

# Pawnbrokers and Second-hand Dealers Act 1996 No 13

[1996-13]



New South Wales

## Status Information

### Currency of version

Historical version for 10 December 2004 to 30 March 2005 (accessed 17 April 2024 at 9:45)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
*Pawnbrokers and Second-hand Dealers Amendment Act 2002 No 104*, Sch 1 [15] [18] [22] and [26], Sch 1 [27] (to the extent that it omits sec 30 and inserts a new sec 30), Sch 1 [28] (to the extent that it inserts sec 31A), Sch 1 [29] (to the extent that it inserts sec 32A (1), (3) and (5)) and Sch 1 [30] (not commenced — to commence on 31.3.2005)

### Authorisation

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File last modified 10 December 2004

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# Pawnbrokers and Second-hand Dealers Act 1996 No 13



New South Wales

An Act to provide for the licensing and regulation of pawnbrokers and dealers in certain classes of second-hand goods; to repeal the *Pawnbrokers Act 1902*, the *Second-hand Dealers and Collectors Act 1906* and the *Hawkers Act 1974*; to amend certain Acts consequentially; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Pawnbrokers and Second-hand Dealers Act 1996*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**authorised officer** means:

- (a) a police officer, or
- (b) the Director-General, or
- (c) an investigator appointed under section 18 of the *Fair Trading Act 1987*, or
- (d) a person authorised in writing by the Director-General.

**Director-General** means the Director-General of the Department of Fair Trading.

**disqualified person** has the meaning given by section 8A.

**executive officer** of a corporation has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

#### Note—

Section 9 of the Commonwealth Act contained the following definition when the Bill inserting the definition

in this Act was introduced:

**executive officer** of a body corporate means a person who is concerned in, or takes part in, the management of the body (regardless of the person's designation and whether or not the person is a director of the body).

**fees and charges** in respect of the sale of pawned goods—see section 30A.

**licence** means a licence in force under this Act.

**licensed business** means a business authorised by a licence.

**market** does not include an annual event such as a school fete, or any activity of a kind prescribed by the regulations.

**pawn agreement** means an agreement by which goods are pawned.

**pawn ticket** means a copy of a record referred to in section 28 (5).

**pawnbroker** means a person who carries on a business of lending money on the security of pawned goods.

**promoter** of a market means a person to whom vendors of goods or services offered at the market pay any fee, commission or rent in consideration of being allowed to sell there.

**record** means:

- (a) a documentary record, or
- (b) a record made by an electronic, electromagnetic, photographic or optical process, or
- (c) any other kind of record.

**redemption period**, in relation to pawned goods, means the period during which the goods may be redeemed under section 29 (1).

**second-hand goods** means any goods of a class or description prescribed that have been used or that are represented by a vendor of the goods to be goods purchased (otherwise than by the vendor) previously but unused.

**sell** includes any of the following:

- (a) sell by tender,
- (b) barter or exchange,
- (c) any of the following:
  - (i) consign or deliver for sale,

- (ii) advertise for sale,
- (iii) offer for sale,
- (iv) have in possession for sale,
- (v) agree to sell,
- (d) sell or do any of the above:
  - (i) as an agent or broker, or
  - (ii) by an agent or broker,
- (e) cause a sale to take place or cause any of the above to be done.

In paragraph (c), the expressions **sale** and **sell** are capable of having the extended meaning given by paragraph (a) or (b) or both.

**surplus proceeds**, in relation to a sale of pawned goods, means the proceeds of the sale less:

- (a) the principal and interest that was due at the time of the sale, and
  - (b) any unpaid fees and charges that would have been paid by the person who pawned the goods to redeem the goods, and
  - (c) any fees and charges that are deductible in respect of the sale of the goods, so long as:
    - (i) they were disclosed in a statement in accordance with section 28 (5A) (b), and
    - (ii) they do not exceed the amounts of the fees and charges so disclosed or the amounts determined in accordance with the manner of determining them as so disclosed.
- (2) Notes included in this Act do not form part of this Act.

#### **4 Restrictions on operation of this Act**

- (1) This Act does not apply so as to affect any activities conducted in accordance with a licence, permit or other authority under another Act (for example the *Property, Stock and Business Agents Act 2002*, the *Firearms Act 1996*, or the *Motor Dealers Act 1974*). In particular, this Act does not require a person to obtain a licence under this Act to carry on a business or any activity that is authorised by a licence, permit or other authority issued to that person under any other Act.
- (2) This Act does not apply:
  - (a) to dealing in second-hand goods in the course of a fundraising appeal authorised

under the *Charitable Fundraising Act 1991*, or

- (b) to the business of an auctioneer, or
- (c) to the extent provided by the regulations, in relation to such persons and circumstances as the regulations may prescribe.

(3) In subsection (2):

***business of an auctioneer*** does not include the business of selling goods by tender.

## **5 Buy-back contracts regarded as pledge and loan**

If a person receives goods under a contract of sale where the seller has the right to buy back the goods, then for the purposes of this Act:

- (a) the person receiving the goods is taken to be lending money on the security of the goods, and
- (b) the price at which the goods are to be sold under the contract is taken to be the amount lent, and
- (c) the difference between the amount lent and the price at which the goods may be bought back is taken to be the interest payable.

## **Part 2 Licensing of pawnbrokers and second-hand dealers**

### **6 Pawnbrokers to be licensed**

A person must not carry on a business of lending money on the security of pawned goods except in accordance with a licence held by the person.

Maximum penalty: 100 penalty units.

### **7 Dealers in second-hand goods to be licensed**

A person must not carry on a business of buying or selling second-hand goods except in accordance with a licence held by the person.

Maximum penalty: 100 penalty units.

### **8 Eligibility for licence**

- (1) An individual is eligible to hold a licence only if the Director-General is satisfied that:
  - (a) he or she is at least 18 years of age, and
  - (b) he or she is a fit and proper person to hold a licence and each person with whom he or she is in partnership in connection with the business concerned is a fit and proper person to hold a licence, and



- (c) he or she is not a disqualified person.
- (2) A corporation is eligible to hold a licence only if the Director-General is satisfied that:
  - (a) the corporation is a fit and proper person to hold a licence, and
  - (b) each director of the corporation is a fit and proper person to hold a licence, and
  - (c) the corporation is not a disqualified person.
- (3) If an applicant for a licence has been charged with an offence involving dishonesty, the Director-General may await the outcome of proceedings on the charge before determining the application.

### **8A Disqualified persons**

- (1) A person is a **disqualified person** for the purposes of this Act if:
  - (a) the person is disqualified under subsection (2) or (3) from holding a licence, or
  - (b) the person is precluded from being granted a licence under Part 5, or
  - (c) the person is the holder of a licence that is suspended under this Act, or of a licence, permit or other authority that is suspended under the [Fair Trading Act 1987](#), or
  - (d) the person is disqualified from holding a licence, certificate of registration or other authority under a corresponding law or is the holder of such a licence, certificate of registration or other authority that is suspended, or
  - (e) the person is in breach of any provision of this Act or the regulations that is prescribed by the regulations as a disqualifying breach.
- (2) An individual is disqualified from holding a licence if:
  - (a) he or she has a conviction in New South Wales or elsewhere for an offence involving dishonesty that was recorded in the last 10 years, unless the Director-General has determined under subsection (4) that the offence should be ignored, or
  - (b) he or she is an undischarged bankrupt, unless the Director-General has determined under subsection (5) that this factor should be ignored, or
  - (c) he or she, at any time in the 3 years preceding the application for the licence, was an undischarged bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit, unless the Director-General has determined under subsection (5) that this factor should be ignored, or

- (d) he or she is an executive officer of a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed, or
  - (e) he or she, at any time in the 3 years preceding the application for the licence, was an executive officer of a corporation when the corporation was the subject of a winding up order or when a controller or administrator was appointed, unless the Director-General has determined under subsection (5) that this factor should be ignored in relation to the individual, or
  - (f) he or she is an executive officer of a corporation that is a disqualified person, or
  - (g) he or she is a mentally incapacitated person, or
  - (h) he or she is in partnership in connection with the business concerned with a person who is a disqualified person.
- (3) A corporation is disqualified from holding a licence if:
- (a) it has a conviction in New South Wales or elsewhere for an offence involving dishonesty that was recorded in the last 10 years, unless the Director-General has determined under subsection (4) that the offence should be ignored, or
  - (b) it is a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed, or
  - (c) any of its executive officers is a disqualified person.
- (4) Where subsection (2) or (3) provides that a determination may be made under this subsection in relation to an offence committed by a person, the Director-General may determine that the offence should be ignored for the purposes of this section on one or more of the following grounds:
- (a) the triviality of the acts or omissions giving rise to the offence,
  - (b) the time that has passed since the offence was committed,
  - (c) the offence was committed by the offender as a minor,
  - (d) the subsequent good behaviour of the offender,
  - (e) any other ground prescribed by the regulations.
- (5) Where subsection (2) provides that a determination may be made under this subsection that a factor should be ignored, the Director-General may determine that the factor should be ignored for the purposes of this section in relation to the individual concerned if, on the basis of information and evidence provided to the Director-General by the individual, the Director-General considers it is appropriate to do so.

