

# Pawnbrokers and Second-hand Dealers Amendment Act 2002 No 104

[2002-104]



New South Wales

## Status Information

### Currency of version

Repealed version for 29 November 2002 to 30 June 2005 (accessed 25 November 2024 at 23:26)

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

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Repeal**

The Act was repealed by Sch 3 to the [Statute Law \(Miscellaneous Provisions\) Act 2005 No 64](#) with effect from 1.7.2005.

### 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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# Pawnbrokers and Second-hand Dealers Amendment Act 2002 No 104



New South Wales

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# Pawnbrokers and Second-hand Dealers Amendment Act 2002 No 104



New South Wales

An Act to amend the *Pawnbrokers and Second-hand Dealers Act 1996* and the *Pawnbrokers and Second-hand Dealers Regulation 1997* in relation to the application and operation of the Act, the licensing of pawnbrokers and second-hand dealers, the regulation of the businesses of pawnbroking and second-hand dealing, and the regulation of markets; and for other purposes.

## 1 Name of Act

This Act is the *Pawnbrokers and Second-hand Dealers Amendment Act 2002*.

## 2 Commencement

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

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

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

## 4 Amendment of *Pawnbrokers and Second-hand Dealers Regulation 1997*

The *Pawnbrokers and Second-hand Dealers Regulation 1997* is amended as set out in Schedule 2.

## Schedule 1 Amendment of *Pawnbrokers and Second-hand Dealers Act 1996*

(Section 3)

### [1] Section 3 Definitions

Insert in alphabetical order:

***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.

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

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

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

**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] Section 3 (2)**

Insert at the end of section 3:

- (2) Notes included in this Act do not form part of this Act.

**[3] Section 4 Restrictions on operation of this Act**

Insert after section 4 (2):

- (3) In subsection (2):

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

**[4] Sections 8 and 8A**

Omit section 8. Insert instead:

**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.

**[5] Section 10 Determination of applications**

Omit “subject to sections 8 and 36” from section 10 (1).

Insert instead “subject to section 8 and Part 5”.

**[6] Section 10A Renewal of licences**

Omit “subject to sections 8 and 36” from section 10A (4).

Insert instead “subject to section 8 and Part 5”.

**[7] Section 10A (7) and (8)**

Omit “subject to section 36” wherever occurring.

Insert instead “subject to Part 5”.

**[8] Section 11 Conditions of licences**

Omit section 11 (1). Insert instead:

(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.

**[9] Section 11 (1A) and (1B)**

Insert after section 11 (1):

(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).

**[10] Section 12A Business and storage premises: pawnbrokers**

Omit “(subsection (2))” from section 12A (2).

**[11] Section 12A (3)**

Omit “, or stores the goods of the business only at,”.

**[12] Section 12A (4)**

Omit “, or store goods at,”.

**[13] Section 12B**

Insert after section 12A:

**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.

#### **[14] Section 15A**

Insert after section 15:

#### **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.

**[15] Section 21 Retention of goods**

Insert after section 21 (1):

- (1A) The period of 14 days commences with the day on which the purchase or receipt was recorded by the licensee.

**[16] Section 22 Goods alleged to be stolen to be retained**

Omit the section.

**[17] Section 23 Direction for restoration of goods**

Omit the section.

**[18] Section 28 Pawnbroker's record of pledges**

Omit section 28 (2) (a). Insert instead:

- (a) a fair and reasonable description of the goods (including a fair and reasonable description of any detached or detachable components of the goods), which must include:
  - (i) each serial number, each other identifying number and each hallmark, inscription and engraving appearing on the goods (including any such components), and
  - (ii) any other matters prescribed by the regulations for the purposes of this

paragraph, and

**[19] Section 28 (3)**

Insert “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” after “of the record”.

**[20] Section 28 (5)-(5B)**

Omit section 28 (5). Insert instead:

- (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.

**[21] Section 28 (5C)**

Renumber section 28 (5A) (as in force before the commencement of item [20]) as subsection (5C).

**[22] Section 28 (6)**

Insert before section 28 (7):

(6) In this section:

**component** of goods includes an attachment to the goods (including, for example, a battery).

**[23] Section 29 Redemption of pawned goods**

Omit “to be sold by auction” from section 29 (2).

