

[Act 1996 No 13]



New South Wales

Pawnbrokers and Second-hand Dealers Bill 1996

Explanatory note

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

Overview of Bill

The object of this Bill is to revise the law relating to pawnbrokers, hawkers and second-hand dealers and enact it in a single statute that will replace the *Pawnbrokers Act 1902*, the *Second-hand Dealers and Collectors Act 1906* and the *Hawkers Act 1974*. A single licence under the proposed Act will authorise the undertaking of any one or more of the activities that were authorised under the 3 licences issued under the repealed Acts. The Director-General of the Department of Fair Trading is the sole licensing authority under the proposed Act. (Previously the relevant licences were issued by the clerk of a Local Court.) The Bill proposes to deregulate dealing in second-hand goods other than those of a kind assessed to be at a high risk of theft.

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 or days to be proclaimed.

Clause 3 defines certain words and expressions used in the proposed Act. See especially the definition of *second-hand goods*. It is proposed to prescribe goods assessed to be at a high risk of theft for the purposes of the definition.

Clause 4 states that the proposed Act does not affect activities that are already lawful under other Acts such as the laws relating to business agents, firearms and motor vehicles. An activity that is licensed under those Acts will not require a further licence by virtue of this Bill. It also removes charitable fundraising and other activities from the scope of the Bill.

Clause 5 states that a contract of sale under which the seller has a right to buy back the goods is regarded as lending money on the security of the goods. As a consequence, a business involving this kind of contract will require a licence authorising the holder to carry on business as a pawnbroker, and every such contract must be recorded as prescribed in clause 28.

Part 2 Licensing of pawnbrokers and second-hand dealers

Clause 6 requires pawnbrokers to be licensed.

Clause 7 requires dealers in second-hand goods to be licensed.

Clause 8 states that a person is entitled to obtain a licence unless disqualified, or precluded by disciplinary measures under the proposed Act, from holding one. A natural person is disqualified if he or she is under-age or bankrupt or is disqualified by a criminal record. A corporation is disqualified if it is in liquidation, or if it is disqualified by its criminal record or if any of its directors is for any reason disqualified. A licensee is disqualified by the licensee's criminal record if a conviction has been recorded against the licensee for an offence involving dishonesty. The Commercial Tribunal has a discretion to overlook the offence.

Clause 9 states the procedural requirements for making a licence application.

Clause 10 provides for the form and duration of licences, and for their renewal on an annual basis.

Clause 11 provides that licences are subject to conditions imposed on grant or renewal or as a result of disciplinary proceedings.

Clause 12 provides that a licensee or applicant for a licence must keep the Director-General informed about the premises that are to be used in connection with the licensed business.

Clause 13 provides for the keeping of a register of licences and allows members of the public to access recorded information.

Part 3 Regulation of licensed businesses

Clause 14 requires a licensee to display the prescribed particulars of the licence while carrying on business.

Clause 15 requires a licensee to obtain proof of the identity of a customer offering goods for sale or pawn and to take such steps as the regulations may require to establish the customer's title to the goods.

Clause 16 requires certain records to be kept by a licensee and by the promoter of a market.

Clause 17 requires a licensee or market promoter to produce records on demand by an authorised officer.

Clause 18 allows an authorised officer to take temporary possession of records produced to the officer under the proposed Act in order to copy them or make a note of them.

Clause 19 requires a licensee or an employee of the business to inform police when goods which the licensee suspects are stolen are presented for sale or pawn.

Clause 20 allows an authorised officer to enter premises where a licensed business is being carried on, and to enter any associated storage place, and to inspect any goods that are there.

Clause 21 requires a licensee to retain goods for 14 days after obtaining them. It also allows an authorised officer to serve a notice on a licensee in possession of goods whose ownership is disputed, prohibiting the licensee from further dealing with the goods for 21 days. The notice may be renewed for a further period of 21 days if necessary.

