

First print



New South Wales

Pawnbrokers and Second-hand Dealers Bill 1995

Explanatory note

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

Overview of Bill

The object of this Bill is to revise the law relating to pawnbrokers, hawkers and second-hand dealers and enact it in a single statute that will replace the *Pawnbrokers Act 1902*, the *Second-hand Dealers and Collectors Act 1906* and the *Hawkers Act 1974*. A single licence under the proposed Act will authorise the undertaking of any one or more of the activities that were authorised under the 3 licences issued under the repealed Acts. The Director-General of the Department of Fair Trading is the sole licensing authority under the proposed Act. (Previously the relevant licences were issued by the clerk of a Local Court.) The Bill proposes to deregulate dealing in second-hand goods other than those of a kind assessed to be at a high risk of theft.

Outline of provisions

Part 1 Preliminary

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

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 defines certain words and expressions used in the proposed Act. See especially the definition of *second-hand goods*. It is proposed to prescribe goods assessed to be at a high risk of theft for the purposes of the definition.

Clause 4 states that the proposed Act does not affect activities that are already lawful under other Acts such as the laws relating to business agents, firearms and motor vehicles. An activity that is licensed under those Acts will not require a further licence by virtue of this Bill. It also removes charitable fundraising and other activities from the scope of the Bill.

Clause 5 states that a contract of sale under which the seller has a right to buy back the goods is regarded as lending money on the security of the goods. As a consequence, a business involving this kind of contract will require a licence authorising the holder to carry on business as a pawnbroker, and every such contract must be recorded as prescribed in clause 27.

Part 2 Licensing of pawnbrokers and second-hand dealers

Clause 6 requires pawnbrokers to be licensed.

Clause 7 requires dealers in second-hand goods to be licensed.

Clause 8 states that a person is entitled to obtain a licence unless disqualified, or precluded by disciplinary measures under the proposed Act, from holding one. A natural person is disqualified if he or she is under-age or bankrupt or is disqualified by a criminal record. A corporation is disqualified if it is in liquidation, or if it is disqualified by its criminal record or if any of its directors is for any reason disqualified. A licensee is disqualified by the licensee's criminal record if a conviction has been recorded against the licensee for an offence involving dishonesty. The Commercial Tribunal has a discretion to overlook the offence.

Clause 9 states the procedural requirements for making a licence application.

Clause 10 provides for the form and duration of licences, and for their renewal on an annual basis.

Clause 11 provides that licences are subject to conditions imposed on grant or renewal or as a result of disciplinary proceedings.

Clause 12 provides that a licensee or applicant for a licence must keep the Director-General informed about the premises that are to be used in connection with the licensed business.

Clause 13 provides for the keeping of a register of licences and allows members of the public to access recorded information.

Part 3 Regulation of licensed businesses

Clause 14 requires a licensee to display the prescribed particulars of the licence while carrying on business.

Clause 15 requires a licensee to obtain proof of the identity of a customer offering goods for sale or pawn and to take such steps as the regulations may require to establish the customer's title to the goods.

Clause 16 requires certain records to be kept by a licensee and by the promoter of a market.

Clause 17 requires a licensee or market promoter to produce records on demand by an authorised officer.

Clause 18 allows an authorised officer to take temporary possession of records produced to the officer under the proposed Act in order to copy them or make a note of them.

Clause 19 requires a licensee or an employee of the business to inform police when goods which the licensee suspects are stolen are presented for sale or pawn.

Clause 20 allows an authorised officer to enter premises where a licensed business is being carried on, and to enter any associated storage place, and to inspect any goods that are there.

Clause 21 requires a licensee to retain goods for 14 days after obtaining them. It also allows an authorised officer to serve a notice on a licensee in possession of goods whose ownership is disputed, prohibiting the licensee from further dealing with the goods for 21 days. The notice may be renewed for a further period of 21 days if necessary.

Clause 22 provides that when a person claims to be the owner of property in the possession of a licensee, the licensee must provide the person with a statement in a form to be prescribed by regulations. The licensee is thereafter prohibited from dealing with or repairing the goods for a period of 28 days. If proceedings are commenced by the person claiming to be the true owner, this prohibition continues until the matter is resolved by a court.

Clause 23 prohibits persons from supplying false or misleading information in response to a requirement under the proposed Act to supply information.

Clause 24 prohibits obstruction of an authorised officer in the performance of the officer's duties under the proposed Act.

Clause 25 allows an authorised officer to issue penalty notices for minor offences under the proposed Act.

Clause 26 enables the Director-General to establish a demerit points scheme for licensees. A licensee who exceeds 12 points in 3 years can have his or her licence revoked.

Part 4 Special provisions relating to pawnbrokers

Clause 27 requires a pawnbroker to provide a written record to the customer as to the terms of the agreement between them. The record must include, among other things, statements relating to interest and charges.

Clause 28 prohibits a pawnbroker from taking pledges on the basis of a redemption period that is less than 3 months, and prohibits the sale of pawned goods before the expiry of the redemption period.

Clause 29 provides that pawned goods that are unredeemed and whose value exceeds a prescribed value must be sold at a public auction.

Clause 30 provides that when a forfeit pledge is sold, any balance remaining after the amount secured by the pledge and other legitimate expenses have been paid out is payable to the pledgor, or any person deriving title through the pledgor, on demand made within 12 months of the sale.

Clause 31 prohibits pawnbrokers from buying unredeemed goods.

Part 5 Revocation, suspension and variation of licences

Clause 32 provides for revocation of a licence on conviction of the licensee for certain offences.

Clause 33 allows the Director-General, in certain circumstances, to serve notice on a licensee to show cause why the licence should not be revoked or suspended. The grounds of the notice are similar to those of disqualification from holding a licence but include, in addition, suspected dealing in stolen goods, dishonest or unfair dealing in a licensed business and the accumulation of excess points by the licensee under the Director-General's demerit points scheme.

Clause 34 allows the licensee to adduce evidence in support of entitlement to keep the licence.

Clause 35 allows the Director-General to revoke or suspend a licence, or to attach conditions to a licence, if the Director-General is satisfied that the grounds of a notice under proposed section 33 are made out.

Clause 36 requires a licensee to surrender a licence that has been revoked.

