

NORTHERN TERRITORY OF AUSTRALIA

CONSUMER AFFAIRS AND FAIR
TRADING AMENDMENT BILL 1997

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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Consumer Affairs
and Fair Trading Act*

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:

1. SHORT TITLE

This Act may be cited as the *Consumer Affairs and Fair Trading Amendment Act 1997*.

2. COMMENCEMENT

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Consumer Affairs and Fair Trading Act* is in this Act referred to as the Principal Act.

4. POWERS OF ENTRY OF AUTHORIZED OFFICERS

Section 20(1) of the Principal Act is amended by inserting after paragraph (b) the following:

"(ba) a place where a person carries on a business as a second-hand dealer, or pawnbroker, within the meaning of Part 14, or where documents relating to any such business are kept;"

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5. NEW PART

The Principal Act is amended by inserting after Part XII the following:

"PART 14 - PAWN-BROKERS
AND SECOND-HAND DEALERS

"Division 1 - Preliminary

"244. INTERPRETATION

"(1) In this Part, unless the contrary intention appears -

'approved', in relation to a form, means approved by the Commissioner;

'business premises' means premises at which, under a licence -

(a) business may be conducted with members of the public; and

(b) goods may be stored;

'lawn sale' means a sale of goods from a residential dwelling, or from a parcel of land on which a residential dwelling is situated, where the property in the goods was not acquired by the seller through his or her business as a pawnbroker or a second-hand dealer;

'licence' means a pawnbroker's licence, a pawnbroker/second-hand dealer's licence or a second-hand dealer's licence;

'licensee' means a person who holds a licence;

'officer', in relation to a body corporate, includes a director, secretary, executive officer or employee of the body;

'pawnbroker' means a person conducting the business of -

(a) lending money on the security of pawned goods; or

(b) receiving goods under a contract for sale where the seller has a right to buy back the goods;

'pawn ticket' means a statement required to be given under section 280;

'redemption period' means the period referred to in section 288(1)(a)(i) or (ii), whichever applies in the particular case;

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'second-hand dealer' means a person conducting the business of buying, selling or exchanging second-hand goods, whether the goods are bought, sold or exchanged on the person's own behalf or on behalf of another person;

'second-hand goods' means any goods which have been worn or otherwise used but does not include goods belonging to a class of goods prescribed by the regulations as goods not to be treated as second-hand goods for the purposes of this Act;

'storage premises' means premises at which, under a licence, goods may be stored.

"(2) In this Part a reference to goods in the possession of a person includes a reference to goods under that person's control.

"(3) In this Part, unless the contrary appears, a reference to a contract is a reference -

- (a) in the case of a pawnbroker, to a contract for the lending of money on the security of pawned goods or for the receiving of goods under a contract of sale where the seller has a right to buy back the goods; and
- (b) in the case of a second-hand dealer, to a contract for the purchase or exchange of second-hand goods by the second-hand dealer.

"(4) In this Part a reference to the purchase or exchange of goods in relation to a second-hand dealer includes a reference to a purchase or exchange, as the case may be, of goods by the dealer on behalf of another person.

"245. APPLICATION

"This Part does not apply to -

- (a) an auctioneer within the meaning of the *Auctioneer Act* who is acting in accordance with a licence granted to, or for the benefit of, the auctioneer under that Act;
- (b) a dealer within the meaning of the *Firearms Act* who is acting in accordance with a licence granted in relation to that dealer under that Act; or
- (c) a holder of a licence granted under Part 10 of this Act who is acting in accordance with the licence.

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"246. DEEMING OF LOAN AND INTEREST UNDER 'BUY BACK' CONTRACTS

"In the case of a pawnbroker receiving goods under a contract for sale where the seller has a right to buy back the goods, then for the purposes of this Part -

- (a) the price at which the goods are to be sold under the contract is to be taken to be the amount lent; and
- (b) the difference between the amount lent and the price at which the goods may be bought back is to be taken to be the interest payable.

*"Division 2 - Licensing of Pawnbrokers
and Second-Hand Dealers*

"Subdivision 1 - Requirement for Licences

"247. PAWNBROKERS TO BE LICENSED

"A person must not act as a pawnbroker except under and in accordance with a pawnbroker's licence or a pawnbroker/second-hand dealer's licence.

Penalty: \$50,000.

"248. SECOND-HAND DEALERS TO BE LICENSED

"A person must not act as a second-hand dealer except under and in accordance with a second-hand dealer's licence or a pawnbroker/second-hand dealer's licence.

Penalty: \$50,000.

"249. OFFENCE OF HOLDING OUT, &c.

"(1) A person, other than a person who holds a pawnbroker's licence or a pawnbroker/second-hand dealer's licence, must not hold himself or herself out as being, or pretend to be, or make use of any words or letters or any name, title, abbreviation, or description that implies or tends to encourage the belief that he or she is, a pawnbroker.

"(2) A person, other than a person who holds a second-hand dealer's licence or a pawnbroker/second-hand dealer's licence, must not hold himself or herself out as being, or pretend to be, or make use of any words or letters or any name, title, abbreviation, or description that implies or tends to encourage the belief that he or she is, a second-hand dealer.

Penalty: \$50,000.

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"250. LICENCE MAY BE GRANTED TO PERSON OR PARTNERSHIP

"(1) The Commissioner may grant a licence to a person or a partnership.

"(2) The Commissioner may grant more than one licence to a person or a partnership and any business under that licence may be transacted in the name of the person or partnership.

"Subdivision 2 - Licensing

"251. APPLICATION FOR LICENCE

"An application for the grant of a licence is to be -

- (a) made in an approved form, which is to contain the prescribed details and other information the Commissioner requires, lodged at a place approved by the Commissioner; and
- (b) accompanied by the prescribed fee.

"252. COMMISSIONER TO ADVISE POLICE COMMISSIONER, &c.

