

Hawkers and Pedlers.

Act No. 28, 1901.

An Act to consolidate the Acts relating to
Hawkers and Pedlers. [31st October, 1901.]HAWKERS AND
PEDLERS.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

Preliminary.

1. This Act may be cited as the "Hawkers and Pedlers Act, 1901," and is divided into Parts, as follows :—

PART I.—*Preliminary.*—ss. 1–5.

PART II.—*Licenses.*—ss. 6–13.

PART III.—*Offences and general provisions.*—ss. 14–24.

PART IV.—*Procedure.*—ss. 25, 26.

2. The Acts mentioned in the First Schedule hereto are, to the extent therein expressed, hereby repealed. Repeal of Acts.
First Schedule.

3. Every license granted under the authority of any Act hereby repealed and existing at the passing of this Act shall be deemed to have been granted under the authority of this Act. Saving of existing
licenses.

4. In this Act, unless the context or subject-matter otherwise indicates or requires,— Interpretation.

"Boat" includes vessel.

"Cart" includes dray, waggon, or other vehicle,

"Justice" means justice of the peace.

"License" means a license granted under the authority of this Act.

"Pack" includes bag, box, trunk, or case.

5. The selling or offering for sale goods carried about on the person or on any animal or in any movable conveyance, whether by land or water, shall be deemed to be carrying on the business of a hawker or pedler within the meaning of this Act. Persons deemed
hawkers and pedlers.
13 Vic. No. 36, s. 23.
16 Vic. No. 4, s. 1.

Hawkers and Pedlers.

PART II.

Licenses.

No person to carry on the business of a hawker or pedler without having a license.

13 Vic. No. 36, ss. 2 and 23.

16 Vic. No. 4, s. 1. Exemptions.

6. (1) No person shall carry on the business of a hawker or pedler without having a license :

Provided that—

- (a) any person may sell or offer for sale any printed newspapers, books, pamphlets, periodicals, or other printed publications, any fish, fruit, water, fuel, milk, vegetables, or victuals of any description, or any agricultural produce without having a license ;
- (b) the actual maker or the children, apprentices, agents, or servants of and residing with the maker of any goods may sell or offer them for sale without having a license ;
- (c) any goods may be sold without a license in any market or fair legally established, or in any house or shop occupied by the person so selling or offering to sell the same.

(2) If any person, without having first obtained a license, carries on such business he shall for every such offence be liable to a penalty not exceeding twenty pounds.

(3) Every person carrying on such business shall be deemed to be unlicensed unless he proves the contrary.

Forms of licenses.

13 Vic. No. 36, s. 3. Second Schedule.

Third Schedule.

7. There shall be two kinds of hawkers and pedlers licenses—

- (a) a license in the form contained in the Second Schedule hereto authorising the holder thereof to carry on his own person his wares and merchandise for the purpose of sale ; and
- (b) a license in the form contained in the Third Schedule hereto authorising the holder thereof to carry his wares and merchandise for the purpose of sale by pack-horse or other animal, or by cart or boat.

Applications for licenses.

Ibid. s. 4. 26 Vic. No. 2, s. 2.

8. (1) Applications for hawkers and pedlers licenses may be made on the first ordinary sitting day of any month to two or more justices sitting in petty sessions in the police district wherein the applicant usually or principally resides.

Granting of licenses.

(2) Such justices or a majority of them may in their discretion grant to any applicant who may be approved of by them a license in one or other of the forms aforesaid.

Rejection of applications, and adjournments.

(3) Such justices may reject any such application or may adjourn the consideration thereof from time to time as they see fit :

Provided that such adjournments do not in the whole exceed three weeks from the first ordinary sitting day aforesaid.

Notice of application. 13 Vic. No. 36, s. 5. 26 Vic. No. 2, s. 2.

9. (1) Every person desirous of obtaining a license under this Act shall, not less than three weeks before the first ordinary sitting day of

Hawkers and Peddlers.

of such justices as aforesaid, deliver or cause to be delivered to the clerk of petty sessions of the police district within which such person usually or principally resides a notice of his intention to apply for the same.

