

Pawnbrokers and Second-hand Dealers Regulation 1997

[1997-163]



New South Wales

Status Information

Currency of version

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Provisions in force

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

Notes—

- **Does not include amendments by**
[Pawnbrokers and Second-hand Dealers Amendment Act 2002 No 104](#) (not commenced)
- **Repeal**
The Regulation was repealed by the [Subordinate Legislation Act 1989 No 146](#), sec 10 (2) with effect from 1.9.2003.

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 Regulation 1997



New South Wales

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Pawnbrokers and Second-hand Dealers Regulation 1997



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Pawnbrokers and Second-hand Dealers Regulation 1997*.

2 Commencement

This Regulation commences on 30 April 1997.

3 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

4 Definitions

In this Regulation:

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

the Act means the *Pawnbrokers and Second-hand Dealers Act 1996*.

5 Meaning of “market”

For the purposes of the definition of ***market*** in section 3 of the Act, a ***market*** does not include:

(a) an activity:

- (i) conducted in the course of or for the purposes of a fundraising appeal within the meaning of the *Charitable Fundraising Act 1991*, and
- (ii) promoted by a person who is or is taken to be the holder of an authority under that Act in respect of such an appeal,

unless, for the purposes of the activity concerned, space is allocated for a consideration to stallholders or marketeers who are not members of a charitable

organisation or other body connected with the promotion of the fundraising appeal, or

(b) an assembly of stallholders or marketeers:

- (i) none of whom is selling any second-hand goods (within the meaning of the Act), or
- (ii) at which every person selling any such goods is selling them in household quantities only and has provided the promoter of the assembly with a signed declaration that the person has not traded in such goods on more than 12 days in the period of 12 months ending with the date on which the assembly is held.

6 Meaning of “second-hand goods”

(1) For the purposes of the definition of **second-hand goods** in section 3 of the Act, the following classes of goods are prescribed:

- (a) items of jewellery (including watches) that include gemstones or precious metals,
- (b) gemstones and precious metals,
- (c) sporting and recreational goods,
- (d) musical instruments (other than pianos),
- (e) photographic equipment,
- (f) portable engine-powered, motorised or air-powered tools and equipment,
- (g) microwave cookers and other electric or electronic goods (other than refrigerators, washing machines or other “whitegoods”),
- (h) computer hardware and software,
- (i) compact (laser-read) discs,
- (j) watercraft and parts of watercraft,
- (k) (Repealed)
- (l) tool kits,
- (m) car accessories,
- (n) mobile phones.

(1A) Despite subclause (1), the following classes of goods are not prescribed for the purposes of the definition of **second-hand goods** in section 3 of the Act:

- (a) motorised wheelchairs, wheeled lounges, spinal carriages and other similar goods designed to carry a person with a disability,

(b) industrial machinery, or farming machinery, that cannot be driven or is not portable.

(2) The fact, however, that a person, in the course of or as a matter ancillary to the carrying on of a business that does not require a licence under the Act:

(a) sells any goods pursuant to a power conferred by the *Uncollected Goods Act 1995*, or

(b) takes goods as a trade-in or sells any goods so taken,

does not, for the purposes of the Act, constitute carrying on a business of buying or selling second-hand goods.

6A Act does not apply to local government recycling programs

For the purposes of section 4 (2) (c) of the Act, the Act does not apply in relation to any act or omission by a local government council or any employee of a local government council in:

(a) conducting a recycling program, or

(b) selling any goods collected in a recycling program, or

(c) contracting with another person to give that person ownership of goods collected in a recycling program.

7 Exclusion of certain institutions from operation of section 5 of the Act

Section 5 of the Act (Buy-back contracts regarded as pledge and loan) does not apply to goods received by:

(a) a registered corporation within the meaning of the *Financial Corporations Act 1974* of the Commonwealth, or

(b) a bank within the meaning of the *Banking Act 1959* of the Commonwealth, or

(c) a bank constituted under the law of the Commonwealth or of a State or Territory, or

(d) a financial institution within the meaning of the *Financial Institutions (NSW) Code*.

