



Australian Capital Territory

Second-hand Dealers and Collectors Act 1906 No 30

Republication No 3

Republication date: 19 February 2002

Last amendment made by Act 2001 No 70

Amendments incorporated to 30 June 1995

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Second-hand Dealers and Collectors Act 1906* as in force on 19 February 2002. It includes any amendment, repeal or expiry affecting the republished law to 30 June 1995 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
30 June 1995



Australian Capital Territory

Second-hand Dealers and Collectors Act 1906

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Amendments incorporated to
30 June 1995



Australian Capital Territory

Second-hand Dealers and Collectors Act 1906

U An Act to provide for the licensing and regulation of second-hand dealers in and collectors of certain old wares, to regulate the sale of second-hand articles and old wares, and for other purposes

Part 1 Preliminary

U 1 Short title

This Act may be cited as the *Second-hand Dealers and Collectors Act 1906*.

U 2 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

charge means a charge that has not been dealt with by a court, but does not include a charge that has been withdrawn or otherwise not been proceeded with.

collector means any person engaged in collecting old wares of any kind, whether on his or her own behalf or on behalf of an employer, for the purposes of sale or trade, but shall not include a person who buys old wares at a bona fide advertised auction sale conducted by a licensed auctioneer.

convicted includes being discharged under the *Crimes Act 1900*, section 402 or an equivalent provision of a law of the Commonwealth, a State, another Territory or another country, but does not include a reference to a conviction that has been set aside on appeal or review.

court means the Magistrates Court.

licence means licence under this Act.

old wares means partly manufactured metal goods, second-hand anchors, cables, sails, old junk, rags, bones, bottles, syphons, syphon tops, old copper, old iron, old brass, old lead, old Muntz metal, scrap metal, broken metal, defaced metal goods, old wearing apparel, old boots, second-hand furniture, second-hand tools,

second-hand drapery goods, second-hand jewellery, and old stores of every description.

registrar means the registrar of the court.

second-hand dealer means any person, other than a ship chandler or shipowner, who carries on the business of dealing in or buying and selling old wares of any kind, whether such person deals in any other goods or not.

ship chandler means any shopkeeper whose principal business is the sale of cordage, canvas, and other furniture, and general necessities of ships.

truck means truck, handcart, cart, barrow or vehicle of any kind whatsoever.

Part 2 Licences

U 2A Applications for licences

- (1) A person who has attained the age of 18 years may apply to the court for a licence by lodging with the registrar—
 - (a) an application in accordance with a form approved by the registrar; and
 - (b) a copy of the application; and
 - (c) where the applicant is not the holder of a licence—references as to the applicant's character and suitability for holding a licence given by 3 qualified persons.

- (2) In this section:

elector—see the *Electoral Act 1992*.

qualified person means—

- (a) an elector who is a person referred to in the *Statutory Declarations Regulations* (Cwlth), schedule; or
- (b) another person approved by the court.

U 2B Licences

- (1) Upon lodgment of the documents referred to in section 2A (1), the registrar shall—
 - (a) appoint a date for the hearing of the application by the court, being a date not earlier than 21 days after the date on which the application is lodged; and
 - (b) endorse on the copy of the application a notice stating the date so fixed; and
 - (c) return the copy to the applicant.

- (2) The applicant shall, within 24 hours after receiving the copy of the application under subsection (1) (c), lodge it with the commissioner of police.

U 2C Certificates of convictions

- (1) The commissioner shall, not later than 5 days before the date appointed for the hearing of an application for a licence, furnish to the registrar for the use of the court a certificate stating whether, according to the records held by the commissioner, it appears that the applicant has been charged with, or convicted of, any offence against a law of the Territory, the Commonwealth, a State, another Territory or another country.
- (2) The applicant is entitled to inspect a certificate under subsection (1).

U 2D Objections to granting of licences

- (1) Subject to subsection (2), the commissioner of police may, upon the hearing of an application for a licence, object to the granting of the licence on the ground that the applicant is not a fit and proper person to be the holder of a licence.
- (2) The commissioner of police is not entitled to object to the granting of a licence unless, not later than 7 days before the date appointed for the hearing of the application for the licence, he or she—
- (a) lodges with the registrar a notice of objection setting out particulars of the ground of objection; and
 - (b) serves a copy of the notice on the applicant.

