Western Australia

Pawnbrokers and Second-hand Dealers Act 1994

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Defined terms

Western Australia

Pawnbrokers and Second-hand Dealers Act 1994

An Act to make provision for the licensing and regulation of pawnbrokers and second-hand dealers, to facilitate the recovery of stolen goods from pawnbrokers and second-hand dealers, to repeal the —

- ***Pawnbrokers Act 1860*** [1]**;**
- ***Second-hand Dealers Act 1906*** [1]**; and**
- ***Marine Stores Act 1902*** [1]**,**

and for related purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Pawnbrokers and Second-hand Dealers Act 1994*.

2. Commencement

The provisions of this Act come into operation on such day as is fixed by proclamation.

3. Terms used in this Act

(1) In this Act, unless the contrary appears —

approved, in relation to a form, means approved by the Commissioner;

business premises means premises at which, under a licence —

(a) business may be conducted with members of the public; and

(b) goods may be stored;

Commissioner means the person for the time being holding or acting in the office of Commissioner of Police appointed under the *Police Act 1892*;

Department means the department of the Public Service principally assisting the Minister in the administration of this Act;

licence means a pawnbroker's licence or a second-hand dealer's licence;

licensee means a person who holds a licence;

officer, in relation to a body corporate, includes a director, secretary, executive officer or employee of the body;

pawnbroker has the meaning given by section 3A;

pawn ticket means a statement required to be given under section 42;

redemption period means the period referred to in section 50(1)(a)(i) or (ii), whichever applies in the particular case;

second-hand dealer means a person conducting the business of buying, selling or exchanging second-hand goods, whether the goods are bought, sold or exchanged on the person's own behalf or on behalf of another person;

second-hand goods means any goods which have been worn or otherwise used but does not include goods belonging to a class of goods prescribed by the regulations as goods not to be treated as second-hand goods for the purposes of this Act;

storage premises means premises at which, under a licence, goods may be stored.

(2) In this Act a reference to goods in the possession of a person includes a reference to goods under that person's control.

(3) In this Act, unless the contrary appears, a reference to a contract is a reference —

(a) in the case of a pawnbroker, to a contract for the lending of money on the security of pawned goods or for the receiving of goods under a contract of sale where the seller has a right to buy back the goods; and

(b) in the case of a second-hand dealer, to a contract for the purchase, sale or exchange of second-hand goods.

(4) In this Act, unless the contrary appears, words importing the masculine gender also import the neuter.

(5) In this Act a reference to the purchase, sale or exchange of goods in relation to a second-hand dealer includes a reference to a purchase, sale or exchange, as the case may be, of goods by the dealer on behalf of another person.

[Section 3 amended: No. 46 of 2006 s. 4.]

3A. Meaning of "pawnbroker"

(1) In this Act —

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

(2) For the purposes of this Act, goods are ***pawned*** if the goods are taken into the possession of a lender of money for the purpose of the lender relying on possession of the goods as security for the repayment of the loan.

(3) To determine for the purposes of this Act whether goods are pawned and whether money is lent on the security of pawned goods —

(a) regard is to be had to the substance of the loan transaction rather than its form or other legal technicalities;

(b) particular regard is to be had to the ordinary understanding of the borrower as to the nature of the loan transaction and the reason or basis on which possession of goods is given to the lender;

(c) it does not matter that the terms of the loan transaction provide that the lender has taken possession of the goods at the request of, or on behalf of, the borrower or otherwise so as to give the appearance that the lender does not rely on possession of the goods as security for the repayment of the loan; and

(d) goods can be considered pawned and money can be considered lent on the security of pawned goods even if the loan also gives rise to a mortgage of the goods.

(4) The regulations may prescribe cases or circumstances in which, for the purposes of this Act —

(a) the taking of goods into the possession of a lender of money in connection with the loan is the pawning of the goods (whether or not that taking into possession is for

the purpose of the lender relying on possession of the goods as security for the repayment of the loan);

(b) the taking of goods into the possession of a lender of money in connection with the loan is not the pawning of the goods (despite that taking into possession being for the purpose of the lender relying on possession of the goods as security for the repayment of the loan); or

(c) the taking of goods into the possession of a person acting on behalf of, or associated with, a lender of money is taken to be the taking of goods into the possession of the lender.

[Section 3A inserted: No. 46 of 2006 s. 5.]

4. Application

(1) This Act does not apply to —

(a) an auctioneer within the meaning of the *Auction Sales Act 1973* who is acting in accordance with a licence issued to, or for the benefit of, the auctioneer under that Act; or

(b) the holder of a Firearm Dealer Licence under the *Firearms Act 2024* who is acting in accordance with that licence; or

(c) a holder of an authorisation under the *Motor Vehicle Dealers Act 1973* who is acting in accordance with the authorisation.

(2) Parts III to VIII of the *Credit Act 1984* do not have effect in relation to the provision of credit within the meaning of that Act by a person who is acting in accordance with a pawnbroker's licence held by or on behalf of the person.

(3) All or any of the provisions of this Act may be prescribed by the regulations as provisions which do not apply to persons or

classes of persons or to goods or classes of goods specified in the regulations.

[Section 4 amended: No. 4 of 2002 s. 71; No. 23 of 2024 s. 475.]

5. Buy-back contracts regarded as lending money on security of pawned goods

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

(a) the person receiving the goods is taken to be lending money on the security of the goods as pawned goods;

(b) the price at which the goods are to be sold under the contract is taken to be the amount lent;

(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; and

(d) the right to buy back the goods is taken to be the right to redeem the goods.

[Section 5 inserted: No. 46 of 2006 s. 6.]

Part 2 — Licensing of pawnbrokers and second-hand dealers

Division 1 — Requirement for licences

6. Pawnbrokers to be licensed

A person must not act as a pawnbroker except under and in accordance with a pawnbroker's licence held by or on behalf of the person.

Penalty for an individual: $5 000 and 12 months' imprisonment.

Penalty for a body corporate: $20 000.

7. Second-hand dealers to be licensed

A person must not act as a second-hand dealer except under and in accordance with a second-hand dealer's licence held by or on behalf of the person.

Penalty for an individual: $5 000 and 12 months' imprisonment.

Penalty for a body corporate: $20 000.

8. Natural persons only to be licensed

(1) A person other than a natural person cannot hold a licence.

(2) A person may hold more than one licence but a licence cannot be held by more than one person.

(3) A natural person may hold a licence on behalf of —

(a) a partnership if the natural person is one of the partners; or

(b) a body corporate if the natural person is an officer of the body,

and any business under that licence may be transacted in the name of the partnership or body.

8A. Premises in respect of which licences apply

(1) Unless the Commissioner otherwise determines in a particular case, a licence can only apply in respect of one location where the business premises to which the licence applies are operated, as specified in the licence.

(2) A licence may apply in respect of one or more locations where storage premises are operated for the purposes of the business premises to which the licence applies, as specified in the licence.

[Section 8A inserted: No. 46 of 2006 s. 7.]

9. Offence of holding out, etc.

(1) A person other than a person who holds, or on behalf of whom is held, a pawnbroker's licence must not hold himself or herself out as being, or pretend to be, or make use of any words or letters or any name, title, abbreviation, or description that implies or tends to encourage the belief that he or she is a pawnbroker.

(2) A person other than a person who holds, or on behalf of whom is held, a second-hand dealer's licence must not hold himself or herself out as being, or pretend to be, or make use of any words or letters or any name, title, abbreviation, or description that implies or tends to encourage the belief that he or she is a second-hand dealer.

Penalty for an individual: $5 000 and 12 months' imprisonment.

Penalty for a body corporate: $20 000.

Division 2 — Licensing

10. Licensing officers

The Commissioner is to appoint from members of the Police Force or officers of the Department such number of licensing officers as are required for the purposes of this Act.

11. Notice of intention to apply for licence

(1) Subject to section 12, a person cannot apply for a licence unless a notice of the person's intention to apply has been published in a newspaper with circulation throughout the State within the 28 day period before the application is made.

