

CLAUSE NOTES

Charities and Associations Law (Miscellaneous) Amendment Bill 2023

PART 1 - PRELIMINARY

- Clause 1** **Short title**
- This clause provides that the Act will be cited as the *Charities and Associations Law (Miscellaneous) Amendment Act 2023*
- Clause 2** **Commencement**
- This clause provides that the Act commences on a day to be proclaimed.

PART 2 – ASSOCIATIONS INCORPORATION ACT 1964 AMENDED

- Clause 3** **Principal Act**
- This clause provides that the Principal Act that is being amended in Part 2 is the *Associations Incorporation Act 1964* (the Associations Act).
- Clause 4** **Section 24 amended (Accounts and audit)**
- This clause amends subsection 24(1C) of the Associations Act to clarify it applies to incorporated associations generally, not registered entities. It also increases the auditing threshold from \$250,000 to \$500,000 for small organisations that are incorporated associations, whether or not they are charities. For charities, this has the benefit of alignment with the thresholds in the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (the ACNC Act). This will reduce the regulatory burden on all incorporated associations in Tasmania with revenue under \$500,000.
- Clause 5** **Section 24B amended (Annual returns)**
- This clause makes amendments to clarify the annual return requirements for incorporated associations, such as providing any other such information that the Commissioner requires and in such form as the Commissioner requires.

PART 3 – COLLECTIONS FOR CHARITIES ACT 2001 AMENDED

- Clause 6** **Principal Act**
- This clause provides that the Principal Act that is being amended in Part 3 is the *Collections for Charities Act 2001* (the Charities Act).
- Clause 7** **Section 3 amended (Interpretation)**
- This clause inserts new definitions in the Interpretation section of the Charities Act and makes minor technical amendments.

New definitions of ACNC and ACNC-registered entity are inserted, referring to the meanings in the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

The current definition of *charitable purpose* is omitted and substituted with a new definition which clarifies the overarching purposes are benevolent, philanthropic or patriotic. . The definition includes but is not limited to the examples given, including examples already in the current Act, and is compatible with the definition and examples of charitable purposes under the *Charities Act 2013* of the Commonwealth.

A definition of *code of practice* is inserted, meaning a code of practice prescribed by the regulations.

A definition of *infringement offence* is included, providing it is an offence against this Act or the regulations that is prescribed by the regulations to be an infringement offence.

The definition of 'sunset' is omitted as it is only referred to in section 9 of the Act, which the Bill repeals.

The clause updates the list of relevant Acts for the purposes of the Charities Act.

Clause 8 Section 4A inserted (Functions of Commissioner)

This clause inserts section 4A which provides for the functions of Commissioner. This does not limit any functions under any other Act the Commissioner has. The functions for the purposes of the Charities Act include advising the Minister in relation to the administration of the Act, informing the public about the operation of the Act, to facilitate training and education and any other function determined by the Minister or prescribed by the regulations.

Clause 9 Section 5 amended (Permissible soliciting)

Section 5 of the Charities Act provides in part a person must not solicit for a charitable purpose unless on behalf of an organisation complying with section 5(2).

This clause amends subsection 5(2) of the Charities Act to add 'an ACNC registered entity', so such an entity can solicit for a charitable purpose without being subject to the further requirements of that section.

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

This clause amends subsection 6(1) of the Charities Act to clarify that the requirement for approval of the Commissioner does not apply to an organisation that is an ACNC-registered entity.

This amendment means that an organisation that is an ACNC-registered entity does not need to seek additional approval from the Commissioner to undertake soliciting for charitable purpose in Tasmania, reducing the administrative burden on those charities.

Clause 11 Section 6A inserted

6A. ACNC registered entity not to solicit without notifying

This clause inserts new section 6A into the Charities Act. The new subsection 6A (1) provides that an ACNC registered entity other than an association incorporated in Tasmania or a corporation whose principal office is located in Tasmania, must not solicit for any charitable purpose unless it has first notified the Commissioner of its intention to do so, or provided notification to the ACNC for the purpose of the ACNC notifying the Commissioner. This provision ensures that the Commissioner is aware of all charities that are operating in Tasmania.

In practice, under this section, charities can notify ACNC of their intention to fundraise in particular jurisdictions in their registration or annual statement or by other method. The ACNC can then provide any necessary data to the Commissioner.

New subsection 6A (2) provides that the Commissioner may impose such conditions as the Commissioner thinks fit on the soliciting for a charitable purpose by an ACNC registered entity.

