

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 1 December, 1966.*

New South Wales



ANNO QUINTO DECIMO

ELIZABETHÆ II REGINÆ

Act No. , 1966.

An Act to authorise the disposal of goods the subject of a bailment, and motor vehicles held in certain circumstances, but not redelivered; and for purposes connected therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Disposal of Uncollected Goods Act, 1966".
- (2) Short title and commencement.

Disposal of Uncollected Goods.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. This Act is divided into Parts as follows :—

Division of Act into Parts.

5 PART I.—PRELIMINARY—ss. 1–3.

PART II.—DISPOSAL OF UNCOLLECTED GOODS WITHOUT COURT ORDER—ss. 4–9.

PART III.—DISPOSAL OF UNCOLLECTED GOODS PURSUANT TO COURT ORDER—ss. 10–14.

10 PART IV.—GENERAL—ss. 15–22.

3. In this Act—

Interpretation.

“Hire-purchase agreement” means a hire-purchase agreement within the meaning of the Hire-Purchase Act, 1960, as amended by subsequent Acts.

15 “Motor vehicle” means a motor car, motor carriage, motor cycle, tractor, or other vehicle propelled, or designed to be propelled, wholly or partly by a volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power.

20 PART II.

DISPOSAL OF UNCOLLECTED GOODS WITHOUT COURT ORDER.

4. This Part applies in relation to the bailment of any goods accepted (whether before or after the commencement of this Act) by the bailee, in the course of a business, for repair or other treatment on the terms (express or implied) that they will be redelivered to the bailor or in accordance with the bailor’s directions when the repair or other treatment has been carried out and on payment to the bailee of such charges as may be agreed between the parties or as may be reasonable.

Application of Part. cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 1 (1), Vic. No. 6815, s. 2 (1).

5.

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5. Where goods accepted pursuant to a bailment in relation to which this Part applies are ready for redelivery but the bailor—

- (a) fails to pay or tender to the bailee his charges in relation to the goods; or
- (b) having paid those charges, fails to take delivery of the goods or, if the terms of the bailment so provide, to give directions as to their delivery,

then, subject to the provisions of any agreement between the bailee and the bailor and to the provisions of this Act, and if the bailee did not, before carrying out the repair to or other treatment of the goods, have notice that the goods were comprised in a hire-purchase agreement containing a provision prohibiting the creation by the hirer of a lien on the goods, the bailee is, while the failure continues, entitled to sell the goods.

Right of bailees to sell goods accepted for repair or other treatment but not re-delivered.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 1 (2), Vic. No. 6815, s. 2 (2).

6. (1) The bailee is not entitled by virtue of section five of this Act to sell goods accepted by him for repair or other treatment unless the following provisions are complied with, that is to say :—

- (a) where the goods are accepted for repair or treatment after the commencement of this Act, at all premises used or appropriated by the bailee for accepting for repair or other treatment goods of the class to which the goods accepted belong, there is, at the time of the acceptance (whether or not the goods are accepted at any such premises), conspicuously displayed in the part of the premises so used or appropriated a notice indicating that the acceptance by the bailee of goods of that class for repair or other treatment is subject to the provisions of this Act, and that this Act confers on the bailee a right of sale exercisable in certain circumstances after an interval of not less than six months from the date on which the goods are ready for redelivery;

Bailee to comply with certain provisions to be entitled to sell goods.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 1 (3)-(7), Vic. No. 6815, s. 3.

(b)

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- 5 (b) after the goods are ready for redelivery, or after the commencement of this Act, whichever is the later, the bailee gives to the bailor a notice that the goods are ready for redelivery, being a notice complying with the requirements, relating to such a notice, of subsection seven of this section, and gives such a notice to every other person who, at the time he gives the notice to the bailor, he actually knows has or claims an interest in the goods;
- 10 (c) after the expiration of the period of six months beginning with the date of the giving of the notice that the goods are ready for redelivery or, if more than one such notice was given, beginning with the date of the giving of the later or latest of the
- 15 notices, and not less than fourteen days before the sale of the goods, the bailee—
- (i) gives to the bailor a notice of his intention to sell the goods, being a notice complying with the requirements, relating to such a
- 20 notice, of the said subsection seven;
- (ii) gives such a notice to every other person who, at the time he gives the notice to the bailor, he actually knows has or claims an interest in the goods; and
- 25 (iii) causes such a notice to be published—
- (a) in a newspaper published in Sydney and circulating throughout New South Wales; and
- (b) where the goods are a motor vehicle,
- 30 in the Gazette; and
- (d) the goods are sold by public auction in a lot in which no other goods are included.
- (2) Where, at any time before the giving to the bailor of the notice of the bailee's intention to sell the goods, a
- 35 dispute arises between the bailor and the bailee by reason of the bailor's refusal to pay the sum which the bailee claims to be due to him by way of his charges in relation to the goods,

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goods, or to take delivery thereof or give directions as to their delivery, on the ground that the charges are excessive or that the bailor is not satisfied that the repair or other treatment of the goods has been properly carried out, the
5 bailee's right to sell the goods shall be suspended until the dispute is determined.

(3) Without prejudice to any other mode of determining a dispute, it shall be treated for the purposes of this Act as having been determined if the bailee, at any time after the
10 dispute has arisen, gives to the bailor a notice (hereafter in this Part referred to as a "notice to treat the dispute as determined")—

(a) stating that unless within the period of one month beginning with the date of the giving of the notice
15 the bailor objects thereto, the dispute will be treated for the purposes of this Act as having been determined; and

(b) in other respects complying with the requirements, relating to such a notice, of subsection seven of this
20 section,

and within the said period of one month the bailor does not notify the bailee that he objects to the notice; and where the dispute is so treated as having been determined, the date on which it shall be so treated as having been determined
25 shall be the date of the giving of the notice.

(4) If the bailor so notifies the bailee that he objects to the notice to treat the dispute as determined, the court of petty sessions for the district in which the goods were accepted by the bailee may, on the application of the bailor
30 or bailee—

(a) make an order specifying the amount which the court deems reasonable in respect of the bailee's charges, and upon the making of such an order—

(i) the dispute shall be treated for the purposes
35 of this Act as having been determined on the date of the order;

(ii) the amount specified in the order shall for all purposes be the amount of the bailor's liability to the bailee for the bailee's
40 charges; and (iii)

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5 (iii) where the bailor has paid to the bailee an amount in respect of the bailee's charges that is in excess of the amount so specified, the bailor shall be entitled to recover that excess as a debt in any court of competent jurisdiction; or

(b) may refuse to make such an order.

10 (5) The jurisdiction conferred on a court of petty sessions by subsection four of this section shall not be exercised except by a court of petty sessions held before a stipendiary magistrate.

15 (6) Where a dispute in relation to any goods is determined (whether by virtue of subsection three or four of this section or otherwise) subsection one of this section shall have effect in relation to those goods as if paragraph (b) thereof were omitted and as if for the reference in paragraph (c) thereof to the date of the giving of the notice that the goods are ready for redelivery there were substituted a reference to the date on which the dispute is determined.

20 (7) A notice required or authorised by this section to be given by the bailee to the bailor must contain a sufficient description of the goods to which the notice relates or, where the goods are a motor vehicle, the particulars of that vehicle referred to in subsection one of section nineteen of this Act,
25 and a statement of the sum which the bailee claims to be due to him by way of his charges in relation to the goods, together with—

30 (a) in the case of a notice that the goods are ready for redelivery or a notice to treat the dispute as determined, a statement that if the bailor fails within the period of six months beginning with the date of the giving of the notice to pay the said sum or, having paid the said sum, to take delivery of the goods or give directions as to their delivery they
35 are liable to be sold in accordance with the provisions of this Act; and

(b) in the case of a notice of the bailee's intention to sell the goods, a statement of the date of the giving of the notice to the bailor that the goods are ready
for

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for redelivery or, where there has been a dispute between the bailor and bailee, the date on which the dispute was determined, and a statement that if the bailor fails, within the period of fourteen days beginning with the date of the giving of the notice of the bailee's intention to sell the goods, to pay the said sum or, having paid the said sum, to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Act.

7. (1) Where goods are sold by virtue of the provisions of this Part, any amount by which the gross proceeds of the sale exceed the charges of the bailee in relation to the goods shall be recoverable by the bailor from the bailee and any amount by which those charges exceed the gross proceeds of the sale shall be recoverable by the bailee from the bailor.

Procedure
after sale
under this
Part.

cf. 15 & 16
Geo. 6 & 1
Eliz. 2 c. 43,
s. 3,
Vic. No.
6815, s. 5.

(2) Where goods are so sold, the bailee shall, before the expiration of the period of seven days beginning with the date of the sale of the goods, prepare a record in relation to the goods containing the following particulars, that is to say—

- (a) a sufficient description of the goods or, where the goods are a motor vehicle, the particulars of that vehicle referred to in subsection one of section nineteen of this Act;
- (b) the date and place of the sale and the name and principal place of business of the auctioneer by whom the goods were sold;
- (c) the amount of the gross proceeds of the sale; and
- (d) a statement of each item of the charges of the bailee in relation to the goods and the transaction to which each item relates,

and shall, during the period of six years beginning with the date on which the record is prepared, keep the record together with a copy of the notice of the bailee's intention to sell the goods and shall, at any reasonable time during the said period of six years, if so requested by or on behalf of the bailor, produce the record and copy for inspection by the bailor, any

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any person nominated by him in that behalf, or any person who at the time of the sale had or claims to have had an interest in the goods.

(3) A person who fails to comply with any of the provisions of subsection two of this section or who produces or furnishes a document kept for the purposes thereof which is to his knowledge false in a material particular is guilty of an offence against this Act.

8. (1) References in this Part to goods accepted by a bailee, in the course of a business, for repair or other treatment shall, in relation to goods of any class, be construed as references to goods of that class accepted by him for repair or other treatment in the course of a business consisting of or comprising the acceptance by him of goods of that class for repair or other treatment (whether or not the repair or other treatment is effected by him) wholly or mainly from persons who deliver to him, otherwise than in the course of a business, goods of that class for repair or other treatment.

Supplemental provisions. cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 4, Vic. No. 6815, s. 6.

(2) References in this Part to the charges of the bailee in relation to any goods shall, subject to the provisions of any agreement between the bailor and the bailee, be construed as references to the amount agreed between them as the charge for the repair or other treatment of the goods, or, if no amount has been so agreed, a reasonable charge therefor and, in a case where the goods have been sold, the following additional amounts, that is to say—

- (a) a reasonable charge for storing the goods during the period beginning with the date of the giving of the notice that the goods are ready for redelivery, or, where there has been a dispute between the bailor and bailee, the date on which the dispute was determined, and ending with the date of the sale;
- (b) any costs of or in connection with the sale; and
- (c) the cost, if any, of insuring the goods.

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9. (1) Where the bailee of goods accepted before the commencement of this Act for repair or other treatment does not at the commencement of this Act know any address of the bailor, the bailee shall not be disentitled to sell the goods by reason only that paragraphs (b) and (c) of subsection one of section six of this Act are not complied with, if the following provisions are complied with, that is to say—
- (a) within the period of one month beginning with the commencement of this Act, the bailee causes to be published—
- (i) in a newspaper published in Sydney and circulating throughout New South Wales; and
- (ii) where the goods are a motor vehicle, in the Gazette,
- a notice complying with the requirements of subsection three of this section;
- (b) at all premises used or appropriated by the bailee after the commencement of this Act for accepting for repair or other treatment goods of the class to which the goods so accepted belong, there is, throughout the period of six months immediately following the said period of one month or throughout that portion of the said period of six months during which the premises are so used or appropriated, conspicuously displayed in the part of the premises so used or appropriated a notice indicating that in the case of goods of that class accepted before the commencement of this Act for repair or other treatment this Act confers on the bailee a right of sale exercisable in certain circumstances after an interval of not less than seven months from the commencement of this Act; and
- (c) the goods are not sold before the expiration of the period of seven months beginning with the commencement of this Act.

Special provisions applicable to certain cases of goods accepted before the commencement of this Act.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 5, Vic. No. 6815, s. 7.

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(2) Where goods are sold by virtue of the fact that the foregoing provisions of this section have been complied with, the foregoing sections of this Part shall have effect in relation to the goods subject to the following modifications, that is to say—

(a) for any reference in subsection two of section seven to a copy of the notice of the bailee's intention to sell the goods there shall be substituted a reference to a statement of the name and issue of the newspaper in which the notice under paragraph (a) of subsection one of this section was published and, where that notice was also published in the Gazette, to that Gazette; and

(b) for the reference in paragraph (a) of subsection two of section eight of this Act to the notice that the goods are ready for redelivery there shall be substituted a reference to the publication of the notice under paragraph (a) of subsection one of this section.

(3) A notice under paragraph (a) of subsection one of this section in relation to any goods must contain—

(a) a sufficient description of the class to which the goods belong or, where the goods are a motor vehicle, the particulars of that vehicle referred to in subsection one of section nineteen of this Act;

(b) the name under which the bailee carries on the business consisting of or comprising the acceptance of goods of that class for repair or other treatment and the address of the bailee's principal place of business or, where the bailee is a company, the registered office of the company, and if the name or the address has changed during the six months immediately preceding the date of the publication of the notice, the last such name, or, as the case may be, the last such address preceding the change thereof; and

(c) a statement that if the bailor of the goods fails within the period of seven months beginning with the commencement of this Act to pay the sum which

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5 which the bailee claims to be due to him by way of his charges in relation to the goods or, having paid that sum, to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Act.

(4) Where the bailee of goods accepted before the commencement of this Act for repair or other treatment does not at the commencement of this Act know any address of the bailor and at any time during the period of seven months 10 beginning with the commencement of this Act a dispute arises between the bailor and the bailee by reason of either or both of the grounds mentioned in subsection two of section six of this Act, the foregoing provisions of this section shall not apply in relation to the goods, but the foregoing sections of 15 this Act shall apply in relation thereto as they apply in a case where a dispute arises between the bailor and the bailee before the giving of the notice of the bailee's intention to sell the goods.

PART III.

20 DISPOSAL OF UNCOLLECTED GOODS PURSUANT TO COURT ORDER.

10. (1) Where—

25 (a) goods accepted pursuant to a bailment in relation to which Part II of this Act applies are ready for redelivery and the bailor—

Right of bailee to apply for order to sell goods.

(i) fails to pay or tender to the bailee his charges in relation to the goods; or

30 (ii) having paid to the bailee those charges, fails to take delivery of the goods or, if the terms of the bailment so provide, to give directions for their delivery;

35 (b) the bailee of goods that have been accepted by him (whether before or after the commencement of this Act) pursuant to any other bailment for reward has, by notice given to the bailor, required the bailor, subject to the payment to the bailee of his charges,

to

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5 to take delivery of the goods at a time specified in or determined in accordance with the contract of bailment or, if the contract of bailment does not specify or make provision for the determination of the time when the goods are to be redelivered to the bailor, within such reasonable time as may be specified in the notice, and the bailor—

(i) fails to pay or tender to the bailee his charges in relation to the goods; or

10 (ii) having paid or tendered those charges, fails, at the time so specified or determined or within such reasonable time, to take delivery of the goods or, if the terms of the bailment so provide, to give directions as to their delivery; or

15 (c) the bailee of goods that have been accepted by him (whether before or after the commencement of this Act) pursuant to a bailment not for reward has, by notice in writing given to the bailor, required
20 the bailor to take delivery of the goods at a time specified in or determined in accordance with the contract of bailment or, if the contract of bailment does not specify or make provision for the determination of the time when the goods are to be
25 redelivered to the bailor, within such reasonable time as may be specified in the notice, and the bailor fails, at the time so specified or determined or within such reasonable time, to take delivery of the goods or, if the terms of the bailment so
30 provide, to give directions as to their delivery,

the bailee may make an application for an order under section twelve of this Act to sell the goods.

(2) An application in respect of goods referred to in paragraph (a) of subsection one of this section may be made
35 whether or not the bailee is entitled to sell the goods under the provisions of Part II of this Act, but where such an application is made the bailee's right to sell the goods in accordance with those provisions shall cease and determine.

(3)

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(3) A reference in this Part to an owner of goods shall, where those goods were accepted pursuant to a bailment referred to in subsection one of this section, be construed as a reference to the bailor of those goods under that bailment.

5 11. (1) Where a tow truck operator, in the course of his business as a tow truck operator and in accordance with directions lawfully given to him, has (whether before or after the commencement of this Act) moved goods, being a motor vehicle, from a public place to some other place, and the
10 owner of the goods fails to pay or tender to the tow truck operator his towing charges for moving the goods, the tow truck operator may make an application for an order under section twelve of this Act to sell the goods if they are in his possession when the application is made.

Right of tow truck operator or person storing motor vehicle to apply for order to sell the vehicle.

15 (2) Where—

(a) a tow truck operator, in the course of his business as a tow truck operator and in accordance with directions lawfully given to him, has (whether before or after the commencement of this Act)
20 moved goods, being a motor vehicle, from a public place and leaves them for storage at a place where the business of repairing motor vehicles is ordinarily carried on by him or by some other person; and

25 (b) the owner of the goods fails to pay or tender to the person by whom that business of repairing motor vehicles is carried on that person's charges for the storage of the goods,

that person may make an application for an order under
30 section twelve of this Act to sell the goods if they are in his possession when the application is made.

(3) Where a tow truck operator would not, but for this subsection, be entitled by virtue of subsection one of this section to make an application for an order under
35 section twelve of this Act to sell any goods by reason only that the goods are not in his possession, and a person carrying on the business of repairing motor vehicles is, by virtue of

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of subsection two of this section, entitled to make an application for an order under section twelve of this Act to sell those goods, that tow truck operator and that person may make a joint application for an order under that section to sell
5 those goods.

12. (1) An application for an order under this section shall be made— Orders to
sell goods.

10 (a) where a bailee is entitled to make the application by virtue of subsection one of section ten of this Act, to the court of petty sessions for the petty sessions district in which the goods were accepted by the bailee;

15 (b) where a tow truck operator or a person carrying on the business of repairing motor vehicles is entitled to make the application by virtue of subsection one or two, as the case may be, of section eleven of this Act, or a tow truck operator and such a person are jointly entitled to make the application by virtue of subsection three of that
20 section, to the court of petty sessions for the petty sessions district in which the goods were situated when they were moved by the tow truck operator.

(2) Where an application is made to a court of petty sessions in accordance with the provisions of this Part
25 the court—

(a) may make an order authorising—

30 (i) a sole applicant to sell the goods in respect of which the order is made if they remain in his possession until he is entitled under subsection six of this section to sell them; or

35 (ii) joint applicants to sell the goods in respect of which the order is made if they remain in the possession of one of them until they are entitled under subsection six of this section to sell the goods; or

(b) may refuse to make such an order.

(3)

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- (3) An order under this section—
- 5 (a) where it is made pursuant to an application made by virtue of subsection one of section ten of this Act in respect of goods the subject of a bailment referred to in paragraph (a) or (b) of that subsection, and the bailor has not paid or tendered to the bailee the bailee's charges in respect of the goods, shall specify the amount which the court deems reasonable in respect of the bailee's charges;
- 10 (b) where it is made pursuant to an application made by virtue of subsection one of section eleven of this Act, shall specify the amount which the court deems reasonable in respect of the applicant's charges for moving the goods;
- 15 (c) where it is made pursuant to an application made by virtue of subsection two of section eleven of this Act, shall specify the amount which the court deems reasonable in respect of the applicant's charges for the storage of the goods up to the date of the order;
- 20 (d) where it is made pursuant to an application made by virtue of subsection three of section eleven of this Act, shall specify separately the amounts which the court deems reasonable in respect of—
- 25 (i) the tow truck operator's charges referred to in subsection one of that section, for moving the goods; and
- (ii) the charges, referred to in subsection two of that section, for the storage of the goods up to the date of the order;
- 30 (e) shall specify the amount, if any, allowed in respect of the costs of obtaining the order;
- (f) may specify, for the purposes of paragraph (a) of section fourteen of this Act, a rate of storage charges and, for the purposes of paragraph (b) of that section, the amount that may be incurred in respect of the costs of or in connection with the sale; and
- 35

(g)

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- (g) shall prohibit the sale of the goods specified in the order until the expiration of a period of six months, or such lesser period as may be specified in the order, after the date of the order.
- 5 (4) The amount specified in accordance with paragraph (a), (b) or (c), or the separate amounts specified in accordance with paragraph (d), of subsection three of this section shall for all purposes be the amount of the liability of the owner of the goods for the charges of the applicant
10 or each of the joint applicants for the order, as the case may be.
- (5) The power of a court to make an order under this section authorising the sale of goods shall be subject to the provisions of any agreement between the owner of the goods
15 and the applicant for the order.
- (6) An applicant in whose favour an order is made under this section is entitled, subject to the order and the provisions of this Act, to sell the goods specified in the order.
- (7) An order under this section shall not affect the
20 right of any person to recover the goods specified in the order by an action commenced within six months after the date of the order.
- (8) If any such action is so commenced the right of the person in whose favour the order is made to sell the
25 goods shall be suspended until that action has been heard and determined and if in that action an order is made for the recovery of the goods from the person in whose favour the order was made, that person's right to sell the goods shall cease and determine.
- 30 (9) The regulations under this Act may prescribe rates of towing charges and storage charges for motor vehicles, and the court shall have regard to any rates so prescribed in specifying the amounts referred to in paragraph (b), (c), (d) or (f) of subsection three of this section.
- 35 (10) The jurisdiction conferred on a court of petty sessions by this section shall not be exercised except by a court of petty sessions held before a stipendiary magistrate.

