

Collections (Deemed Registration) Amendment Regulation 2023

Explanatory notes for SL 2023 No. 30

Made under the

Collections Act 1966

General Outline

Short Title

Collections (Deemed Registration) Amendment Regulation 2023

Authorising law

Sections 5, 17, 21, 23L, 31, and 47 of the *Collections Act 1966* (Collections Act).

Policy objectives and the reasons for them

The policy objectives of the *Collections (Deemed Registration) Amendment Regulation 2023* (Amendment Regulation) are to:

- support commencement of the cross-border recognition scheme for fundraising authorisation introduced by Part 5 of the *Casino Control and Other Legislation Amendment Act 2022* (CCOLAA);
- make consequential and supporting amendments to the *Collections Regulation 2008* (Collections Regulation) arising from the removal of public objections to registration of a charity under Part 5 of CCOLAA; and
- remove certain financial record-keeping, accounting and reporting requirements no longer considered necessary for charities registered under the Collections Act (including deemed registrants).

The policy objectives are intended to reduce regulatory burden for the charitable fundraising sector.

Achievement of policy objectives

Support commencement of the cross-border recognition scheme for fundraising

Part 5 of CCOLAA amends the *Collections Act 1966* (Collections Act) to introduce a nationally agreed cross-border recognition scheme under which charities registered with the Australian Charities and Not for Profits Commission (ACNC) will be taken, or “deemed”, to be registered as a charity in Queensland from the date the Minister receives a notification that they intend to conduct appeals for support in the state. Deemed registration will allow these entities to begin fundraising immediately without the need to meet local application requirements under the Collections Act.

Excluded provisions

The Amendment Regulation supports the commencement of the scheme by defining provisions of the regulation (“excluded provisions”) that do not apply to deemed registrants pursuant to section 23L of the Collections Act.

The following provisions of the Collections Regulation are excluded provisions:

- Section 37, which allows public access to a range of information filed with the chief executive by any person and requires charities, associations and promoters of appeals for support to make their financial statements available for inspection by the public or members of the charity or association, on payment of a prescribed fee; and
- Section 39, requiring the governing body of a registered charity or community purpose association to give written notice to the chief executive of the establishment of a new branch or section, within one month.

In the case of deemed registrants, the information for section 37 of the Regulation will generally be available from the ACNC’s publicly accessible register, except in a small number of cases where the ACNC considers this should not be so. Regardless, the information will not be held by the chief executive under the Collections Act. Given the public availability of the information where appropriate, it should not be necessary for deemed registrants, or the chief executive, to provide this information to a person, and section 37 is therefore an excluded provision that does not apply in respect of deemed registrants.

For section 39, the creation of a new branch will not be relevant to the chief executive’s administration of the Collections Act and is, in the case of deemed registrants, a matter for the ACNC.

Reporting exemptions

Additionally, the Amendment Regulation supports the commencement of the deemed registration scheme by expanding the existing financial reporting exemptions at section 30 of the Regulation to all ACNC registrants, regardless of whether they are part of a group reporting scheme, or have their financial information withheld from publication by the ACNC. ACNC registrants will still need to ensure the ACNC is provided the appropriate state-issued registration number in order to qualify for an exemption, and the chief executive will still be able to request financial statements from an exempt charity or exempt association (including deemed registrants) if needed.

Removal of public objections to charity applications

The Amendment Regulation removes subsections 4A(d) and 4A(e) and section 6 of the Collections Regulation, which relate to the manner of lodging and process for dealing with objections to registration of a charity. The provisions are redundant due to CCOLAA's removal of the public objections process.

The rest of section 4A is amended such that the chief executive will not be required to publish an application notice on the department's website as soon as practicable after receiving an application for registration as a charity, but may publish a notice stating the name of the association and the date its application to register as a charity was received.

Section 5, which prescribed grounds for objecting to the registration of a charity, is also redundant and has been removed. However, a new section 8A has been inserted to ensure those same prescribed grounds remain as the grounds on which a member of the public may seek to have a charity removed from the register.

