

## **Pawnbrokers and Second-hand Dealers Amendment Bill 2002**

### **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

#### Overview of Bill

This Bill principally contains provisions arising in response to recommendations made in the Final Report of a departmental review of the *Pawnbrokers and Second-hand Dealers Act 1996* conducted in the context of a National Competition Policy review.

The object of this Bill is to amend the *Pawnbrokers and Second-hand Dealers Act 1996* and the *Pawnbrokers and Second-hand Dealers Regulation 1997*, so as:

(a) to make further provision regarding:

- (i) the application and operation of the Act,
  - (ii) the licensing of pawnbrokers and second-hand dealers,
  - (iii) the regulation of licensed businesses,
  - (iv) the regulation of markets at which second-hand goods are sold,
  - (v) the taking of disciplinary action against licensees and former licensees,
- (b) to provide a new mechanism to deal with goods in the possession of a licensee and claimed to have been stolen or otherwise unlawfully dealt with,
- (c) to prevent the unauthorised disclosure of personal information obtained in the course of conducting a licensed business,
- (d) to make other amendments of a minor, consequential or ancillary nature.

#### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Pawnbrokers and Second-hand Dealers Act 1996* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Pawnbrokers and Second-hand Dealers Regulation 1997* set out in Schedule 2.

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

#### **Licensing of pawnbrokers and second-hand dealers**

Schedule 1 contains the following:

(a) **Schedule 1 [4]** inserts new sections 8 and 8A to make the following changes to licensing arrangements:

- (i) to restate the circumstances in which an individual is eligible to hold a licence under the Act, including requirements that the individual is a fit and proper person to hold a licence and is not a “disqualified person” as defined in the provisions,
- (ii) to restate the circumstances in which a corporation is eligible to hold a licence under the Act, including requirements that the corporation and each of its directors are fit and proper persons to hold a licence and that the corporation and any of its directors or other executive officers are not “disqualified persons” as defined in the provisions,
- (iii) to provide that a person is a “disqualified person” if the person is precluded from being granted a licence in consequence of court action or disciplinary action, or is the holder of a licence suspended under the Act or a licence or other authority suspended under the *Fair Trading Act 1987*,
- (iv) to provide that a person is a “disqualified person” if the person is disqualified from holding a licence or other authority under a corresponding law of another jurisdiction or is the holder of a licence or other authority suspended under such a law,

(v) to provide that an individual is a “disqualified person” in specified circumstances, including where he or she is a director or other executive officer of a corporation that is a disqualified person,

(vi) to empower the Director-General of the Department of Fair Trading (as well as the Administrative Decisions Tribunal) to determine that an offence involving dishonesty should be ignored on specified grounds as a disqualification from holding a licence.

(b) **Schedule 1 [8] and [9]** amend section 11 to enable licence conditions to be imposed, varied or revoked at any time during the currency of a licence.

(c) **Schedule 1 [32]** inserts new section 33A to require a licensee to notify the Director-General in writing within 28 days of a conviction for an offence involving dishonesty committed by the licensee or an employee of the licensee.

(d) **Schedule 1 [41]** amends section 39 to preserve the current ability of the Administrative Decisions Tribunal to determine that an offence involving dishonesty should be ignored on specified grounds as a disqualification from holding a licence.

### **Regulation of business of pawnbroking**

Schedule 1 contains the following:

(a) **Schedule 1 [13]** inserts new section 12B to require pawned goods to be physically kept at the business or storage premises of the pawnbroker, until they are redeemed or otherwise properly dealt with. The proposed section provides machinery to enable specific premises or classes of premises to be excluded as premises at which pawned goods may be kept.

(b) **Schedule 1 [18] and [22]** amend section 28 to provide that 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 and must also include anything else prescribed by the regulations.

(c) **Schedule 1 [19]** amends section 28 to provide that the document to be signed by a person who pawns goods (a **pawner**) must contain all the particulars required to be included in it by or under the Act.