U 2E Grant of licences

- (1) Where, on the hearing of an application for a licence, the applicant satisfies the court that he or she is a fit and proper person to be the holder of a licence, the court may direct the registrar to issue a licence to the applicant and the registrar shall issue a licence to the applicant in accordance with—

- (a) in the case of a second-hand dealer's licence—the form in Schedule 1; and
 - (b) in the case of a collector's licence—the form in Schedule 6.
- (2) For the purpose of determining whether an applicant for a licence is a fit and proper person to hold the licence, the court may have regard to whether he or she—
- (a) has been convicted of, or is subject to, a charge in relation to an offence—
 - (i) that involves fraud or dishonesty; or
 - (ii) against this Act or a corresponding law; or
 - (b) has been refused a licence under this Act or a corresponding law.
- (3) The court may, on the hearing of an application for a licence, request the commissioner of police to make such further inquiries as the court thinks fit and may adjourn the hearing to enable the commissioner to make the inquiries and furnish the report.
- (4) Where the granting of a licence to an applicant who is already the holder of a licence is not objected to, the application may be determined in chambers.
- (5) In this section:
- corresponding law* means a law of a State, another Territory or another country that deals with the licensing or conduct of second-hand dealers or collectors.

U 2F Duration of licences

Subject to this Act, a licence is in force for 1 year from the day on which it is issued.

Part 3 Second-hand dealers

U 3 **Dealers must be licensed**

Any person who carries on business as a second-hand dealer without being licensed so to do shall be guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

U 8 **Duties of dealers**

If any licensed second-hand dealer, without reasonable excuse, fails to—

- (a) cause to be painted and kept painted, his or her name in full, and the words ‘licensed dealer in old wares’ upon some conspicuous part of the outside of the premises in respect of which his or her licence is granted in letters not less than 10cm high; or
- (b) enter in a book, in the form in Schedule 2, the name of every person to whom he or she shall lend or let on hire, whether gratuitously or otherwise, any truck, and the date when and the period for which such truck was lent or let on hire, and the amount (if any) charged for such lending or hire; or
- (c) keep a book, in the form of Schedule 3, and enter correctly therein all particulars mentioned in that schedule; or
- (d) keep a book, in the form of Schedule 4, and enter correctly therein all particulars mentioned in that schedule; or
- (e) produce to any police officer, whenever requested, the book or books by this Act required to be kept by him or her, and any old wares purchased or received by him or her then in his or her possession; or

- (f) keep all old wares purchased or received by him or her, excepting old wares purchased from a licensed auctioneer, without changing the form in which they were when so purchased or received, and without disposing of the same in any way for a period of 5 days after such wares have been purchased or received; or
- (g) keep all old wares purchased or received by him or her from a licensed collector, other than bottles, separate and distinct from old wares purchased or received from any other person, and labelled with the name of the licensed collector from whom they were purchased or received, for a period of 5 days after the old wares were so purchased or received;

the dealer commits an offence.

Maximum penalty: 20 penalty units.

U 8A Goods suspected of being stolen, embezzled or fraudulently obtained

A person shall as soon as is reasonably practicable give notice to a police officer if an article comes into the person's possession which answers the description of an article described to the person by any police officer, whether orally or by notice in writing, as having been stolen, embezzled or fraudulently obtained.

Maximum penalty: 50 penalty units.

U 9 Goods suspected of being stolen or fraudulently obtained

U 9 Dealers—carrying on business

- (1) A licensed second-hand dealer shall not carry on the business of a second-hand dealer on premises other than those specified in the licence.
- (2) A licensed second-hand dealer shall not, without reasonable excuse, fail to produce his or her licence on demand made by a police officer at any time on the premises specified in the licence.

- (3) A licensed second-hand dealer shall not purchase or receive old wares from any person who is or is reasonably believed by the dealer to be under the age of 14 years.
- (4) A licensed second-hand dealer shall not carry on business before 7 am.
- (5) A person who contravenes this section commits an offence.