Clause 22 provides that when a person claims to be the owner of property in the possession of a licensee, the licensee must provide the person with a statement in a form to be prescribed by regulations. The licensee is thereafter prohibited from dealing with or repairing the goods for a period of 28 days. If proceedings are commenced by the person claiming to be the true owner, this prohibition continues until the matter is resolved by a court. Authorised officers are obliged to assist the person claiming the goods to the greatest practicable extent.

Clause 23 requires a court that finds in any criminal proceedings that any goods have been stolen, or that possession of any goods has been taken unlawfully, to direct the police to take the goods into police custody. They are then dealt with in the same way as goods that were already in police custody in connection with the relevant proceedings, in accordance with Part 11 of the *Criminal Procedure Act 1986*.

Clause 24 prohibits persons from supplying false or misleading information in response to a requirement under the proposed Act to supply information.

Clause 25 prohibits obstruction of an authorised officer in the performance of the officer's duties under the proposed Act.

Clause 26 allows an authorised officer to issue penalty notices for minor offences under the proposed Act.

Clause 27 enables the Director-General to establish a demerit points scheme for licensees. A licensee who exceeds 12 points in 3 years can have his or her licence revoked.

Part 4 Special provisions relating to pawnbrokers

Clause 28 requires a pawnbroker to provide a written record to the customer as to the terms of the agreement between them. The record must include, among other things, statements relating to interest and charges.

Clause 29 prohibits a pawnbroker from taking pledges on the basis of a redemption period that is less than 3 months, and prohibits the sale of pawned goods before the expiry of the redemption period.

Clause 30 provides that pawned goods that are unredeemed and whose value exceeds a prescribed value must be sold at a public auction.

Clause 31 provides that when a forfeit pledge is sold, any balance remaining after the amount secured by the pledge and other legitimate expenses have been paid out is payable to the pledgor, or any person deriving title through the pledgor, on demand made within 12 months of the sale.

Clause 32 prohibits pawnbrokers from buying unredeemed goods.

Part 5 Revocation, suspension and variation of licences

Clause 33 provides for revocation of a licence on conviction of the licensee for certain offences.

Clause 34 allows the Director-General, in certain circumstances, to serve notice on a licensee to show cause why the licence should not be revoked or suspended. The grounds of the notice are similar to those of disqualification from holding a licence but include, in addition, suspected dealing in stolen goods, dishonest or unfair dealing in a licensed business and the accumulation of excess points by the licensee under the Director-General's demerit points scheme.

Clause 35 allows the licensee to adduce evidence in support of entitlement to keep the licence.

Clause 36 allows the Director-General to revoke or suspend a licence, or to attach conditions to a licence, if the Director-General is satisfied that the grounds of a notice under proposed section 34 are made out.

Clause 37 requires a licensee to surrender a licence that has been revoked.

Part 6 Miscellaneous

Clause 38 provides that, in any legal proceedings, a person will be presumed to be carrying on business as a second-hand dealer (that is, to be carrying on a business for which a licence under the proposed Act is required) if, on more than 12 occasions in any period of 12 months, the person is party to transactions in which second-hand goods are sold.

Clause 39 provides an appeal to the Commercial Tribunal against decisions of the Director-General under the proposed Act.

Clause 40 provides for proceedings for an offence under the proposed Act to be taken before a Local Court.

Clause 41 allows a court to order forfeiture of the stock-in-trade of unlicensed traders.

Clause 42 makes provision for reciprocal exchange of information between police and officers of the Department of Fair Trading, to the extent necessary for the performance of their respective duties under the proposed Act.

Clause 43 provides for the making of regulations in aid of the proposed Act.

Clause 44 repeals the *Pawnbrokers Act 1902*, the *Second-hand Dealers and Collectors Act 1906* and the *Hawkers Act 1974*, and gives effect to the consequential amendments to the *Credit (Administration) Act 1984*, the *Justices Act 1902* and the *Uncollected Goods Act 1995* set out in Schedule 1.

Clause 45 gives effect to a Schedule of savings and transitional provisions.

Clause 46 provides for review of the policies embodied in the proposed Act.

Schedules

Schedule 1 makes consequential amendments to several Acts.

Schedule 2 contains savings and transitional provisions.