Insert instead “consigned for auction”.

**[24] Section 29**

Omit “Maximum penalty: 50 penalty units.” wherever occurring.

**[25] Section 29**

Insert at the end of the section:

Maximum penalty: 50 penalty units.

**[26] Sections 29A-29C**

Insert after section 29:

**29A Agreement to extend redemption period**

- (1) This section applies to an agreement (in this section called an **extending agreement**) for the purposes of section 29 (1) (b) to vary a pawn agreement (in this section called an **original agreement**) by extending the redemption period for the goods concerned.
- (2) An extending agreement may be entered into with a pawnbroker by a person who is entitled to redeem the goods concerned.
- (3) A pawnbroker must not enter into an extending agreement with another person without:
  - (a) taking such steps in relation to ascertaining the identity of the other person as:
    - (i) would be required by the regulations in relation to ascertaining the identity of a person seeking to redeem the goods, or

- (ii) are prescribed instead by the regulations for the purposes of this paragraph, and
- (b) complying with such other requirements as:
  - (i) would be applicable under the regulations in relation to the redemption of those goods, or
  - (ii) are prescribed instead by the regulations for the purposes of this paragraph.
- (4) At the time an extending agreement is entered into, a record of the extending agreement must be made that complies with this section.
- (5) The record of an extending agreement must:
  - (a) be incorporated in or attached to the original record of the original agreement, and
  - (b) include an identifying reference to or description of the original agreement, and
  - (c) specify the new redemption period, and
  - (d) specify any new or varied rates, fees or charges that are or may be payable as a result of the extension, and
  - (e) specify the date on which the extending agreement is entered into, and
  - (f) include any other particulars required by the regulations to be included.
- (6) An extending agreement is not validly made unless:
  - (a) the person who enters the extending agreement with the pawnbroker concerned signs the original record created under this section or, if the original record created under this section is kept in electronic form, signs a hard copy of the record, and
  - (b) the document at the time of being signed contained all the particulars required by or under this Act to be included in it.
- (7) An accurate and legible copy of the original of any such record must be given to the person who pawned the goods at the time the record is made.
- (8) Without affecting the generality of subsection (4), 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.

- (9) A record of an extending agreement under this section must be retained for the period for which the record of the original agreement concerned is required to be kept under section 28.
- (10) A redemption period may be extended even though the period has already expired.
- (11) 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.

### **29B Pawn agreement not to be varied**

- (1) A pawn agreement may not be varied (whether by alteration of the agreement or by a further agreement) except:
  - (a) in accordance with section 29A or any other Act, or
  - (b) as permitted by the regulations.
- (2) If a pawn agreement is varied in contravention of subsection (1), the pawnbroker by or on whose behalf the agreement was entered into is guilty of an offence.  
Maximum penalty: 50 penalty units.
- (3) However, a pawnbroker is not liable to be punished twice in respect of the same variation (that is, under this section and also under section 29A or any other Act).

### **29C Simultaneous discharge of pawn agreement and re-pawning of goods**

- (1) Nothing in this Part prevents the parties to a pawn agreement in relation to any goods from agreeing to discharge the pawn agreement and simultaneously to enter into a new pawn agreement in relation to the same goods or any of the goods.
- (2) If a new pawn agreement is entered into as referred to in subsection (1):
  - (a) the goods are regarded as having been redeemed under the discharged agreement, and
  - (b) the pawnbroker is regarded as having again taken possession of the goods (in so far as they are covered by the new agreement) under the new agreement when it is entered into.

**[27] Sections 30 and 30A**

Omit section 30. Insert instead:

**30 Sale of unredeemed goods**

(1) If pawned goods have not been redeemed at the end of the redemption period and the principal lent on the goods was greater than the amount prescribed by the regulations, the pawnbroker must, as soon as reasonably practicable, sell the goods in a manner conducive to securing the best price reasonably obtainable, either:

(a) by sale by auction at any premises, or

(b) by sale by auction or otherwise at business premises of the pawnbroker.

Maximum penalty: 50 penalty units.

(2) If the goods are sold at auction and the person to whom the goods are sold does not pay the whole of the purchase price for those goods in accordance with the contract governing the sale at auction, the sale is taken to be void and the title to the goods is taken not to have passed.

