

Second-hand Dealers and Pawnbrokers Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 19 April 1989

(Brought in by Mr McCutcheon and Mr Roper)

A BILL

To provide for the licensing and regulation of second-hand dealers and pawnbrokers and to facilitate and expedite the recovery of stolen goods from second-hand dealers and pawnbrokers; to repeal the *Second-hand Dealers Act 1958*, the *Pawnbrokers Act 1958* and the *Marine Stores and Old Metals Act 1958*; to amend the *Goods Act 1958*; to make other consequential amendments and repeals; and for other purposes.

Second-Hand Dealers and Pawnbrokers Act 1989

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purposes

1. The purposes of this Act are—
 - 5 (a) to provide for the licensing and regulation of second-hand dealers and pawnbrokers; and
 - (b) to facilitate and expedite the recovery of stolen goods from second-hand dealers and pawnbrokers.

Commencement

- 10 2. (1) This Act (apart from section 35 (6) and (7)) comes into operation on a day to be proclaimed.

(2) Section 35 (6) and (7) comes into operation at the same time as Part 2 of the *Magistrates' Court Act 1989*.

Definitions

3. In this Act—

“**Council**” means a municipal council, and includes the Council of the City of Melbourne and the Council of the City of Geelong. 5

“**Pawnbroker**” means a person who carries on the business of advancing money on the security of pledged goods.

“**Second-hand dealer**” means a person who carries on the business of buying, selling, exchanging and otherwise dealing in second-hand goods, whether or not he or she deals in other goods and regardless of where goods are bought. 10

“**Second-hand goods**” means any goods which have been worn or otherwise used. 15

Application

4. Nothing in this Act applies to—

(a) a licensed auctioneer under the *Auction Sales Act 1958*, or any goods acquired by such an auctioneer pursuant to that Act for so long as they are in his or her possession; or 20

(b) a gun-dealer or firearm within the meaning of the *Firearms Act 1958*; or

(c) a person conducting a fundraising appeal within the meaning of and as permitted by the *Fundraising Appeals Act 1984*; or 25

(d) goods subject to a hire-purchase agreement or a bailment; or

(e) persons or goods exempted under the regulations.

PART 2—LICENSING

Types of licence 30

5. The following licences may be granted under this Act:

(a) A second-hand dealer’s business premises licence to authorise the holder to act as a second-hand dealer at the premises specified in the licence;

(b) A second-hand dealer’s market licence to authorise the holder to act as a second-hand dealer at any market in Victoria; 35

(c) A pawnbroker’s business premises licence to authorise the holder to act as a pawnbroker at the premises specified in the licence. 40

Obligation to be licensed

6. (1) A person who does not hold a second-hand dealer's licence under this Act must not act as a second-hand dealer.

5 (2) A person who does not hold a pawnbroker's licence under this Act must not act as a pawnbroker.

(3) A business premises licensee must not act as a second-hand dealer or as a pawnbroker (as the case requires) except at the premises specified in the licence.

10 (4) A market licensee must not act as a second-hand dealer except at a market.

(5) A person who contravenes this section is guilty of an offence and liable to a penalty of not more than 100 penalty units or imprisonment for a period not exceeding six months and to a further penalty of 2 penalty units for each day on which the contravention continues.

Relevant councils

7. (1) An application for a business premises licence must be made to the council in whose municipal district the premises specified in the application are situated.

20 (2) An application for a market licence must be made to the council in whose municipal district the market specified in the application is situated, being the market at which the applicant proposes to first act as a second-hand dealer after the granting of the licence.

25 (3) All other applications under this Act must be made to the council which granted the licence in question.

(4) A reference in this Act to the relevant council is a reference to the council to which the application in question must be made or which granted the licence in question.

Relevant police officers

30 8. (1) The relevant police officer in relation to an application for or in respect of a business premises licence is the member of the police force in charge for the time being of the police station in the relevant council's municipal district that is closest to the premises specified in the licence application or in the licence (as the case requires).

35 (2) The relevant police officer in relation to an application for or in respect of a market licence is the member of the police force in charge for the time being of the police station in the relevant council's municipal district that is closest to the market that is or was (as the case requires) specified in the licence application.

Applications generally

9. An application under this Part must be made in the appropriate form approved by the Minister and must be accompanied by the appropriate application fee.

Grant of licences

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10. (1) Within 7 days after receiving a licence application the relevant council must serve written notice of the application on the relevant police officer.

