



New South Wales

# Pawnbrokers and Second-hand Dealers Regulation 2020

under the

Pawnbrokers and Second-hand Dealers Act 1996

*[The following enacting formula will be included if the Regulation is made]*

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Pawnbrokers and Second-hand Dealers Act 1996*.

Minister for Better Regulation and Innovation

## Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Pawnbrokers and Second-hand Dealers Regulation 2015*, which will be repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following—

- (a) the definition of the terms **market** and **second-hand goods** for the purposes of the *Pawnbrokers and Second-hand Dealers Act 1996* (**the Act**),
- (b) the exclusion of certain conduct and institutions from the application of the Act or certain provisions of the Act,
- (c) the keeping of records by pawnbrokers and second-hand dealers,
- (d) the regulation of business carried on by pawnbrokers and second-hand dealers (including displaying licence details and other information, obtaining proof of identity from a person offering to sell or pawn goods, identification of goods and the retention of goods by a licensee),
- (e) the rights and obligations of persons entering into pawnbroking transactions (including a requirement to record pledges, the redemption of pawned goods and the sale of unredeemed goods),
- (f) disputes relating to the ownership of goods held by a pawnbroker or second-hand dealer (including the jurisdiction of the Local Court in relation to disputes),
- (g) fees payable for certain applications under the Act,
- (h) penalty notices for certain offences under the Act and this Regulation,
- (i) other matters of a minor, savings or transitional nature.

This Regulation is made under the *Pawnbrokers and Second-hand Dealers Act 1996*, including the sections referred to in this Regulation and sections 32C and 43 (the general regulation-making power).

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# public consultation draft

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## Pawnbrokers and Second-hand Dealers Regulation 2020

under the

Pawnbrokers and Second-hand Dealers Act 1996

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Pawnbrokers and Second-hand Dealers Regulation 2020*.

#### 2 Commencement

This Regulation commences on 1 September 2020.

**Note.** This Regulation replaces the *Pawnbrokers and Second-hand Dealers Regulation 2015* which is repealed on 1 September 2020 under section 10(2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

(1) In this Regulation—

*fee unit*—see Part 2 of Schedule 2.

*the Act* means the *Pawnbrokers and Second-hand Dealers Act 1996*.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

#### 4 Meaning of “market”

For the purposes of the definition of *market* in section 3(1) of the Act, a market does not include—

(a) an activity—

(i) conducted in the course of or for the purposes of a fundraising appeal within the meaning of the *Charitable Fundraising Act 1991*, and

(ii) promoted by a person who is or is taken to be the holder of an authority under that Act in respect of the appeal,

unless, for the purposes of the activity concerned, space is allocated to stallholders or marketeers who are not members of a charitable organisation or other body connected with the promotion of the fundraising appeal, or

(b) an assembly of stallholders or marketeers at which every person selling second-hand goods—

(i) is selling second-hand goods in household quantities, and

(ii) has provided the promoter of the assembly with a signed declaration that the person has not traded in second-hand goods on more than 6 days in the period of 12 months ending immediately before the day on which the assembly is held.

## 5 Meaning of “second-hand goods”

- (1) For the purposes of the definition of *second-hand goods* in section 3(1) of the Act, the following classes of goods are prescribed—
  - (a) car accessories,
  - (b) computer hardware (including tablet computers and video game consoles),
  - (c) electric or electronic goods (including mobile phones, global positioning system equipment and audio devices),
  - (d) gemstones and precious metals,
  - (e) items of jewellery (including watches) that include gemstones or precious metals,
  - (f) musical instruments,
  - (g) photographic and video equipment (including digital cameras, digital imaging equipment and video recording devices),
  - (h) portable engine-powered, motorised or air-powered tools and equipment,
  - (i) sporting and recreational equipment,
  - (j) watercraft used or capable of being used as a means of transportation on water (including parts of a watercraft).
- (2) Despite subclause (1), the following classes of goods are not prescribed for the purposes of the definition of *second-hand goods* in section 3(1) of the Act—
  - (a) items that are not portable and cannot be driven,
  - (b) wheelchairs and other mobility aids,
  - (c) microwave ovens, refrigerators, washing machines or other whitegoods,
  - (d) watercraft that cannot be lawfully towed or otherwise conveyed by a light vehicle (within the meaning of the *Road Transport Act 2013*).
- (3) For the purposes of the Act, none of the following activities constitutes the carrying on of a business of buying or selling second-hand goods if the activity is carried out by a person in the course of (or as a matter ancillary to) the carrying on of a business that does not require a licence under the Act—
  - (a) the sale of goods pursuant to a power conferred by the *Uncollected Goods Act 1995*,
  - (b) the taking of goods as a trade-in or the sale of goods taken as a trade-in,
  - (c) the sale of goods that have become second-hand goods by reason of being used in the course of a rental business conducted by the person,
  - (d) the sale of goods for the purpose of taking or enforcing securities over those goods.
- (4) In this clause—

**trade-in**, in relation to goods, means the taking of the goods as part payment for new or used goods.

## 6 Application of Act

- (1) For the purposes of section 4(2)(c) of the Act, the Act does not apply in relation to an act or omission arising in connection with the following—
  - (a) conducting a recycling program or rubbish collection program,
  - (b) selling goods collected in a recycling program or rubbish collection program,
  - (c) contracting with another person to give that person ownership of goods collected in a recycling program or rubbish collection program.