Part 6 Miscellaneous

Clause 37 provides that, in any legal proceedings, a person will be presumed to be carrying on business as a second-hand dealer (that is, to be carrying on a business for which a licence under the proposed Act is required) if, on more than 12 occasions in any period of 12 months, the person is party to transactions in which second-hand goods are sold.

Clause 38 provides an appeal to the Commercial Tribunal against decisions of the Director-General under the proposed Act.

Clause 39 provides for proceedings for an offence under the proposed Act to be taken before a Local Court.

Clause 40 allows a court to order forfeiture of the stock-in-trade of unlicensed traders.

Clause 41 makes provision for reciprocal exchange of information between police and officers of the Department of Fair Trading, to the extent necessary for the performance of their respective duties under the proposed Act.

Clause 42 provides for the making of regulations in aid of the proposed Act.

Clause 43 repeals the *Pawnbrokers Act 1902*, the *Second-hand Dealers and Collectors Act 1906* and the *Hawkers Act 1974*, and gives effect to the consequential amendments to the *Credit (Administration) Act 1984*, the *Justices Act 1902* and the *Uncollected Goods Act 1995* set out in Schedule 1.

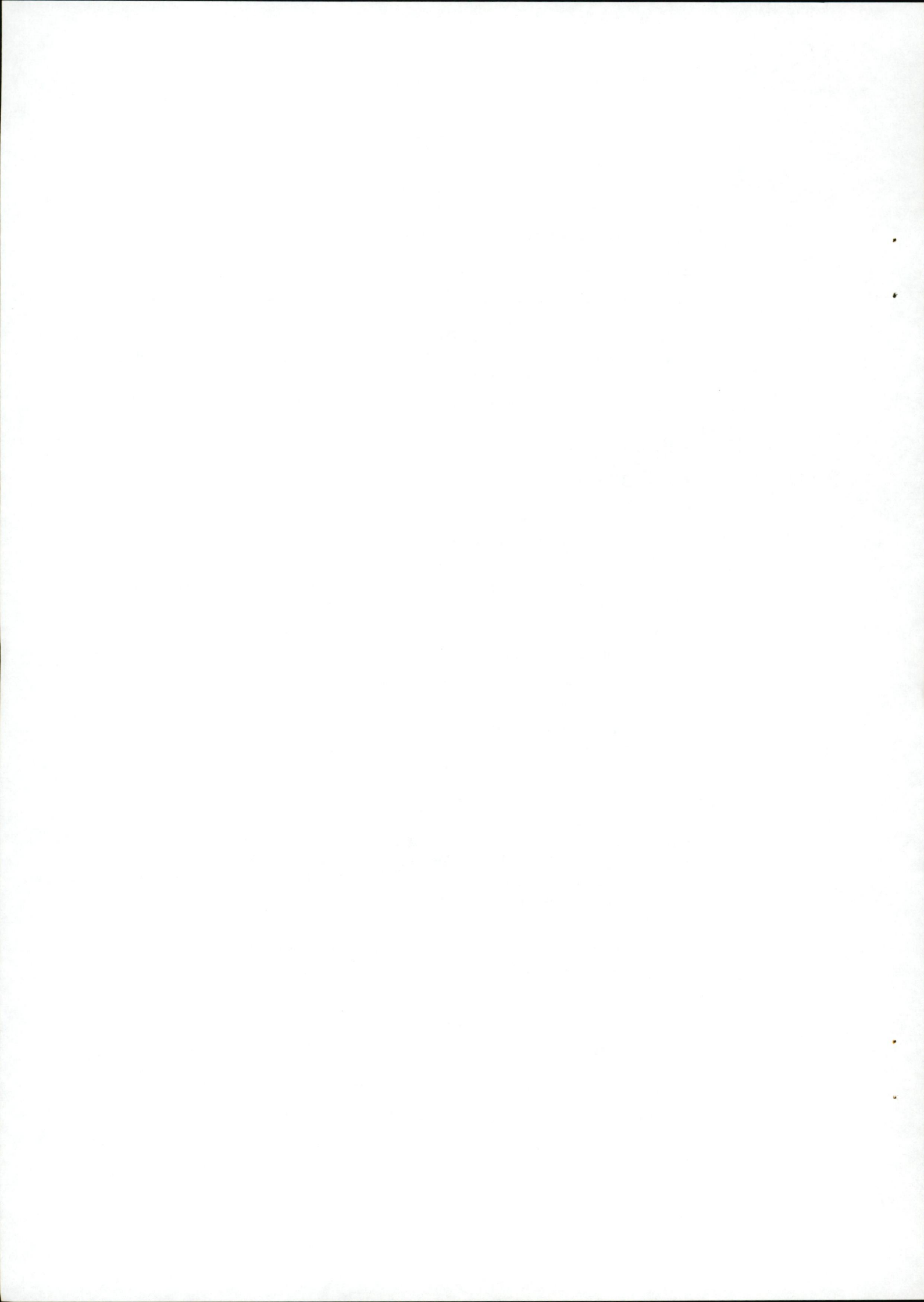
Clause 44 gives effect to a Schedule of savings and transitional provisions.

Clause 45 provides for review of the policies embodied in the proposed Act.

Schedules

Schedule 1 makes consequential amendments to several Acts.

Schedule 2 contains savings and transitional provisions.





