

[Act 1995 No 68]



New South Wales

Uncollected Goods Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The disposal of uncollected goods is governed partly by common law and partly by legislation. A significant piece of legislation on the subject is the *Disposal of Uncollected Goods Act 1946*. That Act deals, broadly speaking, with situations where a bailee (having a lien in respect of an unpaid debt concerning goods in his or her possession) is unable to persuade the bailor to pay the debt or to collect the goods. The New South Wales Law Reform Commission, in its report entitled *Disposal of Uncollected Goods* (LRC 54—1988), has recommended that the Act be amended so as to allow the remedies under the Act to be extended to apply to all bailees and other persons in possession of goods and so as to vary the stringency of the notice requirements of the Act according to the value of the goods concerned.

The object of this Bill is to repeal and re-enact the provisions of the *Disposal of Uncollected Goods Act 1946* in the light of the recommendations of the Law Reform Commission.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day to be proclaimed.

Clause 3 defines certain expressions (including *bailed goods*, *bailee*, *bailor*, *goods* and *publicly registered interest*) for the purposes of the proposed Act.

Clause 4 specifies that the object of the proposed Act is to provide persons in possession of uncollected goods subject to bailment with the means of disposing of those goods without incurring any liability to the bailor or any other person. The means of disposal are by way of court order or after due notice to the bailor and certain other persons.

Clause 5 defines *uncollected goods* for the purposes of the proposed Act. Goods are uncollected if they are ready for delivery but not collected or if the bailee cannot trace or communicate with the bailor to collect the goods. The definition is similar to the definition in the corresponding U.K. legislation, the *Torts (Interference with Goods) Act 1977*.

Clause 6 specifies that the proposed Act does not apply if there is an agreement between the parties about the relevant matter concerning the disposal of the goods. However, clause 32 applies despite any agreement to the contrary. The proposed Act applies in addition to other statutory methods of disposal.

Clause 7 provides that a person who disposes of uncollected bailed goods in accordance with the proposed Act is not liable to any other person merely because he or she has been a bailee of the goods.

Part 2 Disposal of Uncollected Goods by way of court order

Clause 8 enables a bailee to apply to a Local Court for an order authorising the disposal of uncollected goods.

Clause 9 empowers (but does not require) a Local Court to make an order authorising the disposal of the uncollected goods. Such an order (if made) must specify, among other things, the relevant charges due to the bailee in respect of the goods.

Clause 10 defines *relevant charges* for the purposes of the proposed Part. Relevant charges will include amounts for the carriage or storage of goods or for repairs or other work done in connection with goods, for costs incurred by a bailee for the storage, maintenance or insurance of goods and for costs incurred by a bailee for the disposal of goods in accordance with the proposed Part.

Clause 11 enables a Local Court to authorise the disposal of uncollected goods even though there is a dispute between the bailor and the bailee as to the amount owed or as to the condition of the goods or the nature or quality of repairs or other work done in connection with the goods.

Clause 12 provides that goods to which an order under the proposed Part relates may be disposed of in accordance with the order, but provides that the goods may be redeemed (on payment of the relevant charges) at any time before they are disposed of.

Clause 13 suspends the operation of an order under the proposed Part in circumstances where other legal proceedings are taken for the recovery of the goods to which the order relates. If any such proceedings are successful, the order ceases to have effect.

Clause 14 entitles a bailee to retain from the proceeds of sale of goods under the proposed Part the relevant charges due to the bailee in respect of the goods, and provides that the remainder of the proceeds are to be dealt with as if they were unclaimed money under the *Unclaimed Money Act 1982*. The clause preserves the right of the bailee to recover the amount of any deficiency from the bailor as a debt.

Clause 15 requires a bailee to prepare a record in relation to goods disposed of under the proposed Part and to keep the record for at least 6 years, and further provides that the bailee must make the record available, on request, for inspection by the bailor or by any other person claiming an interest in the goods.

Clause 16 enables the bailor to obtain judgment against the bailee for the amount by which any money paid by the bailor to the bailee in connection with the goods exceeds the relevant charges determined by the Local Court.

Clause 17 requires the jurisdiction conferred on a Local Court by the proposed Part to be exercised by a Magistrate. However, the Local Court is denied jurisdiction if the value of the goods concerned exceeds the Court's civil jurisdiction under the *Local Courts (Civil Claims) Act 1970*. The clause also ensures that the usual appeal process for Local Court civil claims jurisdiction applies.

Clause 18 enables the jurisdiction of a Local Court under the proposed Part to be exercised by the Supreme Court (with leave) even though the value of the goods concerned exceeds the jurisdictional limit of a Local Court.

Part 3 Disposal of uncollected goods after due notice to bailor

Clause 19 applies the proposed Part to uncollected bailed goods whose value is less than \$5,000. The proposed Part is not to apply to goods in respect of which there is a dispute between the bailor and the bailee as to the amount owed or as to the condition of the goods or the nature or quality of repairs or other work done in connection with the goods.