(6) In this section:

**administrator** and **controller** have the same meanings as in the *Corporations Act 2001* of the Commonwealth.

**corresponding law** means a law of another Australian jurisdiction that is declared by the Minister from time to time by order published in the Gazette to be a law that corresponds to this Act.

## 9 Application to licences of *Licensing and Registration (Uniform Procedures) Act 2002*

(1) The Director-General may grant the following licences for the purposes of this Act:

- (a) pawnbrokers' licences,
- (b) second-hand dealers' licences,
- (c) combined pawnbrokers' and second-hand dealers' licences.

(2) Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* (**the applied Act**) applies to and in respect of a licence, subject to the modifications and limitations prescribed by or under this Act.

(3) For the purpose of applying Part 2 of the applied Act to a licence:

- (a) the licence may be amended under that Act, and
- (b) an application for restoration of a licence under section 10 of that Act may not be made more than 3 months after the date on which the licence expires.

(4) Subject to this section, the regulations may make provision for or with respect to such matters concerning a licence as are relevant to the operation of Part 2 of the applied Act.

## 10 Duration of licence

A licence remains in force for a period of 12 months from the date of its grant.

## 10A (Repealed)

## 11 Conditions of licences

(1) A licence is subject to any conditions that the Director-General sees fit, in the public interest, to attach to it:

- (a) on grant or renewal, or
- (b) at any time by order under subsection (1A), or
- (c) pursuant to section 36 or 36A.

- (1A) The Director-General may, by order served on the holder of a licence, attach conditions to the licence at any time during its currency.
- (1B) The Director-General may, by order served on the holder of a licence, vary or revoke any conditions referred to in subsection (1).
- (2) The regulations may make provision for or with respect to the imposition of conditions on the grant or renewal of a licence or at some later time.

## **12 Business and storage premises: second-hand dealers**

- (1) An applicant for a licence to carry on the business of a second-hand dealer only, or an applicant for the renewal of such a licence, must nominate in the application any premises that the applicant intends to make regular use of, whether as business premises or storage premises, for the purposes of carrying on the licensed business.
- (2) A licensee who for any reason ceases to carry on business or to store goods at the premises nominated under this section, or who commences to carry on business or to store goods at other premises and intends to make regular use of those other premises, must notify the Director-General in writing of that fact and of the address of the other premises within 14 days of doing so.

Maximum penalty (subsection (2)): 50 penalty units.

## **12A Business and storage premises: pawnbrokers**

- (1) An applicant for a licence to carry on the business of a pawnbroker, or of a pawnbroker and a second-hand dealer, or an applicant for the renewal of such a licence, must nominate in the application all premises that the applicant will make use of, whether as business premises or storage premises, for the purposes of carrying on the licensed business.
- (2) A licensee who for any reason ceases to carry on business or to store goods at the premises nominated under this section, or who commences to carry on business or to store goods at other premises, must notify the Director-General in writing of that fact and of the address of the other premises within 14 days of doing so.

Maximum penalty: 50 penalty units.

- (3) It is a condition of a licence to carry on the business of a pawnbroker, or of a pawnbroker and a second-hand dealer, that the licensee carries on the business only from the premises nominated in the application for the licence, or later notified to the Director-General under subsection (2).
- (4) It is not a breach of such a condition for the licensee to carry on the business from other premises for a period of up to 14 days if the licensee notifies the Director-General of that fact within 14 days of commencing to use those premises.

## **12B Goods to be kept at approved business or storage premises: pawnbrokers**

(1) **Definition** In this section:

**approved premises**, in relation to a licensee carrying on the business of a pawnbroker, or of a pawnbroker and a second-hand dealer, means:

- (a) business premises or storage premises nominated in the application for the relevant licence, or
- (b) business premises or storage premises later notified by the licensee to the Director-General under section 12A (2), or
- (c) other business premises or storage premises in respect of which the licensee is not yet in breach of section 12A (2),

but does not include premises that are for the time being the subject of a declaration under subsection (4), or a direction under subsection (5), that is applicable to the goods concerned.

(2) **Unredeemed pawned goods to be kept at approved premises** A licensee carrying on the business of a pawnbroker, or of a pawnbroker and a second-hand dealer, must ensure that any goods that are pawned to the licensee are at all times kept at approved premises, until:

- (a) the goods are redeemed, or
- (b) the goods are purchased, or
- (c) the goods are consigned for auction, or
- (d) the goods are removed in accordance with a requirement imposed, or an authorisation given, by or under this Act or the regulations.

Maximum penalty: 50 penalty units.

(3) It is a condition of a licence to carry on the business of a pawnbroker, or of a pawnbroker and a second-hand dealer, that all goods pawned to the licensee are at all times kept at approved premises as required by subsection (2).

(4) **Exclusion of premises from being approved premises** The regulations may declare that premises of a specified class are excluded from this section, in relation to all pawned goods or to pawned goods of a specified class.

(5) The Director-General may, by notice given to a licensee, direct that specified premises or premises of a specified class are excluded from this section, in relation to all pawned goods, or to specified pawned goods or to pawned goods of a specified class. The Director-General may, in the same manner, amend or revoke such a direction.

- (6) **Defence** It is a defence to a charge for an offence based on the fact that goods were not kept at approved premises (or to an allegation of a failure to comply with a condition based on that fact) if the licensee establishes that at the relevant time:
- (a) the goods were located on premises that have within the past 3 days ceased to be approved premises, or
  - (b) the goods were in the process of being transported to approved premises from:
    - (i) other approved premises, or
    - (ii) premises that have within the past 3 days ceased to be approved premises.
- (7) **Other requirements not affected** Nothing in this section affects any requirement of or imposed under any other provision of this Act or the regulations.

### **13 Register of licences**

- (1) The Director-General must cause a register of licences to be maintained, in which are to be recorded the names, business premises and storage premises and other particulars relating to licensees and required by the regulations to be recorded.
- (2) On payment of a fee prescribed by the regulations, a person is entitled on request to be given a certificate by the Director-General containing information extracted from the register.
- (3) (Repealed)

## **Part 3 Regulation of licensed businesses**

### **14 Display of licence details**

- (1) A licensee must conspicuously display, on all premises used for the conduct of a licensed business, the particulars required by the regulations to be displayed in relation to the licence.
- (2) A licensee who is conducting a licensed business as an itinerant must, at all times while so conducting the business, display in the prescribed manner any particulars required by the regulations to be displayed in relation to the licence.

Maximum penalty: 10 penalty units.

### **15 Evidence of identity and title of supplier of goods**

- (1) On each occasion before accepting any goods offered for sale or pawn, a licensee must obtain evidence of the identity of the person by whom the goods are being offered.
  - (1A) The evidence must include documentary evidence that shows the person's name

and address, being evidence of a kind prescribed by the regulations, and must also include other evidence of any further particulars relating to the identity of the person that are required by the regulations.

- (1B) The regulations may provide for that additional evidence to be in oral or documentary form and may prescribe the kind of evidence required.
- (2) A licensee must not accept any goods offered for sale or pawn if the licensee has reasonable grounds to believe that the goods concerned are not the property of the person by whom they are offered or of any person for whom that person is authorised to make the offer.
- (3) A licensee must not accept any goods offered for sale or pawn without first complying with any requirements of the regulations relating to ascertaining the title to the goods.
- (4) A person must not, in purported compliance with any requirement reasonably made of the person by a licensee for the purposes of the licensee's compliance with this section, furnish information or make any statement knowing that it is false in a material particular.

Maximum penalty: 50 penalty units.

#### **15A Evidence of identity of vendors at markets**

- (1) Before permitting a person to sell second-hand goods at a market, the promoter of the market must obtain evidence of the person's identity on each occasion a market is or is to be conducted.
- (2) The evidence must include the same kind of evidence that is required to be obtained by a licensee under section 15 before accepting goods for sale.
- (3) However, in the case of a person licensed to carry on the business of a second-hand dealer or the business of a pawnbroker and a second-hand dealer, subsection (1) is satisfied by production to the promoter of documentary evidence indicating that the person is so licensed.
- (4) A promoter of a market may impose a reasonable requirement on a person seeking to sell goods at the market to furnish information to the promoter for the purposes of the promoter's compliance with this section.