"(1) On receiving an application for a licence under section 251, the Commissioner is to -

- (a) send a copy of it to the Commissioner of Police, together with copies of any accompanying documents other than statements relating to the material and financial resources of the applicant; and
- (b) publish, in a newspaper circulating throughout the Territory and (if there be one) in a further newspaper circulating in the locality in which the applicant proposes to carry on business as a dealer, notices stating that the application has been made, setting out the prescribed details with respect to the application, and specifying a period during which members of the public may, by notice in writing lodged with the Commissioner, object to the granting of a licence on any of the grounds specified in section 258.

"(2) The Commissioner of Police, within 28 days of receiving a copy of an application pursuant to subsection (1)(a), is to lodge with the Commissioner a notice in writing which either supports the application or objects to the grant of a licence on the grounds that the applicant may not be a fit and proper person.

"(3) A notice of objection under subsection (1)(b) or (2) is to state the reasons for the objection.

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"(4) References in this section to an applicant's not being a fit and proper person are, where the applicant is -

- (a) a partnership - references to a partner in the partnership; or
- (b) a body corporate - references to a director or other person concerned in the management of the body corporate,

not being a fit and proper person.

"253. EXPEDITED APPLICATIONS

"(1) Where an applicant intends to conduct the business of a licensee in place of the licensee in circumstances where -

- (a) the licensee has died;
- (b) the licensee is suffering from an illness or other disability of a nature that renders the licensee unable to conduct the business in accordance with this Part;
- (c) the licensee decides that he or she will no longer be involved in conducting the business;
- (d) the licence is revoked or suspended; or
- (e) the licensee is unable to conduct the business because of unforeseen circumstances,

the Commissioner may waive the requirement for the publication of a notice under section 252 if, during the period referred to in that section, the business could not otherwise be conducted at all.

"(2) A licence granted to an applicant referred to in subsection (1) is to be granted on the condition that a notice in an approved form is published in a newspaper with circulation throughout the Territory 10 days after the licence is granted so as to enable persons to object to any subsequent application to renew the licence.

"254. DOCUMENTATION IN SUPPORT OF APPLICATION FOR LICENCE

"An application for the grant of a licence is to be accompanied by -

- (a) where the applicant is a natural person or a partnership - evidence as to the identity of the natural person or each partner in the partnership -
 - (i) by means of his or her birth certificate;

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- (ii) by means of his or her passport, where the passport is either current or has not been expired for more than 24 months;
 - (iii) by means of his or her motor driver's licence; or
 - (iv) by other prescribed means;
- (b) in the case of an application for a licence by a partnership or body corporate -
- (i) where relevant, proof of the business name;
 - (ii) where relevant, proof of incorporation; and
 - (iii) written confirmation from one of the other partners or one of the body's directors, as the case requires, that the applicant is authorized by the partnership or the body to make the application;
- (c) other information the Commissioner requires for the proper consideration of a particular application; and
- (d) other evidence of a prescribed nature or prescribed form.

"255. APPLICATION FOR RENEWAL OF LICENCE

"(1) An application for the renewal of a licence is to be -

- (a) made in an approved form lodged at, or sent by post to, a place approved by the Commissioner; and
- (b) accompanied by the prescribed fee.

"(2) An application for the renewal of a licence is to be made no later than 28 days before the day on which the licence is due to expire or at a later time that the Commissioner, having regard to section 262(2), allows.

"256. DOCUMENTATION IN SUPPORT OF APPLICATION FOR RENEWAL OF LICENCE

"An application for the renewal of a licence is to be accompanied by evidence of the prescribed type or prescribed form.

"257. OFFENCES IN RELATION TO LICENCE APPLICATIONS

"A person must not, in relation to an application for the grant or renewal of a licence, provide information in written or oral form that the person knows to be -

- (a) false or misleading in a material particular; or

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(b) likely to deceive in a material way.

Penalty: \$5,000.

"258. OBJECTIONS TO GRANT OR RENEWAL OF LICENCES

"(1) A person may object to the grant or renewal of a licence on the ground that the Commissioner should not or should no longer be satisfied in relation to any of the matters referred to in section 259, 260 or 261 that is relevant to the applicant or, where the applicant is a partnership or body corporate, to the partnership and any of the partners or to the body and any of the body's officers, as the case may be.

"(2) An objection is to be made in an approved form and is not to be considered unless it is lodged with the Commissioner -

- (a) in the case of an application (other than an expedited application under section 253) for the grant of a licence, no later than 28 days after the publication date of the notice under section 252; or
- (b) in the case of an application for the renewal of a licence, no later than 28 days before the day the licence is due to expire.

"259. GRANT OF LICENCES

"The Commissioner is not to grant a licence unless the Commissioner is satisfied -

- (a) that, where the applicant is a natural person or a partnership - the person or each partner in the partnership has attained the age of 18 years;
- (b) that there is sufficient evidence as to the identity of the applicant;
- (c) that the applicant has not been convicted of an offence prescribed for the purposes of this paragraph;
- (d) subject to section 253, that a notice under section 252 has been published in accordance with that section;
- (e) that the time for the lodgement of objections has passed and either -
 - (i) no objection to the application has been made; or
 - (ii) each objection has been adequately investigated and that the investigation results justify the grant of the licence;

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- (f) that the applicant is of good character and is in all respects a fit and proper person to hold a licence;
- (g) that there will be during the licence period, adequate management, supervision and control of the business operations that are the subject of the application;
- (h) that during the licence period the applicant will be able to comply with -
 - (i) the provisions of this Part; and
 - (ii) any condition or restriction to which the licence is likely to be subject;
- (j) that the applicant has, or is able to obtain, the means to provide information in accordance with section 316;
- (k) that the applicant is not -
 - (i) an insolvent under administration within the meaning of the Corporations Law; or
 - (ii) subject to a type of external administration referred to in Chapter 5 of the Corporations Law;
- (m) that there is, in relation to the applicant, no charge pending for an offence involving dishonesty, fraud or stealing, an offence of a nature that renders the applicant unsuitable to hold a licence or that is prescribed for the purposes of paragraph (c);
- (n) where the applicant has been found guilty of an offence, that -
 - (i) the circumstances of the applicant's involvement in the commission of the offence; or
 - (ii) the period of time between the finding and the application,do not render the applicant unsuitable to hold a licence;
- (p) that the applicant has not been involved in conduct of a nature that renders the applicant unsuitable to hold a licence;
- (q) in the case of an application for a pawnbroker's licence or a pawnbroker/second-hand dealer's licence, that there are adequate arrangements for the safekeeping of pawned goods;

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- (r) that at the time of the application -
 - (i) the applicant is not disqualified from holding the type of licence applied for; and
 - (ii) a licence of the type applied for held by the applicant is not suspended;
- (s) of such other matters as may be prescribed; and
- (t) that there is no other good reason why the licence should not be granted.