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13. (1) Where goods are sold by virtue of the provisions of this Part, any amount by which the gross proceeds of the sale exceed the aggregate of the amount or amounts specified in the order authorising the sale in accordance with paragraph 5 (a), (b), (c) or (d) of subsection three of section twelve of this Act together with the subsidiary charges which the person authorised to sell the goods is entitled to make under section fourteen of this Act shall be recoverable as a debt by the owner of the goods from the person authorised to sell the 10 goods and any amount by which that aggregate exceeds the gross proceeds of the sale shall be recoverable as a debt by the person so authorised from that owner.

Procedure
after sale
under this
Part.

(2) Where goods are so sold, the person authorised by the order to sell the goods shall, before the expiration of 15 the period of seven days beginning with the date of the sale of the goods, prepare a record in relation to the goods containing the following particulars, that is to say—

- (a) a reference to the order authorising the sale of the goods;
- 20 (b) the method, date and place of the sale;
- (c) where the goods are sold by public auction, the name and principal place of business of the auctioneer, and where they are sold otherwise than by public auction, the name and address of the 25 buyer;
- (d) the amount of the gross proceeds of the sale; and
- (e) a statement of each item of the charges of the person authorised by the order to sell the goods and the transaction to which each item relates,

30 and shall before the expiration of the period of fourteen days beginning with the date of the sale of the goods lodge a copy of that record with the clerk of petty sessions for the court in which the order was made for filing with the records of the court relating to the order.

35 (3) Any person who had or claims to have had, at the time of the sale of the goods, an interest in the goods shall be entitled, on payment of a fee of twenty cents, to inspect the copy of the record so lodged.

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(4) A person who fails to comply with any of the provisions of subsection two of this section or who lodges a document for the purposes thereof which is to his knowledge false in a material particular is guilty of an offence against this Act.

14. Where goods are sold by virtue of the provisions of this Part, the subsidiary charges which a person authorised to sell the goods is entitled to make are—

- 10 (a) a reasonable charge for storing the goods during the period beginning with the date of the order authorising the sale of the goods and ending with the date of the sale, not exceeding a charge at a rate, if any, specified in the order in accordance with paragraph (f) of subsection three of section twelve
- 15 of this Act;
- (b) any costs of or in connection with the sale, not exceeding the costs, if any, specified in the order in accordance with paragraph (f) of that subsection; and
- 20 (c) the cost, if any, of insuring the goods.

PART IV.

GENERAL.

15. Any provisions of this Act which apply to or in respect of any person by virtue of his rights or obligations in respect of any goods shall as respects a period during which those rights or obligations are vested in any other person apply to and in respect of that other person.

Ambulatory
operation
of Act.
cf. 15 & 16
Geo. 6 & 1
Eliz. 2
c. 43, s. 4
(3),
Vic. No.
6815, s. 6
(3).

16.

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16. The powers conferred on a person by this Act shall be in addition to and not in derogation of any powers exercisable by him independently of this Act.

Saving of powers outside Act.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 4 (4), Vic. No. 6815, s. 6 (4).

17. (1) A notice required or authorised by this Act to be given to any person shall be in writing.

Notices.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 2, Vic. No. 6815, s. 4.

(2) Any such notice may be given—

(a) by delivering it to the person to whom it is required or authorised to be given personally;

10 (b) by leaving it for him at his last known place of abode or business with some other person apparently an inmate thereof or employed thereat, and apparently of or over the age of sixteen years; or

(c) by posting it addressed to him at his last known place of abode or business.

15 **18.** (1) The buyer of any goods sold by virtue of the provisions of this Act shall acquire a good title to the goods if he buys them in good faith and without notice—

Buyer of goods sold by virtue of this Act to acquire a good title. cf. Vic. No. 6815, s. 8.

(a) of any failure by the seller to comply with any of the provisions of this Act; and

20 (b) in the case of goods the subject of a bailment, of any defect or want of title in the bailor.

(2) Upon any proceedings by or against the seller in respect of any goods sold by virtue of the provisions of this Act, the burden of proving that the provisions of this Act relating to the sale of those goods have been complied with shall be upon the seller.

19. (1) Where a person intends to sell a motor vehicle by virtue of the provisions of this Act he shall, not less than one month before the sale, give notice to the Commissioner of Police of his intention to sell the vehicle together with

Special provisions applicable to sales of motor vehicles.

particulars cf. Vic. No. 6815, s. 10.

Disposal of Uncollected Goods.

particulars of the make, model type, colour, registration number, chassis number, if any, body number, if any, and engine number of the vehicle and how and when it came into his possession.

5 (2) As soon as practicable after the receipt of any such notice and particulars, the Commissioner of Police shall cause a search to be made of the records in his custody and shall forward to the person giving the notice and particulars
10 a certificate as to whether or not the motor vehicle referred to is for the time being recorded as stolen.

(3) A person who sells a motor vehicle by virtue of the provisions of this Act without having first obtained from the Commissioner of Police a certificate that the motor vehicle is not recorded for the time being as stolen is guilty
15 of an offence against this Act.

20 **20.** (1) Where, after goods have been sold by virtue of the provisions of this Act, and the seller has deducted the charges in relation to those goods which he is entitled to make, there remains a surplus of moneys in the hands of the seller, the seller shall within fourteen days after the sale pay those moneys into a bank to the credit of a savings account to be opened by him for that purpose unless they have previously been paid by him to the person entitled thereto.

Disposal
of net
proceeds
of sale
of goods.
cf. Vic. No.
6815, s. 11.

25 (2) Where any such moneys have not been paid by the seller of the goods to the person entitled thereto within a period of twelve months after their being so paid into a bank, the seller shall within fourteen days after the expiration of that period pay those moneys together with any interest
30 thereon to the Treasurer to be placed to the credit of the Consolidated Revenue Fund.

(3) The seller, when paying any moneys to the Treasurer in accordance with subsection two of this section, shall, at the same time, furnish to the Treasurer a copy of
35 the record required to be prepared by the seller by subsection two of section seven, or by subsection two of section thirteen, of this Act, as the case may be.

(4)

Disposal of Uncollected Goods.

(4) A person entitled to any moneys paid to the Treasurer in accordance with subsection two of this section shall, subject to subsection five of this section, be entitled to recover it from the Treasurer.

5 (5) Where any moneys that have been paid to the Treasurer in accordance with subsection two of this section and have been paid by him to some person appearing to him to be entitled thereto are afterwards claimed by another person, the Treasurer shall not be liable to make any payment
10 to that other person, but that other person may have recourse against the person to whom the Treasurer has paid the moneys.

(6) A person who fails to comply with any of the provisions of subsection one or subsection two or three of this section, or who furnishes a document for the purposes of
15 subsection three of this section which is to his knowledge false in a material particular is guilty of an offence against this Act.

21. (1) A person guilty of an offence against this Act is
liable to a penalty not exceeding two hundred dollars or to
20 imprisonment for a term not exceeding three months or to
both such penalty and imprisonment. Penalties
and pro-
ceedings.

(2) Proceedings for an offence against this Act may be taken before any two justices in petty sessions.

22. (1) The Governor may make regulations not incon- Regulations.
25 sistent with this Act prescribing all matters which are required or permitted by this Act to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act.

(2) The regulations may impose a penalty not
30 exceeding one hundred dollars for any breach thereof.

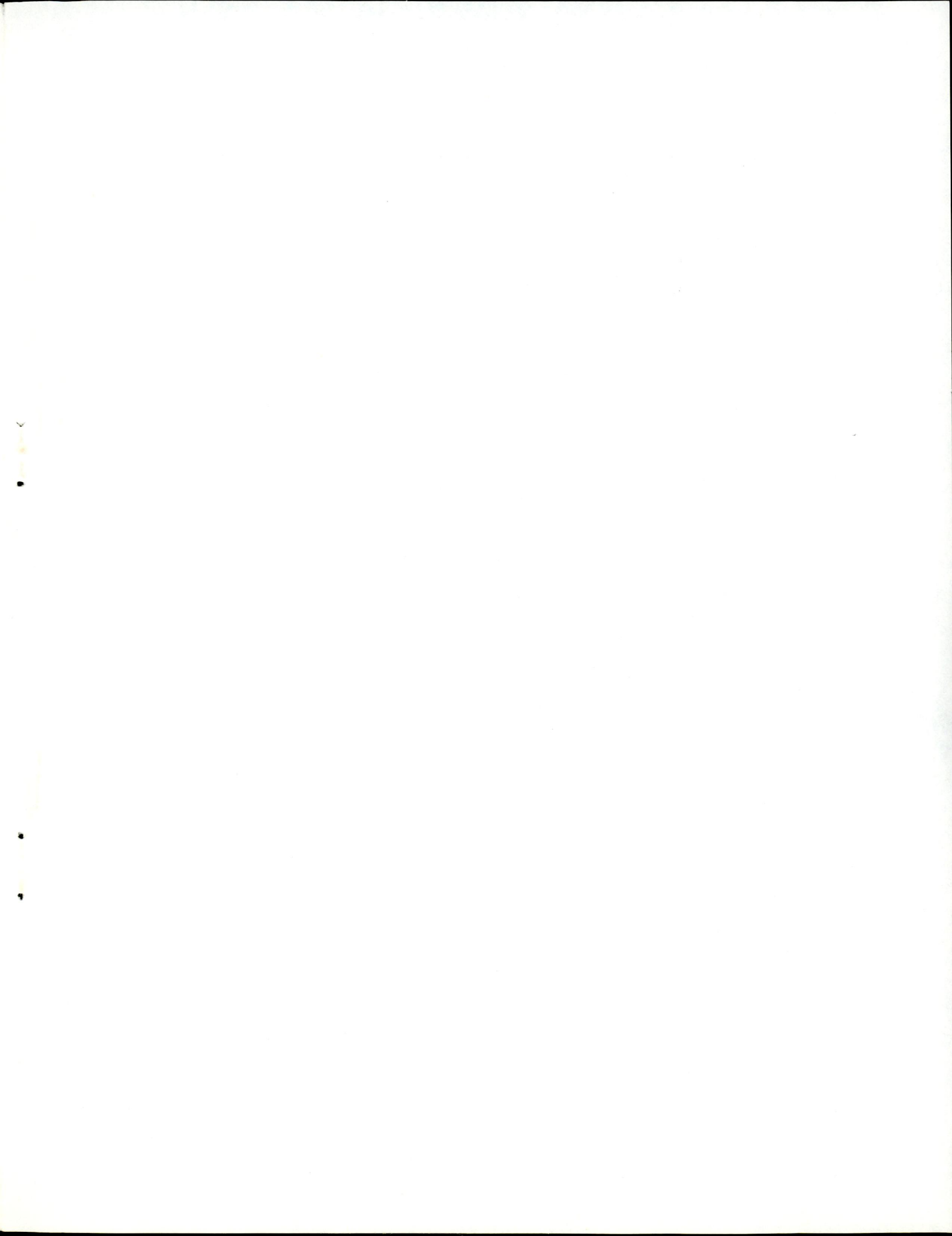
(3)

Disposal of Uncollected Goods.

- (3) The regulations shall—
- (a) be published in the Gazette;
 - (b) take effect from the date of publication or from a later date to be specified therein;
 - 5 (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.
- 10 (4) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, that regulation or part shall thereupon cease to have effect.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1966
[20c]



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No. , 1966.

A BILL

To authorise the disposal of goods the subject of a bailment, and motor vehicles held in certain circumstances, but not redelivered; and for purposes connected therewith.

[MR MADDISON—28 *September*, 1966.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Disposal of Uncollected Goods Act, 1966".

(2)

Short title
and com-
mencement.

Disposal of Uncollected Goods.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. This Act is divided into Parts as follows :—

Division of Act into Parts.

5 PART I.—PRELIMINARY—ss. 1-3.

PART II.—DISPOSAL OF UNCOLLECTED GOODS WITHOUT COURT ORDER—ss. 4-9.

PART III.—DISPOSAL OF UNCOLLECTED GOODS PURSUANT TO COURT ORDER—ss. 10-14.

10 PART IV.—GENERAL—ss. 15-22.

3. In this Act—

Interpretation.

“Hire-purchase agreement” means a hire-purchase agreement within the meaning of the Hire-Purchase Act, 1960, as amended by subsequent Acts.

15 “Motor vehicle” means a motor car, motor carriage, motor cycle, tractor, or other vehicle propelled, or designed to be propelled, wholly or partly by a volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power.

20 PART II.

DISPOSAL OF UNCOLLECTED GOODS WITHOUT COURT ORDER.

4. This Part applies in relation to the bailment of any goods accepted (whether before or after the commencement of this Act) by the bailee, in the course of a business, for repair or other treatment on the terms (express or implied) that they will be redelivered to the bailor or in accordance with the bailor’s directions when the repair or other treatment has been carried out and on payment to the bailee of such charges as may be agreed between the parties or as may be reasonable.

Application of Part. cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 1 (1), Vic. No. 6815, s. 2 (1).

5.

Disposal of Uncollected Goods.

5. Where goods accepted pursuant to a bailment in relation to which this Part applies are ready for redelivery but the bailor—

- (a) fails to pay or tender to the bailee his charges in relation to the goods; or
- (b) having paid those charges, fails to take delivery of the goods or, if the terms of the bailment so provide, to give directions as to their delivery,

then, subject to the provisions of any agreement between the bailee and the bailor and to the provisions of this Act, and if the bailee did not, before carrying out the repair to or other treatment of the goods, have notice that the goods were comprised in a hire-purchase agreement containing a provision prohibiting the creation by the hirer of a lien on the goods, the bailee is, while the failure continues, entitled to sell the goods.

Right of bailees to sell goods accepted for repair or other treatment but not re-delivered.
cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 1 (2), Vic. No. 6815, s. 2 (2).

6. (1) The bailee is not entitled by virtue of section five of this Act to sell goods accepted by him for repair or other treatment unless the following provisions are complied with, that is to say :—

- (a) where the goods are accepted for repair or treatment after the commencement of this Act, at all premises used or appropriated by the bailee for accepting for repair or other treatment goods of the class to which the goods accepted belong, there is, at the time of the acceptance (whether or not the goods are accepted at any such premises), conspicuously displayed in the part of the premises so used or appropriated a notice indicating that the acceptance by the bailee of goods of that class for repair or other treatment is subject to the provisions of this Act, and that this Act confers on the bailee a right of sale exercisable in certain circumstances after an interval of not less than six months from the date on which the goods are ready for redelivery;

Bailee to comply with certain provisions to be entitled to sell goods.
cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 1 (3)-(7), Vic. No. 6815, s. 3.

(b)

Disposal of Uncollected Goods.

- 5 (b) after the goods are ready for redelivery, or after the commencement of this Act, whichever is the later, the bailee gives to the bailor a notice that the goods are ready for redelivery, being a notice complying with the requirements, relating to such a notice, of subsection seven of this section, and gives such a notice to every other person who, at the time he gives the notice to the bailor, he actually knows has or claims an interest in the goods;
- 10 (c) after the expiration of the period of six months beginning with the date of the giving of the notice that the goods are ready-for redelivery or, if more than one such notice was given, beginning with the date of the giving of the later or latest of the notices, and not less than fourteen days before the sale of the goods, the bailee—
- 15 (i) gives to the bailor a notice of his intention to sell the goods, being a notice complying with the requirements, relating to such a notice, of the said subsection seven;
- 20 (ii) gives such a notice to every other person who, at the time he gives the notice to the bailor, he actually knows has or claims an interest in the goods; and
- 25 (iii) causes such a notice to be published—
- (a) in a newspaper published in Sydney and circulating throughout New South Wales; and
- (b) where the goods are a motor vehicle, in the Gazette; and
- 30 (d) the goods are sold by public auction in a lot in which no other goods are included.
- (2) Where, at any time before the giving to the bailor of the notice of the bailee's intention to sell the goods, a dispute arises between the bailor and the bailee by reason of the bailor's refusal to pay the sum which the bailee claims to be due to him by way of his charges in relation to the goods,

Disposal of Uncollected Goods.

goods, or to take delivery thereof or give directions as to their delivery, on the ground that the charges are excessive or that the bailor is not satisfied that the repair or other treatment of the goods has been properly carried out, the
5 bailee's right to sell the goods shall be suspended until the dispute is determined.

(3) Without prejudice to any other mode of determining a dispute, it shall be treated for the purposes of this Act as having been determined if the bailee, at any time after the
10 dispute has arisen, gives to the bailor a notice (hereafter in this Part referred to as a "notice to treat the dispute as determined")—

(a) stating that unless within the period of one month beginning with the date of the giving of the notice
15 the bailor objects thereto, the dispute will be treated for the purposes of this Act as having been determined; and

(b) in other respects complying with the requirements, relating to such a notice, of subsection seven of this
20 section,

and within the said period of one month the bailor does not notify the bailee that he objects to the notice; and where the dispute is so treated as having been determined, the date on which it shall be so treated as having been determined
25 shall be the date of the giving of the notice.

(4) If the bailor so notifies the bailee that he objects to the notice to treat the dispute as determined, the court of petty sessions for the district in which the goods were accepted by the bailee may, on the application of the bailor
30 or bailee—

(a) make an order specifying the amount which the court deems reasonable in respect of the bailee's charges, and upon the making of such an order—

(i) the dispute shall be treated for the purposes
35 of this Act as having been determined on the date of the order;

(ii) the amount specified in the order shall for all purposes be the amount of the bailor's liability to the bailee for the bailee's
40 charges; and (iii)

Disposal of Uncollected Goods.

(iii) where the bailor has paid to the bailee an amount in respect of the bailee's charges that is in excess of the amount so specified, the bailee shall be entitled to recover that excess as a debt in any court of competent jurisdiction; or

(b) may refuse to make such an order.

(5) The jurisdiction conferred on a court of petty sessions by subsection four of this section shall not be exercised except by a court of petty sessions held before a stipendiary magistrate.

(6) Where a dispute in relation to any goods is determined (whether by virtue of subsection three or four of this section or otherwise) subsection one of this section shall have effect in relation to those goods as if paragraph (b) thereof were omitted and as if for the reference in paragraph (c) thereof to the date of the giving of the notice that the goods are ready for redelivery there were substituted a reference to the date on which the dispute is determined.

(7) A notice required or authorised by this section to be given by the bailee to the bailor must contain a sufficient description of the goods to which the notice relates or, where the goods are a motor vehicle, the particulars of that vehicle referred to in subsection one of section nineteen of this Act, and a statement of the sum which the bailee claims to be due to him by way of his charges in relation to the goods, together with—

(a) in the case of a notice that the goods are ready for redelivery or a notice to treat the dispute as determined, a statement that if the bailor fails within the period of six months beginning with the date of the giving of the notice to pay the said sum or, having paid the said sum, to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Act; and

(b) in the case of a notice of the bailee's intention to sell the goods, a statement of the date of the giving of the notice to the bailor that the goods are ready for

Disposal of Uncollected Goods.

5 for redelivery or, where there has been a dispute
 between the bailor and bailee, the date on which
 the dispute was determined, and a statement that if
 the bailor fails, within the period of fourteen days
 beginning with the date of the giving of the notice of
 the bailee's intention to sell the goods, to pay the
 said sum or, having paid the said sum, to take
 delivery of the goods or give directions as to their
 delivery they are liable to be sold in accordance
 10 with the provisions of this Act.

7. (1) Where goods are sold by virtue of the provisions
 of this Part, any amount by which the gross proceeds of the
 sale exceed the charges of the bailee in relation to the goods
 shall be recoverable by the bailor from the bailee and any
 15 amount by which those charges exceed the gross proceeds of
 the sale shall be recoverable by the bailee from the bailor.

Procedure
 after sale
 under this
 Part.
 cf. 15 & 16
 Geo. 6 & 1
 Eliz. 2 c. 43,
 s. 3,
 Vic. No.
 6815, s. 5.

