



Australian Capital Territory

Hawkers Act 2003

A2003-10

Republication No 10

Effective: 1 July 2011 – 16 November 2011

Republication date: 1 July 2011

Last amendment made by A2011-22

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Hawkers Act 2003* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 July 2011. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 July 2011.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

Hawkers Act 2003

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
3	Objects of Act 2
4	Conduct excluded from Act 3
5	Dictionary 4
6	Notes 4
7	Offences against Act—application of Criminal Code etc 4
Part 2	Hawking in public places
8	Meaning of <i>carrying on business as a hawker</i> 5
9	Meaning of <i>public place</i> 5
10	Hawkers not to obstruct or endanger public 5
11	Unlicensed hawkers limited to 30 minutes standing 6

R10	Hawkers Act 2003	contents 1
01/07/11	Effective: 01/07/11-16/11/11	

Contents

		Page
12	Licensed hawkers to comply with licence	6
13	Licensed hawkers to display licence	7
14	Restriction on hawking near commercial premises	8
15	Commercial premises—exempt people to comply with exemption	8
16	Commercial premises—exemption to be displayed	9
Part 3	Hawkers licences	
17	Application for licence	10
18	Decision on application for licence	10
19	Term of licence	12
20	Licence not transferable	12
21	Form of licence	12
22	Amendment of licence—application by hawker	13
23	Temporary amendment or suspension of licence—Roads and Public Places Act	14
24	Amendment, suspension or cancellation of licence—other grounds	14
25	Procedure for amendment etc of licence—other grounds	15
26	Failing to return amended, suspended or cancelled licence	16
Part 4	Exemptions for hawking near commercial premises	
27	Circumstances for exemption from s 14 (1)	18
28	Hawking near commercial premises—giving of exemption	18
29	Exemption not transferable	19
30	Amendment of exemption—application by exempt person	19
31	Hawking near commercial premises—amendment or revocation of exemption	20
32	Failing to return amended or revoked exemption	21
Part 5	Notification and review of decisions	
33	Definitions—pt 5	22
33A	Reviewable decision notices	22
34	Applications for review	22

	Page
Part 6 Administration	
35 Register of licensed hawkers and exempt people	23
36 Public access to register	23
37 Licensed hawkers and exempt people to notify change of name and address	24
38 Replacement of licence or exemption	25
39 Surrender of licence or exemption	25
40 Authorised people	26
41 Identity cards	26
42 Authorised person's power to require name and address	27
Part 7 Miscellaneous	
45 Determination of fees	28
46 Approved forms	28
47 Regulation-making power	28
Schedule 1 Reviewable decisions	29
Dictionary	31
Endnotes	
1 About the endnotes	33
2 Abbreviation key	33
3 Legislation history	34
4 Amendment history	35
5 Earlier republications	37



Australian Capital Territory

Hawkers Act 2003

An Act to regulate the activities of hawkers in public places, and for other purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Hawkers Act 2003*.

3 Objects of Act

- (1) The objects of this Act are to ensure that—
- (a) people carrying on business as hawkers in a public place do not have a significant, adverse effect on any of the following in or near the public place:
 - (i) public safety;
 - (ii) the free movement of people and vehicles;
 - (iii) the accessibility of premises, including commercial premises;
 - (iv) the accessibility of public amenities; and
 - (b) people carrying on business as hawkers in a public place do not have a significant, adverse effect on the appearance or amenity of the public place; and
 - (c) adequate and appropriate public amenities (for example, rubbish bins and toilets) are available at or near the location where a person carries on business as a hawker.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) For subsection (1), it does not matter whether the adverse effect is direct or indirect.

4 Conduct excluded from Act

This Act does not apply to any of the following:

- (a) the sale of goods or services in accordance with—
 - (i) a licence under the *Planning and Development Act 2007*;
or
 - (ii) a permit under the *Roads and Public Places Act 1937*; or
 - (iii) a permit under the *Trespass on Territory Land Act 1932*;
- (b) the operation of a public passenger service under the *Road Transport (Public Passenger Services) Act 2001*;
- (c) the sale of a ticket or share in an approved lottery or exempt lottery under the *Lotteries Act 1964*;
- (d) the sale, delivery or distribution of newspapers by a child or young person that is light work under the *Children and Young People Act 2008*, section 793 (What is *light work*?);
- (e) busking;
- (f) a collection under the *Charitable Collections Act 2003*;
- (g) conduct declared by the regulations to be conduct to which the Act does not apply.

