



New South Wales

Pawnbrokers and Second-hand Dealers Amendment Act 1998 No 24

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Pawnbrokers and Second-hand Dealers Amendment Act 1998 No 24

Act No 24, 1998

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. [Assented to 3 June 1998]

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

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 amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Sections 9, 10 and 10A

Omit sections 9 and 10. Insert instead:

9 Licence applications

- (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
 - (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

- (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.
- (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.
- (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.

- (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.
- (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.
- (7) If an application for renewal is made before the expiry of the current licence, 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.
- (8) 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.

[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.

[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.
- (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.

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.
- (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.

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).
- (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.

[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.
- (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.
- (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

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.

[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)

Omit “21 days” wherever occurring. Insert instead “56 days”.

[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).

[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.

[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).

[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.

[13] Section 28 (6)

Omit the subsection.

[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):

(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.

(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:

(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

[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,

[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

[20] Schedule 2, clause 2 (2)

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

[21] Schedule 2, Part 2

Insert after clause 2:

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

7 Definition

In this Part:

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

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.

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 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.

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.
- (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.
- (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.

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.

[Minister's second reading speech made in—
Legislative Assembly on 29 April 1998
Legislative Council on 27 May 1998]