

NORTHERN TERRITORY OF AUSTRALIA

DISPOSAL OF UNCOLLECTED GOODS ACT

As in force at 30 October 2002

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 30 October 2002

DISPOSAL OF UNCOLLECTED GOODS ACT

An Act relating to the disposal of unclaimed and uncollected goods

Part I Preliminary

1 Short title

This Act may be cited as the *Disposal of Uncollected Goods Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Definitions

(1) In this Act unless the contrary intention appears:

Commissioner means the Commissioner within the meaning of the *Police Administration Act*.

court means the Local Court.

order means an order of the court under this Act.

record means the record required to be kept by section 18.

(2) For the purposes of this Act, goods are deemed to be ready for redelivery:

(a) in relation to goods accepted for inspection, when the inspection has been carried out;

(b) in relation to goods accepted for custody, when the period of arranged custody has expired, or, where there is no period of arranged custody, 7 days after they are so accepted;

(c) in relation to goods accepted for storage, when the period of arranged storage has expired or, where there is no period of arranged storage, 7 days after they are so accepted; and

- (d) in relation to goods accepted for repair or other treatment, when the repair or other treatment has been carried out.

4 Savings of other laws

This Act shall be read and construed as being in addition to and not in derogation of or in substitution for any other law in force in the Territory.

5 Act not to apply to certain bailments

This Act shall not apply to a bailment or the pos-session or other custody of goods to which the *Consumer Affairs and Fair Trading Act*, the *Warehousemen's Liens Act* or the *Hotel-keepers Act* apply.

Part II Disposal of uncollected goods of value not exceeding \$200

6 Application of part

This Part applies to a bailment of goods which do not exceed \$200 in value accepted, whether before or after the commencement of this Act, by a bailee in the course of business for inspection, custody, storage, repair or other treatment.

7 Right of bailee to sell goods

- (1) Where goods accepted pursuant to a bailment in respect of which this Part applies are:
- (a) ready for redelivery; and
 - (b) there is a failure by the bailor:
 - (i) to take redelivery of the goods;
 - (ii) if the terms of the bailment agreement so provided, to give directions as to their redelivery; or
 - (iii) to pay the charges lawfully due to the bailee in relation to the goods,

the bailee, while the failure continues, may, subject to the bailment agreement and this Act, sell the goods by public auction or private treaty or otherwise dispose of the goods.

- (2) Subsection (1) does not apply where the bailor's failure to take redelivery arises from:
- (a) a refusal of the bailee to make delivery;
 - (b) the bailee preventing the bailor from taking delivery; or
 - (c) the bailee failing to fix the amount of his charges.

8 Conditions as to sale of goods

- (1) A bailee shall not attempt to sell goods under this Part unless:
- (a) he gives notice to the bailor, after the goods are ready for redelivery, that the goods are so ready;
 - (b) not less than 3 months after he gives such notice and not less than one month before he attempts to sell the goods, he gives a further notice to the bailor of his intention to sell the goods and gives notice of his intention:
 - (i) to every person known to the bailee at the time as having, or claiming to have, an interest in the goods; and
 - (ii) to the Commissioner; and
 - (c) at least one month before the intended sale he publishes, in the prescribed form in the *Gazette*, a notice of his intention.
- (2) Subject to subsection (3), a bailee shall not, under this Part, sell goods except by public auction in a lot in which no other goods are included.
- (3) If the bailee has offered the goods for sale by public auction in circumstances calculated to offer a reasonable prospect of sale and has not succeeded in selling them, he may sell them by private treaty or otherwise dispose of them.

9 Disputes

Where, after notice of intention to sell has been given in accordance with section 8 and, before the goods are sold or otherwise disposed of, a dispute arises between the bailor and the bailee, the bailee's right to sell or otherwise dispose of the goods shall not be exercised unless the dispute is treated as determined under section 10(1) or (4) or is otherwise determined.

10 Determination of disputes

- (1) A dispute to which section 9 refers shall, without prejudice to any other method of determining it, be treated as determined for the purpose of the section if:
 - (a) the bailee gives to the bailor notice in writing to treat the dispute as determined; and
 - (b) the bailor does not, within one month after he receives the notice, give to the bailee, a notice in writing that the bailor objects to the dispute being treated as determined for the purpose of the section.
- (2) Where, under subsection (1), a dispute is treated as determined, it shall, for the purpose referred to in that subsection, be treated as having been determined on the date the bailee gives the notice to the bailor in accordance with subsection (1)(a).
- (3) Where, within the period of one month referred to in subsection (1)(b), the bailor gives to the bailee, a notice in writing that he objects to the dispute being treated as determined for the purpose referred to in that subsection, either of the parties concerned may make an application to the court.
- (4) Subject to subsection (5), the court to which an application is made:
 - (a) shall determine the dispute; and
 - (b) may make such orders as it thinks fit (including orders that a court is empowered to make under section 14).
- (5) In exercising its powers under subsection (4), the court shall have regard to:
 - (a) the provisions of this Act; and
 - (b) the terms and conditions of any agreement between the parties before it relating to the goods.

