



New South Wales

Pawnbrokers and Second-hand Dealers Amendment (Records and Goods) Regulation 1998

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*.

J W Shaw QC MLC

Minister for Fair Trading

Explanatory note

The objects of this Regulation are:

- (a) to prescribe mobile phones as second-hand goods for the purposes of the *Pawnbrokers and Second-hand Dealers Act 1996*, and
- (b) to exclude all furniture, and certain other classes of goods, from the definition of *second-hand goods*, and
- (c) to ensure that the Act does not apply to a local government council when it conducts a recycling program, and
- (d) to prescribe the proof of identity required to accompany an application for a licence, and
- (e) to prescribe a fee for the late renewal of a licence, and
- (f) to require pawnbrokers to display a warning that any information provided to a pawnbroker by a customer in relation to the trading of second-hand goods will then be provided to the police, and
- (g) to provide for hard copies of certain statements or agreements to be kept in loose-leaf, rather than bound, form, and

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Explanatory note

- (h) to allow certain existing licensees to be exempted from the requirement to keep certain records in electronic form, and
- (i) to require all licensees to keep records of the date of birth of the supplier of goods offered for sale or pawn, and
- (j) to require the electronic transmission of all records kept in electronic form, and the furnishing of other records, to the Commissioner of Police subject to his or her directions, and
- (k) to make it clear that a provision relating to the retention of goods by a second-hand dealer does not apply to pawned goods, and
- (l) to prescribe a standard form of statement about the ownership of goods, to be provided by a customer when the customer leaves goods for sale or pawn, and
- (m) to amend the Schedule of offences that can be dealt with by penalty notice, as a consequence of amendments made to the Act by the *Pawnbrokers and Second-hand Dealers Amendment Act 1998*.

This Regulation is made under the *Pawnbrokers and Second-hand Dealers Act 1996*, as amended by the *Pawnbrokers and Second-hand Dealers Amendment Act 1998*, including the definition of **second-hand goods** in section 3 and sections 4, 10, 11, 14, 15, 16, 21, 28 and 43 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Pawnbrokers and Second-hand Dealers Amendment (Records and Goods) Regulation 1998*.

2 Commencement

This Regulation commences on 31 July 1998.

3 Amendment of Pawnbrokers and Second-hand Dealers Regulation 1997

The *Pawnbrokers and Second-hand Dealers Regulation 1997* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation

Schedule 1 Amendments

(Clause 3)

[1] Clause 6 Meaning of "second-hand goods"

Omit clause 6 (1) (k).

[2] Clause 6 (1) (n)

Omit the paragraph. Insert instead:

(n) mobile phones.

[3] Clause 6 (1A)

Insert after clause 6 (1):

(1A) Despite subclause (1), the following classes of goods are not prescribed for the purposes of the definition of *second-hand goods* in section 3 of the Act:

- (a) motorised wheelchairs, wheeled lounges, spinal carriages and other similar goods designed to carry a person with a disability,
- (b) industrial machinery, or farming machinery, that cannot be driven or is not portable.

[4] Clause 6A

Insert after clause 6:

6A Act does not apply to local government recycling programs

For the purposes of section 4 (2) (c) of the Act, the Act does not apply in relation to any act or omission by a local government council or any employee of a local government council in:

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- (a) conducting a recycling program, or
 - (b) selling any goods collected in a recycling program, or
 - (c) contracting with another person to give that person ownership of goods collected in a recycling program.

[5] Clauses 9 and 9A

Omit clause 9. Insert instead:

9 Proof of identity of licence applicant

For the purposes of section 9 (2) (b) of the Act, the proof of identity that is required to accompany an application for a licence made by an individual is the original, or a photocopy, of any of the following documents:

- (a) a current driver's licence,
- (b) a birth certificate,
- (c) a current passport.
- (d) an entitlement card issued by a Commonwealth Government Department or authority,
- (e) the most recent income tax return lodged by, and the most recent income tax assessment issued in relation to, the individual,
- (f) a marriage certificate,
- (g) a certificate evidencing the individual's educational, professional or trade qualifications,
- (h) evidence of electoral enrolment, issued under the provisions of any Commonwealth, State or Territory Act.
- (i) a certificate of naturalisation or citizenship.
- (j) a certificate of identification or discharge papers issued by any branch of the armed services of the Commonwealth.

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Schedule 1 Amendments

9A Fee on renewal of licence

For the purposes of section 10A (2) of the Act, the prescribed renewal fee is:

- (a) \$235, if the application for renewal is made before the expiry of the current licence, or
- (b) \$255, if the application is made after the expiry of that licence.

[6] Clause 12 Display of licence details

Insert after clause 12 (1) (c):

, and

- (d) if the licensee is a pawnbroker, a statement to the effect that any information provided to the licensee by or about a customer in relation to the trading of second-hand goods will be furnished to the police.

[7] Clause 12 (1), note

Insert at the end of the subclause:

Note. The obligation to furnish information to the Commissioner of Police is imposed by clause 16A.

[8] Clause 12 (2)

Omit "width and".

[9] Clause 13 Records generally

Insert "or 28" after "section 16" in clause 13 (4).

[10] Clause 13 (6)

Insert after clause 13 (5):

- (6) Despite subclauses (1) and (4):
 - (a) any hard copy of any written statement as to the ownership of goods obtained from a customer under clause 18 (3) may be kept in loose-leaf form, and

- (b) any hard copy of the record of any agreement by which goods were pawned under section 28 of the Act may be kept in loose-leaf form.

