

1996
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Uncollected Goods Bill 1996

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A BILL FOR

An Act to provide for the disposal of uncollected, lost or abandoned goods and for related purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Uncollected Goods Act 1996*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- 10 (2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If the provisions referred to in subsection (2) have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

5 **Application**

3. (1) Subject to subsection (2), this Act applies to goods in the possession of a person whether the goods came into the person's possession before, on or after the commencement of this section.

(2) This Act does not apply to—

- 10 (a) unclaimed prizes under the *Lotteries Act 1964*;
(b) unclaimed moneys under the *Unclaimed Moneys Act 1950*;
(c) cheques, I.O.U.s or other writings for securing the payment of money, goods or other property; or
(d) animals under the *Dog Control Act 1975* or the *Pounds Act 1928*.

15 **Interpretation**

4. In this Act, unless the contrary intention appears—

“authorised officer” means an authorised officer appointed under section 16;

20 “carriageway”, in relation to a public street, includes the gutter, if any, of the public street;

“goods” means moveable personal property, including animals and food;

“goods of low value” means uncollected goods having a net value of more than \$20 but less than \$500;

25 “goods of no value” means uncollected goods having a net value of \$20 or less;

“goods of significant value” means uncollected goods having a net value of \$500 or more;

30 “leased public baths” means public baths of which a lease has been granted by the Minister administering the *Public Baths and Public Bathing Act 1956*;

“manager” means—

- 35 (a) in relation to any public baths which are not leased public baths—the person for the time being occupying, or performing the duties of, the office of manager of the baths

or, if there is no such office, the person who, for the time being, is the senior attendant at the baths; and

(b) in relation to leased public baths—the lessee of the baths;

5 “net value”, in relation to goods, means the market value of the goods less the reasonable costs of selling the goods including removal, storage, preservation, transportation and advertising costs;

“off-street parking area” means an area of land available for use by the public, whether with or without the payment of money, for the parking of motor vehicles, and includes—

10 (a) the entrances to, the exits from and the passageways in such an area; and

(b) the area of land that is situated between the entrances to and the exits from such an area and a public street and that is used for access to the area;

15 “owner” means the owner of goods in the possession of another person;

“perishable goods” means—

(a) animals;

(b) perishable foodstuffs; or

20 (c) articles that are, or could become, noxious or a danger to public health;

“personal effects” includes private and personal papers, official records, bankbooks, certificates and photographs;

“possessor” means a person in possession of goods belonging to another person;

25 “public baths” means any baths or swimming pool declared under subsection 6 (2) of the *Public Baths and Public Bathing Act 1956* to be public baths, and includes all land, buildings and other improvements within the boundary fences and boundary walls enclosing the baths or swimming pool;

30 “public place” means—

(a) an off-street parking area;

(b) a loading area;

(c) a wharf, pier or jetty;

(d) the Lake Burley Griffin foreshores; or

- 5 (e) any part of a park, reserve, recreational or sporting ground, racecourse, or any other open place, to which the public has access whether with or without payment for admission, other than a street, road or lane that is prepared with cement or concrete or is sealed with bitumen or other sealing substance;

“public street” means a street, road, lane or footpath (including a street, road, lane or footpath on or forming part of a bridge) that is open to or used by the public, but does not include—

- 10 (a) an entrance-driveway leading to a parcel of land; or
(b) any part of a public place;

“retention area” means an area declared under section 17 to be a retention area for the purposes of Division 4 of Part II;

- 15 “trust bank account” means a trust bank account opened by the Minister or the Chief Executive and maintained under section 51 of the *Financial Management Act 1996*;

“uncollected goods” has the meaning given by section 5;

- 20 “value” means the price goods would attract in the market where no special or extraordinary effort would be expended in selling them, irrespective of a particular contract;

“vehicle” means any means of conveyance which runs on wheels but does not include any vehicle used on a railway or a wheelchair;

“weapon” includes a dangerous weapon, restricted weapon or prohibited weapon within the meaning of the *Weapons Act 1991*.

