

WESTERN AUSTRALIA

**PAWNBROKERS AND
SECOND-HAND DEALERS
ACT 1994**

(No. 88 of 1994)

ARRANGEMENT

PART 1 — PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Application
5. Deeming of loan and interest under “buy back” contracts

**PART 2 — LICENSING OF PAWNBROKERS
AND SECOND-HAND DEALERS**

Division 1 — Requirement for licences

6. Pawnbrokers to be licensed
7. Second-hand dealers to be licensed
8. Natural persons only to be licensed
9. Offence of holding out, etc.

*Pawnbrokers and Second-hand Dealers
Act 1994*

Division 2 — Licensing

10. Licensing officers
11. Notice of intention to apply for licence
12. Expedited applications
13. How to apply for issue of licence
14. Documentation in support of application for issue of licence
15. How and when to apply for renewal of licence
16. Documentation in support of application for renewal of licence
17. Offences in relation to licence applications
18. Objections to issue or renewal of licences
19. Issue of licences
20. Renewal of licences
21. Issue and renewal of licences held on behalf of partnerships and bodies corporate
22. Declining issue or renewal of licence
23. Form of licences
24. Conditions and restrictions
25. Not transferable
26. Duration of licences
27. Suspension, revocation of licences and disqualification
28. Commissioner to keep register of licences

Division 3 — Court's functions in relation to licensing

29. Definition
30. Appeal
31. Regulations for appeal procedure
32. Returns by clerks of Courts
33. Effect of charges pending on Court hearings

***Division 4 — Powers of courts generally
in relation to licences***

34. Courts may suspend, revoke licence or disqualify person upon conviction
35. Returns by courts

*Pawnbrokers and Second-hand Dealers
Act 1994*

Division 5 — Other requirements in relation to licences

- 36. Sign to be displayed
- 37. Certain employee records to be kept, provided to police

**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
- 39. Identification of persons
- 40. Offences in relation to false information
- 41. Records to be made by pawnbrokers
- 42. Pawn tickets
- 43. Records to be made by second-hand dealers
- 44. Records to be provided by second-hand dealers
- 45. Keeping of records
- 46. Tampering with records
- 47. Goods to carry contract number
- 48. Pawn ticket "lost" or "stolen"

Division 2 — Redemption and sale of goods

- 49. Interpretation
- 50. When goods may be redeemed
- 51. Where pawned goods to be kept
- 52. When goods to be redeemed
- 53. When goods not to be redeemed
- 54. Redemption only to holder of pawn ticket
- 55. Sale of unredeemed goods
- 56. Unredeemed goods not to be bought by or on behalf of pawnbroker
- 57. Application of proceeds of sale
- 58. Records to be made on sale of unredeemed goods
- 59. Notice as to surplus
- 60. Payment of surplus on demand

*Pawnbrokers and Second-hand Dealers
Act 1994*

Division 3 — Retention of second-hand goods

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

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

- 63. Pawnbroker not to charge establishment fee
- 64. Re-pledging of goods prohibited
- 65. No contracting out of liability for loss or damage
- 66. Buyer may be compensated
- 67. Certain rights etc. saved
- 68. Reopening pawnbroking contracts
- 69. Civil consequences of breach of section 6
- 70. Civil consequences of breach of section 42
- 71. Criminal liability
- 72. Breach does not otherwise vitiate contract
- 73. Relief from sections 69 and 70

PART 4 — ENFORCEMENT

- 74. Entry to and inspection of licensed premises without warrant
- 75. Assistance in the location of goods at licensed premises
- 76. Provision of, and assistance in relation to, records etc.
- 77. Police may seize records for certain purposes
- 78. Police to be informed in certain circumstances
- 79. Information about goods to be given to Commissioner in accordance with regulations
- 80. Notice to stop dealing
- 81. Seizure of goods suspected stolen
- 82. Name and address
- 83. Power of pawnbrokers, dealers etc. to arrest
- 84. Offence of hindering police
- 85. Summary orders where goods stolen, pawned etc.
- 86. Summary orders where competing claims to goods
- 87. Procedure for sections 85 and 86
- 88. Licensee's liability for employees, agents
- 89. Liability of partners, bodies corporate and officers
- 90. Infringement notices