(2) A notice under this section is to be in an approved form.

12. Expedited applications

(1) Where an applicant intends to conduct the business of a licensee in place of the licensee in circumstances where —

(a) the licensee has died;

(b) the licensee is suffering from an illness or other disability of a nature that renders the licensee unable to conduct the business in accordance with this Act;

(c) the licensee decides that he or she will no longer be involved in conducting the business;

(d) the licence is revoked or suspended; or

(e) the licensee is unable to conduct the business because of unforeseen circumstances,

a licensing officer may waive the requirement for the applicant to publish a notice under section 11 if, during the period referred to in that section, the business could not otherwise be conducted at all.

(2) A licence issued to an applicant referred to in subsection (1) is to be issued on the condition that a notice in an approved form is published in a newspaper with circulation throughout the State 10 days after the licence is issued so as to enable persons to object to any subsequent application to renew the licence.

13. How to apply for issue of licence

An application for the issue of a licence is to be —

(a) made in an approved form lodged at a place approved by the Commissioner; and

(b) accompanied by the prescribed fee.

14. Documentation in support of application for issue of licence

An application for the issue of a licence is to be accompanied by —

(a) evidence as to the applicant's identity —

(i) by means of the applicant's birth certificate;

(ii) by means of the applicant's passport where the passport is either current or has not been expired for more than 24 months;

(iii) by means of the applicant's motor driver's licence; or

(iv) by such other means as are prescribed;

(b) written evidence from the local government of the district within which premises proposed to be licensed are situated to the effect that all approvals, consents and exemptions required under any written law have been obtained in relation to the premises;

(c) subject to section 12, a copy of the notice under section 11 showing the date and name of the newspaper in which the notice was published;

(d) in the case of an application for a licence to be held on behalf of a partnership or body corporate —

(i) where relevant, proof of the business name;

(ii) where relevant, proof of incorporation; and

(iii) written confirmation from one of the other partners or one of the body's directors, as the case requires, that the applicant is authorised by

the partnership or the body to make the application;

(e) such other information as a licensing officer may require for the proper consideration of a particular application; and

(f) other evidence of such a nature or in such a form as may be prescribed.

[Section 14 amended: No. 14 of 1996 s. 4.]

15. How and when to apply for renewal of licence

(1) An application for the renewal of a licence is to be —

(a) made in an approved form lodged at, or sent by post to, a place approved by the Commissioner; and

(b) accompanied by the prescribed fee.

(2) An application for the renewal of a licence is to be made no later than 28 days before the day on which the licence is due to expire or at such later time as the licensing officer, having regard to section 22(2), allows.

16. Documentation in support of application for renewal of licence

An application for the renewal of a licence is to be accompanied by evidence of such a nature or in such a form as may be prescribed.

17. Offences in relation to licence applications

A person must not, in relation to an application for the issue or renewal of a licence, provide information in written or oral form that the person knows to be —

(a) false or misleading in a material particular; or

(b) likely to deceive in a material way.

Penalty for an individual: $5 000 and 12 months' imprisonment.

Penalty for a body corporate: $20 000.

18. Objections to issue or renewal of licences

(1) Any person may object to the issue or renewal of a licence on the ground that a licensing officer should not or should no longer be satisfied in relation to any of the matters referred to in section 19, 20 or 21 that is relevant to the applicant or, where the application is on behalf of a partnership or body corporate, to the partnership and any of the partners or to the body and any of the body's officers, as the case may be.

(2) An objection is to be made in an approved form and is not to be considered unless it is lodged with a licensing officer —

(a) in the case of an application (other than an expedited application) for the issue of a licence, no later than 28 days after the publication date of the notice under section 11; or

(b) in the case of an application for the renewal of a licence, no later than 28 days before the day the licence is due to expire.

19. Issue of licences

A licensing officer is not to issue a licence unless the officer is satisfied —

(a) that there is sufficient evidence as to the identity of the applicant;

(b) that all approvals, consents and exemptions referred to in section 14(b) have been obtained;

(c) subject to section 12, that a notice under section 11 has been published in accordance with that section;

(d) that the time for the lodgement of objections has passed and either —

(i) no objection to the application has been made; or

(ii) each objection has been adequately investigated and that the investigation results justify the issue of the licence;

(e) that the applicant is of good character and is in all respects a fit and proper person to hold a licence;

(f) that there will be during the licence period, adequate management, supervision and control of the business operations that are the subject of the application;

(g) that during the licence period the applicant will be able to comply with —

(i) the provisions of this Act; and

(ii) any condition or restriction to which the licence is likely to be subject;

(h) that the applicant has, or is able to obtain, the means to provide information in accordance with section 79;

(i) that the applicant is not —

(i) an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or

(ii) subject to a type of external administration referred to in Chapter 5 of the *Corporations Act 2001* of the Commonwealth;

(j) that there is no charge pending in relation to the applicant for an offence involving dishonesty, fraud, stealing or of any other offence of a nature that renders the applicant unsuitable to hold a licence;

(k) where the applicant has been found guilty of any offence, that neither —

(i) the circumstances of the applicant's involvement in the commission of the offence; nor

(ii) the period of time between the finding and the application,

renders the applicant unsuitable to hold a licence;

(l) that the applicant has not been involved in conduct of a nature that renders the applicant unsuitable to hold a licence;

(m) in the case of an application for a pawnbroker's licence, that there are adequate arrangements for the safekeeping of pawned goods;

(n) that at the time of the application —

(i) the applicant is not disqualified from holding the type of licence applied for or from having the type of licence held on his or her behalf; and

(ii) a licence of the type applied for held by or on behalf of the applicant is not suspended;

(o) of such other matters as may be prescribed; and

(p) that there is no other good reason why the licence should not be issued.

[Section 19 amended: No. 10 of 2001 s. 220.]

20. Renewal of licences

A licensing officer is not to renew a licence unless he or she is satisfied —

(a) in relation to the matters referred to in section 19(d) to (p) in so far as those matters apply to the renewal of a licence;

(b) that the licensee has not contravened, or failed to comply with —

(i) a provision of this Act; or

(ii) the licence or a condition or restriction to which the licence is subject,

in circumstances rendering the renewal of the licence to be inappropriate; and

(c) that no proceedings commenced under section 30 are pending.

[Section 20 amended: No. 55 of 2004 s. 888.]

21. Issue and renewal of licences held on behalf of partnerships and bodies corporate

Where an application is made for the issue or renewal of a licence to be held on behalf of a partnership or body corporate, a licensing officer is not to issue or renew the licence unless the licensing officer is satisfied as to each of the matters referred to in section 19 or 20 as the case may be, in relation to each of the following persons who is relevant to the application —

(a) the partnership and the partners; and

(b) the body and the body's officers.

22. Declining issue or renewal of licence

(1) Where a licensing officer declines to issue a licence the officer, no later than 28 days after the decision is made, is to serve the applicant with written notice setting out the decision and the reasons for the decision and informing the applicant of the right to apply to the State Administrative Tribunal for a review of the decision.

(2) Where a licensing officer declines to renew a licence the officer, no later than 14 days before the day on which the licence is due to expire, is to serve the applicant with written notice setting out the decision and the reasons for the decision and informing the applicant of the right to apply to the State Administrative Tribunal for a review of the decision.

[Section 22 amended: No. 55 of 2004 s. 889.]

23. Form of licences

(1) A licensing officer is not to issue or renew a licence without specifying in the licence the business premises and storage premises to which the licence applies.

(2) Subject to subsection (1), a licence is to be in an approved form.

[Section 23 amended: No. 46 of 2006 s. 8.]

24. Conditions and restrictions

(1) A licensing officer may issue or renew a licence subject to conditions and restrictions set out in, or provided with, the licence.

