

TASMANIA

DISPOSAL OF UNCOLLECTED GOODS BILL 2019

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SCHEDULE 1 – LEGISLATION REPEALED

DISPOSAL OF UNCOLLECTED GOODS BILL 2019

(Brought in by the Minister for Building and Construction, the Honourable Sarah Courtney)

A BILL FOR

An Act to enable the disposal of certain uncollected goods, to repeal the *Disposal of Uncollected Goods Act 1968*, and for related purposes

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 *Disposal of Uncollected Goods Act 2019*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Interpretation

In this Act, unless the contrary intention appears –

bailment includes bailment for reward, bailment in the course of business,

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gratuitous bailment, involuntary bailment
and any sub-bailment;

court means the Supreme Court and the
Magistrates Court;

Director has the same meaning as in the
Consumer Affairs Act 1988;

disposal costs means the costs incurred by the
receiver for the disposal of goods under
this Act;

goods disposal notice means a notice referred
to in section 17;

high value, for goods, means the goods are of
a value equal to or more than \$5 000, or,
if another amount is determined by the
Director for the purposes of this
definition, that other amount;

low value, for goods, means the goods are of a
value less than –

- (a) in the case of a motor vehicle –
\$1 000, or, if another amount is
determined by the Director for
the purposes of this paragraph,
that other amount; or
- (b) in any other case – \$200, or, if
another amount is determined by
the Director for the purposes of
this paragraph, that other amount;

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medium value, for goods, means the goods are of a value –

- (a) in the case of a motor vehicle –
 - (i) equal to or more than \$1 000 or, if another amount is determined by the Director for the purposes of this subparagraph, that other amount; and
 - (ii) less than \$5 000 or, if another amount is determined by the Director for the purposes of this subparagraph, that other amount; or
- (b) in any other case –
 - (i) equal to or more than \$200 or, if another amount is determined by the Director for the purposes of this subparagraph, that other amount; and
 - (ii) less than \$5 000 or, if another amount is determined by the Director for the purposes of this subparagraph, that other amount;

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motor vehicle has the same meaning as in the *Vehicle and Traffic Act 1999*;

owner, in relation to a motor vehicle, means the registered operator, within the meaning of the *Vehicle and Traffic Act 1999*, of the vehicle;

provider, in relation to goods, means the person who gives possession of the goods under a bailment (whether or not the person is the owner of the goods);

public auction includes an auction conducted on the Internet;

publicly registered interest means an interest in goods that is recorded –

- (a) in the register within the meaning of the *Personal Property Securities Act 2009* of the Commonwealth, if the goods are described by serial number in that register; or
- (b) in any register prescribed by the regulations;

receiver, in relation to goods, means the person who takes possession of the goods under a bailment;

Registrar of Motor Vehicles means the Registrar of Motor Vehicles appointed under section 5 of the *Vehicle and Traffic Act 1999*;

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relevant charge has the meaning it has in section 8;

uncollected goods has the meaning it has in section 7;

vehicle identification number, in relation to a motor vehicle, means the vehicle identification number allocated to the vehicle in accordance with the relevant national standard under the *Motor Vehicle Standards Act 1989* of the Commonwealth, as amended and in force from time to time.

4. Application of Act

- (1) This Act applies to the possession of goods under a bailment, whether or not the possession of the goods was taken before or after the day on which this Act commences.
- (2) This Act –
 - (a) applies to the disposal of uncollected goods if there is no agreement between the provider and the receiver about their disposal; or
 - (b) if there is an agreement between the provider and the receiver about the disposal of uncollected goods, applies to the disposal of uncollected goods only in respect of matters not dealt with by the agreement.