New South Wales

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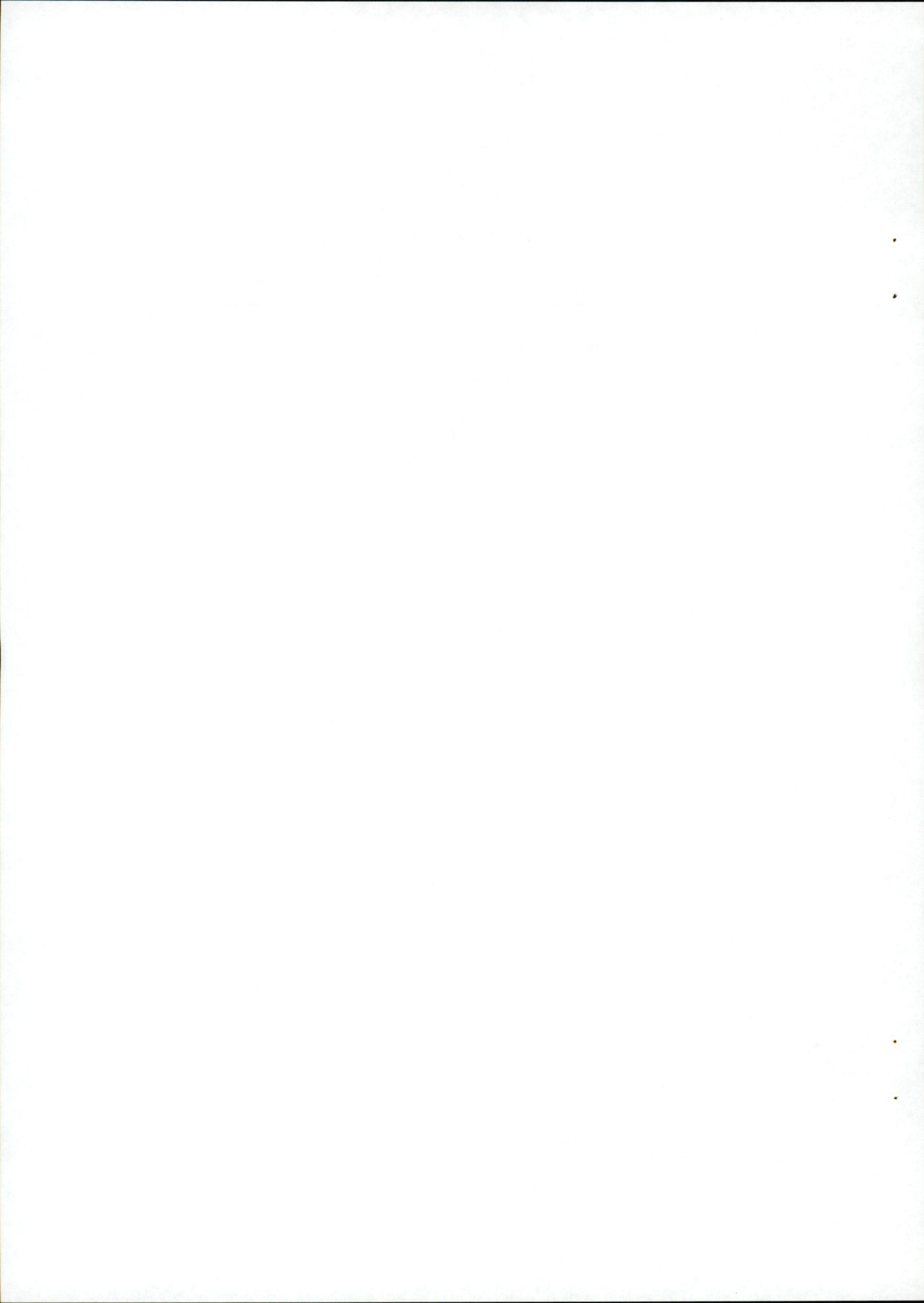
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New South Wales

Pawnbrokers and Second-hand Dealers Bill 1995

No , 1995

A Bill for

An Act to provide for the licensing and regulation of pawnbrokers and dealers in certain classes of second-hand goods; to repeal the *Pawnbrokers Act 1902*, the *Second-hand Dealers and Collectors Act 1906* and the *Hawkers Act 1974*; to amend certain Acts consequentially; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Pawnbrokers and Second-hand Dealers Act 1995*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

authorised officer means:

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- (a) a police officer, or
- (b) the Director-General, or
- (c) an investigator appointed under section 18 of the *Fair Trading Act 1987*, or
- (d) a person authorised in writing by the Director-General.

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Director-General means the Director-General of the Department of Fair Trading.

licence means a licence in force under this Act.

licensed business means a business authorised by a licence.

market does not include an annual event such as a school fete, or any activity of a kind prescribed by the regulations.

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pawnbroker means a person who carries on a business of lending money on the security of pawned goods.

promoter of a market means a person to whom vendors of goods or services offered at the market pay any fee, commission or rent in consideration of being allowed to sell there.

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record means:

- (a) a documentary record, or
- (b) a record made by an electronic, electromagnetic, photographic or optical process, or
- (c) any other kind of record.

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second-hand goods means any goods:

- (a) that have been used, and
- (b) that are of a class or description prescribed by the regulations.

4 Restrictions on operation of this Act

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- (1) This Act does not apply so as to affect any activities conducted in accordance with a licence, permit or other authority under another Act (for example the *Property, Stock and Business Agents Act 1941*, the *Firearms Act 1989*, or the *Motor Dealers Act 1974*). In particular, this Act does not require a person to obtain a licence under this Act to carry on a business or any activity that is authorised by a licence, permit or other authority issued to that person under any other Act. 10
- (2) This Act does not apply:
 - (a) to dealing in second-hand goods in the course of a fundraising appeal authorised under the *Charitable Fundraising Act 1991*, or 15
 - (b) to the business of an auctioneer, or
 - (c) to the extent provided by the regulations, in relation to such persons and circumstances as the regulations may prescribe. 20

5 Buy-back contracts regarded as pledge and loan

If a person receives goods under a contract of sale where the seller has the right to buy back the goods, then for the purposes of this Act:

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- (a) the person receiving the goods is taken to be lending money on the security of the goods, and
- (b) the price at which the goods are to be sold under the contract is taken to be the amount lent, and
- (c) the difference between the amount lent and the price at which the goods may be bought back is taken to be the interest payable. 30

Part 2 Licensing of pawnbrokers and second-hand dealers

6 Pawnbrokers to be licensed

A person must not carry on a business of lending money on the security of pawned goods except in accordance with a licence held by the person. 5

Maximum penalty: 100 penalty units.

7 Dealers in second-hand goods to be licensed

A person must not carry on a business of buying or selling second-hand goods except in accordance with a licence held by the person. 10

Maximum penalty: 100 penalty units.

8 Qualifications for obtaining licence

- (1) An individual is disqualified from holding a licence if he or she:
- (a) is under 18 years of age, or 15
 - (b) is an undischarged bankrupt, or
 - (c) is a mentally incapacitated person, or
 - (d) has a conviction in New South Wales or elsewhere for an offence involving dishonesty that was recorded within the last 10 years. 20
- (2) A corporation is disqualified from holding a licence if:
- (a) it is in the course of being wound up, or is under official management or has entered into a scheme of arrangement with its creditors, or
 - (b) it has a conviction in New South Wales or elsewhere for an offence involving dishonesty that was recorded within the last 10 years, or 25
 - (c) any of its directors is disqualified under subsection (1).

