

Collections Amendment Regulation (No. 1) 2014

Explanatory Notes for SL 2014 No. 27

made under the

Collections Act 1966

General outline

Short title

Collections Amendment Regulation (No. 1) 2014

Authorising law

Sections 35 and 47 of the *Collections Act 1966*

Policy objective and reasons for it

The objective of the *Collections Amendment Regulation (No. 1) 2014* (the Amendment Regulation) is to vest the property of the Foundation of Public Safety Professionals in the Public Trustee under section 35(1) of the *Collections Act 1966* (the Act) and subsequently to vest the money to the Australian Red Cross Society under section 35(2) of the Act for the provision of charitable purposes in Australia.

While the Act is silent as to specific objectives, an underlying purpose of the Act is to give the public who support a particular fundraising appeal, a sense of confidence that the following will happen:

- that the money donated will go to the “cause” for which their support is given;
- that public fundraising appeals are only made by legitimate charitable organisations and not for personal profit; and
- charitable monies need to be protected from misuse.

There is a general public expectation that charitable monies be dealt with in an honest way and protected from misuse.

An enforcement action undertaken by the Office of Fair Trading identified that monies collected by the Foundation of Public Safety Professionals was not authorised, nor given, to

the emergency services named in the fundraising activities. The funds obtained have been frozen and pursuant to section 35 of the Act. The Amendment Regulation has been drafted to vest all of the property in the Public Trustee and subsequently in the Australian Red Cross Society for charitable purposes.

Section 35(2) of the Act states that once the property is vested with the Public Trustee the property is to be held on trust and administered according to the original purpose for which it was obtained. The original purpose of the charitable donations was for it to be given to emergency services. Section 35(3) allows the Regulation to direct the property to a particular person for charitable or community purposes.

Sections 47(3)(n) and (o) of the Act contain the regulation making power applicable to this matter:

”...

(3) Regulations may be made for or in respect of all or any of the following purposes, matters and things –

...

(n) prescribing, regulating and controlling all or any matters necessary or desirable with respect to the giving of sanctions the revocation or surrender of sanctions, and the amendment by the issuing authority of any sanctions given;

(o) prescribing, regulating and controlling the making of all or any appeals for support for any purpose, whether a purpose to which part 3 applies or not, including such provisions as are necessary or desirable for safeguarding the public from fraud or deceit or cheating, the ensuring of the true and correct accounting for and recording of all moneys and property received in and resulting from the appeals, the true and correct accounting for and recording of all expenditure incurred in connection with the appeals and the handing over to the purpose for which the appeals are made all moneys and property resulting from the appeals;

...”

Achievement of policy objective

The Amendment Regulation is required to finalise the enforcement action taken by the regulator when a “sanction” or approval to conduct a fundraising appeal was revoked and the funds of the Foundation of Public Safety Professionals was subsequently frozen to safeguard the public from fraud, deceit or cheating. The funds would otherwise remain in a state of uncertainty. The handing over of the funds to the Public Trustee and subsequently the Australian Red Cross Society will ensure the charitable funds collected are distributed for the purpose for which they were obtained – for the provision of charitable purposes.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the Act.

Inconsistency with policy objectives of other legislation

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

Alternative ways of achieving policy objective

There is no alternative way to achieve the policy objective.

Benefits and costs of implementation

The Office of Best Practice Regulation (OBPR) has confirmed that the Amendment Regulation appears to not have any significant impacts and a Preliminary Impact Assessment is not required.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

The Public Trustee, the Australian Red Cross Society and the OBPR have been consulted regarding the Amendment Regulation.