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- (3) This Act does not apply to –
- (a) goods left behind at the end of a tenancy that is a tenancy to which the *Residential Tenancy Act 1997* applies; or
 - (b) unsolicited goods; or
 - (c) second-hand goods received in pawn under the *Second-hand Dealers and Pawnbrokers Act 1994*; or
 - (d) goods to which section 90 of the *Police Service Act 2003* applies; or
 - (e) goods to which section 171 of the *Gene Technology Act 2000* of the Commonwealth, as that Act applies in this State by virtue of section 6 of the *Gene Technology (Tasmania) Act 2012*, applies; or
 - (f) goods that are the subject of an order for forfeiture under section 133 of the *Petroleum (Submerged Lands) Act 1982*; or
 - (g) any goods or vehicle to which section 41F, 43 or 82 of the *Traffic Act 1925* applies; or
 - (h) goods to which section 15 of the *Tasmanian Museum and Art Gallery Act 2017* applies; or

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- (i) any unclaimed non-monetary prize to which section 76ZS of the *Gaming Control Act 1993* applies; or
 - (j) goods within a class of goods determined by the Director.
- (4) Subject to subsection (3), this Act applies in addition to any other remedy or right that is available to dispose of uncollected goods under any other Act.
- (5) For the avoidance of doubt, this Act does not affect the right of a provider and receiver to make an agreement about the disposal of uncollected goods.

5. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

6. Effect of Act on common law

- (1) The common law in relation to bailment of goods remains in force to the extent to which it is not affected by this Act.
- (2) A person is entitled to exercise any rights that the person may have at common law in relation to the recovery of goods or compensation for the loss of or damage to goods, except to the extent to which this Act provides otherwise.

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7. Meaning of *uncollected goods*

- (1) For the purposes of this Act, goods are ***uncollected goods*** if they are goods under bailment and if –
- (a) the goods are ready for delivery to the provider in accordance with the terms of the bailment, but the provider has not taken delivery of the goods and has not given directions as to their delivery; or
 - (b) the receiver is required to give notice to the provider when the goods are ready for delivery but cannot locate or communicate with the provider; or
 - (c) the receiver can reasonably expect to be relieved of any duty to safeguard the goods on giving notice to the provider but cannot locate or communicate with the provider; or
 - (d) the provider has not paid the relevant charge payable to the receiver in relation to the goods, within a reasonable time after being informed by the receiver that the goods are ready for delivery.
- (2) Goods are not uncollected goods for the purposes of subsection (1)(a) if the provider's failure to take delivery arises from –
- (a) the receiver refusing to make delivery; or
 - (b) the receiver preventing the provider from taking delivery.

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8. Relevant charge

- (1) For the purposes of this Act, the *relevant charge* is the amount that is payable to the receiver for goods under bailment and payment of which entitles the provider to take delivery of the goods.
- (2) Unless specified otherwise in an order of a court, the amount payable to the receiver is, for the purposes of subsection (1), the sum of the following:
 - (a) for any carriage and storage of the goods or for any repairs, cleaning, treatment or other work done in connection with the goods –
 - (i) the amount agreed to by the provider and receiver as the charge payable to the receiver; or
 - (ii) in the absence of an agreement, the amount that is reasonable;
 - (b) the amount of costs, for any storage, maintenance or insurance of the goods, incurred by the receiver during the period –
 - (i) beginning when a goods disposal notice in relation to the goods is given under Part 2 and ending when the goods are disposed of; or

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- (ii) beginning when an application is made under section 24 or 25 for a court order and ending when the goods are disposed of.

9. Valuation of goods

- (1) The Director may determine a method for valuation of a category of goods specified in the determination.
- (2) If the Director determines a method for valuation of a category of goods specified in the determination, a valuation, in accordance with that method, of goods within that category is taken to be an accurate valuation of the goods.
- (3) A valuation of goods is not to be taken to be inaccurate by reason only that it is not performed in accordance with a method determined under subsection (2) in relation to a category of goods of which the goods is a member.

