

New South Wales

# **Pawnbrokers and Second-hand Dealers Amendment Bill 1998**

## **Explanatory note**

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

### **Overview of Bill**

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

- (a) to make it clear that when a person applies for a licence, or for the renewal of a licence, under the Act, the Director-General of the Department of Fair Trading has the function of granting or refusing the application, and
  - (b) to provide that a person who holds a pawnbroker's licence can carry on the pawnbroking business only from the premises specified in the licence application or application for renewal, or premises later notified to the Director-General, and must store the relevant goods only at premises specified in the application or later notified, and
  - (c) to empower the Governor to make regulations requiring any person who offers goods to a pawnbroker or second-hand dealer for pawn or sale to provide further evidence of his or her identity than that which is presently required, and
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- (d) to provide for all records kept by licensees under the Act to be furnished to the Commissioner of Police, including those not required to be kept electronically, and
- (e) to provide for goods in the possession of a second-hand dealer or pawnbroker that are suspected of having been stolen or otherwise unlawfully obtained to be kept, unaltered, for a longer period than is presently the case, and
- (f) to provide for goods in the possession of a second-hand dealer or pawnbroker of which another person has claimed ownership to be retained until any criminal proceedings in relation to the theft of those goods are concluded, and
- (g) to provide for the way in which forfeited pledges are dealt with, and
- (h) for other purposes.

## 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.

## Schedule 1 Amendments

### Grant, refusal and renewal of licence

**Schedule 1 [1]** substitutes the provisions relating to applications for licences and the grant and renewal of licences. The new provisions make it clear that, when a person applies to the Director-General of the Department of Fair Trading for the renewal of a licence under the *Pawnbrokers and Second-hand Dealers Act 1996*, the Director-General must grant the application for renewal if it is not refused. The new provisions also make it clear that a licence that is proposed to be renewed, and for which an extension of the period in which to renew the licence has been granted, continues in force until that renewal is granted or refused.

### **Business and storage premises of licensed pawnbrokers**

At present, section 12 (1) of the Act requires an applicant for a licence to nominate the premises that the applicant intends to make regular use of as business or storage premises. Section 12 (2) requires a licensee to notify the Director-General if those premises are no longer used or the premises are changed.

**Schedule 1 [3]** substitutes that section and inserts proposed section 12A. The amendment makes it a condition of a pawnbroker's licence that the licensed business be conducted only from the previously nominated business and storage premises or from any other premises later notified to the Director-General.

**Schedule 1 [6]** makes a consequential amendment.

### **Licensees' records and pawnbrokers' records of pledges**

**Schedule 1 [4]** amends section 15, which requires a licensee to obtain documentary evidence of the identity of any person by whom goods are offered for sale or pawn. At present, that evidence must show the person's name and residential address. As a result of the proposed amendment, the regulations may prescribe that a licensee is also required to obtain oral or documentary evidence of other matters (such as the person's date of birth).

**Schedule 1 [5]** requires every licensee to furnish particulars of all records kept under the Act or the regulations to the Commissioner of Police, if required to do so by the regulations. (At present, only particulars of pawnbrokers' records of pledges are required to be furnished. **Schedule 1 [13]** omits the separate obligation to furnish those records.)

**Schedule 1 [11]** allows a person who pawns goods to sign a hard copy of any electronic record of the pledge. (At present, the person is required to sign the original.)

**Schedule 1 [12]** provides for the regulations to make provision for or with respect to the use by pawnbrokers of electronic methods of creation and storage of certain records.

### **Retention of goods**

**Schedule 1 [7]** amends section 21 of the Act, which empowers an authorised officer who has reasonable grounds to believe that second-hand goods purchased or received in the course of a licensed business have been stolen or

otherwise unlawfully obtained, to prohibit the licensee from altering the form of the goods, disposing of the goods, allowing them to be redeemed or parting with possession of them. At present, such a notice remains in force for 21 days and may be extended once for a further period of 21 days. The proposed amendment provides for such a notice to be in force for 56 days. A notice can be renewed for a further period of 56 days.

