



Australian Capital Territory

Pawnbrokers Act 1902 No 66

Republication No 4

Republication date: 13 September 2002

Last amendment made by Act 2002 No 27

Amendments incorporated to 13 September 2002

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 *Pawnbrokers Act 1902* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 13 September 2002. It also includes any amendment, repeal or expiry affecting the republished law to 13 September 2002.

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 does not include 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
13 September 2002



Australian Capital Territory

Pawnbrokers Act 1902

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Amendments incorporated to
13 September 2002



Australian Capital Territory

Pawnbrokers Act 1902

U An Act to consolidate the enactment regulating the trade or business of pawnbrokers

Part 1 Preliminary

1 Name of Act

This Act is the *Pawnbrokers Act 1902*.

U 2 Dictionary

U 3 Definitions for Act

In this Act:

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

article includes every species of chattels and goods whatsoever.

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.

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 a licence granted under this Act to carry on the trade or business of a pawnbroker.

pawnbroker means a person who carries on business or seeks his or her livelihood in or by advancing on interest, or for or in expectation of profit, gain, or reward, any sum of money on security, whether collateral or otherwise, of any article taken by the person by way of pawn, pledge, or security.

registrar means the registrar of the Magistrates Court.

U 4 To whom Act not to apply

Nothing in this Act shall be construed to apply to loans or advances made on any goods, chattels, livestock, wool, bonds, bills, title deeds, or other security by merchants, bankers, commission agents, brokers, or licensed auctioneers in the ordinary and bona fide course of mercantile or banking transactions if the interest on the loans or advances does not exceed the rate of 14% per annum.

U Part 2 Licences

U 5 Pawnbrokers to be licensed

A person who is not licensed shall not carry on the trade or business of a pawnbroker.

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

U 6 Applications for licences

- (1) An individual who is 18 years or older may apply to the Magistrates Court for a licence.
- (2) The applicant must give the court—
 - (a) the application and a copy of the application; and
 - (b) if the applicant is not the holder of a licence—references from 3 qualified people about the applicant's character and suitability to hold a licence.

Note 1 A fee may be determined under the *Magistrates Court Act 1930*, s 248A (Determination of fees) for an application.

Note 2 If a form is approved under s 47 (Approved forms) for an application, the form must be used.

- (3) 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 Magistrates Court.

U 6A Licences

- (1) On lodgment of the documents referred to in section 6 (1), the registrar shall—
 - (a) appoint a date for the hearing of the application by the Magistrates Court, being a date not earlier than 21 days after the day 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 chief police officer.

U 7 Certificates of convictions

- (1) The chief police officer shall, not later than 5 days before the date appointed for the hearing of an application for a licence, give to the registrar for the use of the Magistrates Court a certificate stating whether, according to the records held by the chief police officer, 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 7A Objections to granting of licences

- (1) Subject to subsection (2), the chief police officer may, on 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 chief police officer 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 8 Grant of licences

- (1) If, on the hearing of an application for a licence, the applicant satisfies the Magistrates 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.

Note If a form is approved under s 47 (Approved forms) for a licence, the form must be used.

- (2) For the purpose of determining whether an applicant for a licence is a fit and proper person to hold the licence, the Magistrates 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 Magistrates Court may, on the hearing of an application for a licence, request the chief police officer to make the further inquiries the court considers appropriate, and may adjourn the hearing to enable the chief police officer to make the inquiries and give the report.
- (4) If 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 pawnbrokers.

U 8A Duration of licences

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

U 8B Record of licences to be kept

The registrar shall keep a record of all licences granted by the Magistrates Court.

U 9 Separate licence for each shop

No pawnbroker holding a licence shall, because of a licence, keep more than 1 house, shop, or other place for taking in goods or chattels to pawn, but, for each and every house, shop, or other place where any person keeps for those purposes, a separate and distinct licence shall be taken out and paid for.

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

U 10 Partner's licence

Persons in partnership and carrying on the trade or business of a pawnbroker in 1 house, shop, or tenement only shall not be obliged to take out more than 1 licence in any 1 year for carrying on the trade or business.

U Part 3 Business of pawnbroking**U 11 Pawnbroker's name on premises**

- (1) Every person who holds a licence shall not, without reasonable excuse, fail to have his or her full name displayed, in legible characters at least 5cm deep, with the words 'licensed pawnbroker' constantly and permanently remaining and plainly to be seen and read over the door of each shop or other place kept, or made use of, by that person for carrying on the trade or business of a pawnbroker.

Maximum penalty: 5 penalty units.

U 12 Production of licence

A licensed pawnbroker shall not, without reasonable excuse, fail to produce his or her licence on the premises specified in the licence on demand made by a police officer.

Maximum penalty: 5 penalty units.

U 13 Book entries on taking pledges

- (1) Every licensed pawnbroker taking in pawn any article on which any money is to be lent shall, before advancing any money, enter in a fair and legible way in some book kept for that purpose—
- (a) a fair and reasonable description of the article; and
 - (b) the sum of money in the whole advanced, with the rate of interest to be charged by the week or month; and
 - (c) the true date when the article is pawned; and
 - (d) the name of the party by or for whom the article is pawned, and his or her place of residence, according to the statement of the person pawning, into which lastmentioned circumstances the pawnbroker shall inquire of the person pawning before any money is lent or advanced by him or her; and

-
- (e) if a longer time for redemption than 3 months is agreed on—the time so agreed on.
- (2) Every entry shall be numbered consecutively throughout the year, the first pledge received by any pawnbroker on or after 1 January in each year being numbered 1, the second 2, and so on progressively throughout the year.
- (3) A person who, without reasonable excuse, contravenes this section commits an offence.