Maximum penalty: 50 penalty units.

#### **Note—**

Section 24 makes it an offence for a person, in purported compliance with a requirement under the Act for the furnishing of information, to make or furnish any statement that the person knows is false or misleading.

## **16 Records**

- (1) A licensee must keep records, in the manner and containing the particulars prescribed by the regulations, of all transactions:
  - (a) for the acquisition or disposal of second-hand goods, or
  - (b) for the redemption of any pawned goods, or the disposal of any forfeit pledge,and of such other matters pertaining to the business of a licensee as the regulations may prescribe.
- (2) A licensee must keep records, in the manner and containing the particulars prescribed by the regulations, of all persons employed in the licensed business.
- (3) The promoter of any market must keep records, in the manner and containing the particulars prescribed by the regulations, of all vendors selling second-hand goods at the market on any day, and of the kinds of goods sold by them and any other prescribed particulars.
- (4) A requirement under this Act to keep a record is a requirement to keep it:
  - (a) so that it is readily able to be produced to an authorised officer if an authorised officer should require its production, and
  - (b) in English.
- (5) A person required by this section to keep a record must retain the record for a period of 3 years after it is made.
- (5A) A licensee must, if required to do so by the regulations, furnish to the Commissioner of Police, within the prescribed time after it is made, particulars of any record required to be kept by the licensee by or under this Act.
- (6) If the regulations require a record kept under this section to be signed by a person making any entry in it or by a person who is the owner or consignor of goods to which the record relates, that person must sign it.
- (7) Without affecting the generality of subsections (1) and (2) or the power of the Director-General under section 11, the regulations may make provision for or with respect to requiring the use by licensees of electronic methods of creation and storage of records that licensees are required under this section to keep.

Maximum penalty: 50 penalty units.

## **17 Production of records**

- (1) An authorised officer who has lawfully entered any premises where a licensed business is being carried on may require any person apparently in charge of the



premises to do immediately any of the following:

- (a) to produce for inspection any record required to be kept by the licensee under this Act,
  - (b) to identify and locate records kept by the licensee that correspond to particular goods kept by the licensee,
  - (c) to identify and locate goods kept by the licensee that correspond to particular records kept by the licensee,
  - (d) to reveal the whereabouts of any goods or records referred to in paragraph (b) or (c),
  - (e) to produce the licence.
- (2) An authorised officer may require a person carrying on a licensed business from a market stall or other place occupied intermittently for the purposes of a licensed business to do any of the following:
- (a) to produce for inspection at the nearest police station within 24 hours any record required to be kept by the licensee under this Act,
  - (b) to identify, locate and produce for inspection at the nearest police station within 24 hours any records kept by the licensee that correspond to particular goods kept by the licensee,
  - (c) to identify, locate and produce for inspection at the nearest police station within 24 hours any goods kept by the licensee that correspond to particular records kept by the licensee,
  - (d) to reveal immediately the whereabouts of any goods or records referred to in paragraph (b) or (c),
  - (e) to produce the licence for inspection at the nearest police station within 24 hours.
- (3) An authorised officer may require the promoter of a market:
- (a) to produce for inspection at the nearest police station within 24 hours any record required to be kept by the promoter under this Act, or
  - (b) to reveal the whereabouts of any such records.
- (4) An authorised officer who is not a police officer may, instead of requiring under this section that any matter or thing be produced at a police station, require its production at a specified office of the Department of Fair Trading, being the nearest such office to, and within the prescribed distance from, the place where the requirement was imposed.

- (5) In the case of a record that is electronically stored, a provision of this section conferring power on an authorised officer to compel production of the record for inspection empowers the officer, for the purpose of exercising that power:
  - (a) to view the record and to copy or take extracts from it by electronic means, or
  - (b) to require that it be reproduced in hard copy, or copied on to computer diskette or reduced to some other portable form suitable for removal and capable of reproducing the record for viewing.
- (6) A person must comply with a requirement made of the person under this section.  
Maximum penalty: 50 penalty units.

### **18 Seizure of records**

- (1) An authorised officer may take temporary possession of any record produced to the officer under this Act for the purpose of making copies or notes of some or all of it.
- (2) When possession of a record is taken under this section, a receipt is to be issued for it at the time it is taken and, as soon as practicable thereafter, the record or a copy of it must be returned to the person from whom it was taken.

### **19 Duty to report suspicious goods**

- (1) A licensee, and any employee of a licensee, who suspects for any reason that goods in the custody of the licensee or employee in the course of the licensee's business, or goods that are offered to the licensee or employee for sale or pawn, may have been stolen or otherwise unlawfully obtained must without delay inform an authorised officer of the cause of that suspicion.  
Maximum penalty: 50 penalty units.
- (2) If the licensee or employee is aware that the unique identifier of the goods has been removed, obliterated, defaced or altered, the licensee or employee is presumed (for the purposes of this section) to suspect that the goods may have been stolen.
- (3) In this section, **unique identifier** of goods means any numbers, letters or symbols that are marked on or attached to the goods as a permanent record so as to enable the goods to be distinguished from similar goods.

### **20 Inspection of goods**

- (1) An authorised officer may, at any reasonable time, enter any premises where a licensed business is conducted and inspect goods kept at the premises.
- (2) An authorised officer may, at any reasonable time, enter any storage premises used in connection with a licensed business and inspect any goods there, and for that purpose may require a person apparently in charge of the storage premises to open

them.

- (2A) For the purpose of inspecting goods kept at any premises referred to in subsection (1) or (2), an authorised officer may open any unlocked cupboard, drawer, container or other form of storage found at the premises, and may require a person apparently in charge of the premises to open any form of storage (including a safe) that is locked.
- (3) In exercise of the power conferred by this section, the authorised officer may enter the premises concerned in company with a person claiming to be the true owner of any goods believed to be kept on the premises, or with any technical expert, and may take photographs of any goods found there and tender them for inspection by the person accompanying the officer.
- (4) A person must not fail to comply with a requirement under this section.

Maximum penalty: 50 penalty units.

## **21 Retention of goods**

- (1) A licensee:
  - (a) must keep all second-hand goods purchased or received in the course of the licensed business for a period of 14 days on premises nominated or otherwise notified under section 12 or 12A as business premises or at such other places as may be determined by or in accordance with the regulations, and
  - (b) must not alter the form of the goods or dispose of them in any way, or allow them to be redeemed or part with possession of them, during that period.

This subsection does not apply to such goods, or in such circumstances, as the regulations may prescribe.

- (2) An authorised officer who has reasonable grounds to suspect that goods in the possession of a licensee have been stolen or otherwise unlawfully obtained may, by a notice specifying the goods, prohibit the licensee from altering the form of the goods or disposing of them in any way, or allowing them to be redeemed, or parting with possession of them, for a period of 56 days after service of the notice.
- (3) A notice under subsection (2) may be reissued once for a further period of 56 days commencing on the expiry of the first notice.
- (4) A licensee must comply with this section and with any notice under this section, and must see to it that no employee of the business does what this section or such a notice prohibits the licensee from doing.

Maximum penalty: 50 penalty units.

## **22, 23 (Repealed)**

## **24 False or misleading information**

A person must not, in purported compliance with a requirement under this Act to furnish information, make or furnish any statement that the person knows is false or misleading.

Maximum penalty: 50 penalty units.

## **25 Obstructing authorised officer**

A person must not delay, obstruct or otherwise hinder an authorised officer in the performance of the officer's functions under this Act.

Maximum penalty: 50 penalty units.

## **26 Penalty notices**

- (1) An authorised officer to whom it appears that a person has committed any offence under this Act or the regulations, being an offence prescribed by the regulations for the purposes of this section, may serve a notice on the person to the effect that, if the person does not desire to have the matter determined by a court, the person may pay to the Commissioner of Police, within a time limited by the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (2) The notice may be served personally or by post.
- (3) Once the prescribed penalty is paid in compliance with the notice, no person is liable to any further proceedings for the alleged offence.
- (4) Payment of a penalty under this section is not to be regarded as an admission of liability for the purposes of, nor does it in any way affect or prejudice, any claim, action or proceeding arising out of the same occurrence.
- (5) For the purposes of this section, the regulations may prescribe different penalties for different prescribed offences, or for offences committed in different circumstances, but the penalty must in no case exceed the maximum penalty that a court could impose for the offence.
- (6) Nothing in this section limits the operation of any provision made by or under this or any other Act in relation to proceedings that may be taken in respect of offences.