(2) The relevant police officer, or another member of the police force authorised by the Chief Commissioner, may object to the granting of the licence on the ground that the applicant or, in the case of a body corporate, a director or the nominee is not a fit and proper person to act as a second-hand dealer or as a pawnbroker (as the case requires).

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(3) An objection must be in writing served on the relevant council within 21 days after service of the notice of the application.

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(4) Within 7 days after service of an objection the relevant council must serve written notice of the objection on the applicant, who may respond in writing served on the relevant council within 7 days after service of that notice.

(5) The relevant council must consider the licence application and any objection and response and may grant the licence if satisfied—

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- (a) that the application was made as required by this Act; and
- (b) that the applicant or, in the case of a body corporate, each of the directors and the nominee is a fit and proper person to act as a second-hand dealer or as a pawnbroker (as the case requires); and
- (c) that no planning law or scheme will be contravened by activity to be authorised by the licence.

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(6) The relevant council must not issue the licence until the applicant has paid it the appropriate licence fee.

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(7) A licence is subject to—

- (a) the condition that the licensee should comply with this Act and the regulations and any relevant planning law and scheme; and
- (b) any prescribed conditions; and
- (c) any other conditions imposed by the relevant council.

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(8) A licence is not transferrable from one person to another.

Term of licences, renewal and surrender

11. (1) A licence remains in force for three years from the date of granting or renewal unless it is sooner revoked or surrendered.

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(2) An application for renewal of a licence must be made before the licence expires, and section 10 applies as if it were an application for a

licence, except that the matters referred to in section 10 (5) (b) shall be presumed unless an objection is made.

5 (3) A licensee may at any time surrender the licence by serving it, with a written notice of surrender, on the relevant council, and the surrender takes effect on service.

(4) The relevant council must serve written notice of the surrender of a licence on the relevant police officer as soon as practicable after it receives the licence and notice of surrender.

Corporate licensees and nominees

10 12. (1) A body corporate may hold a licence under this Act in the name of a natural person (its “nominee”).

15 (2) An application to replace the nominee may be made at any time, and section 10 applies as if it were an application for a licence, except that the relevant council’s consideration of the application, and any objection to it, shall relate only to the matter of whether the proposed new nominee is a fit and proper person to act as a second-hand dealer or as a pawnbroker (as the case requires).

Removal of business premises licences

20 13. (1) The holder of a business premises licence may at any time apply for removal of the licence from the premises specified in the licence to other premises within the relevant council’s municipal district.

25 (2) The council may grant the application, and amend the licence accordingly, if satisfied that no planning law or scheme will be contravened if the licensee acts as a second-hand dealer or as a pawnbroker (as the case requires) at the new premises.

Variation of conditions

14. (1) A licensee may at any time apply for variation of the conditions of the licence.

30 (2) The relevant police officer may at any time apply for variation of the conditions of a licence.

(3) Within 7 days after receiving a variation application the relevant council must serve written notice of the application on the licensee or the relevant police officer (as the case requires).

35 (4) The relevant council may at any time by written notice served on the licensee and the relevant police officer propose a variation of the conditions of the licence.

(5) A licensee may object to a variation sought by the relevant police officer or proposed by the relevant council.

40 (6) The relevant police officer may object to a variation sought by the licensee or proposed by the relevant council.

(7) An objection must be in writing served on the relevant council within 21 days after service of the notice under sub-section (3) or (4).

(8) Within 7 days after service of an objection the relevant council must serve written notice of the objection on the licensee or the relevant police officer (as the case requires), who may respond in writing served on the relevant council within 7 days after service of that notice.

(9) In the case of a variation proposed by it, the relevant council may proceed to make the variation if no objection is received within the period specified in sub-section (7). 5

(10) Otherwise, the relevant council must consider the application (if any) and any objection and response and may make the variation or not, as it thinks fit. 10

Revocation

15. (1) The relevant police officer, or another member of the police force authorised by the Chief Commissioner, may at any time apply for revocation of a licence.

(2) Within 7 days after receiving a revocation application the relevant council must serve written notice of the application on the licensee. 15

(3) The relevant council may at any time by written notice served on the licensee and the relevant police officer propose revocation of the licence. 20

(4) A licensee may object to revocation sought by the relevant police officer or authorised member of the police force or proposed by the council.

