



New South Wales

# Pawnbrokers and Second-hand Dealers Regulation 1997

under the

Pawnbrokers and Second-hand Dealers Act 1996

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

FAYE LO PO', MP.,  
Minister for Fair Trading

## Explanatory note

The object of this Regulation is to prescribe matters necessary or incidental to the operation of the *Pawnbrokers and Second-hand Dealers Act 1996*. The Regulation contains provisions prescribing, among other things:

- (a) the evidence of identity required to be produced by a person offering goods for sale to a second-hand dealer or as pledges to a pawnbroker, and
- (b) the records to be kept by pawnbrokers and second-hand dealers in connection with their businesses, and
- (c) fees payable under the Act.

Clause 28 of the Regulation relies in part on power conferred by section 4 (2) (c) of the Act. Other provisions of the Regulation are made under the enabling provisions of the Act referred to in them, or under section 43 (the general regulation-making power).

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## 1997 No 163

Clause 1 Pawnbrokers and Second-hand Dealers Regulation 1997

Part 1 Preliminary

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# Pawnbrokers and Second-hand Dealers Regulation 1997

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Pawnbrokers and Second-hand Dealers Regulation 1997*.

### 2 Commencement

This Regulation commences on 30 April 1997.

### 3 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

### 4 Definitions

In this Regulation:

*pawn ticket* means a copy of a record referred to in section 28 (5) of the Act.

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

### 5 Meaning of “market”

For the purposes of the definition of *market* in section 3 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 such an appeal,

unless, for the purposes of the activity concerned, space is allocated for a consideration 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:
  - (i) none of whom is selling any second-hand goods (within the meaning of the Act), or
  - (ii) at which every person selling any such goods is selling them in household quantities only and has provided the promoter of the assembly with a signed declaration that the person has not traded in such goods on more than 12 days in the period of 12 months ending with the date on which the assembly is held.

## 6 Meaning of “second-hand goods”

- (1) For the purposes of the definition of *second-hand goods* in section 3 of the Act, the following classes of goods are prescribed:
  - (a) items of jewellery (including watches) that include
  - (b) gemstones or precious metals,
  - (c) gemstones and precious metals,
  - (d) sporting and recreational goods,
  - (e) musical instruments (other than pianos),
  - (f) photographic equipment,
  - (g) portable engine-powered, motorised or air-powered tools and equipment,
  - (h) microwave cookers and other electric or electronic goods (other than refrigerators, washing machines or other “whitegoods”),
  - (i) computer hardware and software,
  - (j) compact (laser-read) discs,
  - (k) watercraft and parts of watercraft,
  - (l) lots of copper or other non-ferrous metal or metal alloys (other than beverage containers),  
tool kits,
  - (m) car accessories,
  - (n) furniture having a wholesale value greater than \$200.

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- (2) The fact, however, that 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) sells any goods pursuant to a power conferred by the *Uncollected Goods Act 1995*, or
  - (b) takes goods as a trade-in or sells any goods so taken,
- does not, for the purposes of the Act, constitute carrying on a business of buying or selling second-hand goods.

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

Section 5 of the Act (Buy-back contracts regarded as pledge and loan) does not apply to goods received by:

- (a) a registered corporation within the meaning of the *Financial Corporations Act 1974* of the Commonwealth, or
- (b) a bank within the meaning of the *Banking Act 1959* of the Commonwealth, or
- (c) a bank constituted under the law of the Commonwealth or of a State or Territory, or
- (d) a financial institution within the meaning of the *Financial Institutions (NSW) Code*.

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## **Part 2      Licensing of pawnbrokers and second-hand dealers**

### **8      Licence application fee**

For the purposes of section 9 of the Act, the prescribed application fee is \$325.

### **9      Fee on renewal of licence**

For the purposes of section 10 (3) of the Act, the prescribed renewal fee is \$235.

### **10     Extract from register of licences**

For the purposes of section 13 (2) of the Act, the prescribed fee is \$10.

### **11     Evidence of content of register of licences**

For the purposes of section 13 (3) of the Act, the following officers of the Department of Fair Trading are prescribed officers:

- (a) the Director-General,
- (b) the Licensing Manager, Marketplace Management Division,
- (c) the Licensing Co-ordinator, Business Licensing, Marketplace Management Division,
- (d) the Operations Manager, Business Licensing, Marketplace Management Division.