## **27 Demerit points scheme**

- (1) If a licensee or any employee of a licensee:
  - (a) has been convicted of any offence prescribed by the regulations for the purposes of this section, or
  - (b) has paid a penalty pursuant to section 26 in respect of any such offence, or
  - (c) is a person against whom an order has been made under Division 4 of Part 3 of the

*Fines Act 1996* in respect of such an offence,

the Director-General may endorse, on a record kept in relation to the licensee, particulars of the offence, the penalty, the number of demerit points allocated to the offence and the date on which the offence is alleged to have been committed.

- (2) The number of demerit points to be allocated to an offence is the number prescribed by the regulations in relation to the offence.
- (3) In addition to any other grounds on which the Director-General may serve a notice under section 34, such a notice may be issued if the licensee incurs a total of 12 or more demerit points within any period of 3 years.
- (4) For the purposes of this section, any demerit points incurred in respect of an offence are to be taken to have been incurred on the date on which the offence was allegedly committed.
- (5) If the Director-General serves a notice under section 34 in accordance with this section, the demerit points on which that notice was grounded may not be considered as grounds for a further notice under that section.
- (6) A certificate that purports to be signed by an officer prescribed by the regulations and that certifies the number of demerit points accruing to a particular licensee in a particular period is evidence, in any proceedings, of the particulars certified in it.

## **Part 4 Special provisions relating to pawnbrokers**

### **28 Pawnbroker's record of pledges**

- (1) At the time possession of goods is taken under an agreement by which the goods are pawned, a record of the agreement must be made that complies with this section.
- (2) The record must include:
  - (a) a fair and reasonable description of the goods, including any serial number or other identifying number and any hallmark, inscription or engraving appearing on the goods, and
  - (b) the total amount lent on the goods, together with the rate of interest charged by week, month, or other period, as the case may be, and any other charges, and
  - (c) an equivalent annual interest rate, calculated in accordance with the regulations, and
  - (d) the name and residential address of the owner of the goods and of any agent through whom they are pawned, and
  - (e) the date of the pledge, and

- (f) any other particulars required by the regulations to be included.
- (3) No pledge is validly made unless the person pawning the goods signs the original record or, if the original record is kept in electronic form, signs a hard copy of the record and unless the document at the time of being signed contained all the particulars required by or under this Act to be included in it.
- (4) The original record, or hard copy, signed under subsection (3) must be retained for a period of 3 years after it was made.
- (5) An accurate and legible copy (a ***pawn ticket***) of any such record must be given to the person who pawned the goods at the time the record is made.
- (5A) A pawn ticket must incorporate or be accompanied by:
  - (a) a notice in the form prescribed by the regulations setting out rights and obligations of the person who pawned the goods, and
  - (b) a statement, in itemised form, of:
    - (i) the types of fees and charges that are or may become payable, including those that are or may become deductible from the proceeds of the sale of the goods concerned, and
    - (ii) so far as they are known or ascertainable—the amounts of the fees and charges, and
    - (iii) so far as they are not known or ascertainable—the manner of calculating the amounts of the fees and charges, and
  - (c) a statement of the method or methods by which the goods may be sold if the goods are not redeemed, and
  - (d) a notice disclosing such other particulars or information as may be prescribed by the regulations.
- (5B) A pawn ticket must not contain any statement or claim, or be accompanied by any material that contains any statement or claim, that purports to exclude or modify or misrepresents any rights that a person has under this Act or the regulations, or under any other legislation, or under the common law.
- (5C) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to requiring the use by pawnbrokers of electronic methods of creation and storage of records that pawnbrokers are required to keep under this section.
- (6) (Repealed)

- (7) If this section is contravened in relation to any transaction, the pawnbroker by or on whose behalf the transaction was undertaken is guilty of an offence.

Maximum penalty: 50 penalty units.

## **29 Redemption of pawned goods**

- (1) Pawned goods may be redeemed at any time:
- (a) during the period of 3 months commencing on the date they were pawned, or
  - (b) during such longer period, commencing on that date, as may be agreed.
- (2) When the redemption period has expired, pawned goods may still be redeemed at any time before they are sold (or, in the case of goods consigned for auction, at any time before they are consigned for auction).
- (3) A provision in or condition of any agreement that purports to limit the period of 3 months referred to in subsection (1) (a), or that purports to limit or restrict the operation of subsection (2), is of no effect.
- (4) An agreement for the purposes of subsection (1) (b) may be made at any time before the pawned goods are sold.
- (5) A pawnbroker must not sell any goods before the redemption period has expired.
- (6) A pawnbroker must not permit any goods to be redeemed without taking such steps as the regulations may require in relation to ascertaining the identity of the person redeeming them or without complying with any other requirement prescribed by the regulations in relation to the redemption of those goods.

Maximum penalty: 50 penalty units.

## **30 Sale of forfeited pledges**

- (1) Pawned goods that are forfeit, if the principal lent on the goods was greater than the amount prescribed by the regulations, must be sold by public auction as soon as is practicable after the redemption period has expired.
- (1A) If the person to whom goods are sold at public auction does not pay the whole of the purchase price for those goods in accordance with the contract governing the sale at auction then the sale is taken to be void and the title to the goods is taken not to have passed.
- (1B) In such a case, the goods must again be sold at public auction.
- (2) A pawnbroker must not sell any goods or permit any goods to be sold in contravention of this section.

Maximum penalty: 50 penalty units.

(3) In this section:

**public auction** means an auction to which members of the public are invited by advertisement in a newspaper of general circulation in New South Wales or circulating in the district where the goods were pawned.

### **30A Fees and charges in respect of sale of unredeemed goods**

- (1) References in this Act to fees and charges in respect of the sale of pawned goods include references to fees and charges that may be deducted from the proceeds of the sale of the goods.
- (2) The fees and charges in respect of the sale of pawned goods that may be deducted from the proceeds of the sale of the goods include:
  - (a) the costs of or reasonably incidental to the sale, and
  - (b) any receipted expenses actually incurred for the repair of the goods for the purposes of their sale,but exclude:
  - (c) any fees or charges relating to the repair of the goods for the purposes of their sale, apart from receipted expenses actually incurred, and
  - (d) such kinds of fees or charges as are prescribed by the regulations as being excluded from this subsection.

### **31 Application of proceeds of sale**

- (1) If any pawned goods are sold for more than the full amount of the principal and interest that was due at the time of the sale, the surplus proceeds of the sale must, if claimed within the period of 12 months commencing with the date of the sale, be paid on demand (orally or in writing at the business premises of the pawnbroker, or elsewhere in any manner as agreed) to:
  - (a) the person by or for whom the goods were pawned, or
  - (b) any person claiming for or under that person, or
  - (c) that person's executor or administrator in the case of his or her death.
- (2) If subsection (1) is contravened, the pawnbroker to whom the goods were pawned is guilty of an offence.

Maximum penalty: 50 penalty units.

**Note—**



The expression "surplus proceeds" is defined in section 3.

### **32 Pawnbroker not to purchase pawned goods**

- (1) Neither a pawnbroker nor an employee or person acting on behalf of a pawnbroker is permitted to buy goods that have been pawned to and are being sold by the pawnbroker.
- (2) In the case of a corporate pawnbroker, subsection (1) extends to apply to every director of the pawnbroker, as well as to the pawnbroker, its employees and persons acting on its behalf.
- (3) The title conveyed by a sale in contravention of this section is not valid against the owner of the article.
- (4) If a person purports to purchase an article in contravention of this section, the pawnbroker to whom the goods were pledged, and that person, are each guilty of an offence.

Maximum penalty: 50 penalty units.

### **32A Interest charges**

- (2) Payment of an interest charge in respect of a period (whether of one month or any other duration) may be made, by or on behalf of the person who pawned the goods, at any time during business hours during that period.
- (4) A pawnbroker is guilty of an offence if the pawnbroker refuses to accept or retain payment of interest charges as permitted by subsection (2).

Maximum penalty: 50 penalty units.

### **32B Interest charges and other charges after redemption period**

- (1) Interest is not chargeable in respect of any period after the end of the redemption period in relation to any pawned goods.
- (2) No special fee or charge is payable for the redemption of pawned goods after the end of the redemption period, and fees and charges in respect of the safekeeping of the pawned goods must not be at a higher rate after the end of the redemption period than before.
- (3) A pawnbroker is guilty of an offence if the agreement by which goods are pawned contains a provision or condition for the charging of interest in contravention of subsection (1) or (2).
- (4) A pawnbroker is guilty of an offence if the pawnbroker charges interest in contravention of subsection (1) or accepts payment of any such interest.

- (5) A pawnbroker is guilty of an offence if the pawnbroker imposes a special fee or charge, or a fee or charge at a higher rate, in contravention of subsection (2) or accepts payment of any such fee or charge.

Maximum penalty: 50 penalty units.