(3) If subsection (2) applies, the pawnbroker must, as soon as reasonably practicable, sell the goods in a manner conducive to securing the best price reasonably obtainable, either:

(a) by sale by auction at any premises, or

(b) by sale at business premises of the pawnbroker.

Maximum penalty: 50 penalty units.

(4) If in proceedings a question arises as to whether the pawnbroker has complied with subsection (1) or (3), the onus of proving compliance is on the pawnbroker.

(5) Nothing in this section prevents redemption of the goods under section 29 after expiry of the redemption period, and the pawnbroker is not guilty of an offence under this section if the goods are so redeemed.

**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.

**[28] Sections 31 and 31A**

Omit section 31. Insert instead:

**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.

**31A Notice as to proceeds of sale**

- (1) Subject to subsection (2), a pawnbroker who sells pawned goods must, before the end of the period of 21 days commencing with the date of the sale, send by registered mail to the last known address of the person who pawned the goods a notice informing the person:
  - (a) of any amount that may be claimed by the person as surplus proceeds of the sale, and

- (b) that the person is entitled to receive that amount from the pawnbroker at the business premises of the pawnbroker or in another manner as agreed, within 12 months after the sale.

Maximum penalty: 50 penalty units.

(2) Subsection (1) does not apply where:

- (a) the person who pawned the goods has requested the pawnbroker in writing not to send the notice under that subsection, or
- (b) the amount that may be claimed is less than \$50 or such other amount as may be prescribed instead.

**Note—**

The expression “surplus proceeds” is defined in section 3.

**[29] Sections 32A-32C**

Insert after section 32:

**32A Interest charges**

- (1) If interest charges are able to be debited under a pawn agreement:
  - (a) at the end of the redemption period (where that period exceeds one month), or
  - (b) at intervals that exceed one month,the agreement must:
  - (c) provide an option for payment of interest charges at monthly intervals, and
  - (d) specify the amount payable in respect of each month or (if that amount is not known or ascertainable) the manner of calculating that amount.
- (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.
- (3) A pawnbroker is guilty of an offence if the agreement by which goods are pawned contains a provision or condition that is inconsistent with subsection (1) or (2).
- (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).

- (5) Nothing in this section prevents the extension of a redemption period under section 29A.

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.

### **[30] Section 32D**

Insert at the end of Part 4:

### **32D Sale or transfer of business**

- (1) If a pawnbroker sells or transfers the pawnbroker's business to a person (in this section called the ***purchaser***), the rights and obligations of the pawnbroker in relation to each agreement by which goods are pawned to the pawnbroker are transferred to the purchaser.

- (2) The pawnbroker must notify (in accordance with subsection (5) (a)) each person who has pawned goods to the pawnbroker under a current agreement of the transfer to the purchaser of the rights and obligations of the pawnbroker in relation to the agreement, unless the purchaser agrees in writing to give the notice.

Maximum penalty: 50 penalty units.

- (3) If the purchaser agrees to give notice as referred to in subsection (2), the purchaser must notify (in accordance with subsection (5) (b)) each person who has pawned goods to the pawnbroker under a current agreement of the transfer to the purchaser of the rights and obligations of the pawnbroker in relation to the agreement.

Maximum penalty: 50 penalty units.

- (4) For the purposes of this section:

- (a) an agreement relating to pawned goods is current if:

- (i) the goods are still able to be redeemed, or
- (ii) the goods are in the process of being sold, or
- (iii) any surplus proceeds of the sale of the goods are still claimable under this Act, and

- (b) a reference to a pawnbroker includes a reference to a former pawnbroker.

- (5) Notice under:

- (a) subsection (2) must be given within the period of 14 days commencing with the date of the transfer or within such other period as may be prescribed by the regulations instead, and
- (b) subsection (3) must be given within the period of 14 days commencing with the date the purchaser agrees under that subsection or within such other period as may be prescribed by the regulations instead.

**Note—**

The expression “surplus proceeds” is defined in section 3.

**[31] Part 4A**

Insert after Part 4:

**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 an authorised 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 6 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.

