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## SECOND-HAND DEALERS AND PAWNBROKERS ACT 1994

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**No. 95 of 1994**

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

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**No. 95 of 1994**

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**AN ACT to regulate the businesses of second-hand dealers and pawnbrokers and to repeal the *Pawnbrokers Act 1857* and the *Second-hand Dealers Act 1905***

**[Royal Assent 16 December 1994]**

**BE** it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**PART 1**

**PRELIMINARY**

**Short title**

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

**Commencement**

2—This Act commences on a day to be proclaimed.

**Interpretation**

- 3—(1) In this Act, unless the contrary intention appears—
- “**goods**” means any form of personal property except intangible property;
  - “**pawnbroker**” means a person who carries on the business of advancing money on the security of pledged goods;
  - “**police officer**” has the same meaning as in the *Police Regulation Act 1898*;
  - “**promoter**” means a person who operates a second-hand goods market or makes arrangements for any such market to be held;
  - “**repealed Act**” means an Act repealed by this Act;
  - “**second-hand dealer**” means a person who carries on the business of buying or selling, or otherwise dealing in, second-hand goods, either as a principal or agent, but does not include—
    - (a) a person holding a licence as an auctioneer or real estate agent under the *Auctioneers and Real Estate Agents Act 1991*; or
    - (b) a person who, under subsection (3), is exempted from the operation of this Act;
  - “**second-hand goods**” means goods that have been used for a purpose not connected with their manufacture or sale or that have been taken from other goods used for any such purpose;
  - “**second-hand goods market**” means a market at which second-hand goods are sold, whether or not any other goods are also sold in the market;
  - “**sell**” includes—
    - (a) barter or exchange; and
    - (b) offer or expose for sale, barter or exchange; and
    - (c) cause or permit to be offered or exposed for sale, barter or exchange;

“**stolen goods**” includes goods obtained by unlawful means;

“**vehicle**” means a motor vehicle as defined by the *Traffic Act 1925* or a trailer as so defined;

“**vessel**” means a vessel within the meaning of the *Marine Act 1976*.

(2) For the purposes of this Act, second-hand goods are to be taken as being in the possession of a second-hand dealer when they are at any premises or place that is occupied by him or her or is under his or her control or when they are in a vehicle that is under his or her control.

(3) The Minister may, by order published in the *Gazette*, exempt from the operation of this Act a person, a class of persons or persons who are engaged in a trade specified in the order.

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## PART 2

### SECOND-HAND DEALERS AND PAWNBROKERS

#### *Division 1—Commencement of business*

#### **Requirement to notify police as to business of second-hand dealer or pawnbroker**

4—(1) This section does not apply to—

- (a) a second-hand dealer who, immediately before the commencement of this Act, was the holder of a licence in force under the *Second-hand Dealers Act 1905*; or
- (b) a pawnbroker who, immediately before that commencement, was the holder of a licence in force under the *Pawnbrokers Act 1857*.

(2) A person who proposes—

- (a) to carry on the business of a second-hand dealer at any premises or second-hand goods market; or
- (b) to carry on the business of a pawnbroker at any premises—

must give at least one month's notice in writing of intention to do so to the officer in charge of the police station nearest to the premises or market at which that person proposes to carry on business.

(3) A notice under subsection (2) is required whether or not the person proposing to carry on business has been granted a licence or approval by a local authority in respect of the proposed business and the notice is to specify—

- (a) the full name, address and date of birth of that person; and
- (b) the address of the premises or second-hand goods market at which that person proposes to carry on that business.

(4) Where a person proposes to carry on a business as mentioned in subsection (2) at more than one premises or second-hand goods market, it is sufficient if the notice is given to the officer in charge of the police station that is nearest to one of the premises or markets.

(5) If, in the case of a natural person—

- (a) the person proposing to carry on business has been convicted of an offence under this Act or a repealed Act or an offence involving dishonesty; or
- (b) that person is not, in the opinion of the Commissioner of Police, a fit and proper person to carry on the business of a second-hand dealer or pawnbroker—

or if, in the case of a corporation—

- (c) a person concerned in the management of the corporation has been convicted of an offence under this Act or a repealed Act or an offence involving dishonesty; or

(d) any such person is not, in the opinion of the Commissioner, a fit and proper person to carry on the business of a second-hand dealer or pawnbroker—the Commissioner may, within 28 days after receipt of a notice under subsection (2), file a notice of objection in the prescribed form in the court of petty sessions nearest to the premises or market where the person proposes to carry on business.