### **32C Signage to be displayed**

A licensee must cause a notice specifying the rate or rates of interest charged and any other fees and charges, in such form and of such appearance as may be prescribed by the regulations, to be displayed in a prominent position in each of the business premises of the licensee to which the public has access so that the notice is clearly visible to the public.

Maximum penalty: 50 penalty units.

## **Part 4A Disputes as to ownership of goods and restoration of goods**

### **32E Definitions**

- (1) In this Part:

***claimant*** means a claimant referred to in section 32F.

***licensee*** includes a former licensee.

***restoration notice*** means a restoration notice referred to in section 32F.

***Tribunal*** means the Consumer, Trader and Tenancy Tribunal established by the [Consumer, Trader and Tenancy Tribunal Act 2001](#).

- (2) For the purposes of this Part, criminal proceedings are commenced by the laying or filing of an information, complaint or charge, or the issuing and filing of a court attendance notice, in relation to the offence concerned, or in such other manner as is referred to in the regulations.

### **32F Notice of entitlement to goods**

- (1) **Application of section** This section applies where:

- (a) a person (in this Part called the ***claimant***) alleges, in a written statement signed by the person and given to a police officer, that any goods in the possession of a licensee and obtained by the licensee in the course of the conduct of a licensed business:
- (i) are the property of the claimant, and
  - (ii) have been stolen or otherwise unlawfully obtained from the claimant or have been pawned or sold to the licensee without the claimant's authority, and

- (b) the theft or other activity referred to in paragraph (a) (ii) has been reported to a police officer on an earlier occasion, and
  - (c) the claimant produces to a police officer written documentary evidence, or a statutory declaration made by the claimant, that appears to the officer to contain evidence or statements acceptable to the officer for the purpose of substantiating the claimant's title to the goods, and
  - (d) the police officer to whom the evidence or statutory declaration is produced has no reason to suspect that any of the evidence or statements is false or misleading in a material particular.
- (2) **Restoration notice** A police officer may serve on the licensee a notice (in this Part called a **restoration notice**) stating that the goods must be delivered to the claimant within the required period unless within that period the licensee commences proceedings under section 32G or other civil or criminal proceedings have been commenced and are pending in relation to the goods.
- (3) The restoration notice must contain such particulars and information, and be accompanied by such material, as may be prescribed by the regulations.
- (4) **Duty of licensee** The licensee must, within the required period:
- (a) deliver the goods to the person specified in the restoration notice or, if the licensee is unable to do so because the licensee cannot locate the person or for any other reason, to a police officer, or
  - (b) make an application under section 32G in relation to the goods,
- unless other civil or criminal proceedings have been commenced and are pending in relation to the goods.
- Maximum penalty: 50 penalty units.
- (5) If:
- (a) a licensee does not comply with subsection (4) in relation to the goods because other proceedings are pending in relation to the goods, and
  - (b) the other proceedings are discontinued before judgment is given,
- subsection (4) applies to the goods as from the date on which the proceedings are discontinued.
- (6) **Restoration notice ceasing to be operative** Subsection (4) ceases to apply to goods if the restoration notice ceases to be operative.
- (7) The regulations may make provision for or with respect to prescribing circumstances in which a restoration notice ceases to be operative or prescribing procedures

compliance with which renders a restoration notice inoperative.

(8) **Definition** In this section:

**required period** means whichever of the following is relevant:

- (a) the period of 28 days starting with the day on which a restoration notice is served on a licensee, or
- (b) the period of 28 days starting with the day on which the other proceedings referred to in subsection (5) are discontinued.

### **32G Proceedings before Tribunal for recovery of goods**

(1) **Application to Tribunal** A licensee may apply to the Tribunal for an order under this section where a restoration notice has been served on the licensee in relation to any goods in the possession of the licensee.

**Note—**

Section 24 of the *Consumer, Trader and Tenancy Tribunal Act 2001* makes provision for applications to the Tribunal.

(2) **Production of goods and appearance of interested persons** The Tribunal may make an order requiring production of the goods and the appearance before the Tribunal of any person who appears to the Tribunal to have a claim of ownership of, or rights in respect of, the goods.

(3) **Order of Tribunal** The Tribunal may:

- (a) make an order for the delivery of the goods to the person who appears to be the rightful owner of the goods, or
- (b) if the rightful owner cannot be ascertained or located—make any order with respect to the goods the Tribunal thinks fit, or
- (c) if the goods appear to have been pawned to the licensee by the rightful owner or with the rightful owner's authority—make an order for the delivery of the goods to the licensee.

(4) **Alternative order** Instead of making an order under subsection (3) (a), the Tribunal may:

- (a) make an order for the delivery of the goods to the person who appears to be the rightful owner of the goods, but giving the licensee the option of retaining the goods and paying that person the value of the goods, as assessed by the Tribunal, or
- (b) make an order for payment to the person who appears to be the rightful owner of the value of the goods, as assessed by the Tribunal.

(5) **Provisions relating to orders** Relief under subsection (3) (a) is at the discretion of the

Tribunal, but the designated rightful owner may choose between the forms of relief under subsection (4).

- (6) If the Tribunal makes an order under subsection (4) (a), the Tribunal may, on the application of the designated rightful owner, subsequently make an order for the delivery of the goods to the designated rightful owner without giving the licensee the option of retaining the goods and paying their assessed value.
- (7) **Order for payment of money** The Tribunal may make an order for the payment (as compensation or otherwise) to or by the licensee of an amount of money as determined by the Tribunal at or by the time stated in the order.
- (8) Without limiting subsection (7), the Tribunal may make an order under that subsection for the payment to the licensee, by the person by or on whose behalf the goods were pawned, of the whole or a part of the amount of money determined by the Tribunal to be payable to the licensee had the goods been redeemed at a particular time.
- (9) **Claimant is party to proceedings** The claimant is the respondent in proceedings for an order applied for under this section. This subsection does not affect any power of the Tribunal to direct that a person be joined as an applicant or respondent in relation to the proceedings.
- (10) **Enforcement of orders** Regulations under the *Consumer, Trader and Tenancy Tribunal Act 2001* may make provision for or with respect to the manner in which an order under this section may be enforced or satisfied. This subsection does not affect any power of enforcement conferred by or under that Act and does not affect any power to make regulations under that Act.
- (11) **Definition** In this section:  
  
***designated rightful owner*** means the person who appears to the Tribunal to be the rightful owner.

### **32H Retention of goods covered by restoration notice**

- (1) If a restoration notice is served on a licensee in possession of the goods to which the notice relates, the licensee must not:
  - (a) alter the form of the goods, sell them or grant any rights over them, or
  - (b) cause or allow them to be altered, sold or have any rights granted over them, or
  - (c) cause or allow them to be redeemed or removed,except:
  - (d) with the consent of the claimant, or
  - (e) in accordance with the regulations.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) ceases to have effect in relation to the goods concerned:
  - (a) when the goods are delivered to the claimant, or
  - (b) when the restoration notice ceases to be operative, or
  - (c) when the Tribunal or a court makes an order relating to the delivery of the goods or the ownership or entitlement to possession of the goods or an order declaring that the goods are not the property of the claimant.
- (3) This section does not affect the operation of section 21.

### **32I Role of courts**

- (1) Local Courts do not have jurisdiction to determine an action referred to in section 28A of the *Local Courts (Civil Claims) Act 1970* brought by a claimant in connection with goods that are in the possession of a licensee and to which a restoration notice relates, unless:
  - (a) the regulations otherwise provide, or
  - (b) the Tribunal does not have jurisdiction to hear and determine an application for an order under section 32G in relation to the goods, or
  - (c) the Tribunal has directed that proceedings to hear and determine such an application be stayed on the ground that the Tribunal does not have jurisdiction to make an order as sought because of monetary limits on the jurisdiction of the Tribunal.
- (2) If proceedings for the recovery of pawned goods are commenced in any other court, that other court may, without affecting any power vested in it, hear and determine the proceedings in accordance with that section.

### **32J Role of authorised officers**

- (1) An authorised officer may act on behalf of a claimant for the purposes of this Part.
- (2) It is the duty of an authorised officer (other than a police officer) to whom a claimant resorts for assistance in pursuance of the claimant's rights under this Part or otherwise in connection with any goods in the possession of a licensee to assist the claimant to the greatest practicable extent by acting on his or her behalf as permitted by this Part and by the exercise, in pursuit of the claimant's rights, of any other powers conferred on the officer by or under this Act.
- (3) The regulations may make provision for or with respect to the handling and disposition of goods delivered to an authorised officer under section 32F (4).

### **32K False or misleading allegation or evidence**

- (1) A person must not make an allegation to a police officer for the purposes of section 32F knowing that, or being reckless as to whether or not, the allegation is false or misleading in a material particular.
- (2) A person must not produce to a police officer any evidence for the purposes of section 32F that the person knows is false or misleading in a material particular.