**Schedule 1 [8]** amends section 22 of the Act, which provides that if a person has complained to a licensee that any goods in the possession of the licensee are the property of the person, the licensee must provide a written statement of particulars to that person, and to the police, within 24 hours. Under section 22, the licensee must not alter the form of the goods or sell the goods or cause or allow them to be altered, sold, redeemed or removed except with the consent of the person or in accordance with the order of a court. At present, this obligation applies for 28 days unless, within that time, civil court proceedings are commenced to recover the goods. If such proceedings are commenced the obligation to retain the goods applies until the proceedings are concluded.

The proposed amendment will have the additional effect that, if any criminal proceedings are commenced in relation to the theft of the goods, the obligation to retain the goods will remain in force until the proceedings are finalised.

**Schedule 1 [9]** makes a consequential amendment.

**Schedule 1 [10]** defines when criminal proceedings are commenced.

### **Other amendments**

**Schedule 1 [2]** and **[17]** empower the Governor to make regulations regarding the conditions that can be imposed on a licence at the time of the grant or renewal of the licence or at some later time and regulations regarding the documents or information that must accompany an application for the issue or renewal of a licence.

**Schedule 1 [14]** amends section 30 of the Act, which provides that pawned goods that are forfeited must be sold by public auction if they secured a debt greater than the amount prescribed by the regulations. The amendment makes it clear that the threshold relates to the amount of the principal lent on the goods and not to any interest.

**Schedule 1 [15]** provides that if goods are sold at public auction, but the purchase price is not recovered in accordance with the sale contract, the sale is invalidated and the licensee is required to hold a further public auction.