7A Fees

(1) The fees payable for the purposes of the Act are listed in Column 1 of Schedule 3.

(2) The amount of each fee is to be calculated by adding together the various components set out in Columns 2 and 3 of Schedule 3 in relation that fee.

(3) An amount specified in relation to an application in Column 2 of Schedule 3 under the heading **Processing component** is taken to be a fee to cover the costs incurred by

the Director-General in processing the application.

Note—

This amount is consequently a **processing fee** for the purposes of Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002*.

Part 2 Licensing of pawnbrokers and second-hand dealers

8 Unique identifier for combined licence

Despite section 20 (3) (b) (i) of the *Licensing and Registration (Uniform Procedures) Act 2002*, the same unique identifier may relate to a pawnbroker's licence and second-hand dealer's licence that are both contained in the same document, as referred to in section 20 (5) of that Act.

9-11 (Repealed)

12 Display of licence details

- (1) For the purposes of section 14 of the Act, the required particulars are:
 - (a) the name of the licensee, and
 - (b) the licence number, and
 - (c) the business authorised by the licence to be carried on by the licensee, and
 - (d) if the licensee is a pawnbroker, a statement to the effect that any information provided to the licensee by or about a customer in relation to the trading of second-hand goods will be furnished to the police.

Note—

The obligation to furnish information to the Commissioner of Police is imposed by clause 16A.

- (2) The particulars must be written in legible capital letters in the English language using letters and figures each not less than 5 centimetres in height.

Part 3 Records

13 Records generally

- (1) Records maintained for the purposes of the Act may be kept electronically or in a bound (not loose-leaf) book.
- (2) The records must have consecutively numbered pages.
- (3) The records must permanently record the date on which each record was first compiled and the date on which each entry was made.
- (4) In the case of any licence issued or renewed on or after 1 January 1999, the Director-

General is to require the licensee, by way of a condition of the licence, to use electronic means of creation and storage of records kept for the purposes of section 16 or 28 of the Act using software specified, or of a kind specified, in the condition.

- (5) The records must include the contract number referred to in clause 14 (1) (b) and (2) (b) for each item taken in trade or pawn, and that number must be reproduced on a tag, label or other attachment to the item.
- (6) Despite subclauses (1) and (4):
 - (a) any hard copy of any written statement as to the ownership of goods obtained from a customer under clause 18 (3) may be kept in loose-leaf form, and
 - (b) any hard copy of the record of any agreement by which goods were pawned under section 28 of the Act may be kept in loose-leaf form.

13A Special provisions relating to the keeping of records by certain licensees

- (1) A person who held a second-hand dealer's licence under the *Second-hand Dealers and Collectors Act 1906* immediately before the repeal of that Act on 30 April 1997 and who has never held a licence issued with a condition requiring the use of electronic means of creation and storage of records, may, when applying for the issue or renewal of a licence on or after 1 January 1999 (being a licence authorising the person to carry on the business of a second-hand dealer, but not the business of a pawnbroker), apply to have the licence issued or renewed without such a condition.
- (2) Despite clause 13 (4), if a person makes such an application, the Director-General must not impose such a condition if:
 - (a) the Director-General is satisfied that the person was entitled to make such an application, and
 - (b) the Director-General is satisfied, after having regard to both of the relevant documents in relation to the person's business, that the gross receipts of the business relating to used goods totalled \$150,000 or less in the previous financial year or (if appropriate) the financial year before that.
- (3) For this purpose, the relevant documents in relation to the person's business are:
 - (a) the person's income tax return or audited financial statement for the previous financial year, and
 - (b) a statutory declaration by the person declaring that the gross receipts of the business relating to used goods totalled \$150,000 or less in the previous financial year.
- (4) If the Director-General considers it appropriate, the Director-General may accept the following as relevant documents in relation to a person's business:

