

THE NORTHERN TERRITORY OF AUSTRALIA

PAWNBROKERS ACT
No. 23 of 1980
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THE NORTHERN TERRITORY OF AUSTRALIA

No. 23 of 1980

AN ACT

To provide for the regulation of pawnbroking

[Assented to 14 March 1980]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the Pawnbrokers Act 1980.

2. COMMENCEMENT

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

3. REPEAL

(1) The Pawnbrokers Act 1888 (No. 433 of 1888) of the State of South Australia, in its application to the Territory, is repealed.

(2) The Pawnbrokers Ordinance 1965 (No. 57 of 1965) is repealed.

4. SAVINGS

(1) Notwithstanding the repeal effected by section 3, The Pawnbrokers Act 1888 of the State of South Australia in its application to the Territory shall continue in force in relation to an article to the pawning of which that Act applied immediately before the commencement of this Act as though this Act had not commenced.

(2) Notwithstanding the repeal effected by section 3, a licence under The Pawnbrokers Act 1888 of the State of South Australia in its application to the Territory continues in force as though this Act had not commenced, but may be cancelled or renewed under this Act.

5. INTERPRETATION

In this Act, unless the contrary intention appears -

"article" includes all chattels and goods;

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"clerk of the court" means a clerk of the Local Court appointed under the Local Courts Act;

"company" means a company within the meaning of the Companies Act;

"court" means the Local Court of Full Jurisdiction constituted under the Local Courts Act;

"licence" means a pawnbroker's licence issued under this Act;

"officer", in relation to a company, means an officer, within the meaning of the Companies Act, of that company;

"pawnbroker" means a person who advances money for or in the expectation of profit, gain or reward upon the security of an article taken by the person by way of pawn, pledge or other security;

"redemption period", in relation to a pawn, means the period fixed by or under section 23(1) in relation to that pawn;

"saleable pawn" means a pawn the redemption period in respect of which has expired.

6. APPLICATION

(1) This Act does not apply to or in relation to a loan, financial accommodation or credit made or given on the security of any article, including any livestock, wool, bond, bill of exchange, deed, certificate or document evidencing an estate or interest in land where -

(a) possession of the article does not pass to the lender until after default; or

(b) the loan, financial accommodation or credit is given by -

(i) a wholesaler;

(ii) a retailer;

(iii) a banker;

(iv) a licensed agent within the meaning of the Land and Business Agents Act; or

(v) an auctioneer licensed under the Auctioneers Act,

in the ordinary course of the business carried on by that person.

(2) This Act does not apply to or in relation to a loan, financial accommodation or credit the amount of which exceeds \$200.

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PART II - LICENSING OF PAWNBROKERS

Division 1 - Issue and Renewal of Licence

7. APPLICATION FOR LEASE OR RENEWAL OF LICENCE

(1) A person may apply to the clerk of the court in the district in which the person carries on or intends to carry on business as a pawnbroker for -

(a) a licence; or

(b) a renewal of a licence.

(2) An application under sub-section (1) shall be -

(a) in the prescribed form; and

(b) accompanied by the prescribed fee.

(3) An application under sub-section (1) on behalf of a company shall be made by an officer of the company authorized in writing by the company to make the application.

8. POLICE TO BE INFORMED

The clerk of the court to whom an application under section 7(1) has been made shall, as soon as practicable thereafter, serve a copy of the application on the member of the Police Force in charge of the police station nearest the court or on the Commissioner of Police.

9. OBJECTION

(1) The member of the Police Force referred to in section 8 or the Commissioner of Police may object to the grant or renewal of a licence to an applicant on the grounds that -

(a) if the applicant is a company -

(i) it has fraudulently obtained a licence or the renewal of a licence;

(ii) it or one of its officers has been convicted of an offence against this Act; or

(iii) one of its officers is a person in respect of whom, if he were an applicant for a licence, an objection could be made on one or more of the grounds referred to in paragraph (b); or

(b) in any other case - the applicant -

(i) is not of good fame or character;

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- (ii) is not a fit and proper person to hold a licence;
- (iii) has fraudulently obtained a licence or the renewal of a licence; or
- (iv) has been convicted of an offence against this Act.

(2) An objection under sub-section (1) shall be in the prescribed form.