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- (3) The Director-General must refuse to grant a licence to a person who is disqualified by this section, or who is precluded under section 32 or 35 from holding one, but otherwise an applicant is entitled to be granted one. If, however, the applicant has been charged with an offence involving dishonesty, the Director-General is entitled to await the outcome of proceedings on the charge before determining the application. 5
- (4) On an appeal under section 38 against a decision of the Director-General refusing to grant a licence to a person because the person is disqualified under subsection (1) (d) or (2) (b), the Commercial Tribunal may determine that the fact that the person has committed the offence concerned should be ignored on one or more of the following grounds: 10
- (a) the triviality of the acts or omissions giving rise to the offence, 15
 - (b) the time that has passed since the offence was committed,
 - (c) the subsequent good behaviour of the offender,
 - (d) any other ground prescribed by the regulations.

9 Licence applications

An application for a licence is to be addressed to the Director-General and made in a form and lodged at a place approved by the Director-General and must be accompanied by the application fee, and any necessary proof of identity, prescribed by the regulations. 20

10 Grant and renewal of licences

- (1) A licence is to be granted in a form determined by the Director-General and remains in force for a period of 12 months from the date of its grant. 25
- (2) A licence may authorise its holder to carry on the business of a second-hand dealer or pawnbroker, or both. 30
- (3) A licence may be renewed for further periods of 12 months on application made in a form and lodged at a place approved by the Director-General, and accompanied by the renewal fee prescribed by the regulations.

- (4) Renewal of a licence may be refused on the same grounds as an application for an original licence and the same appeal rights and procedures apply accordingly. In addition, renewal may be refused on the ground that the licensee has not observed the conditions of the licence. 5
- (5) Application for renewal of a licence must be made before expiry of the current licence or within such further time as the Director-General may allow.

11 Conditions of licences

A licence is subject to any conditions that the Director-General sees fit, in the public interest, to attach to it on grant or renewal or by order under section 35. 10

12 Business and storage premises

- (1) An applicant for a licence or for renewal of a licence who, for the purposes of carrying on a licensed business, intends to make regular use of any premises, whether as business premises or storage premises, must nominate all such premises in the application. 15
- (2) A licensee who for any reason ceases to carry on business or to store goods at the premises nominated under subsection (1), or who commences to carry on business or to store goods at other premises, must notify the Director-General in writing of that fact within 14 days of doing so. 20

Maximum penalty (subsection (2)): 50 penalty units.

13 Register of licences

- (1) The Director-General must cause a register of licences to be maintained, in which are to be recorded the names, business premises and storage premises and other particulars relating to licensees and required by the regulations to be recorded. 25
- (2) On payment of a fee prescribed by the regulations, a person is entitled on request to be given a certificate by the Director-General containing information extracted from the register. 30
- (3) A certificate of the kind mentioned in subsection (2) that purports to be signed by an officer prescribed by the regulations is evidence, in any proceedings, of the matters certified in it. 35

Part 3 Regulation of licensed businesses

14 Display of licence details

- (1) A licensee must conspicuously display, on all premises used for the conduct of a licensed business, the particulars required by the regulations to be displayed in relation to the licence. 5
- (2) A licensee who is conducting a licensed business as an itinerant must, at all times while so conducting the business, display in the prescribed manner any particulars required by the regulations to be displayed in relation to the licence. 10
- Maximum penalty: 10 penalty units. 10

15 Evidence of identity and title of supplier of goods

- (1) Before accepting any goods offered for sale or pawn, a licensee must obtain documentary evidence of the identity of the person by whom the goods are being offered. The evidence must be of a kind prescribed by the regulations and must show the person's name and residential address. 15
- (2) A licensee must not accept any goods offered for sale or pawn if the licensee has reasonable grounds to believe that the goods concerned are not the property of the person by whom they are offered or of any person for whom that person is authorised to make the offer. 20
- (3) A licensee must not accept any goods offered for sale or pawn without first complying with any requirements of the regulations relating to ascertaining the title to the goods.
- (4) A person must not, in purported compliance with any requirement reasonably made of the person by a licensee for the purposes of the licensee's compliance with this section, furnish information or make any statement knowing that it is false in a material particular. 25
- Maximum penalty: 50 penalty units. 30

16 Records

- (1) A licensee must keep records, in the manner and containing the particulars prescribed by the regulations, of all transactions:
- (a) for the acquisition or disposal of second-hand goods, or

- (b) for the redemption of any pawned goods, or the disposal of any forfeit pledge,
and of such other matters pertaining to the business of a licensee as the regulations may prescribe.
- (2) A licensee must keep records, in the manner and containing the particulars prescribed by the regulations, of all persons employed in the licensed business. 5
- (3) The promoter of any market must keep records, in the manner and containing the particulars prescribed by the regulations, of all vendors selling second-hand goods at the market on any day, and of the kinds of goods sold by them and any other prescribed particulars. 10
- (4) A requirement under this Act to keep a record is a requirement to keep it:
- (a) so that it is readily able to be produced to an authorised officer if an authorised officer should require its production, and 15
- (b) in English.
- (5) A person required by this section to keep a record must retain the record for a period of 3 years after it is made. 20
- (6) If the regulations require a record kept under this section to be signed by a person making any entry in it or by a person who is the owner or consignor of goods to which the record relates, that person must sign it.
- Maximum penalty: 50 penalty units. 25

17 Production of records

- (1) An authorised officer who has lawfully entered any premises where a licensed business is being carried on may require any person apparently in charge of the premises to do immediately any of the following: 30
- (a) to produce for inspection any record required to be kept by the licensee under this Act,
- (b) to identify and locate records kept by the licensee that correspond to particular goods kept by the licensee,
- (c) to identify and locate goods kept by the licensee that correspond to particular records kept by the licensee, 35