(2) If the application is for a license in the form contained in the Second Schedule hereto such notice shall be in the form contained in the Fourth Schedule hereto. Form of notice. Fourth Schedule.

(3) If the application is for a license in the form contained in the Third Schedule hereto such notice shall be in the form contained in the Fifth Schedule hereto. Form of notice. Fifth Schedule.

10. Before such justices grant to any applicant a license in the form contained in the Second Schedule hereto such applicant shall be required to produce to the said justices a certificate of good character from at least two known and respectable inhabitants of the police district within which the application is made. Persons applying for personal licenses to obtain certificates of character. 13 Vic. No. 36, s. 6.

11. Before the justices grant to any applicant a license in the form in the Third Schedule hereto such applicant shall enter into a recognizance before such justices or any two of them with two sureties (to be approved of by the said justices) each in the sum of twenty pounds, such recognizance to be in the form and with the conditions set forth in the Sixth Schedule hereto. Persons applying for licenses to hawk with pack-horse, &c., to enter into recognizance. Ibid. s. 7. Sixth Schedule.

12. (1) Every person to whom a license in the form contained in the Second Schedule hereto is granted shall pay to the clerk of petty sessions of the police district in which the same is granted the sum of twenty shillings, if such license is for the full period of twelve months, or such smaller sum as is proportioned to the time the same is to be in force. Fees to be paid for licenses. Ibid. s. 8.

(2) Every person to whom a license in the form contained in the Third Schedule hereto is granted shall pay to such clerk the sum of two pounds, if such license is for the full period of twelve months, or such smaller sum as is proportioned to the time the same is to be in force.

(3) No license shall be of any effect until the sum so fixed has been paid to such clerk.

13. Every license granted under this Act shall be in force throughout New South Wales from the first day of the month next ensuing the granting thereof to the thirty-first day of December following and no longer. Duration, &c., of license. Ibid. s. 10. 26 Vic. No. 2, s. 4.

Hawkers and Pedlers.

PART III.

Offences and general provisions.

Any person carrying on business as a hawker and pedler without license to be seized and detained. 13 Vic. No. 36, s. 13.

Hawker or pedler to have certain words painted, written, or printed on his pack or conveyance.

Ibid. s. 14.

Persons not licensed not to paint as aforesaid on any packs or conveyance.

Ibid. s. 15.

Penalty on persons not showing license on demand.

Ibid. s. 16.

Any person forging or counterfeiting license to be guilty of a misdemeanour.

Ibid. s. 17.

Hawkers and pedler not to have liquors in their possession.

Ibid. s. 18.

Holder of license not to carry liquors.

Ibid. s. 19.

Seizure of liquors.

Sale of liquors and appropriation of proceeds.

14. Any constable may seize any person found by him carrying on the business of a hawker or pedler without having a license, and may detain him until the following day for the purpose of proceeding against him for such offence unless the case can be sooner disposed of.

15. Every holder of a license shall have in large legible Roman letters upon some conspicuous part of every pack, cart, boat, or other conveyance in or with which he so carries on such business the words "licensed hawker" together with his name at full length and the number of his license, and every such person making default therein shall for every such offence be liable to a penalty not exceeding ten pounds.

16. Every person, not being the holder of a license, who has upon any pack, cart, boat, or other conveyance in or with which he sells or exposes to sale any goods, or in or with which he conveys any goods, the words "licensed hawker" or any other words to that effect, shall be liable to a penalty not exceeding ten pounds.

17. Any holder of a license who at any time upon demand by any justice or constable, or by any person to whom he has, within twenty-four hours previously, sold or offered to sell any goods, neglects or refuses to produce and show his said license to such justice, constable, or person, shall for every such offence be liable to a penalty not exceeding ten pounds.

18. Whosoever forges or counterfeits any license, or travels with, produces, or shows with intent to use as a genuine instrument any such forged or counterfeited license to any person entitled under this Act to demand the production of such license shall be guilty of a misdemeanour, and shall be liable to imprisonment with hard labour for a term not exceeding six months.

