



Legislative Assembly

Pawnbrokers And Second-Hand Dealers Amendment Bill Hansard

Extract

30/10/2002

Second Reading

Mr AQUILINA (Riverstone—Minister for Land and Water Conservation, and Minister for Fair Trading) [10.24 a.m.]: I move:

That this bill be now read a second time.

The purpose of this bill is to amend the Pawnbrokers and Second-hand Dealers Act 1996 and the Pawnbrokers and Second-hand Dealers Regulation 1997 as a consequence of a national competition policy review of the legislation. The bill principally contains provisions arising in response to recommendations made in the final report of that review. The main purpose of the Pawnbrokers and Second-hand Dealers Act 1996 is to restrict the trade in stolen goods. This is done by regulating the industry through an occupational licensing regime and having evidence of identity and record-keeping requirements. The Act also aims to constrain the exercise of market power in respect of the provision of pawnbroking services and to provide a mechanism to facilitate the return of stolen property to rightful owners quickly and equitably.

As of 16 October there was a total of 1,339 licence holders under the Act of whom five were licensed as pawnbrokers only, 997 were licensed as second-hand dealers only and 337 were licensed as pawnbrokers and second-hand dealers. The review of the Pawnbrokers and Second-hand Dealers Act 1996 was undertaken in accordance with the Government's commitments under national competition policy. There was extensive consultation with the industry and other interested parties throughout the review process. The review was supervised by a steering committee and a reference group was also established to provide advice to the review. The reference group included representatives from the Pawnbrokers Association of New South Wales, the Australian Antique Dealers Association, the Law Society of New South Wales, the Consumer Credit Legal Centre and other industry and consumer groups.

The review concluded that the current licensing system provides a net public benefit and therefore should be retained. Notwithstanding that finding, the review also found that a greater net public benefit would arise from enhancing the existing licensing model. The final report recommended that the legislation be amended so that it is more effective and efficient in achieving its objectives, to reduce the regulatory burden for licensees, and for the purposes of clarification and consistency.

In this regard the bill makes further provisions regarding the application and operation of the Act, the licensing of pawnbrokers and second-hand dealers, the regulation of licensed businesses, the regulation of markets at which second-hand goods are sold, and the taking of disciplinary action against licensees and former licensees. The bill also provides a new mechanism to deal with goods in the possession of a licensee that are claimed to have been stolen or otherwise unlawfully dealt with. The bill prevents the unauthorised disclosure of personal information obtained in the course of conducting a licensed business and makes other amendments of a minor, consequential or ancillary nature.

I now turn to specific provisions contained in the bill. In the course of the operation of the Act it has become apparent that the presumption for carrying on a business has been used as a means of circumventing the need to be licensed. Consequently the bill changes the statutory presumption as to when a person is considered to be carrying on the business of buying or selling second-hand goods, so that the presumption arises when a person sells goods on more than six days—instead of 12 days—within a 12-month period.

This presumption will allow people conducting garage sales or sporting and school groups enough opportunity to sell their own household quantities of these prescribed goods while ensuring that the system of tracking stolen goods is as effective as possible. This presumption is also in keeping with similar provisions in the legislation of other jurisdictions. Licensing arrangements within the Act have been amended so that they are more effective in their objective of preventing people of unsuitable character from entering the industry. In this regard the bill provides that an individual or a corporation, and each of its directors, cannot be a disqualified person and must be a fit and proper person to hold a licence.

In addition to existing requirements the bill provides that a disqualified person is one who is: the holder of a licence suspended under the Act or a licence or authority suspended by the Fair Trading Act 1987; or disqualified from holding a licence or other authority, or have such a licence or other authority suspended, under a corresponding law of another jurisdiction. The bill also provides that a person is disqualified from holding a licence if he or she is the executive officer of a corporation that is disqualified from holding a licence; or is in partnership in connection with the business with a disqualified person. In order that the Act is consistent with other jurisdictions and other Acts administered by the Department of Fair Trading, licence conditions can now be imposed, varied or revoked at

any time during the currency of a licence.

Amendments have been made to the business of pawnbroking to ensure that the requirements of the Act are effective and to clarify certain provisions. In this regard the bill provides that pawned goods must be physically kept at registered business and storage premises. This allows pawners to redeem their goods whenever possible and to ensure that such goods can be readily inspected. Specific classes of premises can be excluded to ensure that the intent of the legislation is maintained. To ensure that the tracking of stolen goods is as effective as possible a pawn ticket, and a pawnbroker's record of pledges, must, in a fair and reasonable description of the pawned goods, include every serial number, other identifying number, inscription and engraving appearing on the goods and each component of the goods.

One of the main areas of market failure in the pawnbroking industry is the imbalance of information between the consumer and the trader. As a means of addressing this important consumer issue, the Act has been amended to require a pawn ticket to incorporate or be accompanied by an itemised statement of fees and charges and the manner of determining those fees and charges. The bill requires a licensee to provide a pawnor with a prescribed notice which sets out the rights and obligations of the pawnor and a statement of the method by which the pawned goods may be sold if they are not redeemed. To ensure that a pawnor's rights are not undermined, a pawn ticket cannot exclude, modify or misrepresent the pawnor's legal rights.

