



New South Wales

# Uncollected Goods Act 1995 No 68

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New South Wales

## Uncollected Goods Act 1995 No 68

Act No 68, 1995

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An Act to provide for the disposal of uncollected goods; and to repeal the *Disposal of Uncollected Goods Act 1966*. [Assented to 12 December 1995]

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**The Legislature of New South Wales enacts:**

## **Part 1      Preliminary**

### **1    Name of Act**

This Act is the *Uncollected Goods Act 1995*.

### **2    Commencement**

This Act commences on a day to be appointed by proclamation.

### **3    Definitions**

In this Act:

*bailed goods* means goods subject to bailment.

*bailee* and *bailor* include their respective successors.

*bailment* includes bailment for reward, bailment in the course of business, gratuitous bailment, involuntary bailment or any sub-bailment, but does not include anything excluded from this definition by the regulations.

*dispose of* includes sell or destroy.

*goods* means all chattels personal, other than things excluded from this definition by the regulations.

*publicly registered interest* in goods means an interest in the goods that is recorded in the Register of Interests in Goods under the *Registration of Interests in Goods* or in any other register prescribed by the regulations.

*relevant charges* is defined in section 10 (for the purposes of Part 2) and in section 28 (for the purposes of Part 3).

*uncollected goods* means bailed goods that are uncollected as referred to in section 5.

### **4    Object of Act**

- (1) The object of this Act is to provide persons in possession of uncollected goods subject to bailment (**bailees**) with means of disposing of those goods without incurring any liability to the bailor or any other person.

- (2) The means of disposal are by way of court order or after due notice to the bailor and others.

#### **5 When goods uncollected for purposes of Act**

Bailed goods are uncollected for the purposes of this Act if:

- (a) the goods are ready for delivery to the bailor in accordance with the terms of the bailment, but the bailor has failed to take delivery of the goods or, if those terms so provide, to give directions as to their delivery, or
- (b) the bailee is required to give notice to the bailor before the goods are so ready for delivery, but is unable to trace or communicate with the bailor, or
- (c) the bailee can reasonably expect to be relieved of any duty to safeguard the goods on giving notice to the bailor, but is unable to trace or communicate with the bailor.

#### **6 When Act available for disposal of uncollected goods**

- (1) This Act is available for the disposal of uncollected goods where there is no agreement between the parties on the means of their disposal. If there is such an agreement, this Act applies to any aspect of the disposal of those goods that is not dealt with in the agreement.
- (2) This Act is also available as an alternative to other statutory means of disposal of particular uncollected goods. However, it is not available as an alternative to the *Unclaimed Money Act 1982* or to any other Act or instrument prescribed by the regulations.
- (3) This section is subject to section 32.

#### **7 No liability for due disposal of uncollected goods**

A person who disposes of uncollected goods in accordance with this Act is not liable to any other person in respect of the goods merely because the person by whom the goods have been disposed of has been a bailee of the goods.

## **Part 2      Disposal of uncollected goods by way of court order**

### **8      Applications to Local Court for orders for disposal of uncollected goods**

- (1) A bailee may, in accordance with the regulations, apply to a Local Court for an order authorising the bailee to dispose of uncollected goods.
- (2) A copy of the application must be served on the bailor, on the owner of the goods and on each other person having or claiming an interest in the goods.
- (3) However, this section does not require a copy of the application to be served on a person (other than any person who has a publicly registered interest in the goods) if the bailee:
  - (a) is unaware of the fact that the person has or claims an interest in the goods, or
  - (b) cannot trace or communicate with the person.
- (4) An application for the disposal of a motor vehicle must be accompanied by:
  - (a) a certificate referred to in section 31 from the Commissioner of Police that the vehicle is not stolen, and
  - (b) a certificate under section 8 of the *Registration of Interests in Goods Act 1986* in relation to the vehicle.