25 PART II—UNCOLLECTED GOODS

Division 1—Meaning of uncollected goods

Goods deemed uncollected

5. Goods shall be deemed to be uncollected goods for the purposes of this Act—

- 30 (a) where the possessor received the goods in pursuance of an agreement under which—
(i) the owner was to collect the goods at a certain time or within a certain period and has failed to do so; or
35 (ii) the possessor was to deliver the goods to the owner and, after making a reasonable attempt, the possessor is unable to do so in accordance with the agreement;

- 5 (b) where the possessor has a lien on the goods under the *Mercantile Law Act 1962* and a notice of intention to sell the goods has been given in accordance with subsection 22 (2) of that Act, but the charges stated in the notice have not been paid by the day specified in the notice;
- (c) where the goods are received by the possessor in the absence of any agreement regarding collection of the goods—
- 10 (i) in the case of perishable goods or goods of no value—immediately the goods are received by the possessor; or
- (ii) in the case of any other goods—the owner has refused or failed to comply with a request made in accordance with section 7 to collect the goods;
- (d) where the goods were lost or abandoned at public baths—
- 15 (i) in the case of perishable goods or goods of no value—immediately the manager or attendant at the baths takes possession of the goods; or
- (ii) in the case of any other goods—if the goods have not been given to a person entitled to their possession within the period specified in section 12; and
- 20 (e) where the goods were lost or abandoned on public or unleased land—
- (i) in the case of perishable goods or goods of no value—immediately the goods are found by an authorised officer; or
- 25 (ii) in the case of any other goods—
- (A) immediately the goods are moved to a retention area under subparagraph 14 (1) (a) (i); or
- (B) if the goods have not been collected by the owner in accordance with a notice affixed to the goods
- 30 under subparagraph 14 (1) (a) (ii).

Division 2—Goods not collected when requested

Application

6. This Division applies to goods received in the absence of an agreement for their collection.

Request to collect goods

7. (1) A possessor may request the owner of goods to collect the goods within 7 days of the date of the request.

(2) A request under subsection (1) shall—

- 5 (a) be in writing; and
- (b) contain—
- 10 (i) a brief description of the goods;
- (ii) the address at which the goods are available for collection;
- (iii) a statement of the times at which, or the hours between which, the goods will be available for collection at that address;
- (iv) a statement that the goods may be disposed of in accordance with Part IV if they are not collected within 7 days of the date of the request; and
- 15 (v) a statement of any costs that must be met by the owner before the goods will be released by the possessor.

(3) A request—

- (a) shall be sent to the owner's last known address; and
- 20 (b) if the possessor does not have an address for the owner and has not been able to ascertain it through reasonable inquiry—shall be published in a daily newspaper printed and circulating in the Territory.

Uncollected goods—goods not collected when requested

25 8. Where an owner refuses or fails to comply with a request made in accordance section 7, the goods shall be deemed to be uncollected goods and may be disposed of in accordance with Part IV.

Division 3—Goods found at public baths

Goods lost or abandoned at public baths

30 9. Where goods that a reasonable person would believe have been lost or abandoned are found at public baths—

- (a) by a manager or attendant at the baths—he or she shall take possession of the goods; or
- (b) by any other person—he or she shall immediately place the goods in the possession of the manager of or an attendant at the baths.

Lost property register

10. The manager or attendant shall, on taking possession of goods, other than perishable goods, under section 9, enter in a register, to be known as the lost property register—

- 5 (a) a description of the goods; and
 (b) any other particulars relating to the goods.

Claims for lost property

11. A person who—

- 10 (a) satisfies the manager or an attendant at the baths that he or she is entitled to possession of goods entered in the register; and
 (b) enters his or her signature and address in the lost property register as evidence of receiving the goods;

may be given possession of the goods.

Uncollected goods—public baths

- 15 12. Where goods have not been given to a person entitled to their possession within 3 months of the manager or attendant taking possession of them under section 9, the goods shall be deemed to be uncollected goods and may be disposed of in accordance with Part IV.

Division 4—Goods found on public or unleased land

20 **Application**

13. This Division applies in relation to—

- (a) land lying between the carriageway of a public street and the boundary of leased land;
25 (b) any part of a public street, including land lying between the carriageways of a public street; and
 (c) any other unleased land.