Maximum penalty: 20 penalty units.

U 14 Duplicates of entry to be given

- (1) Every licensed pawnbroker, at the time of taking any article in pawn, shall give to the person pawning the article a duplicate of every entry fairly and legibly written, or partly written and partly printed, with the signature of the pawnbroker, containing every particular inserted in the original entry, and corresponding in number.

Maximum penalty: 5 penalty units.

- (3) No pawnbroker shall receive or keep any pledge unless the duplicate is accepted, at the time, by the party pawning, and every duplicate shall be delivered gratis, and shall be produced to the pawnbroker before he or she shall be obliged to redeliver the articles mentioned or any of them.

Maximum penalty: 5 penalty units.

U 15 Duplicates lost or stolen

If—

- (a) any pawnbroker's duplicate is lost or mislaid by, or fraudulently taken or obtained from, the owner; and
- (b) the articles mentioned remain unredeemed; and
- (c) the person representing himself or herself to be the owner produces and leaves with the pawnbroker who gave the

duplicate a written declaration in accordance with the form in the *Statutory Declarations Act 1959* (Cwlth), schedule, duly made as required by that Act, and setting out the circumstances of the loss or otherwise satisfactorily accounting for the nonproduction of the duplicate;

the pawnbroker shall, at the request of the person, deliver to him or her a copy of the duplicate.

Maximum penalty: 5 penalty units.

U 16 Holders of duplicates deemed owners of goods pawned

- (1) Every person who, at any time, produces any such duplicate to the pawnbroker who gave the duplicate, and requires delivery of the articles specified, claiming to be the owner or representing himself or herself to be authorised by the owner, shall be deemed to be the owner or to be so authorised, and shall be entitled to redeem the articles accordingly unless—
 - (a) the pawnbroker has notice from the real owner that the duplicate was lost by him or her or was fraudulently taken or obtained from him or her; or
 - (b) the pawnbroker has been informed by some credible person that the articles were stolen.
- (2) If the pawnbroker refuses to deliver the articles to the party producing the duplicate, the pawnbroker shall not, without reasonable excuse, fail to immediately give information of the refusal and of the particular grounds to a police officer, together with a description of the party, or, if known to the pawnbroker, the party's name and place of residence.

Maximum penalty (subsection (2)): 5 penalty units.

U 17 Period for sale of pledges

- (1) Unless a longer time is expressly agreed on, the period during which any article taken in pawn may be redeemed shall be 3 months, at the

end of which period, or at the end of any longer period as has been agreed on, the article shall be deemed forfeited, and may be sold.

- (2) Any agreement for the forfeiture of any article before the end of 3 months shall be wholly void.

U 18 Selling before end of redemption period

- (1) A pawnbroker shall not, before the end of the relevant period, sell or dispose of, or cause or knowingly suffer to be sold or disposed of, an article that has been pawned.

Maximum penalty: 50 penalty units.

- (2) In this section:

relevant period means the period during which an article taken in pawn may be redeemed under section 17.

U 19 Method of sale

- (1) All articles forfeited on which in the whole more than \$500 has been lent, shall be sold by public auction, and not otherwise.
- (2) A notice of every such sale, containing a catalogue of all the articles and the time when the articles were respectively taken in pawn, shall be twice inserted in some public newspaper, published in the ACT, 4 days at the least before the proposed day of sale.
- (3) Any pawnbroker who offends against the provisions of this section shall forfeit to the owner of any article sold contrary to the provisions a sum not exceeding 5 penalty units.

U 20 Pawnbroker not to purchase

No purchase or pretended purchase by any pawnbroker or person on his or her behalf of any article pawned with him or her shall in any case be valid against the owner in any case.

U 21 Application of proceeds of sale

- (1) If—
- (a) an article that has been pawned is sold; and
 - (b) a surplus results from the sale; and
 - (c) the person by or for whom the article was pawned claims the surplus within 12 months of the sale;

the pawnbroker shall not, without reasonable excuse, fail to pay to that person within 2 days of his or her claim, the surplus less any necessary charges relating to the sale.

Maximum penalty: 50 penalty units.

- (2) In this section:

surplus means the amount by which the price paid for the article exceeds the sum of—

- (a) the amount of money advanced by the pawnbroker on the security of the article; and
- (b) any interest due at the time of the sale in relation to that advance.

U 22 Entries of articles sold

- (1) Every pawnbroker shall, from time to time, enter in a book to be kept by him or her for that purpose an account of the sale of every article that was pawned, and is sold or otherwise disposed of by him or her, specifying the date when the article was pledged and the number of the entry then made, and the name of the person who pledged the article and the day when and the amount for which the article was sold.

Maximum penalty: 20 penalty units.

- (2) A pawnbroker shall not knowingly or recklessly make a false entry in a book kept under subsection (1).

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

U 23 Pawner may inspect entries

If—

- (a) an article that has been pawned is sold or otherwise disposed of; and
- (b) the person by or for whom the article was pawned produces the duplicate in relation to the article; and
- (c) that person requests inspection of the entry of sale of the article;

the pawnbroker or his or her employee shall not, without reasonable excuse, fail to—

- (d) produce the book or document containing the entry; or
- (e) permit the person to inspect the entry.

Maximum penalty: 5 penalty units.