PART 2 – DISPOSAL OF UNCOLLECTED GOODS

Division 1 – Disposal of goods by receiver

10. Low value uncollected goods

- (1) A receiver may dispose of low value uncollected goods if –
 - (a) the receiver has given to the provider a goods disposal notice in relation to the goods; and
 - (b) 28 days have elapsed since the giving of the notice and the provider has not taken delivery of the goods or given directions as to their delivery.
- (2) A receiver may dispose of low value uncollected goods if –
 - (a) the receiver cannot locate or communicate with the provider in order to give a goods disposal notice under subsection (1) after making reasonable attempts to do so; and
 - (b) 60 days have elapsed since the goods became uncollected goods.
- (3) Goods may be disposed of under this section by sale, destruction, appropriation or any other means.

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11. Medium value uncollected goods

- (1) A receiver may dispose of medium value uncollected goods if –
 - (a) the receiver has given a goods disposal notice in relation to the goods to –
 - (i) the provider; and
 - (ii) if the provider and the owner are different people and the receiver is aware of that fact, the owner of the goods; and
 - (b) 28 days have elapsed since the giving of the notice and the provider has not taken delivery of the goods or given directions as to their delivery.
- (2) A receiver may dispose of medium value uncollected goods if –
 - (a) the receiver cannot locate or communicate with the provider or the owner of the goods in order to give a goods disposal notice under subsection (1) after making reasonable attempts to do so; and
 - (b) 90 days have elapsed since the goods became uncollected goods.
- (3) Goods must be disposed of under this section by public auction or by private sale and with reasonable care to ensure that the goods are sold for the best price that can reasonably be

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obtained, having regard to the circumstances existing when the goods are sold.

12. High value uncollected goods

- (1) A receiver may dispose of high value uncollected goods if –
- (a) the receiver has given a goods disposal notice in relation to the goods to –
 - (i) the provider; and
 - (ii) if the provider and the owner of the goods are different people and the receiver is aware of that fact, the owner of the goods; and
 - (iii) any person who has a publicly registered interest in the goods; and
 - (iv) any other person having or claiming an interest in the goods of which the receiver is aware; and
 - (b) 28 days have elapsed since the giving of the notice and neither of the following persons has taken delivery of the goods or given directions as to their delivery:
 - (i) the provider;
 - (ii) the owner of the goods.

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- (2) A receiver may dispose of high value uncollected goods if –
- (a) the receiver cannot locate or communicate with the provider or the owner of the goods in order to give a goods disposal notice under subsection (1) after making reasonable attempts to do so; and
 - (b) 180 days have elapsed since the goods became uncollected goods.
- (3) Goods must not be disposed of under this section otherwise than –
- (a) by way of public auction that is –
 - (i) advertised at least 7 days in advance; or
 - (ii) held over a period of at least 7 days; or
 - (b) subject to subsection (4), by way of private sale.
- (4) Goods may only be disposed of under subsection (3)(b) if –
- (a) a goods disposal notice in relation to the goods has been given in accordance with subsection (1); and
 - (b) the receiver has a reasonable belief that the best price could only be achieved by private sale; and

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- (c) the receiver takes reasonable care to ensure that the goods are sold for the best price that can reasonably be obtained, having regard to the circumstances at the time the goods are sold.

13. Additional requirement for disposal of high value motor vehicles

A receiver must not dispose of a motor vehicle that is of a high value unless the receiver has obtained in relation to that motor vehicle a written search result under section 170(2)(b) of the *Personal Property Securities Act 2009* of the Commonwealth.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 120 penalty units; or
- (b) an individual, a fine not exceeding 60 penalty units.

14. Perishable goods

- (1) A receiver may dispose of perishable uncollected goods (whether or not the goods have perished) by sale, appropriation or destruction, if –
 - (a) the receiver has given the provider –
 - (i) oral notice of the receiver's intention to dispose of the goods;
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- (ii) a goods disposal notice in relation to the goods; and
 - (b) having regard to the nature and condition of the goods, a reasonable time in which to collect the goods has elapsed since the giving of the notice.
- (2) A receiver may dispose, by any means, of uncollected goods that have perished but must make reasonable attempts to give the provider, within a reasonable time after the disposal of the goods, oral or written notice of the disposal of the goods.

