



2002

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

Hawkers Bill 2002

EXPLANATORY MEMORANDUM

**Circulated by the authority of
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Minister for Urban Services**

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Outline

The objectives of the Bill are to implement the recommendations made in the National Competition Policy review of the *Hawkers Act 1936*, which streamline the regulation of hawkers and remove anti-competitive provisions, and to be more consistent with other jurisdictions in their treatment of hawkers. No other State or Territory in Australia has general licensing for hawkers; instead they control hawkers when they want to stand in a public place.

Revenue/Cost Implications

There will be minimal financial implications associated with the refund of hawker's licences. There will be no impact on administrative or operational costs as a result of these changes.

Formal Clauses

Part 1- Preliminary

Clauses 1 and 2 are formal requirements. They deal with the short title of the Bill, and the commencement provisions.

Clause 3 lists the objectives of the Bill, which are to: ensure that hawkers do not have a significant adverse effect on public safety, the free movement of people and vehicles, the accessibility of premises or the accessibility of public amenities, in a public place; ensure that hawkers in public places do not have a significant adverse effect on the appearance or amenity of the public place; and ensure that adequate and appropriate public amenities are available at or near where hawkers operate.

Clause 4 excludes certain activities from this Bill. This includes the sale of goods and services using a licence under the *Land (Planning and Environment) Act 1991*, or a permit under the *Roads and Public Places Act 1937*, or a permit under the *Trespass on Territory Land Act 1932*, or public passenger services under the *Road Transport (Public Passenger Services) Act 2001* or a public vehicle under part 10 of the *Road Transport (General) Act 1999*, or an approved or exempt lottery under the *Lotteries Act 1964*, or the sale, delivery or distribution of newspapers by a child under the *Children and Young People Act 1999*, or busking, or a collection under the *Collections Act 1959*, or conduct declared by the regulations to be conduct that this Bill does not apply to.

Clause 5 states that the Dictionary at the end of the Bill is part of the Bill.

Clause 6 explains that notes included in the Bill are only explanatory.

Clause 7 clarifies that other legislation applies to offences in this Bill, including the Criminal Code and the Legislation Act.

Part 2- Hawking in public places

Clause 8 defines the term ‘carrying on business as a hawker’. The definition includes a person carrying on an itinerant business selling goods or services carried by the person or from a vehicle used by the person.

Clause 9 defines the term ‘public place’.

Clause 10 creates an offence for a person to be a hawker in a public place if they hinder or obstruct the free movement of people or vehicles or they endanger the safety of members of the public.

Clause 11 creates an offence for a person to be a hawker in a public place for more than 30 minutes at a time without a licence. It is also an offence for a person to be a hawker in a public place within 180 metres of a location where the person was a hawker earlier in the day, so that the total amount of time spent in these places exceeds 30 minutes, without a licence. This clause does not apply to a person who carries on business as a hawker for a licensed hawker in accordance with the licence.

Clause 12 creates an offence for a licensed hawker if they contravene their licence. The licensed hawker also commits an offence if another person carries on business as a hawker on their behalf and the person contravenes the licence.

Clause 13 creates an offence for a licensed hawker if they carry on business as a hawker in a public place and do not display their licence at the point of sale. It is also an offence for a licensed hawker if they authorise a person to carry on business as a hawker in a public place on their behalf and the person does not display a copy of the licence at the point of sale.

Clause 14 creates an offence for a person to be a hawker in a public place within 180 metres of commercial premises unless they hold an exemption under clause 28. This offence does not apply to a person who is a representative of a hawker if the hawker holds an exemption under clause 28.

Clause 15 creates an offence for a person that has an exemption under clause 28 if they carry on business as a hawker in a way that contravenes the exemption. It is also an offence for the person that has an exemption under clause 28, if another person carries on business as a hawker on their behalf and the person does not comply with the exemption.

