

# NORTHERN TERRITORY OF AUSTRALIA

## HAWKERS ACT

As in force at 1 July 1996

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 July 1996

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## HAWKERS ACT

### An Act relating to the licensing of hawkers

#### 1 Short title

This Act may be cited as the *Hawkers Act*.

#### 2 Repeal

- (1) The "*Licensed Hawkers Act, 1863*" and "*The Licensed Hawkers Amendment Act, 1898*" of the State of South Australia, in their application to the Northern Territory, are repealed.
- (2) Notwithstanding the repeal of the Acts referred to in subsection (1) any hawker's or servant's licence granted under those Acts and in force at the commencement of this Act shall remain in force during the period for which it was granted, and shall be of the same force and effect as if this Act had been in force when it was granted and it had been granted under this Act. A servant's licence granted under those repealed Acts shall be deemed to be an employee's licence under this Act.

#### 3 Definitions

In this Act, unless the contrary intention appears:

**Commissioner of Police** means the Commissioner of Police for the Territory.

**hawker** means any person who travels either personally or by his servants or agents by any means of locomotion (whether by land, air or water, and whether with or without a vehicle) from place to place or from house to house carrying or exposing goods for sale by retail but does not include a person who sells goods or exposes goods for sale only from a house, shop, room, stall, tent or marquee or other premises.

**hawker's licence** means a hawker's licence granted under this Act and for the time being in force.

**employee's licence** means a licence granted under this Act to the employee of a hawker and for the time being in force.

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**licence** means hawker's licence or employee's licence.

**vehicle** includes vehicle or conveyance of any kind.

**boat** includes ship, boat or any vessel for transport by water.

### **3A Delegation**

- (1) The Commissioner of Police may, by instrument in writing, delegate to a member of the Northern Territory Police Force all or any of his powers, functions and authorities under this Act (except this power of delegation) in relation to a district or part of the Territory so that the delegated powers, functions and authorities may be exercised by the delegate with respect to the district or part of the Territory specified in the instrument of delegation.
- (2) A delegation under subsection (1) is revocable in writing at will and does not prevent the exercise of a power, function or authority by the Commissioner of Police.

## **4 Duty to obtain hawker's and employee's licences**

- (1) A person shall not carry on business as a hawker unless:
  - (a) the business is one in relation to which a hawker's licence is not required; or
  - (b) he is the holder of a hawker's licence and carries on the business in accordance with the terms and conditions of that licence.

Penalty: \$20.

- (2) A hawker shall not employ any person in the business of hawking unless an employee's licence has been obtained for that person.

Penalty: \$40.

## **5 Exemptions**

A hawker's licence shall not be required:

- (a) for the sale of:
  - (i) feed for livestock, not being agricultural produce;
  - (ii) newspapers; or
  - (iii) timber;

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- (b) by the actual worker or maker (not being a body corporate) of any goods, wares or merchandise, or his children, apprentices, or servants usually residing in the same house with him selling or exposing for sale goods, wares or merchandise made by him;
  - (c) by any person selling or exposing for sale goods, wares or merchandise to persons who are traders therein and who buy to sell again;
  - (d) by any person carrying about, either personally or by his employees, any mead, wine, cider or perry the produce of his own vineyard or orchard for sale in accordance with the law for the time being in force in the Territory relating to the sale of such liquors;
  - (e) for the sale of any goods in any market;
  - (f) for the sale of goods on any show grounds whilst any agricultural, horticultural, pastoral or other like show is being held; or
  - (g) for the sale of goods at any fair, fete, bazaar or other like function held for charitable or benevolent purposes.

## **6 Applications for licences**

- (1) An application for a licence shall be made to the Commissioner of Police.
- (2) Subject to subsection (3) the Commissioner of Police shall not entertain any application (other than an application for a licence by way of renewal of a prior licence) unless the applicant produces to him or to some person authorized by him a certificate signed by 2 reputable inhabitants of the Territory, certifying that the applicant is of good character and reputation and is a fit person to exercise the trade of a hawker.
- (3) The Commissioner of Police may dispense with the production of a certificate under subsection (2):
  - (a) where the applicant is a body corporate; or
  - (b) where the applicant is unable to obtain the required references, but the Commissioner of Police is satisfied that the applicant is of good character and reputation and is a fit person to exercise the trade of a hawker.