5 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*public place*—see section 9.' means that the expression 'public place' is defined in section 9 and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

6 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

7 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Hawking in public places

8 Meaning of *carrying on business as a hawker*

For this Act, a person *carries on business as a hawker*—

- (a) if the person carries on an itinerant business selling—
 - (i) goods carried by the person, or by a vehicle used by the person; or
 - (ii) services provided by the person, or provided from a vehicle used by the person; or
- (b) if the person sells goods or services for a person mentioned in paragraph (a).

Note *Vehicle* includes an animal, see dict.

9 Meaning of *public place*

In this Act:

public place means a place that is unleased Territory land (including a road) that the public are entitled to use or that is open to, or used by, the public.

10 Hawkers not to obstruct or endanger public

- (1) A person who is carrying on business as a hawker in a public place commits an offence if—
 - (a) the person hinders or obstructs the free movement of people or vehicles in or near the public place; or
 - (b) the person endangers the safety of members of the public in or near the public place.

Maximum penalty: 30 penalty units.

- (2) An offence against this section is a strict liability offence.

11 Unlicensed hawkers limited to 30 minutes standing

- (1) A person commits an offence if—
- (a) the person carries on business as a hawker at a location in a public place for more than 30 minutes at a time; and
 - (b) the person is not licensed to sell goods or services at the location.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if—
- (a) the person carries on business as a hawker at a location in a public place that is less than 180m from the same or another location in a public place where the person carried on business as a hawker earlier the same day; and
 - (b) the total of the periods the person spent at the locations is more than 30 minutes; and
 - (c) the person is not licensed to sell goods or services at each of those locations.

Maximum penalty: 10 penalty units.

- (3) This section does not apply to a person who carries on business as a hawker for a licensed hawker in accordance with the licence.
- (4) An offence against this section is a strict liability offence.

12 Licensed hawkers to comply with licence

- (1) A licensed hawker commits an offence if the licensee carries on business as a hawker in contravention of the licence.

Maximum penalty: 10 penalty units.

- (2) A licensed hawker commits an offence if someone else carries on business as a hawker for the licensee in contravention of the licence.

Maximum penalty: 10 penalty units.

Examples of contraventions for s (1) and s (2)

- 1 selling goods or services at a location, or from a vehicle, not shown on the licence
- 2 selling goods or services not shown on the licence
- 3 selling goods or services outside the period or periods shown on the licence during which goods or services may be sold
- 4 selling goods or services in contravention of a condition shown on the licence

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) An offence against this section is a strict liability offence.

13 Licensed hawkers to display licence

- (1) A licensed hawker commits an offence if—
- (a) the licensee carries on business as a hawker in a public place; and
 - (b) the licence is not displayed at the point of sale.

Maximum penalty: 10 penalty units.

- (2) A licensed hawker commits an offence if—
- (a) someone else carries on business as a hawker for the licensee in a public place; and
 - (b) the licence (or a copy of the licence) is not displayed at the point of sale.

Maximum penalty: 10 penalty units.

- (3) An offence against this section is a strict liability offence.

14 Restriction on hawking near commercial premises

- (1) A person commits an offence if—
- (a) the person carries on business as a hawker at a location in a public place within 180m of commercial premises; and
 - (b) the person is not an exempt person for the premises.

Maximum penalty: 10 penalty units.

Note An exempt person may carry on business as a hawker within 180m of the commercial premises to which the exemption applies (see s 14 and s 28).

- (2) This section does not apply to a person who carries on business as a hawker for an exempt person in accordance with the exemption.
- (3) An offence against this section is a strict liability offence.

15 Commercial premises—exempt people to comply with exemption

- (1) An exempt person commits an offence if the person carries on business as a hawker in contravention of the exemption.

Maximum penalty: 10 penalty units.

Note An exempt person may carry on business as a hawker within 180m of the commercial premises to which the exemption applies (see s 14 and s 28).

- (2) An exempt person commits an offence if someone else carries on business as a hawker for the exempt person in contravention of the exemption.

Maximum penalty: 10 penalty units.

Example of contravention of exemption for s (1) and s (2)

selling goods or services in contravention of a condition shown on the exemption

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) An offence against this section is a strict liability offence.

16 Commercial premises—exemption to be displayed

- (1) This section does not apply to a licensed hawker.