To provide increased consumer protection, the bill requires that a pawn agreement cannot be varied, except by extending the original redemption period by mutual agreement. The operation of the Act has determined the importance of having all agreements in writing. To that effect the bill provides that certain particulars must be set out in writing when extending the original redemption period. The Act currently requires all unredeemed pledges to be sold by public auction when the principal lent on the goods exceeds \$50. The review concluded that this enforced method of sale does not always procure the fairest price for the goods and the costs involved in sending goods to auction often negates a potential surplus for the pawnor on the sale of the goods. Consequently, the bill allows pawnbrokers the option of selling unredeemed goods either by sale at their premises or by sale by auction elsewhere. Pawnbrokers, however, are still required to sell unredeemed goods in a manner conducive to securing the best price reasonably obtainable.

A person who has pawned goods for a lesser value than their worth but is unable to redeem those goods is entitled to any surplus proceeds from a sale of those goods. To support this right the bill provides that a pawnbroker must notify the pawnor, by way of registered mail, of any surplus proceeds of the sale of pawned goods. This is not necessary when the pawnor has requested the pawnbroker in writing not to send the notice or where the amount that may be claimed is less than \$50. To assist pawnors in redeeming their goods at the end of the redemption period, the bill requires that pawnors have the option to pay their interest on the pawn at monthly intervals, rather than at longer intervals or entirely at the end of the redemption period. To ensure that those who pawn goods are aware of all the fees and charges and the applicable interest rates, the bill provides that pawnbrokers are required to display these prominently. In the interests of consumer protection the bill provides that interest on the pawned goods is to cease at the end of the redemption period.

To maintain consistency with other consumer protection laws, the bill requires pawnbrokers to notify those with whom they have operational pawn agreements if the business is sold or transferred to another licensee. Additionally, if pawnbrokers surrender or do not renew their license, then the bill requires that they make arrangements for the redemption of pawned goods. To assist with the tracking of stolen goods, the bill requires that market promoters obtain the same kind of evidence of identity from stallholders that persons offering to pawn or sell goods are required to produce before permitting them to sell second-hand goods at the markets.

I now come to one of the most important aspects of the bill, the provision of a new mechanism for the restoration of goods that are alleged stolen or improperly dealt with and are in the possession of a licensee. The bill provides that if the theft of the goods has been previously reported to the police, then the person claiming the goods may furnish a written statement to a police officer alleging that the goods have been stolen or otherwise improperly dealt with, together with documentary evidence or a statutory declaration substantiating the claimant's ownership of the goods. The police officer may then serve a restoration notice on the licensee requiring the licensee to deliver the goods to the claimant, unless the licensee commences proceedings before the Consumer, Trader and Tenancy Tribunal, which may deal with the matter. To ensure that consumers are aware of their rights, the licensee must display prescribed notification of these rights in a prominent location.

For the purposes of tracking stolen goods, the legislation requires the capturing of detailed information about those who use pawnbroking and/or second-hand dealing services. To ensure that this information is treated confidentially the bill makes it an offence, with the exception of certain circumstances, for a licensee or other person involved in the management of a licensed business to disclose this personal information. The disciplinary provisions of the Act have been amended to ensure that those of unsuitable character are not involved in the pawnbroking and second-hand dealing industries.

In this regard the bill provides that a "show cause" can be served on a licensee as to why the licensee's licence should not be revoked on the following grounds: that the licensee, or an employee, has contravened the Act or other legislation administered by the Department of Fair Trading; or that the licensee has been convicted of an offence involving dishonesty or become a disqualified person since the licence was issued or last renewed. In order that disciplinary action can be taken against those licensees who do not comply with the Act's requirements, the bill introduces a new provision which enables disciplinary action to be taken against those who have held a licence in the last 12 months. This provision is in keeping with current legislation administered by the Department of Fair Trading.

I now turn to amendments to the Pawnbrokers and Second-hand Dealers Regulation 1997. As technology advances, certain types of goods come onto the market which are at a high risk of theft. Consequently, the prescribed list of goods to which the legislation applies must be updated to ensure that they represent those goods that are still at high risk of theft. In this regard the bill amends the regulation to clarify that items like minidisks and DVDs are specifically included in the prescribed list of second-hand goods. The record-keeping requirements have also been amended to keep up with technology to ensure that the most valuable information is obtained. To this end, the bill provides that pawnbrokers record what is a fair and reasonable description of goods in relation to compact discs, mobile phones and items with bar codes.

In order to ensure that people are not discriminated against when using pawnbroking services, the bill has provided for more acceptable forms of identification. In this regard the bill provides that the documentation issued by the government of a foreign country is allowed amongst the kinds of evidence of identity that may be produced by a person seeking to redeem goods. As another means of providing up-to-date information about transactions involving prescribed classes of second-hand goods, the bill requires second-hand dealers to record transaction details by close of business on the date of the transaction. However, as this may not always be practical when licensees are on buying expeditions or when the acquisition of second-hand goods is at a place other than the dealer's business premises, this recording is to be done as soon as possible afterwards.

This bill enhances the existing pawnbroking and second-hand dealer licensing regime. It ensures that the objectives of the legislation—to restrict the trade in stolen goods, to provide consumer protection to those who use pawnbroking services and to provide a mechanism to facilitate the return of stolen property to rightful owners quickly and equitably—continue to be met in the most efficient and effective way. My appreciation is extended to the industry and other interested parties who made submissions to the review and in response to the exposure draft bill. In particular, I extend my appreciation to the Pawnbrokers Association of New South Wales and its members who have taken a constructive approach in the consultation process on this bill. I commend the bill to the House.