

# Fair Trading Legislation Amendment (Miscellaneous) Act 2018 No 79

[2018-79]



New South Wales

## Status Information

### Currency of version

Repealed version for 2 July 2019 to 1 July 2020 (accessed 5 December 2024 at 12:49)

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**

This Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 2.7.2020.

### 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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# Fair Trading Legislation Amendment (Miscellaneous) Act 2018 No 79



New South Wales

An Act to amend various Acts and Regulations administered by the Minister for Innovation and Better Regulation; and other related matters.

## 1 Name of Act

This Act is the *Fair Trading Legislation Amendment (Miscellaneous) Act 2018*.

## 2 Commencement

This Act commences on 1 July 2020 or on an earlier day or days to be appointed by proclamation.

## 3 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedules 1–3 does not form part of this Act.

## Schedules 1, 2 (Repealed)

## Schedule 3 Amendments relating to uncollected goods

### 3.1 Uncollected Goods Act 1995 No 68

#### [1] Whole Act (except Schedule 1 and where otherwise amended by this subschedule)

Omit “bailor”, “bailee” and “bailee’s” wherever occurring.

Insert instead “depositor”, “receiver” and “receiver’s”, respectively.

#### [2] Section 3 Definitions

Omit the definitions of **bailee**, **bailor**, **relevant charges** and **uncollected goods**.

Insert in alphabetical order:

**depositor** means the person who gives possession of goods (whether or not the person

is the owner of the goods), and includes a bailor.

**receiver** means the person who takes possession of goods, and includes a bailee.

**relevant charges**—see section 28.

**uncollected goods** means goods that are uncollected as referred to in section 5.

**[3] Section 3, definition of “Tribunal”**

Insert in alphabetical order:

**Tribunal** means the Civil and Administrative Tribunal.

**[4] Section 4 Object of Act**

Omit the section.

**[5] Section 5 When goods uncollected for purposes of Act**

Insert at the end of the section:

(2) Goods are also uncollected goods if:

- (a) a park owner reasonably believes the goods have been abandoned or left by the occupant on the site when an occupation agreement is terminated (within the meaning of the *Holiday Parks (Long-term Casual Occupation) Act 2002*), or
- (b) an operator reasonably believes the goods have been abandoned or left behind on residential premises when an agreement is terminated or on common property in the community (within the meaning of the *Residential (Land Lease) Communities Act 2013*), or
- (c) a landlord reasonably believes the goods have been abandoned or left behind by the tenant or an occupant of the premises after vacant possession of the premises is obtained or the premises are abandoned (within the meaning of the *Residential Tenancies Act 2010*), or
- (d) an operator reasonably believes the goods have been abandoned or left behind on residential premises when a residence contract is terminated or on common property within the retirement village (within the meaning of the *Retirement Villages Act 1999*), or
- (e) an owners corporation reasonably believes the goods have been abandoned or left behind on common property of a strata scheme (within the meaning of the *Strata Schemes Management Act 2015*), or
- (f) the goods are of a kind prescribed by the regulations.

**[6] Section 6 When Act available for disposal of uncollected goods**

Omit section 6 (2) and (3). Insert instead:

- (2) This Act is also available as an alternative to other statutory means of disposal of particular uncollected goods. However, it is not available as an alternative to the following:
- (a) the *Passenger Transport Act 1990*,
  - (b) the *Passenger Transport Act 2014*,
  - (c) the *Pawnbrokers and Second-hand Dealers Act 1996*,
  - (d) the *Storage Liens Act 1935*,
  - (e) the *Transport Administration Act 1988*,
  - (f) the *Unclaimed Money Act 1995*,
  - (g) any other Act or instrument prescribed by the regulations.

**[7] Section 7**

Omit the section. Insert instead:

**7 No liability for due disposal of uncollected goods**

A person does not incur any liability in respect of the disposal of uncollected goods in accordance with this Act or in accordance with an order of the Tribunal.

**[8] Part 2 Disposal of uncollected goods by way of court order**

Omit the Part.

**[9] Sections 19-22A**

Omit sections 19-22. Insert instead:

**19 Application of Part**

This Part applies to uncollected goods, other than bailed goods in respect of which a dispute exists between the depositor and the receiver as to:

- (a) the amount of any charge made by the receiver for the carriage or storage of the goods or for repairs or other work done in connection with the goods, or
- (b) the condition of the goods or the nature or quality of any repairs or other work

done in connection with the goods.

## **20 Low value uncollected goods**

- (1) This section applies to uncollected goods with a value of less than \$1,000 (***low value uncollected goods***).
- (2) A receiver may dispose of low value uncollected goods in an appropriate manner if the depositor:
  - (a) has been given oral or written notice of the receiver's intention to dispose of the goods, and
  - (b) has been given at least 14 days, from the date when notice was given, within which to collect the goods.
- (3) The receiver may move or store low value uncollected goods in an appropriate manner.