(2) Without limiting subsection (1), a licence may be subject to conditions in relation to ascertaining whether any person who is, or is proposed to be, employed at business premises has been convicted of any offence the nature of which may render the person unsuitable to enter into contracts at the premises.

(3) A licensing officer may make an existing licence subject to a new condition or restriction or change or remove a condition or restriction to which an existing licence is subject but in that case —

(a) the officer, no later than 14 days after the decision is made, is to serve the licensee with written notice of the decision; and

(b) the decision does not take effect until 21 days after the decision is made, or at such later time as is set out in the notice.

(4) Unless it is otherwise provided in the licence, a licence is subject to any condition or restriction prescribed by the regulations for the purposes of this subsection.

(5) A pawnbroker or second-hand dealer must not contravene or fail to comply with a condition or restriction to which the licence is subject.

Penalty for an individual: $5 000.

Penalty for a body corporate: $20 000.

[Section 24 amended: No. 46 of 2006 s. 9.]

25. Not transferable

A licence is not transferable.

26. Duration of licences

A licence may be issued or renewed for such period as the licensing officer thinks fit but the period cannot exceed 3 years from the day of issue or renewal of the licence.

27. Suspension, revocation of licences and disqualification

(1) A licensing officer who is a member of the Police Force may, on receiving a complaint or on the licensing officer's own initiative, make any investigation or inquiry necessary to decide whether an allegation should be made under subsection (2) by that or any other licensing officer.

(2) A licensing officer may make an allegation to the State Administrative Tribunal that it should take action against a specified licensee under this section —

(a) on the ground that a licensing officer should not or should no longer be satisfied in relation to any of the matters referred to in section 19, 20 or 21 that is relevant to the licensee or, where the licence is held on behalf of a partnership or body corporate, to the partnership and any of the partners or to the body and any of the body's officers, as the case may be; or

(b) on the ground that a person (other than the licensing officer) referred to in paragraph (a) has contravened, or failed to comply with —

(i) a provision of this Act; or

(ii) the licence or a condition or restriction to which the licence is subject.

(3) If the State Administrative Tribunal, on dealing with an allegation under subsection (2), is satisfied that a ground referred to in that subsection has been made out, it may —

(a) suspend a licence for such period as it thinks fit;

(b) revoke a licence; or

(c) disqualify a person from holding a licence or from having a licence held on the person's behalf, for such period as the Tribunal thinks fit or permanently.

(4) A person whose licence is suspended or revoked by the State Administrative Tribunal, or who is disqualified by the State Administrative Tribunal from holding a licence, is required to deliver the person's licence, if any, to a licensing officer.

Penalty: $2 000.

(5) If a licence is suspended under this section it is to be treated as being of no effect during the period of suspension.

(6) A person who under this section is disqualified from holding a licence or from having a licence held on the person's behalf cannot during the period of disqualification apply, or be the subject of an application, for a licence of that type.

[Section 27 amended: No. 55 of 2004 s. 890.]

28. Commissioner to keep register of licences

(1) The Commissioner is to cause to be kept, in a form approved by the Commissioner, a register of the following information in relation to each licence issued —

(a) the type of licence;

(b) the name of the licensee and where the licence is held on behalf of a partnership or body corporate, the name (including, where relevant, the business name) of the partnership or body corporate;

(c) the location of the business premises and storage premises to which the licence applies;

(d) the expiry date; and

(e) such other particulars as may be prescribed.

(2) A licensing officer is to allow any person to inspect the register on payment of the prescribed fee (if any).

[Section 28 amended: No. 46 of 2006 s. 10.]

Division 3 — Review of licensing decisions

[Heading inserted: No. 55 of 2004 s. 891.]

*[**29.** Deleted: No. 55 of 2004 s. 892.]*

30. Review

(1) A person who is aggrieved by a licensing officer's decision —

(a) to decline the issue or the renewal of a licence;

(b) as to the period for which a licence is issued or renewed;

(c) as to a condition or restriction to which a licence is to be subject;

(d) as to premises to which the licence is, or is not, to apply; or

(e) as to the suspension or revocation of, or disqualification in relation to, a licence,

may apply to the State Administrative Tribunal for a review of the decision.

[(2) deleted]

[Section 30 amended: No. 55 of 2004 s. 893.]

*[**31.** Deleted: No. 55 of 2004 s. 894.]*

32. Returns by executive officer of the State Administrative Tribunal

(1) The executive officer of the State Administrative Tribunal is to give to the Commissioner such information from the records under the executive officer's control as the Commissioner certifies in writing is required for the purposes of this Act.

(2) On the determination of an application under this Division the executive officer of the State Administrative Tribunal is to send to the Commissioner a copy of any order in relation to the determination.

[Section 32 amended: No. 55 of 2004 s. 895.]

33. Effect of charges pending on Court hearings

Where —

(a) an application has been made under this Division for a review; and

(b) a charge for an offence referred to in section 19(j) is pending in relation to a person who is a subject of the application,

the State Administrative Tribunal may adjourn the hearing of the matter until the charge has been determined.

[Section 33 amended: No. 55 of 2004 s. 896.]

Division 4 — Powers of courts generally in relation to licences

34. Courts may suspend, revoke licence or disqualify person upon conviction

(1) Where a person is convicted by any court of an offence against this Act, the court may, in addition to any penalty imposed or order made in respect of the conviction —

(a) order, in relation to a licence applicable to that person —

(i) that the licence be suspended for such period as the court thinks fit;

(ii) that the licence be revoked; or

(iii) that a person be disqualified from holding a licence or from having a licence held on a person's behalf, for such period as the court thinks fit or permanently,

and that the licence be delivered up to the court; or

(b) order the imposition of conditions or restrictions in relation to the licence as it thinks fit for the period of time set out in the order.

(2) When making any order under this section the court may, if it thinks fit, defer the operation of the order pending an appeal.

(3) If a licence is suspended under this section it is to be treated as being of no effect during the period of suspension.

(4) A person who under this Division is disqualified from holding a licence or from having a licence held on the person's behalf cannot during the period of disqualification apply, or be the subject of an application, for a licence of that type.

[Section 34 amended: No. 55 of 2004 s. 897.]

35. Returns by courts

Where a court has made an order under section 34 in relation to a licence, the court is to ensure that the following is sent to the Commissioner —

(a) notice of the findings, penalty imposed and orders made in relation to the matter; and

(b) where relevant, any licence that has been delivered up to the court.

[Section 35 amended: No. 55 of 2004 s. 898.]

Division 5 — Other requirements in relation to licences

36. Sign to be displayed

A licensee must cause to be kept displayed in a position that is clearly visible from the outside of the business premises to which the licence applies —

(a) the licensee's name; and

(b) the words "Licensed Pawnbroker" or "Licensed Second-hand Dealer", as the case may be,

in legible lettering at least 50mm high.

Penalty: $2 000.

37. Certain employee records to be kept, provided to police

(1) Where a person is employed at business premises and the person's functions include entering into contracts at the premises, the licensee must ensure that the following are kept in relation to the person —

(a) a record of the person's full name, current residential address and date of birth;

(b) a photograph or digital image of the person; and

(c) all records provided by the person by way of —

(i) the person's application for employment at the premises; or

(ii) the licensee's compliance with a condition of the licence.

(2) Records referred to in subsection (1) are to be kept for 12 months from the day the employee ceases to be employed at the premises.

(3) A member of the Police Force may require a licensee to produce for inspection a record kept under this section and the licensee must not refuse or fail to comply with the request.

Penalty: $2 000.

[Section 37 amended: No. 46 of 2006 s. 11.]

37A. Advertisements

(1) Subject to subsections (2) and (3), a pawnbroker or second-hand dealer must not cause or permit an advertisement relating to the business conducted under the licence to be published or displayed unless the advertisement legibly specifies the number of the licence.

Penalty: $2 000.

(2) If the advertisement relates to pawnbroking conducted under 2 or more licences held by the same licensee, the advertisement may specify the number of only one of those licences.