(2) Where goods are so sold, the bailee shall, before
 the expiration of the period of seven days beginning with the
 date of the sale of the goods, prepare a record in relation to
 20 the goods containing the following particulars, that is to say—

- (a) a sufficient description of the goods or, where the
 goods are a motor vehicle, the particulars of that
 vehicle referred to in subsection one of section
 nineteen of this Act;
- 25 (b) the date and place of the sale and the name and
 principal place of business of the auctioneer by
 whom the goods were sold;
- (c) the amount of the gross proceeds of the sale; and
- 30 (d) a statement of each item of the charges of the bailee
 in relation to the goods and the transaction to
 which each item relates,

and shall, during the period of six years beginning with the
 date on which the record is prepared, keep the record together
 with a copy of the notice of the bailee's intention to sell the
 35 goods and shall, at any reasonable time during the said period
 of six years, if so requested by or on behalf of the bailor,
 produce the record and copy for inspection by the bailor,
 any

Disposal of Uncollected Goods.

any person nominated by him in that behalf, or any person who at the time of the sale had or claims to have had an interest in the goods.

(3) A person who fails to comply with any of the provisions of subsection two of this section or who produces or furnishes a document kept for the purposes thereof which is to his knowledge false in a material particular is guilty of an offence against this Act.

8. (1) References in this Part to goods accepted by a bailee, in the course of a business, for repair or other treatment shall, in relation to goods of any class, be construed as references to goods of that class accepted by him for repair or other treatment in the course of a business consisting of or comprising the acceptance by him of goods of that class for repair or other treatment (whether or not the repair or other treatment is effected by him) wholly or mainly from persons who deliver to him, otherwise than in the course of a business, goods of that class for repair or other treatment.

Supplemental provisions. cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 4, Vic. No. 6815, s. 6.

(2) References in this Part to the charges of the bailee in relation to any goods shall, subject to the provisions of any agreement between the bailor and the bailee, be construed as references to the amount agreed between them as the charge for the repair or other treatment of the goods, or, if no amount has been so agreed, a reasonable charge therefor and, in case where the goods have been sold, the following additional amounts, that is to say—

- (a) a reasonable charge for storing the goods during the period beginning with the date of the giving of the notice that the goods are ready for redelivery, or, where there has been a dispute between the bailor and bailee, the date on which the dispute was determined, and ending with the date of the sale;
- (b) any costs of or in connection with the sale; and
- (c) the cost, if any, of insuring the goods.

Disposal of Uncollected Goods.

9. (1) Where the bailee of goods accepted before the commencement of this Act for repair or other treatment does not at the commencement of this Act know any address of the bailor, the bailee shall not be disentitled to sell the goods by reason only that paragraphs (b) and (c) of subsection one of section six of this Act are not complied with, if the following provisions are complied with, that is to say—
- (a) within the period of one month beginning with the commencement of this Act, the bailee causes to be published—
- (i) in a newspaper published in Sydney and circulating throughout New South Wales; and
- (ii) where the goods are a motor vehicle, in the Gazette,
- a notice complying with the requirements of subsection three of this section;
- (b) at all premises used or appropriated by the bailee after the commencement of this Act for accepting for repair or other treatment goods of the class to which the goods so accepted belong, there is, throughout the period of six months immediately following the said period of one month or throughout that portion of the said period of six months during which the premises are so used or appropriated, conspicuously displayed in the part of the premises so used or appropriated a notice indicating that in the case of goods of that class accepted before the commencement of this Act for repair or other treatment this Act confers on the bailee a right of sale exercisable in certain circumstances after an interval of not less than seven months from the commencement of this Act; and
- (c) the goods are not sold before the expiration of the period of seven months beginning with the commencement of this Act.

Special provisions applicable to certain cases of goods accepted before the commencement of this Act.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 5, Vic. No. 6815, s. 7.

Disposal of Uncollected Goods.

(2) Where goods are sold by virtue of the fact that the foregoing provisions of this section have been complied with, the foregoing sections of this Part shall have effect in relation to the goods subject to the following modifications, that is to say—

- 5 (a) for any reference in subsection two of section seven to a copy of the notice of the bailee's intention to sell the goods there shall be substituted a reference to a statement of the name and issue of the newspaper in which the notice under paragraph (a) of subsection one of this section was published and, where that notice was also published in the Gazette, to that Gazette; and
- 10
- 15 (b) for the reference in paragraph (a) of subsection two of section eight of this Act to the notice that the goods are ready for redelivery there shall be substituted a reference to the publication of the notice under paragraph (a) of subsection one of this section.

20 (3) A notice under paragraph (a) of subsection one of this section in relation to any goods must contain—

- 25 (a) a sufficient description of the class to which the goods belong or, where the goods are a motor vehicle, the particulars of that vehicle referred to in subsection one of section nineteen of this Act;
- 30 (b) the name under which the bailee carries on the business consisting of or comprising the acceptance of goods of that class for repair or other treatment and the address of the bailee's principal place of business or, where the bailee is a company, the registered office of the company, and if the name or the address has changed during the six months immediately preceding the date of the publication of the notice, the last such name, or, as the case may be, the last such address preceding the change thereof; and
- 35 (c) a statement that if the bailor of the goods fails within the period of seven months beginning with the commencement of this Act to pay the sum

which

Disposal of Uncollected Goods.

5 which the bailee claims to be due to him by way of his charges in relation to the goods or, having paid that sum, to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Act.

(4) Where the bailee of goods accepted before the commencement of this Act for repair or other treatment does not at the commencement of this Act know any address of the bailor and at any time during the period of seven months
10 beginning with the commencement of this Act a dispute arises between the bailor and the bailee by reason of either or both of the grounds mentioned in subsection two of section six of this Act, the foregoing provisions of this section shall not apply in relation to the goods, but the foregoing sections of
15 this Act shall apply in relation thereto as they apply in a case where a dispute arises between the bailor and the bailee before the giving of the notice of the bailee's intention to sell the goods.

PART III.

20 **DISPOSAL OF UNCOLLECTED GOODS PURSUANT TO COURT ORDER.**

10. (1) Where—

(a) goods accepted pursuant to a bailment in relation to which Part II of this Act applies are ready for redelivery and the bailor—
25

Right of bailee to apply for order to sell goods.

- (i) fails to pay or tender to the bailee his charges in relation to the goods; or
 - (ii) having paid to the bailee those charges, fails to take delivery of the goods or, if the terms of the bailment so provide, to give directions for their delivery;
- 30

(b) the bailee of goods that have been accepted by him (whether before or after the commencement of this Act) pursuant to any other bailment for reward has, by notice given to the bailor, required the bailor, subject to the payment to the bailee of his charges,
35

to

Disposal of Uncollected Goods.

5 to take delivery of the goods at a time specified in or determined in accordance with the contract of bailment or, if the contract of bailment does not specify or make provision for the determination of the time when the goods are to be redelivered to the bailor, within such reasonable time as may be specified in the notice, and the bailor—

(i) fails to pay or tender to the bailee his charges in relation to the goods; or

10 (ii) having paid or tendered those charges, fails, at the time so specified or determined or within such reasonable time, to take delivery of the goods or, if the terms of the bailment so provide, to give directions as to their
15 delivery; or

(c) the bailee of goods that have been accepted by him (whether before or after the commencement of this Act) pursuant to a bailment not for reward has, by notice in writing given to the bailor, required
20 the bailor to take delivery of the goods at a time specified in or determined in accordance with the contract of bailment or, if the contract of bailment does not specify or make provision for the determination of the time when the goods are to be
25 redelivered to the bailor, within such reasonable time as may be specified in the notice, and the bailor fails, at the time so specified or determined or within such reasonable time, to take delivery of the goods or, if the terms of the bailment so
30 provide, to give directions as to their delivery,

the bailee may make an application for an order under section twelve of this Act to sell the goods.

(2) An application in respect of goods referred to in paragraph (a) of subsection one of this section may be made
35 whether or not the bailee is entitled to sell the goods under the provisions of Part II of this Act, but where such an application is made the bailee's right to sell the goods in accordance with those provisions shall cease and determine.

(3)

Disposal of Uncollected Goods.

(3) A reference in this Part to an owner of goods shall, where those goods were accepted pursuant to a bailment referred to in subsection one of this section, be construed as a reference to the bailor of those goods under that bailment.

5 **11.** (1) Where a tow truck operator, in the course of his business as a tow truck operator and in accordance with directions lawfully given to him, has (whether before or after the commencement of this Act) moved goods, being a motor vehicle, from a public place to some other place, and the
10 owner of the goods fails to pay or tender to the tow truck operator his towing charges for moving the goods, the tow truck operator may make an application for an order under section twelve of this Act to sell the goods if they are in his possession when the application is made.

Right of tow truck operator or person storing motor vehicle to apply for order to sell the vehicle.

15 (2) Where—

(a) a tow truck operator, in the course of his business as a tow truck operator and in accordance with directions lawfully given to him, has (whether before or after the commencement of this Act) moved goods, being a motor vehicle, from a public place and leaves them for storage at a place where the business of repairing motor vehicles is ordinarily carried on by him or by some other person; and

25 (b) the owner of the goods fails to pay or tender to the person by whom that business of repairing motor vehicles is carried on that person's charges for the storage of the goods,

30 that person may make an application for an order under section twelve of this Act to sell the goods if they are in his possession when the application is made.

(3) Where a tow truck operator would not, but for this subsection, be entitled by virtue of subsection one of this section to make an application for an order under
35 section twelve of this Act to sell any goods by reason only that the goods are not in his possession, and a person carrying on the business of repairing motor vehicles is, by virtue of

Disposal of Uncollected Goods.

of subsection two of this section, entitled to make an application for an order under section twelve of this Act to sell those goods, that tow truck operator and that person may make a joint application for an order under that section to sell
5 those goods.

12. (1) An application for an order under this section shall be made— Orders to sell goods.

10 (a) where a bailee is entitled to make the application by virtue of subsection one of section ten of this Act, to the court of petty sessions for the petty sessions district in which the goods were accepted by the bailee;

15 (b) where a tow truck operator or a person carrying on the business of repairing motor vehicles is entitled to make the application by virtue of subsection one or two, as the case may be, of section eleven of this Act, or a tow truck operator and such a person are jointly entitled to make the application by virtue of subsection three of that
20 section, to the court of petty sessions for the petty sessions district in which the goods were situated when they were moved by the tow truck operator.

(2) Where an application is made to a court of petty sessions in accordance with the provisions of this Part
25 the court—

(a) may make an order authorising—

30 (i) a sole applicant to sell the goods in respect of which the order is made if they remain in his possession until he is entitled under subsection six of this section to sell them; or

35 (ii) joint applicants to sell the goods in respect of which the order is made if they remain in the possession of one of them until they are entitled under subsection six of this section to sell the goods; or

(b) may refuse to make such an order.

(3)

Disposal of Uncollected Goods.

- (3) An order under this section—
- 5 (a) where it is made pursuant to an application made by virtue of subsection one of section ten of this Act in respect of goods the subject of a bailment referred to in paragraph (a) or (b) of that subsection, and the bailor has not paid or tendered to the bailee the bailee's charges in respect of the goods, shall specify the amount which the court deems reasonable in respect of the bailee's charges;
- 10 (b) where it is made pursuant to an application made by virtue of subsection one of section eleven of this Act, shall specify the amount which the court deems reasonable in respect of the applicant's charges for moving the goods;
- 15 (c) where it is made pursuant to an application made by virtue of subsection two of section eleven of this Act, shall specify the amount which the court deems reasonable in respect of the applicant's charges for the storage of the goods up to the date of the order;
- 20 (d) where it is made pursuant to an application made by virtue of subsection three of section eleven of this Act, shall specify separately the amounts which the court deems reasonable in respect of—
- 25 (i) the tow truck operator's charges referred to in subsection one of that section, for moving the goods; and
- (ii) the charges, referred to in subsection two of that section, for the storage of the goods up to the date of the order;
- 30 (e) shall specify the amount, if any, allowed in respect of the costs of obtaining the order;
- 35 (f) may specify, for the purposes of paragraph (a) of section fourteen of this Act, a rate of storage charges and, for the purposes of paragraph (b) of that section, the amount that may be incurred in respect of the costs of or in connection with the sale; and

(g)

Disposal of Uncollected Goods.

(g) shall prohibit the sale of the goods specified in the order until the expiration of a period of six months, or such lesser period as may be specified in the order, after the date of the order.

5 (4) The amount specified in accordance with paragraph (a), (b) or (c), or the separate amounts specified in accordance with paragraph (d), of subsection three of this section shall for all purposes be the amount of the liability of the owner of the goods for the charges of the applicant
10 or each of the joint applicants for the order, as the case may be.

(5) The power of a court to make an order under this section authorising the sale of goods shall be subject to the provisions of any agreement between the owner of the goods
15 and the applicant for the order.

(6) An applicant in whose favour an order is made under this section is entitled, subject to the order and the provisions of this Act, to sell the goods specified in the order.

(7) An order under this section shall not affect the
20 right of any person to recover the goods specified in the order by an action commenced within six months after the date of the order.

(8) If any such action is so commenced the right of the person in whose favour the order is made to sell the
25 goods shall be suspended until that action has been heard and determined and if in that action an order is made for the recovery of the goods from the person in whose favour the order was made, that person's right to sell the goods shall cease and determine.

30 (9) The regulations under this Act may prescribe rates of towing charges and storage charges for motor vehicles, and the court shall have regard to any rates so prescribed in specifying the amounts referred to in paragraph (b), (c), (d) or (f) of subsection three of this section.

35 (10) The jurisdiction conferred on a court of petty sessions by this section shall not be exercised except by a court of petty sessions held before a stipendiary magistrate.

Disposal of Uncollected Goods.

13. (1) Where goods are sold by virtue of the provisions of this Part, any amount by which the gross proceeds of the sale exceed the aggregate of the amount or amounts specified in the order authorising the sale in accordance with paragraph 5 (a), (b), (c) or (d) of subsection three of section twelve of this Act together with the subsidiary charges which the person authorised to sell the goods is entitled to make under section fourteen of this Act shall be recoverable as a debt by the owner of the goods from the person authorised to sell the 10 goods and any amount by which that aggregate exceeds the gross proceeds of the sale shall be recoverable as a debt by the person so authorised from that owner.

Procedure
after sale
under this
Part.

(2) Where goods are so sold, the person authorised by the order to sell the goods shall, before the expiration of 15 the period of seven days beginning with the date of the sale of the goods, prepare a record in relation to the goods containing the following particulars, that is to say—

- (a) a reference to the order authorising the sale of the goods;
- 20 (b) the method, date and place of the sale;
- (c) where the goods are sold by public auction, the name and principal place of business of the auctioneer, and where they are sold otherwise than by public auction, the name and address of the 25 buyer;
- (d) the amount of the gross proceeds of the sale; and
- (e) a statement of each item of the charges of the person authorised by the order to sell the goods and the transaction to which each item relates,

30 and shall before the expiration of the period of fourteen days beginning with the date of the sale of the goods lodge a copy of that record with the clerk of petty sessions for the court in which the order was made for filing with the records of the court relating to the order.

35 (3) Any person who had or claims to have had, at the time of the sale of the goods, an interest in the goods shall be entitled, on payment of a fee of twenty cents, to inspect the copy of the record so lodged.

Disposal of Uncollected Goods.

(4) A person who fails to comply with any of the provisions of subsection two of this section or who lodges a document for the purposes thereof which is to his knowledge false in a material particular is guilty of an offence against this Act.

14. Where goods are sold by virtue of the provisions of this Part, the subsidiary charges which a person authorised to sell the goods is entitled to make are—

- (a) a reasonable charge for storing the goods during the period beginning with the date of the order authorising the sale of the goods and ending with the date of the sale, not exceeding a charge at a rate, if any, specified in the order in accordance with paragraph (f) of subsection three of section twelve of this Act;
- (b) any costs of or in connection with the sale, not exceeding the costs, if any, specified in the order in accordance with paragraph (f) of that subsection; and
- (c) the cost, if any, of insuring the goods.

PART IV.

GENERAL.

15. Any provisions of this Act which apply to or in respect of any person by virtue of his rights or obligations in respect of any goods shall as respects a period during which those rights or obligations are vested in any other person apply to and in respect of that other person.

Ambulatory
operation
of Act.
cf. 15 & 16
Geo. 6 & 1
Eliz. 2
c. 43, s. 4
(3),
Vic. No.
6815, s. 6
(3).

Disposal of Uncollected Goods.

16. The powers conferred on a person by this Act shall be in addition to and not in derogation of any powers exercisable by him independently of this Act.
- Saving of powers outside Act.
cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 4 (4), Vic. No. 6815, s. 6 (4).
17. (1) A notice required or authorised by this Act to be given to any person shall be in writing.
- Notices.
cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 2, Vic. No. 6815, s. 4.
- (2) Any such notice may be given—
- (a) by delivering it to the person to whom it is required or authorised to be given personally;
- (b) by leaving it for him at his last known place of abode or business with some other person apparently an inmate thereof or employed thereat, and apparently of or over the age of sixteen years; or
- (c) by posting it addressed to him at his last known place of abode or business.
18. (1) The buyer of any goods sold by virtue of the provisions of this Act shall acquire a good title to the goods if he buys them in good faith and without notice—
- Buyer of goods sold by virtue of this Act to acquire a good title.
cf. Vic. No. 6815, s. 8.
- (a) of any failure by the seller to comply with any of the provisions of this Act; and
- (b) in the case of goods the subject of a bailment, of any defect or want of title in the bailor.
- (2) Upon any proceedings by or against the seller in respect of any goods sold by virtue of the provisions of this Act, the burden of proving that the provisions of this Act relating to the sale of those goods have been complied with shall be upon the seller.
19. (1) Where a person intends to sell a motor vehicle by virtue of the provisions of this Act he shall, not less than one month before the sale, give notice to the Commissioner of Police of his intention to sell the vehicle together with
- Special provisions applicable to sales of motor vehicles.
cf. Vic. No. 6815, s. 10.
- particulars

Disposal of Uncollected Goods.

particulars of the make, model type, colour, registration number, chassis number, if any, body number, if any, and engine number of the vehicle and how and when it came into his possession.

5 (2) As soon as practicable after the receipt of any such notice and particulars, the Commissioner of Police shall cause a search to be made of the records in his custody and shall forward to the person giving the notice and particulars a certificate as to whether or not the motor vehicle referred
10 to is for the time being recorded as stolen.

(3) A person who sells a motor vehicle by virtue of the provisions of this Act without having first obtained from the Commissioner of Police a certificate that the motor vehicle is not recorded for the time being as stolen is guilty
15 of an offence against this Act.

20 20. (1) Where, after goods have been sold by virtue of the provisions of this Act, and the seller has deducted the charges in relation to those goods which he is entitled to make, there remains a surplus of moneys in the hands of the
seller, the seller shall within fourteen days after the sale pay those moneys into a bank to the credit of a savings account to be opened by him for that purpose unless they have previously been paid by him to the person entitled thereto.

Disposal
of net
proceeds
of sale
of goods.
cf. Vic. No.
6815, s. 11.

25 (2) Where any such moneys have not been paid by the seller of the goods to the person entitled thereto within a period of twelve months after their being so paid into a bank, the seller shall within fourteen days after the expiration of that period pay those moneys together with any interest
30 thereon to the Treasurer to be placed to the credit of the Consolidated Revenue Fund.

(3) The seller, when paying any moneys to the Treasurer in accordance with subsection two of this section, shall, at the same time, furnish to the Treasurer a copy of
35 the record required to be prepared by the seller by subsection two of section seven, or by subsection two of section thirteen, of this Act, as the case may be.

(4)

Disposal of Uncollected Goods.

(4) A person entitled to any moneys paid to the Treasurer in accordance with subsection two of this section shall, subject to subsection five of this section, be entitled to recover it from the Treasurer.

5 (5) Where any moneys that have been paid to the Treasurer in accordance with subsection two of this section and have been paid by him to some person appearing to him to be entitled thereto are afterwards claimed by another person, the Treasurer shall not be liable to make any payment
10 to that other person, but that other person may have recourse against the person to whom the Treasurer has paid the moneys.

(6) A person who fails to comply with any of the provisions of subsection one or subsection two or three of this section, or who furnishes a document for the purposes of
15 subsection three of this section which is to his knowledge false in a material particular is guilty of an offence against this Act.

21. (1) A person guilty of an offence against this Act is
liable to a penalty not exceeding two hundred dollars or to
20 imprisonment for a term not exceeding three months or to
both such penalty and imprisonment. Penalties and proceedings.

(2) Proceedings for an offence against this Act may be taken before any two justices in petty sessions.

22. (1) The Governor may make regulations not incon- Regulations.
25 sistent with this Act prescribing all matters which are required or permitted by this Act to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act.

(2) The regulations may impose a penalty not
30 exceeding one hundred dollars for any breach thereof.

(3)

Disposal of Uncollected Goods.

- (3) The regulations shall—
- (a) be published in the Gazette;
 - (b) take effect from the date of publication or from a later date to be specified therein;
 - 5 (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.
- 10 (4) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, that regulation or part shall thereupon cease to have effect.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1966

[20c]

DISPOSAL OF UNCOLLECTED GOODS BILL, 1966

EXPLANATORY NOTE

THE object of this Bill is to authorise bailees of goods and certain tow truck operators moving motor vehicles from public places and persons to whose premises motor vehicles have been moved from public places by tow truck operators to sell the goods or motor vehicles if they are unclaimed by the bailor or owner, subject to their complying with the procedures set out in the Bill.