(6) The Commissioner of Police must, on filing a notice of objection under subsection (5), serve a copy of the notice—

(a) in the case of a natural person proposing to carry on business, personally on that person; or

(b) in the case of a corporation, personally on a director, the secretary, the public officer or any person who the Commissioner reasonably believes is a responsible officer of the corporation.

(7) Service of the notice of objection may be proved in the same way as service of a summons under the *Justices Act 1959*.

### Delegation by Commissioner of Police

5—(1) The Commissioner of Police may, in writing—

(a) delegate to a police officer any of the functions or duties of the Commissioner under section 4; and

(b) revoke wholly or partly a delegation.

(2) A delegation—

(a) may be made either generally or as otherwise provided by the instrument of delegation; and

(b) does not prevent the performance or discharge of a function or duty by the Commissioner.

(3) A function performed, or duty discharged, by a delegate has the same effect as if performed or discharged by the Commissioner.

### Hearing of objections

6—(1) For the purposes of hearing an objection of which notice has been filed under section 4, a court of petty sessions is to be constituted by a magistrate.

(2) The person proposing to carry on the business of a second-hand dealer or the business of a pawnbroker is entitled to be heard and to adduce evidence on the hearing of the objection.

(3) Where, on the hearing of the objection, the court is of opinion that it is not in the public interest that the person proposing to carry on the business of a second-hand dealer or the business of a pawnbroker should carry on that business the court may, by order, prohibit that person from carrying on—

(a) the business of buying or selling, or otherwise dealing in, second-hand goods, either as a principal or agent; or

(b) the business of a pawnbroker—

for such period, not less than one year, as the court thinks fit.

(4) Service of an order made under subsection (3) is to be effected on a person referred to in subsection (2) in the same way as service of a summons under the *Justices Act 1959*.

### **Unlawfully carrying on business as second-hand dealer or pawnbroker**

7—A person who carries on business as a second-hand dealer or pawnbroker—

(a) without giving notice as required by section 4 (2); or

(b) after service on that person of a copy of the notice of objection under section 4 (6) and before the hearing of the objection by a court of petty sessions; or

(c) during any period when, pursuant to an order made under section 6 (3), that person is disqualified from carrying on the business of buying or selling, or otherwise dealing in, second-hand goods, either as a principal or agent, or the business of a pawnbroker—

is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units and a daily fine not exceeding 2 penalty units in respect of each day during which that person so carries on business.



*Division 2—Change of business address***Duty to notify change of business address****8—(1) Where—**

- (a) a second-hand dealer or pawnbroker who was carrying on business as such immediately before the commencement of this Act proposes to carry on business as such at any premises or second-hand goods market other than the premises or market at which he or she was carrying on business at that time; or
- (b) a second-hand dealer or pawnbroker proposes to carry on business as such at any premises or second-hand goods market not specified in a notice given under section 4 (2)—

the second-hand dealer or pawnbroker must give notice in writing of his or her intention to do so to—

- (c) the officer in charge of the police station nearest to the premises or market at which he or she proposes to carry on the business; or
- (d) if he or she proposes to carry on business as such at more than one premises or market, the officer in charge of the police station that is nearest to one of those premises or markets.

(2) A second-hand dealer or pawnbroker to whom subsection (1) applies and who carries on business as such without giving notice as required by that subsection is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units and a daily fine not exceeding 2 penalty units in respect of each day during which the offence continues.

*Division 3—Duties of second-hand dealers and pawnbrokers***Duty to obtain proof of identity, &c.**

9—(1) A second-hand dealer or pawnbroker must not receive any goods in the course of business unless the person who sells, supplies or pawns the goods produces documentary proof of identity showing his or her correct name and address.

(2) A second-hand dealer or pawnbroker who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units.

### **Records to be kept relating to second-hand or pawned goods**

**10—(1)** A second-hand dealer must keep records containing such particulars as may be prescribed of all second-hand goods bought or received that exceed in value such amount as may be prescribed.