Maximum penalty:

- (a) for subsection (1)—50 penalty units; or
- (b) for subsections (2) to (4)—5 penalty units.

Part 4 Collectors

U 11 Collector's address

If any collector, without reasonable excuse, fails to—

- (a) whenever and so often as he or she changes his or her place of abode, notify by writing signed by him or her, such change to the commissioner of police within 7 days after having so changed his or her abode; or
- (b) at any time, upon demand, produce his or her licence to any police officer, or to any person from whom he or she has within 24 hours previously bought or offered to buy, or collected or offered to collect, any old wares; or
- (c) unless he or she shall sooner sell the same to a licensed dealer, keep all old wares other than bottles purchased or received by him or her, or old wares purchased from a licensed auctioneer, in the same state and condition as they were in when so purchased or received for 4 days at least next after such purchase or receipt, or, if he or she sell the same within that period, deliver the same to the licensed dealer purchasing the same in the same state and condition as when purchased or received;

the collector commits an offence.

Maximum penalty:

- (a) for paragraph (a) or (b)—5 penalty units; or
- (b) for paragraph (c)—50 penalty units.

U 12 Licence not to be hired or lent

A collector shall not hire or lend his or her licence to another person with the intention of enabling that person to carry on the business of collector.

Maximum penalty: 30 penalty units.

U 12A Hours of business

A person shall not, before 7 am or after 6 pm, buy, sell or carry on the business of collecting old wares.

Maximum penalty: 5 penalty units.

U 13 Collectors to be licensed

- (1) A person who is not licensed shall not act as a collector.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person shall not act as a collector under a licence issued in a false name.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) A person shall not hire or borrow a licence which has been issued to another person.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Part 5 Miscellaneous

U 14 Ceasing to be licensed

Every person ceases to be licensed on the expiration, cancellation, or forfeiture of his or her licence.

U 15 Evidentiary certificates

- (1) The registrar of the Magistrates Court may issue a certificate stating whether a specified person was or was not on a specified date or during a specified period the holder of a licence.
- (2) A certificate issued under subsection (1) is evidence of the facts stated in the certificate.

U 18 Licences may be revoked

The court may, upon application made by any person claiming that any licensed person has been guilty of any violation of any of the provisions of this Act, or of any regulations, or that such person is in any other respect unfit to hold any licence, cancel such licence.

U 19 Register to be kept

The registrar of the court shall enter particulars of any licence granted or cancelled in a register to be kept in the office of the court, and shall send copies of such entries to the commissioner of police.

Schedule 2 Entry of trucks, handcarts, carts, or vehicles lent or let out on hire

(see s 8 (b))

Second-hand Dealers and Collectors Act 1906

Name of collector to whom truck etc lent or let on hire	Date on which truck etc lent or let on hire	Whether on hire or gratuitously: and if on hire, at what price	Period for which truck etc is lent or let or hire	No on trucks etc lent or let on hire
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Schedule 3 Entry of purchases and receipts

(see s 8 (c))

Second-hand Dealers and Collectors Act 1906

Day of purchase or receipt, and hour of day	Description of old wares purchased or received	Name and surname of person by or through whom purchased or received	Name and surname of person from whom purchased or received	Business and place of abode of person from whom purchased or received
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Schedule 4 Entry of sales and dispositions

(see s 8 (d))

Second-hand Dealers and Collectors Act 1906

Day of sale	Description of old wares sold or disposed of	Name and surname of person by or through whom sold or disposed of	Name and surname of person to whom sold or disposed of	Business and place of abode of person to whom sold or disposed of
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Schedule 6 Collector's licence

(see s 2E (1))

Second-hand Dealers and Collectors Act 1906

A.B., of [*address and description*], is authorised and empowered to act as a collector, and to carry on the business of collecting old wares within all parts of the Australian Capital Territory; and this licence shall (unless the same be sooner cancelled or forfeited) be and continue in force for 1 year from the date thereof.

Granted at _____, this _____ day of _____,
20 _____.

Registered No. (L.S.)

(Signed)

Registrar of the Magistrates Court

This licence is not to be let on hire or lent to any person.