The Bill—

- (a) empowers a bailee of goods left with him for repair or other treatment to sell those goods without the necessity of obtaining a court order, subject to his having complied with the requirements set forth in the Bill, where the bailor fails to pay the bailee's charges or, having paid those charges, fails to take delivery or give directions for the delivery of the goods ;
- (b) enables a court of petty sessions held before a stipendiary magistrate to make an order authorising the sale of—
 - (i) goods accepted by a bailee under a bailment for reward, where the bailor fails to pay the bailee's charges or, having paid those charges, fails to take delivery of the goods ;
 - (ii) goods accepted by a bailee under a bailment not for reward, where the bailor has failed to take delivery of the goods within the time specified in or determined in accordance with the contract of bailment or if the contract does not specify or make provision for the determination of that time, within a reasonable time ;
 - (iii) a motor vehicle lawfully moved by a tow truck operator from a public place, where the owner of the motor vehicle fails to pay the tow truck operator's charges for moving the motor vehicle ;
 - (iv) a motor vehicle that has been so moved to a place where the business of repairing motor vehicles is carried on, where the owner of the motor vehicle fails to pay the storage charges of the person carrying on that business ;
- (c) makes provision with respect to the disposal of any surplus arising from the sale ;
- (d) makes other provisions ancillary to or consequential upon the foregoing.

DISPOSAL OF UNCOLLECTED GOODS BILL, 1988

EXPLANATORY NOTE

The object of this Bill is to provide for the disposal of uncollected goods and to amend the law relating to the disposal of such goods.

Section 1 of the Bill provides for the disposal of uncollected goods by the court.

Section 2 of the Bill provides for the disposal of uncollected goods by the court.

Section 3 of the Bill provides for the disposal of uncollected goods by the court.

Section 4 of the Bill provides for the disposal of uncollected goods by the court.

Section 5 of the Bill provides for the disposal of uncollected goods by the court.

PROOF

No. , 1966.

A BILL

To authorise the disposal of goods the subject of a bailment, and motor vehicles held in certain circumstances, but not redelivered; and for purposes connected therewith.

[MR MADDISON—28 *September*, 1966.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Disposal of Uncollected Goods Act, 1966".

(2)

Short title
and com-
mencement.

Disposal of Uncollected Goods.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. This Act is divided into Parts as follows :—

Division of Act into Parts.

5 PART I.—PRELIMINARY—ss. 1-3.

PART II.—DISPOSAL OF UNCOLLECTED GOODS WITHOUT COURT ORDER—ss. 4-9.

PART III.—DISPOSAL OF UNCOLLECTED GOODS PURSUANT TO COURT ORDER—ss. 10-14.

10 PART IV.—GENERAL—ss. 15-22.

3. In this Act—

Interpretation.

“Hire-purchase agreement” means a hire-purchase agreement within the meaning of the Hire-Purchase Act, 1960, as amended by subsequent Acts.

15 “Motor vehicle” means a motor car, motor carriage, motor cycle, tractor, or other vehicle propelled, or designed to be propelled, wholly or partly by a volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power.

20

PART II.

DISPOSAL OF UNCOLLECTED GOODS WITHOUT COURT ORDER.

4. This Part applies in relation to the bailment of any goods accepted (whether before or after the commencement of this Act) by the bailee, in the course of a business, for repair or other treatment on the terms (express or implied) that they will be redelivered to the bailor or in accordance with the bailor’s directions when the repair or other treatment has been carried out and on payment to the bailee of such charges as may be agreed between the parties or as may be reasonable.

Application of Part.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 1 (1), Vic. No. 6815, s. 2 (1).

5.

Disposal of Uncollected Goods.

5. Where goods accepted pursuant to a bailment in relation to which this Part applies are ready for redelivery but the bailor—

Right of bailees to sell goods accepted for repair or other treatment but not re-delivered.
cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 1 (2), Vic. No. 6815, s. 2 (2).

- 5 (a) fails to pay or tender to the bailee his charges in relation to the goods; or
- (b) having paid those charges, fails to take delivery of the goods or, if the terms of the bailment so provide, to give directions as to their delivery.

10 then, subject to the provisions of any agreement between the bailee and the bailor and to the provisions of this Act, and if the bailee did not, before carrying out the repair to or other treatment of the goods, have notice that the goods were comprised in a hire-purchase agreement containing a provision prohibiting the creation by the hirer of a lien on the
15 goods, the bailee is, while the failure continues, entitled to sell the goods.

6. (1) The bailee is not entitled by virtue of section five of this Act to sell goods accepted by him for repair or other treatment unless the following provisions are complied with,
20 that is to say :—

Bailee to comply with certain provisions to be entitled to sell goods.
cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 1 (3)-(7), Vic. No. 6815, s. 3.

- 25 (a) where the goods are accepted for repair or treatment after the commencement of this Act, at all premises used or appropriated by the bailee for accepting for repair or other treatment goods of the class to which the goods accepted belong, there is, at the time of the acceptance (whether or not the goods are accepted at any such premises), conspicuously displayed in the part of the premises so used or appropriated a notice indicating that the acceptance
30 by the bailee of goods of that class for repair or other treatment is subject to the provisions of this Act, and that this Act confers on the bailee a right of sale exercisable in certain circumstances after an interval of not less than six months from the date
35 on which the goods are ready for redelivery;

(b)

Disposal of Uncollected Goods.

- 5 (b) after the goods are ready for redelivery, or after the commencement of this Act, whichever is the later, the bailee gives to the bailor a notice that the goods are ready for redelivery, being a notice complying with the requirements, relating to such a notice, of subsection seven of this section, and gives such a notice to every other person who, at the time he gives the notice to the bailor, he actually knows has or claims an interest in the goods;
- 10 (c) after the expiration of the period of six months beginning with the date of the giving of the notice that the goods are ready for redelivery or, if more than one such notice was given, beginning with the date of the giving of the later or latest of the notices, and not less than fourteen days before the sale of the goods, the bailee—
- 15 (i) gives to the bailor a notice of his intention to sell the goods, being a notice complying with the requirements, relating to such a notice, of the said subsection seven;
- 20 (ii) gives such a notice to every other person who, at the time he gives the notice to the bailor, he actually knows has or claims an interest in the goods; and
- 25 (iii) causes such a notice to be published—
- (a) in a newspaper published in Sydney and circulating throughout New South Wales; and
- 30 (b) where the goods are a motor vehicle, in the Gazette; and
- (d) the goods are sold by public auction in a lot in which no other goods are included.
- (2) Where, at any time before the giving to the bailor of the notice of the bailee's intention to sell the goods, a dispute arises between the bailor and the bailee by reason of the bailor's refusal to pay the sum which the bailee claims to be due to him by way of his charges in relation to the goods,

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goods, or to take delivery thereof or give directions as to their delivery, on the ground that the charges are excessive or that the bailor is not satisfied that the repair or other treatment of the goods has been properly carried out, the
5 bailee's right to sell the goods shall be suspended until the dispute is determined.

(3) Without prejudice to any other mode of determining a dispute, it shall be treated for the purposes of this Act as having been determined if the bailee, at any time after the
10 dispute has arisen, gives to the bailor a notice (hereafter in this Part referred to as a "notice to treat the dispute as determined")—

(a) stating that unless within the period of one month beginning with the date of the giving of the notice
15 the bailor objects thereto, the dispute will be treated for the purposes of this Act as having been determined; and

(b) in other respects complying with the requirements, relating to such a notice, of subsection seven of this
20 section,

and within the said period of one month the bailor does not notify the bailee that he objects to the notice; and where the dispute is so treated as having been determined, the date on which it shall be so treated as having been determined
25 shall be the date of the giving of the notice.

(4) If the bailor so notifies the bailee that he objects to the notice to treat the dispute as determined, the court of petty sessions for the district in which the goods were accepted by the bailee may, on the application of the bailor
30 or bailee—

(a) make an order specifying the amount which the court deems reasonable in respect of the bailee's charges, and upon the making of such an order—

(i) the dispute shall be treated for the purposes of this Act as having been determined on
35 the date of the order;

(ii) the amount specified in the order shall for all purposes be the amount of the bailor's liability to the bailee for the bailee's
40 charges; and (iii)

Disposal of Uncollected Goods.

5 (iii) where the bailor has paid to the bailee an amount in respect of the bailee's charges that is in excess of the amount so specified, the bailee shall be entitled to recover that excess as a debt in any court of competent jurisdiction; or

(b) may refuse to make such an order.

10 (5) The jurisdiction conferred on a court of petty sessions by subsection four of this section shall not be exercised except by a court of petty sessions held before a stipendiary magistrate.

15 (6) Where a dispute in relation to any goods is determined (whether by virtue of subsection three or four of this section or otherwise) subsection one of this section shall have effect in relation to those goods as if paragraph (b) thereof were omitted and as if for the reference in paragraph (c) thereof to the date of the giving of the notice that the goods are ready for redelivery there were substituted a reference to the date on which the dispute is determined.

20 (7) A notice required or authorised by this section to be given by the bailee to the bailor must contain a sufficient description of the goods to which the notice relates or, where the goods are a motor vehicle, the particulars of that vehicle referred to in subsection one of section nineteen of this Act, and a statement of the sum which the bailee claims to be due to him by way of his charges in relation to the goods, together with—

30 (a) in the case of a notice that the goods are ready for redelivery or a notice to treat the dispute as determined, a statement that if the bailor fails within the period of six months beginning with the date of the giving of the notice to pay the said sum or, having paid the said sum, to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Act; and

35 (b) in the case of a notice of the bailee's intention to sell the goods, a statement of the date of the giving of the notice to the bailor that the goods are ready for

Disposal of Uncollected Goods.

for redelivery or, where there has been a dispute between the bailor and bailee, the date on which the dispute was determined, and a statement that if the bailor fails, within the period of fourteen days beginning with the date of the giving of the notice of the bailee's intention to sell the goods, to pay the said sum or, having paid the said sum, to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Act.

7. (1) Where goods are sold by virtue of the provisions of this Part, any amount by which the gross proceeds of the sale exceed the charges of the bailee in relation to the goods shall be recoverable by the bailor from the bailee and any amount by which those charges exceed the gross proceeds of the sale shall be recoverable by the bailee from the bailor.

Procedure after sale under this Part.
cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 3, Vic. No. 6815, s. 5.

(2) Where goods are so sold, the bailee shall, before the expiration of the period of seven days beginning with the date of the sale of the goods, prepare a record in relation to the goods containing the following particulars, that is to say—

- (a) a sufficient description of the goods or, where the goods are a motor vehicle, the particulars of that vehicle referred to in subsection one of section nineteen of this Act;
- (b) the date and place of the sale and the name and principal place of business of the auctioneer by whom the goods were sold;
- (c) the amount of the gross proceeds of the sale; and
- (d) a statement of each item of the charges of the bailee in relation to the goods and the transaction to which each item relates,

and shall, during the period of six years beginning with the date on which the record is prepared, keep the record together with a copy of the notice of the bailee's intention to sell the goods and shall, at any reasonable time during the said period of six years, if so requested by or on behalf of the bailor, produce the record and copy for inspection by the bailor, any

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any person nominated by him in that behalf, or any person who at the time of the sale had or claims to have had an interest in the goods.

(3) A person who fails to comply with any of the provisions of subsection two of this section or who produces or furnishes a document kept for the purposes thereof which is to his knowledge false in a material particular is guilty of an offence against this Act.

8. (1) References in this Part to goods accepted by a bailee, in the course of a business, for repair or other treatment shall, in relation to goods of any class, be construed as references to goods of that class accepted by him for repair or other treatment in the course of a business consisting of or comprising the acceptance by him of goods of that class for repair or other treatment (whether or not the repair or other treatment is effected by him) wholly or mainly from persons who deliver to him, otherwise than in the course of a business, goods of that class for repair or other treatment.

Supplemental provisions. cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 4, Vic. No. 6815, s. 6.

(2) References in this Part to the charges of the bailee in relation to any goods shall, subject to the provisions of any agreement between the bailor and the bailee, be construed as references to the amount agreed between them as the charge for the repair or other treatment of the goods, or, if no amount has been so agreed, a reasonable charge therefor and, in a case where the goods have been sold, the following additional amounts, that is to say—

- (a) a reasonable charge for storing the goods during the period beginning with the date of the giving of the notice that the goods are ready for redelivery, or, where there has been a dispute between the bailor and bailee, the date on which the dispute was determined, and ending with the date of the sale;
- (b) any costs of or in connection with the sale; and
- (c) the cost, if any, of insuring the goods.

Disposal of Uncollected Goods.

9. (1) Where the bailee of goods accepted before the commencement of this Act for repair or other treatment does not at the commencement of this Act know any address of the bailor, the bailee shall not be disentitled to sell the goods **5** by reason only that paragraphs (b) and (c) of subsection one of section six of this Act are not complied with, if the following provisions are complied with, that is to say—
- (a) within the period of one month beginning with the commencement of this Act, the bailee causes to be **10** published—
- (i) in a newspaper published in Sydney and circulating throughout New South Wales; and
- (ii) where the goods are a motor vehicle, in the **15** Gazette,
- a notice complying with the requirements of subsection three of this section;
- (b) at all premises used or appropriated by the bailee after the commencement of this Act for accepting **20** for repair or other treatment goods of the class to which the goods so accepted belong, there is, throughout the period of six months immediately following the said period of one month or throughout that portion of the said period of six months **25** during which the premises are so used or appropriated, conspicuously displayed in the part of the premises so used or appropriated a notice indicating that in the case of goods of that class accepted before the commencement of this Act for repair or **30** other treatment this Act confers on the bailee a right of sale exercisable in certain circumstances after an interval of not less than seven months from the commencement of this Act; and
- (c) the goods are not sold before the expiration of the **35** period of seven months beginning with the commencement of this Act.

Special provisions applicable to certain cases of goods accepted before the commencement of this Act.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 5, Vic. No. 6815, s. 7.

Disposal of Uncollected Goods.

(2) Where goods are sold by virtue of the fact that the foregoing provisions of this section have been complied with, the foregoing sections of this Part shall have effect in relation to the goods subject to the following modifications, that is to say—

5 (a) for any reference in subsection two of section seven to a copy of the notice of the bailee's intention to sell the goods there shall be substituted a reference to a statement of the name and issue of the newspaper in which the notice under paragraph (a) of
10 subsection one of this section was published and, where that notice was also published in the Gazette, to that Gazette; and

15 (b) for the reference in paragraph (a) of subsection two of section eight of this Act to the notice that the goods are ready for redelivery there shall be substituted a reference to the publication of the notice under paragraph (a) of subsection one of this section.

20 (3) A notice under paragraph (a) of subsection one of this section in relation to any goods must contain—

(a) a sufficient description of the class to which the goods belong or, where the goods are a motor vehicle, the particulars of that vehicle referred to in subsection one of section nineteen of this Act;

25 (b) the name under which the bailee carries on the business consisting of or comprising the acceptance of goods of that class for repair or other treatment and the address of the bailee's principal place of business or, where the bailee is a company, the
30 registered office of the company, and if the name or the address has changed during the six months immediately preceding the date of the publication of the notice, the last such name, or, as the case
35 may be, the last such address preceding the change thereof; and

(c) a statement that if the bailor of the goods fails within the period of seven months beginning with the commencement of this Act to pay the sum
which

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5 which the bailee claims to be due to him by way of his charges in relation to the goods or, having paid that sum, to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Act.

(4) Where the bailee of goods accepted before the commencement of this Act for repair or other treatment does not at the commencement of this Act know any address of the bailor and at any time during the period of seven months
10 beginning with the commencement of this Act a dispute arises between the bailor and the bailee by reason of either or both of the grounds mentioned in subsection two of section six of this Act, the foregoing provisions of this section shall not apply in relation to the goods, but the foregoing sections of
15 this Act shall apply in relation thereto as they apply in a case where a dispute arises between the bailor and the bailee before the giving of the notice of the bailee's intention to sell the goods.

PART III.

20 DISPOSAL OF UNCOLLECTED GOODS PURSUANT TO COURT ORDER.

10. (1) Where—

(a) goods accepted pursuant to a bailment in relation to which Part II of this Act applies are ready for redelivery and the bailor—

Right of bailee to apply for order to sell goods.

25 (i) fails to pay or tender to the bailee his charges in relation to the goods; or

(ii) having paid to the bailee those charges, fails to take delivery of the goods or, if the terms of the bailment so provide, to give directions for their delivery;

30 (b) the bailee of goods that have been accepted by him (whether before or after the commencement of this Act) pursuant to any other bailment for reward has, by notice given to the bailor, required the bailor, subject to the payment to the bailee of his charges,

35 to

Disposal of Uncollected Goods.

5 to take delivery of the goods at a time specified in or determined in accordance with the contract of bailment or, if the contract of bailment does not specify or make provision for the determination of the time when the goods are to be redelivered to the bailor, within such reasonable time as may be specified in the notice, and the bailor—

- (i) fails to pay or tender to the bailee his charges in relation to the goods; or
- 10 (ii) having paid or tendered those charges, fails, at the time so specified or determined or within such reasonable time, to take delivery of the goods or, if the terms of the bailment so provide, to give directions as to their
- 15 delivery; or

(c) the bailee of goods that have been accepted by him (whether before or after the commencement of this Act) pursuant to a bailment not for reward has, by notice in writing given to the bailor, required

20 the bailor to take delivery of the goods at a time specified in or determined in accordance with the contract of bailment or, if the contract of bailment does not specify or make provision for the determination of the time when the goods are to be

25 redelivered to the bailor, within such reasonable time as may be specified in the notice, and the bailor fails, at the time so specified or determined or within such reasonable time, to take delivery of the goods or, if the terms of the bailment so

30 provide, to give directions as to their delivery,

the bailee may make an application for an order under section twelve of this Act to sell the goods.

(2) An application in respect of goods referred to in paragraph (a) of subsection one of this section may be made

35 whether or not the bailee is entitled to sell the goods under the provisions of Part II of this Act, but where such an application is made the bailee's right to sell the goods in accordance with those provisions shall cease and determine.

(3)

Disposal of Uncollected Goods.

(3) A reference in this Part to an owner of goods shall, where those goods were accepted pursuant to a bailment referred to in subsection one of this section, be construed as a reference to the bailor of those goods under that bailment.

5 **11.** (1) Where a tow truck operator, in the course of his business as a tow truck operator and in accordance with directions lawfully given to him, has (whether before or after the commencement of this Act) moved goods, being a motor vehicle, from a public place to some other place, and the
10 owner of the goods fails to pay or tender to the tow truck operator his towing charges for moving the goods, the tow truck operator may make an application for an order under section twelve of this Act to sell the goods if they are in his possession when the application is made.

Right of tow truck operator or person storing motor vehicle to apply for order to sell the vehicle.

15 (2) Where—

(a) a tow truck operator, in the course of his business as a tow truck operator and in accordance with directions lawfully given to him, has (whether before or after the commencement of this Act)
20 moved goods, being a motor vehicle, from a public place and leaves them for storage at a place where the business of repairing motor vehicles is ordinarily carried on by him or by some other person; and

25 (b) the owner of the goods fails to pay or tender to the person by whom that business of repairing motor vehicles is carried on that person's charges for the storage of the goods,

that person may make an application for an order under
30 section twelve of this Act to sell the goods if they are in his possession when the application is made.

(3) Where a tow truck operator would not, but for this subsection, be entitled by virtue of subsection one of this section to make an application for an order under
35 section twelve of this Act to sell any goods by reason only that the goods are not in his possession, and a person carrying on the business of repairing motor vehicles is, by virtue of

Disposal of Uncollected Goods.

of subsection two of this section, entitled to make an application for an order under section twelve of this Act to sell those goods, that tow truck operator and that person may make a joint application for an order under that section to sell
5 those goods.

12. (1) An application for an order under this section shall be made— Orders to sell goods.

10 (a) where a bailee is entitled to make the application by virtue of subsection one of section ten of this Act, to the court of petty sessions for the petty sessions district in which the goods were accepted by the bailee;

15 (b) where a tow truck operator or a person carrying on the business of repairing motor vehicles is entitled to make the application by virtue of subsection one or two, as the case may be, of section eleven of this Act, or a tow truck operator and such a person are jointly entitled to make the application by virtue of subsection three of that
20 section, to the court of petty sessions for the petty sessions district in which the goods were situated when they were moved by the tow truck operator.

(2) Where an application is made to a court of petty sessions in accordance with the provisions of this Part
25 the court—

(a) may make an order authorising—

30 (i) a sole applicant to sell the goods in respect of which the order is made if they remain in his possession until he is entitled under subsection six of this section to sell them; or

35 (ii) joint applicants to sell the goods in respect of which the order is made if they remain in the possession of one of them until they are entitled under subsection six of this section to sell the goods; or

(b) may refuse to make such an order.