Note A licensed hawker must display the licence, which must show any exemption held by the licensee, see s 13 and s 21.

- (2) An exempt person for commercial premises commits an offence if—
- (a) the person carries on business as a hawker at a location in a public place within 180m of the premises; and
 - (b) the exemption is not displayed at the point of sale.

Maximum penalty: 5 penalty units.

Note An exempt person may carry on business as a hawker within 180m of the commercial premises to which the exemption applies (see s 14 and s 28).

- (3) An exempt person for commercial premises commits an offence if—
- (a) someone else carries on business as a hawker for the exempt person at a location in a public place; and
 - (b) the location is within 180m of the premises to which the exemption applies; and
 - (c) the exemption (or a copy of the exemption) is not displayed at the point of sale.

Maximum penalty: 5 penalty units.

- (4) An offence against this section is a strict liability offence.

Part 3 Hawkers licences

17 Application for licence

- (1) A person may apply in writing to the director-general for a licence.

Note 1 If a form is approved under s 46 (Approved forms) for an application, the form must be used.

Note 2 A fee may be determined under s 45 (Determination of fees) for this section.

- (2) The director-general may, by written notice given to the applicant, require the applicant to give the director-general further stated information or a stated document that the director-general reasonably needs to decide the application.
- (3) If the applicant fails to comply with a requirement under subsection (2), the director-general may refuse to consider the application further.

18 Decision on application for licence

- (1) The director-general must issue, or refuse to issue, the licence.
- (2) In deciding whether to issue a licence, the director-general must act in accordance with the objects of this Act.
- (3) Without limiting subsection (2), the director-general may also have regard to any of the following matters:
- (a) whether the applicant has contravened this Act (whether or not the applicant has been convicted or found guilty of an offence for the contravention);

- (b) if the applicant proposes to use other people to carry on business as a hawker for the applicant—whether the applicant can and will ensure that each other person will comply with this Act;

Note A licensed hawker commits an offence if another person carries on business as a hawker for the licensee and contravenes the licence or does not display the licence, see s 12 (2) and s 13 (2).

- (c) whether the applicant or anyone else who is concerned with, or takes part in, the applicant's management has been convicted or found guilty of an offence against—
- (i) the Criminal Code, section 313 (Receiving); or
 - (ii) the *Crimes Act 1900*, section 105 (Handling stolen property) (repealed); or
 - (iii) an offence against the law of a State or another Territory that corresponds to an offence mentioned in subparagraph (i) or (ii);
- (d) whether the applicant or anyone else who is concerned with, or takes part in, the applicant's management has contravened an order under—
- (i) the Criminal Code, section 364 (Stolen property held by dealers etc—owners rights); or
 - (ii) the *Crimes Act 1900*, section 109 (Delivery of stolen property held by dealers) (repealed); or
 - (iii) a provision of the law of a State or another Territory that corresponds to a provision mentioned in subparagraph (i) or (ii).

- (4) A licence is subject to the conditions (if any) stated in the licence.

19 Term of licence

A licence is issued for the period (not longer than 1 year) stated in the licence.

20 Licence not transferable

A licence is not transferable.

21 Form of licence

- (1) A licence must show the following information:
 - (a) the full name, address and contact telephone number of the licensee;
 - (b) the goods or services that may be sold under the licence;
 - (c) the locations where a person may carry on business as a hawker under the licence;
 - (d) the period or periods during which a person may carry on business as a hawker under the licence;
 - (e) whether the goods or services must be sold from a vehicle;
 - (f) if the goods or services must be sold from a vehicle—the make, model and registration number of the vehicle;
 - (g) the conditions (if any) to which the licence is subject;
 - (h) any exemption given to the licensee under section 28 (Hawking near commercial premises—giving of exemption);
 - (i) the licence number allocated to the licensee;
 - (j) when the term of the licence ends.
- (2) A licence may also include any other information the director-general considers appropriate.

22 Amendment of licence—application by hawker

- (1) A licensed hawker may apply in writing to the director-general for the amendment of the licence.

Examples of amendments

- 1 to amend or revoke a condition to which the licence is subject
2 to change the locations where a person may carry on business as a hawker under the licence

Note 1 If a form is approved under s 46 (Approved forms) for an application, the form must be used.

Note 2 A fee may be determined under s 45 (Determination of fees) for this section.