"260. RENEWAL OF LICENCES

"The Commissioner is not to renew a licence unless he or she is satisfied -

- (a) in relation to the matters referred to in section 259(e) to (t) insofar as those matters apply to the renewal of a licence;
- (b) that the licensee has not contravened, or failed to comply with -
 - (i) a provision of this Part; or
 - (ii) the licence or a condition or restriction to which the licence is subject,in circumstances rendering the renewal of the licence to be inappropriate; and
- (c) that no proceedings under section 269 are pending.

"261. GRANT AND RENEWAL OF LICENCES HELD BY PARTNERSHIPS AND BODIES CORPORATE

"Where an application is made for the grant or renewal of a licence by a partnership or a body corporate, the Commissioner is not to grant or renew the licence unless the Commissioner is satisfied as to each of the matters referred to in section 259 or 260, as the case may be, in relation to each of the following persons who is relevant to the application:

- (a) the partnership and the partners;
- (b) the body and the body's officers.

"262. REFUSAL TO GRANT OR RENEW LICENCES

"(1) Where the Commissioner refuses to grant a licence the Commissioner, before 28 days after the decision is made, is to serve the applicant with written notice setting out the decision and the reasons for the decision.

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"(2) Where the Commissioner refuses to renew a licence the Commissioner, no later than 14 days before the day on which the licence is due to expire, is to serve the applicant with written notice setting out the decision and the reasons for the decision.

"263. FORM OF LICENCES

"(1) The Commissioner is not to grant or renew a licence without specifying in the licence each business premises and storage premises to which the licence applies.

"(2) Subject to subsection (1), a licence is to be in an approved form.

"264. CONDITIONS AND RESTRICTIONS

"(1) The Commissioner may grant or renew a licence subject to conditions and restrictions set out in, or provided with, the licence.

"(2) Without limiting subsection (1), a licence may be subject to conditions in relation to ascertaining whether a person who is, or is proposed to be, employed at business premises has been convicted of an offence the nature of which may render the person unsuitable to enter into contracts at the premises or which is prescribed for the purposes of this section.

"(3) The Commissioner may -

- (a) make an existing licence subject to a new condition or restriction; or
- (b) change or remove a condition or restriction to which an existing licence is subject,

but where the Commissioner does so -

- (c) the Commissioner, before 14 days after the decision is made, is to serve the licensee with written notice of the decision; and
- (d) the decision does not take effect until 21 days after the decision is made, or at a later time specified in the notice.

"265. LICENCE NOT TRANSFERABLE

"A licence is not transferable.

"266. DURATION OF LICENCES

"A licence may be granted or renewed for the period, being not longer than 3 years from the day of grant or renewal of the licence, the Commissioner thinks fit and specifies in the licence document.

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"267. SUSPENSION, REVOCATION OF LICENCES AND DISQUALIFICATION

"(1) Subject to this section, the Commissioner may -

- (a) suspend a licence for the period he or she thinks fit;
- (b) revoke a licence; or
- (c) disqualify a person from holding a licence for the period the Commissioner thinks fit or permanently.

"(2) The Commissioner may exercise a power referred to in subsection (1) -

- (a) on the ground that the Commissioner should not or should no longer be satisfied in relation to any of the matters referred to in section 259, 260 or 261 that is relevant to the licensee and, where the licence is held by a partnership or body corporate, to the partnership and any of the partners or to the body and any of the body's officers, as the case may be; or
- (b) on the ground that a person (other than the Commissioner) referred to in paragraph (a) has contravened, or failed to comply with -
 - (i) a provision of this Part; or
 - (ii) the licence or a condition or restriction to which the licence is subject.

"(3) A suspension or revocation of, or disqualification in relation to, a licence is not effective unless the Commissioner -

- (a) has caused written notice of the intention to suspend, revoke, or disqualify to be served on the licensee, stating the grounds on which the suspension, revocation or disqualification is intended to be made and allowing the licensee 21 days within which to respond to the notice;
- (b) has had due regard to any response to the notice made within that time; and
- (c) has caused written notice of the decision to suspend, revoke or disqualify to be served on the licensee at least 14 days before the decision is to take effect, stating the grounds on which the decision has been made.

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"(4) A person who has received notice under subsection (3)(c) must, within 2 business days of receiving the notice, or another period approved by the Commissioner, return the licence document to the Commissioner.

Penalty: \$2,000.

"(5) If a licence is suspended under this section it is to be treated as being of no effect during the period of suspension.

"(6) A person who under this section is disqualified from holding a licence must not, during the period of disqualification, apply for a licence of that type.

"268. COMMISSIONER TO KEEP REGISTER OF LICENCES

"(1) The Commissioner is to cause to be kept, in a form approved by the Commissioner, a register of the following information in relation to each licence granted:

- (a) the type of licence;
- (b) the name (including, where relevant, the business name) or names of the licensee;
- (c) the location of business premises to which the licence applies;
- (d) the expiry date;
- (e) other prescribed particulars.

"(2) The Commissioner is to allow any person to inspect the register on payment of the prescribed fee, if any.

*"Subdivision 3 - Court's Functions
in relation to Licensing*

"269. APPEAL

"(1) A person who is aggrieved by the Commissioner's decision -

- (a) to refuse to grant or renew a licence;
- (b) as to the period for which a licence is granted or renewed;
- (c) as to a condition or restriction to which a licence is to be subject;
- (d) as to premises to which the licence is, or is not, to apply; or

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- (e) as to the suspension or revocation of, or disqualification in relation to, a licence,

may appeal to the Local Court within 14 days after receiving notice of the decision.