## **21 Medium value uncollected goods**

- (1) This section applies to uncollected goods with a value equal to or more than \$1,000 but less than \$20,000 (***medium value uncollected goods***).
- (2) A receiver may dispose of medium value uncollected goods by way of public auction or by private sale for a fair value if the depositor:
  - (a) has been given written notice of the receiver's intention to dispose of the goods, and
  - (b) has been given at least 28 days, from the date when notice was given, within which to collect the goods.
- (3) The receiver may move or store medium value uncollected goods in an appropriate manner.

## **22 High value uncollected goods**

- (1) This section applies to uncollected goods with a value of at least \$20,000 (***high value uncollected goods***).
- (2) A receiver must not dispose of high value uncollected goods otherwise than in accordance with an order of the Tribunal.  
  
Maximum penalty: 200 penalty units.
- (3) A receiver may apply to the Tribunal for an order specifying the way in which the uncollected goods are to be disposed of.
- (4) The receiver may move or store high value uncollected goods in an appropriate

manner.

## **22A Personal documents**

- (1) This section applies to personal documents that are uncollected goods.
- (2) A receiver may dispose of personal documents if the depositor:
  - (a) has been given written notice of the receiver's intention to dispose of the documents, and
  - (b) has been given at least 28 days, from the date when notice was given, within which to collect the documents.
- (3) Personal documents must be disposed of by way of a secure destruction method or by returning the documents to their author.
- (4) In this section:

***personal document*** means:

- (a) a birth certificate, passport or other identity document, or
- (b) bank books or other financial statements or documents, or
- (c) photographs and other personal memorabilia, or
- (d) licences or other documents conferring authorities, rights or qualifications, or
- (e) any other record, or class of record, prescribed by the regulations for the purposes of this definition.

### **[10] Section 24 Perishable goods and rubbish**

Omit section 24 (1). Insert instead:

- (1) Nothing in this Part prevents a receiver from disposing of rubbish or perishable uncollected goods.
- (1A) A receiver is not required to give a depositor notice of the receiver's intention to dispose of the goods.

### **[11] Section 28 Relevant charges due to receiver**

Insert at the end of the section:

- (2) This section does not apply to personal documents.

**[12] Section 30 Records**

Insert before section 30 (1):

(1A) This section applies to low value uncollected goods, medium value uncollected goods, high value uncollected goods and personal documents.

**[13] Section 30 (2)**

Omit the subsection. Insert instead:

(2) A record prepared under this section must:

- (a) be kept by the receiver for at least the following period from the date on which the goods were disposed of:
  - (i) in relation to low value uncollected goods—12 months,
  - (ii) in any other case—6 years, and
- (b) be made available by the receiver, on request, for inspection by the depositor or by any other person claiming an interest in the goods.

**[14] Section 31 Sale of uncollected motor vehicles**

Insert “and the person has obtained a written search result (within the meaning of section 174 of the *Personal Property Securities Act 2009* of the Commonwealth) in relation to the vehicle” after “stolen” in section 31 (1).

**[15] Part 3A**

Insert after section 31:

**Part 3A Disposal of uncollected goods by way of Tribunal order**

**31A Receiver may seek Tribunal direction**

- (1) The Tribunal may, on application by a receiver, make any one or more of the following orders:
  - (a) an order authorising the removal or other disposal of uncollected goods,
  - (b) an order directing that notice of any action or proposed action in relation to uncollected goods be given to the depositor, the legal personal representative of a depositor or any other person,



- (c) an order authorising the sale of uncollected goods,
  - (d) an order as to the manner of sale of uncollected goods,
  - (e) an order as to the payment of the proceeds of sale of uncollected goods,
  - (f) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (2) A receiver must deal with goods in accordance with an order of the Tribunal under this section and not in accordance with the other provisions of this Act relating to disposal of goods.
- (3) This section does not apply to perishable goods.

### **31B Orders by Tribunal relating to uncollected goods**

- (1) The Tribunal may, on application by a depositor or a person who has an interest in uncollected goods, make any of the following orders:
- (a) an order requiring the receiver to pay compensation for uncollected goods disposed of by the receiver otherwise than in accordance with this Act,
  - (b) an order requiring the receiver to pay compensation for uncollected goods damaged after being left in the possession of the receiver and before being claimed by the person entitled to them,
  - (c) an order that the receiver deliver uncollected goods into the depositor's or other person's possession,
  - (d) an order requiring the receiver to pay the proceeds of sale, or an amount equivalent to the value of the uncollected goods, to the depositor or person,
  - (e) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (2) An application for an order under this section must be made within the period prescribed by the regulations.

### **[16] Section 32 Minimum period within which certain commercial bailees may dispose of uncollected goods by agreement**

Omit the section.