Maximum penalty: 50 penalty units.

### **32L Signage to be displayed**

A licensee must cause a notice relating to the operation of this Part in the form and of the appearance prescribed by the regulations to be displayed in a prominent position in each of the business premises of the licensee to which the public has access so that the notice is clearly visible to the public.

Maximum penalty: 20 penalty units.

### **32M Directions by court for restoration of goods**

- (1) A court that, in any criminal proceedings:
  - (a) finds that any goods have been stolen or that possession of any goods has been taken unlawfully, and
  - (b) believes that the goods are in the possession of a licensee,must, unless it is satisfied in a particular case that there is good reason why such a direction should not be given, by order direct the Commissioner of Police or a police officer specified in the direction to take the goods into police custody.
- (2) It is the duty of the Commissioner of Police or police officer concerned to comply with the direction without delay.
- (3) Part 2 of Chapter 7 of the *Criminal Procedure Act 1986* applies to the goods of which possession is taken in compliance with the direction of a court under this section.
- (4) The power conferred on a court by this section is in addition to any other power or discretion vested in it.

#### **Note—**

Section 126 of the *Criminal Procedure Act 1986* also empowers courts to order restoration of property in criminal proceedings.

## **Part 5 Revocation, suspension and variation of licences**

### **33 Revocation of licence as a consequence of offence**

- (1) The finding of a court that a licensee is guilty of an offence under any of sections 188, 189 and 189A of the *Crimes Act 1900* (which deal with receiving stolen goods) revokes the licensee's licence, unless the court making the finding determines that, in the particular circumstances of the case, the licence ought to remain in force.
- (2) A court by which a licensee is convicted of an offence involving dishonesty (other than an offence referred to in subsection (1)) or an offence against this Act may, in addition to any other penalty imposed for the offence, by order revoke or suspend the licensee's licence.
- (3) A court by whose conviction or order a licence is revoked may specify a period during which the licensee cannot be granted a further licence, and such a specification precludes the grant of a licence during that period.
- (4) A court by whose conviction or order a licence is revoked or suspended may, where the licensed business consisted of or included pawnbroking, make such order as it thinks fit in relation to the redemption of goods held in the course of that business.
- (5) A court may, if it thinks fit, defer the operation of any order under this section pending an appeal against the relevant conviction.
- (6) Without affecting any other right of appeal, the order of a court under this section is appellable as if it were, or were part of, an order imposing a penalty in respect of the relevant conviction.
- (7) The registrar or clerk of a court by which an order has been made under this section is required without delay to give notice of the order to the Director-General.

### **33A Duty of licensee to report certain offences**

- (1) If a licensee is convicted in New South Wales or elsewhere of an offence involving dishonesty, the licensee must notify the Director-General in writing of the conviction within the period of 28 days commencing with the date of the conviction.
- (2) If an employee of a licensee is convicted of an offence involving dishonesty, the licensee must notify the Director-General in writing of the conviction within the period of 28 days commencing with the date on which the licensee became aware of the conviction.
- (3) It is a defence if the licensee establishes that the licensee believed on reasonable grounds that the Director-General was already aware of the details of the conviction.

Maximum penalty: 50 penalty units.



### **34 Notices to show cause why licence should not be revoked**

(1) The Director-General may serve a notice on any licensee:

- (a) who has become bankrupt or, in the case of a corporate licensee, which is in the course of being wound up, or is under official management or has entered into a scheme of arrangement with its creditors, or
- (b) who, in the opinion of the Director-General, made false or misleading statements in or in connection with an application for the licence, or an application for renewal of the licence, that the licensee obtained, or
- (c) who, or one of whose employees, has contravened a provision of this Act or any other Act administered by the Minister, or the regulations under any such Act, whether or not the licensee or employee has been prosecuted for or convicted of an offence in respect of the contravention, or
- (c1) who, or one of whose employees, has been convicted of an offence involving dishonesty that was recorded since the licensee's licence was issued or last renewed (whichever is the later), or
- (d) who has employed or continues to employ, in connection with the licensee's business, a person who the licensee knows is disqualified by this Act from holding a licence, or
- (e) being a corporate licensee, one of whose directors is disqualified from holding a licence, or
- (f) who the Director-General considers, in light of evidence acceptable to the Director-General, is probably receiving or dealing in stolen goods, or
- (g) who has incurred a number of demerit points as referred to in section 27 (3), or
- (h) who has failed to comply with a condition of the licence, or
- (i) who the Director-General considers, in light of evidence acceptable to the Director-General, is carrying on the licensed business in a dishonest or unfair manner, or
- (j) who in any other manner has become a disqualified person,

requiring the licensee to show cause, within a time (not less than 14 days) limited by the notice, why the licensee's licence should not be revoked.

(2) A notice issued in accordance with subsection (1) (c), (c1), (d) or (e) must name the employee or director concerned.

(3) By way of example of the operation of subsection (1) (f), the Director-General may consider that a licensee:

- (a) in whose custody stolen goods are found, or
  - (b) who, in a particular length of time, buys or takes as security from the same person (not being another licensee) one or more types of household item in quantities exceeding what an ordinary householder might reasonably be expected to have acquired during that length of time,
- is probably receiving or dealing in stolen goods.

### **35 Licensee may adduce evidence**

A licensee to whom a notice under section 34 is addressed may, within the time limited by the notice, make a written submission and adduce evidence in relation to the matters raised by the notice.

### **36 Disciplinary action by Director-General**

- (1) The Director-General may undertake such inquiry and investigation in relation to the matters to which a notice under section 34 relates, and any submissions made and evidence adduced by or on behalf of the licensee in relation to those matters, as the Director-General thinks fit. If, after such inquiry and investigation, the Director-General is satisfied on the balance of probabilities that the ground of any notice under section 34 has been substantiated against the licensee, the Director-General may:
  - (a) revoke the licence, or suspend it for such portion of the remainder of its duration as the Director-General thinks fit, or
  - (b) attach one or more conditions to it, or
  - (c) determine that the licence is not to be renewed, or that a licence is not to be granted to the same licensee in future, unless one or more conditions are attached to it on grant or renewal.
- (2) Without limiting the generality of subsection (1) (b), the Director-General may specify, as a condition to be imposed in accordance with that paragraph in respect of the licence of a corporate licensee, that a particular director or officer of the corporation must not (either for a specified period or permanently, as the Director-General may determine) be concerned in the management of the licensed business.
- (3) The Director-General, on revoking a licence, may specify a period during which the licensee cannot be granted a further licence, and such a specification precludes the grant of a licence during that period.
- (4) (Repealed)
- (5) The Director-General may make orders requiring the licensee to pay such amounts as the Director-General determines by way of costs in relation to disciplinary proceedings under this section that resulted in action being taken in respect of the licensee's

licence. Such an order is to be filed in the Consumer, Trader and Tenancy Tribunal and is enforceable in the same way as a judgment or order of the Tribunal.

### **36A Disciplinary action against former licensees**

- (1) **Service of show cause notices on former licensees (application of section 34)** The provisions of section 34 apply to a former licensee in the same way as they apply to a licensee, but not in respect of matters that occurred or came into being after the person ceased to be a licensee.
- (2) However, a notice may only be served under section 34 (as applied by this section) on a person who has held a licence within the period of 12 months ending with the date of service of the notice.
- (3) **Former licensee may adduce evidence (application of section 35)** The provisions of section 35 apply to a former licensee on whom:
  - (a) a notice has been served under section 34 when the person was a licensee, or
  - (b) a notice has been served under section 34 (as applied by this section) after the person ceased to be a licensee,in the same way as they apply to a licensee.
- (4) **Disciplinary action by Director-General against former licensee (provisions corresponding to section 36)** The Director-General may undertake such inquiry and investigation in relation to the matters to which any such notice relates, and any submissions made and evidence adduced by or on behalf of the former licensee in relation to those matters, as the Director-General thinks fit.
- (5) If, after such inquiry and investigation, the Director-General is satisfied on the balance of probabilities that the ground of any such notice has been substantiated against the former licensee, the Director-General may make either or both of the following determinations:
  - (a) a determination that a licence is not to be granted to the former licensee for a specified period,
  - (b) a determination that a licence is not to be granted to the former licensee, or that a licence held by the former licensee is not to be renewed, in future unless one or more specified conditions are attached to it.
- (6) A determination under subsection (5) (a) precludes the grant of a licence to the former licensee for the specified period.
- (7) **Continuation under this section if person ceases to be licensed** If:
  - (a) a notice has been served under section 34 on a person who was a licensee when

the notice was served, and

- (b) the person ceases to be licensed before the matters raised by the notice are finalised,

the matters may continue to be dealt with under this Part, as if anything done or omitted to be done under sections 34–36 in relation to the person as a licensee had been done or omitted to be done under this section in relation to the person as a former licensee.