Part III Disposal of goods under order of court**11 Application of Part**

This Part applies to goods, irrespective of their value:

- (a) of which a person has possession before the commencement of this Act; or

(b) of which a person acquires possession after the commencement of this Act,

whether the possession is acquired under a bailment or otherwise.

12 Application for order of court for sale of certain goods

(1) Subject to subsection (2), where a person has or acquires possession of goods to which this Part applies and:

- (a) he is unaware of the identity or the whereabouts of the person through whom he came into possession of the goods;
- (b) the person through whom he has acquired possession refuses or fails to relieve him of their possession; or
- (c) if the goods are the subject of a bailment:
 - (i) the goods are ready for delivery, but the bailor fails to take redelivery;
 - (ii) the bailment agreement provides that the bailor shall give directions as to re-delivery, but he fails to do so; or
 - (iii) the bailor fails to pay the charges lawfully due to the bailee in relation to the goods,

he may apply to the court for an order to sell the goods.

(2) Subsection (1) does not apply:

- (a) where the person who has or acquires possession of the goods has come by them illegally; or
- (b) in the case of a bailment, where the bailor's failure to take redelivery arises from:
 - (i) a refusal of the bailee to make delivery;
 - (ii) the bailee preventing the bailor from taking delivery; or
 - (iii) the bailee failing to fix the amount of his charges.

13 Notice to be given before application

- (1) A person shall not make an application under section 12 unless, not less than one month before he does so, he gives notice in writing of his intention to do so:
- (a) where subsection (1)(a) of that section applies:
 - (i) to any other person who he has reason to believe has or claims to have an interest in the goods; and
 - (ii) to the Commissioner;
 - (b) where subsection (1)(b) of that section applies:
 - (i) to the person through whom he came into possession of the goods;
 - (ii) to every other person who he has reason to believe has or claims to have an interest in the goods; and
 - (iii) to the Commissioner; and
 - (c) where subsection (1)(c) of that section applies:
 - (i) to the bailor;
 - (ii) to every other person who he has reason to believe has or claims to have an interest in the goods; and
 - (iii) to the Commissioner.
- (2) Where the person desiring to sell goods under this Part is unable to comply with subsection (1)(a), it shall, unless the court otherwise orders, be sufficient for him to give to the Commissioner the notice required by that subsection.

14 Order to sell or dispose of goods

- (1) Where an application is made under section 12, the court may make an order authorizing the applicant to sell the goods or to dispose of them in some other manner.
- (2) An order for the sale or disposal of goods may:
- (a) fix the rate of storage charges for the goods and the date from which those charges shall accrue;
 - (b) fix the expenses that may be incurred on the sale or disposal of the goods (including the cost of insuring the goods whilst in storage); and

- (c) impose conditions on the sale or disposal of the goods.
- (3) Upon the hearing of an application, the court may:
 - (a) give such directions as to the matter; and
 - (b) make such other orders (including the payment of costs),
as it thinks fit.
- (4) Costs awarded pursuant to subsection (3) may be recovered as part of the expenses of sale or disposal of the goods.
- (5) Where an application is made under section 12, the court may determine the amount of the charges or expenses (if any) lawfully due in relation to the goods, and may order payment of the amount so determined.
- (6) In making an order under this section the court shall have regard to the terms and conditions of any agreement or bailment under which the goods the subject of the order were held.

15 Effect of order to sell or dispose of goods

A person in whose favour an order for the sale or disposal of goods has been made may, subject to the order and this Act, sell or otherwise dispose of the goods in the manner authorized by the order.

16 Payment before sale

- (1) A person entitled to possession of goods may, at any time before a sale or disposal of the goods under this Part, recover them from:
 - (a) a bailee; or
 - (b) the person in possession of the goods,
by paying or tendering:
 - (c) all moneys to satisfy the amount owing on the goods;
 - (d) the amount of the charges and costs reasonably incurred by the bailee or person in possession of the goods; and
 - (e) the amount of the charges and expenses reasonably incurred up to the time of payment or tender in the giving of notices, the publication of advertisements, the application to a court for the order for sale or the disposal, preparing the goods for sale and all other charges lawfully due to the bailee or person in possession.