15. Provider, &c., entitled to goods before disposal, on payment of relevant charge

The provider, the owner of the uncollected goods or any other person with an interest in the goods is entitled, on payment of the relevant charge, to delivery of the goods at any time before their disposal under this Part.

16. No disposal of uncollected goods under this Part if application to court about dispute

- (1) A receiver must not dispose of uncollected goods under this Part if –
- (a) a dispute exists between the provider and receiver regarding the relevant charge, including such a dispute about the condition of the goods or the nature or

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quality of any repairs or other work done in connection with the goods; and

- (b) an application has been made to a court in relation to the dispute, including but not limited to an application made to the court under section 24 in relation to the goods.
- (2) Subsection (1) does not prevent the receiver from giving notice under this Part of the receiver's intention to dispose of the uncollected goods.

Division 2 – Goods disposal notice

17. Goods disposal notice

- (1) A goods disposal notice in relation to goods is a notice in writing specifying the receiver's intention to dispose of uncollected goods under this Part.
- (2) A goods disposal notice in relation to goods must include –
 - (a) the receiver's name; and
 - (b) a description of the goods; and
 - (c) an address at which the goods may be collected; and
 - (d) a statement of the relevant charge payable to the receiver for the goods and, if the relevant charge is likely to increase, a statement of the current

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relevant charge and an estimate of further charges that will accrue; and

- (e) a statement to the effect that on or after a specified date the goods will be disposed of unless they are collected and the relevant charge is paid; and
- (f) if applicable, a statement to the effect that the receiver will retain from the proceeds of sale of the goods an amount not exceeding the sum of the relevant charge and the disposal costs.

18. How goods disposal notice may be given

- (1) A goods disposal notice may be given by a receiver to a person –
 - (a) personally; or
 - (b) by email to an electronic address given to the receiver by the person; or
 - (c) by text, or facsimile transmission, sent electronically to a telephone number given to the receiver by the person; or
 - (d) by being left at, or sent by post to, the person's last known address.
- (2) A goods disposal notice to a person with a publicly registered interest in uncollected goods is taken to have been given if it has been sent by post to the person's address in the register in which the interest is recorded.

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Division 3 – Effect of sale or disposal of goods under this Part

19. Person disposing of goods under this Part not liable

A receiver who disposes of uncollected goods in accordance with this Part is not liable in relation to the goods by reason of the disposal.

20. Proceeds of sale of goods under this Part

- (1) If uncollected goods are sold under this Part, the receiver is entitled to retain the relevant charge payable to the receiver for the goods and the disposal costs.
- (2) The balance (if any) of the proceeds of sale is to be dealt with as if the receiver were a business and the money were unclaimed money for the purposes of the *Unclaimed Money Act 2015*.
- (3) If the proceeds of the sale are insufficient to pay the relevant charge and disposal costs, the receiver may recover the deficiency from the provider as a debt due and payable.

21. Good title

- (1) The purchaser of goods sold under this Part acquires good title to the goods, free from any interest that existed in the goods in favour of another person before the goods were sold, if the purchaser buys the goods –

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- (a) without notice of any failure of the receiver to comply with this Act; and
 - (b) without notice of any defect or want of title of the provider.
- (2) A receiver who disposes of goods by appropriation in accordance with this Part acquires good title to the goods.