### **12     Display of licence details**

- (1) For the purposes of section 14 of the Act, the required particulars 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.
- (2) The particulars must be written in legible capital letters in the English language using letters and figures each not less than 5 centimetres in width and height.

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Part 3          Records

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### **Part 3      Records**

#### **13   Records generally**

- (1) Records maintained for the purposes of the Act may be kept electronically or in a bound (not loose-leaf) book.
- (2) The records must have consecutively numbered pages.
- (3) The records must permanently record the date on which each record was first compiled and the date on which each entry was made.
- (4) In the case of any licence issued or renewed on or after 1 May 1998, the Director-General is to require the licensee, by way of a condition of the licence, to use electronic means of creation and storage of records kept for the purposes of section 16 of the Act using software specified, or of a kind specified, in the condition.
- (5) The records must include the contract number referred to in clause 14 (1) (b) and (2) (b) for each item taken in trade or pawn, and that number must be reproduced on a tag, label or other attachment to the item.

#### **14   Records of goods pawned, purchased or sold**

- (1) The following particulars are prescribed for the purposes of section 16 (1) of the Act in so far as the licensee carries on the business of a pawnbroker:
  - (a) the name, address and signature of the pledgor or his or her agent,
  - (b) a contract number for each transaction in which goods are pawned (that is, a number uniquely assigned by the licensee to distinguish it from any other pledge arising in the course of the licensee's business),
  - (c) the date on which any pledge was taken, forfeited, sold or otherwise dealt with,
  - (d) the sale price of any forfeited item sold,
  - (e) the location of any goods concerned in the business that are not kept at the notified business or storage premises of the licensee.



- (2) The following particulars are prescribed for the purposes of section 16 (1) of the Act in so far as the licensee carries on the business of a second-hand dealer:
- (a) the name, address and signature of the vendor or consignor or his or her agent,
  - (b) 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 any other sale or purchase arising in the course of the licensee's business),
  - (c) the date on which any goods were purchased, taken on consignment, sold or otherwise dealt with,
  - (d) the name and address of the purchaser of goods sold by the licensee (otherwise than at a market), except in cases where the value of the goods does not exceed \$50,
  - (e) a description of the goods that includes any characteristics specified in section 28 (2) (a) of the Act that appear on or in connection with the goods,
  - (f) the price paid for any goods purchased,
  - (g) the location of any goods concerned in the business that are not kept at the notified business or storage premises of the licensee.
- (3) The following particulars are also prescribed for the purposes of section 16 (1) of the Act in relation to all licensed businesses:
- (a) evidence of any search in public registers such as REVS for encumbrances in respect of goods,
  - (b) features peculiar to any card or document relied on for the purposes of clause 18 (1), such as:
    - (i) in the case of a passport or driver's licence — the number of the passport or licence, or
    - (ii) in the case of a credit card — the account number displayed 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,

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Part 3 Records

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- (c) in relation to jewellery, such particulars as the Commissioner of Police, by one or more notices served on the licensee, may specify.

### **15 Records of persons employed in licensed businesses**

For the purposes of section 16 (2) of the Act, the prescribed particulars are the name, date of birth and residential address of each person employed in the licensed business.

### **16 Records relating to markets**

For the purposes of section 16 (3) of the Act, the prescribed particulars are as follows:

- (a) the date on which the market is held,
- (b) the location of the market,
- (c) the name, residential address and vehicle registration number of any unlicensed stallholder offering second-hand goods (within the meaning of the Act) for sale,
- (d) a general description of the goods offered for sale by any such stallholder,
- (e) details of any identification documents produced by any such stallholder.

### **17 Production of records at offices of the Department**

For the purposes of section 17 (4) of the Act, the prescribed distance is 100 km.

