



New South Wales

# Pawnbrokers and Second-hand Dealers Amendment Regulation 2007

under the

Pawnbrokers and Second-hand Dealers Act 1996

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

DIANE BEAMER, M.P.,  
Minister for Fair Trading

## Explanatory note

The object of this Regulation is to amend the *Pawnbrokers and Second-hand Dealers Regulation 2003* (*the Principal Regulation*):

- (a) to prescribe global positioning system equipment as a class of goods for the purposes of the definition of *second-hand goods* in the *Pawnbrokers and Second-hand Dealers Act 1996* (*the Act*), and
- (b) to clarify requirements of the Principal Regulation relating to the making and keeping of records and the tagging of goods, and
- (c) to correct some minor errors in a form prescribed by the Principal Regulation, and
- (d) to provide an exemption in particular circumstances from a requirement for second-hand goods to be retained by licensees, and
- (e) to prescribe the Commissioner for Fair Trading as an officer whose certification of the number of demerit points that have accrued to a licensee for offences prescribed by the Principal Regulation is to be taken as evidence, in any proceedings, of the particulars certified, and
- (f) to remove the allocation of a demerit point for an offence under section 14 of the Act (which relates to the display of prescribed information by the holder of a licence under that Act), and

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#### Explanatory note

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- (g) to prescribe additional offences under the Act as offences for which penalty notices may be issued and allocate demerit points for some of those additional offences, and
- (h) for the purposes of minor law revision.

This Regulation is made under the *Pawnbrokers and Second-hand Dealers Act 1996*, including sections 3, 11 (2), 15, 16, 21, 26, 27, 28 and 43 (the general regulation-making power).

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## **Pawnbrokers and Second-hand Dealers Amendment Regulation 2007**

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### **1 Name of Regulation**

This Regulation is the *Pawnbrokers and Second-hand Dealers Amendment Regulation 2007*.

### **2 Amendment of Pawnbrokers and Second-hand Dealers Regulation 2003**

The *Pawnbrokers and Second-hand Dealers Regulation 2003* is amended as set out in Schedule 1.

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Schedule 1 Amendments

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### Schedule 1 Amendments

(Clause 2)

**[1] Clause 5 Meaning of “second-hand goods”**

Insert after clause 5 (1) (n):

- (o) global positioning system equipment.

**[2] Clauses 11 and 11A**

Omit clause 11. Insert instead:

**11 Records generally**

- (1) Records that are required to be kept for the purposes of the Act must be kept:
  - (a) if they are records to which a licence condition under clause 11A applies, in the form required by that condition, or
  - (b) if they are other records, electronically or in a bound (not loose-leaf) book.  
**Note.** Clause 12 enables a licence to be issued or renewed, in some circumstances, without a condition of the kind referred to in clause 11A.
- (2) Any such records must:
  - (a) be in the English language, and
  - (b) have consecutively numbered pages, and
  - (c) permanently record the date on which each record was first compiled and the date on which each entry was made, and
  - (d) include the contract number referred to in clause 13 (1) (c) and (2) (c) for each item taken in trade or pawn.
- (3) Despite subclause (1) and any condition imposed on a licence under clause 11A:
  - (a) any hard copy of a written statement as to the ownership of goods obtained from a customer under clause 18 (4) may be kept in loose-leaf form, and
  - (b) any hard copy of the record of an agreement by which goods were pawned under section 28 of the Act may be kept in loose-leaf form so long as the record includes the contract number referred to in clause 13 (1) (c) and (2) (c) for each item taken in pawn and is kept in order of contract number.

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**11A Licence condition about record creation and storage**

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, 28 or 29A of the Act using software specified, or of a kind specified, in the condition.

**[3] Clause 12 Special provisions relating to keeping of records by certain licensees**

Omit “clause 11 (2)” from clause 12 (2). Insert instead “clause 11A”.

**[4] Clause 18 Evidence of identity and title of supplier of goods**

Omit “on A4 double-sided paper” from clause 18 (4) (b).

**[5] Clause 18A Contract or stock number to be reproduced on tag, label or other attachment**

Insert “that is attached on the day on which the item is taken in trade or pawn” after “to the item” in clause 18A (1).

**[6] Clause 19 Retention of goods by licensee**

Insert after clause 19 (1) (b):

- (ba) goods purchased by the licensee from another licensee if before the purchase the goods have already been kept by the other licensee for any period for which the other licensee was required to keep them by section 21 of the Act or any notice under that section, or

**[7] Clause 23 Pawnbroker’s record of pledges**

Insert at the end of clause 23 (1) (a):

**Note.** The expression “compact (laser-read) disc” includes compact discs, digital video discs (DVDs) and mini discs—see clause 5 (1) (i).

**[8] Clause 30**

Omit the clause. Insert instead:

**30 Certification of number of demerit points**

For the purposes of section 27 (6) of the Act, the Commissioner for Fair Trading, Department of Commerce is a prescribed officer.

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#### [9] Schedule 1 Forms

Omit Form 3. Insert instead:

### **Form 3 Pawnbrokers and Second-hand Dealers Act 1996**

(Clause 23A of Pawnbrokers and Second-hand Dealers Regulation 2003)

#### **Notice to person pawning goods**

**Note.** The information contained in this notice is to be treated only as a guide to your rights and obligations. In order to fully ascertain your legal rights and obligations you should refer to the relevant legislation.