(5) An objection must be in writing served on the relevant council within 21 days after service of the notice under sub-section (2) or (3). 25

(6) Within 7 days after service of an objection the relevant council must serve written notice of the objection on the member of the police force who applied for revocation or on the relevant police officer (as the case requires).

(7) That member of the police force may respond in writing served on the relevant council within 7 days after service of the notice of the objection. 30

(8) The relevant council must consider the application (if any) and any objection and response and may revoke the licence if satisfied—

(a) that the licensee has been found guilty of an offence against this Act or of any offence involving dishonesty; or 35

(b) that the licensee has acted as a second-hand dealer or as a pawnbroker (as the case requires) otherwise than as authorised by the licence; or

(c) that the licensee has failed to comply with a condition of the licence; or 40

(d) that the licensee or, in the case of a body corporate, a director or the nominee is otherwise no longer a fit and proper

person to act as a second-hand dealer or as a pawnbroker (as the case requires).

(9) If the licence is revoked, the licensee must return it to the council within 7 days after the revocation takes effect.

5 Penalty: 10 penalty units

Review of decisions

16. An applicant under this Part, licensee or relevant police officer may apply to the Administrative Appeals Tribunal for review of a decision made under this Part by a relevant council.

10 **General provisions as to council decisions**

17. (1) A decision made under this Part by a relevant council takes effect—

15 (a) if an application for review of the decision is not made, at the end of the period within which such an application could have been made; or

(b) if such an application is made, in accordance with the determination of the Administrative Appeals Tribunal.

20 (2) Within 7 days after making a decision under this Part, a relevant council must serve written notice of the decision on the applicant or licensee and on the relevant police officer.

(3) A relevant council is not bound to hear an applicant, licensee, relevant police officer or other member of the police force, or other person in relation to any application or proposed decision under this Part.

25 **Offence**

18. A person must not knowingly or recklessly make a false or misleading statement in or in connection with an application under this Part.

Penalty: 20 penalty units.

30 **PART 3—CONDUCT OF BUSINESS**

Identifying persons selling or pawning goods

19. A second-hand dealer or pawnbroker must take reasonable steps to ascertain and verify the identity of every person from whom the dealer or pawnbroker receives second-hand goods.

35 Penalty: 20 penalty units.

Recording transactions

20. A second-hand dealer or pawnbroker must keep, in the form and containing the information required by the regulations, accurate and complete records of every transaction by which the dealer or pawnbroker receives second-hand goods. 5

Penalty: 20 penalty units.

Retention of goods for seven days

21. (1) For 7 days after receiving second-hand goods a second-hand dealer or pawnbroker must keep the goods in the form in which they were received and without disposing of them in any way. 10

Penalty: 20 penalty units.

(2) Sub-section (1) does not derogate from any obligation a second-hand dealer or pawnbroker might otherwise have to keep goods for a period longer than 7 days after receipt.

Co-operation with police 15

22. (1) A second-hand dealer or pawnbroker must check second-hand goods in his or her possession and second-hand goods which he or she receives against any notice describing stolen goods served on him or her by a member of the police force.

(2) A second-hand dealer or pawnbroker who suspects for any reason that goods in his or her possession or which he or she receives may have been stolen must immediately inform a member of the police force. 20

Penalty applying to this sub-section: 20 penalty units.

Contracts for pawning goods 25

23. (1) A pawnbroker must not receive second-hand goods in pawn from a person apparently under 16 years of age.

Penalty: 20 penalty units.

(2) A pawnbroker who advances money on the security of second-hand goods received in pawn must not charge or receive interest on the principal sum at a rate greater than the rate from time to time specified in section 150A of the *Credit Act* 1984. 30

Penalty: 20 penalty units.

(3) Any excess interest so received by a pawnbroker may be recovered in a Magistrates' Court as a civil debt recoverable summarily or in any court of competent jurisdiction. 35

(4) A pawnbroker who advances money on the security of goods received in pawn must serve on the owner of the goods written notice of both the annual and monthly rates of interest that will be charged on the principal sum. 40

Penalty: 20 penalty units.

(5) For the purposes of this section—

- 5 (a) a pawnbroker shall be deemed to receive goods in pawn if he or she receives them under a contract for the sale of the goods by which he or she gives the vendor the option of buying the goods back within a set period for the price for which the goods are sold (the “contract price”) plus an amount in consideration of the option (the “premium”); and
- 10 (b) the contract price shall be deemed to be the principal sum and the premium shall be deemed to be the total amount of interest payable.