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The director-general may, by written notice given to the applicant, require the applicant to give the director-general further stated information or a stated document that the director-general reasonably needs to decide the application.
- (3) If the applicant fails to comply with a requirement under subsection (2), the director-general may refuse to consider the application further.
- (4) The director-general must amend the licence or refuse to amend the licence.
- (5) In deciding whether to amend the licence the director-general must have regard to the matters mentioned in section 18 (2) and (3) (Decision on application for licence).
- (6) If the director-general amends a licence under this section, the director-general must give the licensee an amended licence for the remainder of the term of the licence amended.

Note A licensee must return the licence for amendment if required, see s 26.

- (7) An amendment has effect only if the amendment is stated in the licence to which the amendment relates.

23 Temporary amendment or suspension of licence—Roads and Public Places Act

- (1) The director-general may, in writing, temporarily amend or suspend a licence if satisfied on reasonable grounds that a location where a person may carry on business as a hawker under the licence is, or will be—
- (a) closed under the *Roads and Public Places Act 1937*, section 4 (Temporary closing of roads); or
 - (b) affected by a permission under the *Roads and Public Places Act 1937*, section 9 (Permission to place culverts etc across, and to interfere with the surfaces of, public places).
- (2) The director-general must give written notice to the licensee of—
- (a) the date when the amendment or suspension takes effect; and
 - (b) the date when the amendment or suspension end; and
 - (c) for a licence that is amended—how the licence is amended.
- (3) The date of effect must not be earlier than 7 days after the day the notice is given to the licensee.

24 Amendment, suspension or cancellation of licence—other grounds

The director-general may act under section 25 to amend, suspend or cancel a licence if satisfied, on reasonable grounds, that—

- (a) carrying on business as a hawker in accordance with the licence is not, or will not be, consistent with the objects of this Act; or

- (b) the licensee has committed an offence against this Act (whether or not the licensee has been convicted or found guilty of an offence for the contravention); or

Note A licensed hawker commits an offence if another person carries on business as a hawker for the licensee and contravenes the licence or does not display the licence, see s 12 (2) and s 13 (2).

- (c) the licensee or anyone else who is concerned with, or takes part in, the licensee's management has been convicted or found guilty of an offence against the Criminal Code, section 313 (Receiving) or a corresponding offence against the law of a State or another Territory.

25 Procedure for amendment etc of licence—other grounds

- (1) If the director-general proposes to act under this section in relation to a licence, the director-general must give the licensee a written notice that—
- (a) states the proposed action, including any proposed amendment of the licence or suspension period; and
 - (b) states the grounds for the proposed action; and
 - (c) tells the licensee that the licensee may, within 14 days beginning the day after the day the licensee receives the notice, give a written response to the director-general about the matters in the notice.
- (2) In deciding whether to amend, suspend or cancel the licence, the director-general must consider any response given to the director-general in accordance with subsection (1) (c).
- (3) If the director-general is satisfied that grounds for taking action under this section have been established, the director-general may—
- (a) if the proposed action was to cancel the licence—cancel the licence, suspend the licence for a period of not longer than 1 year or amend the licence; or

- (b) if the proposed action included suspending the licence for a stated period—suspend the licence for a period of not longer than that period or amend the licence; or
 - (c) if the proposed action included amending the licence—amend the licence in a way that is no more onerous than the proposed amendment.
- (4) To remove any doubt, the amendment of a licence under this section may include the imposition of a condition on the licence and the amendment of a condition to which the licence is subject.
 - (5) The director-general must give the licensee written notice of the director-general's decision.
 - (6) The amendment, suspension or cancellation of the licence takes effect 14 days after the day when notice of the amendment, suspension or cancellation is given to the licensee or, if the notice states a later date of effect, that date.
 - (7) If the director-general amends a licence under this section, the director-general must give the licensee an amended licence for the remainder of the term of the licence amended.

26 Failing to return amended, suspended or cancelled licence

- (1) A licensed hawker commits an offence if—
 - (a) the licence is amended, suspended or cancelled; and
 - (b) the director-general gives the licensee a written notice requiring the licensee to return the licence to the director-general within a stated reasonable time; and
 - (c) the person does not comply with the requirement.

Maximum penalty: 5 penalty units.

- (2) This section does not apply to the amendment or suspension of a licence under section 23 (Temporary amendment or suspension of licence—Roads and Public Places Act).
- (3) An offence against this section is a strict liability offence.