U 24 Children and intoxicated persons

A person who is a licensed pawnbroker or his or her agent or employee shall not purchase, receive or take in pawn an article from a person who is or is reasonably believed by the pawnbroker, agent or employee to be—

- (a) under 14 years old; or
- (b) intoxicated with liquor.

Maximum penalty: 30 penalty units.

- U 25 False or misleading information**
- U 26 Magistrates Court may order return of article**
- U 27 Determination of fees and charges**
- U 28 Approved forms**
- U 29 Persons attempting to redeem article when not entitled to do so may be apprehended**

If any person not entitled nor having any colour of title by law to redeem any article in pledge or pawn attempts or endeavours to redeem the article, the pawnbroker with whom the article is in pledge, or the servant or agent of the pawnbroker, may seize and detain the person and deliver him or her immediately to the custody of a police officer to be dealt with according to law.

U **Part 4** **Miscellaneous and legal procedure****U** **31 Record evidence**

- (1) In any proceedings before the Magistrates Court against any person alleged to be a licensed pawnbroker and liable as such to any such proceeding, the production of the alphabetical record shall be evidence both of the personal identity of the person named and that the person is a licensed pawnbroker under this Act.
- (2) Any other proof as to the fact of any person holding a licence may be admitted before the Magistrates Court as it, in its discretion, considers appropriate.

U **32 Evidentiary certificates**

- (1) The registrar 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 **33 Advertisements**

An unlicensed person shall not display any sign on or near premises that he or she occupies that states or gives reasonable cause to believe that those premises are being used to carry on the trade or business of a pawnbroker.

Maximum penalty: 30 penalty units.

U 34 Lending licences

- (1) A licensed pawnbroker shall not lend his or her licence to a person for the purpose of enabling that person to carry on business as a pawnbroker.

Maximum penalty: 30 penalty units.

- (2) If any person is convicted of an offence against subsection (1), the Magistrates Court may declare his or her licence void, and the licence shall become void.
- (3) No licence shall be granted to the person for 2 years from the date of the conviction.

U 35 Forged or altered licences

A person shall not—

- (a) forge or alter a licence; or
- (b) cause a licence to be forged or altered; or
- (c) produce a licence that is forged or has been altered to a person entitled to demand production of that licence.

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

U 36 Forging etc duplicates

A person commits an offence if the person—

- (a) forges or alters, or causes to be forged or altered, or knowingly assists in forging or altering any pawnbroker's duplicate, or utters, sells, disposes of, or puts off a duplicate so forged or altered, knowing the duplicate to be so forged or altered, with intent to defraud anyone; or

- (b) steals or unlawfully takes a pawnbroker's duplicate with a fraudulent intent, to deprive the owner of the duplicate, or of any article.

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

U 37 Pawnbroker to produce books etc

- (1) If, in the course of any proceedings before a court, whether under this Act or otherwise, it appears to the court to be material or proper to require the production before it of any book, note, voucher, entry, memorandum, licence, or other paper required by this Act to be kept by, or that ought to be in the custody of, any pawnbroker, the court may summon the pawnbroker to attend before it and produce it, and the pawnbroker is required to produce every such book, duplicate, note, voucher, entry, memorandum, licence, or other paper before the court accordingly.
- (2) A pawnbroker shall not, without reasonable excuse—
- (a) fail to attend on a summons under subsection (1);
 - (b) fail to produce a book, duplicate or entry referred to in the summons; or
 - (c) produce a book, duplicate or entry so referred to that has been altered.

Maximum penalty (subsection (2)): 50 penalty units, imprisonment for 6 months or both.

U 39 Magistrates Court may order delivery of goods pawned on payment of compensation or otherwise

- (1) The Magistrates Court may order any article unlawfully pawned, pledged or exchanged that is brought before it, and the ownership of which is established to the satisfaction of the court, to be delivered up to the owner by the person with whom they were so unlawfully pawned, pledged or exchanged either without compensation or with

compensation to the party in question as the court considers appropriate.

U 46 General issue

If any person is sued for any matter or thing done by him or her in the execution of this Act, he or she may plead the general issue and give the special matter in evidence.

U 47 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

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

U Part 5

Transitional

U Dictionary

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 and expiries 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 endnote.

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
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	s = section/subsection
LRA = Legislation (Republication) Act 1996	sch = schedule
mod = modified / modification	sdiv = subdivision
No = number	sub = substituted
num = numbered	SL = Subordinate Law
o = order	<u>underlining</u> = whole or part not commenced or to be expired
om = omitted/repealed	

Endnotes

3 Legislation history

3 Legislation history

This Act was originally a NSW Act—the *Pawnbrokers Act 1902* No 66 (NSW).

The 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), s 34 (4) converted most 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 11 May 1989 (self-government day).

Under the *Interpretation Act 1967*, s 65 (now expired) all former NSW Acts in force in the ACT immediately before 10 November 1999 (including this Act) became, for all purposes, laws made by the ACT Legislative Assembly. This completed the process of making former NSW Acts fully into ACT laws.