PART 4—DISPUTES AS TO THE OWNERSHIP OF GOODS

Magistrates’ Courts to determine disputes

15 **24.** (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, being second-hand goods or goods in pawn, may apply to a Magistrates’ Court for an order for delivery of the goods.

(2) An application—

- 20 (a) may be made without notice to any other person; and
(b) must be supported by evidence on oath or by affidavit.

(3) If satisfied by the supporting evidence that the applicant may be entitled to possession of the goods, the clerk of the Court may make both of the following orders:

- 25 (a) An order directing the second-hand dealer or pawn broker to deliver the goods to the applicant;
(b) An order directing the second-hand dealer or pawnbroker to refrain from altering the form of the goods and from disposing of them in any way except in accordance with an order under paragraph (a).

30 (4) Subject to this section, an order under sub-section (3) (b) takes effect on service, and an order under sub-section (3) (a) takes effect 21 days after service.

35 (5) The orders under sub-section (3) must be served on the second-hand dealer or pawnbroker in the same way as a default summons, and service may be proved in the same way as service of a default summons.

(6) Orders under sub-section (3) are deemed to be orders made by the Court.

40 (7) If within 21 days after service of an order under sub-section (3) (a) the second hand dealer or pawnbroker lodges an objection with the Court—

- (a) the order lapses and is and will be of no effect; and

- (b) the matter of who is entitled to possession of the goods must be determined by the Court.
- (8) The Court—
- (a) may make an order directing the second-hand dealer or pawnbroker to deliver the goods to the applicant; or 5
- (b) may make an order directing the second-hand dealer or pawnbroker to pay the applicant the value of the goods as assessed by the Court; or
- (c) may dismiss the matter and rescind the order under sub-section (3) (b). 10

PART 5—ENFORCEMENT

Police powers generally

25. (1) A member of the police force may without warrant enter business premises occupied by a second-hand dealer or pawnbroker at any time when those premises are open for business. 15

(2) A member of the police force may require a second-hand dealer or pawnbroker to produce—

- (a) any goods in the possession or under the control of the second-hand dealer or pawnbroker; or
- (b) his or her licence under this Act; or 20
- (c) any records kept by the second-hand dealer or pawnbroker pursuant to this Act.

(3) A second-hand dealer or pawnbroker must not refuse or fail to comply with such a requirement.

Penalty: 20 penalty units. 25

(4) In this section—

“premises” include a stall or storage area at a market.

Notice to stop dealings in goods suspected of having been stolen

26. (1) Any member of the police force may serve notice under this section on a second-hand dealer or pawnbroker if the member reasonably believes that goods in the possession or under the control of the dealer or pawnbroker may have been stolen. 30

(2) A notice—

- (a) must be in the form approved by the Minister; and
- (b) must specify the goods suspected of having been stolen; and 35
- (c) prohibits the second-hand dealer or pawnbroker altering the form of the goods or disposing of them in any way for 21 days from service.

(3) A notice under this section may be reissued once for a further period of 21 days commencing immediately after the first period ends. 40

(4) A second-hand dealer or pawnbroker must comply with a notice served on him or her under this section.

Penalty: 20 penalty units.

PART 6—GENERAL

5 Service

27. (1) Subject to section 24, a notice or other document authorised or required by this Act to be served on an applicant for a licence or a licensee shall be deemed to have been duly served on the applicant or licensee—

- 10 (a) if it is delivered to him or her personally; or
- (b) if it is left at his or her last known residence or business premises with a person apparently over 16 years of age and apparently residing or employed there; or
- (c) if it is sent to him or her by post.

15 (2) Sub-section (1) is in addition to and does not derogate from sections 528, 529 and 530 of the *Companies (Victoria) Code*.

(3) A notice or other document authorised or required by this Act to be served on a council shall be deemed to have been duly served on the council—

- 20 (a) if it is delivered to a member of council staff at the council office; or
- (b) if it is sent by post to council's postal address.

(4) A notice or other document authorised or required by this Act to be served on a member of the police force shall be deemed to have

- 25 duly served on the member—
- (a) if it is delivered to him or her personally; or
- (b) if it is left with another member of the police force at the police station of which the member is for the time being in charge or at which he or she is for the time being stationed ;
- 30 or
- (c) if it is sent by post to that police station.