- (2) For the purposes of section 4(2)(c) of the Act, the Act does not apply in relation to a person to the extent that the person—
- (a) buys second-hand goods only from a government agency or public authority, or
  - (b) deals only in second-hand goods that have been bought from manufacturers as factory seconds.

**7 Exclusion of certain institutions from operation of section 5 of Act**

Section 5 of the Act does not apply to goods received by an authorised deposit-taking institution.

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## Part 2 Records

### 8 Definition

In this Part—

*electronic record-keeping condition* means a condition imposed on a licence in accordance with clause 9.

### 9 Licence condition relating to electronic record-keeping

- (1) The Secretary, when granting or renewing a licence, is to impose a condition on the licence requiring the licensee to use electronic methods of creation and storage of records that the licensee is required to keep under section 16, 28 or 29A of the Act.
- (2) Without limiting subclause (1), the condition is to include a requirement that the licensee use software, or software of a kind, specified in the condition for the creation and storage of the records.

### 10 Furnishing of records to Commissioner of Police

- (1) For the purposes of section 16(5A) of the Act, particulars of a record to which an electronic record-keeping condition applies must be furnished to the Commissioner of Police—
  - (a) by transmission in electronic form before the end of the day on which the record was made, or
  - (b) if other arrangements have been made by the Commissioner of Police, in accordance with those other arrangements.
- (2) For the purposes of section 16(5A) of the Act, particulars of a record that is required by or under the Act to be kept by a licensee, but to which an electronic record-keeping condition does not apply, must be furnished to the Commissioner of Police, if so directed by the Commissioner, in the manner and within the time directed by the Commissioner.
- (3) This clause does not apply to a record required to be kept for the purposes of section 29A of the Act.

### 11 Records generally

- (1) Records required to be kept by a licensee the purposes of the Act must be kept in the form required by the electronic record keeping condition imposed on the licence of the licensee.
- (2) Records required to be kept for the purposes of the Act must—
  - (a) be in the English language, and
  - (b) have consecutively numbered pages, and
  - (c) permanently record the date on which each record was first compiled and the date on which each entry was made, and
  - (d) include the contract number referred to in clause 12(1)(c) and (2)(c) for each item taken in trade or pawn.
- (3) Despite the electronic record-keeping requirement of a licence, the licensee may keep—
  - (a) a hard copy of a written statement as to the ownership of goods obtained from a customer under clause 16(6) a in loose-leaf form, but only if the statement includes the contract number referred to in clause 12(1)(c) and (2)(c) for each item taken in trade or pawn and is kept in order of contract number, and

- (b) a hard copy of the record of an agreement by which goods were pawned under section 28 of the Act in a loose-leaf form, but only if the record includes the contract number referred to in clause 12(1)(c) for each item taken in pawn and is kept in order of contract number.

## 12 Records of goods pawned, purchased or sold

- (1) For the purposes of section 16(1) of the Act, the following particulars are prescribed in so far as the licensee carries on the business of a pawnbroker—
  - (a) if the pledgor is—
    - (i) an individual—the name, residential address and date of birth of the individual, or
    - (ii) a corporation—the name, business address and Australian Business Number of the corporation,
  - (b) if the transaction is conducted by an individual acting as agent of the pledgor—the name, residential address and date of birth of the agent,
  - (c) a contract number for each transaction in which goods are pawned (that is, a number uniquely assigned by the licensee to distinguish it from another pledge arising in the course of the licensee's business),
  - (d) each date on which a pledge was taken, forfeited, sold or otherwise dealt with,
  - (e) the sale price of each forfeited item sold,
  - (f) the name and address of the purchaser of each forfeited item sold, except in cases where—
    - (i) the principal lent on the goods did not exceed \$75, or
    - (ii) the goods were sold by auction conducted away from business premises of the pawnbroker.
- (2) For the purposes of section 16(1) of the Act, the following particulars are prescribed in so far as the licensee carries on the business of a second-hand dealer—
  - (a) if the vendor or consignor is—
    - (i) an individual—the name, residential address and date of birth of the individual, or
    - (ii) a corporation—the name, business address and Australian Business Number of the corporation,
  - (b) if the transaction is conducted by an individual acting as agent of the vendor or consignor—the name, residential address and date of birth of the agent,
  - (c) a contract number for each transaction in which goods are bought or sold (that is, a number uniquely assigned by the licensee to distinguish it from another sale or purchase arising in the course of the licensee's business),
  - (d) the date on which goods were purchased, taken on consignment, sold or otherwise dealt with,
  - (e) the name and address of the purchaser of goods sold by the licensee along with the sale price, except in cases where the sale price does not exceed \$75,
  - (f) a description of the goods acquired, including characteristics specified in section 28(2)(a) of the Act that appear on or in connection with the goods,
  - (g) the price paid by the licensee for goods purchased by the licensee,
  - (h) the location of goods concerned in the business that are not kept at the notified business or storage premises of the licensee.
- (3) For the purposes of section 16(1) of the Act, the following additional particulars are prescribed in so far as the licensee carries on a licensed business—