- (a) the person's income tax return or audited financial statement for the year before the previous financial year, and
 - (b) a statutory declaration relating to the gross receipts of the business for the year before the previous financial year.
- (5) If the Director-General accepts the person's income tax return or audited financial statement for the year before the previous financial year as the relevant documents for the purposes of this clause, the Director-General may impose a condition on the licence granted or renewed requiring the licensee to forward to the Director-General the licensee's income tax return or financial statement for the previous financial year within 14 days of the licensee receiving or finalising that document.
- (6) If at any time after the issue or renewal of a licence that does not contain a condition requiring the use of electronic means of creation and storage of records the Director-General is satisfied that the gross receipts for the licensee's business relating to used goods totalled more than \$150,000 in the previous financial year, the Director-General may impose a condition of that kind on the licence.
- (7) Any condition imposed under subclause (6) takes effect 90 days after written notice of the condition is given to the licensee.
- (7A) If, on such evidence as the Director-General may require, the Director-General is satisfied that:
- (a) a second-hand dealer's licence under the *Second-hand Dealers and Collectors Act 1906* was held by a person for the purposes of a business carried on by a corporation or partnership, and
 - (b) in the case of a partnership, there has not been any change in the membership of the partnership since the licence was held on its behalf (except for any person ceasing to be a partner or any spouse of an existing partner becoming a partner),
- the Director-General may determine that the corporation or each of those partners is to be regarded, for the purposes of this clause, as the holder of the licence. The determination has effect accordingly.
- (7B) For the purposes of subclause (7A), **spouse** includes the other party to a de facto relationship within the meaning of the *Property (Relationships) Act 1984*.
- (7C) A reference in subclause (1) to a licence issued under the *Second-hand Dealers and Collectors Act 1906* includes a reference to a licence issued after 30 April 1997 pursuant to an application that was made but not dealt with before that date.
- (8) In this clause:
- used goods** means goods that have been used or that are represented by a vendor

of the goods to be goods purchased (otherwise than by the vendor) previously but unused, and includes second-hand goods.

14 Records of goods pawned, purchased or sold

- (1) The following particulars are prescribed for the purposes of section 16 (1) of the Act in so far as the licensee carries on the business of a pawnbroker:
 - (a) the name, address, date of birth and signature of the pledgor or his or her agent,
 - (b) a contract number for each transaction in which goods are pawned (that is, a number uniquely assigned by the licensee to distinguish it from any other pledge arising in the course of the licensee's business),
 - (c) the date on which any pledge was taken, forfeited, sold or otherwise dealt with,
 - (d) the sale price of any forfeited item sold,
 - (e) the location of any goods concerned in the business that are not kept at the notified business or storage premises of the licensee.

- (2) The following particulars are prescribed for the purposes of section 16 (1) of the Act in so far as the licensee carries on the business of a second-hand dealer:
 - (a) the name, address, date of birth and signature of the vendor or consignor or his or her agent,
 - (b) a contract number for each transaction in which goods are bought or sold (that is, a number uniquely assigned by the licensee to distinguish it from any other sale or purchase arising in the course of the licensee's business),
 - (c) the date on which any goods were purchased, taken on consignment, sold or otherwise dealt with,
 - (d) the name and address of the purchaser of goods sold by the licensee (otherwise than at a market), except in cases where the value of the goods does not exceed \$50,
 - (e) a description of the goods that includes any characteristics specified in section 28 (2) (a) of the Act that appear on or in connection with the goods,
 - (f) the price paid for any goods purchased,
 - (g) the location of any goods concerned in the business that are not kept at the notified business or storage premises of the licensee.

- (3) The following particulars are also prescribed for the purposes of section 16 (1) of the Act in relation to all licensed businesses:

- (a) evidence of any search in public registers such as REVS for encumbrances in respect of goods,
- (b) features peculiar to any card or document relied on for the purposes of clause 18 (1), such as:
 - (i) in the case of a passport or driver's licence—the number of the passport or licence, or
 - (ii) in the case of a credit card—the account number displayed on the card, or
 - (iii) in the case of a bill addressed to the customer from a public utility—the customer's account number shown on the bill,
- (c) in relation to jewellery, such particulars as the Commissioner of Police, by one or more notices served on the licensee, may specify.

15 Records of persons employed in licensed businesses

For the purposes of section 16 (2) of the Act, the prescribed particulars are the name, date of birth and residential address of each person employed in the licensed business.