19. Every holder of a license who has in his possession or on his cart, boat, or other conveyance any fermented or spirituous liquors shall for every such offence be liable to a penalty not exceeding twenty pounds.

20. (1) Every holder of a license who carries any fermented or spirituous liquors shall be liable to a penalty not exceeding thirty pounds, or to imprisonment with hard labour for any period not exceeding six months.

(2) Any person authorised by warrant, as hereinafter provided, and any justice or constable finding any such liquors carried by any holder of a license, may seize the same.

(3) The justices before whom any such conviction takes place may order the liquors so seized to be sold by any chief constable or licensed

Hawkers and Peddlers.

licensed auctioneer at any place such justices may appoint, and the proceeds thereof, after deducting the expenses of such sale, shall be paid, one-half to the prosecutor in the case, and the other half to the Treasurer for the public uses of New South Wales.

21. (1) If any person has reasonable ground for suspecting that any holder of a license is offending against the provisions of this Act, such person may make oath before any justice of the circumstances, and if it appears to such justice that reasonable grounds for suspicion exist such justice may grant a warrant authorising such person to examine and search the person, pack, cart, boat, or other conveyance of such holder therein named or described, such warrant to remain in force for such time as is therein mentioned.

Magistrates on application to grant warrants to search packs and conveyances of hawkers and peddlers. 13 Vic. No. 36 s. 19.

(2) Any justice or constable having reasonable ground of suspicion as aforesaid, may without a warrant, examine and search the person, pack, cart, boat, or other conveyance of any such holder of a license.

Justices, &c., may search without a warrant.

22. (1) Any justice or constable may, without warrant, seize all such fermented or spirituous liquors as are conveyed about and hawked or exposed for sale in any street, road, footpath, or in any booth, tent, stall, or shed, or in any boat, or in any place whatsoever, by any person not licensed according to law to sell the same in such place, and the vessels containing the same and all the vessels and utensils used for drinking or measuring the same, and any horse or other animal, and any cart or boat employed in drawing or carrying the same.

Seizure of liquors hawked about for illegal sale and any vehicle or animal used in conveying the same. *Ibid.* s. 20.

(2) If it appears to any justice or justices, on his or their own view, or after due inquiry and examination, that such liquors were conveyed about and hawked or exposed for the purpose of being illegally sold or disposed of by retail, he or they may adjudge the said liquors and vessels, and any such horse or other animal, and any such cart, to be forfeited and sold, and the proceeds thereof, after deducting the expenses of sale, shall be paid, one half to the Treasurer for the public uses of New South Wales, and the other half to the person who in such case first seizes, informs, or prosecutes.

Such liquors may be forfeited and sold.

(3) In all cases where fermented or spirituous liquors are conveyed about and hawked or exposed, the burden of proving that such liquors were not conveyed about and hawked or exposed for sale shall be upon the party charged.

Onus of proof.

(4) Nothing in this Act contained shall prevent any penalty or punishment under any other Act being inflicted on any person so offending as aforesaid.

Saving of penalties under other Acts.

23. Every holder of a license who knowingly deals in any kind of smuggled or contraband goods, wares, or merchandise, or knowingly deals in, any goods, wares, or merchandise fraudulently or dishonestly procured, shall on conviction forfeit his license, and be for ever thereafter incapable of holding any new license or trading under the same,

Penalty on hawker selling smuggled or stolen goods. *Ibid.* s. 21.

Hawkers and Pedlers.

same, and shall, in addition, be liable to all forfeitures, incapacities, fines, and penalties to which he is or may be by law subject and liable for such illicit and illegal dealing.

License not to be
let out or lent.
13 Vic. No. 36, s. 22.

24. (1) Any holder of a license who lets out or lends his license, and any person who trades under any license granted to any other person, or under any license in which his own real name is not inserted as the name of the person to whom the same is granted, shall be liable to a penalty of forty pounds.

Person letting out or
lending license to
forfeit same.

(2) If any person is convicted of letting out or lending his license the same shall thereupon be forfeited, and no license shall thereafter be granted to him.

PART IV.

Procedure.

Limitation of
actions.

Ibid. s. 25.

Limitation of
actions.