- (a) evidence of a search in public registers such as the Personal Property Securities Register for encumbrances in respect of the goods,
  - (b) features unique to each card or document relied on for the purposes of clause 16(1), such as—
    - (i) in the case of a passport or driver licence—the number of the passport or licence, or
    - (ii) in the case of a credit card—the account number shown on the card, or
    - (iii) in the case of a bill addressed to the customer from a public utility—the customer’s account number shown on the bill,
  - (c) in relation to jewellery, the particulars (if any) specified in a notice served on the licensee by the Commissioner of Police.
- (4) A record required to be kept by a second-hand dealer under section 16(1) of the Act must—
- (a) in the case of the acquisition or consignment of second-hand goods—
    - (i) be made by close of business on the day on which the goods were acquired or taken on consignment by the licensee, or
    - (ii) be made as soon as possible after the acquisition or consignment of the goods, if they were received by or consigned to the licensee at premises other than those nominated in the licensee’s application for a licence or afterwards notified to the Secretary, and
  - (b) in the case of the disposal of second-hand goods—be made by close of business on the day on which the goods were disposed of by the licensee.
- (5) In this clause—
- business address** of a corporation means the address of the corporation’s registered office.
- Personal Property Securities Register** means the Personal Property Securities Register established under the *Personal Property Securities Act 2009* of the Commonwealth.

### 13 Records of persons employed in licensed businesses

For the purposes of section 16(2) of the Act, the following particulars are prescribed—

- (a) the name, date of birth and residential address of each person employed in the licensed business,
- (b) the date on which each person commences employment in the licensed business,
- (c) the date on which each person’s employment in the licensed business ended.

**Note.** A record required to be kept under section 16 of the Act must be retained for a period of 3 years after the record is made.

### 14 Records relating to markets

For the purposes of section 16(3) of the Act, the following particulars are prescribed—

- (a) the date on which the market is held,
- (b) the location of the market,
- (c) the name, residential address and, if possible, vehicle registration number of an unlicensed vendor at the market offering second-hand goods for sale,
- (d) a general description of the goods offered for sale by each unlicensed vendor,

- (e) details of identification document produced by each unlicensed vendor.

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## Part 3 Regulation of licensed businesses

### 15 Display of licence details and other information

- (1) For the purposes of section 14 of the Act, the particulars required to be displayed by a licensee are—
  - (a) the name of the licensee, and
  - (b) the licence number, and
  - (c) the business authorised by the licence to be carried on by the licensee, and
  - (d) a statement containing the words “information provided to the licensee by or about a customer in relation to the trading of second-hand goods may be given to the police”.
- (2) For the purposes of section 14(2) of the Act, the particulars required to be displayed by an itinerant licensee must be in a notice displayed in a prominent position at each place at which the licensee carries on the business of a licensee so that the notice is clearly visible to, and easily read by, the a member of the public in those premises.

### 16 Evidence of identity and title of supplier of goods

- (1) For the purposes of section 15(1A) of the Act, the identity of the person (the *customer*) offering to sell or pawn goods to a licensee must be verified by the licensee by means of the following evidence—
  - (a) a card or other document that—
    - (i) bears the customer’s photograph, and
    - (ii) appears to be issued by the government, or a statutory authority, of New South Wales, the Commonwealth, another State or a Territory, and
    - (iii) includes the following—
      - (A) the name of the customer,
      - (B) address at which the customer claims to reside,
      - (C) the signature of the customer,
  - (b) a combination of cards or other documents—
    - (i) that appear to be issued by organisations or persons other than the customer and that include the information and features described in paragraph (a)(iii), and
    - (ii) one of which appears to be issued by the government, or a statutory authority, of New South Wales, the Commonwealth, another State or a Territory,
  - (c) a card or other document (including, for example, a foreign passport) that appears to be issued by the government, or a government authority, of a foreign country, and includes the information and features described in paragraph (a)(i) and (iii) (including the customer’s permanent or temporary residential address in Australia),
  - (d) a combination of cards or other documents (including, for example, a foreign passport)—
    - (i) one of which appears to be issued by the government, or a government authority, of a foreign country, and includes the information and features described in paragraph (a)(i) and (iii) (but not including the customer’s permanent or temporary residential address in Australia), and