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- (d) to reveal the whereabouts of any goods or records referred to in paragraph (b) or (c),
- (e) to produce the licence.
- (2) An authorised officer may require a person carrying on a licensed business from a market stall or other place occupied intermittently for the purposes of a licensed business to do any of the following: 5
- (a) to produce for inspection at the nearest police station within 24 hours any record required to be kept by the licensee under this Act, 10
- (b) to identify, locate and produce for inspection at the nearest police station within 24 hours any records kept by the licensee that correspond to particular goods kept by the licensee,
- (c) to identify, locate and produce for inspection at the nearest police station within 24 hours any goods kept by the licensee that correspond to particular records kept by the licensee, 15
- (d) to reveal immediately the whereabouts of any goods or records referred to in paragraph (b) or (c), 20
- (e) to produce the licence for inspection at the nearest police station within 24 hours.
- (3) An authorised officer may require the promoter of a market:
- (a) to produce for inspection at the nearest police station within 24 hours any record required to be kept by the promoter under this Act, or 25
- (b) to reveal the whereabouts of any such records.
- (4) An authorised officer who is not a police officer may, instead of requiring under this section that any matter or thing be produced at a police station, require its production at a specified office of the Department of Fair Trading, being the nearest such office to, and within the prescribed distance from, the place where the requirement was imposed. 30
- (5) In the case of a record that is electronically stored, a provision of this section conferring power on an authorised officer to compel production of the record for inspection empowers the officer, for the purpose of exercising that power: 35

- (a) to view the record and to copy or take extracts from it by electronic means, or
 - (b) to require that it be reproduced in hard copy, or copied on to computer diskette or reduced to some other portable form suitable for removal and capable of reproducing the record for viewing. 5
- (6) A person must comply with a requirement made of the person under this section.
- Maximum penalty: 50 penalty units.
- 18 Seizure of records** 10
- (1) An authorised officer may take temporary possession of any record produced to the officer under this Act for the purpose of making copies or notes of some or all of it.
 - (2) When possession of a record is taken under this section, a receipt is to be issued for it at the time it is taken and, as soon as practicable thereafter, the record or a copy of it must be returned to the person from whom it was taken. 15
- 19 Duty to report suspicious goods**
- A licensee, and any employee of a licensee, who suspects for any reason that goods in the custody of the licensee or employee in the course of the licensee's business, or goods that are offered to the licensee or employee for sale or pawn, may have been stolen or otherwise unlawfully obtained must without delay inform an authorised officer of the cause of that suspicion. 20
- Maximum penalty: 50 penalty units. 25
- 20 Inspection of goods**
- (1) An authorised officer may, at any reasonable time, enter any premises where a licensed business is conducted and inspect goods kept at the premises.
 - (2) An authorised officer may, at any reasonable time, enter any storage premises used in connection with a licensed business and inspect any goods there, and for that purpose may require a person apparently in charge of the storage premises to open them. 30

- (3) In exercise of the power conferred by this section, the authorised officer may enter the premises concerned in company with a person claiming to be the true owner of any goods believed to be kept on the premises, or with any technical expert, and may take photographs of any goods found there and tender them for inspection by the person accompanying the officer. 5
- (4) A person must not fail to comply with a requirement under this section.
- Maximum penalty: 50 penalty units.

21 Retention of goods 10

- (1) A licensee:
- (a) must keep all second-hand goods purchased or received in the course of the licensed business for a period of 14 days on premises notified under section 12 as business premises or at such other places as may be determined by or in accordance with the regulations, and 15
- (b) must not alter the form of the goods or dispose of them in any way, or allow them to be redeemed or part with possession of them, during that period.

This subsection does not apply to such goods, or in such circumstances, as the regulations may prescribe. 20

- (2) An authorised officer who has reasonable grounds to suspect that goods in the possession of a licensee have been stolen or otherwise unlawfully obtained may, by a notice specifying the goods, prohibit the licensee from altering the form of the goods or disposing of them in any way, or allowing them to be redeemed, or parting with possession of them, for a period of 21 days after service of the notice. 25
- (3) A notice under subsection (2) may be reissued once for a further period of 21 days commencing on the expiry of the first notice. 30
- (4) A licensee must comply with this section and with any notice under this section, and must see to it that no employee of the business does what this section or such a notice prohibits the licensee from doing.

Maximum penalty: 50 penalty units. 35

22 Goods alleged to be stolen to be retained

- (1) If a person (in this section called the *claimant*) has complained to a licensee that any goods in the possession of the licensee are the property of the claimant, the licensee, unless the goods are delivered immediately to the claimant: 5
- (a) must immediately give the claimant a statement in writing in the form and containing the particulars prescribed by the regulations, and within 24 hours give to the officer in charge of the nearest police station a copy of the statement, and 10
- (b) must not alter the form of the goods, or sell them, or cause or allow them to be altered, sold, redeemed or removed, except with the consent of the claimant or in accordance with the order of a court. 15
- Maximum penalty: 50 penalty units. 15
- (2) Particulars prescribed for the purposes of subsection (1) (a), to the extent that they are matters peculiarly within the knowledge of the claimant (such as the claimant's name and address) must be provided by the claimant, and if they are not provided, the licensee's obligations under subsection (1) cease. 20
- (3) Subsection (1) (b) ceases to have effect in relation to the goods concerned:
- (a) 28 days after the notice under subsection (1) (a) is given unless, within that time, the claimant has served the licensee with notice of proceedings for recovery of the goods, or a court by order declares the goods not to be the property of the claimant, or 25
- (b) on the determination or discontinuance of any proceedings referred to in paragraph (a). 30
- (4) Proceedings referred to in subsection (3) (a), if commenced in a Local Court, may be determined in accordance with section 28A of the *Local Courts (Civil Claims) Act 1970*. Any other court in which such proceedings are commenced may, without limiting any power vested in it, determine those proceedings in accordance with that section. 35
- (5) The person by whom the goods were sold to or deposited with the licensee cannot be the claimant under this section in respect of those goods.

23 False or misleading information

A person must not, in purported compliance with a requirement under this Act to furnish information, make or furnish any statement that the person knows is false or misleading.

Maximum penalty: 50 penalty units.

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24 Obstructing authorised officer

A person must not delay, obstruct or otherwise hinder an authorised officer in the performance of the officer's functions under this Act.

Maximum penalty: 50 penalty units.

