



2003

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

Charitable Collections Bill 2003

EXPLANATORY MEMORANDUM

**Circulated by the authority of
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Minister for Urban Services**

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Outline

The objectives of the Bill are to: promote proper management and administration of collections; ensure proper record keeping and auditing of accounts; and ensure that the public has access to information about collections. The Bill is a result of the National Competition Policy review of the *Collections Act 1959*.

Clause Notes

Part 1- Preliminary

Clauses 1 and 2 are formal requirements. They deal with the short title of the Bill, and the commencement provisions.

Clause 3 explains that the Dictionary at the end of the Bill is part of the Bill.

Clause 4 states that notes included in the Bill are only explanatory.

Clause 5 clarifies that other legislation applies to offences in this Bill, including the *Criminal Code 2003* and the *Legislation Act 2001*.

Part 2- Objects and key concepts

Clause 6 lists the objectives of the Bill.

Clause 7 defines the term ‘collection’.

Clause 8 defines the term ‘conducts’ a collection.

Clause 9 defines the term ‘takes part’ in a collection.

Clause 10 defines the term ‘proceeds’ of a collection.

Clause 11 defines the term ‘benefit’.

Clause 12 defines the term ‘commercial fundraiser’.

Clause 13 defines the term ‘licensee’, which is the holder of a licence.

Part 3- Collections - offences

Clause 14 creates an offence for a person who conducts a collection if the person is not authorised by a licence.

Clause 15 creates an offence for a person who takes part in a collection if they are not authorised by a relevant licensee to take part in the collection.

Clause 16 creates an offence for a person if they do not display a complying identifying tag when they ask for or receive money for a collection in person.

Clause 17 creates an offence for a person if they take part in a collection without making available the required information in the approved way.

Clause 18 creates an offence for a person if they conduct or take part in a collection and they give information about the collection that is false or misleading.

Clause 19 creates an offence if a person conducts or takes part in a collection and they give a document to someone else that is false or misleading information. This offence does not apply if a signed statement identifying the false or misleading information accompanies the document.

Clause 20 creates alternative verdicts for different offences under clauses 19 and 20.

Part 4- Licences to conduct collections

Division 4.1- Issue and surrender of licences

Clause 21 allows an entity, including an individual, corporation or unincorporated body, to apply to the chief executive for a licence to conduct a collection.

Clause 22 allows the chief executive to require an applicant to give further information or documents that the chief executive needs to make a decision about the application.

Clause 23 requires the chief executive to issue or refuse to issue the licence. The chief executive must refuse to issue a licence if the proposed collection does not include a charitable purpose or if an entity is collecting on behalf of another entity without that entity's approval. A decision made under this clause is reviewable decision by the Administrative Appeals Tribunal.

Clause 24 allows the chief executive to issue a licence subject to conditions. This is a decision reviewable by the Administrative Appeals Tribunal.

Clause 25 allows the licence to be issued for the period stated in the licence, which must not be longer than five years. This is a decision reviewable by the Administrative Appeals Tribunal.

Clause 26 states that a licence is not transferable.

Clause 27 requires a licence to include the certain information. A decision to issue the licence for collections other than the ones applied for is reviewable by the Administrative Appeals Tribunal.

Clause 28 allows the chief executive to issue a replacement licence to a licensee if satisfied that the licence has been lost, stolen or destroyed.

Clause 29 allows the licensee to apply in writing to the chief executive to surrender the licence.

Division 4.2- Unincorporated bodies

Clause 30 defines the term 'nominated person'.

Clause 31 states that the nominated person is the licensee. If there is no nominated person, the executive officers of the unincorporated body are the licensees.

Clause 32 sets out the procedure for a nominated person to resign.

Clause 33 sets out the procedure for changing a nominated person.

Division 4.3- Amendment, suspension and cancellation of licences

Clause 34 allows a licensee to apply in writing to the chief executive for the amendment of their licence. If the chief executive refuses to amend the licence this is a decision reviewable by the Administrative Appeals Tribunal.

Clause 35 allows the chief executive to amend, suspend or cancel a licence if satisfied that a reason for rejecting a licence, as mentioned in clause 23 (2), (3) or (4), applies in relation to the licence. This is a decision reviewable by the Administrative Appeals Tribunal. In deciding whether to amend, suspend or cancel the licence, the chief executive must consider any response given by the licensee.

Clause 36 requires the chief executive to give the licensee written notice of the chief executive's decision under clause 35.

Clause 37 allows the chief executive to give directions to a licensee who had their licence suspended or cancelled under clause 35. Giving a direction is a decision reviewable by the Administrative Appeals Tribunal.