The collector, if he or she changes his or her abode, must report his or her new place of abode to the commissioner of police.

Specially notice—This licence is subject to cancellation or forfeiture if the collector be guilty of any breach of the Act or any regulation, or of any improper conduct whatever.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
num = numbered	sdiv = subdivision
No = number	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced

3 Legislation history

This Act was originally a NSW Act—the *Second-hand Dealers and Collectors Act 1906* No 30 (NSW).

This Act was in force in NSW immediately before 1 January 1911 (the date of establishment of the ACT) and was continued in force by the *Seat of Government Acceptance Act 1909* (Cwlth), s 6.

Under the *Seat of Government (Administration) Act 1910* (Cwlth), s 4, the Act had effect in the ACT as if it were an ACT law (subject to ordinances made under the *Seat of Government (Administration) Act 1910*).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) converted certain former NSW laws in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on Self-Government (11 May 1989).

Under the *Interpretation Act 1967*, s 63 (all former NSW Acts in force in the ACT immediately before 10 November 1999 became, for all purposes, laws made by the ACT Legislative Assembly. This completed the process of making former NSW laws fully into ACT laws.

NSW legislation

Second-hand Dealers Act 1906 No 30

assented to 12 December 1906
commenced 1 January 1907

Commonwealth legislation

New South Wales Application Ordinance 1985 No 25

notified 28 June 1985
commenced 28 June 1985
disallowed by Senate 28 November 1985

Magistrates Court Ordinance 1985 No 67

notified 19 December 1985
commenced 1 February 1986 (Gaz 1986 No G3)

New South Wales Acts Ordinance 1986 No 91

notified 12 January 1987
commenced 12 January 1987

Endnotes

3 Legislation history

Legislation after becoming Territory enactment

Second-hand Dealers and Collectors (Amendment) Act 1990 No 34

notified 30 October 1990 (Gaz 1990 No S72)
ss 1-3 commenced 30 October 1990 (s 2 (1))
remainder commenced 1 December 1990 (s 2 (2) and Gaz 1990 No 46)

Magistrates and Coroner's Courts (Registrar) Act 1991 No 44 s 9

notified 20 September 1991 (Gaz 1991 No S95)
s 1, s 2 commenced 20 September 1991 (s 2 (1))
s 9 commenced 25 September 1991 (s 2 (2) and Gaz 1991 No S103)

Statute Law Revision (Penalties) Act 1994 No 81 sch

notified 29 November 1994 (Gaz 1994 No S253)
s 1, s 2 commenced 29 November 1994 (s 2 (1))
sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

Second-hand Dealers and Collectors (Amendment) Act 1995 No 16

notified 30 June 1995 (Gaz 1995 No S135)
commenced 30 June 1995 (s 2)

Legislation (Consequential Amendments) Act 2001 No 44 pt 362

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (s 10B)
amdt 1.3885 commences on the commencement of s 3 of this Act or immediately after the commencement of the provision of the Justice and Community Safety Legislation Amendment Act 2001 that inserts new pt 4 into the Second-hand Dealers and Collectors Act 1906, whichever is later
remainder pt 362 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

Justice and Community Safety Legislation Amendment Act 2001 No 70 sch 1

notified LR 14 September 2001
s 1, s 2 commenced 14 September 2001 (LA s 75)
amds awaiting commencement (s 2 (1))

Note Default commencement of Justice and Community Safety Legislation Amendment Act 2001 under LA s 79: 14 March 2002

4 Amendment history

The *New South Wales Acts Act 1986*, schedule 2, part 6 sets out the text of this Act in an amended form and provided for the amended form to apply as the text of the Act in force in the ACT. This endnote, therefore, only details amendments made after that date.