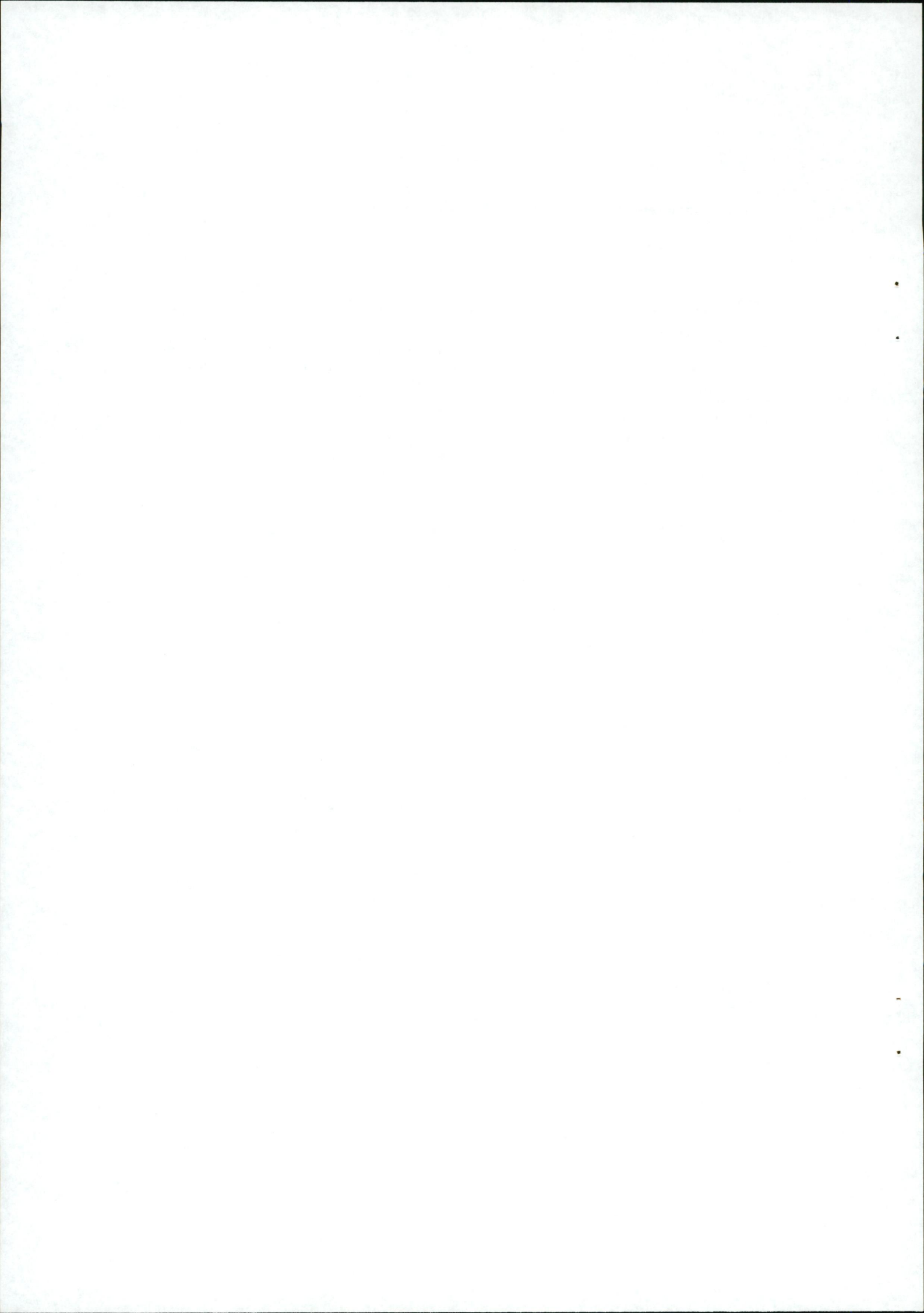
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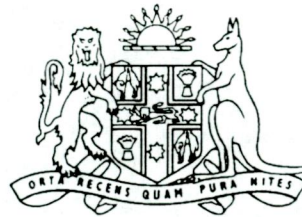
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**Schedule 1 [16]** provides for the Director-General to issue to a licensee a notice to show cause why the licensee's licence should not be revoked if, in the opinion of the Director-General, the licensee made false or misleading statements in or in connection with the licensee's application for a licence or for the renewal of a licence.

**Schedule 1 [18]–[22]** make savings and transitional provisions consequent on the enactment of the proposed Act and provide for the regulations to make further provisions of that kind, subject to the usual safeguards.



First print



New South Wales

# **Pawnbrokers and Second-hand Dealers Amendment Bill 1998**

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New South Wales

## **Pawnbrokers and Second-hand Dealers Amendment Bill 1998**

No. , 1998

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### **A Bill for**

An Act to amend the *Pawnbrokers and Second-hand Dealers Act 1996* in relation to the granting and renewal of licences, the retention of goods that are suspected of having been stolen, the keeping of records, the sale of pawned goods at public auction and the provision of information to the Commissioner of Police; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Pawnbrokers and Second-hand Dealers Amendment Act 1998*.

**2 Commencement**

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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 10 amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Section 3)

### [1] Sections 9, 10 and 10A

Omit sections 9 and 10. Insert instead:

- 9 Licence applications** 5
- (1) An application for a licence is to be made to the Director-General in a form approved by the Director-General.
  - (2) An application is to be accompanied by:
    - (a) an application fee of an amount prescribed by the regulations, and 10
    - (b) proof of identity, as prescribed by the regulations.
  - (3) An application must be lodged at a place approved by the Director-General.
- 10 Determination of applications** 15
- (1) After considering an application, the Director-General must, subject to sections 8 and 36, grant a licence to the applicant, or refuse the licence.
  - (2) A licence is to be granted in a form determined by the Director-General and remains in force for a period of 12 months from the date of its grant. 20
  - (3) A licence may authorise its holder to carry on the business of a second-hand dealer or pawnbroker, or both.
- 10A Renewal of licences**
- (1) A licensee may make an application for the renewal of a licence to the Director-General in the form approved by the Director-General. 25
  - (2) An application is to be accompanied by a renewal fee of an amount prescribed by the regulations.
  - (3) An application must be lodged at a place approved by the Director-General. 30