"(2) The Commissioner is entitled to be a party to the appeal and to be represented at the hearing of the appeal.

"(3) The Local Court may determine an appeal on the following:

- (a) material that was before the Commissioner;
(b) additional or fresh evidence, either oral or by affidavit, allowed by the Court.

"(4) On an appeal the Local Court may -

- (a) confirm, vary, or reverse the decision of the Commissioner;
(b) remit the matter to the Commissioner, with or without directions; and
(c) make any further order, including an order as to costs or that a licence be delivered up to the Court,

as the Court thinks fit.

"(5) If an appeal is instituted under this section in relation to a decision of the Commissioner, the decision continues to have effect pending the appeal unless the Local Court otherwise orders.

"270. RETURNS BY LOCAL COURT REGISTRAR

"(1) A Registrar, within the meaning of the *Local Court Act*, of the Local Court is to give to the Commissioner information from the records under the Registrar's control that the Commissioner certifies in writing is required for the purposes of this Part.

"(2) On the determination of an appeal under this Subdivision, the Registrar of the Local Court is to send to the Commissioner a copy of an order in relation to the determination and a licence that has been delivered up to the Court.

"271. EFFECT OF CHARGES PENDING ON COURT HEARINGS

"Where -

- (a) an appeal has been made to the Local Court under this Subdivision; and

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- (b) a charge for an offence referred to in section 259(m) is pending in relation to a person who is a subject of the appeal,

the Court may adjourn the hearing of the matter until the charge has been determined.

*"Subdivision 4 - Powers of Court generally
in relation to Licences*

"272. COURT MAY SUSPEND, REVOKE LICENCE OR DISQUALIFY PERSON UPON CONVICTION

"(1) Where a person is convicted by a court of an offence against this Part, the Court may, in addition to any penalty imposed or order made in respect of the conviction -

- (a) order, in relation to a licence applicable to that person -

- (i) that the licence be suspended for the period the Court thinks fit;
- (ii) that the licence be revoked; or
- (iii) that a person be disqualified from holding a licence for the period the Court thinks fit or permanently,

and that the licence be delivered up to the Court or the Commissioner; or

- (b) impose conditions or restrictions in relation to the licence as it thinks fit for the period of time set out in the order.

"(2) When making any order under this section the Court may, if it thinks fit, defer the operation of the order pending an appeal.

"(3) If a licence is suspended under this section it is to be treated as being of no effect during the period of suspension.

"(4) A person who under this Subdivision is disqualified from holding -

- (a) a pawnbroker's licence must not, during the period of disqualification, apply for a pawnbroker's licence or a pawnbroker/second-hand dealer's licence;
- (b) a second-hand dealer's licence must not, during the period of disqualification, apply for a second-hand dealer's licence or a pawnbroker/second-hand dealer's licence; or

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- (c) a pawnbroker/second-hand dealer's licence must not, during the period of disqualification, apply for any licence,

or be the subject of an application for such a licence during the period of disqualification.

"273. RETURNS BY COURTS

"Where a Court has made an order under section 272 in relation to the suspension or revocation of, or disqualification in relation to, a licence, the Court is to ensure that -

- (a) notice of the findings, penalty imposed and orders made in relation to the matter; and
(b) where relevant, any licence that has been delivered up to the Court,

is sent to the Commissioner.

*"Subdivision 5 - Other Requirements
in relation to Licences*

"274. SIGN TO BE DISPLAYED

"A licensee must cause to be kept displayed in a position that is clearly visible from the outside of the business premises to which the licence applies -

- (a) the licensee's name; and
(b) the words 'Licensed Pawnbroker', 'Licensed Pawnbroker and Second-hand Dealer' or 'Licensed Second-hand Dealer', as the case may be,

in legible lettering at least 50mm high.

Penalty: \$2,000.

"275. CERTAIN EMPLOYEE RECORDS TO BE KEPT AND PROVIDED TO POLICE

"(1) Where a person is employed at business premises and the person's functions include entering into contracts at the premises, the licensee must ensure that the following are kept in relation to the person:

- (a) a record of the person's full name, current residential address and date of birth;
(b) a photograph of the person, certified by the licensee to be a true photograph of the employee;
(c) all records provided by the person by way of -
(i) the person's application for employment at the premises;

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(ii) the licensee's compliance with a condition of the licence.

"(2) Records referred to in subsection (1) are to be kept for 12 months after the day the employee ceases to be employed at the premises.

"(3) An authorised officer may require a licensee to produce for inspection a record kept under this section and the licensee must not refuse or fail to comply with the request.

Penalty: \$2,000.

"(4) A person employed at business premises whose functions include entering into contracts at the premises must, at all times while engaged on the business of the licensee, display such identification, if any, as is prescribed.

"(5) A person employed at business premises must not enter into a contract for the purchase of goods from, or the exchange of goods with, another person unless the employee's employer has permitted the employee to enter into contracts for the purchase or exchange of goods.

Penalty: \$1,000.

"(6) Where an employee is found guilty of an offence against subsection (5), his or her employer is guilty of an offence.

Penalty: \$2,000.

*"Division 3 - Contracts with Pawnbrokers
and Second-hand Dealers*

*"Subdivision 1 - Duties of Pawnbrokers
and Second-hand Dealers*

"276. PERSONS UNDER 18 OR AFFECTED BY ALCOHOL OR DRUGS

"A pawnbroker or a second-hand dealer must not enter into a contract with a person who is -

- (a) under 18 years of age; or
- (b) apparently affected by alcohol or a drug.

Penalty: \$5,000.

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"277. IDENTIFICATION OF PERSONS

"(1) Subject to subsection (2), a pawnbroker or a second-hand dealer must not enter into a contract with a person unless the pawnbroker or second-hand dealer -

- (a) has ascertained the person's full name and current residential address; and
- (b) has verified the person's identity by way of -
 - (i) the person's passport, where the passport is either current or has not been expired for more than 24 months;
 - (ii) the person's current motor driver's licence, but only if it bears a photograph of the person; or
 - (iii) prescribed means.