(d) **Schedule 1 [20]** inserts new section 28 (5A) to require a pawn ticket to incorporate or be accompanied by:

- (i) a notice setting out the rights and obligations of a pawner, and
- (ii) an itemised statement of fees and charges, the amounts (if known or ascertainable) of those fees and charges and (if those amounts are not known or ascertainable) the manner of calculating those fees and charges, and
- (iii) a statement of the method by which the pawned goods may be sold if they are not redeemed, and
- (iv) a notice disclosing other particulars or information prescribed by the regulations.

(e) **Schedule 1 [20]** inserts new section 28 (5B) to require a pawn ticket not to contain or be accompanied by material that excludes, modifies or misrepresents the pawner’s legal rights.

(f) **Schedule 1 [26]** inserts new sections 29A, 29B and 29C to provide that a pawn agreement cannot be varied, except by extending the original redemption period by mutual agreement. Certain particulars must be set out in writing in connection with an extending agreement.

(g) **Schedule 1 [27]** inserts new sections 30 and 30A:

- (i) to allow pawnbrokers the option of selling unredeemed goods either by sale at their premises or by sale by auction elsewhere, and
- (ii) to require pawnbrokers to sell unredeemed goods in a manner

conducive to securing the best price reasonably obtainable, and

(iii) to provide for amounts that are deductible from the sale price.

(h) **Schedule 1 [28]** inserts new sections 31 and 31A dealing with the proceeds of the sale of unredeemed pawned goods. Proposed section 31 restates the requirement to pay any surplus proceeds of the sale of pawned goods, on demand, to the pawner or the pawner's representative. Proposed section 31A requires a pawnbroker to notify the pawner, by way of registered mail, of any surplus proceeds of the sale of pawned goods, except where the pawner has requested the pawnbroker in writing not to send the notice or where the amount that may be claimed is less than \$50 (or another amount prescribed by the regulations). **Schedule 1 [1]** amends section 3 to insert a new definition of *surplus proceeds*.

(i) **Schedule 1 [29]** inserts new sections 32A, 32B and 32C to make the following changes in relation to interest charges:

(i) interest ceases to accrue at the end of the redemption period,

(ii) pawners have the option to pay at monthly intervals, rather than at longer intervals or entirely at the end of the redemption period,

(iii) pawnbrokers are required to display prominently the applicable interest rates, fees and charges.

(j) **Schedule 1 [30]** inserts new section 32D to provide that where a pawnbroker sells or transfers the pawnbroker's business to another person, the rights and obligations of the pawnbroker in relation to each pawn agreement are transferred to the other person, and to require the pawnbroker or other person to notify each affected pawner of the transfer.

(k) **Schedule 1 [40]** inserts new section 38A to allow the Director-General to make arrangements for the redemption of pawned goods in cases where a licence relating to a pawnbroking business is surrendered or not renewed, and also where a licence is revoked or suspended by the Director-General. The latter cases are currently dealt with in section 36 (4). **Schedule 1 [36]** accordingly omits section 36 (4), as the subject-matter of that subsection will be dealt with in proposed section 38A.

#### **Regulation of business of second-hand dealing**

**Schedule 1 [15]** amends section 21 to provide that the 14-day retention period for second-hand goods commences with the day on which their purchase or receipt was recorded by the licensee.

#### **Regulation of markets**

**Schedule 1 [14]** inserts new section 15A to oblige market promoters to obtain evidence of the identity of stallholders before permitting them to sell second-hand goods at the markets. The evidence must include the same kind of evidence of identity that persons offering to pawn or sell goods are required to produce.

#### **Restoration of goods claimed to be stolen or otherwise unlawfully dealt with**

Schedule 1 contains the following:

(a) **Schedule 1 [31]** inserts new Part 4A to provide a new mechanism for the restoration of goods alleged to have been stolen and in the possession of a licensee. Some of the features of the new mechanism are as follows:

(i) 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,

(ii) the theft or other activity has been reported to police on an earlier occasion,

(iii) the police officer may 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,

(iv) the goods concerned must not be altered, removed or disposed of until the matter has been resolved,

(v) it is an offence for the claimant to make a false or misleading allegation to the police officer,

(vi) licensees must prominently display a notice in their business premises relating to the mechanism.