- (ii) one of which is in the form of a document (for example, a letter from a landlord or proprietor of a hotel or similar premises) that includes the customer's permanent or temporary residential address in Australia.
- (2) For the purposes of section 15(1A) of the Act, if the person is an individual, the person's date of birth is prescribed as a particular relating to the identity of the person.
- (3) For the purposes of section 15(1B) of the Act, evidence of the person's date of birth must be given in a documentary form (for example, a driver licence, passport, birth certificate or proof of age card) issued by the government, or a statutory authority, of New South Wales, the Commonwealth, another State or a Territory or the government or a government authority of a foreign country.
- (4) For the purposes of section 15(1A) of the Act, if the person is a corporation, the corporation's Australian Business Number is prescribed as a particular relating to the identity of the person.
- (5) For the purposes of section 15(1B) of the Act, evidence of the Australian Business Number must be given in a documentary form issued by the government, or a statutory authority, of New South Wales, the Commonwealth, another State or a Territory.
- (6) For the purposes of section 15(3) of the Act, the licensee must obtain from the customer a written statement, in the form approved by the Secretary, identifying the owner of the goods.
- (7) A licensee must not accept as evidence of the identity of a person a card or document that bears indications of forgery or tampering.

## 17 Exemptions relating to overseas supplier of goods

- (1) A licensee is exempted from the operation of section 15(1) and (3) of the Act if—
  - (a) goods that are being offered for sale to the licensee are to be or have been imported to Australia from a foreign country by the licensee, and
  - (b) the licensee has communicated an import declaration in respect of the goods in accordance with the *Customs Act 1901* of the Commonwealth.
- (2) For the purposes of section 16(1) of the Act, a licensee must, if a transaction consists of the acquisition of goods referred to in subclause (1), keep all original documents obtained in respect of the import declaration and a description of the goods or contract to which the import declaration relates.

## 18 Contract or stock number to be reproduced on tag, label or other attachment

- (1) A licensee must ensure that, for each item taken in trade or pawn during the course of the licensee's business—
  - (a) the contract number or a stock number is reproduced on a tag, label or other attachment to the item, and
  - (b) the attachment is attached to the item on the day on which the item is taken in trade or pawn and remains on the item until it is redeemed or sold.

Maximum penalty—20 penalty units.

- (2) In this clause—
  - contract number** for an item is the number referred to in clause 12(1)(c) or (2)(c) in relation to the item.
  - stock number** for an item is a number that—

- (a) is uniquely assigned by the licensee to distinguish the item from each other item held by the licensee in the course of the licensee's business, and
- (b) is the same as or different from the contract number for the item, and
- (c) is recorded electronically and in paper form, and
- (d) is linked to the contract number for the item in the electronic and paper record.

## 19 Retention of goods by licensee

- (1) Section 21(1) of the Act does not apply to—
  - (a) goods that are on consignment with the licensee for sale, or
  - (b) goods purchased by the licensee at auction, or
  - (c) goods purchased by the licensee from another licensee if before the purchase the goods have already been kept by the other licensee for a period for which the other licensee was required to keep them by section 21 of the Act or a notice under that section, or
  - (d) pawned goods, or
  - (e) goods purchased by tender or auction from—
    - (i) a government agency, or
    - (ii) a State owned corporation, or
    - (iii) a statutory authority constituted by or under an Act for a public purpose.
- (2) For the purposes of section 21(1)(a) of the Act, watercraft may be kept at a convenient place in New South Wales.

**Note.** Clause 12(2)(h) requires a second-hand dealer to record the location of the goods that are not kept at a notified business or storage premises.

## Part 4 Special provisions relating to pawnbrokers

### 20 Equivalent annual interest rate

- (1) For the purposes of section 28(2)(c) of the Act, the equivalent annual interest rate is the rate (expressed as a percentage) calculated in accordance with subclause (2).
- (2) The equivalent annual interest rate, in relation to a loan made by a pawnbroker, is the rate that bears to a year the same proportion as the periodic interest rate bears to the interest period.