Title

title [sub 2001 No 70 amdt 1.175](#)

Preliminary

pt 1 hdg om 1995 No 16 s 7
ins 1995 No 16 s 4

Name of Act

s 1 [sub 2001 No 70 amdt 1.176](#)

Dictionary

s 2 am 1990 No 34 s 4
def **charge** ins 1995 No 16 s 5
def **collector** am 1990 No 34 sch
def **convicted** ins 1995 No 16 s 5
def **registrar** ins 1995 No 16 s 5
[sub 2001 No 70 amdt 1.176](#)

Licences

pt 2 hdg om 1995 No 16 s 9
ins 1995 No 16 s 6

Applications for licences

s 2A ins 1995 No 16 s 6
[om 2001 No 70 amdt 1.177](#)

Licences

s 2B ins 1995 No 16 s 6
[om 2001 No 70 amdt 1.177](#)

Certificates of convictions

s 2C ins 1995 No 16 s 6
[om 2001 No 70 amdt 1.177](#)

Objections to granting of licences

s 2D ins 1995 No 16 s 6
[om 2001 No 70 amdt 1.177](#)

Grant of licences

s 2E ins 1995 No 16 s 6
[om 2001 No 70 amdt 1.177](#)

Duration of licences

s 2F ins 1995 No 16 s 6
[om 2001 No 70 amdt 1.177](#)

Endnotes

4 Amendment history

Second-hand dealers

pt 3 hdg orig pt 3 hdg renum as pt 5 hdg R2 LRA
ins 1995 No 16 s 7

Issue of licences

s 3 am 1990 No 34 s 5; 1994 No 81 sch
sub 2001 No 70 amdt 1.177

Dealers must be licensed

s 4 om 1995 No 16 s 8
ins 2001 No 70 amdt 1.178

Name of dealer etc to be displayed on premises

s 5 am 1990 No 34 sch; 1991 No 44 s 9
om 1995 No 16 s 8
ins 2001 No 70 amdt 1.178

Records of second-hand dealers

s 6 om 1995 No 16 s 8
ins 2001 No 70 amdt 1.178

Inspection of records and goods

s 7 om 1995 No 16 s 8
ins 2001 No 70 amdt 1.178

Keeping of second-hand goods—dealers

s 8 am 1990 No 34 s 6, sch; 1994 No 81 sch
sub 2001 No 70 amdt 1.178

Goods suspected of being stolen, embezzled or fraudulently obtained

s 8A ins 1990 No 34 s 7
am 1994 No 81 sch
om 2001 No 70 amdt 1.178

Goods suspected of being stolen or fraudulently obtained

s 9 orig s 9 renum as s 10
ins 2001 No 70 amdt 1.180

Dealers—carrying on business

s 10 am 1991 No 44 s 9
om 1996 No 16 s 10
(prev s 9) sub 1990 No 34 s 8
am 1994 No 81 sch
am 2001 No 70 amdts 1.181-1.185
renum 2001 No 70 amdt 1.179

Miscellaneous

pt 4 hdg ins 1995 No 16 s 9
pt 4 sub 2001 No 70 amdt 1.186

Working out whether person suitable or unsuitable

s 11 am 1990 No 34 s 9, sch; 1994 No 81 sch
sub 2001 No 70 amdt 1.186

Cancellation and suspension of second-hand dealers licences

s 12 sub 1990 No 34 s 10
am 1994 No 81 sch
sub 2001 No 70 amdt 1.186

Hours of business

s 12A ins 1990 No 34 s 10
am 1994 No 81 sch
om 2001 No 70 amdt 1.186

Records of market promoters

s 13 sub 1990 No 34 s 11
am 1994 No 81 sch
sub 2001 No 70 amdt 1.186

Miscellaneous

pt 5 hdg (prev pt 3 hdg) renum R2 LRA
om 2001 No 70 amdt 1.186

Register of licences

s 14 am 1995 No 16 s 11
sub 2001 No 70 amdt 1.186

Keeping of register

s 15 sub 1990 No 34 s 12
am 1991 No 44 s 9
sub 2001 No 70 amdt 1.186

False or misleading information

s 16 om 1990 No 34 s 12
ins 2001 No 70 amdt 1.186

Determination of fees and charges

s 17 om 1990 No 34 s 12
ins 2001 No 70 amdt 1.186
sub 2001 No 44 amdt 1.3885

Approved forms

s 18 sub 2001 No 70 amdt 1.186
sub 2001 No 44 amdt 1.3885

Regulation-making power

s 19 am 1991 No 44 s 9; 1995 No 16 s 12
sub 2001 No 70 amdt 1.186
sub 2001 No 44 amdt 1.3885