Goods lost or abandoned on public or unleased land

- 30 14. (1) Where goods, other than perishable goods or goods of no value, that a reasonable person would believe have been lost or abandoned are found on land—

- (a) by an authorised officer, he or she may—
 (i) subject to subsection (2), cause the goods to be removed and placed in a retention area; or

- (ii) cause to be affixed to the goods a notice to the effect that the goods may be disposed of in accordance with Part IV if they are not removed within 7 days of the date of the notice; or
- 5 (b) by any other person—he or she shall immediately place the goods in the possession of a police officer.
- (2) Subsection (1) (a) does not apply to—
 - (a) goods that are on the land with the authority of an authorised officer or by virtue of any other law of the Territory;
 - 10 (b) an object that was placed on the land in pursuance of a permit in force under the *Roads and Public Places Act 1937*; or
 - (c) a vehicle that is parked—
 - (i) on the carriageway of a public street; or
 - (ii) in an off-street parking area;
 - 15 unless the authorised officer has reasonable grounds for believing that the vehicle—
 - (iii) has been abandoned;
 - (iv) constitutes an obstruction or hazard to other persons who are or might come upon the land; or
 - 20 (v) is placed in such a way as to constitute a breach of the *Motor Traffic Act 1936*.

Uncollected goods—public or unleased land

15. Where goods—

- 25 (a) have been moved to a retention area under subparagraph 14 (1) (a) (i); or
- (b) are not claimed within the period specified in the notice under subparagraph 14 (1) (a) (ii);

the goods shall be deemed to be uncollected goods and may be disposed of in accordance with Part IV.

30 Appointment of authorised officer

16. The Minister may, by instrument, appoint a person to be an authorised officer for the purposes of this Division.

Retention areas

17. (1) The Minister may by notice published in the *Gazette*, declare an area of land specified in the notice to be a retention area for the purposes of this Division.

- 5 (2) Goods that are on an area of land when the land is declared, under subsection (1), to be a retention area shall, for the purposes of this Division, be deemed to have been placed in the retention area under subparagraph 14 (1) (a) (i).

PART IV—DISPOSAL OF UNCOLLECTED GOODS

10 *Division 1—Mode of disposition*

Disposal generally

18. A possessor may dispose of uncollected goods in accordance with this Part.

References to time

- 15 19. In relation to the disposal of goods under this Part—

- (a) a reference to any time shall be read as a reference to any time after the goods became uncollected goods; and
- (b) a reference to a period of time shall be read as a reference to the period commencing at the time at which the goods became uncollected goods.
- 20

Perishable goods

20. Perishable goods may be disposed of by sale, appropriation or destruction at any time.

Weapons and ammunition

- 25 21. A weapon or ammunition may be disposed of by surrendering it to a police officer at any time.

Personal effects

22. Personal effects may be disposed of by public auction after 3 months.

30 **Goods of no value**

23. Goods of no value may be disposed of by sale, appropriation or destruction after 1 week.

Goods of low value

24. Goods of low value may be disposed of by sale, appropriation or destruction after 1 month.

Goods of significant value

- 5 25. Goods of significant value may be disposed of by public auction after 3 months.

Division 2—Sale of goods

Public auctions

- 10 26. (1) Where uncollected goods are to be disposed of by public auction, the possessor shall, at least 7 days before it is held, advertise the time and place of the auction and a general description of the goods to be sold in a daily newspaper printed and circulating in the Territory.

(2) Any goods passed in at the auction may be disposed of or destroyed in such manner as the possessor sees fit.

15 ***Division 3—Claims by owners***

Claim by owner before disposal

27. (1) Where, at any time before the disposal of uncollected goods, a person satisfies the possessor that he or she is the owner of goods, the possessor may give the goods to that person.

- 20 (2) The possessor may, before handing over goods under subsection (1), require the owner to pay—

- (a) the reasonable costs incurred by the possessor in complying with this Act;
- 25 (b) the reasonable costs incurred by the possessor in storing and maintaining the goods prior to collection;
- (c) the amount of any lien under the *Mercantile Law Act 1962* the possessor has over the goods; and
- (d) the amount of any unpaid rent the owner owes to the possessor.

Review of possessor's costs

- 30 28. The owner of uncollected goods may, at any time before the goods are disposed of under this Part, apply to the Magistrates Court for a review of any costs that the possessor requires the owner to pay under subsection 27 (2) and the Court may make an order—

- 35 (a) that the goods not be disposed of until the application has been determined; or

- (b) disallowing the possessor's costs in whole or in part.

PART V—GOODS FOUND ON TERRITORY PREMISES OR PROPERTY

Goods lost or abandoned on Territory controlled premises etc.

- 5 **29.** Where goods that a reasonable person would believe have been lost or abandoned are found on premises, or in an aircraft, vessel, vehicle, container or receptacle under the control of the Territory, the person who found the goods shall place them in the possession—

- 10 (a) of a public employee who appears to be in charge of the place where the goods were found; or
 (b) of a police officer.