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25 Penalty notices

(1) An authorised officer to whom it appears that a person has committed any offence under this Act or the regulations, being an offence prescribed by the regulations for the purposes of this section, may serve a notice on the person to the effect that, if the person does not desire to have the matter determined by a court, the person may pay to the Commissioner of Police, within a time limited by the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.

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(2) The notice may be served personally or by post.

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(3) Once the prescribed penalty is paid in compliance with the notice, no person is liable to any further proceedings for the alleged offence.

(4) Payment of a penalty under this section is not to be regarded as an admission of liability for the purposes of, nor does it in any way affect or prejudice, any claim, action or proceeding arising out of the same occurrence.

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(5) For the purposes of this section, the regulations may prescribe different penalties for different prescribed offences, or for offences committed in different circumstances, but the penalty must in no case exceed the maximum penalty that a court could impose for the offence.

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(6) Nothing in this section limits the operation of any provision made by or under this or any other Act in relation to proceedings that may be taken in respect of offences.

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26 Demerit points scheme

- (1) If a licensee or any employee of a licensee:
- (a) has been convicted of any offence prescribed by the regulations for the purposes of this section, or
 - (b) has paid a penalty pursuant to section 25 in respect of any such offence, or 5
 - (c) is a person against whom an order has been made under section 100L of the *Justices Act 1902* in respect of such an offence,
- the Director-General may endorse, on a record kept in relation to the licensee, particulars of the offence, the penalty, the number of demerit points allocated to the offence and the date on which the offence is alleged to have been committed. 10
- (2) The number of demerit points to be allocated to an offence is the number prescribed by the regulations in relation to the offence. 15
- (3) In addition to any other grounds on which the Director-General may serve a notice under section 33, such a notice may be issued if the licensee incurs a total of 12 or more demerit points within any period of 3 years.
- (4) For the purposes of this section, any demerit points incurred in respect of an offence are to be taken to have been incurred on the date on which the offence was allegedly committed. 20
- (5) If the Director-General serves a notice under section 33 in accordance with this section, the demerit points on which that notice was grounded may not be considered as grounds for a further notice under that section. 25
- (6) A certificate that purports to be signed by an officer prescribed by the regulations and that certifies the number of demerit points accruing to a particular licensee in a particular period is evidence, in any proceedings, of the particulars certified in it. 30

Part 4 Special provisions relating to pawnbrokers

27 Pawnbroker's record of pledges

- (1) At the time possession of goods is taken under an agreement by which the goods are pawned, a record of the agreement must be made that complies with this section. 5
- (2) The record must include:
 - (a) a fair and reasonable description of the goods, including any serial number or other identifying number and any hallmark, inscription or engraving appearing on the goods, and 10
 - (b) the total amount lent on the goods, together with the rate of interest charged by week, month, or other period, as the case may be, and any other charges, and
 - (c) an equivalent annual interest rate, calculated in accordance with the regulations, and 15
 - (d) the name and residential address of the owner of the goods and of any agent through whom they are pawned, and
 - (e) the date of the pledge, and
 - (f) any other particulars required by the regulations to be included. 20
- (3) No pledge is validly made unless the person pawning the goods signs the original record.
- (4) A record under this section must be retained for a period of 3 years after it was made. 25
- (5) An accurate and legible copy of any such record must be given to the person who pawned the goods at the time the record is made.
- (6) A pawnbroker must, in the manner prescribed by the regulations, furnish to the Commissioner of Police, within 14 days after it was made, particulars of any record made under this section. 30
- (7) If this section is contravened in relation to any transaction, the pawnbroker by or on whose behalf the transaction was undertaken is guilty of an offence.

Maximum penalty: 50 penalty units.

28 Redemption of pawned goods

- (1) Pawned goods may be redeemed at any time:
 - (a) during the period of 3 months commencing on the date they were pawned, or
 - (b) during such longer period, commencing on that date, as may be agreed. 5
- (2) When the redemption period has expired, pawned goods may still be redeemed at any time before they are sold (or, in the case of goods to be sold by auction, at any time before they are consigned for auction). 10
- (3) A provision in or condition of any agreement that purports to limit the period of 3 months referred to in subsection (1) (a), or that purports to limit or restrict the operation of subsection (2), is of no effect.
- (4) An agreement for the purposes of subsection (1) (b) may be made at any time before the pawned goods are sold. 15
- (5) A pawnbroker must not sell any goods before the redemption period has expired.
Maximum penalty: 50 penalty units.
- (6) A pawnbroker must not permit any goods to be redeemed without taking such steps as the regulations may require in relation to ascertaining the identity of the person redeeming them or without complying with any other requirement prescribed by the regulations in relation to the redemption of those goods. 20
Maximum penalty: 50 penalty units. 25

29 Sale of forfeited pledges

- (1) Pawned goods that are forfeit, if they secured a debt greater than the amount prescribed by the regulations, must be sold by public auction as soon as is practicable after the redemption period has expired. 30
- (2) A pawnbroker must not sell any goods or permit any goods to be sold in contravention of this section.
Maximum penalty: 50 penalty units.

- (3) In this section:

public auction means an auction to which members of the public are invited by advertisement in a newspaper of general circulation in New South Wales or circulating in the district where the goods were pawned.

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30 Application of proceeds of sale

- (1) If any pawned article is sold for more than the full amount of the principal and interest that was due at the time of the sale, the surplus proceeds, less any costs of or reasonably incidental to the sale, must, if claimed within 12 months after the sale, be paid on demand to the person by or for whom the article was pawned, or any person claiming for or under that person or, in case of death, to that person's executor or administrator.
- (2) If this section is contravened, the pawnbroker to whom the article was pledged is guilty of an offence.

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Maximum penalty: 50 penalty units.

31 Pawnbroker not to purchase pawned goods

- (1) Neither a pawnbroker nor an employee or person acting on behalf of a pawnbroker is permitted to buy goods that have been pawned to and are being sold by the pawnbroker.
- (2) In the case of a corporate pawnbroker, subsection (1) extends to apply to every director of the pawnbroker, as well as to the pawnbroker, its employees and persons acting on its behalf.
- (3) The title conveyed by a sale in contravention of this section is not valid against the owner of the article.
- (4) If a person purports to purchase an article in contravention of this section, the pawnbroker to whom the goods were pledged, and that person, are each guilty of an offence.

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Maximum penalty: 50 penalty units.