10. LICENCE TO BE ISSUED OR APPLICATION HEARD

(1) Where the member of the Police Force served with notice of an application under section 8 or the Commissioner -

- (a) advises the clerk of the court that there is no objection to the issue of a licence to the applicant; or
- (b) has, within 28 days after being so served, failed to make an objection to the issue of a licence,

the clerk of the court to whom an application under section 7(1) was made shall grant a licence to or renew the licence of the applicant.

(2) Where a member of the Police Force served with notice of an application under section 8 or the Commissioner makes an objection under section 9 within 28 days after being so served, the clerk of the court to whom the application under section 7(1) the subject of the objection was made shall fix a date for hearing the application.

(3) Notice of the date of hearing fixed under sub-section (2) shall be served on the applicant and the member of the Police Force or the Commissioner who made the objection.

11. HEARINGS OF APPLICATION

(1) The court shall hear an application under section 7(1) in respect of which an objection under section 9 has been made.

(2) A hearing under this section shall be before the court sitting in open court.

(3) The court hearing an application for the issue or renewal of a licence -

- (a) may inform itself of any matter in such manner as it thinks fit; and
- (b) shall consider the evidence before it and may, in its discretion, determine the application by -
 - (i) granting, either conditionally or unconditionally; or

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- (ii) refusing to grant,
the application.

12. FORM OF LICENCE

A licence shall -

- (a) be in the prescribed form; and
- (b) specify -
 - (i) the address of the premises in respect of which it is granted; and
 - (ii) the conditions to which it is subject.

Division 2 - Expiration and Cancellation of Licences

13. EXPIRATION OF LICENCE

(1) A licence remains in force from and including the day on which it is granted until -

- (a) subject to sub-section (2), 31 July next following the grant of the licence;
- (b) the holder of the licence -
 - (i) in the case of a company - is wound up; or
 - (ii) in any other case - becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (c) the licence is cancelled under this Act,

whichever is the sooner.

(2) Subject to this Division (sub-section (1)(a) excepted), where an application for renewal of a licence has been made under section 7(1) before the expiration of the licence, the licence the subject of the application continues in force until the application is determined.

14. CANCELLATION OF LICENCE FOR RECEIVING OR POSSESSING STOLEN GOODS OR FRAUD

Where a licensed pawnbroker is convicted of -

- (a) an offence referred to in -
 - (i) section 216 of the Criminal Law Consolidation Act; or

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(ii) section 62 of the Summary Offences Act; or

(b) an offence relating to fraud in carrying on the business of pawnbroking,

the court convicting him may cancel his licence.

15. REQUESTS FOR CANCELLATION

(1) The Commissioner of Police may, at any time, request the clerk of the court who or the clerk of the court which granted the licence that the licence held by a licensed pawnbroker be cancelled on any of the grounds set out in section 9.

(2) A request under sub-section (1) shall be in the prescribed form.

16. REQUEST FOR CANCELLATION TO BE HEARD

A clerk of the court to whom a request under section 15 has been made shall as soon as practicable -

(a) fix a date for hearing the request; and

(b) serve a copy of the request and notice of the date of hearing on -

(i) the licensed pawnbroker; and

(ii) the Commissioner of Police.

17. HEARING OF REQUESTS FOR CANCELLATION

(1) The court shall hear each request made under section 15(1).

(2) A hearing under this section shall be before the court sitting in open court.

(3) The court hearing a request -

(a) may inform itself of any matter in such manner as it thinks fit; and

(b) shall determine the request by dismissing it, or, if it finds the grounds on which the request was made proved -

(i) cautioning the licensed pawnbroker; or

(ii) varying, in such manner as is specified by the court, the licence of the licensed pawnbroker; or

(iii) cancelling the licence of the licensed pawnbroker.

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(4) The court may, in addition to cancelling a licence under sub-section (3)(b)(iii), order that the person who held that licence -

(a) be not granted another licence; or

(b) be not granted another licence until the expiration of such time as is specified by the court.

(5) A licence shall not be granted to a person in contravention of an order under sub-section (4).

(6) The court may make such order as to costs in relation to hearings under this section as it thinks fit.

PART III - PAWNBROKING

18. PAWBROKER NOT TO OPERATE WITHOUT LICENCE

A person shall not carry on business as or hold himself out as carrying on business as a pawnbroker except with and in accordance with the conditions of a licence and on the premises specified in the licence.

Penalty: if the person is a company - \$1,000; or
if the person is not a company - \$500.

19. STOLEN ARTICLES NOT TO BE PAWNED

A person shall not pawn or attempt to pawn an article which he knows or has reasonable cause to believe is stolen or otherwise unlawfully obtained.