Regulation-making power

s 20 om 1990 No 34 s 13
ins 2001 No 70 amdt 1.186
om 2001 No 44 amdt 1.3885

s 22 om 1990 No 34 s 13

Endnotes

5 Earlier republications

s 23 om 1990 No 34 s 13

Schedule 1

sch 1 am 1985 No 67; 1990 No 34 sch; 1991 No 44 s 9; 1995 No 16 s 13
om 2001 No 70 amdt 1.187

Schedule 5

sch 5 om 1995 No 16 s 14

Schedule 6

sch 6 am 1985 No 67; 1990 No 34 sch; 1991 No 44 s 9; 1995 No 16 s 15
om 2001 No 70 amdt 1.187

Dictionary

dict ins 2001 No 70 amdt 1.188
def **commissioner** ins 2001 No 70 amdt 1.188
def **executive officer** ins 2001 No 70 amdt 1.188
def **licence** ins 2001 No 70 amdt 1.188
def **licensed auctioneer** ins 2001 No 70 amdt 1.188
def **licensed second-hand dealer** ins 2001 No 70 amdt 1.188
def **second-hand dealer** ins 2001 No 70 amdt 1.188
def **second-hand goods** ins 2001 No 70 amdt 1.188
def **suitable person** ins 2001 No 70 amdt 1.188
def **unsuitable person** ins 2001 No 70 amdt 1.1880

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Republication No	Amendments to	Republication date
1	Act 1991 No 44	30 November 1992
2	Act 1995 No 16	31 January 1998

6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

1 Justice and Community Safety Legislation Amendment Act 2001 No 70**[1.175] Long title**

substitute

An Act to provide for the licensing and regulation of dealers in certain second-hand goods, to regulate the sale of certain second-hand goods, and for other purposes

[1.176] Sections 1 and 2

substitute

1 Name of Act

This Act is the *Second-hand Dealers Act 1906*.

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

[1.177] Sections 2A, 2B, 2C, 2D, 2E and 2F

substitute

3 Issue of licences

- (1) If a person applies to the commissioner for a licence, or for renewal of a licence, the commissioner must issue a licence to the person or renew the licence if—

Endnotes

6 Uncommenced amendments

- (a) the application complies with this Act; and
 - (b) if the person is an individual—the person is 18 years old or older; and
 - (c) the person is a suitable person.
- (2) A licence must specify the premises where the holder of the licence may carry on business as a second-hand dealer.
- (3) A licence may be issued for up to 1 year.

[1.178] Sections 3, 8 and 8A

substitute

4 Dealers must be licensed

A person must not carry on business as a second-hand dealer unless the person is licensed as a second-hand dealer.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

5 Name of dealer etc to be displayed on premises

A licensed second-hand dealer must clearly display on the outside of each place or premises where the dealer carries on business, in letters at least 10cm high—

- (a) his or her full name; and
- (b) the words ‘licensed dealer in second-hand goods’.

Maximum penalty: 20 penalty units.

6 Records of second-hand dealers

- (1) A second-hand dealer must make, in accordance with the regulations, the records that the dealer is required to make under the regulations.

Maximum penalty: 20 penalty units.

-
- (2) A second-hand dealer must keep, in accordance with the regulations, the records required to be made under subsection (1).

Maximum penalty: 20 penalty units.

- (3) A second-hand dealer must give to the police, in accordance with the regulations, the records or copies of records that the dealer is required to give to the police under the regulations.

Maximum penalty: 20 penalty units.

7 Inspection of records and goods

- (1) A second-hand dealer must, if asked by a police officer, allow the police officer to inspect—

- (a) any record the dealer is required to keep under this Act; or
- (b) any second-hand goods in the dealer's possession; or
- (c) any other record in the dealer's possession relating to second-hand goods.

Maximum penalty: 50 penalty units.

- (2) The police officer may—

- (a) copy any record inspected under this section; and
- (b) examine or photograph any second-hand goods in the dealer's possession that the police officer suspects on reasonable grounds have been stolen or fraudulently obtained.

