

Hawkers Act 1974 No 23

[1974-23]



New South Wales

Status Information

Currency of version

Repealed version for 15 June 1995 to 29 April 1997 (accessed 2 May 2024 at 13:49)

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—

- **Repeal**

The Act was repealed by sec 44 (1) of the [Pawnbrokers and Second-hand Dealers Act 1996 No 13](#) with effect from 30.4.1997.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Hawkers Act 1974 No 23



New South Wales

An Act to provide for the licensing and control of hawkers; to repeal the *Hawkers and Pedlers Act 1901*; and for purposes connected therewith.

1 Name of Act

This Act may be cited as the *Hawkers Act 1974*.

2 Commencement

This Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3 Repeal and savings

- (1) The *Hawkers and Pedlers Act 1901* (in this section referred to as the **repealed Act**), is repealed.
- (2) Any application for a licence made under the repealed Act that has not been dealt with at the commencement of this Act may be dealt with as if this Act had not been passed.
- (3) Any licence granted under the repealed Act and in force immediately before the commencement of this Act, and any licence granted by the operation of subsection (2), shall be deemed to be a licence issued under this Act.

4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

boat includes vessel.

court means court of petty session.

goods does not include:

- (a) newspapers, books, pamphlets, periodicals or other printed publications,
- (b) fish, fruit, water, fuel, milk, vegetables or victuals, or

(c) agricultural produce.

licence means licence issued under this Act and any renewal of a licence.

vehicle includes cart, wagon, carriage, cycle, motor car, motor lorry, motor cycle, motor omnibus, caravan, trailer, aircraft and any other apparatus on wheels or skids upon which goods may be carried.

- (2) For the purposes of this Act, a person carries on business as a hawker if, otherwise than in a market or at a fair or in a house or shop occupied by the person, the person sells, or holds himself or herself out as being ready to sell, goods carried on his or her person, on an animal, in a boat or on a vehicle.

5 Unlicensed hawkers

Subject to this Act a person who is not the holder of a licence shall not carry on business as a hawker or hold himself or herself out as being ready to carry on business as a hawker.

Maximum penalty: 10 penalty units.

6 Application for and issue of licence

- (1) An application for a licence:

(a) made by a person who usually or principally resides in the State—shall be made to the clerk of a court for the district in which the applicant usually or principally resides, or

(b) made by any other person—shall be made to the clerk of any court,

and shall be made in the prescribed manner and accompanied by the prescribed fee.

- (2) A licence shall not be issued unless a copy of the application for the licence has been referred to the officer in charge of police at the police station nearest the court to which the application is made and:

(a) a report made by that officer or a person authorised by that officer on the application has been lodged with the clerk of that court, or

(b) a period of one month has elapsed since the copy of the application was referred to that officer.

- (3) Where:

(a) a report under subsection (2) (a) has been furnished in respect of an application for a licence and that report does not contain a statement objecting to a grant of the licence,

(b) a report under subsection (2) (a) in respect of an application for a licence has not, at the expiration of one month after a copy of the application was referred to the

officer in charge of police referred to in subsection (2), been received by the clerk of the court to which the application was made, or

(c) the court grants an application following a hearing referred to in section 7, the clerk of that court shall issue to the applicant a licence in the prescribed form.

- (4) A licence shall, unless sooner cancelled, remain in force for one year from the date on which it was issued but may, where application is made within one month before the date of expiry of the licence and the prescribed fee is paid, be renewed from year to year for a period not exceeding one year from the date of expiry of the original licence, or the previous renewal of the licence, as the case may be.
- (5) Where an application is made for the renewal of a licence before the date of expiry of the licence and the application is not dealt with before that date, the licence shall be deemed to continue in force until such time as a renewed licence is issued or the application is refused, but any renewed licence issued on that application shall expire on the first anniversary of the date on which the licence so continued in force would, but for this subsection, have expired.