16 Records relating to markets

For the purposes of section 16 (3) of the Act, the prescribed particulars are as follows:

- (a) the date on which the market is held,
- (b) the location of the market,
- (c) the name, residential address and vehicle registration number of any unlicensed stallholder offering second-hand goods (within the meaning of the Act) for sale,
- (d) a general description of the goods offered for sale by any such stallholder,
- (e) details of any identification documents produced by any such stallholder.

16A Furnishing of records to the Commissioner of Police

- (1) For the purposes of section 16 (5A) of the Act, particulars of a record that is required, by way of a condition of a licence, to be created and stored in electronic form by a licensee must be furnished to the Commissioner of Police by transmission in electronic form within 3 working days of the record being made, or in accordance with other arrangements made by the Commissioner of Police with the licensee.
- (2) For the purposes of section 16 (5A) of the Act, particulars of a record that is required by or under the Act to be kept by a licensee, but that is not required to be created and stored in electronic form, must be furnished to the Commissioner of Police, if so directed by the Commissioner, in the manner and within the time directed by the

Commissioner.

17 Production of records at offices of the Department

For the purposes of section 17 (4) of the Act, the prescribed distance is 100 km.

Part 4 Regulation of licensed businesses

18 Evidence of identity and title of supplier of goods

- (1) For the purposes of section 15 (1A) of the Act, the identity of the person (the **customer**) offering to sell or pawn any goods to a licensee must be verified by the licensee by means of either:
 - (a) a card or document that:
 - (i) bears the customer's photograph, and
 - (ii) 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
 - (iii) includes the name of the person who the customer claims to be and the address at which the customer claims to reside, and a signature, purporting to be the signature of that person, which matches the signature of the customer, and
 - (iv) does not, on the face of it, bear any indications of forgery or tampering, or
 - (b) a combination of cards or documents:
 - (i) that, on the face of them, appear to be issued by organisations or persons other than the customer and that include the information and features described in paragraph (a) (iii), and
 - (ii) one of which appears on the face of it 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
 - (iii) none of which bears, on the face of it, any indications of forgery or tampering.
- (2) For the purposes of section 15 (1B) of the Act, the person's date of birth is prescribed as a particular relating to the identity of the person. Evidence of the person's date of birth may be given in oral or documentary form.
- (3) For the purposes of section 15 (3) of the Act, the licensee must obtain from the customer a written statement as to the ownership of goods to the effect of the form set out in Form 2 in Schedule 1.

19 Retention of goods by licensee

- (1) Section 21 (1) of the Act does not apply to:
 - (a) goods consigned for sale by the licensee, or
 - (b) goods purchased by the licensee at auction, or
 - (c) pawned goods.
- (2) For the purposes of section 21 (1) (a) of the Act, motor vehicles, watercraft and other goods of substantial size may be kept at any convenient place.

20 Goods alleged to be stolen in possession of licensee

For the purposes of section 22 (1) (a) of the Act, the licensee's statement is to be given using Form 1 in Schedule 1.

21 Penalty notice offences and demerit points

- (1) (Repealed)
- (2) Each offence created by a provision specified in Column 1 of Schedule 2 is a prescribed offence for the purposes of sections 26 and 27 of the Act.
- (3) The penalty specified in Column 2 of Schedule 2 opposite the prescribed expression for an offence is the amount of penalty prescribed for the offence if dealt with under section 26 of the Act.
- (4) The number of demerit points specified in Column 3 of Schedule 2 opposite the prescribed expression for an offence is the number of demerit points prescribed for the purposes of section 27 (2) of the Act in respect of the offence.
- (5)-(7) (Repealed)

Part 5 Special provisions relating to pawnbrokers

22 Equivalent annual interest rate

- (1) In this clause:

equivalent annual interest rate means the rate mentioned in section 28 (2) (c) of the Act (expressed as a percentage) calculated as prescribed by this clause.

interest period, in relation to a loan made by a pawnbroker, means a period of time in respect of which interest is charged on any outstanding balance.

outstanding balance, in relation to such a loan, means the portion of the amount advanced that remains unpaid.

periodic interest rate, in relation to such a loan, means the rate (expressed as a percentage) per interest period at which interest is chargeable on any outstanding balance.