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- (4) The certificate required under this section may be in the following form:

"We, the persons whose full names and addresses and signatures appear hereunder, hereby certify that (full name and address of applicant) is of good character and reputation and is a fit person to exercise the trade of a hawker.

Full name and address

Signature.

Date."

## **7 Issue of licences**

- (1) The Commissioner of Police, upon being satisfied that the applicant is a fit and proper person to hold a licence, and upon payment of the prescribed fee, may issue a licence to the applicant.
- (2) The Commissioner of Police may refuse to issue a licence to any person if he is satisfied that that person is not a fit and proper person to hold a licence or has not a sufficient knowledge of the English language for the exercise of the trade of hawker.
- (4) Notice that the Commissioner of Police refuses to issue a licence may be served by post.

### **7A Appeal against refusal or failure to grant licence**

- (1) Where the Commissioner of Police refuses to issue a licence, or fails to issue a licence within 14 days from and including the date on which application is made for a licence, the applicant may, within 28 days from and including the date on which notice of the refusal is served on him, or from and including the expiration of that fourteenth day, as the case may be, appeal to the Local Court against the refusal or failure.
- (2) An appeal under subsection (1) shall be instituted by:
- (a) filing with the clerk of the court a notice of appeal in the prescribed form; and
  - (b) serving a copy of the notice of appeal on the Commissioner of Police.

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**7B Powers of court on appeal**

Upon the hearing of an appeal under section 7A, the court:

- (a) if satisfied that the Commissioner of Police, on reasonable grounds and in accordance with the provisions of this Act, refused to issue the licence, shall dismiss the appeal;
- (b) if not satisfied that the Commissioner of Police so refused to issue the licence, shall direct the Commissioner of Police to reconsider the application; or
- (c) may approve of the failure of the Commissioner of Police to deal with the application or direct him to deal with the application within such time as the court sees fit,

and may make such order as to costs as it sees fit.

**8 Duration of licence**

A licence shall, unless sooner revoked or suspended, remain in force for 12 months after the date on which it was issued.

**9 Fees for licences**

The fees payable for licences shall be as set out in the Schedule.

**10 Effect of licence in relation to local by-laws**

- (1) A hawker's licence shall contain a condition that the holder thereof shall comply with all by-laws relating to hawking (other than by-laws requiring hawkers to be licensed or to pay any fees) which are for the time being in force in any district, municipality or community government area (within the meaning of the *Local Government Act*) or town in which he hawks.
- (2) The holder of a hawker's licence may hawk in accordance therewith without obtaining any licence to hawk from, or paying any fees to, any other authority.

**10A Restriction on hawking in towns**

- (1) A hawker shall not, without approval in writing, sell goods or expose goods for sale:
  - (a) on unalienated Crown land in a town, not being land that is reserved or dedicated as a public road; or

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- (b) for more than one hour during any period of 24 hours on land in a town, being land that is reserved or dedicated as a public road.

Penalty: \$20.

- (2) Approval under the provisions of subsection (1) may be given:
- (a) where the land is within a council area within the meaning of the *Local Government Act*, by the clerk of the council for the area; or
- (b) where the land is not within such a council area, by the Minister.
- (3) In this section:

**Crown land** means land of the Crown;

**town** means a town constituted and defined in accordance with the provisions of the *Crown Lands Act* or in accordance with the provisions of any law in force in the Territory prior to the commencement of the *Crown Lands Act*.

## **11 Duty of hawker to display certain information**

- (1) A licensed hawker selling goods or exposing them for sale from a vehicle, boat, aeroplane or pack shall keep his name and the words "Licensed Hawker" and the number of his licence visibly and legibly written, painted or printed in Roman capitals upon the vehicle, boat, aeroplane or pack.
- (2) Any person who fails to comply with any provision of subsection (1) shall be guilty of an offence.

Penalty: \$10.

## **12 Duty to produce a licence**

Any member of the Police Force or any person to whom the licensed hawker or employee of a licensed hawker has within 24 hours previously sold or offered to sell any goods, may demand of any licensed hawker or employee of a licensed hawker that he produce and show his licence to the person making the demand, and, if any licensed hawker or employee of a licensed hawker to whom any such demand is made fails within 48 hours after the making of the demand to produce his licence and show it to the person making the demand, he shall be guilty of an offence.

Penalty: \$20.