Division 4 – Obligations of receiver after disposal of goods under this Part

22. Receiver to prepare and keep record of disposal of goods under this Part

- (1) Within 7 days after disposing under this Part of uncollected goods that are not low value goods, the receiver must prepare a record of the following particulars:
 - (a) a description of the goods;
 - (b) if the goods were disposed of under section 10, 11, 12 or 14 –
 - (i) the date and means of giving a goods disposal notice in relation to the goods; and
 - (ii) the name and address of any person to whom the notice was given;
 - (c) the date of disposal;
 - (d) the manner of disposal;

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- (e) if the goods were sold –
 - (i) the name and address of the purchaser; and
 - (ii) the sale price; and
 - (iii) the amount retained by the receiver to cover the relevant charge payable to the receiver for the goods; and
 - (iv) the amount retained by the receiver to cover the disposal costs;
- (f) if the goods were sold by public auction, the name and address of the principal place of business of the auctioneer who sold the goods;
- (g) if applicable, the amount of the balance of the proceeds of sale paid to the Registrar of Motor Vehicles and the date of payment.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 50 penalty units; or
 - (b) an individual, a fine not exceeding 10 penalty units.
- (2) The receiver must –
- (a) retain, for 6 years from the date of disposal of the goods, the record

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prepared under subsection (1) in relation to the goods; and

- (b) make the record available on request by any of the following:
 - (i) the provider of the goods;
 - (ii) the owner of the goods;
 - (iii) any other person claiming to have an interest in the goods.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 50 penalty units; or
 - (b) an individual, a fine not exceeding 10 penalty units.
- (3) Within 7 days after disposing under this Part of uncollected goods that are low value goods, the receiver must prepare a record containing, in relation to the goods, the information determined by the Director.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 50 penalty units; or
 - (b) an individual, a fine not exceeding 10 penalty units.
- (4) The receiver must –

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-
- (a) retain, for 2 years from the date of disposal of the goods or a lesser period determined by the Director, the record prepared under subsection (3) in relation to the goods; and
 - (b) make the record available on request by any of the following:
 - (i) the provider of the goods;
 - (ii) the owner of the goods;
 - (iii) any other person claiming to have an interest in the goods.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 50 penalty units; or
- (b) an individual, a fine not exceeding 10 penalty units.

23. Receiver to provide receipt to purchaser of motor vehicle

- (1) If a receiver sells a motor vehicle under this Part, the receiver must provide the purchaser with a receipt that complies with this section.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 50 penalty units; or

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(b) an individual, a fine not exceeding 10 penalty units.

- (2) The receipt must contain the following:
- (a) if the receiver is a natural person, the receiver's full name, address and date of birth;
 - (b) if the receiver is a body corporate, the receiver's business name and address and ABN;
 - (c) the vehicle's last registration number (if available) and vehicle identification number;
 - (d) the purchaser's full name, address and date of birth;
 - (e) the date of sale;
 - (f) the sale price;
 - (g) the name of the owner of the vehicle;
 - (h) any other information determined by the Director.
- (3) The receipt must state that the vehicle has been disposed of under this Act and must be signed by both the purchaser and the receiver.

PART 3 – COURT ORDERS TO DISPOSE OF GOODS

24. Application to court for disposal order

- (1) A receiver may apply to a court for an order to dispose of uncollected goods.
- (2) The application must –
 - (a) state fully the grounds on which it is made; and
 - (b) include the information specified in section 17(2)(a), (b), (c) and (d); and
 - (c) in the case of the disposal of a motor vehicle, include the written search result required under section 13 and, if the vehicle is registered in this State, a certificate issued in relation to the vehicle under section 29.
- (3) The receiver must give a copy of the application to –
 - (a) the provider, if the provider can be located after reasonable enquiries have been made; and
 - (b) the owner of the goods, if the owner can be located after reasonable enquiries have been made; and
 - (c) any person with a publicly registered interest in the goods; and

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- (d) any other person known by the receiver to have or to be claiming an interest in the goods.

25. Order as to amount of relevant charge payable

If a dispute exists between the provider and the receiver regarding the relevant charge for uncollected goods, either party may apply to a court for an order determining the amount of the relevant charge payable to the receiver.