Part 5 Revocation, suspension and variation of licences

32 Revocation of licence as a consequence of offence

- (1) The finding of a court that an offence under any of sections 188, 189 and 189A of the *Crimes Act 1900* (which deal with receiving stolen goods) has been proven against a licensee revokes the licensee's licence, unless the court making the finding determines that, in the particular circumstances of the case, the licence ought to remain in force. 5
- (2) A court by which a licensee is convicted of an offence involving dishonesty (other than an offence referred to in subsection (1)) or an offence against this Act may, in addition to any other penalty imposed for the offence, by order revoke or suspend the licensee's licence. 10
- (3) A court by whose conviction or order a licence is revoked may specify a period during which the licensee cannot be granted a further licence, and such a specification precludes the grant of a licence during that period. 15
- (4) A court by whose conviction or order a licence is revoked or suspended may, where the licensed business consisted of or included pawnbroking, make such order as it thinks fit in relation to the redemption of goods held in the course of that business. 20
- (5) A court may, if it thinks fit, defer the operation of any order under this section pending an appeal against the relevant conviction. 25
- (6) Without affecting any other right of appeal, the order of a court under this section is appellable as if it were, or were part of, an order imposing a penalty in respect of the relevant conviction.
- (7) The registrar or clerk of a court by which an order has been made under this section is required without delay to give notice of the order to the Director-General. 30

33 Notices to show cause why licence should not be revoked

- (1) The Director-General may serve a notice on any licensee:
 - (a) who has become bankrupt or, in the case of a corporate licensee, which is in the course of being wound up, or is under official management or has entered into a scheme of arrangement with its creditors, or 35

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- (b) who, in the opinion of the Director-General, obtained a licence by means of statements that were false or misleading, or
 - (c) who, or one of whose employees, has been convicted of an offence involving dishonesty in relation to the licensed business or of an offence against this Act, or 5
 - (d) being a corporate licensee, one of whose directors is disqualified from holding a licence, or
 - (e) who the Director-General considers, in light of evidence acceptable to the Director-General, is probably receiving or dealing in stolen goods, or 10
 - (f) who has incurred a number of demerit points as referred to in section 26 (3), or
 - (g) who has failed to comply with a condition of the licence, or 15
 - (h) who the Director-General considers, in light of evidence acceptable to the Director-General, is carrying on the licensed business in a dishonest or unfair manner, or
 - (i) being an individual, has become a mentally incapacitated person, 20

requiring the licensee to show cause, within a time (not less than 14 days) limited by the notice, why the licensee's licence should not be revoked.

- (2) A notice issued in accordance with subsection (1) (c) or (d) must name the employee or director concerned. 25
- (3) By way of example of the operation of subsection (1) (e), the Director-General may consider that a licensee:
 - (a) in whose custody stolen goods are found, or
 - (b) who, in a particular length of time, buys or takes as security from the same person (not being another licensee) one or more types of household item in quantities exceeding what an ordinary householder might reasonably be expected to have acquired during that length of time, 30
 is probably receiving or dealing in stolen goods.

34 Licensee may adduce evidence

A licensee to whom a notice under section 33 is addressed may, within the time limited by the notice, make a written submission and adduce evidence in relation to the matters raised by the notice.

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35 Disciplinary action by Director-General

- (1) The Director-General may undertake such inquiry and investigation in relation to the matters to which a notice under section 33 relates, and any submissions made and evidence adduced by or on behalf of the licensee in relation to those matters, as the Director-General thinks fit. If, after such inquiry and investigation, the Director-General is satisfied on the balance of probabilities that the ground of any notice under section 33 has been substantiated against the licensee, the Director-General may:
 - (a) revoke the licence, or suspend it for such portion of the remainder of its duration as the Director-General thinks fit, or
 - (b) attach one or more conditions to it, or
 - (c) determine that the licence is not to be renewed, or that a licence is not to be granted to the same licensee in future, unless one or more conditions are attached to it on grant or renewal.
- (2) Without limiting the generality of subsection (1) (b), the Director-General may specify, as a condition to be imposed in accordance with that paragraph in respect of the licence of a corporate licensee, that a particular director or officer of the corporation must not (either for a specified period or permanently, as the Director-General may determine) be concerned in the management of the licensed business.
- (3) The Director-General, on revoking a licence, may specify a period during which the licensee cannot be granted a further licence, and such a specification precludes the grant of a licence during that period.

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(4) The Director-General, on revoking or suspending a licence, may, where the licensed business consisted of or included pawnbroking, make such order as the Director-General thinks fit in relation to the redemption of goods held in the course of that business.

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(5) The Director-General may make orders requiring the licensee to pay such amounts as the Director-General determines by way of costs in relation to disciplinary proceedings under this section that resulted in action being taken in respect of the licensee's licence. Such an order is to be filed in the Commercial Tribunal and is enforceable in the same way as a judgment or order of the Tribunal.

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36 Surrender of licence

When a licence is revoked, the licensee must immediately surrender it to the Director-General.

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Maximum penalty: 10 penalty units.

Part 6 Miscellaneous

37 Dealings that give rise to presumption of carrying on business

- (1) In any proceedings under or arising from this Act, a person who, on more than 12 days in any period of 12 months, sold any second-hand goods, is presumed to be carrying on a business of buying or selling second-hand goods, but the presumption may be displaced by evidence that satisfies the court to the contrary. 5
- (2) For the purposes of subsection (1), it does not matter whether the second-hand goods were sold from a shop, market stall or other premises occupied permanently, regularly or on occasion, or from residential premises, or from a vehicle or water-going vessel or by an itinerant. 10
- (3) This section operates without prejudice to any other means of proving, for the purposes of any proceedings, that a person is carrying on a business of buying or selling second-hand goods. 15

38 Appeals against decisions of Director-General

- (1) An applicant for a licence or for renewal of a licence whose application has been refused may appeal to the Commercial Tribunal.
- (2) A licensee whose licence has been revoked or suspended by the Director-General, or on whose licence a condition has been imposed (whether on grant or renewal of the licence or otherwise) may appeal to the Commercial Tribunal. 20
- (3) An appeal under this section is to be made in accordance with rules of the Tribunal. The Tribunal is to hear and determine the appeal, and may uphold, reverse or vary the decision of the Director-General, as it sees fit, and in so doing may make any order that the Director-General might have made. 25
- (4) It is the duty of the Director-General to give effect to the Tribunal's decision. 30
- (5) Lodgment of an appeal to the Tribunal does not operate to stay the decision of the Director-General against which the appeal is brought, except to the extent that the regulations otherwise provide.