NSW legislation

Pawnbrokers Act 1902 No 66

assented to 4 September 1902
commenced 4 September 1902

Commonwealth legislation

as amended by

Magistrates Court Ordinance 1985 No 67

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

New South Wales Acts Act 1986 No 91

notified 12 January 1987 (Cwlth Gaz 1987)
commenced 12 January 1987

Legislation after becoming Territory enactment

Pawnbrokers (Amendment) Act 1990 No 33

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

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

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

Statute Law Revision (Penalties) Act 1994 No 81 sch

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

Pawnbrokers (Amendment) Act 1995 No 15

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

Law Reform (Miscellaneous Provisions) Act 1999 No 66

notified 10 Nov 1999 (Gaz 1999 No 45)
commenced 10 Nov 1999 (s 2)

Legislation (Consequential Amendments) Act 2001 No 44 pt 276

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 276 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.39

notified 5 September 2001 (Gaz 2001 No S65)
commenced 5 September 2001 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2002
No 27 pt 9, pt 1.1**

notified LR 9 September 2002
s 1, s 2 commenced 9 September 2002 (LA s 75)
pt 9, pt 1.1 commences 7 October 2002 (s 2 (2))

4 Amendment history

The *New South Wales Acts Act 1986* (previously the *New South Wales Acts Ordinance 1986*), sch 2, pt 2 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 2002 No 27 amdt 1.1

Name of Act

s 1 sub 2001 No 56 amdt 3.450

Endnotes

4 Amendment history

Dictionary

s 2 [ins 2002 No 27 amdt 1.2](#)

Notes

s 3 [sub 2002 No 27 amdt 1.2](#)
def of **charge** am 1995 No 15 s 4
def of **convicted** am 1995 No 15 s 4
def of **court** am 1995 No 15 s 4
def of **registrar** am 1995 No 15 s 4

Application of Act

s 4 hdg [sub 2002 No 27 amdt 1.3](#)
s 4 [am 2002 No 27 amdt 1.4, amdt 1.5](#)

Licences

pt 2 hdg [sub 2002 No 27 s 29](#)

Pawnbrokers to be licensed

s 5 sub 1990 No 33 s 4
am 1994 No 81 sch
[sub 2002 No 27 s 29](#)

Pawnbrokers must be licensed

s 6 am 1991 No 44 s 9
sub 1995 No 15 s 5
am 2001 No 44 amdt 1.3099, amdt 1.3100
[om 2002 No 27 s 29](#)
[ins 2002 No 27 amdt 1.6](#)

Licences

s 6A ins 1995 No 15 s 5
am 2001 No 56 amdt 3.451
[om 2002 No 27 s 29](#)

Name of pawnbroker etc to be displayed on premises

s 7 sub 1995 No 15 s 5
am 2001 No 56 amdt 3.452
[om 2002 No 27 s 29](#)
[ins 2002 No 27 amdt 1.6](#)

Objections to granting of licences

s 7A sub 1995 No 15 s 5
sub 2001 No 56 amdt 3.453
[om 2002 No 27 s 29](#)

Pawnbrokers—carrying on business

s 8 hdg [ins 2002 No 27 s 30](#)
s 8 am 1991 No 44 s 9
sub 1995 No 15 s 5
am 2001 No 44 amdt 1.3101, amdt 1.3102; 2001 No 56 amdt
3.454, amdt 3.455
[om 2002 No 27 s 29](#)
[ins 2002 No 27 s 31](#)

am 2002 No 27 amdt 1.7**Duration of licences**

s 8A ins 1995 No 15 s 5
om 2002 No 27 s 29

Record of licences to be kept

s 8B ins 1995 No 15 s 5
om 2002 No 27 s 29

Records of pawned articles received

s 9 am 1990 No 33 s 5; 1994 No 81 sch
om 2002 No 27 s 29
ins 2002 No 27 amdt 1.9

Duplicates of records

s 10 om 2002 No 27 s 29
ins 2002 No 27 amdt 1.9

Production of duplicates

s 11 am 1990 No 33 s 6; 1994 No 81 sch
om 2002 No 27 amdt 1.6
ins 2002 No 27 amdt 1.9

 Holders of duplicates taken to be owners of pawned articles

s 12 sub 1990 No 33 s 7
am 1994 No 81 sch
om 2002 No 27 amdt 1.8
ins 2002 No 27 amdt 1.9

Period for sale or disposal of pawned articles

s 13 am 1990 No 33 s 8, sch; 1994 No 81 sch; 2001 No 56 amdt
3.456
sub 2002 No 27 amdt 1.9

Selling or disposing before end of redemption period

s 14 am 1990 No 33 s 9, sch; 1994 No 81 sch; 2001 No 56
amdt 3.457
sub 2002 No 27 amdt 1.9

Method of sale for certain pawned articles

s 15 am 1990 No 33 s 10, sch; 1994 No 81 sch
sub 2002 No 27 amdt 1.9

Pawnbroker not to buy pawned article

s 16 am 1990 No 33 s 11, sch; 1994 No 81 sch; 2001 No 56
amdt 3.458, amdt 3.459
sub 2002 No 27 amdt 1.9

Application of proceeds of sale

s 17 sub 2002 No 27 amdt 1.9

Records of pawned articles sold or disposed of

s 18 sub 1990 No 33 s 12
am 1994 No 81 sch
sub 2002 No 27 amdt 1.9

Endnotes

4 Amendment history

Inspection of records

s 19 am 1990 No 33 s 13; 1994 No 81 sch; 1999 No 66 s 6 sch 3
sub 2002 No 27 amdt 1.9

Pawnbroker not to purchase

s 20 orig s 20 am 1990 No 33 sch
om 2002 No 27 amdt 1.9
(prev s 29) am 1990 No 33 sch; 2001 No 56 amdt 3.460
renum 2002 No 27 amdt 1.11

Working out whether person suitable

s 21 sub 1990 No 33 s 14, sch
am 1994 No 81 sch
om 2002 No 27 amdt 1.9
ins 2002 No 27 s 32