*Pawnbrokers and Second-hand Dealers
Act 1994*

PART 5 — MISCELLANEOUS

- 91. Delegation by Commissioner
- 92. *Financial Administration and Audit Act 1985*
- 93. Orders to enable redemption of goods where licence revoked etc.
- 94. Service
- 95. Secrecy
- 96. Protection from liability
- 97. Evidentiary provisions
- 98. Regulations
- 99. Repeals, savings and transitional
- 100. Consequential amendments

SCHEDULE 1

SAVINGS AND TRANSITIONAL

- 1. Interpretation
- 2. Contracts existing at commencement
- 3. Licences under repealed Acts to continue until expiry etc.
- 4. Licensees under repealed Acts deemed to be licensees under this Act

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS

**PAWNBROKERS AND
SECOND-HAND DEALERS
ACT 1994**

No. 88 of 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;*
- *Second-hand Dealers Act 1906; and*
- *Marine Stores Act 1902,*

and for related purposes.

[Assented to 5 January 1995.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY**Short title**

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

Commencement

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

Interpretation

3. (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” means a person conducting the business of —

- (a) lending money on the security of pawned goods;
or
- (b) receiving goods under a contract for sale where the seller has a right to buy back the goods;

“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.

Application

4. (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;
- (b) a dealer within the meaning of the *Firearms Act 1973* who is acting in accordance with a licence issued in relation to that dealer under that Act; or
- (c) a holder of a licence issued under the *Motor Vehicle Dealers Act 1973* who is acting in accordance with the licence.

(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.

Deeming of loan and interest under “buy back” contracts

5. In the case of a pawnbroker receiving goods under a contract for sale where the seller has a right to buy back the goods, then for the purposes of this Act —

- (a) the price at which the goods are to be sold under the contract is to be taken to be the amount lent; and
- (b) the difference between the amount lent and the price at which the goods may be bought back is to be taken to be the interest payable.

**PART 2 — LICENSING OF PAWNBROKERS AND
SECOND-HAND DEALERS**

Division 1 — Requirement for licences

Pawnbrokers to be licensed

6. 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.

Second-hand dealers to be licensed

7. 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.

Natural persons only to be licensed

8. (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.

Offence of holding out, etc.

9. (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

Licensing officers

10. 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.

Notice of intention to apply for licence

11. (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.

Expedited applications

12. (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.

How to apply for issue of licence

13. 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.

Documentation in support of application for issue of licence

14. 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 council of the local government 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 authorized 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.

How and when to apply for renewal of licence

15. (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.

Documentation in support of application for renewal of licence

16. 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.

Offences in relation to licence applications

17. 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.

Objections to issue or renewal of licences

18. (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.

Issue of licences

19. 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 Law; or
 - (ii) subject to a type of external administration referred to in Chapter 5 of the Corporations Law;
- (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.

Renewal of licences

20. 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 under section 30 are pending.

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

21. 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.

Declining issue or renewal of licence

22. (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.

(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.

Form of licences

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

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

Conditions and restrictions

24. (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.

Not transferable

25. A licence is not transferable.

Duration of licences

26. 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.

Suspension, revocation of licences and disqualification

27. (1) Subject to this section, a licensing officer may —

- (a) suspend a licence for such period as the officer 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 officer thinks fit or permanently.

(2) A licensing officer may exercise a power referred to in subsection (1) —

- (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) A suspension or revocation of, or disqualification in relation to, a licence is not effective unless a licensing officer —

- (a) has caused written notice of the intention to suspend, revoke, or disqualify to be served on the licensee, stating the grounds on which the suspension, revocation or disqualification is intended to be made and allowing the licensee 21 days within which to respond to the notice;
- (b) has had due regard to any response to the notice made within that time; and
- (c) has caused written notice of the decision to suspend, revoke or disqualify to be served on the licensee at least 14 days before the decision is to take effect, stating the grounds on which the decision has been made.