### **36B Decision to take no further action**

The Director-General may, at any stage of a matter that is the subject of consideration by the Director-General under this Part, determine to take no further action in respect of the matter, whether or not the matter is the subject of a notice under section 34 (or that section as applied by section 36A) and whether or not the Director-General determines that the ground of any such notice has been substantiated.

### **37 Surrender of licence**

When a licence is revoked, the licensee must immediately surrender it to the Director-General.

Maximum penalty: 10 penalty units.

## **Part 6 Miscellaneous**

### **38 Dealings that give rise to presumption of carrying on business**

- (1) In any proceedings under or arising from this Act, a person who, on more than 6 days in any period of 12 months, sold any second-hand goods, is presumed to be carrying on a business of buying or selling second-hand goods, but the presumption may be displaced by evidence that satisfies the court to the contrary.
- (2) For the purposes of subsection (1), it does not matter whether the second-hand goods were sold from a shop, market stall or other premises occupied permanently, regularly or on occasion, or from residential premises, or from a vehicle or water-going vessel or by an itinerant.
- (3) This section operates without prejudice to any other means of proving, for the purposes of any proceedings, that a person is carrying on a business of buying or selling second-hand goods.

### **38A Redemption of pawned goods if licence revoked, suspended, surrendered or not renewed**

- (1) If a licence is:
  - (a) revoked or suspended by the Director-General, or

(b) surrendered or not renewed,

the Director-General may, where the licensed business concerned consisted of or included pawnbroking, make such order as the Director-General thinks fit in relation to the redemption of the goods held in the course of that business.

- (2) Without limiting subsection (1), an order under this section may require a specified person to cause possession of goods to be given to a person entitled to redeem them at specified premises.
- (3) The specified person is, by force of this section, empowered:
- (a) to comply with the order even though the person is not or is no longer authorised to conduct a business consisting of or including pawnbroking at the specified premises, or
- (b) to comply with the order even though the person is not or is no longer authorised to conduct a business consisting of or including pawnbroking anywhere in the State.
- (4) An order under this section has effect despite any other provision of this Act or the regulations.
- (5) A person must not, without reasonable excuse, fail to comply with an order made under this section.

Maximum penalty: 50 penalty units.

### **39 Reviews of decisions of Director-General**

- (1) An applicant for a licence or for renewal of a licence whose application has been refused may apply to the Administrative Decisions Tribunal for a review of the refusal.
- (1A) On an application under subsection (1) for a review of a decision of the Director-General refusing to grant a licence to a person because the person is disqualified under section 8A (2) (a) or (3) (a):
- (a) the Administrative Decisions Tribunal may determine that the fact that the person committed the offence concerned should be ignored on one or more of the grounds referred to in section 8A (4), and
- (b) the licence may be granted accordingly.
- (2) A licensee whose licence has been revoked or suspended by the Director-General, or on whose licence a condition has been imposed (whether on grant or renewal of the licence or otherwise) may apply to the Administrative Decisions Tribunal for a review of the revocation, suspension or imposition.

#### **40 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court.
- (2) Any such proceedings may be commenced at any time within 12 months after the date on which the offence was allegedly committed.

#### **40A Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each executive officer of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the act or omission constituting the offence.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.
- (3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against the provision is actually committed.

#### **41 Forfeiture of goods dealt with by unlicensed persons**

- (1) A court by which a person is convicted of an offence under section 6 or 7 may, in addition to any other penalty imposed for the offence, make either or both of the following orders:
  - (a) an order that any specified goods to which the offence relates be forfeited to the Crown,
  - (b) an order that the person pay to the Crown an amount assessed by the court to be an amount equal to the proceeds derived by the person from the commission of the offence.
- (2) Before making such an order, the court may require notice to be given to, and may hear, such persons as the court thinks fit.
- (3) For the purpose of making an order against a person under subsection (1) (b), the court may determine that proceeds derived by the person from the commission of the offence include the value, as assessed by the court, of an interest in real or personal property acquired by the person by the application of such proceeds.
- (4) Without affecting any other right of appeal, an order under subsection (1) (a) in relation to any goods is appealable at the suit of any person who has an interest in the goods:

- (a) in the case of a person convicted of the offence, in the same manner as if the order were, or were part of, an order imposing a penalty in respect of the offence, or
  - (b) in any other case, in the same manner as if the person had been convicted of an offence to which this section applies and the order were, or were part of, an order imposing a penalty in respect of the offence.
- (5) Without affecting any other right of appeal, an order under subsection (1) (b) is appealable in the same manner as if it were, or were part of, an order imposing a penalty in respect of the offence.
  - (6) The court to which an appeal is made against an order under subsection (1) (a) may, pending the hearing and determination of the appeal, make such orders as it thinks fit for the custody of the goods the subject of the order.
  - (7) On appeal, an order under this section may be confirmed, revoked or varied.
  - (8) An order under subsection (1) (b) may, by leave of the court by which it was made, be enforced, irrespective of the amount ordered to be paid, as if it were a judgment in a civil matter given by that court.

#### **42 Provision of information**

- (1) It is the duty of a police officer in charge of any record or information, access to which by the Director-General is reasonably necessary for the proper exercise of any function of the Director-General under this Act, to supply that record or information to the Director-General on request, and every police officer is by this section authorised to do so.
- (2) It is the duty of the Director-General to supply to the Commissioner of Police, or any police officer or person employed in the Police Service who is authorised by the Commissioner of Police for the purposes of this section, such information relating to licences and other matters as may be reasonably necessary for the performance by police officers of their duties under this Act.

#### **43 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. In particular, regulations may be made for or with respect to the following:
  - (a) the rights and obligations of the parties and the procedure to be followed when pawn tickets are lost, stolen or destroyed,
  - (a1) the documents or information that must accompany an application for the issue or renewal of a licence,

- (b) the replacement of licences that are lost, stolen or destroyed,
  - (c) the recognition of licences issued in other Australian jurisdictions,
  - (c1) the carrying on of a business as a second-hand dealer or pawnbroker or both,
  - (d) the carrying on of a licensed business by legal personal representatives or trustees of the licensee,
  - (e) the electronic transmission, between the Director-General and the Commissioner of Police, of information relevant to the administration of this Act,
  - (f) the electronic transmission, by a pawnbroker or licensee to the Commissioner of Police, of information required by or under this Act to be furnished to the Commissioner,
  - (g) fees chargeable for any service provided by the Director-General under this Act or the regulations,
  - (h) the service of notices for the purposes of this Act or the regulations,
  - (i) exemptions from the operation of this Act or specified provisions of this Act, either unconditionally or subject to conditions.
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.
- (3) The regulations may specify monetary limits on the jurisdiction of the Consumer, Trader and Tenancy Tribunal to hear and determine applications under section 32G or on the jurisdiction of the Tribunal to make orders under that section, whether or not by reference to:
- (a) the value of the goods concerned (as assessed in accordance with the regulations), or
  - (b) in the case of pawned goods—the amount of the principal lent on the goods, or
  - (c) an amount that is the subject of a proposed order of the Tribunal.
- Any such limits have effect despite anything in any other Act or regulation under any other Act.
- (4) Section 4 (2) does not limit the power to make regulations under subsection (1) (i) of this section.

#### **44 Disclosure or use of personal information by licensees and others**

- (1) A person who is or was involved in the management of a licensed business must not disclose any information, about a person or a person's affairs, obtained under this Act



or the regulations in the course of conducting the licensed business, unless that disclosure is made:

- (a) with the consent of the person from or about whom the information was obtained, or
- (b) to any other person involved in the management of the licensed business, or
- (c) in connection with the administration or execution of this Act, or
- (d) to a regulatory officer or law enforcement officer, for the purpose of assisting the officer in the exercise of the officer's functions, or
- (e) for the purposes of any legal proceedings, or
- (f) as authorised by regulations made for the purposes of this subsection, or
- (g) as otherwise authorised by or under this Act, or
- (h) with other lawful excuse.

(2) This section is in addition to, and does not affect, any other law relating to the confidentiality or disclosure of information.

(3) For the purposes of this section, a person is or was ***involved in the management of a licensed business*** if the person is or was:

- (a) the licensee in respect of the licensed business, or
- (b) an employee of the licensee, or
- (c) in the case of a corporate licensee—an executive officer of the corporation, or
- (d) a person of a class or description prescribed by the regulations.