Penalty: \$5,000.

"(2) Subsection (1)(b) does not apply to a contract entered into with a person conducting a lawn sale.

"278. OFFENCES IN RELATION TO FALSE INFORMATION

"A person must not provide to a pawnbroker or second-hand dealer information in relation to the person's name, address or age, in written or oral form, that the person knows to be -

- (a) false or misleading in a material particular; or
- (b) likely to deceive in a material way.

Penalty: \$5,000.

"279. RECORDS TO BE MADE BY PAWNBROKERS

"A pawnbroker must ensure that the following details are recorded in relation to each contract as soon as the information becomes available to the pawnbroker:

- (a) a distinguishing number for the contract;
- (b) the full name and current residential address of the party pawning the goods;
- (c) where verification of identity is required under section 277, the form of identification used to verify the identity of the party pawning the goods and the number (if any) of the identification document;
- (d) the date and time of the contract;

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- (e) a description of each of the goods to be pawned including, where applicable to the goods, the type, size, colour, brand, serial number and any distinguishing feature;
- (f) the amount lent in respect of each of the pawned goods;
- (g) the interest to be paid on the amount lent expressed -
 - (i) as a percentage rate; and
 - (ii) as an amount in dollar terms to be paid for each week or month, as the case may be, of the loan;
- (h) the types of charges that are, or may become, payable, including those that may become payable in the event of the sale of the goods, and the amount (if known) of the charges;
- (j) the redemption period if it is longer than one month;
- (k) the name of the person accepting the goods in pawn as, or on behalf of, the pawnbroker;
- (m) the amount of any repayment made towards satisfaction of the loan;
- (n) the premises where the goods will be located during the redemption period, and if the goods are moved, the name and address of the location of the goods;
- (p) if the redemption period is extended, the new redemption period and the date of the agreement to extend the period;
- (q) if goods are redeemed, the date of redemption;
- (r) if unredeemed goods are sold -
 - (i) the date of sale; and
 - (ii) the details referred to in section 296(1);
- (s) other prescribed matters.

Penalty: \$5,000.

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"280. PAWN TICKETS

"(1) Before lending any money under a contract, a pawnbroker must ensure that a written statement under this section and a copy of the statement are signed by, or on behalf of, the pawnbroker and by the other party to the contract and that the statement is given to that other party, without charge.

"(2) The statement is to -

- (a) set out the details recorded under section 279 (a) to (s) inclusive; and
- (b) inform the other party -
 - (i) of the pawnbroker's obligation under this Part to keep the pawned goods for at least one month or such longer period as the parties may agree;
 - (ii) that the goods can be redeemed at any time before the sale of the goods; and
 - (iii) of the party's right to any surplus on the sale of the goods after deduction of interest and charges.

"(3) The pawnbroker must ensure that the statement and the copy each bear the original signature of the persons referred to in subsection (1).

Penalty: \$2,000.

"281. RECORDS TO BE MADE BY SECOND-HAND DEALERS

"(1) A second-hand dealer must ensure that the following details are recorded in relation to each contract as soon as the information becomes available to the dealer:

- (a) a distinguishing number for the contract;
- (b) the full name and current residential address of the party offering the goods;
- (c) where verification of identity is required under section 277, the form of identification used to verify the identity of the party offering the goods and the number (if any) of the identification document;
- (d) the date and time of the contract;
- (e) a description of each of the goods accepted by the dealer including where applicable to the goods, the type, size, colour, brand, serial number and any distinguishing feature;

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- (f) the consideration provided by the dealer for the accepted goods;
- (g) the name of the person accepting the goods as, or on behalf of, the dealer;
- (h) the premises where the goods will be kept during the period referred to in section 299, and if the goods are moved, the name and address of the location of the goods;
- (j) if the goods are disposed of by the dealer, the date of disposal;
- (k) such other matters as may be prescribed.

Penalty: \$5,000.

"(2) A second-hand dealer must ensure that the details of matters prescribed for the purposes of subsection (1)(k) are kept in the prescribed form.

"282. RECORDS TO BE PROVIDED BY SECOND-HAND DEALERS

"(1) Before accepting goods under a contract a second-hand dealer must ensure that -

- (a) the records specified in or prescribed under section 281 that are prescribed for the purposes of this section are provided to the other party to the contract; and
- (b) a receipt for the goods and a copy of the receipt are signed by, or on behalf of, the dealer and the other party to the contract, and the receipt is given to the other party.

"(2) The second-hand dealer must ensure that the receipt and the copy each bear the original signature of the persons referred to in subsection (1).

Penalty: \$2,000.

"283. KEEPING OF RECORDS

"(1) A pawnbroker must ensure that all records required to be made under section 279, a copy of all the pawnbroker's pawn tickets and all affidavits provided to the pawnbroker under section 286 are kept -

- (a) for at least one year from the time when the goods are redeemed or sold; and
- (b) in the prescribed manner or form.

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"(2) A second-hand dealer must ensure that all records required to be made under section 281 and a copy of all receipts given under section 282 are kept -

- (a) for at least one year from the time when the goods are disposed of by the dealer; and
- (b) in the prescribed manner or form.

"(3) A pawnbroker or second-hand dealer must ensure that -

- (a) the records required to be kept under section 275, insofar as they relate to a person who is currently employed by the pawnbroker or second-hand dealer;
- (b) all other records required to be kept under this Part that relate to contracts entered into within the previous 12 months; and
- (c) all other records kept in the course of carrying on business as a pawnbroker or second-hand dealer within the previous 12 months,

are kept at the business premises nominated in the licence for that purpose.

"(4) A pawnbroker or second-hand dealer must ensure that -

- (a) the records required to be kept under section 275, insofar as they relate to a person who was, but no longer is, employed by the pawnbroker or second-hand dealer;
- (b) all other records required to be kept under this Part that relate to contracts entered into other than within the previous 12 months; and
- (c) all other records kept in the course of carrying on business as a pawnbroker or second-hand dealer, other than such records kept within the previous 12 months,

are kept at a place nominated in the licence for that purpose.

