

TASMANIA

CHARITIES AND ASSOCIATIONS LAW (MISCELLANEOUS) AMENDMENT BILL 2023

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement

PART 2 – ASSOCIATIONS INCORPORATION ACT 1964 AMENDED

3. Principal Act
4. Section 24 amended (Accounts and audit)
5. Section 24B amended (Annual returns)

PART 3 – COLLECTIONS FOR CHARITIES ACT 2001 AMENDED

6. Principal Act
7. Section 3 amended (Interpretation)
8. Section 4A inserted
 - 4A. Functions of Commissioner
9. Section 5 amended (Permissible soliciting)
10. Section 6 amended (Approval of organisations for soliciting)
11. Section 6A inserted
 - 6A. ACNC registered entity not to solicit without notifying
12. Sections 9 and 10 substituted
 9. Times permitted for soliciting
 10. Disclosure of information
13. Sections 17, 17A, 17B, 17C and 17D inserted

- 17. Codes of practice
 - 17A. Contravention of code of practice
 - 17B. Injunctions for breaches of code of practice
 - 17C. Infringement notices
 - 17D. Annual returns
14. Section 18 amended (Regulations)

PART 4 – REPEAL OF ACT

15. Repeal of Act

DRAFT

**CHARITIES AND ASSOCIATIONS LAW
(MISCELLANEOUS) AMENDMENT BILL 2023**

*(Brought in by the Minister for Workplace Safety and
Consumer Affairs, the Honourable Elise Nicole Archer)*

A BILL FOR

**An Act to amend the *Collections for Charities Act 2001* and
the *Associations Incorporation Act 1964***

Be it enacted by Her Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Charities and
Associations Law (Miscellaneous) Amendment
Act 2023*.

2. Commencement

This Act commences on a day to be proclaimed.

*Charities and Associations Law (Miscellaneous) Amendment Act
2023
Act No. of 2023*

s. 3

Part 2 – Associations Incorporation Act 1964 Amended

**PART 2 – ASSOCIATIONS INCORPORATION ACT
1964 AMENDED**

3. Principal Act

In this Part, the *Associations Incorporation Act 1964** is referred to as the Principal Act.

4. Section 24 amended (Accounts and audit)

Section 24(1C) of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- (a) \$500 000; or

5. Section 24B amended (Annual returns)

Section 24B(1) of the Principal Act is amended as follows:

- (a) by inserting “, in such form as the Commissioner requires,” after “with the Commissioner”;
- (b) by omitting from paragraph (d) “year.” and substituting “year; and”;
- (c) by inserting the following paragraph after paragraph (d):

*No. 64 of 1964

*Charities and Associations Law (Miscellaneous) Amendment Act
2023
Act No. of 2023*

Part 2 – Associations Incorporation Act 1964 Amended

s. 5

- (e) such other information that the Commissioner requires.

DRAFT

*Charities and Associations Law (Miscellaneous) Amendment Act
2023
Act No. of 2023*

s. 6

Part 3 – Collections for Charities Act 2001 Amended

**PART 3 – COLLECTIONS FOR CHARITIES ACT 2001
AMENDED**

6. Principal Act

In this Part, the *Collections for Charities Act 2001** is referred to as the Principal Act.

7. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition before the definition of *administrator* in subsection (1):

ACNC registered entity means an entity registered under Part 2-1 of the *Australian Charities and Not-for-profits Commission Act 2012* of the Commonwealth;

- (b) by omitting the definition of *charitable purpose* from subsection (1) and substituting the following definitions:

charitable purpose means a benevolent, philanthropic or patriotic purpose that includes, but is not limited to, a purpose such as helping individuals, the

*No. 28 of 2001

*Charities and Associations Law (Miscellaneous) Amendment Act
2023
Act No. of 2023*

Part 3 – Collections for Charities Act 2001 Amended

s. 7

welfare of animals or the
protection of the environment;

code of practice means a code of
practice prescribed by the
regulations;

- (c) by inserting the following definition after
the definition of *donation* in subsection
(1):

infringement offence means an
offence against this Act or the
regulations that is prescribed by
the regulations to be an
infringement offence;

- (d) by omitting “media;” from paragraph (g)
of the definition of *solicit* in subsection
(1) and substituting “media.”;
- (e) by omitting the definition of *sunset* from
subsection (1);
- (f) by omitting the table from subsection (3)
and substituting the following table:

Charitable Collections Act 1946 of Western Australia;

Charitable Fundraising Act 1991 of New South
Wales;

Collections Act 1966 of Queensland;

Charitable Collections Act 2003 of the Australian
Capital Territory;

*Charities and Associations Law (Miscellaneous) Amendment Act
2023
Act No. of 2023*

s. 8

Part 3 – Collections for Charities Act 2001 Amended

*Collections for Charitable Purposes Act 1939 of
South Australia;*

Fundraising Act 1998 of Victoria.