**Note.** For example—

- (a) if the interest period is 1 month, the equivalent annual interest rate is 12 times the periodic interest rate, and
  - (b) if the interest period is 1 week, the equivalent annual interest rate is 52 times the periodic interest rate.
- (3) In this clause—

**interest period**, in relation to a loan made by a pawnbroker, means a period of time in respect of which interest is charged on an outstanding balance.

**outstanding balance**, in relation to a loan, means the portion of the amount advanced that remains unpaid.

**periodic interest rate**, in relation to a loan, means the rate (expressed as a percentage) per interest period at which interest is chargeable on an outstanding balance.

### 21 Exemptions relating to pawnbroker's record of pledges

A licensee is exempt from the operation of section 28(2)(a) of the Act, to the extent that it requires the licensee to record a serial number appearing on pawned goods, if the pawned goods are batteries or chargers for cordless second-hand goods.

### 22 Pawnbroker's record of pledges

- (1) For the purposes of section 28(2)(a) of the Act, a fair and reasonable description of goods must include—
  - (a) in the case of a mobile phone—the International Mobile Equipment Identity (IMEI) number of the mobile phone, and
  - (b) in the case of a mobile phone, tablet, computer or laptop, containing a wireless local area network (WLAN) interface—the media access control (MAC) address for the interface.
- (2) For the purposes of section 28(2)(f) of the Act, the following particulars are prescribed as particulars required to be included in the record of an agreement by which goods are pawned—
  - (a) particulars of—
    - (i) if the owner of the goods is an individual—the date of birth of the owner, or
    - (ii) if the owner of the goods is a corporation—the Australian Business Number of the owner,
  - (b) if the goods are pawned by an individual as the agent of the owner of the goods—particulars of the date of birth of the agent,
  - (c) the name and signature of the person who took the pawn on behalf of the pawnbroker.
- (3) For the purposes of subclause (2)—
  - (a) evidence of an individual's date of birth must be given in a documentary form (for example a driver licence, passport, birth certificate or proof of age card)

issued by the government, or a statutory authority, of New South Wales, the Commonwealth, another State or a Territory or the government or a government authority of a foreign country, and

- (b) evidence of a corporation's Australian Business Number must be given in a documentary form issued by the government, or a statutory authority, of New South Wales, the Commonwealth, another State or a Territory.

## **23 Notice of rights and obligations of person pawning goods**

For the purposes of section 28(5A)(a) of the Act, a notice incorporating or accompanying a pawn ticket must—

- (a) be legible and printed on both sides of A4 size paper, and
- (b) not include wording other than that required by the form approved for the notice.

## **24 Redemption of pawned goods**

- (1) For the purposes of section 29(6) of the Act, the identity of the person (the *customer*) attempting to redeem pawned goods from a licensee's premises may be ascertained by—

- (a) production of the pawn ticket and reproduction, in the presence of the licensee or an employee of the licensee, of the signature shown on that ticket, or
- (b) if the customer does not produce a pawn ticket—evidence of the customer's identity of a kind referred to in clause 16(1).

- (2) A customer who does not produce the pawn ticket must—

- (a) complete a declaration in writing stating that he or she is the owner of the goods, or
- (b) produce—
  - (i) an authority in writing specifying the name and address of the owner of the goods and signed by the owner, authorising the goods to be collected by that customer, or
  - (ii) such evidence as may, in the circumstances, be reasonably sufficient to prove the death or incapacity of the owner or the owner's inability to sign such an authority.

## **25 Sale of unredeemed goods**

For the purposes of section 30(1) of the Act, the prescribed amount is \$100.

## Part 5 Disputes as to ownership of goods and restoration of goods

### 26 Restoration notices under Part 4A of Act

- (1) For the purposes of section 32F(3) of the Act, a restoration notice must contain the following particulars and information—
  - (a) the name of the claimant (including, if the claimant is a corporation, the name of the person acting on behalf of the corporation),
  - (b) the claimant's address (including, if the claimant is a corporation, the registered business address of the corporation),
  - (c) the date of birth of the claimant (or Australian Business Number, if the claimant is a corporation),
  - (d) the signature of the claimant (or of the person acting on behalf of the claimant, if the claimant is a corporation),
  - (e) if the claimant is a corporation—a signed statement by an executive officer of the corporation authorising a named person to act on behalf of the corporation,
  - (f) the connection between the claimant and the goods concerned,
  - (g) evidence supporting the claimant's title to the goods,
  - (h) the present location of the goods,
  - (i) a description of the goods (including a serial number (if any)),
  - (j) alternative means of identifying the goods (for example, an engraving or permanent marking),
  - (k) the COPS event number (in the case of a theft report),
  - (l) the date the matter was first reported to a police officer,
  - (m) the police description of the goods on inspection and the licensee's contract number for the goods,
  - (n) the name, contact details and signature of the police officer issuing the notice,
  - (o) if an insurance claim has been made in respect of the goods—the name and business address of the insurer,
  - (p) the name and licence number of the licensee (including, if the licensee is a corporation, the names of the directors of the corporation),
  - (q) the registered business address of the licensee,
  - (r) the address of the licensee's approved premises.
- (2) For the purposes of section 32F(7) of the Act, a restoration notice ceases to be operative if the claimant withdraws his or her allegation under section 32F(1) of the Act.