(3) If the advertisement relates to second-hand dealing conducted under 2 or more licences held by the same licensee, the advertisement may specify the number of only one of those licences.

[Section 37A inserted: No. 46 of 2006 s. 12.]

Part 3 — Contracts with pawnbrokers and second-hand dealers

Division 1 — Duties of pawnbrokers and second-hand dealers

38. Persons under 18 or affected by alcohol or drugs

A pawnbroker or a second-hand dealer must not enter into a contract with a person who is —

(a) under 18 years of age; or

(b) apparently affected by alcohol or any drug.

Penalty for an individual: $5 000 and 12 months' imprisonment.

Penalty for a body corporate: $20 000.

39. Identification of persons

A pawnbroker or a second-hand dealer must not enter into a contract with a person unless the pawnbroker or second-hand dealer —

(a) has ascertained the person's full name and current residential address; and

(b) has verified the person's identity by reference to a means of identification prescribed by the regulations.

Penalty for an individual: $5 000 and 12 months' imprisonment.

Penalty for a body corporate: $20 000.

[Section 39 amended: No. 46 of 2006 s. 13.]

40. Offences in relation to false information

A person must not provide to a pawnbroker or second-hand dealer information in relation to the person's name, address or age, in written or oral form, that the person knows to be —

(a) false or misleading in a material particular; or

(b) likely to deceive in a material way.

Penalty for an individual: $5 000 and 12 months' imprisonment.

Penalty for a body corporate: $20 000.

41. Records to be made by pawnbrokers

A pawnbroker must ensure that the following details are recorded in relation to each contract as soon as the information becomes available to the pawnbroker —

(a) a distinguishing number for the contract, which is to be the next number in a consecutive sequence;

(b) the full name and current residential address of the party pawning the goods;

(c) the form of identification used to verify the identity of the party pawning the goods and the number (if any) of the identification document;

(d) the date and time of the contract;

(e) a description of each of the goods to be pawned including, where applicable to the goods, the type, size, colour, brand, serial number and any distinguishing feature;

(f) the amount lent in respect of each of the pawned goods;

(g) the interest to be paid on the amount lent expressed —

(i) as a percentage rate; and

(ii) as an amount in dollar terms to be paid for each week or month, as the case may be, of the loan;

(h) the types of charges that are, or may become, payable, including those that may become payable in the event of the sale of the goods, and the amount (if known) of the charges;

(i) the redemption period if it is longer than 3 months;

(j) the name of the person accepting the goods in pawn as, or on behalf of, the pawnbroker;

(k) the amount of any repayment made towards satisfaction of the loan;

(l) the premises where the goods will be located during the redemption period, and if the goods are moved, the name and address of the location of the goods;

(m) if the redemption period is extended, the new redemption period and the date of the agreement to extend the period;

(n) if goods are redeemed, the date of redemption;

(o) if unredeemed goods are sold —

(i) the date of sale; and

(ii) the details referred to in section 58(1);

and

(p) such other matters as may be prescribed.

Penalty: $5 000.

[Section 41 amended: No. 46 of 2006 s. 14.]

42. Pawn tickets

(1) Before lending any money under a contract, a pawnbroker must ensure that a written statement under this section and a copy of the statement are signed by, or on behalf of, the pawnbroker and by the other party to the contract and that the statement is given to that other party, without charge.

Penalty: $2 000.

(2) The statement is to —

(a) set out the details recorded under section 41(a) to (j) inclusive; and

(b) inform the other party —

(i) of the pawnbroker's obligation under this Act to keep the pawned goods for at least 3 months or such longer period as the parties may agree;

(ii) that the goods can be redeemed at any time before the sale of the goods; and

(iii) of the party's right to any surplus on the sale of the goods after deduction of interest and charges.

(3) Each of the statement and the copy is to bear the original signature of the persons referred to in subsection (1).

[Section 42 amended: No. 46 of 2006 s. 15.]

43. Records to be made by second-hand dealers

A second-hand dealer must ensure that the following details are recorded in relation to each contract as soon as the information becomes available to the dealer —

(a) a distinguishing number for the contract, which is to be the next number in a consecutive sequence;

(b) the full name and current residential address of the party offering the goods;

(c) the form of identification used to verify the identity of the party offering the goods and the number (if any) of the identification document;

(d) the date and time of the contract;

(e) a description of each of the goods accepted by the dealer including where applicable to the goods, the type, size, colour, brand, serial number and any distinguishing feature;

(f) the consideration provided by the dealer for the accepted goods;

(g) the name of the person accepting the goods as, or on behalf of, the dealer;

(h) the premises where the goods will be kept during the period referred to in section 61, and if the goods are moved, the name and address of the location of the goods;

(i) if the goods are disposed of by the dealer, the date of disposal; and

(j) such other matters as may be prescribed.

Penalty: $5 000.

[Section 43 amended: No. 46 of 2006 s. 16.]

44. Records to be provided by second-hand dealers

(1) Before accepting goods under a contract a second-hand dealer must ensure that —

(a) a receipt for the goods and a copy of the receipt are signed by, or on behalf of, the dealer and by the other party to the contract; and

(b) the receipt is given to that other party.

Penalty: $2 000.

(2) Each of the receipt and the copy is to bear the original signature of the persons referred to in subsection (1).

[Section 44 amended: No. 46 of 2006 s. 17.]

45. Keeping of records

(1) A pawnbroker must ensure that all records required to be made under section 41, a copy of all the pawnbroker's pawn tickets and all affidavits provided to the pawnbroker under section 48 are kept —

(a) for at least 7 years from the time when the goods are redeemed or sold; and

(b) in the prescribed manner or form.

(2) A second-hand dealer must ensure that all records required to be made under section 43 and a copy of all receipts given under section 44 are kept —

(a) for at least 7 years from the time when the goods are disposed of by the dealer; and

(b) in the prescribed manner or form.

(3) A pawnbroker or second-hand dealer must ensure that all records that he or she is required under this Act to keep are kept —

(a) in the case of records relating to contracts entered into within the previous 12 months, at the business premises nominated in the licence for that purpose; and

(b) in any other case, at a place nominated in the licence for that purpose.

Penalty: $5 000.

46. Tampering with records

Where a pawnbroker or second-hand dealer keeps a record for the purposes of this Act, a person must not alter the record in a manner that renders the record false or misleading in a material particular.

Penalty for an individual: $5 000 and 12 months' imprisonment.

Penalty for a body corporate: $20 000.

47. Goods to carry contract number

(1) A pawnbroker must ensure —

(a) that all pawned goods are marked or labelled with the distinguishing number of the contract under which the goods were pawned; and

(b) in the case of pawned goods received under a contract for sale where the seller has a right to buy back the goods — that the goods are marked or labelled in a manner that identifies them as goods that are subject to that right.

(2) A second-hand dealer must ensure that all second-hand goods obtained by the dealer that are for sale or exchange by the dealer

are marked or labelled with the distinguishing number of the contract under which the goods were obtained.

Penalty: $2 000.

[Section 47 amended: No. 46 of 2006 s. 18.]

48. Pawn ticket "lost" or "stolen"

(1) A pawnbroker must not replace a pawn ticket alleged by a person to have been lost or stolen unless —

(a) the person provides the pawnbroker with the person's affidavit setting out —

(i) an accurate description of the pawned goods; and

(ii) the circumstances of the loss or theft of the pawn ticket;

(b) the pawnbroker ascertains the person's name and verifies the person's identity in accordance with section 39; and

(c) the pawnbroker is satisfied on reasonable grounds that the person's claim is lawful.

(2) A pawnbroker must not charge a person for a replacement pawn ticket.

Penalty: $2 000.

Division 2 — Redemption and sale of goods

49. Term used in this Division

In this Division ***pawn ticket*** includes a replacement pawn ticket issued under section 48.

