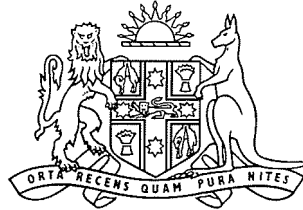


Passed by both Houses



New South Wales

Pawnbrokers and Second-hand Dealers Amendment Bill 2005

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2005*



New South Wales

Pawnbrokers and Second-hand Dealers Amendment Bill 2005

Act No , 2005

An Act to amend the *Pawnbrokers and Second-hand Dealers Act 1996* to clarify the application of the Act in respect of loans on the security of the possession of goods.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Pawnbrokers and Second-hand Dealers Amendment Act 2005*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Pawnbrokers and Second-hand Dealers Act 1996 No 13

The *Pawnbrokers and Second-hand Dealers Act 1996* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Omit the definition of *pawnbroker* from section 3 (1). Insert instead:
pawnbroker—see section 3A.

[2] Section 3A

Insert after section 3:

3A Definition of “pawnbroker”

- (1) In this Act, *pawnbroker* means a person who carries on a business of lending money on the security of pawned goods.
- (2) For the purposes of this Act, goods are *pawned* if the goods are taken into the possession of a lender of money for the purpose of the lender relying on possession of the goods as security for the repayment of the loan.
- (3) In determining for the purposes of this Act whether goods are pawned and whether money is lent on the security of pawned goods, the following principles are to apply:
 - (a) regard is to be had to the substance of the loan transaction rather than its form or other legal technicalities,
 - (b) particular regard is to be had to the ordinary understanding of the borrower as to the nature of the loan transaction and the reason or basis on which possession of goods is given to the lender,
 - (c) it does not matter that the terms of the loan transaction provide that the lender has taken possession of the goods at the request of or on behalf of the borrower or otherwise so as to give the appearance that the lender does not rely on possession of the goods as security for the repayment of the loan,
 - (d) goods can be considered pawned and money can be considered lent on the security of pawned goods even if the loan also gives rise to a mortgage of the goods.
- (4) The regulations may specify cases or circumstances in which, for the purposes of this Act:
 - (a) the taking of goods into the possession of a lender of money in connection with the loan is a pawning of the goods (whether or not that taking into possession is for the

Schedule 1 Amendments

purpose of the lender relying on possession of the goods as security for the repayment of the loan), or

- (b) the taking of goods into the possession of a lender of money in connection with the loan is not a pawning of the goods (despite that taking into possession being for the purpose of the lender relying on possession of the goods as security for the repayment of the loan), or
- (c) the taking of goods into the possession of a person acting on behalf of a lender or associated with a lender is taken to be the taking of goods into the possession of the lender.

[3] Section 5 Buy-back contracts regarded as pledge and loan

Insert “as pawned goods” after “security of the goods” in section 5 (a).

[4] Schedule 2 Savings and transitional provisions

Insert at the end of clause 2 (1):

*the Pawnbrokers and Second-hand Dealers Amendment Act
2005*