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**13            Penalty for refusal of hawker to leave premises, &c.**

Any hawker or employee of a hawker who:

- (a) having entered upon any premises, with or without the permission of the owner or occupier thereof, neglects or refuses to leave the premises immediately when directed to do so by the owner or occupier or his servant or agent; or
- (b) uses insulting or offensive language, or is guilty of rude, offensive or insulting behaviour, while in pursuit of his occupation as a hawker or employee of a hawker, in any place, whether private or public,

shall be guilty of an offence.

Penalty:        \$20.

**14            Penalty on wrongful use of term "Licensed Hawker"**

Any person not being the holder of a hawker's licence who uses or exhibits the words "Licensed Hawker" or any words importing that he carries on the trade of a hawker or is licensed so to do shall be guilty of an offence.

Penalty:        \$20.

**15            Penalty for forgery**

Any person who forges any licence, or travels with or produces or shows with intent to use the same as a genuine instrument any forged licence, shall be guilty of an offence.

Penalty:        Imprisonment for 12 months.

**16            Penalty for lending or hiring licence**

- (1) Any person who lets on hire or lends to any person any licence granted to him under this Act shall be guilty of an offence.

Penalty:        \$20.

- (2) Any person who trades with or under colour of a licence granted to any person other than himself or his employer shall be guilty of an offence.

Penalty:        \$20.

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**16A      Regulatory offences**

An offence of contravening or failing to comply with section 4(2), 10A or 11 is a regulatory offence.

**17      Power to revoke or suspend licence or disqualify from holding licence**

- (1) The Commissioner of Police may, on complaint, apply to a court of summary jurisdiction for an order directing any one or more of the following things:
  - (a) that the licence of any licensed hawker or employee of a licensed hawker be revoked or suspended; or
  - (b) that any licensed hawker or employee of a licensed hawker or any person who has previously held a licence shall be disqualified either temporarily or permanently from obtaining any licence.
- (2) If the Commissioner of Police satisfies the Court that the person against whom the order is sought has been found guilty of any offence, and has by committing the offence shown himself to be an unfit person to hold a licence under this Act, the Court may make such order of the kind mentioned in subsection (1) as the Court thinks just.

**18      Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, for carrying out or giving effect to this Act, and in particular for imposing penalties not exceeding \$10 for any breach of the regulations.

## The Schedule Fee for a hawker's licence

section 9

	Fee per annum
	\$
1. Where the licence is granted in respect of fish, fruit, fuel, milk, vegetables, victuals of any description or agricultural produce:	
In respect of goods carried for sale on the person:	1.00
In respect of goods carried for sale in or on a vehicle	2.00
2. Where the licence is granted in respect of books, pamphlets, periodicals or other printed publications other than newspapers, works of art or photographs:	4.00
3. Where the licence is granted in respect of goods other than goods specified in item 1 or 2:	4.00
In respect of goods carried for sale on the person:	4.00
In respect of goods carried for sale in or on a vehicle:	8.00
Half the fee set out above according to the nature of the hawking in which the employee is employed.	FEE FOR AN EMPLOYEE'S LICENCE

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## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

### 2 LIST OF LEGISLATION

***Hawkers Ordinance 1935 (Act No. 15, 1935)***

Assent date	15 August 1935
Commenced	15 August 1935

***Hawkers Ordinance 1954 (Act No. 3, 1954)***

Assent date	5 April 1954
Commenced	5 April 1954

***Hawkers Ordinance 1962 (Act No. 21, 1963)***

Assent date	26 February 1963
Commenced	18 November 1964 ( <i>Gaz</i> 46, 18 November 1964, p 180 and <i>Gaz</i> 48 2 December 1964, p 187)

***Hawkers Ordinance 1964 (Act No. 54, 1964)***

Assent date	28 September 1964
Commenced	18 November 1964 (s 2, s 2 <i>Hawkers Ordinance 1962</i> (Act No. 21, 1963), <i>Gaz</i> 46, 18 November 1964, p 180 and <i>Gaz</i> 48 2 December 1964, p 187)

***Hawkers Ordinance 1970 (Act No. 66, 1970)***

Assent date	10 December 1970
Commenced	10 May 1972 ( <i>Gaz</i> 19, 10 May 1972, p 161)

***Hawkers Ordinance 1972 (Act No. 5, 1972)***

Assent date	13 March 1972
Commenced	13 March 1972

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**Ordinances Revision Ordinance 1973 (Act No. 87, 1973)**