50. When goods may be redeemed

(1) Pawned goods may be redeemed —

(a) before the expiration of —

(i) 3 months; or

(ii) a period longer than 3 months as agreed by the parties,

from the day on which the goods were pawned; and

(b) where the redemption period has expired, before the sale of the goods.

(2) A provision in, or condition of, an agreement or arrangement that purports to reduce the period referred to in subsection (1)(a)(i) has no effect.

(3) An agreement under subsection (1)(a)(ii) may be made at any time before the goods are sold.

51. Where pawned goods to be kept

A pawnbroker must ensure that pawned goods are kept at business premises or storage premises to which the pawnbroker's licence applies until the redemption period expires.

Penalty: $5 000.

52. When goods to be redeemed

Subject to section 53, where pawned goods have not been sold the pawnbroker must deliver the goods to a person who —

(a) produces to the pawnbroker the pawn ticket for the goods;

(b) requests the redemption of the goods; and

(c) pays the pawnbroker, or tenders to the pawnbroker payment of, all money owing under the contract under which the goods were pawned.

Penalty for an individual: $5 000 and 12 months' imprisonment.

Penalty for a body corporate: $20 000.

53. When goods not to be redeemed

(1) Section 52 does not apply where —

(a) the pawnbroker has been informed by a credible person or has reason to believe that the person who produces the pawn ticket is not the owner of the goods or pawn ticket or is not acting with the owner's authority;

(b) the pawnbroker has been informed by the owner of the pawn ticket or some other credible person that the ticket has been lost, stolen or otherwise unlawfully taken;

(c) the provisions of a notice under section 80 prevent delivery of the goods;

(d) the goods have been seized by a member of the Police Force; or

(e) the goods are not in the possession of the pawnbroker and the pawnbroker had previously reported to a member of the Police Force that the goods had been stolen or otherwise unlawfully obtained from the pawnbroker.

(2) A pawnbroker who does not deliver goods under section 52 in reliance on subsection (1)(a) or (b) must, as soon as is practicable, notify a member of the Police Force of the reasons for non-delivery and where the name and address of the person who requested the delivery are known to the pawnbroker, the name and address of that person.

Penalty: $2 000.

54. Redemption only to holder of pawn ticket

A pawnbroker must not deliver pawned goods in purported redemption of the goods to a person other than the holder of the pawn ticket for the goods.

Penalty for an individual: $5 000 and 12 months' imprisonment.

Penalty for a body corporate: $20 000.

55. Sale of unredeemed goods

(1) A pawnbroker must not sell pawned goods unless the redemption period has expired.

(2) If pawned goods have not been redeemed within the redemption period the pawnbroker must sell the goods —

(a) as soon as is practicable after the redemption period has expired; and

(b) so as to receive the best price reasonably obtainable.

(3) If any question arises as to whether a pawnbroker has complied with subsection (2), the proof of compliance is on the pawnbroker.

Penalty applicable to subsections (1) and (2) for an individual: $5 000 and 12 months' imprisonment.

Penalty applicable to subsections (1) and (2) for a body corporate: $20 000.

56. Unredeemed goods not to be bought by or on behalf of pawnbroker

(1) A pawnbroker, or a person acting on behalf of a pawnbroker, must not buy goods that have been pawned to and are being sold by the pawnbroker.

(2) Where a pawnbroker's licence is held on behalf of a partnership or body corporate, any person who is —

(a) one of the partners;

(b) the body;

(c) one of the body's officers; or

(d) acting on behalf of a person referred to in paragraph (a), (b) or (c),

must not buy goods that have been pawned to and are being sold by the pawnbroker.

Penalty for an individual: $5 000 and 12 months' imprisonment.

Penalty for a body corporate: $20 000.

57. Application of proceeds of sale

The proceeds of sale of pawned goods are to be applied in settlement of all amounts owing to the pawnbroker under the contract under which the goods were pawned and the amount of any surplus is a debt due by the pawnbroker to the other party to the contract.

58. Records to be made on sale of unredeemed goods

(1) A pawnbroker who sells pawned goods must, as soon as practicable after the sale, calculate —

(a) the charges to be paid by the other party to the contract under which the goods were pawned; and

(b) the surplus (if any) due to the other party,

and record those details with the details recorded under section 41 in relation to the goods.

(2) Where pawned goods have been sold by a pawnbroker, the pawnbroker must on request allow the other party to the contract under which the goods were pawned to inspect the record relating to the sale.

Penalty: $2 000.

59. Notice as to surplus

(1) Subject to subsection (2), a pawnbroker who sells pawned goods must, within 14 days of the sale, send by pre-paid post to the last known address of the other party to the contract under which the goods were pawned, a notice informing the party —

(a) of the amount of any surplus proceeds of sale; and

(b) that the party is entitled to receive that amount from the pawnbroker at the pawnbroker's business premises or in such other manner as may be agreed.

Penalty: $2 000.

(2) Subsection (1) does not apply where —

(a) the other party in writing requested the pawnbroker not to give the party notice under that subsection; or

(b) the surplus is less than $25 or such other amount as prescribed.

60. Payment of surplus on demand

A pawnbroker who sells goods pawned by a person must upon demand pay the amount of any surplus payable to the person under section 57 at the pawnbroker's business premises or in such other manner as may be agreed.

Division 3 — Retention of second-hand goods

61. Second-hand goods to be kept unchanged at least 14 days

A second-hand dealer must, in relation to all second-hand goods obtained in the course of the dealer's business, keep the goods for at least 14 days after the goods were obtained without

altering the form of the goods except by marking or labelling them as required by section 47(2).

Penalty for an individual: $5 000 and 12 months' imprisonment.

Penalty for a body corporate: $20 000.

[Section 61 amended: No. 46 of 2006 s. 19.]

62. Where second-hand goods to be kept

A second-hand dealer must ensure, in relation to all second-hand goods obtained in the course of the dealer's business, that the goods are kept at business premises or storage premises to which the dealer's licence applies during the period referred to in section 61.

Penalty: $2 000.

Division 4 — Other matters relating to contracts with pawnbrokers and second-hand dealers

63. Pawnbroker not to charge establishment fee

(1) A pawnbroker must not require or receive any fee, other than by way of interest, in respect of a person's application to enter into a contract with the pawnbroker.

Penalty: $2 000.

(2) A provision in, or condition of —

(a) a contract; or

(b) an agreement or arrangement in relation to entering into a contract,

for a payment other than interest in consideration for entering into a contract with a pawnbroker is of no effect.

64. Re-pledging of goods prohibited

A pawnbroker must not pawn any goods that are pawned to the pawnbroker.

Penalty for an individual: $5 000 and 12 months' imprisonment.

Penalty for a body corporate: $20 000.

65. No contracting out of liability for loss or damage

A provision in, or condition of, an agreement or arrangement in relation to the liability of a pawnbroker for the loss of, or damage to, pawned goods has no effect if it is less favourable to the owner of the goods than the common law.

66. Buyer may be compensated

Where a person buys or purports to buy goods from a pawnbroker or second-hand dealer and title to the goods, as a matter of law, either —

(a) does not pass to the buyer; or

(b) having passed to the buyer, revests in a person who was the owner of the goods,

the buyer may recover from the pawnbroker or dealer in a court of competent jurisdiction, the amount paid by the buyer to the pawnbroker or dealer and any other costs reasonably incurred in relation to the acquisition and loss of the goods.

67. Certain rights etc. saved

Except to the extent that this Act expressly provides otherwise, nothing in this Act affects a right or remedy that a person would have had if this Act had not been enacted.

68. Reopening pawnbroking contracts

Part IX of the *Credit Act 1984* applies to a pawnbroking contract as if it were a regulated contract within the meaning of that Act.

69. Civil consequences of breach of section 6

If a pawnbroker's licence is not held by or on behalf of a person who acts as a pawnbroker, the other party to a contract with that person —

(a) is not liable to repay the money lent to him or her or to pay any interest or any charge in connection with the contract;

(b) is entitled to recover the goods the subject of the contract; and

(c) if he or she has paid or repaid any amount referred to in paragraph (a), may recover the amount in a court of competent jurisdiction as a debt due to him or her by the person acting as a pawnbroker.