(4) A person who has received notice under subsection (3) (c) must comply with any directions of a licensing officer in relation to delivering up the licence.

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.

Commissioner to keep register of licences

28. (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 business 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).

Division 3 — Court's functions in relation to licensing

Definition

29. In this Division, “**Court**” means a court of petty sessions.

Appeal

30. (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 appeal to a Court within 14 days after receiving notice of the decision.

(2) The licensing officer is entitled to be a party to the appeal and be represented at the hearing of the appeal by a member of the police force or an officer of the Department.

(3) A Court may determine an appeal on the material that was before the licensing officer or on such additional or fresh evidence, either oral or by affidavit as the Court may allow.

(4) On an appeal the Court may —

- (a) confirm, vary, or reverse the decision of the licensing officer;
- (b) remit the matter to the, or another, licensing officer, with or without directions; and
- (c) make any further order, including an order as to costs or that a licence be delivered up to the Court,

as the Court thinks fit and effect is to be given to an order under this section.

(5) If an appeal is instituted under this section in relation to a decision of a licensing officer, the decision is to continue to have effect pending the appeal unless the Court otherwise orders.

Regulations for appeal procedure

31. The Governor may make regulations —

- (a) for the purpose of regulating the practice and procedure of the Court; and
- (b) in respect of fees to be taken by the Court and costs,

in relation to appeals under section 30.

Returns by clerks of Courts

32. (1) The clerk of a Court is to give to the Commissioner such information from the records under the clerk's control as the Commissioner certifies in writing is required for the purposes of this Act.

(2) On the determination of an appeal under this Division the clerk of the Court is to send to the Commissioner a copy of any order in relation to the determination and where relevant, any licence that has been delivered up to the Court.

Effect of charges pending on Court hearings

33. Where —

- (a) an appeal has been made to the Court under this Division; 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 appeal,

the Court may adjourn the hearing of the matter until the charge has been determined.

Division 4 — Powers of courts generally in relation to licences

Courts may suspend, revoke licence or disqualify person upon conviction

34. (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) impose 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.

Returns by courts

35. Where a court has made an order under section 34 in relation to the suspension or revocation of, or disqualification 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.

Division 5 — Other requirements in relation to licences

Sign to be displayed

36. 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.

Certain employee records to be kept, provided to police

37. (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 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.

No. 88] *Pawnbrokers and Second-hand Dealers*
 Act 1994

(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.

**PART 3 — CONTRACTS WITH PAWNBROKERS AND
SECOND-HAND DEALERS**

***Division 1 — Duties of pawnbrokers and second-hand
dealers***

Persons under 18 or affected by alcohol or drugs

38. 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.

Identification of persons

39. 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 way of —
 - (i) the person's passport where the passport is either current or has not been expired for more than 24 months;
 - (ii) the person's current motor driver's licence but only if it bears a photograph of the person;

(iii) a proof of identity and age card issued by the Department to the person; or

(iv) prescribed means.

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

Penalty for a body corporate: \$20 000.

Offences in relation to false information

40. 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.

Records to be made by pawnbrokers

41. 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;

(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.

Pawn tickets

42. (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.

(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).

Penalty: \$2 000.

Records to be made by second-hand dealers

43. 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;
- (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.

Records to be provided by second-hand dealers

44. (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.

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

Penalty: \$2 000.

Keeping of records

45. (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.

Tampering with records

46. 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.

Goods to carry contract number

47. (1) A pawnbroker must ensure that all pawned goods are marked or labelled with the distinguishing number of the contract under which the goods were pawned.

(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.

Pawn ticket “lost” or “stolen”

48. (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

Interpretation

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

When goods may be redeemed

50. (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.

Where pawned goods to be kept

51. 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.

When goods to be redeemed

52. 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.

When goods not to be redeemed

53. (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.

Redemption only to holder of pawn ticket

54. 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.

Sale of unredeemed goods

55. (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.

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

56. (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.

Application of proceeds of sale

57. 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.

Records to be made on sale of unredeemed goods

58. (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.

Notice as to surplus

59. (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.