(b) **Schedule 1 [16]** omits section 22, which contains the current provisions relating to goods alleged to be stolen.

(c) **Schedule 1 [17]** omits section 23, which empowers a court in criminal proceedings to direct that goods that have been stolen or otherwise unlawfully dealt with be taken into police custody and dealt with under applicable provisions of other legislation. The contents of the section are transferred to Part 4A as section 32M.

(d) **Schedule 1 [45]** amends section 43 to enable regulations to be made prescribing monetary limits in respect of the jurisdiction of the Consumer, Trader and Tenancy Tribunal.

#### **Protection of personal information**

**Schedule 1 [47]** inserts new section 44 to make it an offence for a licensee or other person involved in the management of a licensed business to disclose personal information about a person in the course of conducting the business, except in certain circumstances listed in the proposed section.

#### **Disciplinary action against licensees and former licensees**

Schedule 1 contains the following:

(a) **Schedule 1 [33], [34] and [35]** amend section 34 to enable a notice to be served requiring a licensee to show cause why the licensee's licence should not be revoked, on the ground:

(i) that the licensee or an employee has contravened the Act or other legislation administered in the Department of Fair Trading, or

(ii) that the licensee or an employee has been convicted of an offence involving dishonesty since the licence was issued or last renewed, or

(iii) that the licensee has become a disqualified person.

(b) **Schedule 1 [37]** inserts new section 36A to enable disciplinary action to be taken against former licensees.

(c) **Schedule 1 [38]** inserts new section 36B to make it clear that the Director-General has the discretion to determine not to take disciplinary action in relation to a matter.

#### **Application and operation of Act**

Schedule 1 contains the following:

(a) **Schedule 1 [1]** amends section 3 to insert a new definition of *sell*, paragraph (a) of which makes it clear that the expression includes sale by tender. **Schedule 1 [3]** amends section 4 to state explicitly that the exclusion of the business of an auctioneer from the application of the Act does not have the effect of excluding the business of selling by tender.

(b) **Schedule 1 [39]** amends section 38 to change 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 6 days (instead of 12 days) within a 12-month period.

**Schedule 1 [49]** inserts new clause 18 into Schedule 2 to the Act to provide transitional arrangements for the amendment.

(c) **Schedule 1 [44]** amends section 43 to enable regulations to be made for exemptions from the Act or specified provisions of the Act. Regulations could

be made, for example, exempting licensees from specific record-keeping requirements. **Schedule 1 [46]** inserts new section 43 (4) to make it clear that section 4, which authorises regulations to be made relating to the application of the Act, does not limit the power to make regulations providing for exemptions.

#### **Other amendments**

Schedule 1 contains other amendments of a minor, consequential or ancillary nature, including the following:

(a) **Schedule 1 [1]** amends section 3 to insert a new definition of **sell**, so that (among other things) it includes selling by tender, bartering, exchanging, offering to sell and selling by or as an agent. Other definitions are also inserted.

(b) **Schedule 1 [2]** amends section 3 to provide that notes included in the Act do not form part of the Act. A similar note already appears in the Regulation.

(c) **Schedule 1 [42]** inserts new section 40A to provide that, if a corporation contravenes a provision of the Act or the regulations, each person who is a director or other executive officer of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(d) **Schedule 1 [43]** amends section 43 to make it clear that regulations can be made for or with respect to the carrying on of a business as a second-hand dealer or pawnbroker or both.

(e) **Schedule 1 [48]** inserts new sections 44A and 44B. Proposed section 44A prevents an agreement from containing a provision that would exclude, modify or restrict the operation of the Act or any provision of the Act. Proposed section 44B prevents an agreement from containing a provision about a licensee's liability for lost or damaged goods that would be less favourable to the owner of the goods than the common law.