Delegation by councils

28. A council may, by instrument, delegate to a member of its staff any of its powers, duties or functions under this Act other than this

35 power of delegation.

Evidentiary provisions

29. In proceedings under this Act—

- (a) goods shall be deemed to be in the possession or under the control of a second-hand dealer or pawnbroker when they

- are in any premises, place or vehicle that is occupied by or under the control of the dealer or pawnbroker; and
- (b) in the absence of proof to the contrary—
- (i) a certificate issued by a council stating—
 - (A) that at a particular time a person held or did not hold a licence under this Act; or
 - (B) that at a particular time a licence under this Act was or was not in force in relation to particular premises—

is proof of that fact; and 10
 - (ii) proof is not required that such a certificate purporting to be issued by a council or its delegate was so issued; and
 - (iii) proof is not required of the delegation to any person of a council's power to issue such certificates. 15

Liability for offences

- 30.** (1) If a body corporate is guilty of an offence against this Act, any person who is concerned in or takes part in the management of that body corporate is also guilty of, and liable to the penalty for, that offence. 20
- (2) It is a defence to a charge under sub-section (1), if the person charged proves—
- (a) that the offence was committed by the body corporate without his or her consent or knowledge; and
 - (b) that he or she exercised due diligence to prevent the commission of the offence. 25

Regulations

- 31.** (1) The Governor in Council may make regulations for or with respect to—
- (a) conditions on licences; and 30
 - (b) carrying on business as a second-hand dealer or as a pawnbroker; and
 - (c) prescribing forms; and
 - (d) prescribing maximum fees; and
 - (e) exempting persons or goods from the application of this Act, subject to conditions or unconditionally; and 35
 - (f) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations may— 40
- (a) be of general or limited application; and

- (b) differ according to differences in time, place or circumstance; and
- (c) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a council; and
- (d) impose penalties not exceeding 20 penalty units for a contravention of the regulations.

Fees

32. Each council may set the application fees and licence fees payable to it under Part 2, but in no case may the fees exceed the maximums prescribed.

PART 7—REPEALS, AMENDMENTS AND TRANSITIONAL PROVISIONS

Repeals and transitional provisions

33. (1) The following Acts are repealed:

Second-hand Dealers Act 1958

No. 6363.

Marine Stores and Old Metals Act 1958

No. 6303.

Pawnbrokers Act 1958.

No. 6332.

(2) Despite sub-section (1), a repealed Act continues to apply to a licence of whatever kind in force under that Act immediately before the commencement of this section until the licence expires in accordance with that Act.

Repeal of law relating to markets overt.

34. Section 28 of the *Goods Act 1958* is repealed.

Consequential repeals and amendments

35. (1) The *Second-hand Dealers (Charity Collectors) Act 1970*, the *Second-hand Dealers (Charitable Collectors) Act 1972* and the *Second-hand Dealers (Charity Collectors) Act 1976* are repealed.

Nos. 8030, 8351 and 8862.

(2) In the *Firearms Act 1958*—

No. 6251.

(a) in section 3 (1)—

(i) the definition of “**Marine stores dealer**” is repealed; and

(ii) in the definition of “**Pawnbroker**”, for “the *Pawnbrokers Act 1958*” substitute “the *Second-hand Dealers and Pawnbrokers Act 1989*”; and

(b) in section 7, the further proviso to sub-section (1) is repealed.

(3) In section 6 of the *Motor Car Traders Act 1986*, for “the *Second-hand Dealers Act 1958*” substitute “the *Second-hand Dealers and Pawnbrokers Act 1989*”.

No. 104 of 1986.

No. 8184.

(4) In section 69 (1) of the *Magistrates' Courts Act 1971*, paragraph (k) is repealed.

(5) In Schedule 4 to the *Magistrates' Court Act 1989*, item 54 is repealed.

(6) In section 23 (3) of this Act, for "a Magistrates' Court" substitute "the Magistrates' Court". 5

(7) Section 24 of this Act is amended as follows:

(a) In sub-section (1), for "a Magistrates' Court" substitute "the Magistrates' Court";

(b) In sub-section (3), for "the clerk of the Court" substitute "the Court constituted by a registrar"; 10

(c) In sub-section (5), for "a default summons" (where twice occurring) substitute "a summons to answer to a charge";

(d) Sub-section (6) is repealed;

(e) In sub-section (7) (b), after "the Court" insert "constituted by a magistrate". 15