### 27 Jurisdiction of Local Court

In accordance with section 32I(1)(a) of the Act, the Local Court has jurisdiction to determine an action referred to in section 93 of the *Civil Procedure Act 2005* that is brought by a claimant in connection with goods that are in the possession of a licensee and to which a restoration notice relates if the licensee does not make an application under section 32G of the Act in relation to the goods within 28 days after the day on which the notice is served.



**28 Notice relating to operation of Part 4A of Act**

For the purposes of section 32L of the Act, the notice relating to the operation of Part 4A of the Act must be in a form containing the following statement—

**Disputes about ownership and restoration of goods**

You have a legal right to claim goods from these premises that you have good reason to believe are yours. Go to a Police Station and a police officer will advise you of your rights and what you will need to do.

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## Part 6 Miscellaneous

### 29 Lending or parting with licence

- (1) A licensee must not purport to transfer, and must not lend, the licence to another person or allow the use of the licence by another person.
- (2) A person must not purport to obtain a transfer of, or borrow or use, another person's licence.  
Maximum penalty—20 penalty units.

### 30 Carrying on of business by legal personal representatives and trustees

- (1) If the holder of a licence dies or becomes mentally incapacitated, or is by the order of a court declared to be bankrupt, the legal personal representative or trustee of the estate of the licensee may in person or by a designated agent carry on the business authorised by the licence for a period of 3 months after the death, incapacity or order, unless sooner notified by the Secretary under subclause (5).
- (2) A person carrying on a business in accordance with this clause must immediately notify the Secretary that he or she is doing so.
- (3) For the purposes of the Act, this Regulation and the powers of the Secretary with respect to licences, a person carrying on a business in accordance with this clause is taken, while so doing, to be the licensee, and an agent through whom the person acts for the purposes of the business is taken to be an employee of the business.
- (4) If the licence concerned expires during the period of 3 months referred to in subclause (1), sections 6 and 7 of the Act do not apply so as to render the person carrying on business in accordance with this clause guilty of an offence by reason of doing so.
- (5) For a reason that appears to the Secretary to be sufficient cause to do so, the Secretary may, by notice in writing to a person carrying on a business in accordance with this clause, revoke the authority conferred by this clause so far as the relevant business is concerned.

### 31 Unique identifier for combined licence

Despite section 20(3)(b)(i) of the *Licensing and Registration (Uniform Procedures) Act 2002*, the same unique identifier may relate to a pawnbroker's licence and second-hand dealer's licence that are both contained in the same document, as referred to in section 20(5) of that Act.

### 32 Specific exemptions from certain requirements

- (1) Verser Technology Lifecycles Pty Ltd is exempted from the operation of the following provisions of the Act—
  - (a) section 16(1) of the Act, to the extent that it requires a licensee who carries on the business of a second-hand dealer to keep records containing particulars, prescribed by clause 12(2)(b), of the residential address and date of birth of an agent of a vendor or consignor,
  - (b) section 16(5A) of the Act, to the extent that it requires a licensee to furnish to the Commissioner of Police particulars of a record that are required to be so furnished by clause 10(1).
- (2) Brightstar Logistics Pty Limited is exempted from the operation of the following provisions of the Act in relation to goods that are mobile phones obtained from Telstra Corporation Limited under its Telstra New Phone Feeling program or from

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customers of Telstra Corporation Limited under Brightstar Logistics Pty Limited's Buy Back and Trade-In Program—