Payment of surplus on demand

60. 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

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

61. 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.

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

Penalty for a body corporate: \$20 000.

Where second-hand goods to be kept

62. 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***

Pawnbroker not to charge establishment fee

63. (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.

Re-pledging of goods prohibited

64. 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.

No contracting out of liability for loss or damage

65. 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.

Buyer may be compensated

66. 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.

Certain rights etc. saved

67. 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.

Reopening pawnbroking contracts

68. 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.

Civil consequences of breach of section 6

69. 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.

Civil consequences of breach of section 42

70. (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.

Criminal liability

71. (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.

Breach does not otherwise vitiate contract

72. 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.

Relief from sections 69 and 70

73. (1) In this section —

“Tribunal” means the Commercial Tribunal of Western Australia established under the *Commercial Tribunal Act 1984*;

“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.

(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.

(6) An amount payable to a person under an order of the Tribunal under this section is recoverable in a court of competent jurisdiction as a debt.

PART 4 — ENFORCEMENT

Entry to and inspection of licensed premises without warrant

74. (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.

Assistance in the location of goods at licensed premises

75. (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.

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

76. (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.

Police may seize records for certain purposes

77. (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.

Police to be informed in certain circumstances

78. 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.

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

79. 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.

Notice to stop dealing

80. (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.

Seizure of goods suspected stolen

81. (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.

Name and address

82. (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.

Power of pawnbrokers, dealers etc. to arrest

83. (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) Section 6 (2) of the *Bail Act 1982* applies to an arrest under this section.

Offence of hindering police

84. 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.

Summary orders where goods stolen, pawned etc.

85. (1) Where a person makes a complaint to a justice 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 justice may issue a warrant or summons for the production of the goods and the appearance of the pawnbroker or dealer before a court of petty sessions.

(2) A court of petty sessions 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 a court of petty sessions,

a court of petty sessions 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.

Summary orders where competing claims to goods

86. (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 a court of petty sessions for an order under this section.

(2) A court of petty sessions 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.

Procedure for sections 85 and 86

87. (1) The *Justices Act 1902* applies to a complaint under section 85 and to an application under section 86 and to orders made under those sections as if they were respectively a

complaint and an order under that Act except that any order for the payment of money, including costs, is recoverable as a debt in a court of competent jurisdiction.

(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.

Licensee's liability for employees, agents

88. (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.

Liability of partners, bodies corporate and officers

89. (1) Where a licence is held on behalf of a partnership or body corporate and the licensee or an employee or agent of the partnership or body commits an offence against this Act —

- (a) subject to subsection (2), each of the partners; or
- (b) the body corporate,

as the case may be, 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 partnership or body.

(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.

(3) Where a body corporate is treated as having committed an offence against this Act, each of the body's officers may be treated as having committed the offence unless the officer proves that —

- (a) the offence was committed without the officer's consent or connivance; and
- (b) the officer 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 officer's functions and to all the circumstances.

(4) The reference in subsection (2) to a partner does not include a reference to a partner who is also the licensee and the defence available to an officer under subsection (3) is not available to an officer who is also the licensee.

Infringement notices

90. (1) A reference in subsection (3), (5) or (7) to an **“authorized person”** is a reference to a person appointed under subsection (11) to be an authorized 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 21 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 have a complaint of the alleged offence heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorized person within a period of 28 days after the giving of the notice; and

- (c) inform the alleged offender as to who are authorized 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 authorized 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 authorized 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 penalty imposed summarily under the *Justices Act 1902*.

(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 authorized 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 authorized person for the purposes of any of those subsections in relation to that notice.

PART 5 — MISCELLANEOUS

Delegation by Commissioner

91. 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.

Financial Administration and Audit Act 1985

92. The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of departments apply to and in respect of the Department and its operations under this Act.

Orders to enable redemption of goods where licence revoked etc.

93. (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, a court of petty sessions may, on the application of any person, make such orders as the court 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 a court 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.

Service

94. (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.

Secrecy

95. (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.

Protection from liability

96. 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.