### **[32] Section 33A**

Insert after section 33:

### **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.

**[33] Section 34 Notices to show cause why licence should not be revoked**

Omit section 34 (1) (c). Insert instead:

- (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

**[34] Section 34 (1) (j)**

Omit the paragraph. Insert instead:

- (j) who in any other manner has become a disqualified person,

**[35] Section 34 (2)**

Insert "(c1)," after "(c),".

**[36] Section 36 Disciplinary action by Director-General**

Omit section 36 (4).

**[37] Section 36A**

Insert after section 36:

### **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.

**[38] Section 36B**

Insert before section 37:

**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.

**[39] Section 38 Dealings that give rise to presumption of carrying on business**

Omit “more than 12 days in any period of 12 months” from section 38 (1).

Insert instead “more than 6 days in any period of 12 months”.

**[40] Section 38A**

Insert after section 38:

**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.

**[41] Section 39 Review of decisions of Director-General**

Insert after section 39 (1):

- (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.

**[42] Section 40A**

Insert after section 40:

**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.

**[43] Section 43 Regulations**

Insert after section 43 (1) (c):

- (c1) the carrying on of a business as a second-hand dealer or pawnbroker or both,

**[44] Section 43 (1) (i)**

Insert after section 43 (1) (h):

- (i) exemptions from the operation of this Act or specified provisions of this Act, either unconditionally or subject to conditions.

**[45] Section 43 (3)**

Insert after section 43 (2):

- (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.

**[46] Section 43 (4)**

Insert at the end of section 43:

- (4) Section 4 (2) does not limit the power to make regulations under subsection (1) (i) of this section.

**[47] Section 44**

Insert after section 43:

#### 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.

**[48] Sections 44A and 44B**

Insert before section 45:

**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.

**[49] Schedule 2 Savings and transitional provisions**

Insert at the end of clause 2 (1):

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

**[50] Schedule 2, Part 4**

Insert after Part 3:

**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”.

## **Schedule 2 Amendment of *Pawnbrokers and Second-hand Dealers Regulation 1997***

(Section 4)

### **[1] Clause 5 Meaning of “market”**

Omit “more than 12 days in the period of 12 months” from clause 5 (b) (ii).

Insert instead “more than 6 days in the period of 12 months”.

### **[2] Clause 6 Meaning of “second-hand goods”**

Omit clause 6 (1) (d). Insert instead:

- (d) musical instruments (but not including pianos other than electric or electronic pianos),

### **[3] Clause 6 (1) (h) and (h1)**

Omit clause 6 (1) (h). Insert instead:

- (h) computer hardware and interactive game consoles,
- (h1) computer software and interactive game software,

### **[4] Clause 6 (1) (i)**

Omit the paragraph. Insert instead:

- (i) compact (laser-read) discs (including compact discs, digital video discs and mini discs), and similar items that are used or designed for use with electric or electronic audio, visual or audio-visual systems,

**[5] Clause 6 (3)**

Insert after clause 6 (2):

(3) In this clause:

***interactive game console*** means equipment for the playing of a game:

- (a) that involves a display on a computer monitor, television screen, liquid crystal display or similar medium, and
- (b) where the way in which the game proceeds and the result achieved at various stages of the game is determined in response to the decisions, inputs and direct involvement of the player.

***interactive game software*** includes software (whether in a disc or cartridge or otherwise) that comprises a game and that is used or designed for use with an interactive game console.

**[6] Clause 6A Act does not apply to local government recycling programs**

Omit “a local government council or any employee of a local government council”.

Insert instead “an approved person”.

**[7] Clause 6A (2)**

Insert at the end of clause 6A:

- (2) A person is an ***approved person*** for the purposes of this clause if the person is:
  - (a) a local government council or an employee of a local government council, or
  - (b) a contractor, or an employee of a contractor, when acting on behalf of a local government council under a contract relating to the recycling program concerned (but only if tenders were invited for the contract and the contractor was the successful tenderer).

**[8] Clause 13 Records generally**

Omit “, and that number must be reproduced on a tag, label or other attachment to the item” from clause 13 (5).