- (3) This section is additional to, and not in substitution for, any other power of a police officer.

8 Keeping of second-hand goods—dealers

- (1) This section applies if a second-hand dealer buys or otherwise receives second-hand goods from someone else (other than a licensed auctioneer).

Endnotes

6 Uncommenced amendments

- (2) The second-hand dealer must not sell or otherwise dispose of the second-hand goods, and must keep them in the condition in which the dealer receives them for—
- (a) if the dealer is a dealer for which a period of less than 5 working days is prescribed under the regulations—the prescribed period after the dealer buys or otherwise receives the goods; or
 - (b) in any other case—5 working days after the dealer buys or otherwise receives the goods.

Maximum penalty: 50 penalty units.

- (3) The regulations may—
- (a) exempt a second-hand dealer from subsection (2); or
 - (b) authorise the chief police officer to exempt a dealer from subsection (2).

[1.179] Section 9

renumber as section 10.

[1.180] New section 9

before section 9, insert

9 Goods suspected of being stolen or fraudulently obtained

- (1) This section applies to a licensed second-hand dealer in relation to second-hand goods if—
- (a) the dealer has or obtains possession of the goods or the goods are offered to the dealer; and
 - (b) either of the following subparagraphs applies:
 - (i) the dealer is or has been told by a police officer that the goods, or goods of their description, have been stolen or fraudulently obtained;

- (ii) the dealer suspects, or should reasonably suspect in the circumstances, that the goods have been stolen or fraudulently obtained.
- (2) The licensed second-hand dealer must immediately tell a police officer that the goods are in the dealer's possession or have been offered to the dealer.

Maximum penalty: 50 penalty units.

[1.181] Subsection 9 (1)

insert

Maximum penalty: 50 penalty units.

[1.182] Subsection 9 (2)

insert

Maximum penalty: 5 penalty units.

[1.183] Subsection 9 (3)

omit

old wares

substitute

second-hand goods

[1.184] Subsection 9 (3)

insert

Maximum penalty: 5 penalty units.

[1.185] Subsections 9 (4) and (5)

omit

[1.186] Parts IV and V

substitute

Part 4 Miscellaneous

11 Working out whether person *suitable* or *unsuitable*

- (1) This section applies in working out for this Act whether a person is a suitable person or an unsuitable person to be, or continue to be, a licensee.
- (2) However, subsection (6) only applies in relation to an application under section 12.
- (3) A person is a *suitable person* unless the person is an unsuitable person.
- (4) A person is an *unsuitable person* if the person is disqualified.
- (5) A person is *disqualified* if the person or, if the person is a corporation, the person or an executive officer of the person—
 - (a) has committed—
 - (i) an offence against this Act or a corresponding law of a State or foreign country; or
 - (ii) in Australia or a foreign country, an offence involving fraud or dishonesty; or
 - (b) been refused a licence, or had a licence cancelled or revoked, under this Act or a corresponding law of a State.
- (6) A person is also *disqualified* if the person or, if the person is a corporation, the person or an executive officer of the corporation, has committed an offence against this Act or an offence involving fraud or dishonesty.
- (7) However, even if the person is disqualified, the person is a suitable person if the person satisfies the Magistrates Court that the person will not be disqualified again and the court makes a declaration to that effect.

12 Cancellation and suspension of second-hand dealers licences

- (1) On application made by anyone claiming that a person licensed as a second-hand dealer is an unsuitable person, the Magistrates Court may cancel the person's licence.
- (2) The Magistrates Court may suspend the person's licence until the application is decided.

13 Records of market promoters

- (1) The promoter of a market must make, in accordance with the regulations, the records that the promoter is required to make under the regulations.

Maximum penalty: 20 penalty units.

- (2) The promoter of a market must keep, in accordance with the regulations, the records required to be made under subsection (1).

Maximum penalty: 20 penalty units.

- (3) The promoter of a market must give to the police, in accordance with the regulations, the records or copies of records that the promoter is required to give to the police under the regulations.

Maximum penalty: 20 penalty units.