Cancellation and suspension of licences

s 22 am 1990 No 33 s 15, sch; 1994 No 81 sch
om 2002 No 27 amdt 1.9
ins 2002 No 27 s 32

Register of licences

s 23 sub 1990 No 33 s 16
am 1994 No 81 sch
om 2002 No 27 amdt 1.9
ins 2002 No 27 s 32

Keeping of register

s 24 sub 1990 No 33 s 16
am 1994 No 81 sch
om 2002 No 27 amdt 1.10
ins 2002 No 27 s 32

False or misleading information

s 25 om 1990 No 33 s 17
ins 2002 No 27 s 32

Magistrates Court may order return of article

s 26 am 1990 No 33 s 18, sch; 1994 No 81 sch
om R2 LRA
ins 2002 No 27 amdt 1.14

Miscellaneous

pt 4 hdg sub 2002 No 27 amdt 1.12

Determination of fees and charges

s 27 ins 2002 No 27 s 33

Approved forms

s 28 ins 2002 No 27 s 33

Regulation-making power

s 29 orig s 29 renum as s 20
ins 2002 No 27 s 33

Transitional

pt 5 hdg [ins 2002 No 27 s 34](#)
[exp 7 April 2003 \(s 32\)](#)

Definitions for pt 5

s 30 [ins 2002 No 27 s 34](#)
[exp 7 April 2003 \(s 32\)](#)

Existing applications for licences

s 31 [am 1995 No 15 s 6](#)
[om 2002 No 27 amdt 1.13](#)
[ins 2002 No 27 s 34](#)
[exp 7 April 2003 \(s 32\)](#)

Expiry of pt 5

s 32 [sub 1990 No 33 s 19](#)
[am 1991 No 44 s 9; 1995 No 15 s 6](#)
[om 2002 No 27 amdt 1.13](#)
[ins 2002 No 27 s 34](#)
[exp 7 April 2003 \(s 32\)](#)

Advertisements

s 33 [sub 1990 No 33 s 19](#)
[am 1994 No 81 sch](#)
[om 2002 No 27 amdt 1.13](#)

Lending licences

s 34 [am 1990 No 33 s 20, sch; 1994 No 81 sch; 1995 No 15 s 6](#)
[om 2002 No 27 amdt 1.13](#)

Forged or altered licences

s 35 [sub 1990 No 33 s 21](#)
[am 1994 No 81 sch](#)
[om 2002 No 27 amdt 1.13](#)

Forging etc duplicates

s 36 [am 1990 No 33 s 22; 1994 No 81 sch; 2001 No 56 amdt 3.461,](#)
[amdt 3.462](#)
[om 2002 No 27 amdt 1.13](#)

Pawnbroker to produce books etc

s 37 [am 1990 No 33 s 23; 1994 No 81 sch; 2001 No 56 amdt 3.463](#)
[om 2002 No 27 amdt 1.13](#)

Court may order delivery of goods pawned on payment of compensation or otherwise

s 39 [am 1995 No 15 s 6](#)
[om 2002 No 27 amdt 1.14](#)

Penalties

s 40 [om 1990 No 33 s 24](#)

General issues

s 46 [am 1990 No 33 sch](#)
[om 2002 No 27 amdt 1.15](#)

Endnotes

5 Earlier republications

Approved forms

s 47	ins 2001 No 44 amdt 1.3103 (4)-(7) exp 12 September 2002 (s 47 (7)) <u>om 2002 No 27 s 33</u>
sch hdg	om 1995 No 15 s 7
sch 1	(prev first schedule) sub 1995 No 15 sch om 2001 No 44 amdt 3.104
sch 2 hdg sch 2	sub 1995 No 15 s 7 (prev second schedule) am 1990 No 33 sch; 1991 No 44 s 9 om 2001 No 44 amdt 3.104

Dictionary

dict	def article ins 2002 No 27 amdt 1.16 def commissioner ins 2002 No 27 amdt 1.16 def disqualified ins 2002 No 27 amdt 1.16 def duplicate ins 2002 No 27 amdt 1.16 def executive officer ins 2002 No 27 amdt 1.16 def licence ins 2002 No 27 amdt 1.16 def licensed pawnbroker ins 2002 No 27 amdt 1.16 def pawnbroker ins 2002 No 27 amdt 1.16 def pawned article ins 2002 No 27 amdt 1.16 def redemption period ins 2002 No 27 amdt 1.16 def suitable person ins 2002 No 27 amdt 1.16
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5 Earlier republications

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

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1991 No 44	31 August 1992
2	Act 1995 No 15	31 January 1998
3	Act 2001 No 56	30 April 2002

6 Uncommenced amendments

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

Justice and Community Safety Legislation Amendment Act 2002 No 27 (pt 9, pt 1.1)**29 Part 2**

substitute

Part 2 Licences**5 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—
 - (a) the application complies with this Act; and

Note If a form is approved under s 28 (Approved forms) for an application, the form must be used.

 - (b) if the person is an individual—the person is 18 years old or older; and
 - (c) the person is a suitable person; and
 - (d) if the person is a partner applying for a licence on behalf of the partnership—each other partner is a suitable person.
- (2) A licence must state each premises where the holder of the licence may carry on business as a pawnbroker.
- (3) A licence may be issued for up to 1 year.

30 New section 8 heading, part 3

insert

Endnotes

6 Uncommenced amendments

8 Pawnbrokers—carrying on business

31 New section 8 (1)

insert

- (1) A licensed pawnbroker must not carry on business as a pawnbroker at a place other than premises stated in the licence.