### **9      Orders of Local Court**

- (1) A Local Court may, on application made under this Part:
  - (a) if satisfied that the goods concerned are uncollected goods, make an order authorising the applicant to dispose of all or some only of those goods, or
  - (b) refuse to make such an order.
- (2) A Local Court may refuse to make such an order on any ground it considers appropriate, including the ground that there are more appropriate means for the disposal of those goods.

- (3) An order under this Part is to specify the following matters:
- (a) the goods to which it relates,
  - (b) the manner in which disposal of the goods is authorised,
  - (c) the date on or after which the goods may be disposed of under the order,
  - (d) the amount of the relevant charges due to the bailee in respect of the goods.

#### **10 Relevant charges due to bailee**

For the purposes of this Part, the amount of the **relevant charges** due to a bailee in respect of uncollected goods is the sum of the following amounts:

- (a) the amount agreed on between the bailor and the bailee (or, in the absence of such an agreement, such amount as is reasonable) as the charges due to the bailee for any carriage or storage of the goods or for any repairs or other work done in connection with the goods,
- (b) the amount of the costs incurred by the bailee (in respect of the period beginning with the date when the application for the order is made and ending with the date when the goods are disposed of) for any storage, maintenance or insurance of the goods,
- (c) the amount of the costs incurred by the bailee for the disposal of the goods in accordance with this Part.

#### **11 Order may be made despite dispute about relevant charges or work done**

- (1) A Local Court may make an order under this Part even though there is a dispute between the bailor and the bailee as to:
- (a) the amount of any charge made by the bailee for carriage or storage of the goods or for repairs or other work done in connection with the goods, or
  - (b) the condition of the goods or the nature or quality of any repairs or other work done in connection with the goods.

- (2) The Local Court may reduce the amount of the relevant charges due to the bailee because of the condition of the goods or the nature or quality of any repairs or other work done in connection with the goods.

## **12 Effect of orders of Local Court**

- (1) An order under this Part authorises the goods to which it relates to be disposed of in accordance with the terms of the order.
- (2) However, a person who has an interest in the goods is entitled, on payment to the bailee of the relevant charges due to the bailee in respect of the goods, to delivery of the goods at any time before they are disposed of.

## **13 Effect of other proceedings on orders of Local Court**

- (1) If, at any time before they are disposed of under this Part, a person commences an action for the recovery of the goods, the order under this Part is suspended until the action is finally disposed of.
- (2) If, as a result of such an action, an order is made for the recovery of the goods, the order under this Part ceases to have effect.

## **14 Proceeds of sale**

- (1) From the proceeds of sale of goods under this Part, the bailee is entitled to retain the relevant charges due to the bailee in respect of the goods.
- (2) The balance (if any) of the proceeds of sale are to be dealt with as if the bailee were a business and the money were unclaimed money for the purposes of the *Unclaimed Money Act 1982*.
- (3) If the proceeds of sale are insufficient to pay the relevant charges due to the bailee in respect of the goods, the bailee may recover the amount of the deficiency from the bailor, as a debt, in any court of competent jurisdiction.

## **15 Records**

- (1) Within 7 days after disposing of goods in accordance with this Part, a bailee must prepare a record of the following particulars:



- (a) a description of the goods disposed of,
  - (b) the date of the order under this Part by which disposal of the goods was authorised,
  - (c) the date on which the goods were disposed of,
  - (d) the manner in which the goods were disposed of,
  - (e) in the case of goods that have been sold:
    - the name and address of the person to whom they were sold, and
    - the amount of the proceeds of the sale, and
    - the amount retained by the bailee to cover the relevant charges due to the bailee in respect of the goods,
  - (f) in the case of goods sold by public auction—the name, and the address of the principal place of business, of the auctioneer by whom the goods were sold.
- (2) A record prepared under this section must be kept by the bailee for at least 6 years from the date on which the goods were disposed of and must be made available by the bailee, on request, for inspection by the bailor or by any other person claiming an interest in the goods.

Maximum penalty: 5 penalty units.