8. Section 4A inserted

After section 4 of the Principal Act, the following section is inserted:

4A. Functions of Commissioner

In addition to any functions under any other Act the Commissioner has the following functions for the purposes of this Act:

- (a) to advise the Minister in relation to the administration of this Act or matters arising under this Act;
- (b) to inform the public about such matters relating to the operation of this Act and as the Commissioner considers appropriate;
- (c) to facilitate training and education in respect of matters under this Act;
- (d) any other function determined by the Minister or prescribed by the regulations.

*Charities and Associations Law (Miscellaneous) Amendment Act
2023
Act No. of 2023*

Part 3 – Collections for Charities Act 2001 Amended

s. 9

9. Section 5 amended (Permissible soliciting)

Section 5(2) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

(ab) an ACNC registered entity; or

10. Section 6 amended (Approval of organisations for soliciting)

Section 6(1) of the Principal Act is amended by inserting “, other than an ACNC registered entity,” after “an organisation”.

11. Section 6A inserted

After section 6 of the Principal Act, the following section is inserted:

6A. ACNC registered entity not to solicit without notifying

(1) An ACNC registered entity must not solicit for any charitable purpose unless it has first notified the Commissioner of its intention to do so.

Penalty: Fine not exceeding 50 penalty units.

(2) The Commissioner may impose such conditions as the Commissioner thinks fit on the soliciting for a charitable purpose by an ACNC registered entity.

*Charities and Associations Law (Miscellaneous) Amendment Act
2023
Act No. of 2023*

s. 12

Part 3 – Collections for Charities Act 2001 Amended

12. Sections 9 and 10 substituted

Sections 9 and 10 of the Principal Act are repealed and the following sections are substituted:

9. Times permitted for soliciting

A person must not solicit for a charitable purpose at a time that is not permitted under the code of practice.

Penalty: Fine not exceeding 20 penalty units.

10. Disclosure of information

A person must not solicit for any charitable purpose in particular circumstances unless the person provides such information as is required to be provided under the code of practice in those circumstances.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a period not exceeding 3 months.

13. Sections 17, 17A, 17B, 17C and 17D inserted

After section 16 of the Principal Act, the following sections are inserted:

*Charities and Associations Law (Miscellaneous) Amendment Act
2023
Act No. of 2023*

Part 3 – Collections for Charities Act 2001 Amended

s. 13

17. Codes of practice

- (1) The Governor, on the recommendation of the Minister, may make regulations prescribing a code of practice.
- (2) Before a code of practice is prescribed under subsection (1), the Minister is to –
 - (a) prepare a draft of the code of practice; and
 - (b) in respect of the draft code of practice, arrange for consultation with, and invite submissions from –
 - (i) the public; and
 - (ii) any other person, body or organisation who the Minister believes would have an interest in the terms of the proposed code of practice.
- (3) A person must not contravene or fail to comply with a provision of a code of practice.

Penalty: Fine not exceeding 20 penalty units.

17A. Contravention of code of practice

- (1) The Director, under the *Consumer Affairs Act 1988*, may make a

*Charities and Associations Law (Miscellaneous) Amendment Act
2023
Act No. of 2023*

s. 13

Part 3 – Collections for Charities Act 2001 Amended

recommendation to the Commissioner that an order be applied for under this section in respect of an alleged contravention of a code of practice if –

- (a) the Director investigates, under that Act, a complaint in respect of the code of practice; and
 - (b) as a result of the investigation, the Director is satisfied that a person has contravened a provision of the code of practice.
- (2) The Commissioner may, on the Commissioner's own initiative or at the recommendation of the Director under subsection (1), apply to a magistrate for an order under this section in respect of an alleged contravention of a provision of the code of practice.
- (3) If a magistrate is satisfied that a person has contravened a provision of a code of practice, the magistrate may order that the person –
- (a) cease contravening that provision; and
 - (b) rectify any consequence of the contravention of that provision.
- (4) In addition to any order made under subsection (3) in respect of a contravention of a provisions of a code of