Maximum penalty: 50 penalty units.

32 New sections 21 to 25, part 4

insert

21 Working out whether person *suitable*

- (1) This section applies in working out for this Act whether a person is a *suitable person*.
- (2) A person is a suitable person if the person is not *disqualified*.
- (3) A person is *disqualified* if the person or, if the person is a corporation, the corporation or an executive officer of the corporation—
 - (a) has committed—
 - (i) an offence against this Act or a corresponding law of a State or foreign country; or
 - (ii) an offence involving fraud or dishonesty in Australia or a foreign country; or
 - (b) has been refused a licence, or had a licence cancelled or revoked, under this Act or a corresponding law of a State.
- (4) However, even if a person is disqualified, the Magistrates Court may declare that the person is a suitable person if satisfied that the person is unlikely to be disqualified again.
- (5) If a person is disqualified after being declared by the Magistrates Court to be a suitable person, the person is no longer a suitable person.

22 Cancellation and suspension of licences

- (1) The Magistrates Court may cancel a person's licence, on application by anyone claiming that—
 - (a) the person is not a suitable person; or

Note A corporation licensed as a pawnbroker is disqualified, and therefore not a suitable person, if a thing mentioned in section 21 (3) (a) or (b) (Working out whether person *suitable*) applies to the corporation or an executive officer of the corporation.

 - (b) if the person is a partner who holds the licence on behalf of a partnership—the person or any other partner is not a suitable person.
- (2) The Magistrates Court may suspend the person's licence until the application is decided.

23 Register of licences

- (1) The commissioner must keep a register of licences under this Act.
- (2) The register must be available for public inspection at reasonable times.

24 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 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.

Endnotes

6 Uncommenced amendments

25 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.

33 Section 47

substitute

27 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*.

28 Approved forms

- (1) The commissioner may, in writing, approve forms for this Act.
- (2) An approved form that is an application for, or for renewal of, a licence 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 partner applying for a licence on behalf of the partnership—each partner; 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.

Note For other provisions about forms, see *Legislation Act 2001*, s 255.

- (4) An approved form is a notifiable instrument.

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

29 Regulation-making power

The Executive may make regulations for this Act.

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

34 New part 5

insert

Part 5 Transitional

30 Definitions for pt 5

In this part:

amendment Act means the *Justice and Community Safety Legislation Amendment Act 2002*.

commencement means the commencement of the amendment Act, part 9 (*Pawnbrokers Act 1902*).

current Act means the *Pawnbrokers Act 1902*, as in force after the commencement.

previous Act means the *Pawnbrokers Act 1902*, as in force immediately before the commencement.

31 Existing applications for licences

An application made by a person for a licence under the previous Act, section 6 (Applications for licences) that has not been finally dealt with by the Magistrates Court before the commencement is

Endnotes

6 Uncommenced amendments

taken, after the commencement, to be an application made by the person under the current Act, section 5 (Issue of licences).

32 Expiry of pt 5

This part expires 6 months after it commences.

Part 1.1 Pawnbrokers Act 1902

[1.1] Title

substitute

An Act to provide for the licensing and regulation of pawnbrokers, and for other purposes

Explanatory note

This amendment updates the long title, particularly to reflect the fact that the Act is now, for all purposes, an ACT law.

[1.2] Section 3

substitute

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, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*suitable person*—see section 21 (Working out whether person *suitable*).' means that the expression '*suitable person*' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) 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)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

Explanatory note

This amendment replaces the interpretation section, in line with current drafting practice. New sections 2 and 3 are standard provisions explaining the status of the dictionary and notes. A new dictionary is inserted by a later amendment in this part.

[1.3] Section 4 heading

substitute

4 Application of Act

Explanatory note

This amendment brings the section heading into line with current drafting practice.

[1.4] Section 4

omit

Nothing in this Act shall be construed to apply

substitute

This Act does not apply

Explanatory note

This amendment updates language.

[1.5] Section 4

omit

bona fide

substitute

genuine

Explanatory note

This amendment updates language.

Endnotes

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[1.6] Section 11

substitute

6 Pawnbrokers must be licensed

A person must not carry on business as a pawnbroker unless the person is licensed as a pawnbroker.

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

7 Name of pawnbroker etc to be displayed on premises

- (1) A licensed pawnbroker must clearly display on the outside of each premises where the pawnbroker carries on business, in letters at least 5cm high—
 - (a) his or her full name; and
 - (b) the words ‘licensed pawnbroker’.
- (2) A licensed pawnbroker must not, without reasonable excuse, contravene subsection (1).

Maximum penalty: 5 penalty units.

Explanatory note

This amendment remakes existing sections 5 and 11 and brings their language and structure into line with current drafting practice.

[1.7] New section 8 (Pawnbrokers—carrying on business) (2) and (3)

insert

- (2) A licensed pawnbroker must not, without reasonable excuse, fail to produce his or her licence on demand made by a police officer at premises stated in the licence.

Maximum penalty: 5 penalty units.

(3) A licensed pawnbroker must not buy, receive or take in pawn an article from a person if the pawnbroker believes or has reasonable grounds to believe that the person is—

- (a) under 14 years old; or
- (b) drunk.

Maximum penalty: 30 penalty units.

Explanatory note

This amendment brings the language of existing sections 12 and 24 into line with current drafting practice.