- (4) After considering an application, the Director-General must, subject to sections 8 and 36, renew the licence for a period of 12 months or refuse to renew the licence.
- (5) An application for renewal of a licence may be refused on the same grounds as an application for an original licence and the same appeal rights and procedures apply accordingly. In addition, renewal may be refused on the grounds that the licensee has not observed the conditions of the licence. 5
- (6) An application for renewal of a licence must be made before the expiry of the current licence or within such further time as the Director-General may allow. 10
- (7) If, before the expiry of the current licence, the Director-General allows further time for an application to be made, and an application is made within that time, the licence is, subject to section 36, taken to continue in force from the day that the licence would have otherwise expired until the day that the applicant is notified that the application for renewal has either been granted or refused. 15  
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**[2] Section 11 Conditions of licences**

Insert at the end of section 11:

- (2) The regulations may make provision for or with respect to the imposition of conditions on the grant or renewal of a licence or at some later time. 25

**[3] Section 12**

Omit the section. Insert instead:

**12 Business and storage premises: second-hand dealers**

- (1) An applicant for a licence to carry on the business of a second-hand dealer only, or an applicant for the renewal of such a licence, must nominate in the application any premises that the applicant intends to make regular use of, whether as business premises or storage premises, for the purposes of carrying on the licensed business. 30

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- (2) A licensee who for any reason ceases to carry on business or to store goods at the premises nominated under this section, or who commences to carry on business or to store goods at other premises and intends to make regular use of those other premises, must notify the Director-General in writing of that fact and of the address of the other premises within 14 days of doing so. 5
- Maximum penalty (subsection (2)): 50 penalty units.

**12A Business and storage premises: pawnbrokers**

- (1) An applicant for a licence to carry on the business of a pawnbroker, or of a pawnbroker and a second-hand dealer, or an applicant for the renewal of such a licence, must nominate in the application all premises that the applicant will make use of, whether as business premises or storage premises, for the purposes of carrying on the licensed business. 10 15
- (2) A licensee who for any reason ceases to carry on business or to store goods at the premises nominated under this section, or who commences to carry on business or to store goods at other premises, must notify the Director-General in writing of that fact and of the address of the other premises within 14 days of doing so. 20
- Maximum penalty (subsection (2)): 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 the licensee carries on the business only from, or stores the goods of the business only at, the premises nominated in the application for the licence, or later notified to the Director-General under subsection (2). 25 30
- (4) It is not a breach of such a condition for the licensee to carry on the business from, or store goods at, other premises for a period of up to 14 days if the licensee notifies the Director-General of that fact within 14 days of commencing to use those premises. 35

**[4] Section 15 Evidence of identity and title of supplier of goods**

Omit section 15 (1). Insert instead:

- (1) Before accepting any goods offered for sale or pawn, a licensee must obtain evidence of the identity of the person by whom the goods are being offered. 5
- (1A) The evidence must include documentary evidence that shows the person's name and address, being evidence of a kind prescribed by the regulations, and must also include other evidence of any further particulars relating to the identity of the person that are required by the regulations. 10
- (1B) The regulations may provide for that additional evidence to be in oral or documentary form and may prescribe the kind of evidence required.

**[5] Section 16 Records 15**

Insert after section 16 (5):

- (5A) A licensee must, if required to do so by the regulations, furnish to the Commissioner of Police, within the prescribed time after it is made, particulars of any record required to be kept by the licensee by or under this Act. 20

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

Omit "notified under section 12" from section 21 (1) (a).  
Insert instead "nominated or otherwise notified under section 12 or 12A".

**[7] Section 21 (2) and (3) 25**

Omit "21 days" wherever occurring. Insert instead "56 days".

