

1990

**THE LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL
TERRITORY**

PAWNBROKERS (AMENDMENT) BILL 1990

EXPLANATORY MEMORANDUM

Circulated by Authority of the Attorney-General

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PAWNBROKERS (AMENDMENT) BILL 1990

The New South Wales Acts Act 1986 (the NSW Act) 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 those Acts is the Pawnbrokers Act 1902.

The Pawnbrokers Act 1902 regulates the trade and business of pawnbroking by requiring pawnbrokers to be licensed, for records to be kept of pledged articles and for the interests of owners of articles pledged to be protected.

The Pawnbrokers (Amendment) Bill 1990 amends the provisions in the Pawnbrokers Act 1902 which infringe the rights and liberties of individuals. The Bill gives effect to undertakings given to the Senate Standing Committee on Regulations and Ordinances prior to Self-Government arising from its consideration of the NSW Act. The Bill also amends penalty provisions in the Principal Act to accord with current penalty values and makes certain changes of a drafting nature to reflect current drafting practice.

The Bill will have no effect on income or expenditure.

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

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Clause 1 provides for the short title of the Bill, once enacted, to be the Pawnbrokers (Amendment) Act 1990.

Clause 2 makes provision for the commencement of the Bill.

Clause 3 defines the Principal Act to be the Pawnbrokers Act 1902.

Clause 4 restates section 5 of the Principal Act which relates to pawnbroking without a licence and increases the penalty from \$40 to \$1000.

Clause 5 amends section 9 of the Principal Act by inserting a penalty of \$1000. Section 9 requires a person to hold a licence for each of the premises from which he or she operates as a pawnbroker.

Clause 6 amends section 11 of the Principal Act by inserting a defence of reasonable excuse to the provision requiring a pawnbroker to display his or her name over the door of the place of business of the pawnbroker, recasting the section in gender neutral terms, inserting a penalty of \$500 and omitting subsection (2) to accord with current drafting practice.

Clause 7 restates section 12 of the Principal Act which relates to the production of a licence to a police officer, and increases the penalty from \$20 to \$500.

Clause 8 amends section 13 of the Principal Act by adding a defence of reasonable excuse to the requirement to keep records under that section and by increasing the penalty from \$20 to \$500.

Clause 9 amends section 14 of the Principal Act by omitting subsection (2) to accord with current drafting practice and increasing the penalty for a breach of the section from \$20 to \$500.

Clause 10 inserts a penalty of \$500 into section 15 of the Principal Act which requires a pawnbroker to provide a copy of a pawnbroker's duplicate in specified circumstances.

Clause 11 amends section 16 of the Principal Act by adding a defence of reasonable excuse into, and a penalty of \$500 for, the offence which arises when a pawnbroker fails to inform a police officer of fraud or theft of which the pawnbroker has notice in relation to a pawned article.

Clause 12 restates section 18 of the Principal Act which relates to the period for which a pawned article must be held prior to sale or disposal and increases the penalty from \$40 to \$500.

Clause 13 amends subsection 19 (3) of the Principal Act by increasing the penalty from \$40 to \$500.

Clause 14 restates section 21 of the Principal Act by providing a defence of reasonable excuse to the offence of failing to pay any surplus on the sale of a pawned article to the owner or other specified person, requiring payment of the amount to be made within 2 days of a claim and inserting a penalty of \$500.

Clause 15 inserts a penalty of \$500 for an offence under subsection 22(1) of the Principal Act which relates to the keeping of true records of articles sold or disposed of. The clause also omits subsection 22(2) and inserts a new subsection which introduces an element of intent into the offence of making a false entry in a book and provides for a penalty of \$500.

Clause 16 restates section 23 of the Principal Act by including a defence of reasonable excuse for failing to allow the holder of a duplicate to inspect the entry of sale of the pawned article, and increases the penalty from \$20 to \$500. The clause also restates section 24 of the Principal Act which prevents purchasing or receiving an article from an intoxicated person or a person under 14 years of age, by omitting the word 'apparently' and substituting the words 'who is, or who is reasonably believed to be', thus removing an element of subjectivity and providing for reasonableness in the judgement of a pawnbroker as to age or state of intoxication. The clause also increases the penalty from \$20 to \$1000.

Clause 17 repeals section 25 of the Principal Act which requires that only money can be lent or exchanged for any article of less than \$20 in value.

Clause 18 amends section 26 of the Principal Act which limits the hours of trading of a pawnbroker, by increasing the penalty from \$20 to \$500.

Clause 19 repeals section 32 of the Principal Act which had the effect of reversing the onus of proof on a person with respect to whether he or she was a licenced pawnbroker, and substitutes a new section 32 which provides for the issue by the Clerk of the Magistrates Court of a certificate evidencing the licensing of a person. The clause also restates section 33 of the Principal Act, which provides that it is an offence to advertise as a pawnbroker without a licence, and increases the penalty from \$20 to \$500.

Clause 20 restates subsection 34(1) of the Principal Act which provides that it is an offence to lend a licence to another person and increases the penalty from \$50 to \$1000.

Clause 21 restates section 35 of the Principal Act which provides that it is an offence to forge or alter a licence and includes a penalty of a period of imprisonment of two years or a fine of \$5000, or both.

Clause 22 amends section 36 of the Principal Act which provides that it is an offence to forge, alter or steal a pawnbrokers duplicate, by deleting the penalty and providing for a period of imprisonment not exceeding two years or a fine not exceeding \$5000, or both.

Clause 23 amends subsection 37(2) of the Principal Act by deleting the penalty of \$20 and inserting a penalty of \$1000 or six months imprisonment, or both for failing, without reasonable excuse, to appear or produce records as ordered by the court.

Clause 24 repeals section 40 of the Principal Act which provides for a penalty of \$40 for offences against the Act where no specific penalty is provided.

Clause 25 provides that the Principal Act is amended as set out in the Schedule. The Schedule makes amendments to various provisions to express them in gender neutral terms.