(2) A pawnbroker must keep records of all goods received in pawn, stating the date of pawn and the date on which the goods were redeemed.

(3) The Minister may, by order published in the *Gazette*, exempt a person, a class of persons or persons who are engaged in a trade specified in the order from compliance with this section and any such exemption may be made subject to such conditions as the Minister thinks fit.

(4) A second-hand dealer or pawnbroker who, without reasonable excuse, fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

### **Duty to retain goods for 7 days**

**11—(1)** A second-hand dealer who, during a period of 7 days after receiving any second-hand goods—

(a) fails to keep the goods in the form in which they were received; or

(b) disposes of them in any way—

is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

(2) Subsection (1)—

(a) does not derogate from any obligation that a second-hand dealer might otherwise have to keep goods for a period longer than 7 days after receipt of the goods; and

(b) does not apply to second-hand goods purchased at a public auction by a second-hand dealer; and

- (c) does not apply to second-hand goods purchased by a second-hand dealer from another second-hand dealer; and
  - (d) does not apply to second-hand goods which are vehicles or vessels.
- (3) Subsection (1) does not apply to the disposal of second-hand goods if the second-hand dealer—
- (a) obtains from the recipient of the goods documentary proof of identity showing his or her correct name and address; and
  - (b) where the goods disposed of exceed in value such amount as may be prescribed, keeps records containing such particulars as may be prescribed of those goods.
- (4) Nothing in subsection (3) permits the disposal of second-hand goods to a person whose usual place of residence is outside Australia.

#### ***Division 4—Promoters of second-hand goods markets***

#### **Duties of promoters of second-hand goods markets**

##### **12—(1) A promoter must—**

- (a) keep such records as may be prescribed relating to persons selling second-hand goods at a second-hand goods market; and
- (b) require any person proposing to sell second-hand goods at a second-hand goods market to produce documentary proof of identity showing his or her correct name and address.

(2) A promoter who, without reasonable excuse, fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

***Division 5—Redemption of pawned goods*****Form of notice to be given by pawnbrokers**

**13—**(1) A pawnbroker must, at the time of taking any goods in pawn, give to the person pawning the goods a notice signed by the pawnbroker specifying—

- (a) the rate of interest payable on the money lent and the total amount of interest payable on redemption of the goods pawned; and
- (b) the date before which the goods pawned may be redeemed.

(2) A notice under subsection (1) is to state—

- (a) that the goods will be forfeited on failure to redeem them before the date specified under subsection (1) (b); and
- (b) that the owner of the goods will be entitled on demand to the balance of the proceeds of sale; and
- (c) such other matters as may be prescribed.

(3) If a pawnbroker takes goods in pawn without giving to the person pawning the goods a notice in accordance with this section, the pawnbroker is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units.

**Redemption of pledges**

**14—**(1) The period for redemption of any goods taken in pawn is to be 6 months or such longer period as may be agreed by the parties at the expiration of which period the goods are to be forfeited and may be sold.

(2) A pawnbroker who sells or otherwise disposes of any goods before the expiration of the period provided for redemption under subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

(3) A pawnbroker who proposes to sell goods forfeited under subsection (1) must, unless the goods do not exceed in value such amount as may be prescribed—

- (a) cause those goods to be sold by auction; and
- (b) at least 14 days before the sale, give notice in writing of the sale by certified post to the person who would have been entitled to redeem the goods; and
- (c) keep a record of the sale in the prescribed form.

(4) Where the proceeds of a sale pursuant to subsection (1) exceed the amount owing to the pawnbroker under the contract of pawn, the balance of those proceeds is recoverable from the pawnbroker as a debt in a court of competent jurisdiction by the person who would have been entitled to redeem the goods.

(5) Where—

- (a) the proceeds of a sale pursuant to subsection (1) exceed the amount owing to the pawnbroker under the contract of pawn; and
- (b) on demand within the prescribed period by the person who would have been entitled to redeem the goods, the pawnbroker fails to pay the balance of the proceeds to that person—

the pawnbroker is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

(6) A conviction under subsection (2) or (5) does not limit any civil liability of the person convicted to the owner of the goods or any other person who would have been entitled to redeem them.