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

This clause amends section 7 so that the requirement for licence or authority in another jurisdiction does not apply to ACNC-registered charities. This is to avoid an ACNC-registered charity being inadvertently required to still hold licences in other States before soliciting for charitable purposes in Tasmania.

Clause 13 Sections 9 and 10 repealed

This clause repeals the offences in sections 9 and 10 of the Charities Act. These matters are covered by the National Fundraising Principles which will be reflected in the Code of Practice, breach of which will be an offence, so the removal of the offences in sections 9 and 10 removes duplication.

Section 12 and 13 repealed

Clause 14 This clause repeals the offences in sections 12 and 13 of the Charities Act. These matters are covered by the National Fundraising Principles which will be reflected in the Code of Practice, breach of which will be an offence, so the removal of the offences in sections 12 and 13 removes duplication.

Clause 15 Sections 17, 17A, 17B, 17C and 17D inserted

This clause inserts new sections 17, 17A, 17B, 17C and 17D into the Charities Act.

Section 17 inserted (Codes of practice)

This clause inserts new section 17 into the Charities Act which provides for a code of practice. The Governor, on recommendation of the Minister, may make regulations prescribing a code of practice. Prior the code of practice being prescribed, the Minister is to prepare a draft and arrange consultation with the public and any other person, body or organisation who the Minister believes has an interest in the terms of the proposed code of practice. A person must not contravene or fail to comply with a provision of a code of practice. The penalty in the case of a body corporate is a fine not exceeding 100 penalty units, or a

fine not exceeding 20 penalty units for an individual. These penalty units are comparable to other offences in the Act, and highlight that it is appropriate for body corporates to be subject to greater monetary penalty for non-compliance.

The code of practice will be used to implement the national fundraising principles endorsed by the Council of Federal Financial Relations, which will place obligations on organisations and persons soliciting for charitable purposes in Tasmania.

Section 17A inserted (Contravention of code of practice)

This clause inserts new section 17A into the Charities Act, providing for actions the Director, being the Director under the *Consumer Affairs Act 1998* (the Consumer Affairs Act), may take in the case of an alleged contravention of a code of practice. This relates to the Director making a recommendation to the Commissioner.

The Commissioner may apply to a magistrate for an order in respect of an alleged contravention, and the section provides for the orders the magistrate may make.

A defence is available 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.

Section 17B inserted (Injunctions for breaches of code of practice)

This clause inserts new subsection 17B into the Charities Act. The clause provides that the Director, under the Consumer Affairs Act, may apply to the Supreme Court for an injunction for breaches of code of practice. Injunctions may be permanent or an interim injunctions, with or without an undertaking being required as to damages or costs.

These provisions reflect similar powers in the *Australian Consumer Law (Tasmania) Act 2010*.

The ability to apply for, and be granted an injunction, provides a mechanism to manage conduct specified in the section, including breaches of Magistrates Court orders under section 17A.

Section 17C inserted (Infringement notices)

This clause inserts new subsection 17C into the Charities Act. The clause gives an authorised officer, within the meaning of the Consumer Affairs Act powers to issue and serve an infringement notice on a person if the officer reasonably believes that the person has committed an infringement offence.

The section provides infringement notices may not be served on a person under 18 years of age, and other standard provisions relating to infringement notices. Infringement offences are defined in section 3, and are the offences in the Act or Regulations that are prescribed as infringement offences. The section provides an infringement penalty is not to exceed 20% of the maximum penalty a court could apply.

Infringement notices will enable the Commissioner to respond effectively to contravention of offences specified as infringement offences, and will encourage compliance with the Act and the code of practice.

Section 17D inserted (Annual returns)

This clause inserts new subsection 17D into the Charities Act. The clause provides the Commissioner with the power to require an organisation to provide an annual return containing such information as the Commissioner may require. Under subsection (2) an organisation is not required to provide an annual return under this section for a financial year if the incorporated association was an ACNC registered entity for all or part of the financial year; and has, in respect of the financial year, complied with the financial and reporting requirements of that Act.

Clause 16 Section 18 amended (Regulations)

This clause amends the regulation making power of the Charities Act by amending section 18(2) to insert a provision for the making of codes of practice.

This clarifies the legislative authority for the prescribing of the code of practice within the regulations. The process for making and consulting on the code of practice is set out in new section 17 inserted by the Bill.

PART 4 – REPEAL OF ACT

Clause 17 Repeal of Act

This clause automatically repeals the amending legislation 12 months after the Act is commenced. This is because the amendments are incorporated into the Principal Act and will remain in force after the repeal of the Amending Act.