Part 4 Exemptions for hawking near commercial premises

27 Circumstances for exemption from s 14 (1)

- (1) The Minister may, in writing, determine circumstances when a person may be exempted from the operation of section 14 (1) (Restriction on hawking near commercial premises).
- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

28 Hawking near commercial premises—giving of exemption

- (1) A person may, in writing, apply to the Minister for exemption from the operation of section 14 (1) (Restriction on hawking near commercial premises) in relation to particular commercial premises.

Note 1 If a form is approved under s 46 (Approved forms) for an application, the form must be used.

Note 2 A fee may be determined under s 45 (Determination of fees) for this section.

- (2) The application must state the grounds on which it is made.
- (3) If satisfied that a circumstance determined under section 27 applies to the person, the Minister may, in writing, exempt the person from the operation of section 14 (1) in relation to the commercial premises stated in the exemption.
- (4) An exemption is subject to the conditions (if any) stated in the exemption.

- (5) An exemption has effect—
- (a) for a licensed hawker—only if the exemption is stated in the licence; or

Note A licensee must return the licence for amendment if required, see s 26.

- (b) for an unlicensed hawker—only if a copy of the exemption is given to the hawker exempted.

29 Exemption not transferable

An exemption is not transferable.

30 Amendment of exemption—application by exempt person

- (1) An exempt person may apply in writing to the Minister for the amendment of the exemption.

Examples of amendments

- 1 to amend or revoke a condition to which the exemption is subject
- 2 to change the locations where a person may carry on business as a hawker under the exemption

Note 1 If a form is approved under s 46 (Approved forms) for an application, the form must be used.

Note 2 A fee may be determined under s 45 (Determination of fees) for this section.

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The Minister may, by written notice given to the applicant, require the applicant to give the Minister further stated information or a stated document that the Minister reasonably needs to decide the application.
- (3) If the applicant fails to comply with a requirement under subsection (2), the Minister may refuse to consider the application further.

- (4) The Minister must amend the exemption or refuse to amend the exemption.
- (5) In deciding whether to amend the exemption the Minister must have regard to the circumstances determined under section 27 (Circumstances for exemption from s 14 (1)).
- (6) If the Minister amends an exemption under this section, the Minister must give the applicant an amended exemption.

Note A exempt person must return the exemption for amendment if required, see s 32.

- (7) An amendment has effect only if the amendment is stated in the exemption to which the amendment relates.

31 Hawking near commercial premises—amendment or revocation of exemption

- (1) The Minister may, in writing, amend or revoke an exemption if—
 - (a) a circumstance determined under section 27 (Circumstances for exemption from s 14 (1)) no longer applies in relation to the exempt person; or
 - (b) the exempt person has committed an offence against this Act (whether or not the person has been convicted or found guilty of the offence).

Note An exempt person commits an offence if another person carries on business as a hawker for the person and contravenes the exemption or does not display the exemption, see s 15 (2) and s 16 (3).

- (2) If the Minister proposes to act under this section in relation to an exemption, the Minister must give the exempt person a written notice that—
 - (a) states the proposed action, including any proposed amendment of the exemption; and
 - (b) states the grounds for the proposed action; and

- (c) tells the person that the person may, within 14 days beginning the day after the day the person receives the notice, give a written response to the Minister about the matters in the notice.
- (3) In deciding whether to amend or revoke the exemption, the Minister must consider any response given to the Minister in accordance with subsection (2) (c).
- (4) To remove any doubt, the amendment of an exemption under this section may include the imposition of a condition on the exemption and the amendment of a condition to which the exemption is subject.
- (5) The Minister must give the exempt person written notice of the Minister's decision.
- (6) The amendment or revocation of the exemption takes effect 14 days after the day when notice of the amendment or revocation is given to the exempt person or, if the notice states a later date of effect, that date.
- (7) If the Minister amends an exemption under this section, the Minister must give the exempt person an amended exemption.

32 Failing to return amended or revoked exemption

- (1) An exempt person commits an offence if—
 - (a) the exemption is amended or revoked; and
 - (b) the Minister gives the person a written notice requiring the person to return the exemption to the Minister within a stated reasonable time; and
 - (c) the person does not comply with the requirement.Maximum penalty: 5 penalty units.
- (2) An offence against this section is a strict liability offence.

Part 5 Notification and review of decisions

33 Definitions—pt 5

In this part:

decision-maker, for a reviewable decision, means an entity mentioned in schedule 1, column 5 for the decision.

