

TASMANIA

CHARITIES AND ASSOCIATIONS LAW (MISCELLANEOUS) AMENDMENT BILL 2024

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**CHARITIES AND ASSOCIATIONS LAW
(MISCELLANEOUS) AMENDMENT BILL 2024**

*(Brought in by the Minister for Small Business and Consumer
Affairs, the Honourable Michael Darrel Joseph Ferguson)*

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 2024*.

2. Commencement

This Act commences on a day to be proclaimed.

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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 as follows:

- (a) by omitting “registered entity” and substituting “incorporated association”;
- (b) 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”;

*No. 64 of 1964

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(c) by inserting the following paragraph after paragraph (d):

(e) such other information as the Commissioner requires.

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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 definitions before the definition of *administrator* in subsection (1):

ACNC means the Australian Charities and Not-for-profits Commission established under the *Australian Charities and Not-for-profits Commission Act 2012* of the Commonwealth;

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:

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charitable purpose means a benevolent, philanthropic or patriotic purpose that includes, but is not limited to, a purpose such as helping individuals, the welfare of animals or the protection of the environment;

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

- (c) by inserting “, fundraised” after “donated” in the definition of *donation* in subsection (1);
- (d) 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;

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

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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;

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 as the Commissioner
considers appropriate;

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- (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.

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, other than an association incorporated in Tasmania or a corporation whose principal office is

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located in Tasmania, must not solicit for any charitable purpose unless it has first –

- (a) notified the Commissioner of its intention to do so; or
- (b) notified the ACNC of that intention in order for the ACNC to notify the Commissioner.

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.

12. Section 7 amended (Requirement for licence or authority in another jurisdiction)

Section 7 of the Principal Act is amended by inserting “, other than an ACNC-registered entity,” after “An organisation”.

13. Sections 9 and 10 repealed

Sections 9 and 10 of the Principal Act are repealed.

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14. Sections 12 and 13 repealed

Sections 12 and 13 of the Principal Act are repealed.

15. Sections 17, 17A, 17B, 17C, 17D, 17E and 17F inserted

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

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.

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- (3) A person must not contravene or fail to comply with a provision of a code of practice.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) an individual, a fine not exceeding 20 penalty units.

17A. Contravention of code of practice

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

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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 provision of a code of 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

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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 such period and subject to such conditions as the magistrate making the order thinks fit, including, but not limited to –
 - (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.

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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 in conduct that 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
 - (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

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- (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.

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 –

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- (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 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

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section for a financial year if the organisation –

- (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 the *Australian Charities and Not-for-profits Commission Act 2012* of the Commonwealth.

17E. Proceedings for offences

Proceedings for an offence against this Act –

- (a) may, with the consent of the Commissioner, be commenced by an authorized officer, within the meaning of the *Consumer Affairs Act 1988*; and
- (b) must be commenced within –
 - (i) 3 years after the date on which the offence is alleged to have been committed; and
 - (ii) 6 months after the date on which evidence of the alleged offence first came

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to the attention of the
Commissioner.

17F. Liability of body corporates

- (1) If a body corporate contravenes a provision of this Act, a person who is concerned in, or takes part in, the management of the body corporate is taken to have contravened that provision.
- (2) It is a defence in proceedings in respect of a contravention referred to in subsection (1) for a person to prove that –
 - (a) the body corporate contravened the provision without the person's knowledge; or
 - (b) the person was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (c) the person, if in such a position, attempted to prevent the contravention by the body corporate.
- (3) A person referred to in subsection (1) may be convicted of a contravention of a provision of this Act whether or not the body corporate has been convicted of its contravention.

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- (4) Nothing in this section affects the liability of a body corporate for an offence committed by it against a provision of this Act.

16. 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

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PART 4 – REPEAL OF ACT

17. Repeal of Act

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