(3)

Disposal of Uncollected Goods.

- (3) An order under this section—
- 5 (a) where it is made pursuant to an application made by virtue of subsection one of section ten of this Act in respect of goods the subject of a bailment referred to in paragraph (a) or (b) of that subsection, and the bailor has not paid or tendered to the bailee the bailee's charges in respect of the goods, shall specify the amount which the court deems reasonable in respect of the bailee's charges;
- 10 (b) where it is made pursuant to an application made by virtue of subsection one of section eleven of this Act, shall specify the amount which the court deems reasonable in respect of the applicant's charges for moving the goods;
- 15 (c) where it is made pursuant to an application made by virtue of subsection two of section eleven of this Act, shall specify the amount which the court deems reasonable in respect of the applicant's charges for the storage of the goods up to the date of the order;
- 20 (d) where it is made pursuant to an application made by virtue of subsection three of section eleven of this Act, shall specify separately the amounts which the court deems reasonable in respect of—
- 25 (i) the tow truck operator's charges referred to in subsection one of that section, for moving the goods; and
- (ii) the charges, referred to in subsection two of that section, for the storage of the goods up to the date of the order;
- 30 (e) shall specify the amount, if any, allowed in respect of the costs of obtaining the order;
- (f) may specify, for the purposes of paragraph (a) of section fourteen of this Act, a rate of storage charges and, for the purposes of paragraph (b) of that section, the amount that may be incurred in respect of the costs of or in connection with the sale; and
- 35
- (g)

Disposal of Uncollected Goods.

(g) shall prohibit the sale of the goods specified in the order until the expiration of a period of six months, or such lesser period as may be specified in the order, after the date of the order.

5 (4) The amount specified in accordance with paragraph (a), (b) or (c), or the separate amounts specified in accordance with paragraph (d), of subsection three of this section shall for all purposes be the amount of the liability of the owner of the goods for the charges of the applicant
10 or each of the joint applicants for the order, as the case may be.

(5) The power of a court to make an order under this section authorising the sale of goods shall be subject to the provisions of any agreement between the owner of the goods
15 and the applicant for the order.

(6) An applicant in whose favour an order is made under this section is entitled, subject to the order and the provisions of this Act, to sell the goods specified in the order.

(7) An order under this section shall not affect the
20 right of any person to recover the goods specified in the order by an action commenced within six months after the date of the order.

(8) If any such action is so commenced the right of the person in whose favour the order is made to sell the
25 goods shall be suspended until that action has been heard and determined and if in that action an order is made for the recovery of the goods from the person in whose favour the order was made, that person's right to sell the goods shall cease and determine.

30 (9) The regulations under this Act may prescribe rates of towing charges and storage charges for motor vehicles, and the court shall have regard to any rates so prescribed in specifying the amounts referred to in paragraph (b), (c), (d) or (f) of subsection three of this section.

35 (10) The jurisdiction conferred on a court of petty sessions by this section shall not be exercised except by a court of petty sessions held before a stipendiary magistrate.

Disposal of Uncollected Goods.

13. (1) Where goods are sold by virtue of the provisions of this Part, any amount by which the gross proceeds of the sale exceed the aggregate of the amount or amounts specified in the order authorising the sale in accordance with paragraph 5 (a), (b), (c) or (d) of subsection three of section twelve of this Act together with the subsidiary charges which the person authorised to sell the goods is entitled to make under section fourteen of this Act shall be recoverable as a debt by the owner of the goods from the person authorised to sell the 10 goods and any amount by which that aggregate exceeds the gross proceeds of the sale shall be recoverable as a debt by the person so authorised from that owner.

Procedure
after sale
under this
Part.

(2) Where goods are so sold, the person authorised by the order to sell the goods shall, before the expiration of 15 the period of seven days beginning with the date of the sale of the goods, prepare a record in relation to the goods containing the following particulars, that is to say—

- (a) a reference to the order authorising the sale of the goods;
- 20 (b) the method, date and place of the sale;
- (c) where the goods are sold by public auction, the name and principal place of business of the auctioneer, and where they are sold otherwise than by public auction, the name and address of the 25 buyer;
- (d) the amount of the gross proceeds of the sale; and
- (e) a statement of each item of the charges of the person authorised by the order to sell the goods and the transaction to which each item relates,

30 and shall before the expiration of the period of fourteen days beginning with the date of the sale of the goods lodge a copy of that record with the clerk of petty sessions for the court in which the order was made for filing with the records of the court relating to the order.

35 (3) Any person who had or claims to have had, at the time of the sale of the goods, an interest in the goods shall be entitled, on payment of a fee of twenty cents, to inspect the copy of the record so lodged.

Disposal of Uncollected Goods.

(4) A person who fails to comply with any of the provisions of subsection two of this section or who lodges a document for the purposes thereof which is to his knowledge false in a material particular is guilty of an offence against this Act.

14. Where goods are sold by virtue of the provisions of this Part, the subsidiary charges which a person authorised to sell the goods is entitled to make are—

- 10 (a) a reasonable charge for storing the goods during the period beginning with the date of the order authorising the sale of the goods and ending with the date of the sale, not exceeding a charge at a rate, if any, specified in the order in accordance with paragraph (f) of subsection three of section twelve of this Act;
- 15 (b) any costs of or in connection with the sale, not exceeding the costs, if any, specified in the order in accordance with paragraph (f) of that subsection; and
- 20 (c) the cost, if any, of insuring the goods.

PART IV.**GENERAL.**

15. Any provisions of this Act which apply to or in respect of any person by virtue of his rights or obligations in respect of any goods shall as respects a period during which those rights or obligations are vested in any other person apply to and in respect of that other person.

Ambulatory operation of Act.
cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 4 (3), Vic. No. 6815, s. 6 (3).

16.

Disposal of Uncollected Goods.

16. The powers conferred on a person by this Act shall be in addition to and not in derogation of any powers exercisable by him independently of this Act.

Saving of powers outside Act.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 4 (4), Vic. No. 6815, s. 6 (4).

17. (1) A notice required or authorised by this Act to be given to any person shall be in writing.

Notices.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 2, Vic. No. 6815, s. 4.

(2) Any such notice may be given—

(a) by delivering it to the person to whom it is required or authorised to be given personally;

10 (b) by leaving it for him at his last known place of abode or business with some other person apparently an inmate thereof or employed thereat, and apparently of or over the age of sixteen years; or

(c) by posting it addressed to him at his last known place of abode or business.

15 18. (1) The buyer of any goods sold by virtue of the provisions of this Act shall acquire a good title to the goods if he buys them in good faith and without notice—

Buyer of goods sold by virtue of this Act to acquire a good title.

cf. Vic. No. 6815, s. 8.

(a) of any failure by the seller to comply with any of the provisions of this Act; and

20 (b) in the case of goods the subject of a bailment, of any defect or want of title in the bailor.

(2) Upon any proceedings by or against the seller in respect of any goods sold by virtue of the provisions of this Act, the burden of proving that the provisions of this Act relating to the sale of those goods have been complied with shall be upon the seller.

19. (1) Where a person intends to sell a motor vehicle by virtue of the provisions of this Act he shall, not less than one month before the sale, give notice to the Commissioner of Police of his intention to sell the vehicle together with

Special provisions applicable to sales of motor vehicles.

particulars cf. Vic. No. 6815, s. 10.

Disposal of Uncollected Goods.

particulars of the make, model type, colour, registration number, chassis number, if any, body number, if any, and engine number of the vehicle and how and when it came into his possession.

5 (2) As soon as practicable after the receipt of any such notice and particulars, the Commissioner of Police shall cause a search to be made of the records in his custody and shall forward to the person giving the notice and particulars a certificate as to whether or not the motor vehicle referred
10 to is for the time being recorded as stolen.

(3) A person who sells a motor vehicle by virtue of the provisions of this Act without having first obtained from the Commissioner of Police a certificate that the motor vehicle is not recorded for the time being as stolen is guilty
15 of an offence against this Act.

20 **20.** (1) Where, after goods have been sold by virtue of the provisions of this Act, and the seller has deducted the charges in relation to those goods which he is entitled to make, there remains a surplus of moneys in the hands of the
20 seller, the seller shall within fourteen days after the sale pay those moneys into a bank to the credit of a savings account to be opened by him for that purpose unless they have previously been paid by him to the person entitled thereto.

Disposal
of net
proceeds
of sale
of goods.
cf. Vic. No.
6815, s. 11.

25 (2) Where any such moneys have not been paid by the seller of the goods to the person entitled thereto within a period of twelve months after their being so paid into a bank, the seller shall within fourteen days after the expiration of that period pay those moneys together with any interest
30 thereon to the Treasurer to be placed to the credit of the Consolidated Revenue Fund.

(3) The seller, when paying any moneys to the Treasurer in accordance with subsection two of this section, shall, at the same time, furnish to the Treasurer a copy of
35 the record required to be prepared by the seller by subsection two of section seven, or by subsection two of section thirteen, of this Act, as the case may be.

(4)

Disposal of Uncollected Goods.

(4) A person entitled to any moneys paid to the Treasurer in accordance with subsection two of this section shall, subject to subsection five of this section, be entitled to recover it from the Treasurer.

5 (5) Where any moneys that have been paid to the Treasurer in accordance with subsection two of this section and have been paid by him to some person appearing to him to be entitled thereto are afterwards claimed by another person, the Treasurer shall not be liable to make any payment
10 to that other person, but that other person may have recourse against the person to whom the Treasurer has paid the moneys.

(6) A person who fails to comply with any of the provisions of subsection one or subsection two or three of this section, or who furnishes a document for the purposes of
15 subsection three of this section which is to his knowledge false in a material particular is guilty of an offence against this Act.

21. (1) A person guilty of an offence against this Act is
liable to a penalty not exceeding two hundred dollars or to
20 imprisonment for a term not exceeding three months or to
both such penalty and imprisonment. ^{Penalties and proceedings.}

(2) Proceedings for an offence against this Act may be taken before any two justices in petty sessions.

22. (1) The Governor may make regulations not incon- ^{Regulations.}
25 sistent with this Act prescribing all matters which are required or permitted by this Act to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act.

(2) The regulations may impose a penalty not
30 exceeding one hundred dollars for any breach thereof.

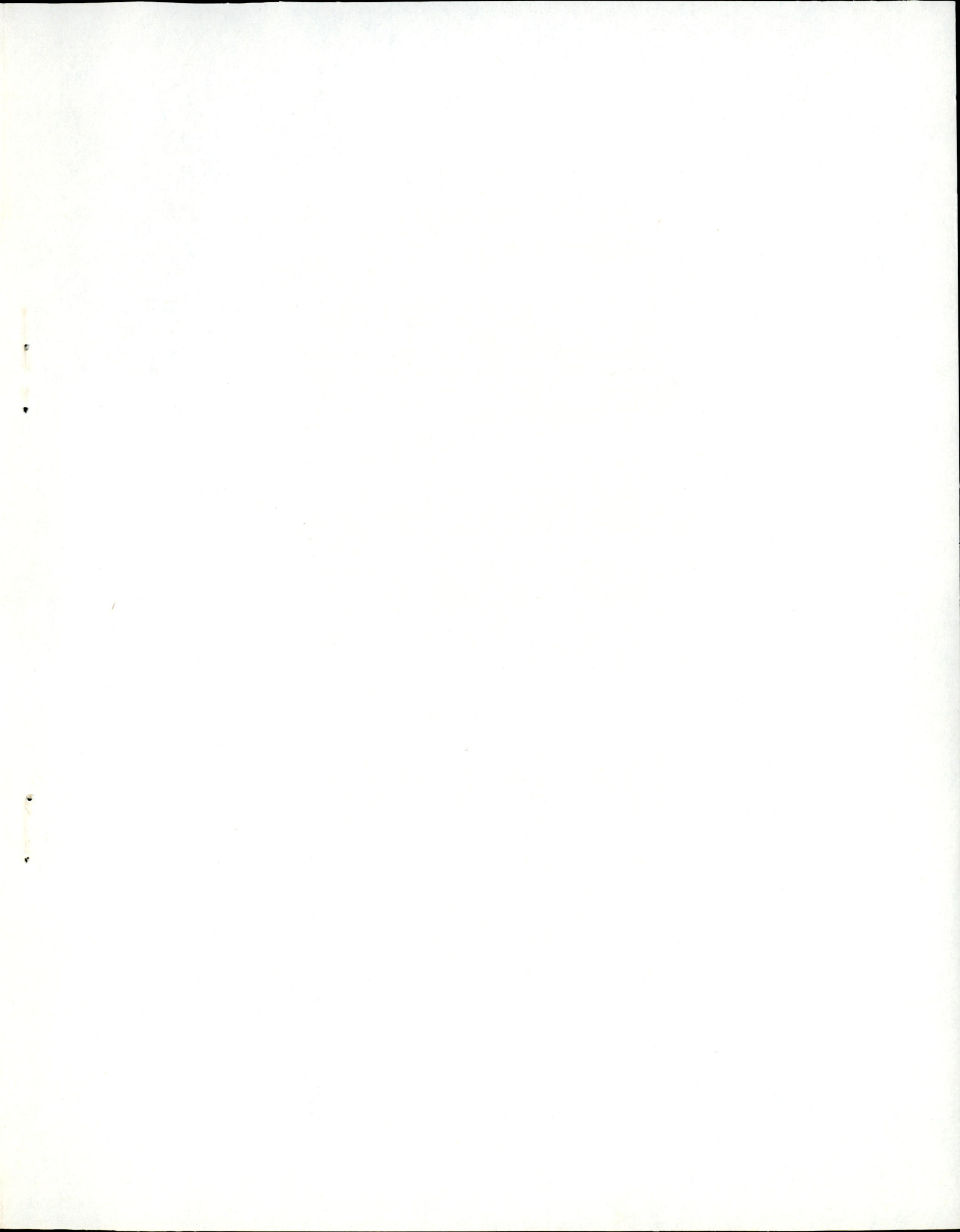
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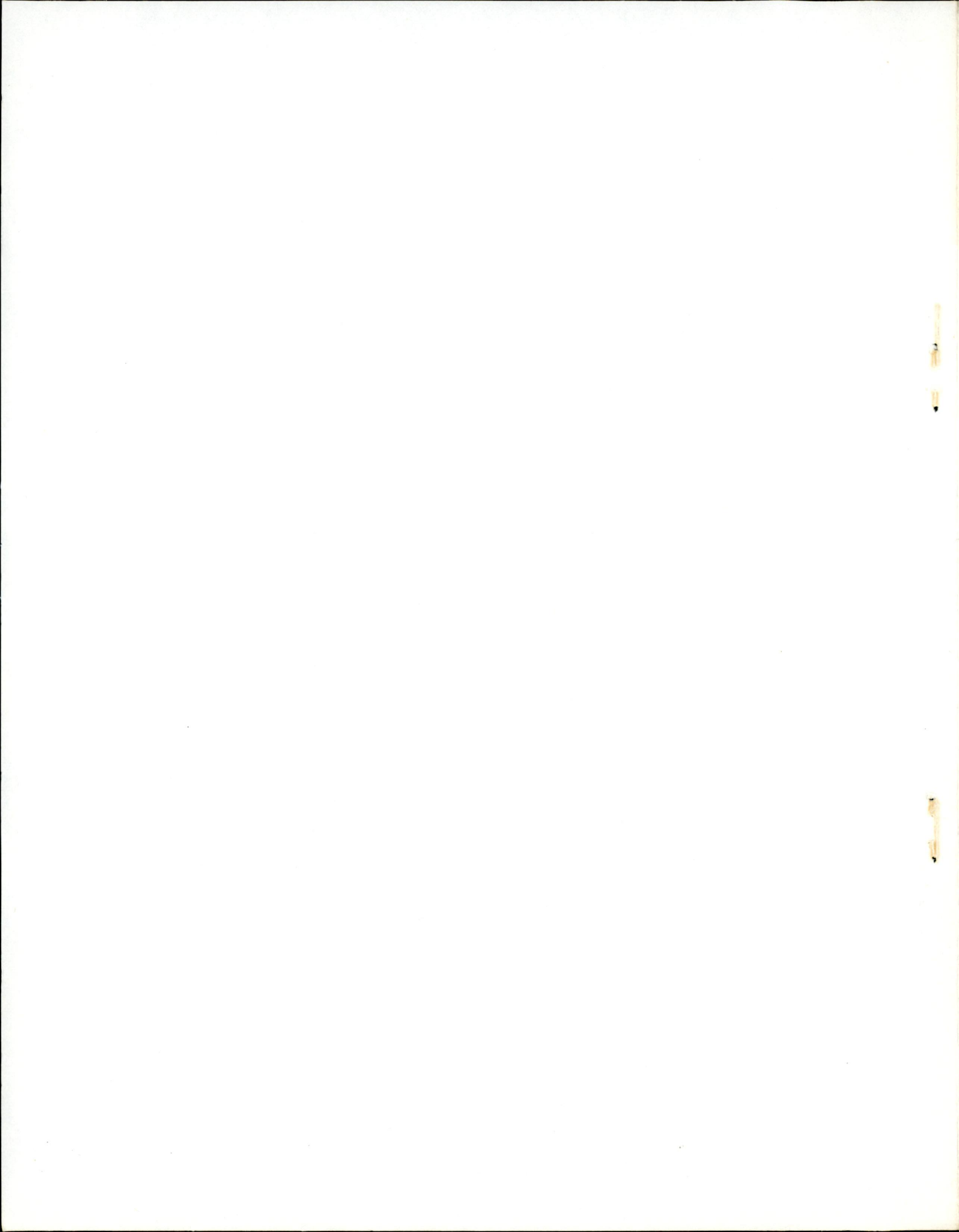
Disposal of Uncollected Goods.

- (3) The regulations shall—
- (a) be published in the Gazette;
 - (b) take effect from the date of publication or from a later date to be specified therein;
 - 5 (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.
- 10 (4) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, that regulation or part shall thereupon cease to have effect.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1966





New South Wales



ANNO QUINTO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 57, 1966.

An Act to authorise the disposal of goods the subject of a bailment, and motor vehicles held in certain circumstances, but not redelivered; and for purposes connected therewith. [Assented to, 14th December, 1966.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Disposal of Uncollected Goods Act, 1966".
- (2) Short title and commencement.

Disposal of Uncollected Goods.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division of
Act into
Parts.

2. This Act is divided into Parts as follows :—

PART I.—PRELIMINARY—*ss.* 1–3.

PART II.—DISPOSAL OF UNCOLLECTED GOODS WITHOUT COURT ORDER—*ss.* 4–9.

PART III.—DISPOSAL OF UNCOLLECTED GOODS PURSUANT TO COURT ORDER—*ss.* 10–14.

PART IV.—GENERAL—*ss.* 15–22.

Interpre-
tation.

3. In this Act—

“Hire-purchase agreement” means a hire-purchase agreement within the meaning of the Hire-Purchase Act, 1960, as amended by subsequent Acts.

“Motor vehicle” means a motor car, motor carriage, motor cycle, tractor, or other vehicle propelled, or designed to be propelled, wholly or partly by a volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power.

PART II.

DISPOSAL OF UNCOLLECTED GOODS WITHOUT
COURT ORDER.

Application
of Part.
cf. 15 & 16
Geo. 6 & 1
Eliz. 2 c. 43,
s. 1 (1),
Vic. No.
6815, s. 2
(1).

4. This Part applies in relation to the bailment of any goods accepted (whether before or after the commencement of this Act) by the bailee, in the course of a business, for repair or other treatment on the terms (express or implied) that they will be redelivered to the bailor or in accordance with the bailor's directions when the repair or other treatment has been carried out and on payment to the bailee of such charges as may be agreed between the parties or as may be reasonable.

Disposal of Uncollected Goods.

5. Where goods accepted pursuant to a bailment in relation to which this Part applies are ready for redelivery but the bailor—

- (a) fails to pay or tender to the bailee his charges in relation to the goods; or
- (b) having paid those charges, fails to take delivery of the goods or, if the terms of the bailment so provide, to give directions as to their delivery,

then, subject to the provisions of any agreement between the bailee and the bailor and to the provisions of this Act, and if the bailee did not, before carrying out the repair to or other treatment of the goods, have notice that the goods were comprised in a hire-purchase agreement containing a provision prohibiting the creation by the hirer of a lien on the goods, the bailee is, while the failure continues, entitled to sell the goods.

Right of bailees to sell goods accepted for repair or other treatment but not re-delivered.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 1 (2), Vic. No. 6815, s. 2 (2).

