

Western Australia

**Pawnbrokers and Second-hand Dealers  
Amendment Act 2006**

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As at 04 Oct 2006

No. 46 of 2006

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## **Pawnbrokers and Second-hand Dealers Amendment Act 2006**

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Western Australia

## **Pawnbrokers and Second-hand Dealers Amendment Act 2006**

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**No. 46 of 2006**

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***An Act to amend the *Pawnbrokers and Second-hand Dealers Act 1994*, and for related purposes.***

*[Assented to 4 October 2006]*

The Parliament of Western Australia enacts as follows:

**s. 1**

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**1. Short title**

This is the *Pawnbrokers and Second-hand Dealers Amendment Act 2006*.

**2. Commencement**

This Act comes into operation on a day fixed by proclamation.

**3. The Act amended**

Except as stated in section 23, the amendments in this Act are to the *Pawnbrokers and Second-hand Dealers Act 1994*\*.

[\* *Reprinted as at 6 December 2002.*

*For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 327.]*

**4. Section 3 amended**

Section 3(1) is amended by deleting the definition of “pawnbroker” and inserting instead —

“

“**pawnbroker**” has the meaning given by section 3A;

”.

**5. Section 3A inserted**

After section 3 the following section is inserted —

“

**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.

”.

**6. Section 5 replaced**

Section 5 is repealed and the following section is inserted instead —

“

**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.

”.



**7. Section 8A inserted**

After section 8 the following section is inserted —

“

**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.

”.

**8. Section 23 amended**

Section 23(1) is amended by deleting “each” and inserting instead —

“ the ”.

**9. Section 24 amended**

After section 24(3) the following subsections are inserted —

“

- (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.

”.

**10. Section 28 amended**

Section 28(1)(c) is amended by deleting “business” and inserting instead —

“ the business premises and storage ”.

**11. Section 37 amended**

Section 37(1)(b) is amended after “photograph” by inserting —

“ or digital image ”.

**12. Section 37A inserted**

After section 37 the following section is inserted in Part 2 —

“

**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.

”.

**13. Section 39 amended**

Section 39(b) is deleted and the following paragraph is inserted instead —

“

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

”.

**14. Section 41 amended**

Section 41(a) is amended by deleting “contract;” and inserting instead —

“

contract, which is to be the next number in a consecutive sequence;

”.

**15. Section 42 amended**

- (1) Section 42(1) is amended at the foot of the subsection by inserting —

“ Penalty: \$2 000. ”.

- (2) Section 42(3) is amended at the foot of the subsection by deleting the penalty provision.

**16. Section 43 amended**

Section 43(a) is amended by deleting “contract;” and inserting instead —

“

contract, which is to be the next number in a consecutive sequence;

”.

**17. Section 44 amended**

- (1) Section 44(1) is amended at the foot of the subsection by inserting —  
“ Penalty: \$2 000. ”.
- (2) Section 44(2) is amended at the foot of the subsection by deleting the penalty provision.

**18. Section 47 amended**

Section 47(1) is repealed and the following subsection is inserted instead —

“

- (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.

”.

**19. Section 61 amended**

Section 61 is amended by deleting “goods.” and inserting instead —

“

goods except by marking or labelling them as required by section 47(2).

”.

**20. Section 89 amended**

- (1) Section 89(1) is repealed and the following subsections are inserted instead —

“

- (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) After section 89(2) the following subsection is inserted —

“

- (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.

”.

**21. Section 90 amended**

Section 90(2) is amended by deleting “21 days” and inserting instead —

“ 90 days ”.

**22. Section 98 amended**

Section 98(2) is repealed.

**23. Consequential amendment to *Credit (Administration) Act 1984***

- (1) The amendment in this section is to the *Credit (Administration) Act 1984*\*.

[\* *Reprint 2 as at 6 August 2004.*

*For subsequent amendments see 2004 Index to Legislation of Western Australia, Table 1, p. 103.]*

- (2) Section 7(1)(f) is amended after “business” by inserting —  
“ as a pawnbroker ”.