- (a) section 15(1) and (1A) of the Act, to the extent that they require a licensee to obtain documentary evidence of the identity of the person by whom the goods are being offered,
  - (b) section 16(1) and (5A) of the Act, to the extent that they require a licensee to keep records of transactions for the acquisition or disposal of the goods and furnish particulars of the records to the Commissioner of Police,
  - (c) section 21(1) of the Act, to the extent that it requires a licensee to retain second-hand goods purchased or received for a period of 14 days.
- (3) TES-AMM Australia Pty Ltd is exempted from the operation of section 16(5A) of the Act, to the extent that it requires a licensee to furnish to the Commissioner of Police particulars of a record that are required to be so furnished by clause 10(1).
- (4) Asurion Australia Pty Limited is exempted from the operation of the following provisions of the Act in relation to goods that are mobile phones or tablet computers obtained from Telstra Corporation Limited under its Telstra New Phone Feeling program or Telstra New Tablet Feeling program—
- (a) section 15(1) and (1A) of the Act, to the extent that they require a licensee to obtain documentary evidence of the identity of the person by whom the goods are being offered,
  - (b) section 16(1) and (5A) of the Act, to the extent that they require a licensee to keep records of transactions for the acquisition or disposal of the goods and furnish particulars of the records to the Commissioner of Police,
  - (c) section 21(1) of the Act, to the extent that it requires a licensee to retain second-hand goods purchased or received for a period of 14 days.
- (5) IBM Australia Ltd is exempted from the operation of the following provisions of the Act—
- (a) section 16(1) of the Act, to the extent that it requires a licensee who carries on the business of a second-hand dealer to keep records containing particulars of the residential address and date of birth of an agent of a vendor or consignor (pursuant to clause 12(2)(b)),
  - (b) section 16(5A) of the Act, to the extent that it requires a licensee to furnish to the Commissioner of Police particulars of a record to which an electronic record-keeping condition applies (under clause 10(1)),
  - (c) section 21(1) of the Act, to the extent that it requires a licensee to retain second-hand goods purchased or received for a period of 14 days.
- (6) Assurant Services Australia Pty Limited is exempted from the operation of the following provisions of the Act in relation to goods that are mobile phones or tablet computers obtained from Optus Mobile Pty Limited under the Mobile Device Sale Agreement dated 27 September 2017 between Assurant Services Australia Pty Limited and Optus Mobile Pty Limited—
- (a) section 15(1) and (1A) of the Act, to the extent that they require a licensee to obtain documentary evidence of the identity of the person by whom the goods are being offered,
  - (b) section 16(1) and (5A) of the Act, to the extent that they require a licensee to keep records of transactions for the acquisition or disposal of the goods and furnish particulars of the records to the Commissioner of Police,
  - (c) section 21(1) of the Act.

- (7) Kingfisher Mobile Australia Pty Ltd is exempted from the operation of the following provisions of the Act in relation to goods that are mobile phones or tablet computers obtained from Telstra Corporation Limited under its Telstra Stay Connected program, Telstra Swap Assure program, Telstra New Phone Feeling program or Telstra New Tablet Feeling program—
- (a) section 15(1) and (1A) of the Act, to the extent that they require a licensee to obtain documentary evidence of the identity of the person by whom the goods are being offered,
  - (b) section 16(1) and (5A) of the Act, to the extent that they require a licensee to keep records of transactions for the acquisition or disposal of the goods and furnish particulars of the records to the Commissioner of Police,
  - (c) section 21(1) of the Act.

### 33 Certification of number of demerit points

For the purposes of section 27(6) of the Act, the Secretary is a prescribed officer.

### 34 Notice as to proceeds of sale

For the purposes of section 31A(2)(b) of the Act, \$75 is prescribed.

### 35 Penalty notice offences and demerit points

- (1) For the purposes of sections 26 and 27 of the Act—
  - (a) each offence created by a provision specified in Column 1 of Schedule 1 is a prescribed offence, and
  - (b) the prescribed penalty for an offence if dealt with under section 26 of the Act is the amount specified in Column 2 of Schedule 1 opposite the provision creating the offence in Column 1 of the Schedule.
- (2) For the purposes of section 27(2) of the Act, the prescribed number of demerit points in relation to an offence is the number specified in Column 3 of Schedule 1 opposite the provision creating the offence in Column 1 of the Schedule.

### 36 Fees

- (1) The fees payable for the purposes of the Act are listed in Column 1 of Part 1 of Schedule 2.
- (2) The amount of each fee is to be calculated by adding together the various components set out in Columns 2 and 3 of Part 1 of Schedule 2 in relation to that fee. The total fee is set out in Column 4 of Part 1 of that Schedule.
- (3) An amount specified in relation to an application in Column 3 of Part 1 of Schedule 2 under the heading “**Processing component**” is taken to be a fee to cover the costs incurred by the Secretary in processing the application.

**Note.** This amount is consequently a **processing fee** for the purposes of Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002*. If an application is made by electronic communication, the processing fee is discounted (see section 13 of that Act). If an application is refused or withdrawn, the applicant is entitled to a refund of all fees paid, other than the processing fee (see section 22 of that Act).

### 37 Secretary's power to waive, reduce, postpone or refund fees

The Secretary may waive, reduce, postpone or refund, in whole or part, a fee payable or paid under the Act or this Regulation if the Secretary is satisfied it is appropriate because—

- (a) the person who is to pay or has paid the fee is suffering financial hardship, or
- (b) special circumstances exist.