## **16 Bailors may recover excess charges**

The Local Court by which an order under this Part is made may, on the application of the bailor, give judgment for the bailor against the bailee for any amount paid by the bailor to the bailee (in respect of the bailee's charges for carriage or storage of the goods or for repairs or other work done in connection with the goods) in excess of the relevant charges.

## **17 Exercise of jurisdiction by Local Court**

- (1) The jurisdiction conferred on a Local Court by this Part is to be exercised by a Magistrate sitting alone.

- (2) A Local Court may not exercise the jurisdiction conferred by this Part if the value of the uncollected goods exceeds the amount of the limit of the Court's jurisdiction in an action for the recovery of a debt under the *Local Courts (Civil Claims) Act 1970*.
- (3) The provisions of the *Local Courts (Civil Claims) Act 1970* relating to appeals to the Supreme Court apply to the exercise of the Local Court's jurisdiction under this Act.

### **18 Exercise of jurisdiction by Supreme Court**

- (1) The jurisdiction conferred on a Local Court by this Part may be exercised by the Supreme Court, but only with the leave of the Supreme Court.
- (2) The Supreme Court may exercise that jurisdiction even though the value of the uncollected goods exceeds the jurisdictional limit of a Local Court.
- (3) When deciding whether to grant leave, the Supreme Court may have regard to the value of the uncollected goods, the complexity of the legal issues involved, any related issues for which a Local Court does not have jurisdiction and any other relevant matter.
- (4) For the purpose of this section:
  - (a) a reference in this Act (except section 17) to a Local Court is to be read as including a reference to the Supreme Court, and
  - (b) a reference in section 8 to the regulations is to be read as including a reference to the rules of court.

## **Part 3 Disposal of uncollected goods after due notice to bailor**

### **19 Application of Part**

This Part applies to uncollected goods, other than:

- (a) goods whose value is \$5,000 or more, or
- (b) goods in respect of which a dispute exists between the bailor and the bailee as to:
  - the amount of any charge made by the bailee for the carriage or storage of the goods or for repairs or other work done in connection with the goods, or
  - the condition of the goods or the nature or quality of any repairs or other work done in connection with the goods.

### **20 Goods of up to \$100 in value**

- (1) A bailee may dispose of uncollected goods whose value is less than \$100 if the bailor:
  - (a) has been given oral or written notice of the bailee's intention to dispose of the goods, and
  - (b) has been given at least 28 days, from the date when notice was given, within which to collect the goods.
- (2) Uncollected goods may be disposed of under this section in such manner as the bailee considers appropriate.

### **21 Goods of between \$100 and \$500 in value**

- (1) A bailee may dispose of uncollected goods whose value is less than \$500 (but not less than \$100), if the bailor, the owner of the goods and each person having or claiming an interest in the goods:
  - (a) have been given written notice of the bailee's intention to dispose of the goods, and
  - (b) have been given at least 3 months, from the date when notice was given, within which to collect the goods.

- (2) Uncollected goods may not be disposed of under this section otherwise than by way of public auction or by private sale for a fair value.

## **22 Goods of between \$500 and \$5,000 in value**

- (1) A bailee may dispose of uncollected goods whose value is less than \$5,000 (but not less than \$500), if the bailor, the owner of the goods and each person having or claiming an interest in the goods:
- (a) have been given written notice of the bailee's intention to dispose of the goods, and
  - (b) have been given at least 6 months, from the date when notice was given, within which to collect the goods,
- and if a copy of the notice has, at least 28 days before the goods are disposed of, been published in a daily newspaper circulating generally throughout New South Wales.
- (2) Uncollected goods may not be disposed of under this section otherwise than by way of public auction.

## **23 Sections 19–22—variation of monetary limits**

The regulations may vary the monetary limits referred to in sections 19–22.

## **24 Perishable goods**

- (1) Nothing in this Part prevents a bailee from disposing of perishable uncollected goods (that is, goods that have perished or are in imminent danger of perishing) if the bailor and the owner of the goods:
- (a) have been given oral or written notice of the bailee's intention to dispose of the goods, and
  - (b) have been given a reasonable opportunity, having regard to the nature and condition of the goods, to collect the goods.
- (2) Goods may be disposed of under this section in such manner as the bailee considers appropriate.