*Charities and Associations Law (Miscellaneous) Amendment Act
2023
Act No. of 2023*

practice, a magistrate may make either or both of the following additional orders:

- (a) an order prohibiting the person from continuing to consent to, or connive at, the contravention;
 - (b) an order prohibiting the person from consenting to, or conniving at, a similar contravention by any other body corporate of which the person is a director or in the management of which the person is concerned.
- (5) An order may only be made under subsection (4) in respect of a contravention of a provision of a code of practice if –
- (a) the contravention is by a body corporate; and
 - (b) the magistrate is satisfied that it occurred with the consent or connivance of a person who, at the time of the contravention, was a director of the body corporate or a person concerned in its management –
- (6) An order under this section may be made for the period and subject to the conditions as the magistrate making the order thinks fit, including, but not limited to –

*Charities and Associations Law (Miscellaneous) Amendment Act
2023
Act No. of 2023*

s. 13

Part 3 – Collections for Charities Act 2001 Amended

- (a) conditions relating to the future conduct of the person who is the subject of the order; and
 - (b) conditions relating to the actions to be taken to rectify the consequences of the contravention which is the subject of the order.
- (7) It is a defence in any proceedings in respect of a failure to comply with a code of practice if the defendant establishes that compliance was effected by means other than those specified in the code of practice.

17B. Injunctions for breaches of code of practice

- (1) The Director, under the *Consumer Affairs Act 1988*, may apply to the Supreme Court for an injunction under this section.
- (2) The Supreme Court may grant an injunction under this section if the Court is satisfied that a person has engaged in conduct that constitutes, or is proposing to engage or would constitute –
 - (a) a contravention of a provision of an order of a magistrate under section 17A; or
 - (b) attempting to contravene such a provision; or

*Charities and Associations Law (Miscellaneous) Amendment Act
2023
Act No. of 2023*

Part 3 – Collections for Charities Act 2001 Amended

s. 13

- (c) aiding, abetting, counselling or procuring a person to contravene such a provision; or
- (d) inducing, or attempting to induce, whether by threats or promises or otherwise, a person to contravene such a provision; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) conspiring with others to contravene such a provision.

(3) An injunction granted under subsection (2) may be granted –

- (a) on such terms as the Court considers appropriate in the circumstances; or
- (b) as either –
 - (i) a permanent injunction; or
 - (ii) an interim injunction, with or without an undertaking being required as to damages or costs.

*Charities and Associations Law (Miscellaneous) Amendment Act
2023
Act No. of 2023*

s. 13

Part 3 – Collections for Charities Act 2001 Amended

17C. Infringement notices

- (1) An authorized officer, within the meaning of the *Consumer Affairs Act 1988*, may issue and serve an infringement notice on a person if the officer reasonably believes that the person has committed an infringement offence.
- (2) An infringement notice may not be served on an individual who has not attained the age of 18 years.
- (3) An infringement notice –
 - (a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and
 - (b) is not to relate to more than 3 offences.
- (4) The regulations –
 - (a) may prescribe, for infringement offences, the penalties payable under infringement notices; and
 - (b) may prescribe different penalties for bodies corporate and individuals.
- (5) The penalty prescribed for any infringement offence is not to exceed

*Charities and Associations Law (Miscellaneous) Amendment Act
2023
Act No. of 2023*

Part 3 – Collections for Charities Act 2001 Amended

s. 14

20% of the maximum penalty that could be imposed on an individual by a court in respect of the offence.

17D. Annual returns

- (1) The Commissioner may require an organisation to provide to the Commissioner, within 6 months after the end of the financial year, an annual return containing such information as the Commissioner may require.
- (2) An organisation is not required to provide an annual return under this section for a financial year if the incorporated association –
 - (a) was an ACNC registered entity for all or part of the financial year; and
 - (b) has, in respect of the financial year, complied with the financial and reporting requirements of that Act.

14. Section 18 amended (Regulations)

Section 18(2) of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

- (da) provide for the making of codes of practice; and

*Charities and Associations Law (Miscellaneous) Amendment Act
2023
Act No. of 2023*

s. 15

Part 4 – Repeal of Act

PART 4 – REPEAL OF ACT

15. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.

DRAFT