

**ACT GOVERNMENT RESPONSE
TO THE FINAL REPORT
NATIONAL COMPETITION POLICY REVIEW OF THE *HAWKERS
ACT 1936 AND THE COLLECTIONS ACT 1959***

26 FEBRUARY 2001

Hawkers Act

Recommendation B1

The Hawkers Act should have as its objective the appropriate allocation of public space for hawking taking into account impacts on third parties.

Not Agreed.

It is proposed that the Hawkers and Collections Administration Bill regulate the business aspects of hawking and collections. The appropriate allocation of public space would one of the objectives of a revised Roads and Public Places Act.

Recommendation B2

There should be continued positive licensing for hawkers who wish to operate from a single location (ie, certain criteria must be met and a fee paid before a hawker is allowed to operate). Mobile hawkers should operate under a negative licensing scheme (ie, they will only be required to provide contact information and pay a fee before being allowed to operate — there are no ‘positive’ licensing requirements).

Agreed in-principle.

It is proposed that the current arrangements be amended so that:

- a mobile hawker is required only to register his or her name and contact details; and
- a hawker who wishes to operate from a single location for an extended period would require, in addition to registering his or her name and contact details, a permit under the Roads and Public Places Act.

Recommendation B3

The Act should be amended to remove the 180-metre exclusion zone provided for traditional shop owners. In place of this restriction, hawkers should not be allowed to operate in locations at which movable signs are prohibited.

Not agreed.

This is a core restriction under NCP because an arbitrary exclusion zone cannot be justified.

It is proposed that regulatory restriction preventing hawkers from operating within one hundred and eighty metres of a shop be retained unless the hawker has written approval from the Minister or an authorised officer. This maintains the existing regulatory regime and maintains the status quo in the ACT retail sector. Supporters of this restriction have also argued that shopkeepers are entitled to some protection because they have higher up-front costs, and pay ongoing rates. Moreover, it is claimed shopkeepers are at a disadvantage in comparison to hawkers because they cannot easily move to new location. In seeking hawkers would be required to obtain approval under the revised Roads and Public Places Act. In considering whether to approve an application the Registrar would have regard to issues of public safety, access and protection of the assets.

It is proposed that a hawker operating on public land permanently or semi-permanently would pay the appropriate commercial rate for that space. It is further proposed that valuations would be sought to determine the appropriate fees. In the interim, the current fees would remain in place.

Recommendation B4

The licence for stationary hawkers should include the right to stand at a single location (ie, the existing hawker's licence and the Permit to Stand should be merged).

Agreed in-principle.

It is proposed that a hawker's licence application form would contain two parts and the applicant would fill in the relevant sections:

Part A - application for a Hawker's licence (under proposed Hawker and Collections Administration legislation).

Part B - an application for a Permit to Stand (under the Roads and Public Places Act).

Recommendation B5

There should be no character requirements that need to be met to obtain a hawker's licence.

Agreed.

To be repealed.

Recommendation B6

There should be no minimum age requirement in order to obtain a hawker's licence.

Agreed.

To be repealed. Advice from the Department of Education and Community Services is that the Children's Services Act covers the employment of children.

Recommendation B7

A business should be able to obtain a hawker's licence.

Agreed.

This is a core NCP issue in that legislation should not restrict who can enter a market.

It is proposed that the proprietor of a business can obtain a hawker's permit. A proprietor could either be a company or an individual.

Recommendation B8

There should be no requirement for a hawker's van to state that it is operated by a licensed hawker.

Agreed.

There would be no corresponding requirement in the proposed Hawkers and Collections Administration Bill.

Recommendation B9

There should be no restrictions as to the number of vehicles that a mobile hawker can operate, but a licence fee should be paid for each vehicle

Agreed.

It is a person's choice how many vehicle he or she operates.

This follows the precedent of food business licensing where a person operating more than one food premises or van has to have a licence to cover all the outlets. However, the licence fee would vary depending on the number of outlets.

Recommendation B10

A separate licence is required for every vehicle operating from a single location from which goods are sold.

Agreed.

A person would require a permit for each outlet under the Roads and Public Places Act. This would ensure that issues such as public access and public safety are properly considered for each location.

Recommendation B11

There is no need for the Hawkers Act to regulate the number of people employed by a hawker or their minimum age.

Agreed.

These issues are covered by other legislation such as the Occupational Health and Safety and the Children's Services Acts.

Recommendation B12

The section 22 restriction on licence transfers should be retained.

Agreed in-principle.

Given the likely low value of licence fees and the fact that they would be renewed annually, a provision providing for licence transfers is not warranted.

Recommendation B13

The Act should be amended to remove the requirement that two sureties be provided.

