formal clause which provides that a certificate signed by the Chief Executive constitutes evidence of land being unleased for the purpose of the proposed Act

Title

- Clause 37 This clause deems that goods purchased or acquired pursuant to the proposed Act shall be unencumbered provided that purchaser was unaware of any encumbrance on the goods at the time the goods were acquired

Mode of disposition

- Clause 38 This clause requires that any disposal of goods must comply with Territory law

Request provisions - substantial compliance

- Clause 39 This clause provides that strict compliance with the making of instrument is not necessary

Regulations

- Clause 40 This clause empowers the Executive to make regulations for the purpose of the proposed Act