6. (1) The bailee is not entitled by virtue of section five of this Act to sell goods accepted by him for repair or other treatment unless the following provisions are complied with, that is to say :—

- (a) where the goods are accepted for repair or treatment after the commencement of this Act, at all premises used or appropriated by the bailee for accepting for repair or other treatment goods of the class to which the goods accepted belong, there is, at the time of the acceptance (whether or not the goods are accepted at any such premises), conspicuously displayed in the part of the premises so used or appropriated a notice indicating that the acceptance by the bailee of goods of that class for repair or other treatment is subject to the provisions of this Act, and that this Act confers on the bailee a right of sale exercisable in certain circumstances after an interval of not less than six months from the date on which the goods are ready for redelivery;

Bailee to comply with certain provisions to be entitled to sell goods.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 1 (3)-(7), Vic. No. 6815, s. 3.

(b)

Disposal of Uncollected Goods.

- (b) after the goods are ready for redelivery, or after the commencement of this Act, whichever is the later, the bailee gives to the bailor a notice that the goods are ready for redelivery, being a notice complying with the requirements, relating to such a notice, of subsection seven of this section, and gives such a notice to every other person who, at the time he gives the notice to the bailor, he actually knows has or claims an interest in the goods;
- (c) after the expiration of the period of six months beginning with the date of the giving of the notice that the goods are ready for redelivery or, if more than one such notice was given, beginning with the date of the giving of the later or latest of the notices, and not less than fourteen days before the sale of the goods, the bailee—
- (i) gives to the bailor a notice of his intention to sell the goods, being a notice complying with the requirements, relating to such a notice, of the said subsection seven;
 - (ii) gives such a notice to every other person who, at the time he gives the notice to the bailor, he actually knows has or claims an interest in the goods; and
 - (iii) causes such a notice to be published—
 - (a) in a newspaper published in Sydney and circulating throughout New South Wales; and
 - (b) where the goods are a motor vehicle, in the Gazette; and
 - (d) the goods are sold by public auction in a lot in which no other goods are included.

(2) Where, at any time before the giving to the bailor of the notice of the bailee's intention to sell the goods, a dispute arises between the bailor and the bailee by reason of the bailor's refusal to pay the sum which the bailee claims to be due to him by way of his charges in relation to the goods,

Disposal of Uncollected Goods.

goods, or to take delivery thereof or give directions as to their delivery, on the ground that the charges are excessive or that the bailor is not satisfied that the repair or other treatment of the goods has been properly carried out, the bailee's right to sell the goods shall be suspended until the dispute is determined.

(3) Without prejudice to any other mode of determining a dispute, it shall be treated for the purposes of this Act as having been determined if the bailee, at any time after the dispute has arisen, gives to the bailor a notice (hereafter in this Part referred to as a "notice to treat the dispute as determined")—

- (a) stating that unless within the period of one month beginning with the date of the giving of the notice the bailor objects thereto, the dispute will be treated for the purposes of this Act as having been determined; and
- (b) in other respects complying with the requirements, relating to such a notice, of subsection seven of this section,

and within the said period of one month the bailor does not notify the bailee that he objects to the notice; and where the dispute is so treated as having been determined, the date on which it shall be so treated as having been determined shall be the date of the giving of the notice.

(4) If the bailor so notifies the bailee that he objects to the notice to treat the dispute as determined, the court of petty sessions for the district in which the goods were accepted by the bailee may, on the application of the bailor or bailee—

- (a) make an order specifying the amount which the court deems reasonable in respect of the bailee's charges, and upon the making of such an order—
 - (i) the dispute shall be treated for the purposes of this Act as having been determined on the date of the order;
 - (ii) the amount specified in the order shall for all purposes be the amount of the bailor's liability to the bailee for the bailee's charges; and
 - (iii)

Disposal of Uncollected Goods.

(iii) where the bailor has paid to the bailee an amount in respect of the bailee's charges that is in excess of the amount so specified, the bailor shall be entitled to recover that excess as a debt in any court of competent jurisdiction; or

(b) may refuse to make such an order.

(5) The jurisdiction conferred on a court of petty sessions by subsection four of this section shall not be exercised except by a court of petty sessions held before a stipendiary magistrate.

(6) Where a dispute in relation to any goods is determined (whether by virtue of subsection three or four of this section or otherwise) subsection one of this section shall have effect in relation to those goods as if paragraph (b) thereof were omitted and as if for the reference in paragraph (c) thereof to the date of the giving of the notice that the goods are ready for redelivery there were substituted a reference to the date on which the dispute is determined.

(7) A notice required or authorised by this section to be given by the bailee to the bailor must contain a sufficient description of the goods to which the notice relates or, where the goods are a motor vehicle, the particulars of that vehicle referred to in subsection one of section nineteen of this Act, and a statement of the sum which the bailee claims to be due to him by way of his charges in relation to the goods, together with—

(a) in the case of a notice that the goods are ready for redelivery or a notice to treat the dispute as determined, a statement that if the bailor fails within the period of six months beginning with the date of the giving of the notice to pay the said sum or, having paid the said sum, to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Act; and

(b) in the case of a notice of the bailee's intention to sell the goods, a statement of the date of the giving of the notice to the bailor that the goods are ready for

for

Disposal of Uncollected Goods.

for redelivery or, where there has been a dispute between the bailor and bailee, the date on which the dispute was determined, and a statement that if the bailor fails, within the period of fourteen days beginning with the date of the giving of the notice of the bailee's intention to sell the goods, to pay the said sum or, having paid the said sum, to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Act.

7. (1) Where goods are sold by virtue of the provisions of this Part, any amount by which the gross proceeds of the sale exceed the charges of the bailee in relation to the goods shall be recoverable by the bailor from the bailee and any amount by which those charges exceed the gross proceeds of the sale shall be recoverable by the bailee from the bailor.

Procedure
after sale
under this
Part.
cf. 15 & 16
Geo. 6 & 1
Eliz. 2 c. 43,
s. 3,
Vic. No.
6815, s. 5.

(2) Where goods are so sold, the bailee shall, before the expiration of the period of seven days beginning with the date of the sale of the goods, prepare a record in relation to the goods containing the following particulars, that is to say—

- (a) a sufficient description of the goods or, where the goods are a motor vehicle, the particulars of that vehicle referred to in subsection one of section nineteen of this Act;
- (b) the date and place of the sale and the name and principal place of business of the auctioneer by whom the goods were sold;
- (c) the amount of the gross proceeds of the sale; and
- (d) a statement of each item of the charges of the bailee in relation to the goods and the transaction to which each item relates,

and shall, during the period of six years beginning with the date on which the record is prepared, keep the record together with a copy of the notice of the bailee's intention to sell the goods and shall, at any reasonable time during the said period of six years, if so requested by or on behalf of the bailor, produce the record and copy for inspection by the bailor,
any

Disposal of Uncollected Goods.

any person nominated by him in that behalf, or any person who at the time of the sale had or claims to have had an interest in the goods.

(3) A person who fails to comply with any of the provisions of subsection two of this section or who produces or furnishes a document kept for the purposes thereof which is to his knowledge false in a material particular is guilty of an offence against this Act.

Supple-
mental
provisions.
cf. 15 & 16
Geo. 6 & 1
Eliz. 2
c. 43, s. 4,
Vic. No.
6815, s. 6.

8. (1) References in this Part to goods accepted by a bailee, in the course of a business, for repair or other treatment shall, in relation to goods of any class, be construed as references to goods of that class accepted by him for repair or other treatment in the course of a business consisting of or comprising the acceptance by him of goods of that class for repair or other treatment (whether or not the repair or other treatment is effected by him) wholly or mainly from persons who deliver to him, otherwise than in the course of a business, goods of that class for repair or other treatment.

(2) References in this Part to the charges of the bailee in relation to any goods shall, subject to the provisions of any agreement between the bailor and the bailee, be construed as references to the amount agreed between them as the charge for the repair or other treatment of the goods, or, if no amount has been so agreed, a reasonable charge therefor and, in a case where the goods have been sold, the following additional amounts, that is to say—

- (a) a reasonable charge for storing the goods during the period beginning with the date of the giving of the notice that the goods are ready for redelivery, or, where there has been a dispute between the bailor and bailee, the date on which the dispute was determined, and ending with the date of the sale;
- (b) any costs of or in connection with the sale; and
- (c) the cost, if any, of insuring the goods.

Disposal of Uncollected Goods.

9. (1) Where the bailee of goods accepted before the commencement of this Act for repair or other treatment does not at the commencement of this Act know any address of the bailor, the bailee shall not be disentitled to sell the goods by reason only that paragraphs (b) and (c) of subsection one of section six of this Act are not complied with, if the following provisions are complied with, that is to say—

Special provisions applicable to certain cases of goods accepted before the commencement of this Act.

- (a) within the period of one month beginning with the commencement of this Act, the bailee causes to be published—
- (i) in a newspaper published in Sydney and circulating throughout New South Wales; and
- (ii) where the goods are a motor vehicle, in the Gazette,

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 5, Vic. No. 6815, s. 7.

a notice complying with the requirements of subsection three of this section;

- (b) at all premises used or appropriated by the bailee after the commencement of this Act for accepting for repair or other treatment goods of the class to which the goods so accepted belong, there is, throughout the period of six months immediately following the said period of one month or throughout that portion of the said period of six months during which the premises are so used or appropriated, conspicuously displayed in the part of the premises so used or appropriated a notice indicating that in the case of goods of that class accepted before the commencement of this Act for repair or other treatment this Act confers on the bailee a right of sale exercisable in certain circumstances after an interval of not less than seven months from the commencement of this Act; and
- (c) the goods are not sold before the expiration of the period of seven months beginning with the commencement of this Act.

Disposal of Uncollected Goods.

(2) Where goods are sold by virtue of the fact that the foregoing provisions of this section have been complied with, the foregoing sections of this Part shall have effect in relation to the goods subject to the following modifications, that is to say—

- (a) for any reference in subsection two of section seven to a copy of the notice of the bailee's intention to sell the goods there shall be substituted a reference to a statement of the name and issue of the newspaper in which the notice under paragraph (a) of subsection one of this section was published and, where that notice was also published in the Gazette, to that Gazette; and
- (b) for the reference in paragraph (a) of subsection two of section eight of this Act to the notice that the goods are ready for redelivery there shall be substituted a reference to the publication of the notice under paragraph (a) of subsection one of this section.

(3) A notice under paragraph (a) of subsection one of this section in relation to any goods must contain—

- (a) a sufficient description of the class to which the goods belong or, where the goods are a motor vehicle, the particulars of that vehicle referred to in subsection one of section nineteen of this Act;
- (b) the name under which the bailee carries on the business consisting of or comprising the acceptance of goods of that class for repair or other treatment and the address of the bailee's principal place of business or, where the bailee is a company, the registered office of the company, and if the name or the address has changed during the six months immediately preceding the date of the publication of the notice, the last such name, or, as the case may be, the last such address preceding the change thereof; and
- (c) a statement that if the bailor of the goods fails within the period of seven months beginning with the commencement of this Act to pay the sum

which

Disposal of Uncollected Goods.

which the bailee claims to be due to him by way of his charges in relation to the goods or, having paid that sum, to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Act.

(4) Where the bailee of goods accepted before the commencement of this Act for repair or other treatment does not at the commencement of this Act know any address of the bailor and at any time during the period of seven months beginning with the commencement of this Act a dispute arises between the bailor and the bailee by reason of either or both of the grounds mentioned in subsection two of section six of this Act, the foregoing provisions of this section shall not apply in relation to the goods, but the foregoing sections of this Act shall apply in relation thereto as they apply in a case where a dispute arises between the bailor and the bailee before the giving of the notice of the bailee's intention to sell the goods.

PART III.

DISPOSAL OF UNCOLLECTED GOODS PURSUANT TO
COURT ORDER.

10. (1) Where—

- (a) goods accepted pursuant to a bailment in relation to which Part II of this Act applies are ready for redelivery and the bailor—
- Right of
bailee to
apply for
order to
sell goods.
- (i) fails to pay or tender to the bailee his charges in relation to the goods; or
- (ii) having paid to the bailee those charges, fails to take delivery of the goods or, if the terms of the bailment so provide, to give directions for their delivery;
- (b) the bailee of goods that have been accepted by him (whether before or after the commencement of this Act) pursuant to any other bailment for reward has, by notice given to the bailor, required the bailor, subject to the payment to the bailee of his charges,

to

Disposal of Uncollected Goods.

to take delivery of the goods at a time specified in or determined in accordance with the contract of bailment or, if the contract of bailment does not specify or make provision for the determination of the time when the goods are to be redelivered to the bailor, within such reasonable time as may be specified in the notice, and the bailor—

- (i) fails to pay or tender to the bailee his charges in relation to the goods; or
 - (ii) having paid or tendered those charges, fails, at the time so specified or determined or within such reasonable time, to take delivery of the goods or, if the terms of the bailment so provide, to give directions as to their delivery; or
- (c) the bailee of goods that have been accepted by him (whether before or after the commencement of this Act) pursuant to a bailment not for reward has, by notice in writing given to the bailor, required the bailor to take delivery of the goods at a time specified in or determined in accordance with the contract of bailment or, if the contract of bailment does not specify or make provision for the determination of the time when the goods are to be redelivered to the bailor, within such reasonable time as may be specified in the notice, and the bailor fails, at the time so specified or determined or within such reasonable time, to take delivery of the goods or, if the terms of the bailment so provide, to give directions as to their delivery,

the bailee may make an application for an order under section twelve of this Act to sell the goods.

(2) An application in respect of goods referred to in paragraph (a) of subsection one of this section may be made whether or not the bailee is entitled to sell the goods under the provisions of Part II of this Act, but where such an application is made the bailee's right to sell the goods in accordance with those provisions shall cease and determine.

(3)

Disposal of Uncollected Goods.

(3) A reference in this Part to an owner of goods shall, where those goods were accepted pursuant to a bailment referred to in subsection one of this section, be construed as a reference to the bailor of those goods under that bailment.

11. (1) Where a tow truck operator, in the course of his business as a tow truck operator and in accordance with directions lawfully given to him, has (whether before or after the commencement of this Act) moved goods, being a motor vehicle, from a public place to some other place, and the owner of the goods fails to pay or tender to the tow truck operator his towing charges for moving the goods, the tow truck operator may make an application for an order under section twelve of this Act to sell the goods if they are in his possession when the application is made.

Right of tow truck operator or person storing motor vehicle to apply for order to sell the vehicle.

(2) Where—

- (a) a tow truck operator, in the course of his business as a tow truck operator and in accordance with directions lawfully given to him, has (whether before or after the commencement of this Act) moved goods, being a motor vehicle, from a public place and leaves them for storage at a place where the business of repairing motor vehicles is ordinarily carried on by him or by some other person; and
- (b) the owner of the goods fails to pay or tender to the person by whom that business of repairing motor vehicles is carried on that person's charges for the storage of the goods,

that person may make an application for an order under section twelve of this Act to sell the goods if they are in his possession when the application is made.

(3) Where a tow truck operator would not, but for this subsection, be entitled by virtue of subsection one of this section to make an application for an order under section twelve of this Act to sell any goods by reason only that the goods are not in his possession, and a person carrying on the business of repairing motor vehicles is, by virtue of

Disposal of Uncollected Goods.

of subsection two of this section, entitled to make an application for an order under section twelve of this Act to sell those goods, that tow truck operator and that person may make a joint application for an order under that section to sell those goods.

Orders to
sell goods.

12. (1) An application for an order under this section shall be made—

- (a) where a bailee is entitled to make the application by virtue of subsection one of section ten of this Act, to the court of petty sessions for the petty sessions district in which the goods were accepted by the bailee;
- (b) where a tow truck operator or a person carrying on the business of repairing motor vehicles is entitled to make the application by virtue of subsection one or two, as the case may be, of section eleven of this Act, or a tow truck operator and such a person are jointly entitled to make the application by virtue of subsection three of that section, to the court of petty sessions for the petty sessions district in which the goods were situated when they were moved by the tow truck operator.

(2) Where an application is made to a court of petty sessions in accordance with the provisions of this Part the court—

- (a) may make an order authorising—
 - (i) a sole applicant to sell the goods in respect of which the order is made if they remain in his possession until he is entitled under subsection six of this section to sell them; or
 - (ii) joint applicants to sell the goods in respect of which the order is made if they remain in the possession of one of them until they are entitled under subsection six of this section to sell the goods; or
- (b) may refuse to make such an order.

Disposal of Uncollected Goods.

- (3) An order under this section—
- (a) where it is made pursuant to an application made by virtue of subsection one of section ten of this Act in respect of goods the subject of a bailment referred to in paragraph (a) or (b) of that subsection, and the bailor has not paid or tendered to the bailee the bailee's charges in respect of the goods, shall specify the amount which the court deems reasonable in respect of the bailee's charges;
 - (b) where it is made pursuant to an application made by virtue of subsection one of section eleven of this Act, shall specify the amount which the court deems reasonable in respect of the applicant's charges for moving the goods;
 - (c) where it is made pursuant to an application made by virtue of subsection two of section eleven of this Act, shall specify the amount which the court deems reasonable in respect of the applicant's charges for the storage of the goods up to the date of the order;
 - (d) where it is made pursuant to an application made by virtue of subsection three of section eleven of this Act, shall specify separately the amounts which the court deems reasonable in respect of—
 - (i) the tow truck operator's charges referred to in subsection one of that section, for moving the goods; and
 - (ii) the charges, referred to in subsection two of that section, for the storage of the goods up to the date of the order;
 - (e) shall specify the amount, if any, allowed in respect of the costs of obtaining the order;
 - (f) may specify, for the purposes of paragraph (a) of section fourteen of this Act, a rate of storage charges and, for the purposes of paragraph (b) of that section, the amount that may be incurred in respect of the costs of or in connection with the sale; and

(g)

Disposal of Uncollected Goods.

(g) shall prohibit the sale of the goods specified in the order until the expiration of a period of six months, or such lesser period as may be specified in the order, after the date of the order.

(4) The amount specified in accordance with paragraph (a), (b) or (c), or the separate amounts specified in accordance with paragraph (d), of subsection three of this section shall for all purposes be the amount of the liability of the owner of the goods for the charges of the applicant or each of the joint applicants for the order, as the case may be.

(5) The power of a court to make an order under this section authorising the sale of goods shall be subject to the provisions of any agreement between the owner of the goods and the applicant for the order.

(6) An applicant in whose favour an order is made under this section is entitled, subject to the order and the provisions of this Act, to sell the goods specified in the order.

(7) An order under this section shall not affect the right of any person to recover the goods specified in the order by an action commenced within six months after the date of the order.

(8) If any such action is so commenced the right of the person in whose favour the order is made to sell the goods shall be suspended until that action has been heard and determined and if in that action an order is made for the recovery of the goods from the person in whose favour the order was made, that person's right to sell the goods shall cease and determine.

(9) The regulations under this Act may prescribe rates of towing charges and storage charges for motor vehicles, and the court shall have regard to any rates so prescribed in specifying the amounts referred to in paragraph (b), (c), (d) or (f) of subsection three of this section.

(10) The jurisdiction conferred on a court of petty sessions by this section shall not be exercised except by a court of petty sessions held before a stipendiary magistrate.

Disposal of Uncollected Goods.

13. (1) Where goods are sold by virtue of the provisions of this Part, any amount by which the gross proceeds of the sale exceed the aggregate of the amount or amounts specified in the order authorising the sale in accordance with paragraph (a), (b), (c) or (d) of subsection three of section twelve of this Act together with the subsidiary charges which the person authorised to sell the goods is entitled to make under section fourteen of this Act shall be recoverable as a debt by the owner of the goods from the person authorised to sell the goods and any amount by which that aggregate exceeds the gross proceeds of the sale shall be recoverable as a debt by the person so authorised from that owner.

Procedure
after sale
under this
Part.

(2) Where goods are so sold, the person authorised by the order to sell the goods shall, before the expiration of the period of seven days beginning with the date of the sale of the goods, prepare a record in relation to the goods containing the following particulars, that is to say—

- (a) a reference to the order authorising the sale of the goods;
- (b) the method, date and place of the sale;
- (c) where the goods are sold by public auction, the name and principal place of business of the auctioneer, and where they are sold otherwise than by public auction, the name and address of the buyer;
- (d) the amount of the gross proceeds of the sale; and
- (e) a statement of each item of the charges of the person authorised by the order to sell the goods and the transaction to which each item relates,

and shall before the expiration of the period of fourteen days beginning with the date of the sale of the goods lodge a copy of that record with the clerk of petty sessions for the court in which the order was made for filing with the records of the court relating to the order.

(3) Any person who had or claims to have had, at the time of the sale of the goods, an interest in the goods shall be entitled, on payment of a fee of twenty cents, to inspect the copy of the record so lodged.

(4)

Disposal of Uncollected Goods.

(4) A person who fails to comply with any of the provisions of subsection two of this section or who lodges a document for the purposes thereof which is to his knowledge false in a material particular is guilty of an offence against this Act.

Subsidiary charges.