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

Insert "criminal proceedings have been commenced in relation to the theft of the goods (which may or may not include any proceedings in relation to unlawful receipt of or conversion of the goods)" after "goods," where firstly occurring in section 22 (3) (a).

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**[9] Section 22 (4)**

Insert "for recovery" after "Proceedings".

**[10] Section 22 (7)**

Insert after section 22 (6):

(7) For the purposes of this section, criminal proceedings are commenced in relation to an offence by the laying or filing of an information, complaint or charge in relation to the offence.

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

Insert "or, if the original record is kept in electronic form, signs a hard copy of the record" after "record" in section 28 (3).

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**[12] Section 28 (5A)**

Insert after section 28 (5):

(5A) Without affecting the generality of subsection (1), 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.

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

Omit the subsection.

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**[14] Section 30 Sale of forfeited pledges**

Omit "they secured a debt" from section 30 (1).  
Insert instead "the principal lent on the goods was".

**[15] Section 30 (1A) and (1B)**

Insert after section 30 (1): 5

(1A) If the person to whom goods are sold at public auction does not pay the whole of the purchase price for those goods in accordance with the contract governing the sale at auction then the sale is taken to be void and the title to the goods is taken not to have passed. 10

(1B) In such a case, the goods must again be sold at public auction.

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

Omit section 34 (1) (b). Insert instead: 15

(b) who, in the opinion of the Director-General, made false or misleading statements in or in connection with an application for the licence, or an application for renewal of the licence, that the licensee obtained, or 20

**[17] Section 43 Regulations**

Insert after section 43 (1) (a):

(a1) the documents or information that must accompany an application for the issue or renewal of a licence, 25

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

Insert before clause 1:

**Part 1 General**



**[19] Schedule 2, clause 2 (1)**

Omit "this Act". Insert instead:

the following Acts:

this Act,

the *Pawnbrokers and Second-hand Dealers Amendment Act 1998*

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**[20] Schedule 2, clause 2 (2)**

Omit "this Act". Insert instead "the Act concerned".

**[21] Schedule 2, Part 2**

Insert after clause 2:

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**Part 2 Provisions consequent on enactment of this Act**

**[22] Schedule 2, Part 3**

Insert after clause 6:

**Part 3 Provisions consequent on enactment of Pawnbrokers and Second-hand Dealers Amendment Act 1998**

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**7 Definition**

In this Part:

*amending Act* means the *Pawnbrokers and Second-hand Dealers Amendment Act 1998*.

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### **8 Existing applications not affected**

The amendments made to sections 9 and 10, and the inclusion of section 10A, by the amending Act, do not affect any application made but not determined before the commencement of Schedule 1 [1] to the amending Act. 5

### **9 Existing licences not affected**

Section 12A (3) (as inserted by the amending Act) does not operate so as to impose a condition on a licence that was in force on the commencement of Schedule 1 [3] to the amending Act, but does apply to any later renewal of such a licence. 10

### **10 Existing records**

The amendments made to sections 16 and 28 by the amending Act extend to records required to be kept before the commencement of the relevant amendments. 15

### **11 Retention of existing goods**

- (1) The amendments made to sections 21 and 22 by the amending Act do not affect the validity of any notice issued under those sections before the commencement of the relevant amendment. 20
- (2) The amendment made to section 21 by Schedule 1 [7] to the amending Act extends to any goods sold or pledged to a licensee before the commencement of the amendment in respect of which a notice under that section has not been issued at that commencement. 25
- (3) The amendments made to section 22 by the amending Act extend to criminal proceedings in relation to any goods sold or pledged to a licensee before the commencement of the amendments. 30

**12 Sale of forfeited pledges**

Section 30 (as amended by the amending Act) extends to any goods pledged to a licensee before the commencement of the amendments to that section whether or not a public auction has been conducted in relation to those goods before that commencement. However, the amended section does not extend to any goods for which the purchase price set by a public auction has been paid as at that commencement.

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