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

33A Reviewable decision notices

If a decision-maker makes a reviewable decision, the decision-maker must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The decision-maker must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

34 Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

Part 6 Administration

35 Register of licensed hawkers and exempt people

- (1) The director-general must keep a register of licensed hawkers and exempt people.
- (2) For each licence, the director-general must enter in the register the information mentioned in section 21 (1) (Form of licence).
- (3) For each exemption, the director-general must enter in the register—
 - (a) the full name, address and contact telephone number of the exempt person; and
 - (b) the commercial premises to which the exemption applies; and
 - (c) the conditions (if any) to which the exemption is subject.
- (4) The register may also include any other information the director-general considers appropriate.
- (5) The register may be kept in the form of, or as part of, 1 or more computer databases or in any other form the director-general considers appropriate.
- (6) The director-general may correct any mistake, error or omission in the register subject to the requirements (if any) of the regulations.

36 Public access to register

- (1) Anyone may, without charge, inspect the register during ordinary office hours.
- (2) A person may, on payment of reasonable copying costs, obtain a copy of all or part of the register.

37 Licensed hawkers and exempt people to notify change of name and address

- (1) A licensed hawker commits an offence if—
- (a) the licensee’s full name, address or contact telephone number shown on the licence changes; and
 - (a) the licensee does not, as soon as practicable (but within 7 days) after the change happens—
 - (i) tell the director-general, in writing, of the change; and
 - (ii) return the licence to the director-general for amendment.

Maximum penalty: 5 penalty units.

- (2) The director-general must give the licensee an amended licence for the remainder of the term of the licence amended.
- (3) An exempt person commits an offence if—
- (b) the person’s full name, address or contact telephone number shown on the exemption changes; and
 - (a) the person does not, as soon as practicable (but within 7 days) after the change happens—
 - (i) tell the director-general, in writing, of the change; and
 - (ii) return the exemption to the director-general for amendment.

Maximum penalty: 5 penalty units.

- (4) The director-general must give the exempt person an amended exemption.
- (5) An offence against this section is a strict liability offence.

38 Replacement of licence or exemption

- (1) The director-general may issue a replacement licence to a person if satisfied that the licence has been lost, stolen or destroyed.
- (2) The Minister may give a replacement exemption to a person if satisfied that the exemption has been lost, stolen or destroyed.
- (3) Before acting under subsection (1) or (2), the director-general or Minister may require the person to give the director-general or Minister a statement, verified by a statutory declaration signed by the person, that the licence or exemption has been lost, stolen or destroyed.

Note 1 A fee may be determined under s 45 (Determination of fees) for this section.

Note 2 The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

39 Surrender of licence or exemption

- (1) A licensed hawker or an exempt person may, at any time, surrender the licence or exemption by returning the licence or exemption to the director-general with a written statement that the licence or exemption is surrendered.
- (2) However, if the licence or exemption has been stolen, lost or destroyed, the person may give the director-general a statement, signed by the person, that the licence or exemption has been stolen, lost or destroyed.

Note The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

40 Authorised people

- (1) Each of the following is an authorised person for this Act:
 - (a) a police officer;
 - (b) a roads and public places officer under the *Roads and Public Places Act 1937*;
 - (c) a public servant appointed under subsection (2).
- (2) The director-general may appoint a public servant as an authorised person for this Act.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

41 Identity cards

- (1) The director-general must give each authorised person (other than a police officer or roads and public places officer) an identity card that states the person's name and appointment as an authorised person, and shows—
 - (a) a recent photograph of the person; and
 - (b) the date of issue of the card; and
 - (c) the date of expiry of the card; and
 - (d) anything else prescribed under the regulations.
- (2) A person commits an offence if—
 - (a) the person was appointed as an authorised person under section 40 (2); and
 - (b) the person ceases to be an authorised person; and

- (c) the person does not return the person's identity card to the director-general as soon as practicable (but within 7 days) after the day the person ceases to be an authorised person.

Maximum penalty: 1 penalty unit.

- (3) An offence against this section is a strict liability offence.

42 Authorised person's power to require name and address

- (1) An authorised person may require a person to state the person's name and address if the authorised person—
 - (a) finds the person committing an offence against this Act; or
 - (b) has reasonable grounds for believing that the person has just committed an offence against this Act.
- (2) If an authorised person makes a requirement of a person under subsection (1), the authorised person must—
 - (a) tell the person the reasons for the requirement; and
 - (b) as soon as practicable, record those reasons.
- (3) A person commits an offence if the person—
 - (a) contravenes a requirement under subsection (1); or
 - (b) states a false name or address in purported compliance with a requirement under that subsection.