- (2) If a person attempts to comply with subsection (1) and a dispute arises as to the right of that person to the goods, the bailee, person in possession or person claiming the goods may make an application to the court to determine that dispute.
- (3) If an application referred to in subsection (2) is made before the goods are disposed of in accordance with an order made under section 14(1), the right under the order for the sale or disposal of the goods shall not be exercised until that application is heard, determined or otherwise disposed of.
- (4) The court to which an application is made under subsection (2) shall determine the dispute and, in doing so:
 - (a) may set aside, amend or vary an order made under section 14; and
 - (b) may make such other orders as it thinks fit including the payment of costs.
- (5) If, in an application brought pursuant to subsection (2), an order is made for the recovery of the goods from the person in whose favour the order for disposal was made, that person's right to dispose of the goods in accordance with the order made under this Act is extinguished.

Part IV Procedure after sale or disposal

17 Procedure after sale or disposal of goods

- (1) Where goods are sold:
 - (a) the amount by which the gross proceeds of sale exceed the outstanding charges of a bailee effecting a sale under Part II or those of the person in whose favour an order under Part III was made may be recovered, in a court of competent jurisdiction, by the bailor or person as a debt due to him by the bailee, or person in whose favour an order was made; and
 - (b) the amount by which the outstanding charges of a bailee effecting a sale under Part II, or those of the person in whose favour an order under Part III was made exceed the gross proceeds, of sale of goods may be recovered, in a court of competent jurisdiction, by the bailee or person as a debt due to him by the bailor or the person against whom an order was made.

- (2) Where goods are disposed of otherwise than by sale, the amount of the outstanding charges of a bailee effecting a sale under Part II or those of the person in whose favour an order under Part III was made may be recovered by the bailee or person in a court of competent jurisdiction as a debt due to him from the bailor or person against whom an order was made.
- (3) Where goods are sold or disposed of under Part II, references in this section to the charges of a bailee in relation to goods shall, subject to the terms of any agreement between the bailor and the bailee, be construed as referring to the amount agreed upon for the inspection, custody, storage, repair or other treatment of, and the cost of transporting, the goods to the premises used by the bailee or, if no amount has been agreed upon, a reasonable charge therefor and additional amounts in respect of:
 - (a) the storage of the goods during the period beginning with the date of the notice that goods are ready for redelivery;
 - (b) the costs of, or in connection with, the sale or other disposal including the reasonable and necessary expenses incurred by the bailee in serving notices and in publication of advertisements; and
 - (c) the cost, if any, of insuring the goods during the period referred to in paragraph (a).
- (4) Where goods are sold or disposed of under Part II consequent upon an application made under section 10, the charges recoverable by the bailee include:
 - (a) charges of the nature of those referred to in subsection (3)(a), (b) and (c), but not exceeding any charges and expenses fixed under section 10(4)(b); and
 - (b) any costs awarded, or any additional charges and expenses fixed, under section 10(4)(b).
- (5) Where goods are sold or disposed of under Part III consequent upon an application under section 12, the charges recoverable by the bailee or by the person in possession of the goods effecting the sale include:
 - (a) the charges and expenses fixed under section 14(5);
 - (b) reasonable charges for the storage of the goods during the period from the date on which an order was made pursuant to the application and ending with the date of sale or disposal, not exceeding the rate, if any, specified in the order;

- (c) the expenses of, or in connection with, the sale or disposal, not exceeding the amount, if any, specified in the order;
- (d) the cost, if any, of insuring the goods during the period referred to in paragraph (b); and
- (e) such costs as may have been awarded under section 14(3)(b).

18 Record of sale or disposal

- (1) A person authorized to sell or dispose of goods pursuant to this Act shall, within 7 days of the sale or disposal, prepare a record in the prescribed form containing:
 - (a) a sufficient description of the goods;
 - (b) if the goods have been sold:
 - (i) the date and place of the sale;
 - (ii) the name and address of the place of business of the person who conducted the sale;
 - (iii) the amount of the gross proceeds of the sale; and
 - (iv) the amount of any sum paid to the person authorized to sell or dispose of the goods on account of his charges prior to the sale;
 - (c) if the goods have been destroyed, the name and address of the person by whom they were destroyed and the date and place of destruction;
 - (d) if the goods have been disposed of in any other manner, details of the manner of disposal and of the person disposing of them; and
 - (e) a statement specifying each item of the charges of the person selling or disposing of the goods in relation to them.
- (2) If the sale or disposal is made pursuant to Part II, the person obliged to make the record shall retain it for a period of 6 years from the date of the sale or disposal and have it available for inspection by the person who at the time of the sale or disposal had, or claimed to have had, an interest in the goods.
- (3) If the sale or disposal is made pursuant to Part III, the person obliged to make the record shall, within 14 days, lodge the record with the clerk of the court in which the order for sale or disposal was made.