## **25 Persons to whom notices not required to be given**

Nothing in this Part requires notice to be given to a person (other than the bailor and any person who has a publicly registered interest in the goods) if the bailee:

- (a) is unaware of the fact that the person has or claims an interest in the goods, or
- (b) cannot trace or communicate with the person.

## **26 Form of notices**

Notice under this Part must include:

- (a) the bailee's name, and
- (b) a description of the goods, and
- (c) an address where the goods may be collected, and
- (d) a statement of the relevant charges due to the bailee in respect of the goods, and
- (e) a statement to the effect that, on or after a specified date, the goods will be disposed of unless they are first collected and the relevant charges are paid, and
- (f) if applicable, a statement to the effect that the person will retain, out of the proceeds of sale of the goods, an amount not exceeding the relevant charges.

## **27 Service of notices**

Any notice under this Part may be given to or served on the person personally or by means of a letter addressed to the person and left at, or sent by post to, the person's last known address.

## **28 Relevant charges due to bailee**

For the purposes of this Part, the amount of the relevant charges due to a bailee in respect of uncollected goods is the sum of the following amounts:

- (a) the amount agreed on between the bailor and the bailee (or, in the absence of such an agreement, such amount as is reasonable) as the charges due to the bailee for any carriage or storage of the goods or for any repairs or other work done in connection with the goods,
- (b) the amount of the costs incurred by the bailee (in respect of the period beginning with the date when the notice about the disposal of the goods was given to the bailor and ending with the date when the goods are disposed of) for any storage, maintenance or insurance of the goods,

- (c) the amount of the costs incurred by the bailee for the disposal of the goods in accordance with this Part.

## 29 Proceeds of sale

- (1) From the proceeds of sale of goods under this Part, the bailee is entitled to retain the relevant charges due to the bailee in respect of the goods.
- (2) The balance (if any) of the proceeds of sale are to be dealt with as if the bailee were a business and the money were unclaimed money for the purposes of the *Unclaimed Money Act 1982*.
- (3) If the proceeds of sale are insufficient to pay the relevant charges due to the bailee in respect of the goods, the bailee may recover the amount of the deficiency from the bailor, as a debt, in any court of competent jurisdiction.

## 30 Records

- (1) Within 7 days after disposing of goods in accordance with this Part, a bailee must prepare a record of the following particulars:
  - (a) a description of the goods disposed of,
  - (b) the date on which the goods were disposed of,
  - (c) the manner in which the goods were disposed of,
  - (d) in the case of goods that have been sold:
    - the name and address of the person to whom they were sold, and
    - the amount of the proceeds of the sale, and
    - the amount retained by the bailee to cover the relevant charges due to the bailee in respect of the goods,
  - (e) in the case of goods sold by public auction—the name, and the address of the principal place of business, of the auctioneer by whom the goods were sold.
- (2) A record prepared under this section must be kept by the bailee for at least 6 years from the date on which the goods were disposed of and must be made available by the bailee, on request, for inspection by the bailor or by any other person claiming an interest in the goods.

Maximum penalty: 5 penalty units.

### **31 Sale of uncollected motor vehicles**

- (1) A person must not sell a motor vehicle under this Part unless the Commissioner of Police has issued the person with a certificate to the effect that the motor vehicle is not for the time being recorded as being stolen.

Maximum penalty: 5 penalty units.

- (2) An application for such a certificate:
- (a) must specify the make, model, type, colour, registration number (if any), chassis number (if any) and engine number (if any) of the motor vehicle, and
  - (b) must be served on the Commissioner of Police at least 28 days before the motor vehicle is to be sold.