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## Part 4 Regulation of licensed businesses

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

- (1) For the purposes of section 15 (1) of the Act, the identity of the person (the *customer*) offering to sell or pawn any goods to a licensee must be verified by the licensee by means of either:
  - (a) a card or document that:
    - (i) bears the customer's photograph, and
    - (ii) on the face of it, appears to be issued by the government or a statutory authority of New South Wales or the Commonwealth or a State or Territory of the Commonwealth, and
    - (iii) includes the name of the person who the customer claims to be and the address at which the customer claims to reside, and a signature, purporting to be the signature of that person, which matches the signature of the customer, and
    - (iv) does not, on the face of it, bear any indications of forgery or tampering, or
  - (b) a combination of cards or documents:
    - (i) that, on the face of them, 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 on the face of it to be issued by the government or a statutory authority of New South Wales or the Commonwealth or a State or Territory of the Commonwealth, and
    - (iii) none of which bears, on the face of it, any indications of forgery or tampering.
- (2) For the purposes of section 15 (3) of the Act, the licensee must require the customer to complete a declaration in writing as to ownership of the goods and the customer must complete such a declaration:
  - (a) stating that he or she is the owner of the goods, or
  - (b) stating that, although the customer is not the owner, the customer is authorised by the owner to sell or pawn the

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Clause 18      Pawnbrokers and Second-hand Dealers Regulation 1997

Part 4          Regulation of licensed businesses

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goods and stating the name and address of the owner.

### **19 Retention of goods by licensee**

- (1) Section 21 (1) of the Act does not apply to:
  - (a) goods consigned for sale by the licensee, or
  - (b) goods purchased by the licensee at auction.
- (2) For the purposes of section 21 (1) (a) of the Act, motor vehicles, watercraft and other goods of substantial size may be kept at any convenient place.

### **20 Goods alleged to be stolen in possession of licensee**

For the purposes of section 22 (1) (a) of the Act, the licensee's statement is to be given using Form 1 in Schedule 1.

### **21 Penalty notice offences and demerit points**

For the purposes of sections 26 and 27 of the Act, an offence committed by the contravention of a provision of the Act specified in the table at the end of this clause is a prescribed offence and:

- (a) the penalty specified opposite it is the amount of penalty prescribed for the offence if dealt with under section 26 of the Act, and
- (b) the number of demerit points specified opposite it is the number of demerit points prescribed for the purposes of section 27 (2) of the Act in respect of the offence.

<i>Provision of Act</i>	<i>Penalty if dealt with by penalty notice (in dollars)</i>	<i>Number of demerit points</i>
Section 12 (2)	300	2
Section 14	300	1
Section 16	300	2
Section 17	300	2
Section 19	500	2
Section 20	300	2
Section 21	500	2
Section 22 (1)	500	2
Section 24	300	2
Section 25	300	2
Section 28	500	2
Section 29	300	2
Section 30	300	2
Section 31	300	2
Section 32	300	2
Section 37	100	

## 1997 No 163

Clause 22 Pawnbrokers and Second-hand Dealers Regulation 1997

Part 5 Special provisions relating to pawnbrokers

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### Part 5 Special provisions relating to pawnbrokers

#### 22 Equivalent annual interest rate

(1) In this clause:

*equivalent annual interest rate* means the rate mentioned in section 28 (2) (c) of the Act (expressed as a percentage) calculated as prescribed by 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 any outstanding balance.

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

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

(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. For example:

- (a) if the interest period is one month, the equivalent annual interest rate is 12 times the periodic interest rate, and
- (b) if the interest period is one week, the equivalent annual interest rate is 52 times the periodic interest rate.

#### 23 Furnishing of records to police

For the purposes of section 28 (6) of the Act, particulars of records are to be given to the officer in charge of the police station nearest to the licensee's place of business or else in accordance with other arrangements made by that officer.

#### 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 any pawned goods from a licensee is ascertained by production of the pawn ticket

and reproduction, in the presence of the licensee, of the signature shown on that ticket. If the customer does this, there are no other requirements for the purposes of that subsection.

- (2) The identity of a customer who cannot produce the pawn ticket must be ascertained by the licensee by means of either:
- (a) a card or document that:
    - (i) bears the customer's photograph, and
    - (ii) on the face of it, appears to be issued by the government or a statutory authority of New South Wales or the Commonwealth or a State or Territory of the Commonwealth, and
    - (iii) includes the name of the person who the customer claims to be and the address at which the customer claims to reside, and a signature, purporting to be the signature of that person, which matches the signature of the customer, and
    - (iv) does not, on the face of it, bear any indications of forgery or tampering, or
  - (b) a combination of cards or documents:
    - (i) that, on the face of them, 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 on the face of it to be issued by the government or a statutory authority of New South Wales or the Commonwealth or a State or Territory of the Commonwealth, and
    - (iii) none of which bears, on the face of it, any indications of forgery or tampering.
- (3) A customer who cannot 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:

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Clause 24      Pawnbrokers and Second-hand Dealers Regulation 1997

Part 5          Special provisions relating to pawnbrokers

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- (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 Forfeited pledges, whether saleable by auction**

For the purposes of section 30 (1) of the Act, the prescribed amount is \$50.