Maximum penalty: 5 penalty units.

- (4) However, a person is not required to comply with a requirement under subsection (1) if, when asked by the person, the authorised person does not produce his or her identity card for inspection by the person.
- (5) An offence against this section is a strict liability offence.

Part 7 Miscellaneous

45 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

46 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.

Note For other provisions about forms, see Legislation Act, s 255.

- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

47 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

Schedule 1 Reviewable decisions

(see pt 5)

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision-maker
1	18	refuse to issue licence	applicant for licence	director-general
2	18	issue licence for term different to term applied for	applicant for licence	director-general
3	18	issue licence subject to condition	applicant for licence	director-general
4	22	refuse to amend licence in way applied for	licensee	director-general
5	25	amend, suspend or cancel licence	person whose licence amended, suspended or cancelled	director-general
6	28	refuse to give exemption	applicant for exemption	Minister
7	28	give exemption subject to condition	applicant for exemption	Minister

Schedule 1 Reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision-maker
8	30	refuse to amend exemption in way applied for	exempt person	Minister
9	31	amend or revoke exemption	person whose exemption amended or revoked	Minister

Dictionary

(see s 5)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 In particular, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- amend
- director-general (see s 163)
- found guilty
- penalty unit
- public servant
- reviewable decision notice
- Territory land.

authorised person means a person who is an authorised person under section 40.

carry on business as a hawker—see section 8.

commercial premises means premises used for the sale of goods or services.

decision-maker, for part 5 (Notification and review of decisions)—see section 33.

exemption means an exemption under section 28 (Hawking near commercial premises—giving of exemption).

exempt person means a person who is the holder of an exemption under section 28.

licence means a licence under this Act.

public place—see section 9.

reviewable decision, for part 5 (Notification and review of decisions)—see section 33.

sell includes—

- (a) barter, offer or attempt to sell; or
- (b) have in possession for sale; or
- (c) display for sale; or
- (d) dispose of by any method for valuable consideration; or
- (e) dispose of by way of raffle, lottery or other game of chance; or
- (f) offer as a prize or reward.

vehicle means any means of transport of people or goods, whether or not self-propelled or capable of being operated or moved in any way, and includes an animal.

Examples

a caravan, trailer and trolley

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Hawkers Act 2003 A2003-10

notified LR 27 March 2003

s 1, s 2 commenced 27 March 2003 (LA s 75 (1))

remainder commenced 27 September 2003 (s 2 and LA s 79)

as amended by

Charitable Collections Act 2003 A2003-17 s 70

notified LR 9 April 2003

s 1, s 2 commenced 9 April 2003 (LA s 75 (1))

s 70 commenced 9 October 2003 (s 2 and LA s 79)

Criminal Code (Theft, Fraud, Bribery and Related Offences)

Amendment Act 2004 A2004-15 sch 2 pt 2.43

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 2 pt 2.43 commenced 9 April 2004 (s 2 (1))

Sentencing Legislation Amendment Act 2006 A2006-23 sch 1 pt 1.21

notified LR 18 May 2006

s 1, s 2 commenced 18 May 2006 (LA s 75 (1))

sch 1 pt 1.21 commenced 2 June 2006 (s 2 (1) and see Crimes (Sentence Administration) Act 2005 A2005-59 s 2, Crimes (Sentencing) Act 2005 A2005-58, s 2 and LA s 79)

Planning and Development (Consequential Amendments) Act 2007 A2007-25 sch 1 pt 1.16

notified LR 13 September 2007

s 1, s 2 commenced 13 September 2007 (LA s 75 (1))

sch 1 pt 1.16 commenced 31 March 2008 (s 2 and see Planning and Development Act 2007 A2007-24, s 2 and CN2008-1)

Children and Young People (Consequential Amendments) Act 2008 A2008-20 sch 4 pt 4.16

notified LR 17 July 2008

s 1, s 2 commenced 17 July 2008 (LA s 75 (1))

s 3 commenced 18 July 2008 (s 2 (1))

sch 4 pt 4.16 commenced 27 February 2009 (s 2 (5) and see Children and Young People Act 2008 A2008-19, s 2 and CN2008-17 (and see CN2008-13))