14. Where goods are sold by virtue of the provisions of this Part, the subsidiary charges which a person authorised to sell the goods is entitled to make are—

- (a) a reasonable charge for storing the goods during the period beginning with the date of the order authorising the sale of the goods and ending with the date of the sale, not exceeding a charge at a rate, if any, specified in the order in accordance with paragraph (f) of subsection three of section twelve of this Act;
- (b) any costs of or in connection with the sale, not exceeding the costs, if any, specified in the order in accordance with paragraph (f) of that subsection; and
- (c) the cost, if any, of insuring the goods.

PART IV.

GENERAL.

Ambulatory operation of Act. cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 4 (3), Vic. No. 6815, s. 6 (3).

15. Any provisions of this Act which apply to or in respect of any person by virtue of his rights or obligations in respect of any goods shall as respects a period during which those rights or obligations are vested in any other person apply to and in respect of that other person.

Disposal of Uncollected Goods.

16. The powers conferred on a person by this Act shall be in addition to and not in derogation of any powers exercisable by him independently of this Act.

Saving of powers outside Act.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 4 (4), Vic. No. 6815, s. 6 (4).

17. (1) A notice required or authorised by this Act to be given to any person shall be in writing.

Notices.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 2, Vic. No. 6815, s. 4.

(2) Any such notice may be given—

- (a) by delivering it to the person to whom it is required or authorised to be given personally;
- (b) by leaving it for him at his last known place of abode or business with some other person apparently an inmate thereof or employed thereat, and apparently of or over the age of sixteen years; or
- (c) by posting it addressed to him at his last known place of abode or business.

18. (1) The buyer of any goods sold by virtue of the provisions of this Act shall acquire a good title to the goods if he buys them in good faith and without notice—

Buyer of goods sold by virtue of this Act to acquire a good title. cf. Vic. No. 6815, s. 8.

- (a) of any failure by the seller to comply with any of the provisions of this Act; and
- (b) in the case of goods the subject of a bailment, of any defect or want of title in the bailor.

(2) Upon any proceedings by or against the seller in respect of any goods sold by virtue of the provisions of this Act, the burden of proving that the provisions of this Act relating to the sale of those goods have been complied with shall be upon the seller.

19. (1) Where a person intends to sell a motor vehicle by virtue of the provisions of this Act he shall, not less than one month before the sale, give notice to the Commissioner of Police of his intention to sell the vehicle together with

Special provisions applicable to sales of motor vehicles.

particulars cf. Vic. No. 6815, s. 10.

Disposal of Uncollected Goods.

particulars of the make, model type, colour, registration number, chassis number, if any, body number, if any, and engine number of the vehicle and how and when it came into his possession.

(2) As soon as practicable after the receipt of any such notice and particulars, the Commissioner of Police shall cause a search to be made of the records in his custody and shall forward to the person giving the notice and particulars a certificate as to whether or not the motor vehicle referred to is for the time being recorded as stolen.

(3) A person who sells a motor vehicle by virtue of the provisions of this Act without having first obtained from the Commissioner of Police a certificate that the motor vehicle is not recorded for the time being as stolen is guilty of an offence against this Act.

Disposal
of net
proceeds
of sale
of goods.
cf. Vic. No.
6815, s. 11.

20. (1) Where, after goods have been sold by virtue of the provisions of this Act, and the seller has deducted the charges in relation to those goods which he is entitled to make, there remains a surplus of moneys in the hands of the seller, the seller shall within fourteen days after the sale pay those moneys into a bank to the credit of a savings account to be opened by him for that purpose unless they have previously been paid by him to the person entitled thereto.

(2) Where any such moneys have not been paid by the seller of the goods to the person entitled thereto within a period of twelve months after their being so paid into a bank, the seller shall within fourteen days after the expiration of that period pay those moneys together with any interest thereon to the Treasurer to be placed to the credit of the Consolidated Revenue Fund.

(3) The seller, when paying any moneys to the Treasurer in accordance with subsection two of this section, shall, at the same time, furnish to the Treasurer a copy of the record required to be prepared by the seller by subsection two of section seven, or by subsection two of section thirteen, of this Act, as the case may be.

Disposal of Uncollected Goods.

(4) A person entitled to any moneys paid to the Treasurer in accordance with subsection two of this section shall, subject to subsection five of this section, be entitled to recover it from the Treasurer.

(5) Where any moneys that have been paid to the Treasurer in accordance with subsection two of this section and have been paid by him to some person appearing to him to be entitled thereto are afterwards claimed by another person, the Treasurer shall not be liable to make any payment to that other person, but that other person may have recourse against the person to whom the Treasurer has paid the moneys.

(6) A person who fails to comply with any of the provisions of subsection one or subsection two or three of this section, or who furnishes a document for the purposes of subsection three of this section which is to his knowledge false in a material particular is guilty of an offence against this Act.

21. (1) A person guilty of an offence against this Act is liable to a penalty not exceeding two hundred dollars or to imprisonment for a term not exceeding three months or to both such penalty and imprisonment. Penalties and proceedings.

(2) Proceedings for an offence against this Act may be taken before any two justices in petty sessions.

22. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or permitted by this Act to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act. Regulations.

(2) The regulations may impose a penalty not exceeding one hundred dollars for any breach thereof.

(3)

Disposal of Uncollected Goods.

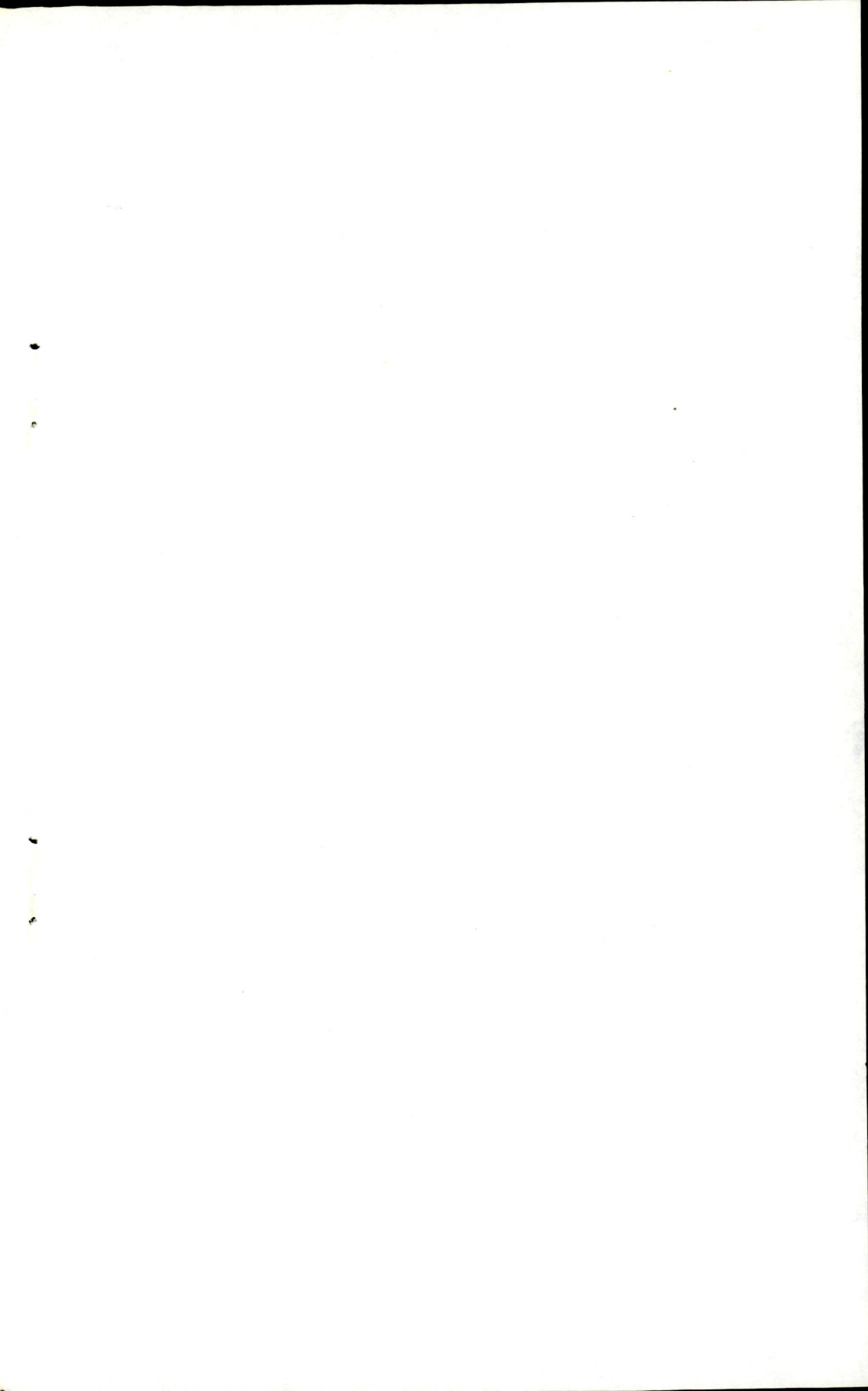
(3) The regulations shall—

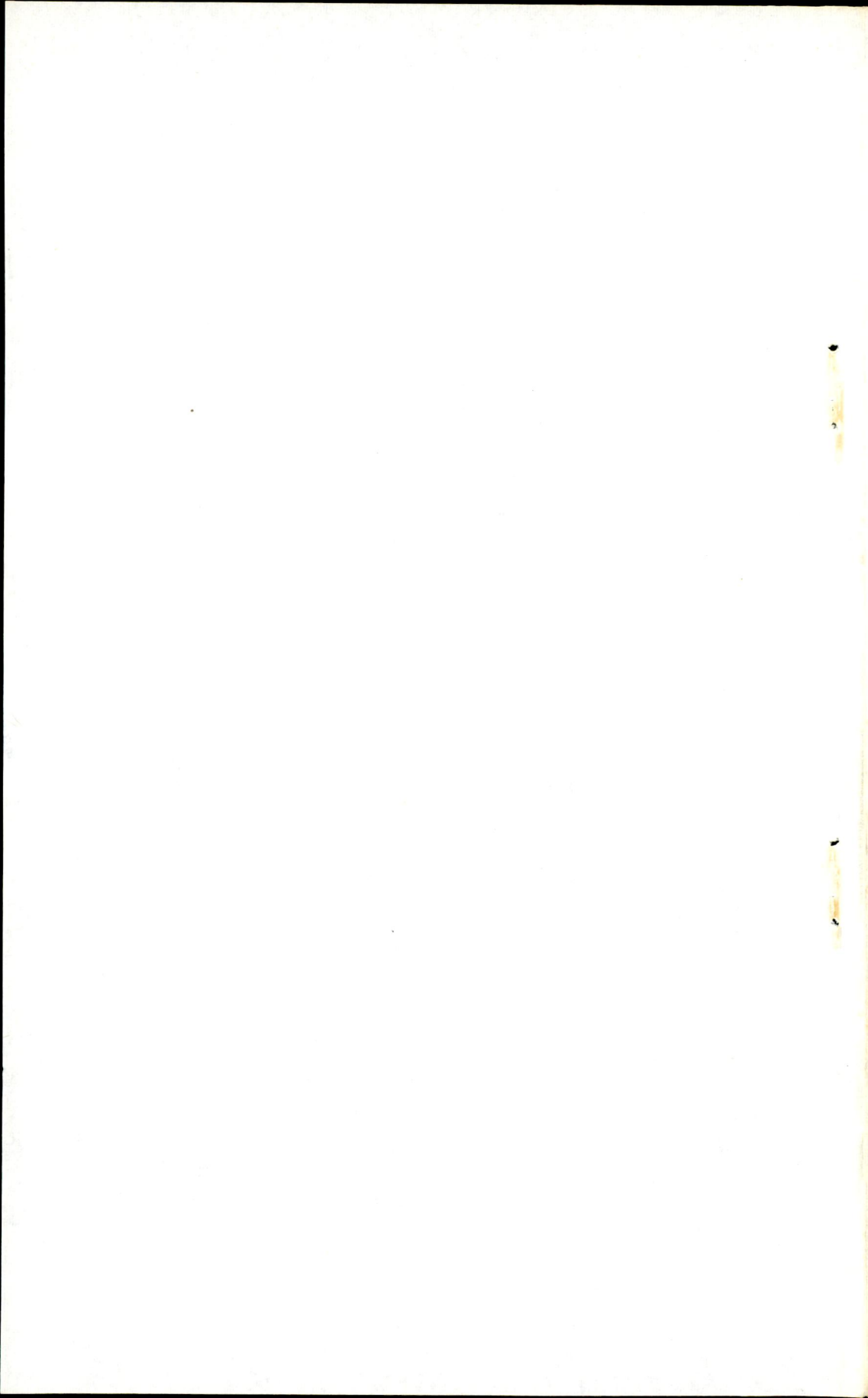
- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified therein;
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(4) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, that regulation or part shall thereupon cease to have effect.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1967





I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 7 December, 1966.*

New South Wales



ANNO QUINTO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 57, 1966.

An Act to authorise the disposal of goods the subject of a bailment, and motor vehicles held in certain circumstances, but not redelivered; and for purposes connected therewith. [Assented to, 14th December, 1966.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Disposal of Uncollected Goods Act, 1966".
- (2) Short title and commencement.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

G. R. CRAWFORD,
Chairman of Committees of the Legislative Assembly.

Disposal of Uncollected Goods.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division of
Act into
Parts.

2. This Act is divided into Parts as follows :—

PART I.—PRELIMINARY—ss. 1–3.

PART II.—DISPOSAL OF UNCOLLECTED GOODS WITHOUT COURT ORDER—ss. 4–9.

PART III.—DISPOSAL OF UNCOLLECTED GOODS PURSUANT TO COURT ORDER—ss. 10–14.

PART IV.—GENERAL—ss. 15–22.

Interpre-
tation.

3. In this Act—

“Hire-purchase agreement” means a hire-purchase agreement within the meaning of the Hire-Purchase Act, 1960, as amended by subsequent Acts.

“Motor vehicle” means a motor car, motor carriage, motor cycle, tractor, or other vehicle propelled, or designed to be propelled, wholly or partly by a volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power.

PART II.

DISPOSAL OF UNCOLLECTED GOODS WITHOUT
COURT ORDER.

Application
of part.
cf. 15 & 16
Geo. 6 & 1
Eliz. 2 c. 43,
s. 1 (1),
Vic. No.
6815, s. 2
(1).

4. This Part applies in relation to the bailment of any goods accepted (whether before or after the commencement of this Act) by the bailee, in the course of a business, for repair or other treatment on the terms (express or implied) that they will be redelivered to the bailor or in accordance with the bailor's directions when the repair or other treatment has been carried out and on payment to the bailee of such charges as may be agreed between the parties or as may be reasonable.

5.

Disposal of Uncollected Goods.

5. Where goods accepted pursuant to a bailment in relation to which this Part applies are ready for redelivery but the bailor—

- (a) fails to pay or tender to the bailee his charges in relation to the goods; or
- (b) having paid those charges, fails to take delivery of the goods or, if the terms of the bailment so provide, to give directions as to their delivery,

then, subject to the provisions of any agreement between the bailee and the bailor and to the provisions of this Act, and if the bailee did not, before carrying out the repair to or other treatment of the goods, have notice that the goods were comprised in a hire-purchase agreement containing a provision prohibiting the creation by the hirer of a lien on the goods, the bailee is, while the failure continues, entitled to sell the goods.

Right of bailees to sell goods accepted for repair or other treatment but not re-delivered.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 1 (2), Vic. No. 6815, s. 2 (2).

6. (1) The bailee is not entitled by virtue of section five of this Act to sell goods accepted by him for repair or other treatment unless the following provisions are complied with, that is to say :—

- (a) where the goods are accepted for repair or treatment after the commencement of this Act, at all premises used or appropriated by the bailee for accepting for repair or other treatment goods of the class to which the goods accepted belong, there is, at the time of the acceptance (whether or not the goods are accepted at any such premises), conspicuously displayed in the part of the premises so used or appropriated a notice indicating that the acceptance by the bailee of goods of that class for repair or other treatment is subject to the provisions of this Act, and that this Act confers on the bailee a right of sale exercisable in certain circumstances after an interval of not less than six months from the date on which the goods are ready for redelivery;

Bailee to comply with certain provisions to be entitled to sell goods.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 1 (3)-(7), Vic. No. 6815, s. 3.

(b)

Disposal of Uncollected Goods.

- (b) after the goods are ready for redelivery, or after the commencement of this Act, whichever is the later, the bailee gives to the bailor a notice that the goods are ready for redelivery, being a notice complying with the requirements, relating to such a notice, of subsection seven of this section, and gives such a notice to every other person who, at the time he gives the notice to the bailor, he actually knows has or claims an interest in the goods;
- (c) after the expiration of the period of six months beginning with the date of the giving of the notice that the goods are ready for redelivery or, if more than one such notice was given, beginning with the date of the giving of the later or latest of the notices, and not less than fourteen days before the sale of the goods, the bailee—
 - (i) gives to the bailor a notice of his intention to sell the goods, being a notice complying with the requirements, relating to such a notice, of the said subsection seven;
 - (ii) gives such a notice to every other person who, at the time he gives the notice to the bailor, he actually knows has or claims an interest in the goods; and
 - (iii) causes such a notice to be published—
 - (a) in a newspaper published in Sydney and circulating throughout New South Wales; and
 - (b) where the goods are a motor vehicle, in the Gazette; and
- (d) the goods are sold by public auction in a lot in which no other goods are included.

(2) Where, at any time before the giving to the bailor of the notice of the bailee's intention to sell the goods, a dispute arises between the bailor and the bailee by reason of the bailor's refusal to pay the sum which the bailee claims to be due to him by way of his charges in relation to the goods,

Disposal of Uncollected Goods.

goods, or to take delivery thereof or give directions as to their delivery, on the ground that the charges are excessive or that the bailor is not satisfied that the repair or other treatment of the goods has been properly carried out, the bailee's right to sell the goods shall be suspended until the dispute is determined.

(3) Without prejudice to any other mode of determining a dispute, it shall be treated for the purposes of this Act as having been determined if the bailee, at any time after the dispute has arisen, gives to the bailor a notice (hereafter in this Part referred to as a "notice to treat the dispute as determined")—

- (a) stating that unless within the period of one month beginning with the date of the giving of the notice the bailor objects thereto, the dispute will be treated for the purposes of this Act as having been determined; and
- (b) in other respects complying with the requirements, relating to such a notice, of subsection seven of this section,

and within the said period of one month the bailor does not notify the bailee that he objects to the notice; and where the dispute is so treated as having been determined, the date on which it shall be so treated as having been determined shall be the date of the giving of the notice.

(4) If the bailor so notifies the bailee that he objects to the notice to treat the dispute as determined, the court of petty sessions for the district in which the goods were accepted by the bailee may, on the application of the bailor or bailee—

- (a) make an order specifying the amount which the court deems reasonable in respect of the bailee's charges, and upon the making of such an order—
 - (i) the dispute shall be treated for the purposes of this Act as having been determined on the date of the order;
 - (ii) the amount specified in the order shall for all purposes be the amount of the bailor's liability to the bailee for the bailee's charges; and
 - (iii)

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(iii) where the bailor has paid to the bailee an amount in respect of the bailee's charges that is in excess of the amount so specified, the bailor shall be entitled to recover that excess as a debt in any court of competent jurisdiction; or

(b) may refuse to make such an order.

(5) The jurisdiction conferred on a court of petty sessions by subsection four of this section shall not be exercised except by a court of petty sessions held before a stipendiary magistrate.

(6) Where a dispute in relation to any goods is determined (whether by virtue of subsection three or four of this section or otherwise) subsection one of this section shall have effect in relation to those goods as if paragraph (b) thereof were omitted and as if for the reference in paragraph (c) thereof to the date of the giving of the notice that the goods are ready for redelivery there were substituted a reference to the date on which the dispute is determined.

(7) A notice required or authorised by this section to be given by the bailee to the bailor must contain a sufficient description of the goods to which the notice relates or, where the goods are a motor vehicle, the particulars of that vehicle referred to in subsection one of section nineteen of this Act, and a statement of the sum which the bailee claims to be due to him by way of his charges in relation to the goods, together with—

(a) in the case of a notice that the goods are ready for redelivery or a notice to treat the dispute as determined, a statement that if the bailor fails within the period of six months beginning with the date of the giving of the notice to pay the said sum or, having paid the said sum, to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Act; and

(b) in the case of a notice of the bailee's intention to sell the goods, a statement of the date of the giving of the notice to the bailor that the goods are ready
for

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for redelivery or, where there has been a dispute between the bailor and bailee, the date on which the dispute was determined, and a statement that if the bailor fails, within the period of fourteen days beginning with the date of the giving of the notice of the bailee's intention to sell the goods, to pay the said sum or, having paid the said sum, to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Act.