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## Part 6      Miscellaneous

### 26    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.

### 27    Replacement licences

On payment of a fee of \$20, a licence may be issued to replace a current licence that has been lost, stolen or destroyed.

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

- (1)    If the holder of a licence dies, or is by the order of any court, tribunal or authority of competent jurisdiction declared to be bankrupt or mentally incapacitated, 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 or order, unless sooner notified by the Director-General under subclause (5).
- (2)    A person carrying on a business in accordance with this clause must immediately notify the Director-General that he or she is doing so.
- (3)    For the purposes of the Act, this regulation and any powers of the Director-General 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 any agent through whom the person acts for the purposes of the business is taken to be an employee of the business.

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Clause 28      Pawnbrokers and Second-hand Dealers Regulation 1997

Part 6          Miscellaneous

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- (4) If the licence concerned expires during the period of 3 months referred to in subclause (1), the provisions of 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 any reason that appears to the Director-General to be sufficient cause to do so, the Director-General may at any time, 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.

### 29 Service of notices

- (1) A notice or other document that, under the Act or this Regulation, may be or is required to be given or served may be given to or served on an individual:
  - (a) by delivering it to the individual personally, or
  - (b) by leaving it at the individual's place of residence last known to the person who issued the notice or other document with a person who apparently resides there, being a person who has or apparently has attained the age of 16 years, or
  - (c) without limiting the other provisions of this subclause, where the individual is a licensee, by leaving it at the place at which the individual is authorised to carry on the business to which the licence relates with a person apparently employed at that place, being a person who has or apparently has attained the age of 16 years, or
  - (d) by sending it by prepaid post addressed to the individual at that place of residence or, where the individual is a licensee, the place at which the individual is authorised to carry on the business to which the licence relates.
- (2) Any such notice or document may be given or served on a corporation:
  - (a) by delivering it to a person who is or apparently is concerned in the management of the corporation, or
  - (b) by leaving it at the registered office of the corporation with a person apparently employed at that office, being a person who has or apparently has attained the age of 16 years, or

- (c) without limiting the other provisions of this subclause, where the corporation is a licensee, by leaving it at the place at which the corporation is authorised to carry on the business to which the licence relates with a person apparently employed at that place, being a person who has or apparently has attained the age of 16 years, or
  - (d) by sending it by prepaid post addressed to the corporation at the registered office of the corporation or, where the corporation is a licensee, the place at which the corporation is authorised to carry on the business to which the licence relates.
- (3) A notice or other document that is delivered, left or sent by post in accordance with this clause is taken to have been given or served on its being so delivered or left or, if it is sent by post, may be presumed, in the absence of evidence to the contrary, to have been given or served when it would have been delivered in the ordinary course of post.

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Schedule 1      Forms

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**Schedule 1      Forms**

(Clause 20)

**Form 1      Pawnbrokers and Second-hand Dealers  
Act 1996**

**Statement by licensee as to goods claimed**

\*Name of claimant: .....

\*Address of claimant: .....

Date: .....

Name of licensee: .....

Business address: .....

Licence number: .....

Description of goods claimed: .....

.....

.....

.....  
Licensee

- 
- These particulars to be supplied by the claimant

**Note.** This statement must be completed by the licensee in duplicate (at least). A copy is to be given to the person claiming the goods. Another copy must be given to the officer in charge of the nearest police station within 24 hours. The goods concerned must not be altered, sold, redeemed or removed from the premises except with the consent of the person claiming the goods or in accordance with the order of a court. If the parties are unable to resolve the matter simply, staff at the Local Court are available for help in commencing a court action under the *Local Courts (Civil Claims) Act 1970* or as to other means of resolving the matter.