70. Civil consequences of breach of section 42

(1) If a pawnbroker lends money under a contract but does not give to the other party to the contract a pawn ticket in accordance with section 42, the other party is not liable to pay any amount for interest or for any charge in connection with the contract.

(2) If the other party has paid any amount referred to in subsection (1) that party may recover the amount in a court of competent jurisdiction as a debt due to him or her by the pawnbroker.

71. Criminal liability

(1) Sections 69 and 70 do not affect the criminal liability of a person for a breach of section 6 or 42 respectively.

(2) Where a pawnbroker commits an offence against this Act in relation to a contract, the other party to the contract does not by reason only of being a party to the contract take part in committing the offence.

72. Breach does not otherwise vitiate contract

Except as provided by section 69 or 70, a contract is not illegal, void or unenforceable by reason only that a pawnbroker has contravened this Act in relation to the contract.

73. Relief from sections 69 and 70

(1) In this section —

pawnbroker includes a person who has acted as a pawnbroker although not under a pawnbroker's licence held by or on behalf of the person;

Tribunal means the State Administrative Tribunal.

(2) A pawnbroker affected by section 69 or 70 may apply to the Tribunal for relief from the section.

(3) Where an application is made under subsection (2) the Tribunal after considering the circumstances, including the conduct of the pawnbroker and the other party to the contract and any loss suffered by the other party, may refuse to make any order or may make such order as to the amount (if any) to be paid or recovered by the other party as it thinks fit.

(4) If the other party to the contract has suffered loss as a result of a contravention of section 6 or 42 the Tribunal is to ensure in making an order under subsection (3) that the amount that that party would have been liable to pay but for the contravention is reduced by an amount that is not less than the amount of the loss.

(5) A contract has effect subject to any order made in relation to it under this section.

[Section 73 amended: No. 55 of 2004 s. 899.]

Part 4 — Enforcement

74. Entry to and inspection of licensed premises without warrant

(1) A member of the Police Force may without warrant enter premises to which a licence applies and inspect goods and records kept at the premises —

(a) in the case of business premises, at any time when the premises are open for business; and

(b) in the case of storage premises, at any time when business premises to which the licence applies are open for business.

(2) A member of the Police Force may, at any time when business premises to which a licence applies are open for business, require a person who is apparently in charge of the premises to open storage premises to which the licence also applies.

(3) A person must not refuse or fail to comply with a requirement under this section.

Penalty: $5 000.

75. Assistance in the location of goods at licensed premises

(1) Where a member of the Police Force has lawfully entered premises to which a licence applies the member may require a person who at the time is apparently in charge of the premises to without delay —

(a) produce for inspection any goods kept by the pawnbroker or second-hand dealer;

(b) identify and locate goods kept by the pawnbroker or second-hand dealer that correspond to a particular record kept by the pawnbroker or dealer under this Act; and

(c) where the goods to be produced, located or identified have been but are no longer kept by the pawnbroker or second-hand dealer, provide —

(i) information as to the current location of the goods; or

(ii) if not known, information as to what has happened to the goods.

(2) In this section, a reference to goods or records kept by a pawnbroker or second-hand dealer is a reference to goods or records kept at any premises to which the licence held by or on behalf of the pawnbroker or dealer applies.

(3) A person must not refuse or fail to comply with a requirement under this section and must not provide information that is false or misleading.

Penalty: $5 000.

76. Provision of, and assistance in relation to, records etc.

(1) Where a member of the Police Force has lawfully entered premises to which a licence applies, the member may require a person who at the time is apparently in charge of the premises to without delay —

(a) produce for inspection any record kept by the pawnbroker or second-hand dealer under this Act;

(b) identify and locate records kept by the pawnbroker or second-hand dealer under this Act that correspond to particular goods kept by the pawnbroker or dealer; and

(c) produce for inspection any licence relevant to the business.

(2) In this section, a reference to records or goods kept by a pawnbroker or second-hand dealer is a reference to records or goods kept at any premises to which the licence held by or on behalf of the pawnbroker or dealer applies.

(3) Where the production of a record is required under this section and the record is not in a readable format, the requirement to produce the record is to be treated as a requirement to produce —

(a) the record itself; and

(b) the contents of the record in a readable format.

(4) A person must not refuse or fail to comply with a requirement under this section and must not provide information that is false or misleading.

Penalty: $5 000.

77. Police may seize records for certain purposes

(1) Where any record kept under this Act is produced for inspection a member of the Police Force may seize the record for the purpose of making copies or notes of some or all of the record.

(2) If a record is seized under this section, then as soon as practicable —

(a) a receipt is to be issued; and

(b) either the original record is to be returned or a copy of the record is to be given,

to the person from whom the record was seized.

78. Police to be informed in certain circumstances

A pawnbroker or second-hand dealer who suspects for any reason that goods —

(a) in the possession of the pawnbroker or dealer may have been stolen or otherwise unlawfully obtained must without delay inform a member of the Police Force of the suspicion and provide a description of the goods; or

(b) which the pawnbroker is offered for pawn or the dealer is offered for exchange or sale may have been stolen or otherwise unlawfully obtained must without delay

inform a member of the Police Force of the suspicion and provide a description of the goods and of the person who offered the goods.

Penalty: $2 000.

79. Information about goods to be given to Commissioner in accordance with regulations

A pawnbroker or second-hand dealer must give to the Commissioner information —

(a) relating to such particulars of goods in the possession of the pawnbroker or dealer;

(b) in such form;

(c) by such means, which may include electronic means; and

(d) at such times,

as may be prescribed.

Penalty: $5 000.

80. Notice to stop dealing

(1) A member of the Police Force who has reasonable cause to suspect that goods in the possession of a pawnbroker or second-hand dealer have been stolen or otherwise unlawfully obtained may personally serve the pawnbroker or dealer with a notice under this section.

(2) A notice under this section is to —

(a) specify the goods suspected of having been stolen or otherwise unlawfully obtained;

(b) state that the pawnbroker or second-hand dealer is prohibited from altering the form of the goods or disposing of the goods in any way for 21 days from service of the notice; and

(c) subject to paragraphs (a) and (b), be in an approved form.

(3) A notice under this section may be reissued once for a further period of 21 days from the day the first period ends.

(4) A pawnbroker or second-hand dealer must not refuse or fail to comply with the provisions of a notice served on the pawnbroker or dealer under this section.

Penalty for an individual: $5 000 and 12 months' imprisonment.

Penalty for a body corporate: $20 000.

81. Seizure of goods suspected stolen

(1) Where a member of the Police Force has lawfully entered premises to which a licence applies and has reasonable cause to suspect that goods in the possession of a pawnbroker or second-hand dealer have been stolen or otherwise unlawfully obtained, the member may without warrant seize the goods.

(2) Where goods are seized from a pawnbroker or second-hand dealer a member of the Police Force is to —

(a) issue a receipt for the goods as soon as practicable; and

(b) where the record is in a signable format and the person who at the time is apparently in charge of the premises so requests, sign the record.

(3) Where it is established to the satisfaction of a member of the Police Force that goods seized from a pawnbroker or second-hand dealer have not been stolen or otherwise unlawfully obtained, a member of the Police Force is to return the goods to the pawnbroker or second-hand dealer as soon as practicable.

(4) Where subsection (3) does not apply in relation to goods seized from a pawnbroker or second-hand dealer, a member of the Police Force —

(a) is to return the goods to the owner of the goods; or

(b) where competing claims have been made as to rights in respect of the goods, keep the goods in safe custody until the claims have been determined,

and in either case, is to notify the pawnbroker or second-hand dealer of the manner of disposal.

(5) Nothing in subsection (4) affects any right of a pawnbroker or second-hand dealer to take proceedings to recover possession of goods seized from the pawnbroker or dealer but the proceedings must be commenced within 6 months after the day the goods are seized.