Assent date 11 December 1973  
Commenced 11 December 1973 (s 12(2))

**Amending Legislation**

**Ordinances Revision Ordinance 1974 (Act No. 34, 1974)**

Assent date 26 August 1974  
Commenced 11 December 1973 (s 3(2))

**Ordinances Revision Ordinance (No. 2) 1974 (Act No. 69, 1974)**

Assent date 24 October 1974  
Commenced 11 December 1973 (s 3)

**Ordinances Revision Ordinance 1976 (Act No. 27, 1976)**

Assent date 28 June 1976  
Commenced ss 1, 2 and 6: 28 June 1976 (s 6(2)); ss 3 and 4: 11 December 1973; s 5: 24 October 1974

**Hawkers Ordinance 1974 (Act No. 80, 1974)**

Assent date 7 November 1974  
Commenced 7 November 1974

**Transfer of Powers (Further Provisions) Ordinance 1977 (Act No. 51, 1977)**

Assent date 9 December 1977  
Commenced 1 January 1978 (s 2)

**Transfer of Powers (Self-Government) Ordinance 1978 (Act No. 54, 1978)**

Assent date 1 July 1978  
Commenced 1 July 1978 (s 2)

**Statute Law Revision Act (No. 3) 1979 (Act No. 37, 1980)**

Assent date 24 April 1980  
Commenced 24 April 1980

**Criminal Law (Regulatory Offences) Act 1983 (Act No. 68, 1983)**

Assent date 28 November 1983  
Commenced 1 January 1984 (s 2 s 2 *Criminal Code Act 1983* (Act No. 47, 1983), Gaz G46, 18 November 1983, p 11 and Gaz G8, 26 February 1986, p 5)

**Local Court (Consequential Amendments) Act 1989 (Act No. 14, 1989)**

Assent date 5 June 1989  
Commenced s 6: 5 June 1989; rem: 1 January 1991 (s 2, s 2 *Small Claims Amendment Act 1988* (Act No. 43, 1988), Gaz G17, 3 May 1989, p 2, s 2 *Local Court Act 1989* (Act No. 31, 1989) and Gaz G49, 12 December 1990, p 2)

**Pastoral Land (Consequential Amendments) Act 1992 (Act No. 39, 1992)**

Assent date 25 June 1992  
Commenced 26 June 1992 (s 2, s 2 *Pastoral Land Act 1992* (Act No. 17, 1992) and Gaz S33, 26 June 1992)

**Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)**

Assent date 31 December 1993  
Commenced 1 June 1994 (s 2, s 2 *Local Government Act 1993* (Act No. 83, 1993) and Gaz S35, 20 May 1994)

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date	19 April 1996
Commenced	s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 <i>Sentencing Act 1995</i> (Act No. 39, 1995) and Gaz S15, 13 June 1996)

**3 GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Ordinances Revision Ordinance 1973* (Act No. 87, 1973) (as amended) to: ss 2, 3, 3A, 4, 6, 7A, 7B, 8, 9, 10A, 11, 12, 13, 14, 15, 16, 17 and The Schedule.

**4 LIST OF AMENDMENTS**

s 3	amd No. 21, 1963, s 3; No. 54, 1964, s 3; No. 66, 1970, s 3; No. 14, 1989, s 7
s 3A	ins No. 3, 1954, s 2
s 4	amd No. 54, 1964, s 4
s 5	amd No. 54, 1964, s 5; No. 5, 1972, s 2
s 6	amd No. 54, 1964, s 6
s 7	amd No. 66, 1970, s 4; No. 80, 1974, s 3
s 7A	ins No. 66, 1970, s 5 amd No. 14, 1989, s 7
s 7B	amd No. 66, 1970, s 5
s 8	amd No. 54, 1964, s 7
s 10	amd No. 54, 1964, s 8; No. 51, 1977, s 3; No. 54, 1978, s 3; No. 84, 1993, s 6
s 10A	ins No. 21, 1963, s 4 amd No. 39, 1992, s 3; No. 84, 1993, s 6
s 16A	ins No. 68, 1983, s 47
s 17	amd No. 17, 1996, s 6
s 18	amd No. 87, 1973, s 6; No. 37, 1980, s 19
The Schedule	sub No. 21, 1963, s 5 amd No. 54, 1964, s 9