### *Division 6—Provisions relating to suspected stolen goods*

#### **Duty of second-hand dealers relating to suspected stolen goods**

**15—**(1) If a second-hand dealer, pawnbroker or an employee of a second-hand dealer or pawnbroker to whom any goods are offered for sale, as a pawn or in some other kind of commercial transaction, has reasonable cause to suspect that the goods are stolen goods—

- (a) the second-hand dealer, pawnbroker or employee must forthwith notify a police officer of that fact; and

(b) the second-hand dealer, pawnbroker or employee may—

- (i) arrest and detain the person offering the goods until he or she can be delivered into the custody of a police officer; and
- (ii) seize and detain the goods until they can be delivered into the custody of a police officer.

(2) A second-hand dealer, pawnbroker or employee who exercises a power of arrest or seizure under this section must take the necessary action to have the person or goods referred to in subsection (1) delivered into the custody of a police officer as soon as practicable.

(3) A second-hand dealer, pawnbroker or employee who contravenes subsection (1) (a) is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

#### **Notice to prevent dealings in goods suspected of being stolen**

**16—**(1) A police officer may serve notice under this section on—

- (a) a second-hand dealer or pawnbroker; or
- (b) any person apparently having the management or charge of the business of second-hand dealer or pawnbroker or the management or charge of any such business so far as it is carried on in or on the relevant premises—

if the police officer suspects that goods in the possession or under the control of the dealer or pawnbroker may be stolen goods.

(2) The notice—

- (a) is to be in the prescribed form; and
- (b) is to specify the goods suspected of being stolen; and
- (c) for a period of 21 days after service of the notice, prohibits the second-hand dealer, pawnbroker or other person referred to in subsection (1) (b) from altering the form of the goods or selling or otherwise disposing of them in any way.

(3) The notice may be reissued once for a further period of 21 days commencing on the expiration of the original period of 21 days.

(4) A second-hand dealer, pawnbroker or other person referred to in subsection (1) (b) who fails to comply with a notice served on him or her under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

**Powers of entry, inspection and arrest in relation to second-hand or pawned goods**

17—(1) A police officer may at any reasonable time—

- (a) enter any place where the business of a second-hand dealer or pawnbroker is being carried on for the purpose of inspecting any goods that are in that place or any records that are kept by the second-hand dealer or pawnbroker; and
- (b) for that purpose require the second-hand dealer or pawnbroker or an employee or agent of the second-hand dealer or pawnbroker to produce any such goods or records.

(2) A police officer may at any reasonable time—

- (a) enter any premises or place at which a second-hand goods market is being, or is to be, held; and
- (b) inspect any goods apparently in the possession, or under the control, of a person who is attending the premises or market to sell goods or leaving the premises or market after attending it to sell goods; and
- (c) require any such person to state his or her full name and address.

(3) A police officer may at any reasonable time—

- (a) enter any premises or place, whether a second-hand goods market or not, at which a promoter is carrying on business; and
- (b) inspect any records made under section 12 and apparently in the possession, or under the control, of the promoter; and
- (c) for the purposes of paragraph (b), require the promoter or his or her employee to produce any such records.

(4) A person who—

- (a) refuses or fails to comply with a requirement made under this section; or
- (b) in response to a requirement made under this section to give his or her full name and address, makes a statement that is false or misleading—

is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

(5) A police officer may arrest a person without warrant in the place of business of a second-hand dealer or pawnbroker if the police officer has reasonable grounds for believing that the person has committed, or is committing, an offence against this Act and, in response to a request made by the police officer, the person—

- (a) refuses to give his or her full name and address; or
- (b) gives a name or an address that the officer has reasonable grounds for believing is false or misleading.

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### PART 3

#### DISPUTES AS TO OWNERSHIP OF GOODS

##### Courts of petty sessions to determine disputes

**18—**(1) A person claiming to be entitled to the possession of goods in the possession or under the control of a second-hand dealer or pawnbroker, where the goods are second-hand goods or goods in pawn, may apply to a court of petty sessions for an order for delivery of the goods.

(2) An application under subsection (1) may be supported by evidence provided by affidavit and is to be served—

- (a) if the second-hand dealer or pawnbroker is a natural person, personally on him or her; or
- (b) if the second-hand dealer or pawnbroker is a corporation, personally on a director, the secretary, the public officer or any person who the applicant reasonably believes is a responsible officer of the corporation.