7. (1) Where goods are sold by virtue of the provisions of this Part, any amount by which the gross proceeds of the sale exceed the charges of the bailee in relation to the goods shall be recoverable by the bailor from the bailee and any amount by which those charges exceed the gross proceeds of the sale shall be recoverable by the bailee from the bailor.

Procedure after sale under this Part.
cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 3,
Vic. No. 6815, s. 5.

(2) Where goods are so sold, the bailee shall, before the expiration of the period of seven days beginning with the date of the sale of the goods, prepare a record in relation to the goods containing the following particulars, that is to say—

- (a) a sufficient description of the goods or, where the goods are a motor vehicle, the particulars of that vehicle referred to in subsection one of section nineteen of this Act;
- (b) the date and place of the sale and the name and principal place of business of the auctioneer by whom the goods were sold;
- (c) the amount of the gross proceeds of the sale; and
- (d) a statement of each item of the charges of the bailee in relation to the goods and the transaction to which each item relates,

and shall, during the period of six years beginning with the date on which the record is prepared, keep the record together with a copy of the notice of the bailee's intention to sell the goods and shall, at any reasonable time during the said period of six years, if so requested by or on behalf of the bailor, produce the record and copy for inspection by the bailor,
any

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any person nominated by him in that behalf, or any person who at the time of the sale had or claims to have had an interest in the goods.

(3) A person who fails to comply with any of the provisions of subsection two of this section or who produces or furnishes a document kept for the purposes thereof which is to his knowledge false in a material particular is guilty of an offence against this Act.

Supple-
mental
provisions.
cf. 15 & 16
Geo. 6 & 1
Eliz. 2
c. 43, s. 4,
Vic. No.
6815, s. 6.

8. (1) References in this Part to goods accepted by a bailee, in the course of a business, for repair or other treatment shall, in relation to goods of any class, be construed as references to goods of that class accepted by him for repair or other treatment in the course of a business consisting of or comprising the acceptance by him of goods of that class for repair or other treatment (whether or not the repair or other treatment is effected by him) wholly or mainly from persons who deliver to him, otherwise than in the course of a business, goods of that class for repair or other treatment.

(2) References in this Part to the charges of the bailee in relation to any goods shall, subject to the provisions of any agreement between the bailor and the bailee, be construed as references to the amount agreed between them as the charge for the repair or other treatment of the goods, or, if no amount has been so agreed, a reasonable charge therefor and, in a case where the goods have been sold, the following additional amounts, that is to say—

- (a) a reasonable charge for storing the goods during the period beginning with the date of the giving of the notice that the goods are ready for redelivery, or, where there has been a dispute between the bailor and bailee, the date on which the dispute was determined, and ending with the date of the sale;
- (b) any costs of or in connection with the sale; and
- (c) the cost, if any, of insuring the goods.

Disposal of Uncollected Goods.

9. (1) Where the bailee of goods accepted before the commencement of this Act for repair or other treatment does not at the commencement of this Act know any address of the bailor, the bailee shall not be disentitled to sell the goods by reason only that paragraphs (b) and (c) of subsection one of section six of this Act are not complied with, if the following provisions are complied with, that is to say—

Special provisions applicable to certain cases of goods accepted before the commencement of this Act.

- (a) within the period of one month beginning with the commencement of this Act, the bailee causes to be published—
- (i) in a newspaper published in Sydney and circulating throughout New South Wales; and
- (ii) where the goods are a motor vehicle, in the Gazette,

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 5, Vic. No. 6815, s. 7.

a notice complying with the requirements of subsection three of this section;

- (b) at all premises used or appropriated by the bailee after the commencement of this Act for accepting for repair or other treatment goods of the class to which the goods so accepted belong, there is, throughout the period of six months immediately following the said period of one month or throughout that portion of the said period of six months during which the premises are so used or appropriated, conspicuously displayed in the part of the premises so used or appropriated a notice indicating that in the case of goods of that class accepted before the commencement of this Act for repair or other treatment this Act confers on the bailee a right of sale exercisable in certain circumstances after an interval of not less than seven months from the commencement of this Act; and
- (c) the goods are not sold before the expiration of the period of seven months beginning with the commencement of this Act.

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(2) Where goods are sold by virtue of the fact that the foregoing provisions of this section have been complied with, the foregoing sections of this Part shall have effect in relation to the goods subject to the following modifications, that is to say—

- (a) for any reference in subsection two of section seven to a copy of the notice of the bailee's intention to sell the goods there shall be substituted a reference to a statement of the name and issue of the newspaper in which the notice under paragraph (a) of subsection one of this section was published and, where that notice was also published in the Gazette, to that Gazette; and
- (b) for the reference in paragraph (a) of subsection two of section eight of this Act to the notice that the goods are ready for redelivery there shall be substituted a reference to the publication of the notice under paragraph (a) of subsection one of this section.

(3) A notice under paragraph (a) of subsection one of this section in relation to any goods must contain—

- (a) a sufficient description of the class to which the goods belong or, where the goods are a motor vehicle, the particulars of that vehicle referred to in subsection one of section nineteen of this Act;
- (b) the name under which the bailee carries on the business consisting of or comprising the acceptance of goods of that class for repair or other treatment and the address of the bailee's principal place of business or, where the bailee is a company, the registered office of the company, and if the name or the address has changed during the six months immediately preceding the date of the publication of the notice, the last such name, or, as the case may be, the last such address preceding the change thereof; and
- (c) a statement that if the bailor of the goods fails within the period of seven months beginning with the commencement of this Act to pay the sum
which

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which the bailee claims to be due to him by way of his charges in relation to the goods or, having paid that sum, to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Act.

(4) Where the bailee of goods accepted before the commencement of this Act for repair or other treatment does not at the commencement of this Act know any address of the bailor and at any time during the period of seven months beginning with the commencement of this Act a dispute arises between the bailor and the bailee by reason of either or both of the grounds mentioned in subsection two of section six of this Act, the foregoing provisions of this section shall not apply in relation to the goods, but the foregoing sections of this Act shall apply in relation thereto as they apply in a case where a dispute arises between the bailor and the bailee before the giving of the notice of the bailee's intention to sell the goods.

PART III.

DISPOSAL OF UNCOLLECTED GOODS PURSUANT TO
COURT ORDER.

10. (1) Where—

- Right of
bailee to
apply for
order to
sell goods.
- (a) goods accepted pursuant to a bailment in relation to which Part II of this Act applies are ready for redelivery and the bailor—
- (i) fails to pay or tender to the bailee his charges in relation to the goods; or
 - (ii) having paid to the bailee those charges, fails to take delivery of the goods or, if the terms of the bailment so provide, to give directions for their delivery;
- (b) the bailee of goods that have been accepted by him (whether before or after the commencement of this Act) pursuant to any other bailment for reward has, by notice given to the bailor, required the bailor, subject to the payment to the bailee of his charges,

to

Disposal of Uncollected Goods.

to take delivery of the goods at a time specified in or determined in accordance with the contract of bailment or, if the contract of bailment does not specify or make provision for the determination of the time when the goods are to be redelivered to the bailor, within such reasonable time as may be specified in the notice, and the bailor—

- (i) fails to pay or tender to the bailee his charges in relation to the goods; or
 - (ii) having paid or tendered those charges, fails, at the time so specified or determined or within such reasonable time, to take delivery of the goods or, if the terms of the bailment so provide, to give directions as to their delivery; or
- (c) the bailee of goods that have been accepted by him (whether before or after the commencement of this Act) pursuant to a bailment not for reward has, by notice in writing given to the bailor, required the bailor to take delivery of the goods at a time specified in or determined in accordance with the contract of bailment or, if the contract of bailment does not specify or make provision for the determination of the time when the goods are to be redelivered to the bailor, within such reasonable time as may be specified in the notice, and the bailor fails, at the time so specified or determined or within such reasonable time, to take delivery of the goods or, if the terms of the bailment so provide, to give directions as to their delivery,

the bailee may make an application for an order under section twelve of this Act to sell the goods.

(2) An application in respect of goods referred to in paragraph (a) of subsection one of this section may be made whether or not the bailee is entitled to sell the goods under the provisions of Part II of this Act, but where such an application is made the bailee's right to sell the goods in accordance with those provisions shall cease and determine.

(3)

Disposal of Uncollected Goods.

(3) A reference in this Part to an owner of goods shall, where those goods were accepted pursuant to a bailment referred to in subsection one of this section, be construed as a reference to the bailor of those goods under that bailment.

11. (1) Where a tow truck operator, in the course of his business as a tow truck operator and in accordance with directions lawfully given to him, has (whether before or after the commencement of this Act) moved goods, being a motor vehicle, from a public place to some other place, and the owner of the goods fails to pay or tender to the tow truck operator his towing charges for moving the goods, the tow truck operator may make an application for an order under section twelve of this Act to sell the goods if they are in his possession when the application is made.

Right of
tow truck
operator or
person
storing
motor
vehicle
to apply
for order
to sell the
vehicle.

(2) Where—

- (a) a tow truck operator, in the course of his business as a tow truck operator and in accordance with directions lawfully given to him, has (whether before or after the commencement of this Act) moved goods, being a motor vehicle, from a public place and leaves them for storage at a place where the business of repairing motor vehicles is ordinarily carried on by him or by some other person; and
- (b) the owner of the goods fails to pay or tender to the person by whom that business of repairing motor vehicles is carried on that person's charges for the storage of the goods,

that person may make an application for an order under section twelve of this Act to sell the goods if they are in his possession when the application is made.

(3) Where a tow truck operator would not, but for this subsection, be entitled by virtue of subsection one of this section to make an application for an order under section twelve of this Act to sell any goods by reason only that the goods are not in his possession, and a person carrying on the business of repairing motor vehicles is, by virtue
of

Disposal of Uncollected Goods.

of subsection two of this section, entitled to make an application for an order under section twelve of this Act to sell those goods, that tow truck operator and that person may make a joint application for an order under that section to sell those goods.

Orders to
sell goods.

12. (1) An application for an order under this section shall be made—

- (a) where a bailee is entitled to make the application by virtue of subsection one of section ten of this Act, to the court of petty sessions for the petty sessions district in which the goods were accepted by the bailee;
- (b) where a tow truck operator or a person carrying on the business of repairing motor vehicles is entitled to make the application by virtue of subsection one or two, as the case may be, of section eleven of this Act, or a tow truck operator and such a person are jointly entitled to make the application by virtue of subsection three of that section, to the court of petty sessions for the petty sessions district in which the goods were situated when they were moved by the tow truck operator.

(2) Where an application is made to a court of petty sessions in accordance with the provisions of this Part the court—

- (a) may make an order authorising—
 - (i) a sole applicant to sell the goods in respect of which the order is made if they remain in his possession until he is entitled under subsection six of this section to sell them; or
 - (ii) joint applicants to sell the goods in respect of which the order is made if they remain in the possession of one of them until they are entitled under subsection six of this section to sell the goods; or
- (b) may refuse to make such an order.

(3)

Disposal of Uncollected Goods.

- (3) An order under this section—
- (a) where it is made pursuant to an application made by virtue of subsection one of section ten of this Act in respect of goods the subject of a bailment referred to in paragraph (a) or (b) of that subsection, and the bailor has not paid or tendered to the bailee the bailee's charges in respect of the goods, shall specify the amount which the court deems reasonable in respect of the bailee's charges;
 - (b) where it is made pursuant to an application made by virtue of subsection one of section eleven of this Act, shall specify the amount which the court deems reasonable in respect of the applicant's charges for moving the goods;
 - (c) where it is made pursuant to an application made by virtue of subsection two of section eleven of this Act, shall specify the amount which the court deems reasonable in respect of the applicant's charges for the storage of the goods up to the date of the order;
 - (d) where it is made pursuant to an application made by virtue of subsection three of section eleven of this Act, shall specify separately the amounts which the court deems reasonable in respect of—
 - (i) the tow truck operator's charges referred to in subsection one of that section, for moving the goods; and
 - (ii) the charges, referred to in subsection two of that section, for the storage of the goods up to the date of the order;
 - (e) shall specify the amount, if any, allowed in respect of the costs of obtaining the order;
 - (f) may specify, for the purposes of paragraph (a) of section fourteen of this Act, a rate of storage charges and, for the purposes of paragraph (b) of that section, the amount that may be incurred in respect of the costs of or in connection with the sale; and

(g)

Disposal of Uncollected Goods.

- (g) shall prohibit the sale of the goods specified in the order until the expiration of a period of six months, or such lesser period as may be specified in the order, after the date of the order.
- (4) The amount specified in accordance with paragraph (a), (b) or (c), or the separate amounts specified in accordance with paragraph (d), of subsection three of this section shall for all purposes be the amount of the liability of the owner of the goods for the charges of the applicant or each of the joint applicants for the order, as the case may be.
- (5) The power of a court to make an order under this section authorising the sale of goods shall be subject to the provisions of any agreement between the owner of the goods and the applicant for the order.
- (6) An applicant in whose favour an order is made under this section is entitled, subject to the order and the provisions of this Act, to sell the goods specified in the order.
- (7) An order under this section shall not affect the right of any person to recover the goods specified in the order by an action commenced within six months after the date of the order.
- (8) If any such action is so commenced the right of the person in whose favour the order is made to sell the goods shall be suspended until that action has been heard and determined and if in that action an order is made for the recovery of the goods from the person in whose favour the order was made, that person's right to sell the goods shall cease and determine.
- (9) The regulations under this Act may prescribe rates of towing charges and storage charges for motor vehicles, and the court shall have regard to any rates so prescribed in specifying the amounts referred to in paragraph (b), (c), (d) or (f) of subsection three of this section.
- (10) The jurisdiction conferred on a court of petty sessions by this section shall not be exercised except by a court of petty sessions held before a stipendiary magistrate.

Disposal of Uncollected Goods.

13. (1) Where goods are sold by virtue of the provisions of this Part, any amount by which the gross proceeds of the sale exceed the aggregate of the amount or amounts specified in the order authorising the sale in accordance with paragraph (a), (b), (c) or (d) of subsection three of section twelve of this Act together with the subsidiary charges which the person authorised to sell the goods is entitled to make under section fourteen of this Act shall be recoverable as a debt by the owner of the goods from the person authorised to sell the goods and any amount by which that aggregate exceeds the gross proceeds of the sale shall be recoverable as a debt by the person so authorised from that owner.

Procedure
after sale
under this
Part.

(2) Where goods are so sold, the person authorised by the order to sell the goods shall, before the expiration of the period of seven days beginning with the date of the sale of the goods, prepare a record in relation to the goods containing the following particulars, that is to say—

- (a) a reference to the order authorising the sale of the goods;
- (b) the method, date and place of the sale;
- (c) where the goods are sold by public auction, the name and principal place of business of the auctioneer, and where they are sold otherwise than by public auction, the name and address of the buyer;
- (d) the amount of the gross proceeds of the sale; and
- (e) a statement of each item of the charges of the person authorised by the order to sell the goods and the transaction to which each item relates,

and shall before the expiration of the period of fourteen days beginning with the date of the sale of the goods lodge a copy of that record with the clerk of petty sessions for the court in which the order was made for filing with the records of the court relating to the order.

(3) Any person who had or claims to have had, at the time of the sale of the goods, an interest in the goods shall be entitled, on payment of a fee of twenty cents, to inspect the copy of the record so lodged.

(4)

Disposal of Uncollected Goods.

(4) A person who fails to comply with any of the provisions of subsection two of this section or who lodges a document for the purposes thereof which is to his knowledge false in a material particular is guilty of an offence against this Act.

Subsidiary charges.

14. Where goods are sold by virtue of the provisions of this Part, the subsidiary charges which a person authorised to sell the goods is entitled to make are—

- (a) a reasonable charge for storing the goods during the period beginning with the date of the order authorising the sale of the goods and ending with the date of the sale, not exceeding a charge at a rate, if any, specified in the order in accordance with paragraph (f) of subsection three of section twelve of this Act;
- (b) any costs of or in connection with the sale, not exceeding the costs, if any, specified in the order in accordance with paragraph (f) of that subsection; and
- (c) the cost, if any, of insuring the goods.

PART IV.

GENERAL.

Ambulatory operation of Act.
cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 4 (3),
Vic. No. 6815, s. 6 (3).

15. Any provisions of this Act which apply to or in respect of any person by virtue of his rights or obligations in respect of any goods shall as respects a period during which those rights or obligations are vested in any other person apply to and in respect of that other person.

Disposal of Uncollected Goods.

16. The powers conferred on a person by this Act shall be in addition to and not in derogation of any powers exercisable by him independently of this Act.

Saving of powers outside Act.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 4 (4), Vic. No. 6815, s. 6 (4).

17. (1) A notice required or authorised by this Act to be given to any person shall be in writing.

Notices.

cf. 15 & 16 Geo. 6 & 1 Eliz. 2 c. 43, s. 2, Vic. No. 6815, s. 4.

(2) Any such notice may be given—

- (a) by delivering it to the person to whom it is required or authorised to be given personally;
- (b) by leaving it for him at his last known place of abode or business with some other person apparently an inmate thereof or employed thereat, and apparently of or over the age of sixteen years; or
- (c) by posting it addressed to him at his last known place of abode or business.

18. (1) The buyer of any goods sold by virtue of the provisions of this Act shall acquire a good title to the goods if he buys them in good faith and without notice—

Buyer of goods sold by virtue of this Act to acquire a good title.
cf. Vic. No. 6815, s. 8.

- (a) of any failure by the seller to comply with any of the provisions of this Act; and
- (b) in the case of goods the subject of a bailment, of any defect or want of title in the bailor.

(2) Upon any proceedings by or against the seller in respect of any goods sold by virtue of the provisions of this Act, the burden of proving that the provisions of this Act relating to the sale of those goods have been complied with shall be upon the seller.

19. (1) Where a person intends to sell a motor vehicle by virtue of the provisions of this Act he shall, not less than one month before the sale, give notice to the Commissioner of Police of his intention to sell the vehicle together with

Special provisions applicable to sales of motor vehicles.

particulars cf. Vic. No. 6815, s. 10.

Disposal of Uncollected Goods.

particulars of the make, model type, colour, registration number, chassis number, if any, body number, if any, and engine number of the vehicle and how and when it came into his possession.

(2) As soon as practicable after the receipt of any such notice and particulars, the Commissioner of Police shall cause a search to be made of the records in his custody and shall forward to the person giving the notice and particulars a certificate as to whether or not the motor vehicle referred to is for the time being recorded as stolen.

(3) A person who sells a motor vehicle by virtue of the provisions of this Act without having first obtained from the Commissioner of Police a certificate that the motor vehicle is not recorded for the time being as stolen is guilty of an offence against this Act.

Disposal
of net
proceeds
of sale
of goods.
cf. Vic. No.
6815, s. 11.

20. (1) Where, after goods have been sold by virtue of the provisions of this Act, and the seller has deducted the charges in relation to those goods which he is entitled to make, there remains a surplus of moneys in the hands of the seller, the seller shall within fourteen days after the sale pay those moneys into a bank to the credit of a savings account to be opened by him for that purpose unless they have previously been paid by him to the person entitled thereto.

(2) Where any such moneys have not been paid by the seller of the goods to the person entitled thereto within a period of twelve months after their being so paid into a bank, the seller shall within fourteen days after the expiration of that period pay those moneys together with any interest thereon to the Treasurer to be placed to the credit of the Consolidated Revenue Fund.

(3) The seller, when paying any moneys to the Treasurer in accordance with subsection two of this section, shall, at the same time, furnish to the Treasurer a copy of the record required to be prepared by the seller by subsection two of section seven, or by subsection two of section thirteen, of this Act, as the case may be.

(4)

Disposal of Uncollected Goods.

(4) A person entitled to any moneys paid to the Treasurer in accordance with subsection two of this section shall, subject to subsection five of this section, be entitled to recover it from the Treasurer.

(5) Where any moneys that have been paid to the Treasurer in accordance with subsection two of this section and have been paid by him to some person appearing to him to be entitled thereto are afterwards claimed by another person, the Treasurer shall not be liable to make any payment to that other person, but that other person may have recourse against the person to whom the Treasurer has paid the moneys.

(6) A person who fails to comply with any of the provisions of subsection one or subsection two or three of this section, or who furnishes a document for the purposes of subsection three of this section which is to his knowledge false in a material particular is guilty of an offence against this Act.

21. (1) A person guilty of an offence against this Act is liable to a penalty not exceeding two hundred dollars or to imprisonment for a term not exceeding three months or to both such penalty and imprisonment. Penalties and proceedings.

(2) Proceedings for an offence against this Act may be taken before any two justices in petty sessions.

22. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or permitted by this Act to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act. Regulations.

(2) The regulations may impose a penalty not exceeding one hundred dollars for any breach thereof.

(3)

Disposal of Uncollected Goods.

- (3) The regulations shall—
- (a) be published in the Gazette;
 - (b) take effect from the date of publication or from a later date to be specified therein;
 - (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.
- (4) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, that regulation or part shall thereupon cease to have effect.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

Government House.
Sydney, 14th December, 1966.