82. Name and address

(1) Where a member of the Police Force has reasonable cause to suspect that a person —

(a) has committed an offence against this Act; or

(b) has information relevant to an investigation as to whether an offence against this Act has been committed,

the member may require that person to state the person's name and address.

(2) A person must not refuse or fail to comply with a requirement under subsection (1) and must not give a name or address that is false or misleading.

Penalty: $2 000.

(3) Where a member of the Police Force has reasonable cause to suspect that a person has committed an offence against subsection (2), the member may arrest that person without warrant.

83. Power of pawnbrokers, dealers etc. to arrest

(1) In this section a reference to a pawnbroker or second-hand dealer is also a reference to a person who at the relevant time is in charge of the premises to which the licence applies.

(2) Where a person offers to pawn, sell, exchange or deliver goods to a pawnbroker or second-hand dealer and the pawnbroker or dealer has reasonable cause to suspect that any offence has been committed by the person in relation to the goods, the pawnbroker or dealer may arrest the person.

(3) An arrest made under this section is to be taken to be an arrest made under section 25 of the *Criminal Investigation Act 2006* and section 25(5) to (7) of that Act applies accordingly.

[Section 83 amended: No. 5 of 2008 s. 130.]

84. Offence of hindering police

A person must not delay, obstruct or otherwise hinder a member of the Police Force in the performance of the member's functions under this Act.

Penalty: $2 000.

85. Summary orders where goods stolen, pawned etc.

(1) If a person has reason to suspect that goods —

(a) have been stolen or unlawfully obtained from the owner of the goods or have been pawned, sold or exchanged without the owner's authority; and

(b) are in the possession of a pawnbroker or second-hand dealer,

the person may apply to the Magistrates Court, without notice to the pawnbroker or dealer, for an order that the pawnbroker or dealer appear before the court and produce the goods to the court.

(1a) On such an application, the Magistrates Court may make such order as it thinks fit and may issue a warrant to have the pawnbroker or dealer brought before the court.

(2) On the appearance of the pawnbroker or dealer, or in default of appearance, the Magistrates Court may make an order for —

(a) the delivery of the goods to the owner of the goods; and

(b) the payment by or to the pawnbroker or second-hand dealer of an amount of money as determined by the court,

at or by the time stated in the order.

(3) Where a pawnbroker or second-hand dealer —

(a) has disposed of goods after notice that the goods were stolen or unlawfully obtained; or

(b) refuses or fails to deliver goods in accordance with an order of the Magistrates Court,

the Magistrates Court may order that the pawnbroker or dealer pay to the owner of the goods an amount determined by the court as compensation for the value of the goods.

[Section 85 amended: No. 59 of 2004 s. 141.]

86. Summary orders where competing claims to goods

(1) Where a member of the Police Force —

(a) has seized goods under this Act; or

(b) under any other written law has seized from —

(i) a pawnbroker or second-hand dealer; or

(ii) a person who obtained from a pawnbroker or second-hand dealer,

goods suspected to have been stolen or otherwise unlawfully obtained,

and competing claims have been made as to rights in respect of the goods, the member may apply to the Magistrates Court for an order under this section.

(2) The Magistrates Court may —

(a) make an order for the delivery of the goods to the party who appears to be the rightful owner of the goods; or

(b) where the owner cannot be ascertained, make such order with respect to the goods as the court thinks just,

and may make an order for the payment by or to a party making a claim for the goods of an amount of money as determined by the court at or by the time stated in the order.

[Section 86 amended: No. 59 of 2004 s. 141.]

87. Procedure for sections 85 and 86

(1) The *Magistrates Court (Civil Proceedings) Act 2004* and the Magistrates Court's rules of court apply to and in respect of proceedings under sections 85 and 86.

(2) Nothing in section 85 or 86 affects any right of a person affected by an order made under either of those sections to take proceedings to recover possession of goods in respect of which the order is made but the proceedings must be commenced within 6 months after the day the order is made.

[Section 87 amended: No. 59 of 2004 s. 141.]

88. Licensee's liability for employees, agents

(1) Where a licence is held by a natural person and an employee or agent of the licensee commits an offence against this Act for which the licensee would have been liable had it been committed by him or her, the licensee is to be treated as having committed an offence and is liable to the penalty prescribed for the offence committed by the employee or agent.

(2) Proceedings under this section may be taken against a licensee whether or not proceedings are taken against the employee or agent and whether or not the employee or agent was convicted of the offence.

(3) In proceedings taken under this section —

(a) it is not a defence that the licensee did not know, or could not reasonably have been aware of or have prevented the offence being committed by the employee or agent;

(b) it is a defence, proof of which is on the licensee, that the licensee had taken reasonable steps to prevent the commission of the offence.

89. Liability of partners and bodies corporate

(1) Where —

(a) a licence is held on behalf of a partnership; and

(b) a partner (whether or not the licensee) or an employee or agent of the partnership commits an offence against this Act,

subject to subsection (2), each of the partners is to be treated as having committed an offence and is liable to the penalty prescribed for the offence committed by the partner or employee or agent of the partnership.

(1a) Where —

(a) a licence is held on behalf of a body corporate; and

(b) the licensee or an employee or agent of the body corporate commits an offence against this Act,

the body corporate is to be treated as having committed an offence and is liable to the penalty prescribed for the offence committed by the licensee or employee or agent of the body corporate.

(2) Subsection (1) does not apply to a partner who proves that —

(a) the offence was committed without the partner's consent or connivance; and

(b) the partner exercised all such due diligence to prevent the commission of the offence as ought to have been

exercised having regard to the nature of the partner's functions and to all the circumstances.

(2a) Where —

(a) it is an offence against this Act for a pawnbroker or second-hand dealer to do or omit to do any particular thing; and

(b) a partner (whether or not the licensee) of a partnership on behalf of which, as the case requires, a pawnbroker's licence or second-hand dealer's licence is held does or omits to do the thing in the course of the business conducted under the licence,

the partner is to be treated as having committed the offence.

[(3) deleted]

(4) The reference in subsection (2) to a partner does not include a reference to a partner who is also the licensee.

[Section 89 amended: No. 46 of 2006 s. 20; No. 9 of 2023 s. 112.]

90. Infringement notices

(1) A reference in subsection (3), (5) or (7) to an ***authorised person*** is a reference to a person appointed under subsection (11) to be an authorised person for the purposes of the subsection in which the term is used.

(2) A member of the Police Force who has reason to believe that a person —

(a) has committed an offence against this Act of a type prescribed by regulation; or

(b) is guilty of an offence referred to in paragraph (a) by reason of section 88 or 89,

may, within 90 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.

(3) An infringement notice is to be in an approved form and is to —

(a) contain a description of the alleged offence;

(b) advise that if the alleged offender does not wish to be prosecuted for the alleged offence in a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorised person within a period of 28 days after the giving of the notice; and

(c) inform the alleged offender as to who are authorised persons for the purposes of receiving payment of modified penalties.

(4) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice is to be the amount that was the modified penalty prescribed by regulation at the time the alleged offence is believed to have been committed.

(5) An authorised person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

(6) Where the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn, the bringing of proceedings and the imposition of penalties are prevented to the same extent as they would be if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

(7) An authorised person may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in an approved form stating that the infringement notice has been withdrawn.

(8) Where an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

(9) An amount paid as a modified penalty, subject to subsection (8), is to be dealt with as if it were a fine imposed by a court as a penalty for an offence.

(10) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

(11) The Commissioner may, in writing, appoint persons or classes of persons to be authorised persons for the purposes of subsection (3), (5) or (7) or for the purposes of 2 or more of those subsections, but a member of the Police Force who issues an infringement notice is not eligible to be an authorised person for the purposes of any of those subsections in relation to that notice.

[Section 90 amended: No. 78 of 1995 s. 102; No. 84 of 2004 s. 80; No. 46 of 2006 s. 21.]