Penalty: \$5,000.

"(5) The holder of a pawnbroker/second-hand dealer's licence must keep those records he or she is required under this Part to keep in relation to his or her business as a pawnbroker separate from those records he or she is required under this Part to keep in relation to his or her business as a second-hand dealer.

Penalty: \$5,000.

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"(6) An authorized officer may require a licensee to produce for inspection a record required to be kept under this Part and the licensee must not refuse or fail to comply with the request -

- (a) in the case of records required to be kept at the business premises - immediately; or
- (b) in any other case - within the period, being not less than one business day after the day on which the requirement is made, that the authorized officer specifies.

Penalty: \$5,000.

"284. TAMPERING WITH RECORDS

"Where a pawnbroker or second-hand dealer keeps a record for the purposes of this Part, a person must not alter the record in a manner that renders the record false or misleading in a material particular.

Penalty: \$5,000.

"285. GOODS TO CARRY CONTRACT NUMBER

"(1) A pawnbroker must ensure that all pawned goods are marked or labelled with the distinguishing number of the contract under which the goods were pawned.

"(2) A second-hand dealer must ensure that all second-hand goods obtained by the dealer that are for sale or exchange by the dealer are marked or labelled with the distinguishing number of the contract under which the goods were obtained.

Penalty: \$2,000.

"286. PAWN TICKET 'LOST' OR 'STOLEN'

"(1) A pawnbroker must not replace a pawn ticket alleged by a person to have been lost or stolen unless -

- (a) the person provides the pawnbroker with the person's affidavit setting out -
 - (i) an accurate description of the pawned goods; and
 - (ii) the circumstances of the loss or theft of the pawn ticket;
- (b) the pawnbroker ascertains the person's name and verifies the person's identity in accordance with section 277; and
- (c) the pawnbroker is satisfied on reasonable grounds that the person's claim is lawful.

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"(2) A pawnbroker must not charge a person for a replacement pawn ticket.

Penalty: \$2,000.

"Subdivision 2 - Redemption and Sale of Goods

"287. INTERPRETATION

"In this Subdivision 'pawn ticket' includes a replacement pawn ticket issued under section 286.

"288. WHEN GOODS MAY BE REDEEMED

"(1) Pawned goods may be redeemed -

(a) before the expiration of -

(i) one month; or

(ii) a period longer than one month agreed by the parties,

from the day on which the goods were pawned; and

(b) where the redemption period has expired, before the sale of the goods.

"(2) A provision in, or condition of, an agreement or arrangement that purports to reduce the period referred to in subsection (1)(a)(i) has no effect.

"(3) An agreement under subsection (1)(a)(ii) may be made at any time before the goods are sold.

"289. WHERE PAWNED GOODS TO BE KEPT

"A pawnbroker must ensure that pawned goods are kept at business premises or storage premises to which the pawnbroker's licence applies until the redemption period expires.

Penalty: \$5,000.

"290. WHEN GOODS TO BE REDEEMED

"Subject to section 291, where pawned goods have not been sold the pawnbroker must deliver the goods to a person who -

(a) produces to the pawnbroker the pawn ticket for the goods;

(b) requests the redemption of the goods; and

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- (c) pays the pawnbroker, or tenders to the pawnbroker payment of, all money owing under the contract under which the goods were pawned.

Penalty: \$5,000.

"291. WHEN GOODS NOT TO BE REDEEMED

"(1) Section 290 does not apply where -

- (a) the pawnbroker has been informed by a credible person or has reason to believe that the person who produces the pawn ticket is not the owner of the goods or pawn ticket or is not acting with the owner's authority;
- (b) the pawnbroker has been informed by the owner of the pawn ticket or some other credible person that the ticket has been lost, stolen or otherwise unlawfully taken;
- (c) the provisions of a notice under section 317 prevent delivery of the goods;
- (d) the goods have been seized by a member of the Police Force;
- (e) the goods are not in the possession of the pawnbroker and the pawnbroker had previously reported to a member of the Police Force that the goods had been stolen or otherwise unlawfully obtained from the pawnbroker; or
- (f) the goods were returned to a person under section 318.

"(2) A pawnbroker who does not deliver goods under section 290 in reliance on subsection (1)(a) or (b) must, as soon as is practicable, notify a member of the Police Force of the reasons for non-delivery and where the name and address of the person who requested the delivery are known to the pawnbroker, the name and address of that person.

Penalty: \$2,000.

"292. REDEMPTION ONLY TO HOLDER OF PAWN TICKET

"A pawnbroker must not deliver pawned goods in purported redemption of the goods to a person other than the holder of the pawn ticket for the goods.

Penalty: \$5,000.

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"293. SALE OF UNREDEEMED GOODS

"(1) A pawnbroker must not sell pawned goods unless the redemption period has expired.

Penalty: \$5,000.

"(2) If pawned goods have not been redeemed within the redemption period the pawnbroker must sell the goods -

(a) as soon as is practicable after the redemption period has expired; and

(b) so as to receive the best market price reasonably obtainable.

Penalty: \$5,000.

"(3) If any question arises as to whether a pawnbroker has complied with subsection (2), the proof of compliance is on the pawnbroker.

"294. UNREDEEMED GOODS NOT TO BE BOUGHT BY OR ON BEHALF OF PAWNBROKER

"(1) A pawnbroker, or a person acting on behalf of a pawnbroker, must not buy goods that have been pawned to and are being sold by the pawnbroker.

"(2) Where a pawnbroker's licence or a pawnbroker/second-hand dealer's licence is held by a partnership or body corporate, a person who is -

(a) one of the partners;

(b) the body;

(c) one of the body's officers; or

(d) acting on behalf of a person referred to in paragraph (a), (b) or (c),

must not buy goods that have been pawned to and are being sold by the pawnbroker.

Penalty: \$5,000.

"295. APPLICATION OF PROCEEDS OF SALE

"(1) Subject to subsection (2), the proceeds of sale of pawned goods are to be applied in settlement of all amounts owing to the pawnbroker under the contract under which the goods were pawned and the amount of any surplus is a debt due by the pawnbroker to the other party to the contract.