(3) For the purposes of hearing an application under subsection (1), a court of petty sessions is to be constituted by a magistrate.

(4) The second-hand dealer or pawnbroker is entitled to be heard and to adduce evidence at the hearing of the application.

(5) If satisfied by the supporting evidence that the applicant is entitled to possession of the goods, the court may make one of the following orders:—

- (a) an order directing the second-hand dealer or pawnbroker to deliver the goods to the applicant;
- (b) an order directing the second-hand dealer or pawnbroker to pay to the applicant the value of the goods as assessed by the court—

but, if the court is not so satisfied, it must dismiss the application.

(6) An order under subsection (5) (a) or (b)—

- (a) is to be served on the second-hand dealer or pawnbroker in the same way as a summons under the *Justices Act 1959*; and
- (b) takes effect 21 days after service; and
- (c) is taken to be a judgement of a court of requests and may be enforced accordingly—

and service of the order may be proved in accordance with the *Justices Act 1959*.

(7) If, after service of an application under subsection (1), the second-hand dealer or pawnbroker—

- (a) alters the form of the goods to which the application relates; or
- (b) disposes of the goods in any way except in accordance with an order made under this section—

the second-hand dealer or pawnbroker is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units.

(8) A conviction under subsection (7) does not limit any civil liability of the person convicted arising under an order made under subsection (5) (a) or (b).

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## **PART 4**

### **MISCELLANEOUS AND SUPPLEMENTAL**

#### **Duty to give correct name and address to second-hand dealer or pawnbroker**

**19**—A person who sells or supplies goods to a second-hand dealer or pawnbroker in the course of business and who fails to give his or her correct name and address to the second-hand dealer or pawnbroker is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

#### **Orders prohibiting a person carrying on business as a second-hand dealer or pawnbroker**

**20**—(1) Where a court convicts a second-hand dealer or pawnbroker of an offence against this Act or an offence involving dishonesty, the court may, in addition to any other order that it makes, by order prohibit the second-hand dealer or pawnbroker from carrying on for such period as the court thinks fit the business of buying or selling, or otherwise dealing in, second-hand goods, either as a principal or agent, or the business of a pawnbroker.

(2) A person who carries on business as a second-hand dealer or pawnbroker in contravention of an order under subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units and a daily fine not exceeding 2 penalty units in respect of each day during which that person so carries on business.

**Evidentiary provision**

**21**—If in proceedings for an offence against this Act it is established that, within the period of 12 months immediately preceding the date of the alleged offence, the defendant—

- (a) sold second-hand goods other than second-hand vehicles or vessels on not less than 6 different days; or
- (b) sold 6 or more second-hand vehicles or vessels; or
- (c) conducted 6 or more auctions for the sale of second-hand goods on behalf of other persons—

it is to be presumed, in the absence of proof to the contrary, that the defendant was carrying on business as a second-hand dealer on the date of the alleged offence.

**Offences by directors of bodies corporate**

**22**—If a body corporate is guilty of an offence against this Act, each of its directors is guilty of an offence and is liable to the same penalty as is prescribed for that offence unless it is proved that the director could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the body corporate.

**Regulations**

**23**—(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the Governor may make regulations providing for records to be kept by second-hand dealers, pawnbrokers and promoters.

**Repeal of *Pawnbrokers Act 1857* and *Second-hand Dealers Act 1905***

**24**—The *Pawnbrokers Act 1857*\* and the *Second-hand Dealers Act 1905*† are repealed.

\* 21 Vict. No. 23. For this Act, as amended to 1959, see the Reprint of Statutes (1826-1959), Vol. 4, p. 577. Subsequently amended by No. 55 of 1965.

† 5 Edw. VII No. 28. For this Act, as amended to 1959, see the Reprint of Statutes (1826-1959), Vol. 5, p. 485. Subsequently amended by No. 55 of 1965, No. 74 of 1972, No. 46 of 1991 and No. 68 of 1994.

**Administration of Act**

**25**—Until provision is made in relation to this Act by order made under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the Department responsible to the Minister for Justice in relation to the administration of this Act is the Department of Justice.

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*[Second reading presentation speech made in:—  
House of Assembly on 29 September 1994  
Legislative Council on 24 November 1994]*