[11] Clause 13A

Insert after clause 13:

13A Special provisions relating to the keeping of records by certain licensees

- (1) A person who held a licence under the *Second-hand Dealers and Collectors Act 1906* immediately before the repeal of that Act on 30 April 1997 and who has never held a licence issued with a condition requiring the use of electronic means of creation and storage of records, may, when applying for the issue or renewal of a licence on or after 1 January 1999, apply to have the licence issued or renewed without such a condition.
- (2) Despite clause 13 (4), if a person makes such an application, the Director-General must not impose such a condition if:
 - (a) the Director-General is satisfied that the person was entitled to make such an application, and
 - (b) the Director-General is satisfied, after having regard to both of the relevant documents in relation to the person's business, that the gross receipts of the business relating to used goods totalled \$150,000 or less in the previous financial year or (if appropriate) the financial year before that.
- (3) For this purpose, the relevant documents in relation to the person's business are:
 - (a) the person's income tax return or audited financial statement for the previous financial year, and
 - (b) a statutory declaration by the person declaring that the gross receipts of the business relating to used goods totalled \$150,000 or less in the previous financial year.

- (4) If the Director-General considers it appropriate, the Director-General may accept the following as relevant documents in relation to a person's business:
 - (a) the person's income tax return or audited financial statement for the year before the previous financial year. and
 - (b) a statutory declaration relating to the gross receipts of the business for the year before the previous financial year.
- (5) If the Director-General accepts the person's income tax return or audited financial statement for the year before the previous financial year as the relevant documents for the purposes of this clause, the Director-General may impose a condition on the licence granted or renewed requiring the licensee to forward to the Director-General the licensee's income tax return or financial statement for the previous financial year within 14 days of the licensee receiving or finalising that document.
- (6) If at any time after the issue or renewal of a licence that does not contain a condition requiring the use of electronic means of creation and storage of records the Director-General is satisfied that the gross receipts for the licensee's business relating to used goods totalled more than \$150,000 in the previous financial year, the Director-General may impose a condition of that kind on the licence.
- (7) Any condition imposed under subclause (6) takes effect 90 days after written notice of the condition is given to the licensee.
- (8) In this clause:
used goods means goods that have been used or that are represented by a vendor of the goods to be goods purchased (otherwise than by the vendor) previously but unused, and includes second-hand goods.

[12] Clause 14 Records of goods pawned, purchased or sold

Insert “ , date of birth” after “address” wherever occurring in clause 14 (1) (a) and (2) (a).

[13] Clause 16A

Insert after clause 16:

16A Furnishing of records to the Commissioner of Police

- (1) For the purposes of section 16 (5A) of the Act, particulars of a record that is required, by way of a condition of a licence, to be created and stored in electronic form by a licensee must be furnished to the Commissioner of Police by transmission in electronic form within 24 hours of the record being made, or in accordance with other arrangements made by the Commissioner of Police with the licensee.
- (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 that is not required to be created and stored in electronic form, 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.

[14] Clause 18 Evidence of identity and title of supplier of goods

Omit "section 15 (1)" from clause 18 (1).

Insert instead "section 15 (1A)".

[15] Clause 18 (2)

Omit the subclause. Insert instead:

- (2) For the purposes of section 15 (1B) of the Act, the person's date of birth is prescribed as a particular relating to the identity of the person. Evidence of the person's date of birth may be given in oral or documentary form.
- (3) For the purposes of section 15 (3) of the Act, the licensee must obtain from the customer a written statement as to the ownership of goods to the effect of the form set out in Form 2 in Schedule 1.

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Schedule 1 Amendments

[16] Clause 19 Retention of goods by licensee

Insert after clause 19 (1) (b):

, or

(c) pawned goods.

[17] Clause 23 Furnishing of records to police

Omit the clause.

[18] Schedule 1 Forms

Omit “(Clause 20)”. Insert instead “(Clauses 18 (3) and 20)”.

[19] Schedule 1, Form 2

insert after Form 1:

**Form 2 Pawnbrokers and Second-hand Dealers Act
1996**

**Statement by customer as to who is the owner of goods
sold or pawned**

.....
..... am the owner of the goods described below.

Signed:

Dated:

OR

I of
..... am not the owner of the goods described below. The
owner of the goods is of
..... and I am authorised by the owner to sell/pawn the
goods. (*You should cross out either “sell” or “pawn” if you are not
authorised to do that thing.*)

Signed:

Dated:

Description of goods:

.....

.....

.....

.....

.....

.....

.....

.....

Important information.

If you are pawning goods:

- (a) you must fill out this form and sign it so that the pawnbroker can be sure that you are the owner of the goods or that you have the authority of the owner to pawn the goods,
- (b) any information that you provide to the pawnbroker will be passed on to the Commissioner of Police.

If you are offering any second-hand goods for sale by a second-hand dealer:

- (a) you must fill out this form and sign it so that the dealer can be sure that you are the owner of the goods or that you have the authority of the owner to sell the goods,
- (b) any information that you provide to the dealer may be passed on to the Commissioner of Police.

Warning: It is a crime to give false information or make a false statement in this form.

Maximum penalty: 50 penalty units (currently \$5,500).

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Schedule 1 Amendments

[20] Schedule 2 Penalty notices, demerit points and short description of offences

Omit "Section 12 (2)" from Column 1 of Schedule 2.
Insert instead "Section 12 (2) or 12A (2)".

[21] Schedule 2

Insert after the matter relating to section 14 (2):

Section 16 (5A)	Record not supplied to Commissioner of Police	500	2
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[22] Schedule 2

Omit the matter relating to section 28 (6).