- (2) The equivalent annual interest rate, in relation to a loan made by a pawnbroker, is the rate that bears to a year the same proportion as the periodic interest rate bears to the interest period. For example:
 - (a) if the interest period is one month, the equivalent annual interest rate is 12 times the periodic interest rate, and
 - (b) if the interest period is one week, the equivalent annual interest rate is 52 times the periodic interest rate.

22A Pawnbroker's record of pledges

For the purposes of section 28 (2) (f) of the Act, particulars of the date of birth of the owner of the goods and of any agent through whom they are pawned are prescribed as particulars required to be included in the record of an agreement by which goods are pawned.

23 (Repealed)

24 Redemption of pawned goods

- (1) For the purposes of section 29 (6) of the Act, the identity of the person (the **customer**) attempting to redeem any pawned goods from a licensee is ascertained by production of the pawn ticket and reproduction, in the presence of the licensee, of the signature shown on that ticket. If the customer does this, there are no other requirements for the purposes of that subsection.
- (2) The identity of a customer who cannot produce the pawn ticket must be ascertained by the licensee by means of either:
 - (a) a card or document that:
 - (i) bears the customer's photograph, and
 - (ii) 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
 - (iii) includes the name of the person who the customer claims to be and the address at which the customer claims to reside, and a signature, purporting to be the signature of that person, which matches the signature of the customer, and
 - (iv) does not, on the face of it, bear any indications of forgery or tampering, or

- (b) a combination of cards or documents:
 - (i) that, on the face of them, appear to be issued by organisations or persons other than the customer and that include the information and features described in paragraph (a) (iii), and
 - (ii) one of which appears on the face of it 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
 - (iii) none of which bears, on the face of it, any indications of forgery or tampering.
- (3) A customer who cannot produce the pawn ticket must:
 - (a) complete a declaration in writing stating that he or she is the owner of the goods, or
 - (b) produce:
 - (i) an authority in writing specifying the name and address of the owner of the goods and signed by the owner, authorising the goods to be collected by that customer, or
 - (ii) such evidence as may, in the circumstances, be reasonably sufficient to prove the death or incapacity of the owner or the owner's inability to sign such an authority.

25 Forfeited pledges, whether saleable by auction

For the purposes of section 30 (1) of the Act, the prescribed amount is \$50.

Part 6 Miscellaneous

26 Lending or parting with licence

- (1) A licensee must not purport to transfer, and must not lend, the licence to another person or allow the use of the licence by another person.
- (2) A person must not purport to obtain a transfer of, or borrow or use, another person's licence.

Maximum penalty: 20 penalty units.

27 (Repealed)

27A Carrying on of business in partnership

- (1) The prescribed fees under items 1-4 of Schedule 3 are the total amount of the fees payable by all applicants who carry on business in partnership. Accordingly, no amount is payable in connection with an application for a licence or the renewal of a

licence by any such applicant if, at that time or during the previous 12 months, the requisite amount has been paid by any other partner in the partnership (whether the payment is for an application for a licence or for the renewal of a licence).

- (2) The Director-General may, for the purposes of clause 13A (6), treat the gross receipts of a business partnership as the gross receipts of the business of each licensee in the partnership.

28 Carrying on of business by legal personal representatives and trustees

- (1) If the holder of a licence dies, or is by the order of any court, tribunal or authority of competent jurisdiction declared to be bankrupt or mentally incapacitated, the legal personal representative or trustee of the estate of the licensee may in person or by a designated agent carry on the business authorised by the licence for a period of 3 months after the death or order, unless sooner notified by the Director-General under subclause (5).
- (2) A person carrying on a business in accordance with this clause must immediately notify the Director-General that he or she is doing so.
- (3) For the purposes of the Act, this regulation and any powers of the Director-General with respect to licences, a person carrying on a business in accordance with this clause is taken, while so doing, to be the licensee, and any agent through whom the person acts for the purposes of the business is taken to be an employee of the business.
- (4) If the licence concerned expires during the period of 3 months referred to in subclause (1), the provisions of sections 6 and 7 of the Act do not apply so as to render the person carrying on business in accordance with this clause guilty of an offence by reason of doing so.
- (5) For any reason that appears to the Director-General to be sufficient cause to do so, the Director-General may at any time, by notice in writing to a person carrying on a business in accordance with this clause, revoke the authority conferred by this clause so far as the relevant business is concerned.