Removal of certain provisions of the Collections Regulation

The Amendment Regulation removes certain provisions from the Collections Regulation that are considered to be overly prescriptive, outdated, or inconsistent with the broader objective of harmonising certain aspects fundraising regulation.

Significantly, section 54 of the *Associations Incorporation and Other Legislation Amendment Act 2020* (AIOLAA) inserted a new section 31 into the Collections Act requiring that entities authorised to conduct fundraising must keep financial records that correctly record and explain financial transactions, financial performance and financial position, and enable a true and fair statement to be made. While a regulation may prescribe particular financial records to be kept by relevant entities, consultation has indicated the principles-based approach of section 31 to be preferable. Accordingly, the following provisions are removed from the Collections Regulation:

- section 30B, which prescribes specific and outdated financial records to be kept by authorised fundraisers, such as a ledger, petty cash book, and receipt book of receipt forms;
- certain items in schedules 1 and 2 that relate to the section 30B requirements, or suggest a physical forms of records;
- a requirement at item 15 of Schedule 1 requiring the governing body to give the chief executive a statement of receipts and expenditure within one month after the day of a door-to-door appeal or street collection, which is inconsistent with the reporting provisions of the Collections Act;
- items 2, 3 and 8 of schedule 2, requiring expenditure over \$100 to be approved by the governing body of a charity or association and limiting cash payments to \$100; and
- item 11 of schedule 2, which states that the accounts of a continuing charity, association or promoter of an appeal for support must be audited at least once a year, which is redundant given the reporting requirements of the Collections Act.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the Collections Act. The amendments support:

- implementation of the CCOLAA amendments introducing a deemed registration scheme into the Collections Act and simplifying the process for local registration; and/or
- the policy objective of amendments to the Collections Act made by AIO LAA to reduce the regulatory burden for charitable entities.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives of the Amendment Regulation.

Benefits and costs of implementation

The charitable fundraising sector will benefit from the commencement of the cross-border recognition scheme and the removal of the public objections process, as supported by the Amendment Regulation. The sector will also benefit from removal of prescriptive and outdated requirements from the Collections Regulation relating to record-keeping and expenditure.

Costs of implementation to Government will be met from existing budget allocations.

Consistency with fundamental legislative principles

The Amendment Regulation makes consequential amendments to the Collections Regulation arising from section 51 of CCOLAA, which removes the right of a person to object to an application to register as a charity under the Collections Act.

This amendment to the Collections Act was identified as a potential breach of section 4(2)(a) of the *Legislative Standards Act 1992*, which requires legislation to have sufficient regard to the rights and liberties of individuals. However, the explanatory notes to CCOLAA justified the amendment on the basis that only a small number of objections are received annually, and removal of the objections process will help achieve national harmonisation of fundraising laws and remove barriers to conducting urgent appeals. Further, any person may still apply to have a charity removed from the register, after registration in circumstances where removal is warranted.

The changes made by the Amendment Regulation are consequential to and consistent with the amendments to the Collections Act made by section 51 of CCOLAA. These amendments can be justified on the same basis.

Consultation

Feedback received through previous consultation processes about the cross-border recognition model and amendments to the Collections Act, including submissions to the Legal Affairs and Safety Committee in its scrutiny of CCOLAA, informed the development of this Amendment Regulation.

Further targeted consultation on the proposed amendments to the Collections Regulation was undertaken via correspondence sent to key stakeholders. Stakeholders generally supported the cross-border recognition scheme and removal of prescriptive record-keeping and accounting requirements.

The Office of Best Practice Regulation (OBPR) was consulted on changes to reporting exemptions, the removal of prescribed records and related requirements, and the removal of restrictions on expenditure over \$100. Each of these proposals was assessed by OBPR as appropriate for exclusion from further regulatory impact assessment under category (k) – Regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts.

Other matters addressed in the Amendment Regulation were determined by the Department of Justice and Attorney-General to be of a consequential or machinery nature and therefore subject to agency-assessed regulatory impact assessment exclusions (categories (a) – regulatory proposals that make consequential amendments and (g) – regulatory proposals that are of a machinery nature).