26. Court orders

- (1) On an application under section 24 or 25, the court may make any one or more of the following orders:
 - (a) an order authorising the disposal of specified goods under bailment;
 - (b) an order determining the relevant charge payable to the receiver;
 - (c) any other orders that it considers necessary to give effect to an order made under paragraph (a) or (b).
- (2) An order under subsection (1)(a) must specify the following:
 - (a) the authorised means of disposal of the goods;
 - (b) the date by which the goods may be disposed of;

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- (c) the amount of the relevant charge payable to the receiver for the goods.

27. Provider, &c., may have goods returned before disposal if relevant charge paid

If a court order has been made under this Part for the disposal of uncollected goods, the provider, the owner of the uncollected goods or any other person with an interest in the goods is entitled, on payment to the receiver of the relevant charge, to delivery of the goods at any time before their disposal.

28. Effect of other proceeding

- (1) If, at any time before the disposal of uncollected goods under Part 2, a person (other than the provider) starts a proceeding for the recovery of the goods, an order made under section 26 is suspended until the proceeding is decided.
- (2) If an order for the recovery of goods is made by a court, Tribunal, or a person, authorised under a law to make an order for the recovery of the goods, the order made under section 26 ceases to have effect.

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Part 4 – Miscellaneous

PART 4 – MISCELLANEOUS

29. Receiver may obtain details of registered operator of motor vehicle

- (1) A receiver of a motor vehicle may apply to the Registrar of Motor Vehicles, in accordance with subsection (2), for a certificate setting out the details of the registered operator of a motor vehicle.
- (2) The application must –
 - (a) be accompanied by the fee prescribed (if any) under the *Vehicle and Traffic Act 1999* for an extract from a register within the meaning of that Act; and
 - (b) be in the form of a statutory declaration; and
 - (c) include the following particulars:
 - (i) if the receiver is a natural person, the receiver's full name, address and date of birth;
 - (ii) if the receiver is a body corporate, the receiver's business name and address and ABN;
 - (iii) the vehicle's last registration number (if available) and vehicle identification number;
 - (iv) a copy of any written search result obtained under section 13;

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- (v) any other information prescribed by the regulations.
- (3) If the Registrar of Motor Vehicles, after receiving an application under subsection (1) in relation to a motor vehicle, is satisfied that the application is being made for the purposes of this Act, the Registrar must give to the receiver a certificate setting out the details of the registered operator of the motor vehicle.

30. Determinations by Director

- (1) The Director may, in writing –
 - (a) determine a matter that is specified in this Act as a matter that the Director may determine; or
 - (b) revoke a determination made under paragraph (a).
- (2) The Director, before making a determination under subsection (1), is to consult with persons who the Director considers have an interest in the contents of the determination.
- (3) The Director must ensure that copies of a determination made under subsection (1)(a) that has not been revoked is –
 - (a) made available for viewing by the public on a website of the Department; and
 - (b) made available, during ordinary business hours, for viewing or purchase by a

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member of the public at offices of the Director; and

- (c) if the Director thinks fit, made available, during ordinary business hours, for viewing by a member of the public in another manner, if any, determined by the Director.
- (4) The Director must ensure that notice of the revocation of a determination under subsection (1) is –
- (a) placed on a website of the Department for at least 12 months after the day on which the revocation takes effect; and
 - (b) if the Director thinks fit, given to members of the public in the manner determined by the Director.
- (5) A determination of a matter by the Director is of no effect at a relevant time if a copy of the determination is not made available, at that time, for viewing by the public on a website of the Department.

31. Regulations

- (1) The Governor may make regulations for the purpose of this Act.
- (2) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

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- (3) The regulations may –
- (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units.

32. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Building and Construction; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

33. Legislation repealed

The legislation specified in Schedule 1 is repealed.

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SCHEDULE 1 – LEGISLATION REPEALED

Section 33

Disposal of Uncollected Goods Act 1968 (No. 34 of 1968)