(f) **Schedule 1 [49] and [50]** amend Schedule 2 to insert provisions of a savings or transitional nature and to enable regulations containing provisions of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

(g) **Schedule 1 [5], [6], [7], [11], [12], [21] and [23]** make other amendments of a consequential nature.

(h) **Schedule 1 [10], [24] and [25]** make other amendments by way of statute law revision.

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

##### **Regulation of licensed businesses generally**

Schedule 2 contains the following:

(a) **Schedule 2 [9], [11], [17] and [18]** amend clauses 14 and 18 to require a corporation's Australian Business Number to be supplied instead of date of birth.

(b) **Schedule 2 [15], [16] and [19]** amend clause 18 to include documentation issued by the government of another country among kinds of evidence of identity that may be produced by a person offering to pawn or sell goods to satisfy identification requirements.

(c) **Schedule 2 [20]** inserts new clause 18A to make it an offence against the regulations if a licensee does not ensure that the contract number or stock number for each item taken in trade or pawn is reproduced on a tag, label or other attachment to the item. **Schedule 2 [8]** amends clause 13 to remove the current provisions concerning this matter.

##### **Regulation of business of pawnbroking**

Schedule 2 contains the following:

(a) **Schedule 2 [10]** amends clause 14 to require pawnbrokers, where unredeemed goods are sold at their business premises, to record details of the transaction if the principal lent on the goods exceeds \$50.

(b) **Schedule 2 [23]** inserts new clause 22A (1) to provide what is a “fair and reasonable description” of goods to be recorded by pawnbrokers in relation to compact discs, mobile phones and items with bar codes.

(c) **Schedule 2 [23]** inserts new clause 22A (2) to require a corporation’s Australian Business Number to be recorded by a pawnbroker instead of date of birth.

(d) **Schedule 2 [24]** inserts new clause 23 to require the following additional particulars to be disclosed in or to accompany a pawn ticket:

(i) a statement of the frequency with which interest charges are to be debited and of the times at which interest charges are payable,

(ii) a statement that interest is payable, at the option of the pawner, at intervals no greater than one month,

(iii) particulars of the premises where the goods will be located during the redemption period,

(iv) a statement as to whether individual items may be separately redeemed,

(v) the date on which the redemption period ends.

(e) **Schedule 2 [25]–[27]** amend clause 24 to include documentation issued by the government of another country among kinds of evidence of identity that may be produced by a person seeking to redeem goods to satisfy identification requirements.

#### **Regulation of business of second-hand dealing**

Schedule 2 contains the following:

(a) **Schedule 2 [2]–[5]** amend clause 6 to make it clear that certain types of goods are prescribed as “second-hand goods” to which the Act applies.

(b) **Schedule 2 [12]** amends clause 14 to require a licensed second-hand dealer to record the name and address of the purchaser of goods sold at a market (except where the value of the goods does not exceed \$50).

(c) **Schedule 2 [13]** amends clause 14 to make it clear that second-hand dealers are required to record the price that they paid when purchasing items.

(d) **Schedule 2 [14]** amends clause 14 to require second-hand dealers to record transaction details by close of business of the date of the transaction, or as soon as possible afterwards in the case of the acquisition of second-hand goods at a place other than the dealer’s business premises.

(e) **Schedule 2 [21]** amends clause 19 to exclude, from the 14-day retention period for second-hand goods, goods purchased by tender or auction from a government agency.

#### **Regulation of markets**

**Schedule 2 [1]** amends clause 5. The clause excludes certain assemblies of stallholders or marketeers, including those at which every person selling second-hand goods is selling them in household quantities and has provided a 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. The proposed amendment reduces the number of days to 6 days in the 12-month period.

#### **Application of Act to recycling programs**

**Schedule 2 [6] and [7]** amend clause 6A to provide that the Act does not apply to the conduct of a recycling program by a person who has tendered successfully to conduct the program on behalf of a local government council.

#### **Other amendments**

**Schedule 2 [22] and [28]** repeal clause 20 and Form 1 as a consequence of the new mechanism for the restoration of goods alleged to have been stolen and in the possession of a licensee, as set out in proposed Part 4A of the Act.