Clause 38 outlines actions to be taken by the person who was the licensee if the chief executive cancels or suspends their licence. It is an offence if the former licensee does not undertake the actions in this clause.

Clause 39 creates an offence for a licensee if their licence is amended, suspended or cancelled and the chief executive requires the licensee to return their licence and they do not return the licence.

Division 4.4- Register of licences

Clause 40 requires the chief executive to keep a register of licences.

Clause 41 allows anyone to inspect the register during ordinary office hours and to obtain a copy of all or part of the register on payment of reasonable copying costs.

Clause 42 creates an offence for a licensee if they do not tell the chief executive in writing of any changes to their name, address or contact number within 7 days after the change occurs.

Part 5- Application of funds raised

Clause 43 defines the terms ‘ends’ and ‘licensee’ for part 5.

Clause 44 creates an offence if the licensee fails to ensure that the proceeds of a collection are applied only for the purposes of the collection.

Clause 45 creates an offence if the licensee receives money and the licensee fails to pay the money into a trust bank account before deducting any expenses in relation to the collection.

Clause 46 allows money received by a licensee for the purposes of a collection, which is not immediately required for those purposes, to be invested in a way authorised by law for the investment of trust funds.

Clause 47 creates an offence for the licensee if they conduct a collection and they fail to finalise the required accounts within 90 days.

Clause 48 creates an offence for the licensee if they do not give the chief executive a report containing the required information about all the collections conducted under the licence.

Clause 49 allows the chief executive to issue a notice, which directs a licensee to give the chief executive within a reasonable time, an auditor’s report about the accounts and records kept in relation to a collection. It is an offence if the licensee fails to comply with the notice. A registered company auditor under the Corporations Act or an auditor approved in writing by the chief executive for this clause must prepare the report. If the chief executive refuses to approve an auditor under this clause, this is a decision reviewable by the Administrative Appeals Tribunal.

Clause 50 creates an offence for the licensee if they carry out a collection and fail to keep records for the collection.

Clause 51 allows the chief executive to order a person to distribute all or any part of the proceeds of a collection: if the licence ends while a collection is being carried out under the licence; or if the collection ends and the proceeds of the collection are not distributed within 90 days.

Clause 52 allows the chief executive to appoint an administrator if a licensee: fails to comply with a direction under clause 38 (2); or contravenes clause 39 (1); or fails to comply with an order under clause 52 (2).

Part 6- Administration

Clause 53 allows the chief executive to require a person to give information or documents that are necessary to decide if the person has complied with this Bill.

Clause 54 states that a police officer is an authorised person and allows the chief executive to appoint a public servant as an authorised person for this Bill.

Clause 55 requires the chief executive to issue an identity card to each authorised person other than a police officer.

Clause 56 allows an authorised person to require a person to state their name and address if they find the person committing an offence against this Bill.

Part 7- Review of decisions

Clause 57 defines the term ‘reviewable decision’ for part 7. A reviewable decision is a decision of the chief executive mentioned in Schedule 1 under column 3.

Clause 58 requires the chief executive to give written notice of a reviewable decision to each person mentioned in Schedule 1 under column 4 except for a decision made in clause 35 (5). The notice must be in accordance with the requirements of the code of practice under section 25 B (1) of the *Administrative Appeals Tribunal Act 1989*.

Clause 59 allows a person to apply in writing to the Administrative Appeals Tribunal for a review of a reviewable decision within 28 days after they receiving notice of the decision.

Part 8- Miscellaneous

Clause 60 creates an offence for a person if they make a false or misleading statement to the chief executive in an application for the issue or amendment of a licence, a response under clause 35 (2), a response made under clause 53 (1), or information required under part 5.

Clause 61 creates an alternative verdict for different offences under clause 60.

Clause 62 allows the Minister to make a public statement or issue a public warning about collection practices or activities.

Clause 63 allows the Minister to determine fees for this Bill.

Clause 64 allows the Minister to approve forms for this Bill. If the Minister approves a form for a particular purpose, it must be used for that purpose.

Clause 65 allows the Executive to make regulations for this Bill. The regulations may include offences up to a maximum penalty of ten penalty units.

Part 9- Transitional and other provisions

Clause 66 repeals the *Collections Act 1959*.

Clause 67 allows licences in force under the *Collections Act 1959* to continue under this Bill.

Clause 68 allows the regulations to modify the operation of part 9.

Clause 69 states that part 9 expires after 1 year.

Clause 70 deletes the words ‘*Collections Act 1959*’ and replaces them with ‘*Charitable Collections Act 2003*’ in section 4 (f) of the *Hawkers Act 2003*.

Schedule 1 - This schedule contains a list of reviewable decisions.

Dictionary - The dictionary defines terms in the Bill.