**[9] Clause 14 Records of goods pawned, purchased or sold**

Omit clause 14 (1) (a). Insert instead:

- (a) if the pledgor is:

- (i) an individual—the name, residential address, date of birth and signature of the individual, or
  - (ii) a corporation—the name, business address and Australian Business Number of the corporation, and a statement signed by an executive officer of the corporation consenting to the transaction,
- (a1) if the transaction is conducted by an individual acting as agent of the pledgor—the name, residential address, date of birth and signature of the agent,

**[10] Clause 14 (1) (d1)**

Insert after clause 14 (1) (d):

- (d1) the name and address of the purchaser of any forfeited item sold, except in cases where:
- (i) the principal lent on the goods did not exceed \$50, or
  - (ii) the goods were sold by auction conducted away from business premises of the pawnbroker,

**[11] Clause 14 (2) (a) and (a1)**

Omit clause 14 (2) (a). Insert instead:

- (a) if the vendor or consignor is:
- (i) an individual—the name, residential address and date of birth of the individual, or
  - (ii) a corporation—the name, business address and Australian Business Number of the corporation,
- (a1) if the transaction is conducted by an individual acting as agent of the vendor or consignor—the name, residential address and date of birth of the agent,

**[12] Clause 14 (2) (d)**

Omit “(otherwise than at a market)”.

**[13] Clause 14 (2) (f)**

Omit the paragraph. Insert instead:

- (f) the price paid by the licensee for any goods purchased by the licensee,

**[14] Clause 14 (4)-(7)**

Insert after clause 14 (3):

- (4) For the purposes of section 16 (1) of the Act, a record required to be kept regarding the acquisition of second-hand goods by the holder of a licence to carry on the business of a second-hand dealer must be made:
  - (a) by close of business on the day on which the goods were acquired by the licensee, or
  - (b) as soon as possible after the acquisition of the goods, if they were received by the licensee at premises other than those nominated in the licensee's application for a licence or afterwards notified to the Director-General.
- (5) For the purposes of section 16 (1) of the Act, a record required to be kept regarding the disposal of second-hand goods by the holder of a licence to carry on the business of a second-hand dealer must be made by close of business on the day on which the goods were disposed of by the licensee.
- (6) Nothing in subclause (4) or (5) affects any other obligation imposed on a licensee.
- (7) In this clause:

***business address*** of a corporation means the address of the corporation's registered office.

**[15] Clause 18 Evidence of identity and title of supplier of goods**

Omit "either" from clause 18 (1).

**[16] Clause 18 (1) (b), (c) and (d)**

Insert at the end of clause 18 (1) (b):

, or

- (c) a card or document (including, for example, a foreign passport) that:
  - (i) on the face of it, appears to be issued by the government or a government authority of a foreign country, and includes the information and features described in paragraph (a) (i) and (iii) (including the customer's permanent or temporary residential address in Australia), and
  - (ii) does not, on the face of it, bear any indications of forgery or tampering, or
- (d) a combination of cards or documents (including, for example, a foreign passport):

- (i) one of which, on the face of it, appears to be issued by the government or a government authority of a foreign country, and includes the information and features described in paragraph (a) (i) and (iii) (but not including the customer's permanent or temporary residential address in Australia), and
- (ii) one of which, on the face of it, appears to be issued by the government or a statutory authority of New South Wales or the Commonwealth or a State or Territory of the Commonwealth and that includes the customer's permanent or temporary residential address in Australia, and
- (iii) none of which bears, on the face of it, any indications of forgery or tampering.

**[17] Clause 18 (2)**

Insert "if the person is an individual," before "the person's date of birth" where firstly occurring.

**[18] Clause 18 (2A)**

Insert after clause 18 (2):

- (2A) For the purposes of section 15 (1B) of the Act, if the person is a corporation, the corporation's Australian Business Number is prescribed as a particular relating to the identity of the person. Evidence of the Australian Business Number must be given in documentary form.

**[19] Clause 18 (4)**

Insert after clause 18 (3):

- (4) In this clause:

***foreign country*** means a country other than Australia, and includes a state, province or other part of such a country.

**[20] Clause 18A**

Insert after clause 18:

**18A Contract or stock number to be reproduced on tag, label or other attachment**

- (1) A licensee must ensure that:
  - (a) the contract number, or
  - (b) a stock number,



for each item taken in trade or pawn during the course of the licensee's business is reproduced on a tag, label or other attachment to the item.