- (4) A person who had, or claims to have had, at the time of the sale or disposal of the goods under an order for sale or disposal an interest in the goods is entitled to inspect a copy of the record in relation to the goods lodged with the clerk of the court under subsection (3).
- (5) A person who:
 - (a) fails to comply with subsection (1), (2) or (3); or
 - (b) lodges a document for the purposes of that subsection that, to his knowledge, is false in a material particular,is guilty of an offence.

Part V General

19 Disposal of net proceeds of sale of goods

- (1) Where, after goods have been sold or have been disposed of by virtue of this Act, and the seller has deducted the charges in relation to those goods which he is entitled to make, there remains a surplus of moneys in the hands of the seller, the seller shall, within 28 days after the sale or disposal:
 - (a) if he is aware of the whereabouts of the bailor or person against whom an order under Part III was made, pay that surplus to that bailor or person; or
 - (b) if he is not aware of the whereabouts of the bailor or person against whom an order under Part III was made, pay the moneys to the Minister and deposit with him a copy of the record.
- (2) Where a person to whom subsection (1)(b) applies complies with that subsection, the rights against him of any other person in respect of the sum referred to in that subsection are extinguished.
- (3) Upon receipt of moneys pursuant to subsection (1), the Minister shall deposit those moneys into a Trust Fund at the Territory Insurance Office or an ADI opened for that purpose.
- (4) If no person has, after the expiration of a period of 3 years, claimed the moneys, the Minister may pay the moneys remaining in the Trust Fund into the Northern Territory Government Account.
- (5) A person entitled to any money paid to the Minister in accordance with subsection (2) shall, subject to subsection (6), be entitled to recover it from the Minister.

- (6) Where any moneys that have been paid to the Minister in accordance with subsection (1)(b) have been paid by him to some person appearing to him to be entitled to the moneys, and those moneys are afterwards claimed by another person, the Minister shall not be liable to make any payment to that other person, but that other person may have recourse against the person to whom the Minister has paid the moneys.
- (7) A person who fails to comply with subsection (1) or who furnishes a document for the purposes of subsection (1)(b) which is to his knowledge false in a material particular is guilty of an offence.
- (8) In this section **seller** means:
- (a) a bailee; or
 - (b) a person in whose favour an order authorizing the sale or disposal of goods is made.

20 Power of court to re-open transactions

- (1) Where it appears to a court that:
- (a) the method of a sale or disposition; or
 - (b) the price or consideration received,
- in a sale or disposition of goods in accordance with this Act was unfair:
- (c) to the bailor;
 - (d) to the person through whom possession was obtained; or
 - (e) for any other reason,
- the court may re-open the transaction.
- (2) In re-opening a transaction under subsection (1), the court may:
- (a) order that an account be taken between the parties concerned; and
 - (b) make such further orders as it thinks fit.

21 Application to be in accordance with Rules

All applications under this Act to the Court shall be in accordance with the Rules of Procedure of the court.

22 Title of persons acquiring goods

- (1) A person who acquires goods sold or otherwise disposed of in the exercise or purported exercise of the powers given under this Act obtains a good title to the goods if he acquires them in good faith and without notice of:
 - (a) any failure, arising in connection with the sale or other disposal of the goods, to comply with this Act; or
 - (b) any lack of title in the bailor or other person who has given possession of the goods to the person effecting the sale or other disposal of them under this Act.
- (2) In a civil proceedings by or against a bailee, or a person, authorized by this Act to sell or otherwise dispose of goods, the burden of proving that the provisions of this Act relating to the sale or other disposal of those goods have been complied with lies on that bailee or person.

23 Provisions as to notices

- (1) This section applies to:
 - (a) notices that goods are ready for redelivery;
 - (b) notices of intention to sell goods;
 - (c) notices of intention to apply to the court for an order to sell the goods; and
 - (d) notices to treat a dispute as determined.
- (2) A notice to which this section applies shall be in writing and shall contain:
 - (a) the names and addresses of the bailor and the bailee or, where Part III applies and there is no bailment involved, the name and address of the person in possession of the goods with an account of how the goods came into his possession, including the place and date of possession and, where possible, the name and address of the person through whom possession was acquired;
 - (b) a sufficient description of the goods to which it relates and of the place where they are situated; and
 - (c) a statement indicating the Part of the Act pursuant to which the notice is given.