[1.8] Section 12

omit

Explanatory note

Section 12 is remade, in a modified form, as s 8 (2) (Pawnbrokers—carrying on business).

[1.9] Sections 13 to 23

substitute

9 Records of pawned articles received

- (1) This section applies if a licensed pawnbroker takes in pawn an article on which money is to be lent to a person.
- (2) Before giving the money to the person, the pawnbroker must make a record for the article that contains the following information:
 - (a) an accurate description of the article;
 - (b) the amount to be lent;
 - (c) the rate of interest to be charged on the amount, by the week or month;
 - (d) the date the article is pawned;
 - (e) the name and home address given by the person;
 - (f) if the period for redemption of the article is longer than 3 months—the period.

Endnotes

6 Uncommenced amendments

- (3) The pawnbroker must not give the money to the person unless the pawnbroker reasonably believes that the name and address given by the person is accurate.
- (4) A licensed pawnbroker must, in each calendar year, consecutively number the records for pawned articles made under this section, starting at 1 for the first pawned article.
- (5) A licensed pawnbroker who, without reasonable excuse, contravenes this section commits an offence.

Maximum penalty: 20 penalty units.

10 Duplicates of records

- (1) If a licensed pawnbroker takes in pawn an article on which money is to be lent to a person, the pawnbroker must give the person (without charge) a duplicate of the record mentioned in section 9 (2) (Records of pawned articles received) signed by the pawnbroker.

Maximum penalty: 5 penalty units.

- (2) If the person does not take the duplicate, the pawnbroker must return the article to the person.

11 Production of duplicates

- (1) A person (the *person*) who pawned an article with a licensed pawnbroker (the *pawnbroker*) must produce the duplicate for the article to redeem the article, unless the duplicate is lost or stolen.
- (2) If the person does not have the duplicate because it is lost or stolen, the person must give the pawnbroker a statutory declaration made by the person that sets out the circumstances of the loss or theft.
- (3) The pawnbroker must give a copy of the record for the article, signed by the pawnbroker, to the person if—
 - (a) the pawnbroker is satisfied that the statutory declaration gives an adequate explanation of the loss or theft; and
 - (b) the article has not been redeemed; and

(c) the person asks for a copy of the record.

Maximum penalty (subsection (3)): 5 penalty units.

12 Holders of duplicates taken to be owners of pawned articles

- (1) This section applies if a person—
 - (a) produces the duplicate for a pawned article to the licensed pawnbroker who gave the duplicate; and
 - (b) claims to be the owner or authorised by the owner; and
 - (c) asks to redeem the article.
- (2) The person is taken to be the owner of the article, or authorised by the owner and entitled to redeem the article.
- (3) However, subsection (2) does not apply if—
 - (a) the pawnbroker has notice from the real owner that the duplicate was lost or stolen; or
 - (b) the pawnbroker reasonably believes that the article was stolen from the real owner.
- (4) If the pawnbroker refuses to give the article to the person mentioned in subsection (1), the pawnbroker must—
 - (a) tell a police officer immediately about the refusal and the reasons for it; and
 - (b) give the officer the person's name and home address or a description of the person.
- (5) A licensed pawnbroker must not, without reasonable excuse, contravene subsection (4).

Maximum penalty: 5 penalty units.

13 Period for sale or disposal of pawned articles

- (1) The period during which a pawned article may be redeemed (the *redemption period*) is—

Endnotes

6 Uncommenced amendments

- (a) 3 months; or
 - (b) if a longer period is agreed to by the licensed pawnbroker and the person pawning the article—the longer period.
- (2) A pawned article that is not redeemed by the end of the redemption period for the article is forfeited to the licensed pawnbroker who has the article, and may be sold or disposed of in another way.
- (3) An agreement for the forfeiture of a pawned article before the end of 3 months is void.

14 Selling or disposing before end of redemption period

A licensed pawnbroker must not sell, or dispose of in another way, a pawned article before the end of the redemption period for the article.

Maximum penalty: 50 penalty units

15 Method of sale for certain pawned articles

- (1) This section applies to an article—
- (a) taken in pawn by a licensed pawnbroker from a person; and
 - (b) on which more than \$500 was lent to the person by the pawnbroker; and
 - (c) that is forfeited under this Act.
- (2) The article must be sold by public auction.
- (3) On 2 separate occasions at least 4 days before the proposed sale, the pawnbroker must publish a written notice about the sale in a newspaper published and circulating in the ACT.
- (4) The notice must contain a list of the articles to be sold by auction and the date each article was pawned.
- (5) A licensed pawnbroker who sells an article otherwise than in accordance with this section must pay the owner of the article \$500.

16 Pawnbroker not to buy pawned article

If a licensed pawnbroker or a person acting on behalf of the pawnbroker buys an article pawned with the pawnbroker, the purchase is not valid against the owner.

17 Application of proceeds of sale

- (1) This section applies if—
 - (a) a pawned article is sold by the licensed pawnbroker with whom the article was pawned; and
 - (b) there is a surplus; and
 - (c) the person by or for whom the article was pawned claims the surplus within 12 months of the sale.
- (2) Within 2 days of the person's claim, the pawnbroker must pay the person the surplus, less any necessary charges relating to the sale.
- (3) A licensed pawnbroker must not, without reasonable excuse, contravene subsection (2).

Maximum penalty: 50 penalty units.

- (4) In this section:

surplus means the amount remaining after the following are subtracted from the amount paid for the article:

- (a) the amount lent by the pawnbroker on the security of the article (*the advance*);
- (b) any interest due at the time of the sale of the article in relation to the advance.