## **Part 4 Miscellaneous**

### **32 Minimum period within which certain commercial bailees may dispose of uncollected goods by agreement**

- (1) This section applies to uncollected goods:
  - (a) which the bailee accepted for carriage or storage or for repairs or other work, and
  - (b) which were accepted in the course of a business prescribed by the regulations, and
  - (c) whose value exceeds \$100 or such other amount as may be prescribed by the regulations.
- (2) A provision of an agreement between a bailor and bailee which authorises the bailee to dispose of uncollected goods to which this section applies is void if the provision gives the bailor less than 3 months to collect the goods after the goods are ready for delivery to the bailor.

### **33 Common law**

The common law relating to the bailment of goods remains in force to the extent to which it is not affected by this Act and a person is entitled to exercise any rights that the person may have at common law in relation to the recovery of goods or compensation for the loss of or damage to goods except to the extent to which this Act otherwise provides (for example, section 7).

### **34 Purchasers acquire good title**

The purchaser of any goods sold under this Act acquires a good title to the goods, free from any interest that may have existed in the goods in favour of some other person before the goods were sold, if the purchaser buys them:

- (a) without notice of any failure by the bailee to comply with the provisions of this Act, and
- (b) without notice of any defect or want of title in the bailor.



**35 Burden of proof**

In any proceedings by or against a person in respect of goods that the person claims have been disposed of in accordance with the provisions of this Act, the burden of proving that the goods have been so disposed of rests on that person.

**36 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**37 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**38 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to:
  - (a) the keeping of records under this Act, and
  - (b) the valuation of goods for the purposes of this Act.
- (3) The regulations may create offences punishable by a penalty not exceeding 10 penalty units.

**39 Repeal of Disposal of Uncollected Goods Act 1966 No 57**

The *Disposal of Uncollected Goods Act 1966* is repealed.

**40 Savings, transitional and other provisions**

Schedule 1 has effect.

**41 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

Section 41      Uncollected Goods Act 1995 No 68

Part 4            Miscellaneous

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- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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## **Schedule 1 Savings, transitional and other provisions**

(Section 40)

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Part 2 Provisions consequent on the enactment of this Act**

#### **2 Definitions**

In this Part:

*appointed day* means the day appointed under section 2 for the commencement of this Act.

*repealed Act* means the *Disposal of Uncollected Goods Act 1966*.

#### **3 Act extends to existing bailments**

This Act extends to bailments in existence on the appointed day, except as otherwise provided by this Schedule.

#### **4 Disposal of uncollected goods without court order**

- (1) Part 2 of the repealed Act continues to apply to goods in respect of which the bailee had, before the appointed day, given notice of intention to sell the goods in accordance with section 6 (1) (c) of that Act.
- (2) Sections 29 and 30 of this Act apply to goods sold pursuant to Part 2 of the repealed Act (as continued by subclause (1)) as if those goods had been sold pursuant to Part 3 of this Act.
- (3) Any records kept under section 7 of the repealed Act are taken to be records kept under section 30 of this Act.

#### **5 Disputes**

Section 6 (4) of the repealed Act continues to apply to an application for an order under that subsection that had been made, but not determined, before the appointed day.

#### **6 Disposal of goods with court order**

- (1) Part 3 of the repealed Act continues to apply to goods in respect of which an application under section 12 of that Act had been made, but not determined, before the appointed day.
- (2) Sections 14 and 15 of this Act apply to goods sold pursuant to Part 3 of the repealed Act (as continued by subclause (1)) as if those goods had been sold pursuant to Part 2 of this Act.
- (3) Any records kept under section 13 of the repealed Act are taken to be records kept under section 15 of this Act.

#### **7 Minimum period for disposal by certain bailees**

Section 32 of this Act does not apply to uncollected goods of a kind to which that section applies if the goods were bailed before the day on which that section was applied to goods of that kind.

## **8 Purchasers acquire good title etc**

Sections 34 and 35 of this Act apply to goods disposed of under the repealed Act (whether by virtue of this Schedule or otherwise) as if those goods had been disposed of under this Act.

[Minister's second reading speech made in—  
Legislative Council on 21 September 1995  
Legislative Assembly on 12 October 1995]