#### **Explanatory note**

Items [1]–[8] of the proposed amendments extend the operation of the *Uncollected Goods Act 1995* to goods other than bailed goods, namely goods that:

- (a) a park owner reasonably believes have been abandoned or left by the occupant on the site when an occupation agreement

is terminated (within the meaning of the *Holiday Parks (Long-term Casual Occupation) Act 2002*), or

- (b) an operator reasonably believes have been abandoned or left behind on residential premises when an agreement is terminated or on common property in the community (within the meaning of the *Residential (Land Lease) Communities Act 2013*), or
- (c) a landlord reasonably believes have been abandoned or left behind by the tenant or an occupant of the premises after vacant possession of the premises is obtained or the premises are abandoned (within the meaning of the *Residential Tenancies Act 2010*), or
- (d) an operator reasonably believes have been abandoned or left behind on residential premises when a residence contract is terminated or on common property within the retirement village (within the meaning of the *Retirement Villages Act 1999*), or
- (e) an owners corporation reasonably believes have been abandoned or left behind on common property of a strata scheme (within the meaning of the *Strata Schemes Management Act 2015*), or
- (f) are of a kind prescribed by the regulations.

Items [9]-[11] make amendments to simplify the operation of the disposal of uncollected goods regime. Different provisions apply depending on whether the goods are of low value (less than \$1,000), medium value (equal to or more than \$1,000 but less than \$20,000), high value (at least \$20,000), personal documents or perishable goods.

Items [12] and [13] make amendments relating to record keeping. Item [13] provides that records relating to the disposal of low value uncollected goods need only be kept for at least 12 months from the date on which the goods were disposed of (rather than 6 years which remains the general requirement).

Item [14] provides that a person must obtain a written search result under the *Personal Property Securities Act 2009* of the Commonwealth before selling a motor vehicle under the *Uncollected Goods Act 1995* (in addition to obtaining a certificate from the Commissioner of Police showing it is not stolen).

Item [15] enables the Civil and Administrative Tribunal to make orders regarding uncollected goods and the disposal of uncollected goods.

Item [16] repeals section 32 of the *Uncollected Goods Act 1995* which provided that, in relation to certain bailed goods, a provision of an agreement between a bailor and bailee that authorised the bailee to dispose of uncollected goods was void if it gave the bailor less than 3 months to collect the goods after the goods were ready for delivery to the bailor.

## 3.2 Uncollected Goods Regulation 2017

### Repeal

The *Uncollected Goods Regulation 2017* is repealed.

#### Explanatory note

The proposed amendment makes a consequential repeal.

## 3.3 Civil and Administrative Tribunal Act 2013 No 2

### Schedule 4 Consumer and Commercial Division

Insert at the end of clause 3 (1):

*Uncollected Goods Act 1995*

#### Explanatory note

The proposed amendment to the *Civil and Administrative Tribunal Act 2013* gives the Consumer and Commercial Division of the Civil and Administrative Tribunal functions in relation to the *Uncollected Goods Act 1995*.

### **3.4 Holiday Parks (Long-term Casual Occupation) Act 2002 No 88**

**[1] Part 8, heading**

Omit “**and goods**”.

**[2] Sections 31 and 34-36**

Omit the sections.

**Explanatory note**

The proposed amendments make consequential repeals.

### **3.5 Holiday Parks (Long-term Casual Occupation) Regulation 2017**

**Repeal**

The *Holiday Parks (Long-term Casual Occupation) Regulation 2017* is repealed.

**Explanatory note**

The proposed amendment makes a consequential repeal.

### **3.6 Residential (Land Lease) Communities Act 2013 No 97**

**[1] Part 11, Division 7, heading**

Omit “**and goods**”.

**[2] Section 143 Home or goods abandoned after site agreement is terminated**

Omit the section.

**Explanatory note**

The proposed amendments make consequential repeals.

### **3.7 Residential Tenancies Act 2010 No 42**

**[1] Section 107 Landlord’s remedies on abandonment**

Omit section 107 (7).

**[2] Part 6, Division 2 Goods left on residential premises**

Omit the Division.

**Explanatory note**

The proposed amendments make consequential repeals.

### **3.8 Retirement Villages Act 1999 No 81**

#### **Part 9, Division 7 Uncollected goods**

Omit the Division.

##### **Explanatory note**

The proposed amendment makes a consequential repeal.

### **3.9 Retirement Villages Regulation 2017**

#### **[1] Part 7 Uncollected goods**

Omit the Part.

#### **[2] Schedule 5 Penalty notice offences**

Omit the matter relating to “**Offences under this Regulation**”.

##### **Explanatory note**

The proposed amendments make consequential repeals.

### **3.10 Strata Schemes Management Act 2015 No 50**

#### **Part 6, Division 5 Goods left on common property**

Omit the Division.

##### **Explanatory note**

The proposed amendment makes a consequential repeal.

### **3.11 Strata Schemes Management Regulation 2016**

#### **Clauses 32-34**

Omit the clauses.

##### **Explanatory note**

The proposed amendment makes a consequential repeal.