29 (Repealed)

Schedule 1 Forms

(Clauses 18 (3) and 20)

Form 1 Pawnbrokers and Second-hand Dealers Act 1996

Statement by licensee as to goods claimed

*Name of claimant:
*Address of claimant:
Date:
Name of licensee:

Business address:
Licence number:
Description of goods claimed:
.....
.....

.....
Licensee

[Ihrule]

* These particulars to be supplied by the claimant

Note.

This statement must be completed by the licensee in duplicate (at least). A copy is to be given to the person claiming the goods. Another copy must be given to the officer in charge of the nearest police station within 24 hours. The goods concerned must not be altered, sold, redeemed or removed from the premises except with the consent of the person claiming the goods or in accordance with the order of a court. If the parties are unable to resolve the matter simply, staff at the Local Court are available for help in commencing a court action under the [Local Courts \(Civil Claims\) Act 1970](#) or as to other means of resolving the matter.

Form 2 Pawnbrokers and Second-hand Dealers Act 1996

Statement by customer as to who is the owner of goods sold or pawned

I of
..... am the owner of the goods described below.

Signed:
Dated:

OR

I of
..... am not the owner of the goods described below. The owner of the goods is

.....
of
..... and I am authorised by the owner to sell/pawn the goods. (*You should cross out either "sell" or "pawn" if you are not authorised to do that thing.*)

Signed:
Dated:

Description of goods:
.....
.....
.....
.....
.....
.....
.....
.....
.....

Important information.

If you are pawning goods:

- (a) you must fill out this form and sign it so that the pawnbroker can be sure that you are the owner of the goods or that you have the authority of the owner to pawn the goods,
- (b) any information that you provide to the pawnbroker will be passed on to the Commissioner of Police.

If you are offering any second-hand goods for sale by a second-hand dealer:

- (a) you must fill out this form and sign it so that the dealer can be sure that you are the owner of the goods or that you have the authority of the owner to sell the goods,
- (b) any information that you provide to the dealer may be passed on to the Commissioner of Police.

Warning: It is a crime to give false information or make a false statement in this form.

Maximum penalty: 50 penalty units (currently \$5,500).

Schedule 2 Penalty notice offences and demerit points

(Clause 21)

Column 1	Column 2	Column 3
Provision of Act	Penalty if dealt with by penalty notice (in dollars)	Number of demerit points
Section 12 (2) or 12A (2)	300	2
Section 14 (1)	300	1
Section 14 (2)	300	1
Section 16 (1)	500	2
Section 16 (2)	500	2
Section 16 (3)	500	2
Section 16 (5)	500	2
Section 16 (5A)	500	2
Section 16 (6)	300	2
Section 17	300	2
Section 19	500	2
Section 20	300	2
Section 21 (1) (a)	500	2
Section 21 (1) (b)	500	2
Section 21 (1) (b)	500	2
Section 21 (1) (b)	500	2
Section 21 (4)	500	2
Section 24	300	2
Section 25	300	2
Section 28 (1)	500	2
Section 28 (4)	500	2

Section 28 (5)	500	2
Section 29 (5)	300	2
Section 29 (6)	300	2
Section 29 (6)	300	2
Section 30 (2)	300	2
Section 30 (2)	300	2
Section 31	300	2
Section 32	300	2
Section 37	100	Nil

Schedule 3 Fees

(Clause 7A)

Column 1	Column 2	Column 3
Nature of fee payable	Processing component	Fixed component
Application fee for granting of licence	\$130	\$230
Application fee for renewal of licence	\$30	\$230
Application fee for restoration of licence	\$30	\$251
Application fee for replacement of licence	\$20	nil
Application fee for extract of register (per entry)	nil	\$11