Ibid. s. 30.

General issue.

25. No conviction shall take place under this Act unless within three months after the commission of the offence complained of.

26. All actions for anything done under this Act shall be commenced within six months after the fact was committed, and notice in writing of such action and the cause thereof shall be given to the defendant one month at least before the commencement of the action, and in such action the defendant may plead the general issue and at the trial give this Act and the special matter in evidence, and no plaintiff shall recover in any such action if before action brought tender of sufficient amends is made, or if after action brought there is paid into Court a sufficient sum of money, together with the costs incurred up to the time of such payment, and if there is a verdict for the defendant, or the plaintiff is nonsuited or discontinues such action after issue joined, or if upon demurrer or otherwise judgment is given against the plaintiff the defendant shall recover his full costs as between attorney and client and have the like remedy for the same as any defendant has in other cases.

Hawkers and Pedlars.

SCHEDULES.

FIRST SCHEDULE.

Section 2.

Reference to Act.	Title or short title.	Extent of repeal.
13 Vic. No. 36...	An Act to repeal the Laws relating to hawkers and pedlars in the Colony of New South Wales, and to substitute other provisions in lieu thereof.	The unrepealed portion.
16 Vic. No. 4 ...	An Act to exempt the sale of books and other publications from the provisions of the Act relating to hawkers and pedlars.	The whole Act.
26 Vic. No. 2 ...	An Act to amend the Hawkers and Pedlars Act ...	The whole Act.

SECOND SCHEDULE.

Section 7.

License for a hawker trading on foot.

13 Vic. No. 36.
Schedule A.

New South Wales, }
to wit. } Police district of

WHEREAS A.B., of _____ has applied to us, the justices sitting in petty sessions at _____ in and for the police district of _____ for a hawker's and pedler's license authorising him to carry on his own person goods, wares, and merchandise for the purposes of sale, travelling on foot only without any horse or other animal bearing or drawing burthen. Now, we, the justices aforesaid, being satisfied that the said A.B. is a fit person to have such license granted to him, do hereby authorise and empower him, the said A.B., to trade as such hawker and pedler as aforesaid within the State of New South Wales, and this license shall be and continue in force from the first day of _____ until the thirty-first day of December next ensuing and no longer.

Granted by the court of petty sessions at _____ aforesaid, this
day of _____ 19 .

(Signed) { D.E., J.P.
 { F.G., J.P.

Entered—

(Signed) H.L.,
Clerk of Petty Sessions.

THIRD SCHEDULE.

Section 7.

License for a hawker trading with pack or draft animals, &c.

13 Vic. No. 36.
Schedule B.

New South Wales, }
to wit. } Police district of

WHEREAS A.B., of _____ has applied to us, the justices assembled in petty sessions at _____ in and for the police district of _____ for a hawker's and pedler's license authorising him to carry goods, wares, and merchandise for the purposes of sale by pack-horse or other animal, or by cart or other vehicle, or by boat or other craft as the case may be. Now, we, the justices aforesaid, being satisfied that the said A.B. is a fit person to have such a license granted to him, do hereby authorise and empower him, the said A.B.,

Act No. 29, 1901.

297

Public Institutions Inspection.

L.M. the sum of _____ pounds of lawful money of Great Britain to be respectively levied of their several goods and chattels, lands and tenements, to the use of our said Lord the King, His Heirs and Successors in case default shall be made in the performance of the conditions hereunder written.

The conditions of this recognizance are such that whereas A.B. is to be licensed pursuant to the Hawkers and Pedlers Act, 1901, to carry goods, wares, and merchandise for sale by pack-horse or other animal, or by cart or other vehicle, or by boat or other craft as the case may be within the State of New South Wales for a period which will expire on the thirty-first day of December next; if the said A.B. shall conform in all respects to the provisions of the aforesaid Act during the said period then the said recognizance to be void, but if the said A.B. shall be lawfully convicted of any offence during the said period against the provisions of the said Act or against the provisions of any other Act in force for the time being relating to hawkers and pedlers, then this recognizance shall remain in full force and effect.

Taken and acknowledged the day and year above written, &c.