(4) In this section:

***law enforcement officer*** means:

- (a) a member of NSW Police, the Australian Federal Police or the police or police force of another State or Territory, or
- (b) the Director of Public Prosecutions, or a Crown Prosecutor, of the State, the Commonwealth or another State or Territory, or
- (c) any other person, or officer of an authority, responsible for the investigation or prosecution of offences under laws of the State, the Commonwealth or another State or Territory.

***regulatory officer*** means an officer or employee of a government agency (including

the government of a jurisdiction within or outside Australia) exercising functions under:

- (a) an enactment with respect to fair trading, or
- (b) an enactment that provides for the issue of licences or other authorities in connection with the undertaking of an activity regulated under the enactment.

Maximum penalty: 50 penalty units.

#### **44A No contracting out of Act**

- (1) A provision in or condition of an agreement or arrangement is of no effect to the extent that it would operate to exclude, modify or restrict the operation of this Act or any provision of this Act.
- (2) A licensee must not enter into an agreement or arrangement if a provision in or condition of the agreement or arrangement would (but for subsection (1)) operate to exclude, modify or restrict the operation of this Act or any provision of this Act.

Maximum penalty: 50 penalty units.

#### **44B No contracting out of liability for loss or damage**

A provision in or condition of an agreement or arrangement (entered into in the course of a licensed business) in relation to the liability of the licensee for the loss of, or damage to, goods in the possession of but not owned by the licensee is of no effect if it is less favourable to the owner of the goods than the common law.

#### **45 Savings and transitional provisions**

Schedule 2 has effect.

#### **46 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

### **Schedule 1 (Repealed)**

## Schedule 2 Savings and transitional provisions

(Section 45)

### Part 1 General

#### 1 Definition

In this Schedule:

**repealed Acts** means:

- the *Pawnbrokers Act 1902*, and
- the *Second-hand Dealers and Collectors Act 1906*, and
- the *Hawkers Act 1974*.

#### 2 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

    this Act

    the *Pawnbrokers and Second-hand Dealers Amendment Act 1998*

    the *Pawnbrokers and Second-hand Dealers Amendment Act 2002*

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done, or omitted to be done, before the date of its publication.

### Part 2 Provisions consequent on enactment of this Act

#### 3 Saving of existing licences

- (1) A licence under any of the repealed Acts that was in force immediately before the commencement of section 44 is taken to be a licence under this Act and remains in

force, subject to this Act and to any limitations and conditions that were imposed on it under any of the repealed Acts, for the remainder of the term for which it was issued.

- (2) Nothing in this clause saves a licence from revocation or cancellation in accordance with any of the repealed Acts as a result of proceedings pending at the commencement of this clause.

#### **4 Applications pending**

An application for a licence made under any of the repealed Acts and still pending at the commencement of section 44 is to be referred to the Director-General and dealt with as an application for a licence under this Act, unless withdrawn by the applicant. An applicant wishing his or her application to stand must, however, be allowed to amend the application in order to vary the classes of business to be authorised by the licence.

#### **5 Refund of application fees**

If an application for a licence made under any of the repealed Acts and still pending at the commencement of section 44 was made for the purpose of obtaining a licence that authorised the carrying on of a business that, after that commencement, may be carried on without a licence, the applicant is entitled to be refunded the amount of the application fee.

#### **6 Records of existing licences**

Records kept by the police and Local Courts administration in relation to licences under any of the repealed Acts are to be supplied to the Director-General without delay following the commencement of section 44.

### **Part 3 Provisions consequent on enactment of [Pawnbrokers and Second-hand Dealers Amendment Act 1998](#)**

#### **7 Definition**

In this Part:

**amending Act** means the [Pawnbrokers and Second-hand Dealers Amendment Act 1998](#).

#### **8 Existing applications not affected**

The amendments made to sections 9 and 10, and the inclusion of section 10A, by the amending Act, do not affect any application made but not determined before the commencement of Schedule 1 [1] to the amending Act.

#### **9 Existing licences not affected**

Section 12A (3) (as inserted by the amending Act) does not operate so as to impose a condition on a licence that was in force on the commencement of Schedule 1 [3] to the amending Act, but does apply to any later renewal of such a licence.

## 10 Existing records

The amendments made to sections 16 and 28 by the amending Act extend to records required to be kept before the commencement of the relevant amendments.

## 11 Retention of existing goods

- (1) The amendments made to sections 21 and 22 by the amending Act do not affect the validity of any notice issued under those sections before the commencement of the relevant amendment.
- (2) The amendment made to section 21 by Schedule 1 [7] to the amending Act extends to any goods sold or pledged to a licensee before the commencement of the amendment in respect of which a notice under that section has not been issued at that commencement.
- (3) The amendments made to section 22 by the amending Act extend to criminal proceedings in relation to any goods sold or pledged to a licensee before the commencement of the amendments.

## 12 Sale of forfeited pledges

Section 30 (as amended by the amending Act) extends to any goods pledged to a licensee before the commencement of the amendments to that section whether or not a public auction has been conducted in relation to those goods before that commencement. However, the amended section does not extend to any goods for which the purchase price set by a public auction has been paid as at that commencement.

## Part 4 Provisions consequent on enactment of **Pawnbrokers and Second-hand Dealers Amendment Act 2002**

### 13 Definition

In this Part:

**amending Act** means the *Pawnbrokers and Second-hand Dealers Amendment Act 2002*.

### 14 Licences

Except as otherwise provided by the regulations, an amendment made by the amending Act does not affect any licence in force immediately before the commencement of the amendment, but the licence and the licensee are subject to this Act as amended by the amending Act.

### 15 Pawn agreements

Except as otherwise provided by this Part or the regulations, an amendment made by the amending Act does not apply to or in respect of a pawn agreement entered into before the commencement of the amendment.

## **16 Second-hand goods**

Except as otherwise provided by this Part or the regulations, an amendment made by the amending Act does not apply to or in respect of goods purchased by a licensee before the commencement of the amendment.

## **17 Disputes as to ownership of goods (section 22 and Part 4A)**

- (1) Section 22, as in force before the date of its repeal by the amending Act, continues to apply to goods in respect of which a complaint was made under that section before that date, and so applies as if that section had not been repealed. However, that section does not apply in relation to a complaint made on or after that date.
- (2) Part 4A, as inserted by the amending Act, extends to goods obtained by a licensee before the date of repeal of section 22 by the amending Act, but not if that section applies to them because of subclause (1).

## **18 Dealings that give rise to presumption of carrying on business (amendment of section 38)**

- (1) In this clause:

**transition date** means the date on which the amendment to section 38 made by the amending Act commenced.

- (2) Section 38, as in force before the transition date, applies to any period of 12 months commencing before the transition date.
- (3) Section 38, as in force on and after the transition date, applies to any period of 12 months commencing on or after the transition date.

### **Note—**

Section 38 provides that a person who, on more than a particular number of days in any period of 12 months, sold any second-hand goods is presumed to be carrying on a business of buying or selling second-hand goods. The effect of clause 18 of this Schedule is that the number of days remains at 12 for any period of 12 months commencing before the transition date, and decreases to 6 for any period of 12 months commencing on or after the transition date.

## **19 Duty of licensee to report certain offences (section 33A)**

Section 33A as inserted by the amending Act does not apply to convictions recorded before the commencement of that section.

## **20 Disciplinary action (sections 34-36B)**

- (1) **Disciplinary action may continue in relation to existing show cause notices** Except as otherwise provided by this Part or the regulations, where a notice under section 34 was served before the commencement of an amendment to that section made by the amending Act:

- (a) the amendment does not affect disciplinary action being taken in respect of a matter to which the notice relates, and
  - (b) disciplinary action may accordingly continue despite the amendment.
- (2) **New show cause notices** Section 34 (1) (c), (c1) or (j) as inserted by the amending Act applies only to matters that occur or come into being after the commencement of the paragraph concerned, but extends to matters to which section 34 (1) (c) or (j) applied before that commencement.
- (3) **Former licensees** Section 36A as inserted by the amending Act does not apply to matters that occurred or came into being before the commencement of that section, except where that section applies by the operation of section 36A (7).
- (4) **Decision to take no further action** Section 36B as inserted by the amending Act extends to a matter in respect of which a notice under section 34 was served before the commencement of section 36B.

**21 Reference to section 23 of this Act in *Justices Legislation Repeal and Amendment Act 2001***

- (1) The reference in Schedule 2.162 [1] to the *Justices Legislation Repeal and Amendment Act 2001* to section 23 of this Act is to be read as a reference to section 32M as inserted by the amending Act.
- (2) If Schedule 2.162 [1] to the *Justices Legislation Repeal and Amendment Act 2001* commences before the commencement of section 32M, then section 32M (3) is amended by omitting “Part 6” and inserting instead “Part 2 of Chapter 7”.