Clause 16 creates an offence for a person with an exemption under clause 14, when they carry on business as a hawker in a public place within 180 metres of commercial premises, if they do not display the exemption at the point of sale. It is also an offence for a person carrying on business on behalf of a hawker if they do not display a copy of the hawker’s exemption at the point of sale. This clause does not apply to a hawker with a licence.

Part 3- Hawker's licences

Clause 17 allows a person to apply in writing to the chief executive for a licence. The chief executive may require the applicant to provide further information or a document, which the chief executive needs in order to make a decision about the application. If the applicant does not provide the information to the chief executive, the chief executive may refuse to consider the application.

Clause 18 requires the chief executive to either issue the licence or refuse to issue the licence. In deciding whether to issue the licence the chief executive must act in a way that is consistent with the objectives of the Bill and may also consider: whether the applicant has contravened this Bill; whether the applicant can and will ensure that people authorised by them to carry on business as a hawker on their behalf will comply with this Bill; and whether the applicant or anyone else who takes part in management of the applicant have been found guilty of handling stolen property or delivery of stolen property held by dealers. A licence is subject to the conditions stated in the licence.

Clause 19 allows the licence to be issued for the period stated in the licence, which must be less than one year.

Clause 20 states that a licence is not transferable.

Clause 21 requires the licence to show the following information: the full name, address and contact number of the licensee; the goods and services the licensee is authorised to sell; the place or places where the licensee may carry on business as a hawker; the period or periods that the licensee may sell goods or services; whether goods and services must be sold from a vehicle and if they do, the make, model and registration number of the vehicle; any conditions; any exemption given under clause 28; and the licence number and expiry date. The chief executive may also include any other appropriate information.

Clause 22 allows a licensed hawker to apply to the chief executive for an amendment of their licence. The chief executive may require the applicant to give further information or documents that the chief executive needs to make a decision on the application. The chief executive must amend the licence or refuse to amend the licence. In making this decision, the chief executive must consider the matters mentioned in clause 18. If the chief executive amends a licence, they must give the licensee an amended licence.

Clause 23 allows the chief executive to temporarily amend or suspend a licence if the public place where a person is licensed to carry on business as a hawker is near a road that will be temporarily closed or affected by permission to place culverts etc across public places under the *Roads and Public Places Act 1937*. The chief executive must give written notice of the amendment or suspension of the licence to the licensee, with the date of effect not earlier than seven days after the notice is given to the licensee.

Clause 24 allows the chief executive to amend, suspend or cancel a licence under section 25 if he or she is satisfied that: carrying on business as a hawker, under the licence, is not or will not be consistent with the objectives of this Bill; or the licensee has contravened a provision of this Bill; or a representative of the licensee has contravened a provision of this Bill; or the licensee or anyone else who is involved in

the licensee's management has been found guilty of handling stolen property or delivery of stolen property held by dealers.

Clause 25 outlines the procedure for amendment, suspension or cancellation of a licence. The chief executive must give the licensee a written notice stating: the proposed action, including any proposed amendments to the licence or the suspension period; the grounds for the proposed action; and that the person may within 14 days, give a written response to the chief executive about matters in the notice. The chief executive may take the following actions: amend the licence; or suspend the licence for a period of not longer than 1 year; or cancel the licence. In deciding whether to amend, suspend or cancel the licence, the chief executive must consider any response from the licensee. If the chief executive is satisfied that grounds for taking action under this clause have been established, he or she may decide on an action which is either the same or less onerous than the proposed action in the notice to the licensee. The chief executive must give the person written notice of the decision. The amendment, suspension or cancellation of the licence takes effect on the day the notice is given to the person, or if the notice states a later date, that date, which must be at least 14 days after the notice of the decision was given. If the chief executive amends a licence under this clause, he or she must issue an amended licence.

Clause 26 creates an offence for licensed hawkers if the licence is amended, suspended or cancelled under this part and the chief executive requires them to return the licence and they do not return the licence. This clause does not apply to the temporary amendment or suspension of licences under clause 23.