Disposal of goods found on Territory controlled premises

30. (1) Where goods have been placed in the possession of a public employee under paragraph 29 (a), the Territory may—

- 15 (a) in the case of perishable goods—dispose of them at any time by appropriation or destruction; or
 (b) in the case of any other goods—dispose of them by sale at any time after a period of 3 months commencing on the day on which they were placed in the possession of that employee.
20 **(2)** Goods shall not be sold under paragraph (1) (b) if it would be impracticable or undesirable in the public interest to do so.

PART VI—MISCELLANEOUS

Proceeds of sale

- 25 **31. (1)** The possessor may retain from the proceeds of the sale of any goods under Part IV—

- (a) the reasonable costs incurred by the possessor in complying with this Act;
 (b) the reasonable costs incurred by the possessor in storing and maintaining the goods prior to sale;
30 (c) the amount secured by any lien under the *Mercantile Law Act 1962* that the possessor has over the goods; and
 (d) the amount of any unpaid rent the owner owes to the possessor.

(2) Any balance of the proceeds remaining after the possessor has retained an amount under subsection (1) is payable to the Territory who shall pay the money into a trust bank account.

5 (3) The Territory may pay into the Territory bank account from the proceeds of the sale of any goods under paragraph 30 (1) (b) an amount equal to the reasonable costs incurred by the Territory in—

(a) storing and maintaining the goods prior to sale; and

(b) selling the goods.

10 (4) The balance of the proceeds remaining after the Territory has retained an amount under subsection (3) shall be paid into a trust bank account.

(5) Interest received from the investment of any money paid into a trust bank account under subsection (2) or (4) shall be used—

15 (a) to meet any costs of administering money paid into the account under subsection (2) or (4); or

(b) for any other prescribed purpose.

20 (6) Any money paid into a trust bank account under subsection (2) or (4) shall, on the expiry of the period of 3 years after the date on which the money was so paid, be deemed to be interest for the purposes of subsection (5).

Payments by Territory

25 32. (1) Where the Minister is satisfied that prior to the sale of any goods under Part IV or paragraph 30 (1) (b), a person had an interest in those goods, the Minister may pay to that person the whole or any part of the balance paid to the Minister in respect of the sale of those goods under subsection 31 (2) or (4).

(2) The Minister may only make such a payment if the person makes a claim for payment before the period referred to in subsection 31 (6) expires.

30 (3) The Minister may make a payment referred to in subsection (2) even if the period referred to in subsection 31 (6) has expired before the claim is decided.

Protection of possessors

35 33. (1) No action shall lie against a possessor by reason of the taking or giving of possession, or the sale, appropriation or destruction, of goods pursuant to this Act.

(2) A possessor acting pursuant to this Act is not liable for any reasonable damage caused by the removal or retention of goods.

Possession of weapons and ammunition

- 5 34. Nothing in this Act shall be construed as authorising a person who is not otherwise entitled to possession of a weapon or ammunition under the *Weapons Act 1991* to possess or to remain in possession of that weapon or ammunition other than for so long as it is necessary and reasonable to enable the person to surrender the weapon or ammunition to a police officer.

Rights not to be affected

35. Nothing in this Act abrogates, limits or in any manner affects—
- 10 (a) any lien, power of sale or other right (whether arising under contract or by operation of law) that a possessor may have apart from this Act with respect to any goods possessed by him or her; or
- (b) the enforcement of such a lien or the exercise of such a power or right.

15 **Evidence**

36. In proceedings for an offence against this Act, a certificate signed by the Chief Executive stating that land specified in the certificate is unleased land is evidence of that matter.

Title

- 20 37. A person who acquires goods that are sold or disposed of in pursuance of this Act acquires title to the goods free of any mortgage, lien or charge in favour of another person affecting the goods of which the person who acquires the goods was unaware at the time of the acquisition.

Mode of disposition

- 25 38. Nothing in this Act shall be taken as authorising a mode of disposition of goods that would otherwise be contrary to another law of the Territory.

Request provisions—substantial compliance

- 30 39. Unless the contrary intention appears, strict compliance with the provisions relating to the making of an instrument under this Act is not necessary and substantial compliance, or such compliance as the circumstances of a particular case allow, is sufficient.

Regulations

40. The Executive may make regulations for the purposes of this Act.