Penalty: \$200.

20. PAWN TRANSACTION

A pawnbroker shall not retain a pawn or advance any money on the security of a pawn unless -

(a) he has entered the prescribed particulars in relation to the transaction and the pawn in a register;

(b) he has issued to the pawner a pawn ticket in the prescribed form; and

(c) the pawner has accepted the pawn ticket so issued.

Penalty: \$200.

21. RESTRICTION ON TAKING PAWNS

A pawnbroker shall not take a pawn from a person who apparently is -

(a) under the age of 17 years; or

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(b) under the influence of liquor or drugs.

Penalty: \$200.

22. INTEREST

A pawnbroker shall not charge interest on money advanced by him on the security of a pawn at a rate in excess of the prescribed rate.

Penalty: \$200.

23. TIME WITHIN WHICH PAWN REDEEMABLE

(1) A pawn is redeemable at any time within -

(a) 3 months; or

(b) such longer period as may be expressly agreed to by the pawner and the pawnbroker,

after the date on which it was pawned.

(2) A pawn not redeemed before the expiration of the redemption period may be redeemed at any time before -

(a) it is sold by the pawnbroker; or

(b) property in it passes to the pawnbroker,

under this Act.

24. METHOD OF REDEEMING PAWNS

(1) Subject to this section, upon the surrender of a pawn ticket and tender of the amount owing in respect of the pawn to the pawnbroker at any time when the pawn may, under this Act, be redeemed, the pawnbroker shall deliver the pawn to the bearer of the pawn ticket.

Penalty: \$500.

(2) A pawnbroker shall not deliver a pawn to a person pursuant to sub-section (1) if the pawnbroker knows or has reasonable grounds to believe that the bearer of the pawn ticket in respect of the article is not -

(a) the owner of the pawn; or

(b) authorized by the owner of the pawn to redeem it.

Penalty: \$200.

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(3) A pawnbroker may deliver a pawn to a person, notwithstanding that that person is not the bearer of the pawn ticket in respect of that pawn, if -

(a) that person tenders to the pawnbroker a statutory declaration made by him -

(i) identifying the pawn; and

(ii) accounting for the non-production of the ticket; or

(b) if the amount owing in respect of the pawn does not exceed \$20 - that person tenders to the pawnbroker a statutory declaration made by him or a statement signed by him -

(i) identifying the pawn; and

(ii) accounting for the non-production of the ticket.

25. SPECIAL CHARGES FOR REDEMPTION PROHIBITED

A pawnbroker shall not impose a special charge for or in respect of the redemption of a pawn, whether or not the redemption period in respect of the pawn has expired.

Penalty: \$200.

26. CERTAIN PAWNS NOT TO BE SOLD

A person shall not sell or otherwise dispose of a pawn which is not a saleable pawn.

Penalty: \$500.

27. PAWNBROKER TO PERMIT REDEMPTION

A pawnbroker shall not, without reasonable cause, refuse to allow a pawn to be redeemed.

Penalty: \$200.

28. WHEN PAWNS MAY BE SOLD

(1) Property in a pawn the amount owing in respect of which does not exceed \$40 passes to the pawnbroker at the expiration of 7 days after the expiration of the redemption period of that pawn, unless the amount owing in respect of it has been paid.

(2) A pawn, other than a pawn referred to in sub-section (1), may be sold in accordance with this Act by a pawnbroker at the expiration of the redemption period fixed in respect of the pawn.

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29. PAWNS TO BE SOLD BY PUBLIC AUCTION

A pawnbroker shall not sell, otherwise than by public auction, a pawn which has become saleable.

Penalty: \$200.

30. NOTICE OF AUCTION

A person shall not sell a saleable pawn at a public auction unless, not less than 4 days before that sale, a notice has been published in a newspaper circulating in the district in which the pawnbroking transaction occurred identifying the pawn and specifying the date at which it was pawned.

Penalty: \$200.

31. PROTECTION OF PURCHASERS

The sale of a pawn under and in accordance with this Act is as valid and effectual as if the person selling the pawn had been, at the time of the sale, the owner of the pawn.

32. APPLICATION OF PROCEEDS OF SALE

(1) In this section, "net proceeds of sale", in relation to a saleable pawn, means the amount received from the sale of the pawn under this Act less the reasonable expenses of that sale.

(2) The net proceeds of sale of a pawn shall be applied in discharge of the amount owing in relation to the pawn at the date of sale.