Part 4- Exemptions for hawking near commercial premises

Clause 27 allows the Minister to determine circumstances when a person may be exempted from clause 14. The determination is a disallowable instrument and must be notified and presented to the Legislative Assembly.

Clause 28 allows a person to apply to the Minister for exemption from clause 14 in relation to particular commercial premises. The application must state the grounds for seeking the exemption. If the Minister is satisfied that the grounds listed in the application are compatible with the circumstances determined in clause 27, then the Minister may exempt the applicant. The exemption may have conditions listed in the exemption. An exemption has effect for a licensed hawker if the exemption is stated in their licence, or in any other case, if a copy of the exemption is given to the hawker exempted.

Clause 29 states that an exemption is not transferable.

Clause 30 allows an exempt person to apply in writing to the Minister for the amendment of the exemption. The Minister may require the person to give further information that the Minister needs to decide the application. If the person does not provide the information, the Minister may refuse to further consider the application. The Minister must amend the exemption or refuse to amend the exemption and the decision must be based on the circumstances determined in clause 27. If the Minister amends the exemption, he or she must give the person an amended exemption.

Clause 31 allows the Minister to amend or revoke an exemption if a circumstance determined in clause 27 no longer applies, or the exempt person has committed an offence under this Bill. The Minister must give the exempt person a written notice that states the proposed action, the grounds for the proposed action and tell the person that they may give a written response within 14 days to the Minister. The Minister must consider any response in deciding whether to amend or revoke the exemption. The Minister must give the exempt person written notice of the decision and the date when the amendment or revocation of the exemption takes effect, which must not be earlier than 14 days after the notice is given to the exempt person.

Clause 32 creates an offence if an exempt person has their exemption amended or revoked under clause 31 and the Minister requires the person to return the exemption and they do not return the exemption.

Part 5- Decisions reviewable by AAT

Clause 33 allows a person to apply to the Administrative Appeals Tribunal for a review of certain decisions. The decisions made by the Minister that may be reviewed are: refusing to give an exemption under clause 28; giving an exemption under clause 28 subject to a condition; refusing to amend an exemption in a way requested by the exemption holder under clause 30; and amending or revoking an exemption under clause 31. The decisions made by the Chief Executive that may be reviewed are: refusing to issue or renew a licence under clause 18; issuing or renewing a licence under clause 18 for a term different to what was applied for; issuing a licence under clause 18 subject to a condition; refusing to amend a licence in a way requested by the licensee under clause 22; and amending, suspending or cancelling a licence under clause 25.

Clause 34 requires the Minister and chief executive to give a written notice to the applicant, or exempt person, or licensee (as appropriate) for each decision they make that is listed in clause 33. The notice must comply with the requirements of the code of practice under the *Administrative Appeals Tribunal Act 1989* section 25B (1).

Part 6- Administration

Clause 35 creates a register of licensed hawkers and exempt people. The chief executive must keep a register of licensed hawkers and exempt people with all the information mentioned for licensed hawkers in clause 21 (1) and for each exemption, the full name, address and contact number, the commercial premises to which the exemption applies and the conditions for the exemption. The register may also include any other appropriate information and may be kept in the form of a computer database. The chief executive may correct any mistakes, errors or omissions in the register subject to any requirements in the regulations.

Clause 36 allows anyone to inspect the register during ordinary office hours. They may also obtain a copy of all or part of the register on payment of reasonable copying costs.

Clause 37 creates an offence if licensed hawkers and exempt people do not tell the chief executive if their name, address or contact number changes within 7 days of the change happening. The chief executive must give the person an amended licence or an amended exemption.

Clause 38 allows the chief executive to issue replacement licences or exemptions if satisfied that the licence or exemption has been lost, stolen or destroyed. The chief executive may require the person to sign a statutory declaration that the licence has been lost, stolen or destroyed.