#### **Pawn ticket**

- (1) You must sign an original record of your pawn agreement that contains all the required information.
- (2) You must be given a copy of this record (a pawn ticket) and this ticket must include the following information:
  - (a) The total amount lent on the goods.
  - (b) The date the pawn was made and the agreement signed.
  - (c) The date that the redemption period ends.
  - (d) If the goods consist of more than one item, whether or not the items can be separately redeemed.
  - (e) The interest that you will be charged and the fees and charges that you will or may have to pay including any that may be deducted from the sale of your goods and how those fees and charges are calculated. Note that the interest rate and the fees and charges must not be more than those that are displayed on a sign in the pawnbroking shop.
  - (f) The equivalent annual interest rate.
  - (g) How often interest will be charged with an option to pay interest monthly if you want to.
  - (h) The address of where the goods will be kept during the redemption period.
  - (i) A fair and reasonable description of your goods, including serial numbers or other identifying numbers of every component.
  - (j) The name and residential address of the owner of the goods and any agent through whom they are pawned.
  - (k) By what method your goods may be sold if you were not to redeem them, for example, sold on the shelf or by auction at the pawnbroking shop or sold by auction at other premises.

**Redemption of goods**

- (1) You may reclaim the goods that you have pawned by paying the outstanding amount of the loan, and any interest due and any fees and charges payable, as stated on your pawn ticket. You must also produce your pawn ticket to the pawnbroker and reproduce the signature on the ticket. If you have lost your ticket, you can provide evidence of your identity and a declaration that you are the owner of the goods instead. If you wish an agent to collect the goods on your behalf they will need an authorisation from you or evidence that you are unable to collect the goods yourself or provide an authorisation.
- (2) You may reclaim the goods at any time before the pawnbroker sells or disposes of them, even if the period of the loan has passed. The pawnbroker cannot charge interest after the end of the loan period but may charge you a safekeeping fee (this must be on your pawn ticket). This safekeeping fee cannot be more than that stated on the pawn ticket and the sign in the pawnbroking shop.

**Period of loan and payments**

- (1) The pawnbroker must provide you with a minimum 3-month loan period. The period of the loan commences on the day the goods are pawned.
- (2) You have a right to pay your interest charges on a monthly basis, the interest does not all have to be paid at the end of the loan period and you can make an interest payment to the pawnbroker at any time during business hours.
- (3) Any person may make an interest payment on your behalf.

**Lost or stolen pawn ticket**

If the pawn ticket is lost or stolen you have a right to redeem the goods if you give the pawnbroker proof of your identity and:

- (a) a declaration stating that you are the owner of the goods, or
- (b) an authority from the owner to collect the goods, or
- (c) reasonable evidence of the owner's death, incapacity or inability to sign an authority.

**Sale of unredeemed goods and payment of surplus**

The following provisions apply if the period of the loan expires and you have not reclaimed the pawned goods:

- (a) The pawnbroker must, if the loan is greater than \$50, offer the goods for sale as soon as possible in a way that will get the best price possible.
- (b) The only fees and charges that may be taken off the price paid for the goods are those that are stated on your pawn agreement (these must also be shown on a sign in the pawnbroking shop).

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- (c) If the goods are sold for more than the loan and any interest or charges payable, then that excess money (or surplus) is payable to you. It is your right to collect that money within 12 months of the sale.
- (d) If there is a surplus which is greater than \$50, then not more than 21 days after the goods are sold the pawnbroker must send you a notice (unless you have requested the pawnbroker not to send you a notice) stating that the goods have been sold and there is a surplus due to you and that you have 12 months to collect it.
- (e) The pawnbroker, an employee of the pawnbroker or a person acting on behalf of a pawnbroker cannot buy the goods. If they do so they will not have legal ownership of the goods.

#### **Pawn agreement cannot be varied other than to extend**

- (1) You and the pawnbroker cannot vary the original agreement to pawn your goods other than to extend the loan period (this can be done even if the original loan period has already finished).
- (2) You must sign the agreement to extend and be provided with a copy of that agreement. The copy must:
  - (a) include a reference to the original agreement and state the date the extension agreement is made and what the new redemption period is, and
  - (b) state any new fees, charges or interest payable as a result of the extension agreement and include the date on which the extension agreement was entered into.

#### **What happens if the pawnbroking shop closes or the pawnbroker sells the business?**

- (1) If the pawnbroker sells the pawnbroking shop, the pawnbroker must write to you within 14 days of the sale, at the address that you have supplied, and notify you as to who has bought the business and will be in charge of the pawn.
- (2) If a pawnbroker surrenders the pawnbroker's licence, the Office of Fair Trading may require the pawnbroker to advise you as to where you can redeem your goods.

#### **[10] Schedule 2 Penalty notice offences and demerit points**

Omit the matter relating to section 14 of the Act from Column 3 of the Schedule.

Insert instead "Nil".

#### **[11] Schedule 2**

Omit the matter relating to section 30 (2) of the Act.



**[12] Schedule 2**

Insert in appropriate order in Columns 1, 2 and 3, respectively, in the matter relating to the Act:

Section 12B (2)	300	2
Section 29A (11)	300	2
Section 29B (2)	500	2
Section 30 (1)	300	2
Section 30 (3)	300	2
Section 31A (1)	500	2
Section 32C	300	Nil
Section 32L	300	Nil

**[13] Schedule 4 Amendment of this Regulation**

Omit the Schedule.