Part 5 — Miscellaneous

91. Delegation by Commissioner

The Commissioner may, by a signed instrument of delegation, delegate to a person, either generally or as otherwise provided in the instrument, any of the Commissioner's powers or duties under this Act, other than this power of delegation.

92. *Financial Management Act 2006* and *Auditor General Act 2006*

(1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of departments apply to and in respect of the Department and its operations under this Act.

(2) The Department's annual report is to include details of —

(a) the number, nature, and outcome, of —

(i) investigations and inquiries undertaken for the purposes of this Act by licensing officers; and

(ii) matters that have been brought before the State Administrative Tribunal under this Act;

(b) the number and nature of matters referred to in paragraph (a) that are outstanding;

(c) any trends or special problems that may have emerged;

(d) forecasts of the workload of licensing officers in the year after the year to which the report relates; and

(e) any proposals for improving the performance of the functions under this Act of licensing officers.

[Section 92 amended: No. 55 of 2004 s. 900; No. 77 of 2006 s. 17.]

93. Orders to enable redemption of goods where licence revoked etc.

(1) If a person who has pawned goods to a pawnbroker is unable to redeem the goods because the pawnbroker's licence has been subsequently suspended, revoked or not renewed, the State Administrative Tribunal may, on the application of any person, make such orders as it thinks fit in relation to conducting business at the premises for the purpose of redeeming the goods.

(2) Nothing in subsection (1) affects any power of a licensing officer or the State Administrative Tribunal in relation to licences.

(3) A person must not, without reasonable excuse, refuse or fail to comply with an order under this section.

Penalty: In the case of an individual, $5 000 and 12 months' imprisonment or, in the case of a body corporate, $20 000.

[Section 93 amended: No. 55 of 2004 s. 901.]

94. Service

(1) Where under this Act, a document is required to be served on a licensee other than by way of personal service, service of the document is to be treated as —

(a) being effected by properly addressing and posting (by pre-paid post) the document as a letter to the address of the licensee's business premises; and

(b) unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.

(2) Nothing in this Act is to be taken as affecting the provisions of the *Interpretation Act 1984* relating to service of documents.

95. Secrecy

(1) Except as provided in this section, a person must not directly or indirectly record, use or divulge any information obtained by reason of any function that person has, or at any time had, in the administration of this Act or an Act repealed by section 99(1).

Penalty: $5 000.

(2) Subsection (1) does not apply to the recording, use or divulging of information —

(a) in the course of duty;

(b) under this Act or another law;

(c) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence; or

(d) with the consent of the person to whom the information relates, or each of them if there be more than one.

(3) Subsection (1) does not apply to the recording, use or divulging of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

96. Protection from liability

The Commissioner, a member of the Police Force or an officer of the Department is not liable in civil or criminal proceedings for anything done or omitted to be done, in good faith, in the performance or purported performance of a function under this Act.

97. Evidentiary provisions

In all courts and before all persons and bodies authorised to receive evidence —

(a) goods are to be treated as being in the possession of a pawnbroker or second-hand dealer if the goods are in

any place that is occupied by, or under the control of, the pawnbroker or dealer;

(b) in the absence of evidence to the contrary —

(i) a certificate purporting to be issued by the Commissioner or the Commissioner's delegate and stating that a licence is or is not held by or on behalf of any person, the conditions or restrictions to which a licence is subject, or the premises to which a licence applies, on any day or days or during any period mentioned in the certificate, is evidence of the matters so stated; and

(ii) proof is not required of any delegation under this Act or of the appointment, or terms of appointment, of any licensing officer under this Act;

and

(c) judicial notice is to be taken, for the purposes of this Act, of the fact that a person is the Commissioner and of the signature of the Commissioner or the Commissioner's delegate on a certificate purporting to be issued under paragraph (b).

98. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

[(2) deleted]

[Section 98 amended: No. 46 of 2006 s. 22.]

*[**99.** Omitted under the Reprints Act 1984 s. 7(4)(f).]*

*[**100.** Omitted under the Reprints Act 1984 s. 7(4)(e).]*

[Schedules 1 and 2 omitted under the Reprints Act 1984 s. 7(4)(e).]

Notes

This is a compilation of the *Pawnbrokers and Second-hand Dealers Act 1994* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
Pawnbrokers and Second-hand Dealers Act 1994	88 of 1994	5 Jan 1995	s. 1 and 2: 5 Jan 1995; Act other than s. 1 and 2: 1 Apr 1996 (see s. 2 and *Gazette* 29 Mar 1996 p. 1495)
Sentencing (Consequential Provisions) Act 1995 Pt. 61	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2(1) and *Gazette* 25 Oct 1996 p. 5632)
Local Government (Consequential Amendments) Act 1996 s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Corporations (Consequential Amendments) Act 2001 s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and *Gazette* 29 Jun 2001 p. 3257 and Cwlth *Gazette* 13 Jul 2001 No. S285)
Motor Vehicle Dealers Amendment Act 2002 s. 71	4 of 2002	4 Jun 2002	1 Sep 2002 (see s. 2 and *Gazette* 13 Aug 2002 p. 4151)
Reprint of the *Pawnbrokers and Second-hand Dealers Act 1994* as at 6 Dec 2002 (includes amendments listed above)			
Courts Legislation Amendment and Repeal Act 2004 s. 141 [4]	59 of 2004 (as amended by No. 2 of 2008 s. 77(11) and (13))	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 94 [2, 3]	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))

Short title	Number and year	Assent	Commencement
Pawnbrokers and Second-hand Dealers Amendment Act 2006	46 of 2006	4 Oct 2006	s. 1 and 2: 4 Oct 2006; Act other than s. 1 and 2: 1 May 2007 (see s. 2 and *Gazette* 30 Apr 2007 p. 1833)
Financial Legislation Amendment and Repeal Act 2006 s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137)
Reprint 2: The *Pawnbrokers and Second-hand Dealers Act 1994* as at 15 Jun 2007 (includes amendments listed above)			
Acts Amendment (Justice) Act 2008 s. 130	5 of 2008	31 Mar 2008	30 Sep 2008 (see s. 2(d) and *Gazette* 11 Jul 2008 p. 3253)
Directors' Liability Reform Act 2023 Pt. 3 Div. 44	9 of 2023	4 Apr 2023	5 Apr 2023 (see s. 2(j))
Firearms Act 2024 Pt. 17 Div. 3 Subdiv. 13	23 of 2024	27 Jun 2024	31 Mar 2025 (see s. 2(d) and SL 2024/289 cl. 2)

Other notes

[1] The provision in this Act repealing these Acts has been omitted under the *Reprints Act 1984* s. 7(4)(f).

[2] The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

[3] The *State Administrative Tribunal Regulations 2004* r. 59 reads as follows:

"

59. *Pawnbrokers and Second-hand Dealers Act 1994*

(1) In this regulation —

commencement day means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 94 comes into operation.

(2) On or after the commencement day a clerk of a court of petty sessions is to cause to be sent to the executive officer of the State Administrative Tribunal all records under the control of the clerk relating to proceedings under the *Pawnbrokers and Second-hand Dealers Act 1994* Part 2 Division 3.

".

[4] The *Courts Legislation Amendment and Repeal Act 2004* Sch. 1 cl. 116 (to amend s. 93(1)) and Sch. 2 cl. 37 were repealed by the *Criminal Law and Evidence Amendment Act 2008* s. 77(11) and (13).

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
approved	3(1)
authorised person	90(1)
business premises	3(1)
Commissioner	3(1)
Department	3(1)
licence	3(1)
licensee	3(1)
officer	3(1)
pawn ticket	3(1), 49
pawnbroker	3(1), 3A(1), 73(1)
pawned	3A(2)
redemption period	3(1)
second-hand dealer	3(1)
second-hand goods	3(1)
storage premises	3(1)
Tribunal	73(1)

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