Clause 39 allows a licensed hawkler or an exempt person to at any time surrender their licence or exemption by returning the licence or exemption to the chief executive with a written statement that it is surrendered. If the licence or exemption has been stolen, lost or destroyed, the person may give the chief executive a statutory declaration stating that it has been stolen, lost or destroyed.

Clause 40 creates authorised persons for this Bill. A police officer, a roads and public places officer under the *Roads and Public Places Act 1937* and a person appointed by the chief executive are authorised persons for this Bill.

Clause 41 requires the chief executive to 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 under this Bill and shows a recent photo of the person, the date of issue and expiry of the card and anything else listed in the regulations. The authorised person with an identity card commits an offence if they cease to be an authorised person and they do not return their identity card to the chief executive within 7 days after the person ceases to be an authorised person.

Clause 42 gives an authorised person the power to require a person to state the person's name and address if the authorised person finds the person committing an offence under this Bill, or has reasonable grounds for believing that the person has just committed an offence under this Bill. The authorised person must tell the person the reason for requiring their name and address and as soon as practicable, record those reasons. A person commits an offence if the person does not give their name and address or states a false name or address. The person does not have to give their name and address if the person asks the authorised person to produce his or her identity card and the authorised person does not.

Part 7- Miscellaneous

Clause 43 creates an offence for a person to knowingly make a false or misleading statement or omit information from a statement, which makes the statement false or misleading when the statement is made in relation to an application for the issue or amendment of a licence or an exemption, or a response to the chief executive under clause 25, or a response to the Minister under clause 31. The person also commits an offence if they make a statement and are reckless about whether the statement is false or misleading or omits information from a statement, which makes the statement misleading, when the statement is made in relation to an application for the issue or amendment of a licence or an exemption, or a response to the chief executive under clause 25, or a response to the Minister under clause 31. The statements must be false or misleading in a material particular.

Clause 44 gives an alternative verdict for an offence under clause 43. A person may be found not guilty of making a false or misleading statement, but guilty of being reckless

about whether the statement is false or misleading, if they have been given procedural fairness in relation to that finding of guilt.

Clause 45 allows the Minister to determine any necessary fees. The fees must be presented to the Legislative Assembly as a disallowable instrument.

Clause 46 allows the Minister to approve, in writing, any necessary forms. The approved form must be used for the purpose it was approved for. The approved forms must be notified under the *Legislation Act 2001* as a notifiable instrument.

Clause 47 provides the Executive with the power to make necessary regulations for this Bill. The regulations must be presented to the Legislative Assembly. The regulations may include offences for contraventions of the regulations with a maximum penalty of 10 penalty units.

Part 8- Transitional and other matters

Clause 48 repeals the *Hawkers Act 1936*.

Clause 49 provides for a permit under section 6B (2) of the *Hawkers Act 1936* to continue for the remainder of the period stated in the permit as if it were a licence under this Bill.

Clause 50 provides for consent under section 6A (1) to be taken as an exemption under section 14 of this Bill.

Clause 51 amends the *Roads and Public Places Act 1937* listed in Schedule 1 of the Bill.

Clause 52 allows regulations to modify the operation of Part 8 of the Bill to deal any matter that in the Executive's opinion has not been adequately dealt with in this part of the Bill.

Clause 53 states that Part 8 expires one year after this clause commences.

Schedule 1- Roads and Public Places Act 1937

Section 15A inserts a new note stating that the holder of a licence under the *Hawkers Act 2002* does not require a permit under this Act to park a vehicle in a public place if the person is carrying on the business of a hawker in accordance with their licence.

Section 15U is a new section, which deals with the occupation etc. of public land under a *Hawkers Act 2002* licence. In this section a person is not required to hold a permit under the *Roads and Public Places Act 1937* to park a vehicle in a public place if the person holds a licence under the *Hawkers Act 2002* to use the vehicle to sell goods or services in the public place and the person is complying with their licence.

Dictionary

The dictionary at the end of the Bill defines key words that are used in the Bill and is part of the Bill.