(3) Where the net proceeds of sale of a pawn exceed the amount owing in relation to the pawn at the date of sale, the difference -

(a) shall be held by the pawnbroker on trust for the pawner for a period of not less than 2 years from the date of the sale of the pawn; and

(b) shall be paid by the pawnbroker to the pawner upon request by the pawner.

Penalty: \$200.

33. PARTICULARS OF SALE TO BE NOTED

A pawnbroker who sells or otherwise disposes of a pawn shall enter the prescribed particulars in respect of the pawn and the sale of the pawn in a register.

Penalty: \$200.

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34. PAWNERS MAY INSPECT RECORDS

(1) The pawner of a pawn may, at any time within 2 years after the date of the sale of the pawn under this Act, at any reasonable time, inspect the record of the sale of the pawn referred to in section 33.

Penalty: \$200.

(2) A pawnbroker may permit a person to examine the records referred to in sub-section (1), notwithstanding that he is not the holder of the pawn ticket in respect of the pawn, if -

(a) that person tenders to the pawnbroker a statutory declaration made by him -

(i) identifying the pawn; and

(ii) accounting for the non-production of the ticket; or

(b) if the amount which was owing in respect of the pawn did not exceed \$20 - that person tenders to the pawnbroker a statutory declaration made by him or a statement signed by him -

(i) identifying the pawn; and

(ii) accounting for the non-production of the ticket.

35. RECOVERY OF STOLEN ARTICLES

(1) A person may, at any time, apply to a magistrate for a summons to issue requiring a licensed pawnbroker named in the summons to appear before the court and produce such articles as are specified in the summons.

(2) An application under sub-section (1) shall be made in the prescribed form.

(3) A licensed pawnbroker upon whom a summons under this section is served shall comply with and not contravene the summons.

Penalty: \$200.

(4) A court may, if it is satisfied that the article specified in the summons has been unlawfully obtained, sold or pawned by or to the pawnbroker, order the pawnbroker to deliver the article to the owner of the article or to pay such amount to that owner as is specified by the court.

(5) A pawnbroker shall comply with and not contravene an order under sub-section (4).

Penalty: \$500.

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(6) An order under sub-section (4) is not a defence to an action by a pawnbroker to recover possession of the article specified in the order if the action is commenced within 3 months after the making of the order.

PART IV - GENERAL

36. CHANGE OF ADDRESS

The clerk of a court may, upon application by a licensed pawnbroker in the prescribed form, vary a licence by omitting the address of the premises specified in the licence and substituting the address of other premises.

37. SIGN TO BE DISPLAYED

A licensed pawnbroker shall prominently display a sign of the prescribed size and containing his name and the words "Licensed Pawnbroker" on the premises specified in his licence.

38. PRODUCTION OF DOCUMENTS

(1) A member of the Police Force may, at any reasonable time, request a licensed pawnbroker to produce for inspection by him such of the licences, records, registers or other documents required or permitted to be kept under this Act as are specified to the pawnbroker.

(2) A pawnbroker shall comply with and not contravene a request made under sub-section (1).

Penalty: \$200.

39. AVERMENTS

The averment by a prosecutor in a complaint or information in respect of an offence against this Act that a specified person was not at a specified time a licensed pawnbroker is evidence of the fact so averred.

40. OFFENCES BY COMPANIES

Where a company is convicted of an offence against this Act, each officer of the company is guilty of the like offence unless he proves that -

(a) the offence was committed without his knowledge; or

(b) he took all reasonable steps to prevent the commission of the offence.

41. COURT PROCEDURE

(1) Subject to this Act and to the directions of the court in a

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particular case, the practice and procedure applicable to proceedings in the court under the Local Courts Act shall be followed, changing what needs to be changed, in proceedings under Part II.

(2) A decision of a court under Part II has effect, for the purposes of Part VI of the Local Courts Act, as if it were a final judgement, determination or order referred to in section 54(1) of that Act, and the Local Courts Act applies accordingly.

42. SERVICE

A document required or permitted by this Act to be served on -

- (a) a licensed pawnbroker - may be served personally or by certified post addressed to the address of the premises specified in the licence;
- (b) an applicant for the issue or renewal of a licence - may be served personally or by certified post addressed to the address specified in the application; or
- (c) a member of the Police Force in charge of a Police Station or the Commissioner - may be served personally or by certified post.

43. REGULATIONS

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