39 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) Any such proceedings may be commenced at any time within 12 months after the date on which the offence was allegedly committed. 5

40 Forfeiture of goods dealt with by unlicensed persons

- (1) A court by which a person is convicted of an offence under section 6 or 7 may, in addition to any other penalty imposed for the offence, make either or both of the following orders: 10
- (a) an order that any specified goods to which the offence relates be forfeited to the Crown,
- (b) an order that the person pay to the Crown an amount assessed by the court to be an amount equal to the proceeds derived by the person from the commission of the offence. 15
- (2) Before making such an order, the court may require notice to be given to, and may hear, such persons as the court thinks fit.
- (3) For the purpose of making an order against a person under subsection (1) (b), the court may determine that proceeds derived by the person from the commission of the offence include the value, as assessed by the court, of an interest in real or personal property acquired by the person by the application of such proceeds. 20 25
- (4) Without affecting any other right of appeal, an order under subsection (1) (a) in relation to any goods is appellable at the suit of any person who has an interest in the goods:
- (a) in the case of a person convicted of the offence, in the same manner as if the order were, or were part of, an order imposing a penalty in respect of the offence, or 30
- (b) in any other case, in the same manner as if the person had been convicted of an offence to which this section applies and the order were, or were part of, an order imposing a penalty in respect of the offence. 35

- (5) Without affecting any other right of appeal, an order under subsection (1) (b) is appellable in the same manner as if it were, or were part of, an order imposing a penalty in respect of the offence.
- (6) The court to which an appeal is made against an order under subsection (1) (a) may, pending the hearing and determination of the appeal, make such orders as it thinks fit for the custody of the goods the subject of the order. 5
- (7) On appeal, an order under this section may be confirmed, revoked or varied. 10
- (8) An order under subsection (1) (b) may, by leave of the court by which it was made, be enforced, irrespective of the amount ordered to be paid, as if it were a judgment in a civil matter given by that court.
- 41 Provision of information 15**
- (1) It is the duty of a police officer in charge of any record or information, access to which by the Director-General is reasonably necessary for the proper exercise of any function of the Director-General under this Act, to supply that record or information to the Director-General on request, and every police officer is by this section authorised to do so. 20
- (2) It is the duty of the Director-General to supply to the Commissioner of Police, or any police officer or person employed in the Police Service who is authorised by the Commissioner of Police for the purposes of this section, such information relating to licences and other matters as may be reasonably necessary for the performance by police officers of their duties under this Act. 25
- 42 Regulations**
- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. In particular, regulations may be made for or with respect to the following: 30
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- (a) the rights and obligations of the parties and the procedure to be followed when pawn tickets are lost, stolen or destroyed,
- (b) the replacement of licences that are lost, stolen or destroyed, 5
- (c) the recognition of licences issued in other Australian jurisdictions,
- (d) the carrying on of a licensed business by legal personal representatives or trustees of the licensee,
- (e) the electronic transmission, between the Director-General and the Commissioner of Police, of information relevant to the administration of this Act, 10
- (f) the electronic transmission, by a pawnbroker or licensee to the Commissioner of Police, of information required by or under this Act to be furnished to the Commissioner, 15
- (g) fees chargeable for any service provided by the Director-General under this Act or the regulations,
- (h) the service of notices for the purposes of this Act or the regulations.
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units. 20

43 Repeals and amendments

- (1) The following Acts are repealed:

Pawnbrokers Act 1902

Second-hand Dealers and Collectors Act 1906 25

Hawkers Act 1974.

- (2) Schedule 1 has effect.

44 Savings and transitional provisions

Schedule 2 has effect.

45 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act. 5
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Amendment of Acts

(Section 43)

1.1 Credit (Administration) Act 1984 No 95

Section 7 Exemptions from licensing

Omit "a pawnbroker's licence issued under the *Pawnbrokers Act 1902* from section 7 (1) (f)". 5

Insert instead "a licence under the *Pawnbrokers and Second-hand Dealers Act 1995*".

1.2 Justices Act 1902 No 27

Section 100I Interpretation 10

Insert in the appropriate place in the list contained in paragraph (a) of the definition of *penalty notice* in subsection (1):

Pawnbrokers and Second-hand Dealers Act 1995,
section 25

1.3 Uncollected Goods Act 1995 15

Section 6 When Act available for disposal of uncollected goods

In subsection (2), insert after "1982" the words " , the *Pawnbrokers and Second-hand Dealers Act 1995*".

Schedule 2 Savings and transitional provisions

(Section 44)

1 Definition

In this Schedule:

repealed Acts means:

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- the *Pawnbrokers Act 1902*, and
- the *Second-hand Dealers and Collectors Act 1906*, and
- the *Hawkers Act 1974*.

2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act. 10
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 20
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done, or omitted to be done, before the date of its publication.

3 Saving of existing licences

- (1) A licence under any of the repealed Acts that was in force immediately before the commencement of section 43 is taken to be a licence under this Act and remains in force, subject to this Act and to any limitations and conditions that were imposed on it under any of the repealed Acts, for the remainder of the term for which it was issued. 25
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- (2) Nothing in this clause saves a licence from revocation or cancellation in accordance with any of the repealed Acts as a result of proceedings pending at the commencement of this clause.

4 Applications pending

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An application for a licence made under any of the repealed Acts and still pending at the commencement of section 43 is to be referred to the Director-General and dealt with as an application for a licence under this Act, unless withdrawn by the applicant. An applicant wishing his or her application to stand must, however, be allowed to amend the application in order to vary the classes of business to be authorised by the licence.

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5 Refund of application fees

If an application for a licence made under any of the repealed Acts and still pending at the commencement of section 43 was made for the purpose of obtaining a licence that authorised the carrying on of a business that, after that commencement, may be carried on without a licence, the applicant is entitled to be refunded the amount of the application fee.

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6 Records of existing licences

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Records kept by the police and Local Courts administration in relation to licences under any of the repealed Acts are to be supplied to the Director-General without delay following the commencement of section 43.

