

HAWKERS ACT.

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 23, 1974.

An Act to provide for the licensing and control of hawkers; to repeal the Hawkers and Pedlers Act, 1901; and for purposes connected therewith. [Assented to, 17th April, 1974.]

BE it enacted by the Queen'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:—

1. This Act may be cited as the "Hawkers Act, 1974". Short title.

2.

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2. This Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

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Commence-
ment.

3. (1) The Hawkers and Pedlers Act, 1901 (in this section referred to as the "repealed Act"), is repealed.

Repeal and
savings.

(2) Any application for a license made under the repealed Act that has not been dealt with at the commencement of this Act may be dealt with as if this Act had not been passed.

(3) Any license granted under the repealed Act and in force immediately before the commencement of this Act, and any license granted by the operation of subsection (2), shall be deemed to be a licence issued under this Act.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

Inter-
pretation.

"boat" includes vessel;

"court" means court of petty sessions;

"goods" does not include—

(a) newspapers, books, pamphlets, periodicals or other printed publications;

(b) fish, fruit, water, fuel, milk, vegetables or victuals; or

(c) agricultural produce;

"licence" means licence issued under this Act and any renewal of a licence;

"vehicle" includes cart, wagon, carriage, cycle, motor car, motor lorry, motor cycle, motor omnibus, caravan, trailer, aircraft and any other apparatus on wheels or skids upon which goods may be carried.

(2)

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(2) For the purposes of this Act, a person carries on business as a hawker if, otherwise than in a market or at a fair or in a house or shop occupied by him he sells, or holds himself out as being ready to sell, goods carried on his person, on an animal, in a boat or on a vehicle.

Unlicensed hawkers.

5. Subject to this Act a person who is not the holder of a licence shall not carry on business as a hawker or hold himself out as being ready to carry on business as a hawker.

Penalty : \$200.

Application for and issue of licence.

6. (1) An application for a licence, accompanied by the prescribed fee, shall be made in the prescribed manner to the clerk of a court for the district in which the applicant usually or principally resides.

(2) A licence shall not be issued unless a copy of the application for the licence has been referred to the officer in charge of police at the police station nearest the court to which the application is made and—

- (a) a report made by that officer or a person authorised by him on the application has been lodged with the clerk of that court; or
- (b) a period of one month has elapsed since the copy of the application was referred to that officer.

(3) Where—

- (a) a report under subsection (2) (a) has been furnished in respect of an application for a licence and that report does not contain a statement objecting to a grant of the licence;
- (b) a report under subsection (2) (a) in respect of an application for a licence has not, at the expiration of one month after a copy of the application was

referred

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referred to the officer in charge of police referred to No. 23, 1974
 in subsection (2), been received by the clerk of the
 court to which the application was made; or

- (c) the court grants an application following a hearing referred to in section 7,

the clerk of that court shall issue to the applicant a licence in the prescribed form.

(4) A licence shall, unless sooner cancelled, remain in force for one year from the date on which it was issued but may, where application is made within one month before the date of expiry of the licence and the prescribed fee is paid, be renewed from year to year for a period not exceeding one year from the date of expiry of the original licence, or the previous renewal of the licence, as the case may be.

(5) Where an application is made for the renewal of a licence before the date of expiry of the licence and the application is not dealt with before that date, the licence shall be deemed to continue in force until such time as a renewed licence is issued or the application is refused, but any renewed licence issued on that application shall expire on the first anniversary of the date on which the licence so continued in force would, but for this subsection, have expired.

7. (1) A person who under section 6 (2) (a) makes a report on an application for a licence may in the report specify that he objects to a licence being issued to an applicant on the ground that the applicant—

- (a) is not of good fame or character;
 (b) is not a fit and proper person to hold a licence;
 (c) has improperly obtained a licence; or
 (d) has been convicted of an offence against this Act or the regulations,

or on more than one of those grounds.

(2)

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(2) Where a report referred to in section 6 (2) (a) containing a statement objecting to the issue to the applicant of a licence is received by the clerk of the court to which the application for the licence was made the clerk shall, unless he has issued the licence, set the application down for hearing by the court and give notice of the hearing in the prescribed manner to the applicant and the officer in charge of police referred to in section 6 (2).

(3) An application referred to in subsection (2) shall be heard by a court held before a stipendiary magistrate sitting in open court.

Disqualifica-
tion of
licensee.

8. (1) A licensee may, on complaint made by a member of the police force, be summoned before a court to show cause why his licence should not be cancelled upon one or more of the grounds of objection specified in section 7 (1) and why he should not be disqualified from holding a licence.

(2) Where, at the hearing of a summons referred to in subsection (1), a court held before a stipendiary magistrate is satisfied of the truth of any ground of objection alleged in the summons it may order that the licence to which the summons relates be cancelled and that the licensee be disqualified, either permanently or for such period as the court specifies, from holding a licence.

(3) A person who has possession of a licence, upon demand made of him by a member of the police force to deliver up the licence following an order made under subsection (2), shall not fail to deliver up the licence.

Penalty : \$200.

Duplicate
licence.

9. (1) Subject to subsection (2), where a licence is lost, destroyed or defaced, a duplicate licence may be issued by the clerk of the court by which the licence was issued.

(2)

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(2) A duplicate licence shall not be issued unless— No. 23, 1974

- (a) the licensed hawker lodges with the application a statutory declaration explaining how the loss, destruction or defacement occurred; and
- (b) the prescribed fee is paid.

10. A licensee shall not fail to display and keep displayed his name and the words "licensed hawker" in letters of the prescribed size and style on a conspicuous part of every boat or vehicle used by him in connection with his business as a hawker. Hawker to display name and occupation.

Penalty : \$50.

11. A person who is not the holder of a licence shall not, in connection with the selling or offering for sale by him of goods, use any boat or vehicle on which are displayed the words "licensed hawker" or any similar words. Unlicensed hawker using vehicle as if licensed.

Penalty : \$50.

12. A licensee shall not, without reasonable excuse, fail to produce his licence— Licence to be produced.

- (a) to any member of the police force on demand made by that member; or
- (b) to any person to whom he has, within twenty-four hours previously, sold or offered to sell goods, upon demand made by that person.

Penalty : \$50.

13.

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Forged or
counterfeit
licences.**13.** A person shall not—

- (a) forge or counterfeit a licence; or
- (b) have in his possession a forged or counterfeit licence,

with intent to use it as a genuine licence.

Penalty : \$200.

Lending,
&c., licence.**14.** A licensee shall not lend his licence to any other person or permit any other person to use his licence.

Penalty : \$200.

Presumption
that person
unlicensed.**15.** In any proceedings under this Act, an allegation in an information that a person is unlicensed need not be proved and that person shall be deemed to be unlicensed until the contrary is proved by the production of a licence or otherwise.Offences—
jurisdiction
of court.**16.** Proceedings for offences under this Act shall be disposed of in a court held before a stipendiary magistrate sitting alone.

Regulations.

17. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter which, by this Act, is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), the Governor may make regulations for or with respect to—

- (a) prescribing the forms to be used under this Act;
- (b) prescribing fees in connection with licences.

(3)

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(3) Regulations may be made so as to apply differently according to such factors as may be specified in the regulations. No. 23, 1974

(4) A regulation may prescribe a penalty not exceeding \$200 for any breach thereof.