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"(2) Where the amount of the surplus is less than \$50 or such other amount as may be prescribed under section 297, the amount is a debt due and payable by the pawnbroker to the other party to the contract only if the other party has, within 60 days after the sale of the goods, demanded the return of the surplus.

"296. RECORDS TO BE MADE ON SALE OF UNREDEEMED GOODS

"(1) A pawnbroker who sells pawned goods must, as soon as practicable after the sale, calculate -

- (a) the charges to be paid by the other party to the contract under which the goods were pawned; and
- (b) the surplus (if any) due to the other party,

and record those details with the details recorded under section 279 in relation to the goods.

"(2) Where pawned goods have been sold by a pawnbroker, the pawnbroker must on request allow the other party to the contract under which the goods were pawned to inspect the record relating to the sale.

Penalty: \$2,000.

"297. NOTICE AS TO SURPLUS

"(1) Subject to subsection (2), a pawnbroker who sells pawned goods must, before 14 days after the sale, send by certified mail to the last known address of the other party to the contract under which the goods were pawned, a notice informing the party -

- (a) of the amount of any surplus proceeds of sale; and
- (b) that the party is entitled to receive that amount from the pawnbroker at the pawnbroker's business premises or in another manner as agreed, within 60 days after the notice is issued.

Penalty: \$2,000.

"(2) Subsection (1) does not apply where -

- (a) the other party in writing requested the pawnbroker not to give the party notice under that subsection; or
- (b) the surplus is less than \$50 or the prescribed amount.

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"298. PAYMENT OF SURPLUS ON DEMAND

"A pawnbroker who sells goods pawned by a person must upon demand pay the amount of any surplus payable to the person under section 295 at the pawnbroker's business premises or in another manner as agreed.

"Subdivision 3 - Retention of Second-hand Goods

"299. SECOND-HAND GOODS TO BE KEPT UNCHANGED AT LEAST 14 DAYS

"A second-hand dealer must, in relation to all second-hand goods obtained in the course of the dealer's business, keep the goods for at least 14 days after the goods were obtained without altering the form of the goods, including by cleaning, repairing or repainting them.

Penalty: \$5,000.

"300. WHERE SECOND-HAND GOODS TO BE KEPT

"Subject to section 318, a second-hand dealer must ensure, in relation to all second-hand goods obtained in the course of the dealer's business, that the goods are kept at business premises or storage premises to which the dealer's licence applies during the period referred to in section 299.

Penalty: \$2,000.

*"Subdivision 4 - Other Matters relating to
Contracts with Pawnbrokers
and Second-hand Dealers*

"301. PAWNBROKER NOT TO CHARGE ESTABLISHMENT FEE

"(1) A pawnbroker must not require or receive a fee, other than by way of interest, in respect of a person's application to enter into a contract with the pawnbroker.

Penalty: \$2,000.

"(2) A provision in, or condition of -

(a) a contract; or

(b) an agreement or arrangement in relation to entering into a contract,

for a payment other than interest in consideration for entering into a contract with a pawnbroker is of no effect.

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"302. RE-PLEDGING OF GOODS PROHIBITED

"A pawnbroker must not pawn any goods that are pawned to the pawnbroker.

Penalty: \$5,000.

"303. NO CONTRACTING OUT OF LIABILITY FOR LOSS OR DAMAGE

"A provision in, or condition of, an agreement or arrangement in relation to the liability of a pawnbroker for the loss of, or damage to, pawned goods has no effect if it is less favourable to the owner of the goods than the common law.

"304. BUYER MAY BE COMPENSATED

"Where a person buys or purports to buy goods from a pawnbroker or second-hand dealer and title to the goods, as a matter of law, either -

- (a) does not pass to the buyer; or
- (b) having passed to the buyer, reverts in a person who was the owner of the goods,

the buyer may recover from the pawnbroker or dealer in a court of competent jurisdiction, the amount paid by the buyer to the pawnbroker or dealer and any other costs reasonably incurred in relation to the acquisition and loss of the goods.

"305. CERTAIN RIGHTS, &c., SAVED

"Except to the extent that this Part expressly provides otherwise, nothing in this Part affects a right or remedy that a person would have had if this Part had not been enacted.

"306. CIVIL CONSEQUENCES OF BREACH OF SECTION 247

"If a pawnbroker's licence or a pawnbroker/second-hand dealer's licence is not held by a person who acts as a pawnbroker, the other party to a contract with that person -

- (a) is not liable to repay the money lent to him or her or to pay any interest or any charge in connection with the contract;
- (b) is entitled to recover the goods the subject of the contract; and
- (c) if he or she has paid or repaid any amount referred to in paragraph (a), may recover the amount in a court of competent jurisdiction as a debt due to him or her by the person acting as a pawnbroker.

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"307. CIVIL CONSEQUENCES OF BREACH OF SECTION 280

"(1) If a pawnbroker lends money under a contract but does not give to the other party to the contract a pawn ticket in accordance with section 280, the other party is not liable to pay any amount for interest or for any charge in connection with the contract.

"(2) If the other party has paid an amount referred to in subsection (1) that party may recover the amount in a court of competent jurisdiction as a debt due to him or her by the pawnbroker.

"308. CRIMINAL LIABILITY

"(1) Sections 306 and 307 do not affect the criminal liability of a person for a breach of section 247 or 280 respectively.

"(2) Where a pawnbroker commits an offence against this Part in relation to a contract, the other party to the contract does not by reason only of being a party to the contract take part in committing the offence.

"309. BREACH DOES NOT OTHERWISE VITIATE CONTRACT

"Except as provided by sections 306 and 307, a contract is not illegal, void or unenforceable by reason only that a pawnbroker has contravened this Part in relation to the contract.

"310. RELIEF FROM SECTIONS 306 AND 307

"(1) In this section 'pawnbroker' includes a person who has acted as a pawnbroker although not under a pawnbroker's licence or a pawnbroker/second-hand dealer's licence held by the person.