7 Objection to issue of licence

- (1) A person who under section 6 (2) (a) makes a report on an application for a licence may in the report specify that the person objects to a licence being issued to an applicant on the ground that the applicant:
- (a) is not of good fame or character,
 - (b) is not a fit and proper person to hold a licence,
 - (c) has improperly obtained a licence, or
 - (d) has been convicted of an offence against this Act or the regulations,
- or on more than one of those grounds.
- (2) Where a report referred to in section 6 (2) (a) containing a statement objecting to the issue to the applicant of a licence is received by the clerk of the court to which the application for the licence was made the clerk shall, unless the clerk has issued the licence, set the application down for hearing by the court and give notice of the hearing in the prescribed manner to the applicant and the officer in charge of police referred to in section 6 (2).
- (3) An application referred to in subsection (2) shall be heard by a court held before a stipendiary magistrate sitting in open court.

8 Disqualification of licensee

- (1) A licensee may, on complaint made by a member of the police force, be summoned

before a court to show cause why the licensee's licence should not be cancelled upon one or more of the grounds of objection specified in section 7 (1) and why the licensee should not be disqualified from holding a licence.

- (2) Where, at the hearing of a summons referred to in subsection (1), a court held before a stipendiary magistrate is satisfied of the truth of any ground of objection alleged in the summons it may order that the licence to which the summons relates be cancelled and that the licensee be disqualified, either permanently or for such period as the court specifies, from holding a licence.
- (3) A person who has possession of a licence, upon demand made by a member of the police force to deliver up the licence following an order made under subsection (2), shall not fail to deliver up the licence.

Maximum penalty: 10 penalty units.

9 Duplicate licence

- (1) Subject to subsection (2), where a licence is lost, destroyed or defaced, a duplicate licence may be issued by the clerk of the court by which the licence was issued.
- (2) A duplicate licence shall not be issued unless:
 - (a) the licensed hawker lodges with the application a statutory declaration explaining how the loss, destruction or defacement occurred, and
 - (b) the prescribed fee is paid.

10 Hawker to display name and occupation

A licensee shall not fail to display and keep displayed the licensee's name and the words "licensed hawker" in letters of the prescribed size and style on a conspicuous part of every boat or vehicle used by the licensee in connection with the licensee's business as a hawker.

Maximum penalty: 3 penalty units.

11 Unlicensed hawker using vehicle as if licensed

A person who is not the holder of a licence shall not, in connection with the selling or offering for sale by the person of goods, use any boat or vehicle on which are displayed the words "licensed hawker" or any similar words.

Maximum penalty: 5 penalty units.

12 Licence to be produced

A licensee shall not, without reasonable excuse, fail to produce the licence held by the licensee:

- (a) to any member of the police force on demand made by that member, or
- (b) to any person to whom the licensee has, within twenty-four hours previously, sold or offered to sell goods, upon demand made by that person.

Maximum penalty: 5 penalty units.

13 Forged or counterfeit licences

A person shall not:

- (a) forge or counterfeit a licence, or
 - (b) have in his or her possession a forged or counterfeit licence,
- with intent to use it as a genuine licence.

Maximum penalty: 10 penalty units.

14 Lending etc licence

A licensee shall not lend the licence held by the licensee to any other person or permit any other person to use the licence.

Maximum penalty: 10 penalty units.

15 Presumption that person unlicensed

In any proceedings under this Act, an allegation in any information that a person is unlicensed need not be proved and that person shall be deemed to be unlicensed until the contrary is proved by the production of a licence or otherwise.

16 Offences—jurisdiction of court

Proceedings for offences under this Act shall be disposed of in a court held before a stipendiary magistrate sitting alone.

17 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter which, by this Act, is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without prejudice to the generality of subsection (1), the Governor may make regulations for or with respect to:
 - (a) prescribing the forms to be used under this Act,
 - (b) prescribing fees in connection with licences.
- (3) Regulations may be made so as to apply differently according to such factors as may

be specified in the regulations.

- (4) A regulation may prescribe a penalty not exceeding 10 penalty units for any breach thereof.