**Example of ‘special circumstances’**— circumstances involving a natural disaster or recovery from a natural disaster

**38 Refund if licence surrendered within 60 days after grant**

- (1) Without limiting clause 37, a the holder of a second-hand dealer’s licence who surrenders the licence within 60 days after the grant or renewal of the licence, is entitled to a refund of the component set out in Column 2 of Part 1 of Schedule 2 paid in respect of the grant or renewal of the licence.
- (2) Subclause (1) does not apply if the licensee is required to surrender the licence under section 37 of the Act.

**39 Savings**

- (1) Any act, matter or thing that had effect under the *Pawnbrokers and Second-hand Dealers Regulation 2015* immediately before the commencement of this Regulation is taken to have effect under this Regulation.
- (2) Despite clause 9, the Secretary must not impose the condition referred to in that clause when granting or renewing a licence for a person if—
  - (a) the person was the holder of a licence immediately before the commencement of this Regulation, and
  - (b) the licence held by a person immediately before the commencement of this Regulation was not, because of clause 12 of the *Pawnbrokers and Second-hand Dealers Regulation 2015*, subject to the condition referred to in clause 11 of that Regulation, and
  - (c) the condition would have effect before 1 September 2022.

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Pawnbrokers and Second-hand Dealers Regulation 2020 [NSW]  
Schedule 1 Penalty notice offences and demerit points

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## Schedule 1 Penalty notice offences and demerit points

(Clause 35)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision of Act</b>	<b>Penalty</b>	<b>Number of demerit points</b>
Section 6	\$1,100 in the case of an individual or \$2,200 in the case of a corporation	Nil
Section 7	\$1,100 in the case of an individual or \$2,200 in the case of a corporation	Nil
Section 12(2)	\$330	2
Section 12A(2)	\$330	2
Section 12B(2)	\$550	2
Section 14	\$330	Nil
Section 15(1)	\$330	2
Section 15(3)	\$330	2
Section 15A(1)	\$330	Nil
Section 16(1)–(5A)	\$550	2
Section 16(6)	\$330	2
Section 17	\$330	2
Section 19(1)	\$550	2
Section 20	\$330	2
Section 21	\$550	2
Section 28(7)	\$550	2
Section 29	\$330	2
Section 29A(11)	\$330	2
Section 29B(2)	\$550	2
Section 30	\$330	2
Section 31	\$330	2
Section 31A(1)	\$550	2
Section 32	\$330	2
Section 32C	\$330	Nil
Section 32F(4)	\$550	2
Section 32L	\$330	Nil
Section 37	\$110	Nil
<b>Provision of this Regulation</b>		
Clause 18(1)	\$330	2
Clause 29	\$330	2

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## Schedule 2 Fees

(Clause 36)

### Part 1 Fees payable

Item	Column 1	Column 2	Column 3	Column 4
	Type of fee	Fixed component (in fee units)	Processing component (in fee units)	Total (in fee units)
1	Application for granting of licence	3.35	1.91	5.26
2	Application for renewal of licence	3.35	0.45	3.80
3	Application for restoration of licence	3.35	0.92	4.27
4	Application for replacement of licence	Nil	0.46	0.46
5	Application for extract of register (per entry)	0.18	Nil	0.18

### Part 2 Adjustment of fees for inflation

#### 1 Definitions

In this Part—

**CPI number** means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

**financial year** means a period of 12 months commencing on 1 July.

#### 2 Calculation of fee unit for purposes of Regulation

- (1) For the purposes of this Regulation, a **fee unit** is—
- in the financial year 2020–2021—\$105.48, and
  - in each subsequent financial year—the amount calculated as follows—

$$\$100 \times \frac{A}{B}$$

where—

**A** is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

**B** is the CPI number for the March quarter of 2017.

- The amount of a fee unit is to be rounded to the nearest cent (and an amount of 0.5 cent is to be rounded down).
- However, if the amount of a fee unit calculated for a financial year is less than the amount that applied for the previous financial year, then the amount for that previous financial year applies instead.

#### 3 Rounding of fee amounts and contributions

The amount of a fee calculated by reference to a fee unit (including the amount of a component of a fee) is to be rounded to the nearest dollar (and an amount of 50 cents is to be rounded down).

#### 4 Notice of indexed fees

- (1) As soon as practicable after the CPI number for the March quarter is first published by the Australian Statistician, the Secretary is required to—
  - (a) notify the Parliamentary Counsel of the amount of the fee unit for the next financial year so that notice of that amount can be published on the NSW legislation website, and
  - (b) give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year resulting from the application of the amount of a fee unit calculated under this Part.
- (2) This Part operates to change an amount of a fee that is calculated by reference to a fee unit and that change is not dependent on the notification or other notice required by this clause.

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