Agreed.

This requirement is outdated and there would not be a corresponding provision in the proposed Hawkers and Collections Administration Bill.

Recommendation B14

Regulation of health, liquor and contraband goods should be undertaken in generally applicable legislation and should not be referred to in the Hawkers Act.

Agreed.

The obligation is on a hawker to ensure that he or she has the necessary approvals and complies with the relevant legislation.

COLLECTIONS ACT

Recommendation C1

To aid understanding of the legislation the Collections Act should be amended to state that the objectives of the Act are:

- **to protect the public against fraud, misappropriation of funds and misleading conduct;**
- **to ensure that donors and the public have access to information; and**
- **to ensure that organisations use acceptable fundraising practices.**

Agreed.

These principles will form part of the objectives of the proposed Hawkers and Collections Administration Bill.

Recommendation C2

The Act should not place limits on the level of fundraising costs or remuneration per se.

Agreed in-principle.

However, a potential donor must be provided with sufficient information in order for him or her to make an informed choice. The proposed Hawkers and Collections Administration Bill would contain these safeguards.

Recommendation C3

The regulatory emphasis should be on disclosure of fundraising details to potential donors.

Agreed.

Recommendation C4

There should be no power to refuse a licence based upon where the funds are to be spent.

Agreed.

It proposed in the Bill that under normal circumstances, the granting of a licence would not be contingent on where the funds would be spent.

Recommendation C5

The legislation should continue to provide the Minister with the ability to refuse to licence a fundraiser on broad public interest grounds. The Minister should be required to provide reasons for any such decision.

Agreed.

These requirements will be incorporated in the proposed Bill.

Recommendation C6

The Collections Act should not limit the locations where collections can be undertaken or the number of organisations collecting at any particular time.

Agreed in-principle.

It is recognised that the Government has a responsibility for public safety and movement on public areas.

It is proposed that a person would require an approval to undertake a collection in a public place. However, the legislation would not restrict the number of organisations from door-to-door collections on the same day. The Registrar would be able to provide information to an applicant on how many other collections there would be on a particular day.

Recommendation C7

Rather than focusing on funds raised and costs incurred for particular collections:

- **all organisations that produce audited accounts should be required to lodge those accounts with the Registrar on an annual basis; and**
- **organisations which do not have audited accounts should be required to keep appropriate records and have those records signed off by an ‘appropriate person’ as being in order.**

Agreed.

It is proposed that under the Hawkers and Collections Administration Bill:

- all organisations undertaking collections would be required to produce audited accounts and lodge these with the Registrar on an annual basis; or
- organisations which do not have audited accounts should be required to keep appropriate records and have those records signed off by an ‘appropriate person’ as being in order.

Those accounts would also include information on the amount collected and the amount received by the charity.

Recommendation C8

Collectors should be required to wear a badge (or prominently display information) that states:

- 1. the name of the fundraising organisation;**
 - **the purpose for which funds are being raised, and how and where the funds will be spent;**
 - **whether the particular collector is:**
 - **a volunteer;**
 - **a paid employee of the fundraising organisation; or**
 - **a contracted professional fundraiser and the terms on which they (or their organisation) are contracted; and**
- 2. a contact name and phone number for the fundraiser.**

Agreed.

The proposed Hawkers and Collections Administration Bill would require collectors to wear a badge (or prominently display information) that contains the information as recommended in the Allen Report. The information would be in lettering that can be easily read.

Recommendation C9

When seeking a fundraising licence the applicant should be required to provide an example of the information to be provided to the community. The Registrar should ensure that the example adequately conveys the required information.

Agreed.

Recommendation C10

Systematic failure to display the required information at the point of collection should result in the suspension or revocation of a fundraiser’s licence.

Agreed.

Recommendation C11

The Collections Act should explicitly provide the Minister with the power to delegate to the Registrar the issuance of licences.

Not agreed.

This power is already available under the *Administration Act 1989*.

Recommendation C12

There should be a publicly accessible list of licensed fundraisers and their contact details.

Agreed.

Recommendation C13

The Act should be drafted to apply to any direct or indirect appeal for support. A direct appeal would include a personal request for a donation in any form, and an indirect appeal would include those circumstances where the appeal involves the sale of a good or service where the price does not truly reflect the good or service's value.

Agreed.

The Bill would also apply to pledges but not to begging or the sale of raffle tickets or cake stalls.

Recommendation C14

Under the principle of mutual recognition, the ACT should accept fundraising licences from jurisdictions with fundraising regimes that are similar to that in the ACT.

Not agreed.

Legal advice is that this is not an issue for Mutual Recognition.