Clause 20 enables a bailee to dispose of uncollected goods of up to \$100 in value, in whatever manner the bailee considers appropriate, after the bailor has been notified, orally or in writing, of the bailee's intention to dispose of the goods and has been given at least 28 days in which to collect them.

Clause 21 enables a bailee to dispose of uncollected goods of between \$100 and \$500 in value, by public auction or private sale only, if the owner of the goods and each person having or claiming an interest in the goods have been notified, in writing, of the bailee's intention to dispose of the goods and been given at least 3 months in which to collect them.

Clause 22 enables a bailee to dispose of uncollected goods of between \$500 and \$5,000 in value, by public auction only, if the owner of the goods and each person having or claiming an interest in the goods have been notified, in writing, of the bailee's intention to dispose of the goods and been given at least 6 months in which to collect them, and if a copy of the notice has been published in a daily newspaper at least 28 days before the goods are disposed of.

Clause 23 authorises the variation by regulation of the monetary limits referred to in clauses 19–22.

Clause 24 enables a bailee to dispose of uncollected perishable goods, in whatever manner the bailee considers appropriate, after the bailor has been notified, orally or in writing, of the bailee's intention to dispose of the goods and has been given a reasonable opportunity to collect the goods.

Clause 25 provides that there is no requirement to give a notice of intention to dispose of uncollected goods to a person (other than the bailor or a person who has a publicly registered interest in the goods) if the bailee is unaware of the fact that the person has or claims an interest in the goods or cannot trace or communicate with the person.

Clause 26 specifies the matters that must be included in a notice of intention to dispose of uncollected goods.

Clause 27 provides that a notice under the proposed Part may be served personally or by post.

Clause 28 defines *relevant charges* for the purposes of the proposed Part. Relevant charges will include amounts for the carriage or storage of goods or for repairs or other work done in connection with goods, for costs incurred by a bailee for the storage, maintenance or insurance of goods and for costs incurred by a bailee for the disposal of goods in accordance with the proposed Act.

Clause 29 entitles a bailee to retain from the proceeds of sale of goods under the proposed Part the relevant charges due to the bailee in respect of the goods, and provides that the remainder of the proceeds are to be dealt with as if they were unclaimed money under the *Unclaimed Money Act 1982*. The clause preserves the right of the bailee to recover the amount of any deficiency from the bailor as a debt.

Clause 30 requires a bailee to prepare a record in relation to goods disposed of under the proposed Part and to keep the record for at least 6 years, and further provides that the bailee must make the record available, on request, for inspection by the bailor or by any other person claiming an interest in the goods.

Clause 31 prohibits the sale of a motor vehicle under the proposed Part unless the seller obtains a certificate from the Commissioner of Police to the effect that the motor vehicle is not for the time being recorded as being stolen.

Part 4 Miscellaneous

Clause 32 specifies a minimum period of 3 months within which certain commercial bailees may, by agreement with the bailor, dispose of uncollected goods.

Clause 33 preserves the operation of the common law in relation to the bailment of goods except to the extent that it is modified by the proposed Act.

Clause 34 provides that the purchaser of any goods sold under the proposed Act acquires a good title to the goods, free of any other interest, if the goods are bought without notice of any failure by the bailee to comply with the provisions of the proposed Act or of any defect or want of title in the bailor.

Clause 35 provides that the burden of establishing that the provisions of the proposed Act have been complied with in relation to the disposal of goods lies on the person who asserts that fact.

Clause 36 provides that the proposed Act is to bind the Crown.

Clause 37 provides that proceedings for an offence against the proposed Act are to be dealt with summarily by a Local Court constituted by a Magistrate.

Clause 38 empowers the Governor to make regulations for the purposes of the proposed Act.

Clause 39 repeals the *Disposal of Uncollected Goods Act 1966*.

Clause 40 is a formal provision that gives effect to the Schedule of savings, transitional and other provisions.

Clause 41 requires the Minister to review the operation of the proposed Act after 5 years and report to Parliament on whether it is still appropriate.

Schedule 1 Savings, Transitional and other provisions

The Schedule contains 2 Parts. Part 1 contains a provision empowering the regulations to contain provisions of a savings or transitional nature consequent on the proposed repeal of the *Disposal of Uncollected Goods Act 1966* (clause 1). Part 2 contains provisions:

- (a) defining certain expressions for the purposes of the proposed Part (clause 2),
- (b) applying the proposed Act to existing bailments (clause 3),
- (c) continuing the effect of Part 2 of the repealed Act with respect to certain goods (clause 4),
- (d) continuing the effect of section 6 of the repealed Act with respect to the resolution of certain disputes (clause 5),
- (e) continuing the effect of Part 3 of the repealed Act with respect to certain goods (clause 6),
- (f) applying section 32 of the proposed Act to future bailments only (clause 7), and
- (g) applying sections 34 and 35 of the proposed Act to goods disposed of under the repealed Act (clause 8).