- (4) In this section:

market means a market in which second-hand goods are sold, bought or otherwise dealt with (whether or not the market also deals with other goods), but does not include an event or activity prescribed under the regulations.

promoter, of a market, includes someone who manages, controls or organises the market.

14 Register of licences

- (1) The commissioner must keep a register of licences under this Act.

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- (2) The register must be available for public inspection at reasonable times.

15 Keeping of register

- (1) The register may include information about licences given to the commissioner under this Act and any other information the commissioner considers appropriate.
- (2) The register may be kept in the form of, or as part of, 1 or more computer databases or in any other form the commissioner considers appropriate.
- (3) The commissioner may correct any mistake, error or omission in the register subject to the requirements (if any) of the regulations.
- (4) This section does not limit the functions of the commissioner in relation to the register.

16 False or misleading information

A person must not, in relation to an application for a licence—

- (a) provide information that the person knows is false or misleading in a material particular; or
- (b) omit information without which the application is, to the person's knowledge, misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

17 Approved forms

- (1) The commissioner may approve forms for this Act.
- (2) An approved form may include a consent for a police officer to make inquiries about any criminal record of—
 - (a) the applicant; or
 - (b) if the applicant is a corporation—the applicant and each executive officer of the applicant.

-
- (3) If the commissioner approves a form for a particular purpose, the form must be used for that purpose.

18 Determination of fees and charges

- (1) The Minister may determine fees and charges for this Act.
- (2) Without limiting subsection (1), a fee, charge or other amount may be determined—
- (a) by specifying the fee, charge or amount; or
 - (b) by setting a rate, or providing a formula or other method, by which the fee, charge or amount is to be worked out.
- (3) A determination under this section—
- (a) must provide who is liable to pay a fee, charge or other amount; and
 - (b) may make provision about when the fee, charge or other amount is payable and how it is to be paid (for example, as a lump sum or by instalments); and
 - (c) may make provision about anything else relating to the fee, charge or other amount.
- (4) A determination under this section is a disallowable instrument.

19 Fees payable to Territory in accordance with determinations

- (1) A fee determined under section 18 is payable to the Territory, in relation to the relevant matter mentioned in the determination and in accordance with the determination, by the person liable to pay the fee under the determination.
- (2) A fee determined under section 18 is payable in advance unless the determination provides otherwise.
- (3) If a fee determined under section 18 is payable in advance and the amount has not been paid, the commissioner or anyone else is not

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obliged to exercise a function, or provide a service or facility, in relation to which the amount is payable.

20 Regulation-making power

- (1) The Executive may make regulations for this Act.
- (2) The regulations may authorise the chief police officer to give written directions to licensed second-hand dealers imposing requirements with which they must comply for section 6 (Records of licensed second-hand dealers).

[1.187] Schedules

omit

[1.188] Dictionary

insert at the end

Dictionary

(see s 2)

commissioner means the commissioner of fair trading.

executive officer, of a corporation, means the person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

licence means a second-hand dealers licence under this Act.

licensed auctioneer means a person who is licensed under the *Auctioneers Act 1959*.

licensed second-hand dealer means a person who is licensed under this Act as a second-hand dealer.

second-hand dealer means a person who carries on the business of dealing in or buying and selling second-hand goods, whether or not the person also deals in other goods.

second-hand goods means second-hand goods of a kind prescribed under the regulations.

suitable person—see section 11.

unsuitable person—see section 11.

2 Legislation (Consequential Amendments) Act 2001 No 44 pt 362

[1.3885] Sections 17 to 20

substitute

17 Determination of fees and charges

- (1) The Minister may, in writing, determine fees and charges for this Act.

Note The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees and charges (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

18 Approved forms

- (1) The commissioner may, in writing, approve forms for this Act.
- (2) An approved form may include a consent for a police officer to make inquiries about any criminal record of—
 - (a) the applicant; or
 - (b) if the applicant is a corporation—the applicant and each executive officer of the applicant.
- (3) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.
- (4) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

Endnotes

6 Uncommenced amendments

19 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may authorise the chief police officer to give written directions to licensed second-hand dealers imposing requirements with which they must comply for section 6 (Records of second-hand dealers).

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