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.52

notified LR 4 September 2008
 s 1, s 2 commenced 4 September 2008 (LA s 75 (1))
 sch 1 pt 1.52 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

Statute Law Amendment Act 2009 (No 2) A2009-49 sch 3 pt 3.36

notified LR 26 November 2009
 s 1, s 2 commenced 26 November 2009 (LA s 75 (1))
 sch 3 pt 3.36 commenced 17 December 2009 (s 2)

Justice and Community Safety Legislation Amendment Act 2011 A2011-16 sch 1 pt 1.6

notified LR 17 May 2011
 s 1, s 2 commenced 17 May 2011 (LA s 75 (a))
sch 1 pt 1.6 awaiting commencement (s 2)
Note default commencement under LA s 79: 17 November 2011

Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.75

notified LR 30 June 2011
 s 1, s 2 commenced 30 June 2011 (LA s 75 (1))
 sch 1 pt 1.75 commenced 1 July 2011 (s 2 (1))

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Conduct excluded from Act

s 4 am A2003-17 s 70; A2007-25 amdt 1.71; A2008-20 amdt 4.40; A2009-49 amdt 3.81

Application for licence

s 17 am A2011-22 amdt 1.234

Decision on application for licence

s 18 am A2006-23 amdt 1.204; A2011-22 amdt 1.234

Form of licence

s 21 am A2011-22 amdt 1.234

Amendment of licence—application by hawker

s 22 am A2011-22 amdt 1.234

Endnotes

4 Amendment history

Temporary amendment or suspension of licence—Roads and Public Places Act

s 23 am A2011-22 amdt 1.234

Amendment, suspension or cancellation of licence—other grounds

s 24 am A2004-15 amdt 2.95; A2011-22 amdt 1.234

Procedure for amendment etc of licence—other grounds

s 25 am A2011-22 amdt 1.232, amdt 1.234

Failing to return amended, suspended or cancelled licence

s 26 am A2011-22 amdt 1.234

Notification and review of decisions

pt 5 hdg sub A2008-37 amdt 1.228

Definitions—pt 5

s 33 sub A2008-37 amdt 1.228
def **decision-maker** ins A2008-37 amdt 1.228
def **reviewable decision** ins A2008-37 amdt 1.228

Reviewable decision notices

s 33A ins A2008-37 amdt 1.228

Applications for review

s 34 sub A2008-37 amdt 1.228

Register of licensed hawkers and exempt people

s 35 am A2011-22 amdt 1.234

Licensed hawkers and exempt people to notify change of name and address

s 37 am A2011-22 amdt 1.234

Replacement of licence or exemption

s 38 am A2011-22 amdt 1.234

Surrender of licence or exemption

s 39 am A2011-22 amdt 1.234

Authorised people

s 40 am A2011-22 amdt 1.234

Identity cards

s 41 am A2011-22 amdt 1.234

False or misleading statements in applications etc

s 43 om A2004-15 amdt 2.96

Alternative verdict for offence under s 43

s 44 om A2004-15 amdt 2.96

Transitional and other matters

pt 8 hdg exp 27 September 2004 (s 53)

Repeal of Hawkers Act 1936

s 48 om LA s 89 (3)

Repealed Act—permits to sell at authorised place

s 49 exp 27 September 2004 (s 53)

Repealed Act—consents to sell within 180m of shops

s 50 exp 27 September 2004 (s 53)

Amendment of Roads and Public Places Act—sch 1

s 51 om LA s 89 (3)

Regulations modifying pt 8

s 52 exp 27 September 2004 (s 53)

Expiry of pt 8

s 53 exp 27 September 2004 (s 53)

Reviewable decisionssch 1 om LA s 89 (3)
ins A2008-37 amdt 1.229
am A2011-22 amdt 1.234**Dictionary**dict am A2008-37 amdt 1.230; A2011-22 amdt 1.233
def **decision-maker** ins A2008-37 amdt 1.231
def **reviewable decision** ins A2008-37 amdt 1.231**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	<u>A2003-17</u>	27 September 2003
2	A2003-17	9 October 2003
3	A2004-15	9 April 2004
4	A2004-15	28 September 2004
5	A2006-23	2 June 2006

Endnotes

5 Earlier republications

Republication No	Amendments to	Republication date
6	A2007-25	31 March 2008
7	A2008-37	2 February 2009
8	A2008-37	27 February 2009
9	A2009-49	17 December 2009

© Australian Capital Territory 2011