18 Records of pawned articles sold or disposed of

- (1) This section applies if a licensed pawnbroker sells or otherwise disposes of a pawned article.
- (2) The pawnbroker must make a record for the article that contains the following information:

Endnotes

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- (a) the record number for the article made under section 9 (4) (Records of pawned articles received);
- (b) the date the article was pawned;
- (c) the name given by the person who pawned the article;
- (d) the date the article was sold or disposed of;
- (e) the amount for which the article was sold.

Maximum penalty: 20 penalty units.

- (3) A pawnbroker must not knowingly or recklessly make a false record under this section.

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

19 Inspection of records

- (1) This section applies if—
 - (a) a licensed pawnbroker sells or otherwise disposes of a person's pawned article; and
 - (b) the person produces the duplicate for the article; and
 - (c) the person asks to inspect the record about the sale or disposal.
- (2) The pawnbroker must let the person inspect the record.

Maximum penalty: 5 penalty units.

Explanatory note

Existing sections 13 to 17 and 19 to 23 have been updated to bring their language and structure into line with current drafting practice.

Existing section 18 (new section 14) has been updated to bring it into line with current drafting practice. 'Cause or knowingly suffer to be sold or disposed of' is not necessary because the *Crimes Act 1900*, section 180 (Aiding and abetting) deals with complicity in a principal offence.

[1.10] Section 24

omit

Explanatory note

This section has been remade, in an updated form, as new section 8 (3) (Pawnbrokers—carrying on business).

[1.11] Section 29

renumber as section 20

Explanatory note

This amendment renumbers section 29.

[1.12] Part 4 heading

substitute

Part 4 Miscellaneous

Explanatory note

Most of the provisions of part 4 are omitted by the following amendments. This amendment changes the part heading so that it describes the new contents of the part.

[1.13] Sections 31 to 37

omit

Explanatory note

Section 31 is no longer necessary (see *Evidence Act 1995* (Cwlth), s 155 and 156).

Section 32 is omitted because it refers to the registrar, but it is not necessary to give the power to the commissioner (see *Evidence Act 1995* (Cwlth), s 155 and 156).

Section 33 is no longer necessary. A person carrying on business as a pawnbroker without a licence would contravene new section 6 (Pawnbrokers must be licensed). If the person is not carrying on business as a pawnbroker but displays a sign saying, or a sign that makes people believe, that the person is a pawnbroker, the person would contravene the *Fair Trading Act 1992*, section 12 (Misleading or deceptive conduct).

Section 34 is no longer necessary. Establishing the identity of a person is straightforward, and a pawnbroker who lent his or her licence to another person so that the person could pretend to be a pawnbroker could be dealt with under the *Crimes Act 1900*, section 180 (Aiding and abetting). The person pretending could be dealt with under the Act, section 7.

Sections 35 and 36 (a) are not necessary because of the *Crimes Act 1900*, division 6.4 (Forgery and use of forged instruments). Section 36 (b) is not necessary because of the *Crimes Act 1900*, section 89 (Theft).

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Section 37 is no longer necessary. The Supreme Court has the power to issue a subpoena to give evidence, a subpoena for production etc (see *Supreme Court Rules* o 39 r 25 and div 80.3), and failing to comply is contempt of court or may be dealt with under the *Supreme Court Act 1930*, section 70A (Failure to attend Supreme Court as required). The Magistrates Court has the power to issue a summons to give evidence, a summons for production etc (see *Magistrates Court Act 1930*, s 66 (Production of documents before magistrate) and s 61 (Power of magistrate to summon witnesses) and *Magistrates Court (Civil Jurisdiction) Act 1982*, div 14.3).

[1.14] Section 39

substitute

26 Magistrates Court may order return of article

- (1) This section applies if—
 - (a) a pawned article was pawned unlawfully; and
 - (b) the Magistrates Court is satisfied about the ownership of the article.
- (2) The Magistrates Court may order that the article be returned to the owner and that the person with whom the article was pawned pay compensation to the owner.

Explanatory note

This amendment renumbers the section and brings it into line with current drafting practice.

[1.15] Section 46

omit

Explanatory note

This section is obsolete. A plea of general issue denies the whole of the statement of claim, information or indictment. It is no longer open to a party to proceedings to plead the general issue.

[1.16] New dictionary*insert***Dictionary**

(see s 2)

Note 1 The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

Note 2 In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- commissioner for fair trading
- police officer
- statutory declaration

article includes a chattel or goods.

commissioner means the commissioner for fair trading.

disqualified—see section 21 (Working out whether person *suitable*).

duplicate, for a pawned article—see section 10 (1) (Duplicates of records).

executive officer, of a corporation, means a 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 pawnbrokers licence under this Act.

licensed pawnbroker means a person who is licensed under this Act as a pawnbroker.

pawnbroker means a person who carries on the business of lending money on the security of an article taken by the person by way of pawn, pledge or as security.

pawned article means an article taken by a licensed pawnbroker by way of pawn, pledge or as security.

redemption period—see section 13 (1) (Period for sale of pawned articles).

Endnotes

6 Uncommenced amendments

suitable person—see section 21 (Working out whether person *suitable*).

Explanatory note

This amendment brings the dictionary into line with current drafting practice, updates the definitions, includes new definitions and omits unnecessary definitions (*charge, convicted, court* and *registrar*).

References to ‘court’ in the Act have been changed to ‘Magistrates Court’ in line with current drafting practice.

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