Evidentiary provisions

97. In all courts and before all persons and bodies authorized 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).

Regulations

98. (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) Without limiting subsection (1), regulations may be made providing for fees to be charged in relation to issuing proof of identity and age cards for the purposes of section 39.

Repeals, savings and transitional

99. (1) The *Pawnbrokers Act 1860*, the *Second-hand Dealers Act 1906* and the *Marine Stores Act 1902* are repealed.

(2) Schedule 1 has effect in relation to the repeals effected by subsection (1).

Consequential amendments

100. The Acts referred to in the first column of Schedule 2 are amended in the manner set out in the second column of that Schedule.

SCHEDULE 1

[Section 99 (2)]

SAVINGS AND TRANSITIONAL

Interpretation

1. (1) In this Schedule —

- (a) “**commencement**” means the commencement of this Act;
and
- (b) a reference to a repealed Act is a reference to the *Pawnbrokers Act 1860*, the *Second-hand Dealers Act 1906* or the *Marine Stores Act 1902*.

(2) The provisions of this Schedule do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeal effected by section 99 (1).

Contracts existing at commencement

2. Where a licence was required under a repealed Act to enter into a contract, a contract that was entered into before commencement is not affected by this Act and the repealed Act continues to apply to the contract as if the repealed Act had not been repealed.

Licences under repealed Acts to continue until expiry etc.

3. (1) Where a licence issued under a repealed Act is effective immediately before commencement, the licence is not affected by this Act and continues to have effect until the licence expires or is otherwise made ineffective, as if the repealed Act had not been repealed.

(2) This clause does not apply to collector’s licences under the *Marine Stores Act 1902*.

Licensees under repealed Acts deemed to be licensees under this Act

4. A person who is the holder of a licence to which clause 3 applies is to be treated —

- (a) where the licence had been issued under the *Pawnbrokers Act 1860*, as the holder of a pawnbroker’s licence under this Act; or
- (b) where the licence had been issued under the *Second-hand Dealers Act 1906* or had been issued as a dealer’s licence under the *Marine Stores Act 1902*, as the holder of a second-hand dealer’s licence under this Act.

SCHEDULE 2

[Section 100]

CONSEQUENTIAL AMENDMENTS

1. *Credit
(Administration)
Act 1984*

Section 7 (1) (f) is deleted and the following paragraph is substituted —

“ (f) a person conducting business under a pawnbroker's licence held by or on behalf of the person under the *Pawnbrokers and Second-hand Dealers Act 1994*; ”.
2. *Disposal of
Uncollected Goods
Act 1970*

The Schedule is amended by deleting the item relating to the *Pawnbrokers Act 1860* and substituting under the heading “Title of Act” the following —

“ *Pawnbrokers and Second-hand Dealers Act 1994*. ”.
3. *Health Act 1911*

Section 3 (1) is amended by deleting the definition of “Marine store”.

Section 199 (16) is amended by deleting “marine stores” and substituting the following —

“ premises of a type prescribed by regulation ”.
4. *Justices Act 1902*

The Eighth Schedule is amended by deleting the item relating to the *Pawnbrokers Ordinance 1860* and substituting the following item in the first column —

“ *Pawnbrokers and Second-hand Dealers Act 1994* — sections 85 and 86 ”.

5. *Retail Trading Hours Act 1987* Section 3 (1) is amended in the definition of "prescribed services" by inserting after "pawnbroking" the following —
- " or dealing in second-hand goods under the *Pawnbrokers and Second-hand Dealers Act 1994* ".
6. *Sale of Goods Act 1895* Section 59 (4) is amended by inserting after "security" the following —
- " or under which a pawnbroker receives goods and the seller has a right to buy back the goods ".
7. *Small Claims Tribunal Act 1974* Section 4 (1) is amended in the definition of "services" by inserting after "under" the following —
- " a pawnbroking contract or ".
8. *Travel Agents Act 1985* The Schedule is amended —
- (a) in item 12 by deleting "Pawnbrokers Act 1860." and substituting the following —
- " *Pawnbrokers and Second-hand Dealers Act 1994.* ";
- and
- (b) by deleting item 14.