- (3) A notice that goods are ready for redelivery, in addition to containing the matters referred to in subsection (2) that apply to the notice, shall state:
- (a) that the goods are available for redelivery by the bailee to the bailor;
 - (b) the place at which they are so available;
 - (c) the amount, if any, the bailee claims is due to him as charges in relation to the goods and the manner in which that amount has been calculated; and
 - (d) that, unless the bailor:
 - (i) takes or gives directions for redelivery of the goods; or
 - (ii) gives to the bailee a notice in writing that he disputes all or any of the matters contained in the notice that the goods are ready for redelivery,

the bailee will in accordance with this Act sell the goods or apply to the court for such an order under Part III.

- (4) A notice of intention to sell goods, in addition to containing the matters referred to in subsection (3) that apply to the notice, shall state:
- (a) the bailee's estimate of the value of the goods;
 - (b) the date on which the bailee gave to the bailor notice that the goods were ready for redelivery; and
 - (c) that, unless within one month:
 - (i) the person to whom the notice is given pays the charges due on the goods and gives directions for the redelivery of the goods to him; or
 - (ii) the person to whom the notice is given gives written notice to the person giving the notice that he claims the value of the goods exceeds \$200,

the person giving the notice intends to sell the goods.

- (5) A notice of intention to make an application to the court for an order to sell goods, in addition to containing the matters referred to in subsection (2) that apply to the notice, shall state:
- (a) where there has been a dispute in relation to the goods and the dispute has been determined, the manner in which and the date on which, it was determined; and
 - (b) that unless, not more than one month after the person giving the notice has given the notice, the person entitled to possession:
 - (i) in the case of a bailment – pays any charges lawfully due on the goods and gives directions for the redelivery of the goods; and
 - (ii) in any other case – takes possession of the goods,the person giving the notice intends to make an application to the court for an order to sell the goods.
- (6) A notice to treat a dispute as determined, in addition to the matters referred to in subsection (2) that apply to the notice, shall state:
- (a) the nature of the dispute and the manner in which it arose;
 - (b) where relevant, that the goods are available for redelivery to the person to whom the notice is given;
 - (c) the place at which they are so available; and
 - (d) that unless not more than one month after the notice has been given, the person to whom notice is given pays the charges lawfully due on the goods and takes, or gives directions for redelivery of them the person giving the notice will sell or otherwise dispose of the goods in accordance with this Act.

24 Offence

A person who contravenes or fails or neglects to comply with a this Act is guilty of an offence.

Penalty: \$400 or imprisonment for 3 months or both.

25 Service of notices

- (1) Where a notice is required to be given under this Act, it shall be sufficient for the person required to give the notice:
- (a) to hand it personally to the person to whom it is to be given; or

- (b) to send it by post to the last known address of the person to whom the notice is to be given.
- (2) The last known address of a person to whom a notice is to be given is the last address furnished by that person to the person giving the notice.
- (3) Where a notice is required to be given under this Act to the Commissioner, it shall be sufficient for the person required to give the notice to leave it with a member of the Police Force in charge of a police station.
- (4) Where, in an application under this Act, the court is not satisfied that a notice required by this Act has been properly given, it may give such directions as to service of that notice as it sees fit, and adjourn the hearing of the application to enable that service to be effected.

26 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters and things which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

ENDNOTES
1**KEY**

Key to abbreviations

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

2**LIST OF LEGISLATION*****Disposal of Uncollected Goods Ordinance 1976 (Act No. 45, 1976)***

| | |
|-------------|--|
| Assent date | 17 September 1976 |
| Commenced | 17 June 1977 (<i>Gaz</i> No. 24, 17 June 1977, p 916) |

Disposal of Uncollected Goods Ordinance 1977 (Act No. 21, 1977)

| | |
|-------------|---|
| Assent date | 31 May 1977 |
| Commenced | 17 June 1977 (s 3, s 2 <i>Disposal of Uncollected Goods Ordinance 1976</i> (Act No. 45, 1976) and <i>Gaz</i> No. 24, 17 June 1977, p 916) |

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 1978 (Act No. 95, 1978)

| | |
|-------------|------------------|
| Assent date | 5 September 1978 |
| Commenced | 5 September 1978 |

Statute Law Revision Act 1983 (Act No. 58, 1983)

| | |
|-------------|------------------|
| Assent date | 28 November 1983 |
| Commenced | 28 November 1983 |

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

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

Financial Institutions (Miscellaneous Amendments) Act 1997 (Act No. 23, 1997)

| | |
|-------------|-------------|
| Assent date | 2 June 1997 |
| Commenced | 2 June 1997 |

