

1990

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

SECOND-HAND DEALERS AND COLLECTORS (AMENDMENT) BILL 1990

EXPLANATORY MEMORANDUM

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SECOND-HAND DEALERS AND COLLECTORS (AMENDMENT) BILL 1990

The New South Wales Acts Act 1986 (the NSW) consolidated the laws of New south Wales which applied in the Territory prior to the establishment of the Territory as the Seat of Government. The inherited New South Wales Acts are specified in Schedule 2 to the NSW Act. One of the Acts is the Second-Hand Dealers and Collectors Act 1906.

The Second-Hand Dealers and Collectors Act 1906 regulates the business of dealing in second-hand goods and old wares through the licensing of dealers and collectors.

The Second-Hand Dealers and Collectors (Amendment) Bill 1990 amends provisions in the Second-hand Dealers and Collectors Act 1906 which contain strict liability offences, powers of arrest without warrant and reversals of the onus of proof. The Bill gives effect to an undertaking given to the Senate Standing Committee on Regulations and Ordinances prior to Self-Government arising from its consideration of the NSW Act.

Details of the provisions of the Bill are included in the Attachment.

Financial Considerations

The Bill will have no effect on income or expenditure.

ATTACHMENT

SECOND-HAND DEALERS AND COLLECTORS BILL 1990

Clause 1 provides for the short title of the Bill, once enacted, to be the Second-Hand Dealers and Collectors (Amendment) Act 1990.

Clause 2 provides for the commencement of the Bill.

Clause 3 defines 'the Principal Act' to be the Second-Hand Dealers and Collectors Act 1906.

Clause 4 amends section 3 of the Principal Act to bring it into accord with current drafting practice.

Clause 5 amends section 3 of the Principal Act which relates to the offence of carrying on business as a second-hand dealer without a licence. A penalty for that offence is stated separately to accord with current drafting practice.

Clause 6 amends section 8 by adding a defence of reasonable excuse to offences contained in the section and by providing for a penalty of \$20 on conviction for an offence.

Clause 7 inserts new section 8A into the Principal Act which requires a person to give notice to a police officer of any article coming into the possession of the person which answers a description given by the police of an article stolen or fraudulently obtained and imposes a penalty of \$20 for non-compliance with the requirement.

Clause 8 amends the Principal Act by repealing section 9 of the Act thereby removing an element of subjectivity in the creation of an offence and an offence of strict liability, and substituting a new section 9 which regulates the carrying on of business of a licensed second-hand dealer and includes a penalty of \$20.

Clause 9 amends section 11 of the Principal Act to introduce a defence of reasonable excuse to an offence under the section and to provide for a penalty not exceeding \$20 upon conviction for such an offence.

Clause 10 repeals section 12 of the Principal Act which confers a right on a person to arrest an offender without a warrant in certain circumstances, and substitutes new section 12 which creates an offence for the hiring or lending of a licence by a licensee to another person with the intention of enabling that person to carry on business as a collector. Clause 23 also inserts a new section 12A which limits the business of trading in old wares to the hours between 7 am and 6 pm. A penalty of \$20 will apply in each case.

Clause 11 repeals section 13 and substitutes a new section 13 which provides for the regulation of a licensed collector and creates an offence where a person acts as a collector under a licence not issued to that person and provides for a penalty of \$20.

Clause 12 repeals sections 15, 16 and 17 which contain inadequate definitions of offences and which reverse the onus of proof, and substitutes a new section 15 which provides for the issue by the Clerk of the Magistrates Court of a certificate evidencing whether or not a person is the holder of a licence at a certain specified period.

Clause 13 repeals sections 20 and 23 of the Principal Act as these sections are antiquated and inappropriate.

Clause 14 provides that the Act is amended as set out in the Schedule. The Schedule makes amendments of various provisions to ensure that provisions are expressed in gender neutral terms.