



NSW Legislative Council Hansard

Pawnbrokers and Second-hand Dealers Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Thursday 23 June 2005.

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, Minister for Lands, and Minister Assisting the Minister for Natural Resources) [10.37 a.m.]: I move:

That this bill be now read a second time.

I seek the leave of the House to incorporate the second reading speech in *Hansard*.

Leave granted.

The purpose of this bill is to amend the *Pawnbrokers and Second-hand Dealers Act 1996* to clarify that all agreements that amount to a pledge and loan are covered by the legislation.

In the decision of the High Court in *Palgo Holdings Pty Ltd v Gowans* that was handed down on 25 May 2005, it was held that the agreement in question, despite having the essential characteristics of a pledge and loan agreement, was not covered by the Act because it had been described in the documentation signed by the customer as a "chattel mortgage". This bill seeks to correct that anomaly and make it clear that the Act applies to all agreements that, in substance, amount to a pledge and loan agreement.

The Act has three main objects: to restrict the trade in stolen goods, to provide consumer protection mechanisms for those entering into a pawn agreement and to provide a mechanism for the recovery of stolen goods by their owner quickly and equitably.

Pawnbrokers are required to hold a licence and to keep certain records. Records of transactions are uploaded to the NSW Police within three days of the record being made. These records are then cross-matched with records of stolen goods. Pawnbrokers are also required to obtain evidence of a person's identity when they sell or pawn goods. These provisions assist in restricting the trade in stolen goods.

When consumers enter into a pawn transaction they benefit from the safeguards provided by the consumer protection mechanisms contained in the Act. The Act requires pawnbrokers to disclose all fees and charges, provide pawners with information about their rights and responsibilities and allow pawners to pay their interest charges monthly. It also gives pawners a minimum period of three months to be able to redeem their goods and, if goods are not redeemed and are sold, then the legislation gives the pawnner the legal right to claim any surplus monies remaining after all allowable fees and charges have been deducted from the sale proceeds.

The pawnbrokers and second-hand dealers legislation contains other protective measures for consumers and the community at large. It is essential that all consumers have access to the benefits of these provisions and that the objectives of the Act can be met.

Parliament has recognised the importance of this legislation by passing amendments which have strengthened its operation. The *Pawnbrokers and Second-hand Dealers Amendment Act 2002* included provisions requiring pawnbrokers to enter into a written agreement when extending existing pawn agreements. These extension agreements contain such important consumer information such as the new terms of the agreement, the date of the new redemption period and what new fees and charges will be payable.

Without the amendment to the Act contained in this bill, unscrupulous persons operating for all intents and purposes as a pawnbroker will be able to require consumers to sign documents that prevent them from accessing rights they would otherwise have under the Act. Consumers who use the services of pawnbrokers are often amongst the most disadvantaged members of our community. It is critical that they can continue to receive the protection provided by the legislation.

In addition, persons wishing to offload stolen goods would be able to do so more readily. The requirements of the Act, including requirements for the lender to obtain evidence of the person's identity and provide details of the pawned goods to the NSW Police, would not apply. This could severely limit the ability of the Police in restricting the trade in stolen goods.

The bill inserts a new definition of pawnbroker into the Act. A pawnbroker means a person who carries on the business of lending money on the security of pawned goods.

For the purposes of the Act, goods are pawned if they are taken into the possession of the lender for the purpose of the lender relying on possession of the goods as security for the loan.

The bill also creates a regulation-making power for use in the event that the credit market develops new products that are not anticipated by the legislation. The regulation-making power allows regulations to be made to exclude products that may not be in the nature of pawn agreements but which may be unwittingly caught by the new definition. Alternatively there may be certain cases or circumstances where the transaction is, in substance, a pawn agreement and the goods are taken into possession by the lender but not used as security. This power also anticipates the need to be able to make regulations to cover certain cases or circumstances where goods may be taken into possession by an associate or person acting on behalf of a lender, where money has been loaned on the security of those goods.

The bill introduces certain interpretive principles to be applied in determining whether goods are pawned and whether money is lent on the security of pawned goods. These are:

- (a) that regard is to be had to the substance of the loan transaction (rather than its form or legal technicalities);
- (b) that particular regard is to be had to the ordinary understanding of the borrower as to the nature of the transaction;
- (c) that a loan can be both on the security of pawned goods and a chattel mortgage; and
- (d) it does not matter that the terms of the loan transaction provide that the lender has taken possession of the goods at the request of or on behalf of the borrower or otherwise so as to give the appearance that the lender does not rely on possession of the goods as security of the repayment of the loan.

I commend this bill to the House.