(2) In this clause:

**contract number** for an item is the number referred to in clause 14 (1) (b) or (2) (b) in relation to the item.

**stock number** for an item is a number that:

- (a) is uniquely assigned by the licensee to distinguish the item from any other item held by the licensee in the course of the licensee's business, and
- (b) is the same as or different from the contract number for the item, and
- (c) is recorded electronically and in paper form, and
- (d) is linked to the contract number for the item in the electronic and paper record.

Maximum penalty: 20 penalty units.

**[21] Clause 19 Retention of goods by licensee**

Insert at the end of clause 19 (1) (c):

, or

- (d) goods purchased by tender or auction from:
  - (i) a Government Department, or
  - (ii) a State owned corporation, or
  - (iii) a statutory authority constituted by or under an Act for a public purpose.

**[22] Clause 20 Goods alleged to be stolen in possession of licensee**

Omit the clause.

**[23] Clause 22A**

Omit the clause. Insert instead:

**22A Pawnbroker's record of pledges**

(1) For the purposes of section 28 (2) (a) of the Act:

- (a) a fair and reasonable description of a compact (laser-read) disc or similar item (as referred to in clause 6 (1) (i)) must include:

- (i) the title of the disc or item or of any film recorded on it, and
  - (ii) the name of any one or more of any artists or groups whose performance is or performances are recorded on it, and
- (b) a fair and reasonable description of a mobile phone must include its International Mobile Equipment Identity (IMEI) number, and
- (c) a fair and reasonable description of goods that are marked with a bar code must include the machine-readable number designated by the bar code or the human-readable number shown in the bar code marking.
- (2) For the purposes of section 28 (2) (f) of the Act:
- (a) particulars of:
    - (i) the date of birth of the owner of the goods, if the owner is an individual, or
    - (ii) the Australian Business Number of the owner of the goods, if the owner is a corporation, and
  - (b) if the goods are pawned by an individual as agent of the owner of the goods—particulars of the date of birth of the agent,
- are prescribed as particulars required to be included in the record of an agreement by which goods are pawned.

**[24] Clause 23**

Insert before clause 24:

**23 Additional particulars or information to be disclosed in or to accompany pawn ticket**

For the purposes of section 28 (5A) (d) of the Act, the following particulars or information are to be disclosed in a notice incorporated in or accompanying a pawn ticket:

- (a) a statement of the frequency with which interest charges are to be debited and of the times at which interest charges are payable, and
- (b) a statement to the effect that, if provision is made for interest charges to be payable at intervals of greater than one month, the interest charges may instead be paid at monthly intervals at the option of the person who pawned the goods, and
- (c) particulars of the address of the premises where the goods will be located during

the redemption period, and

- (d) if the goods consist of more than one item—a statement as to whether or not the goods may be separately redeemed, and
- (e) the date on which the redemption period ends.

**[25] Clause 24 Redemption of pawned goods**

Omit “either” from clause 24 (2).

**[26] Clause 24 (2) (b), (c) and (d)**

Insert at the end of clause 24 (2) (b):

, or

- (c) a card or document (including, for example, a foreign passport) that:
  - (i) on the face of it, appears to be issued by the government or a government authority of a foreign country, and includes the information and features described in paragraph (a) (i) and (iii) (including the customer’s permanent or temporary residential address in Australia), and
  - (ii) does not, on the face of it, bear any indications of forgery or tampering, or
- (d) a combination of cards or documents (including, for example, a foreign passport):
  - (i) one of which, on the face of it, appears to be issued by the government or a government authority of a foreign country, and includes the information and features described in paragraph (a) (i) and (iii) (but not including the customer’s permanent or temporary residential address in Australia), and
  - (ii) one of which, on the face of it, appears to be issued by the government or a statutory authority of New South Wales or the Commonwealth or a State or Territory of the Commonwealth and that includes the customer’s permanent or temporary residential address in Australia, and
  - (iii) none of which bears, on the face of it, any indications of forgery or tampering.

**[27] Clause 24 (4)**

Insert after clause 24 (3):

- (4) In this clause:

**foreign country** means a country other than Australia, and includes a state, province or other part of such a country.

**[28] Schedule 1 Forms**

Omit Form 1.