"(2) A pawnbroker affected by section 306 or 307 may apply to a court of competent jurisdiction for relief from the section.

"(3) Where an application is made under subsection (2), the Court after considering the circumstances, including the conduct of the pawnbroker and the other party to the contract and any loss suffered by the other party, may refuse to make an order or may make an order as to the amount (if any) to be paid or recovered by the other party that it thinks fit.

"(4) If the other party to the contract has suffered loss as a result of a contravention of section 247 or 280 the Court is to ensure in making an order under subsection (3) that the amount that that party would have been liable to pay but for the contravention is reduced by an amount that is not less than the amount of the loss.

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"(5) A contract has effect subject to an order, if any, made in relation to it under this section.

"(6) An amount payable to a person under an order of the Court under this section is recoverable in a court of competent jurisdiction as a debt.

"Division 4 - Enforcement

"311. ENTRY TO AND INSPECTION OF LICENSED PREMISES WITHOUT WARRANT

"(1) A member of the Police Force may without warrant enter premises to which a licence applies and inspect goods and records kept at the premises -

- (a) in the case of business premises, at a time when the premises are open for business; and
- (b) in the case of storage premises, at a time when business premises to which the licence applies are open for business.

"(2) A member of the Police Force may, at a time when business premises to which a licence applies are open for business, require a person who is apparently in charge of the premises to open storage premises to which the licence also applies.

"(3) A member of the Police Force may, without warrant, during an inspection of premises for the purposes of this section -

- (a) enter a room, a storage area or another part of the premises;
- (b) require a person on the premises to open or unlock a room, area or part of premises;
- (c) where a person on the premises refuses to, or is unable to, open or unlock a room, area or part of premises, use force reasonably necessary to gain entry to the room, area or part;
- (d) open and examine the contents of -
 - (i) a package; or
 - (ii) an unlocked container, cupboard, drawer, chest, trunk, box, cage or other receptacle,
found on the premises;
- (e) require a person on the premises to open or unlock a locked container, cupboard, drawer, chest, trunk, box, cage or other receptacle on the premises; and

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- (f) where a person on the premises is unwilling or unable to open or unlock an item referred to in paragraph (e), use force reasonably necessary to open or unlock the item.

"(4) A person must not refuse or fail to comply with a requirement under this section.

Penalty: \$5,000.

"312. ASSISTANCE IN THE LOCATION OF GOODS AT LICENSED PREMISES

"(1) Where a member of the Police Force has lawfully entered premises to which a licence applies, the member may require a person who at the time is apparently in charge of the premises to without delay -

- (a) produce for inspection goods kept by the pawnbroker or second-hand dealer;
- (b) identify and locate goods kept by the pawnbroker or second-hand dealer that correspond to a particular record kept by the pawnbroker or dealer under this Part; and
- (c) where the goods to be produced, located or identified have been but are no longer kept by the pawnbroker or second-hand dealer, provide -
 - (i) information as to the current location of the goods; or
 - (ii) if the current location of the goods is not known, information as to what has happened to the goods.

"(2) In this section, a reference to goods or records kept by a pawnbroker or second-hand dealer is a reference to goods or records kept at premises to which the licence held by the pawnbroker or dealer applies.

"(3) A person must not refuse or fail to comply with a requirement under this section and must not provide information that is false or misleading.

Penalty: \$5,000.

"313. PROVISION OF, AND ASSISTANCE IN RELATION TO, RECORDS, &c.

"(1) Where a member of the Police Force has lawfully entered premises to which a licence applies, the member may require a person who at the time is apparently in charge of the premises to without delay -

- (a) produce for inspection a record kept by the pawnbroker or second-hand dealer under this Part;

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- (b) identify and locate records kept by the pawnbroker or second-hand dealer under this Part that correspond to particular goods kept by the pawnbroker or dealer; and
- (c) produce for inspection a licence relevant to the business.

"(2) In this section, a reference to records or goods kept by a pawnbroker or second-hand dealer is a reference to records or goods kept at premises to which the licence held by the pawnbroker or dealer applies.

"(3) Where the production of a record is required under this section and the record is not in a readable format, the requirement to produce the record is to be treated as a requirement to produce -

- (a) the record itself; and
- (b) the contents of the record in a readable format.

"(4) A person must not refuse or fail to comply with a requirement under this section and must not provide information that is false or misleading.

Penalty: \$5,000.

"314. POLICE MAY SEIZE RECORDS FOR CERTAIN PURPOSES

"(1) Where a record kept under this Part is produced for inspection a member of the Police Force may seize the record for the purpose of making copies or notes of some or all of the record.

"(2) If a record is seized under this section, then as soon as practicable -

- (a) a receipt is to be issued; and
- (b) either the original record is to be returned or a copy of the record is to be given,

to the person from whom the record was seized.

"315. POLICE TO BE INFORMED IN CERTAIN CIRCUMSTANCES

"A pawnbroker or second-hand dealer who suspects for any reason that goods -

- (a) in the possession of the pawnbroker or dealer may have been stolen or otherwise unlawfully obtained, must without delay inform a member of the Police Force of the suspicion and provide a description of the goods; or

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- (b) which the pawnbroker is offered for pawn or the dealer is offered for exchange or sale may have been stolen or otherwise unlawfully obtained, must without delay inform a member of the Police Force of the suspicion and provide a description of the goods and of the person who offered the goods.

Penalty: \$2,000.

"316. INFORMATION ABOUT GOODS TO BE GIVEN

"A pawnbroker or second-hand dealer must -

- (a) in the prescribed manner and form (which may include an electronic form); and
- (b) at the prescribed time,

provide to prescribed persons such information or records, or such access to information or records, as is prescribed.

Penalty: \$5,000.

"317. NOTICE TO STOP DEALING

"(1) A member of the Police Force who has reasonable cause to suspect that goods in the possession of a pawnbroker or second-hand dealer have been stolen or otherwise unlawfully obtained may personally serve the pawnbroker or dealer with a notice under this section.

"(2) A notice under this section is to -

- (a) specify the goods suspected of having been stolen or otherwise unlawfully obtained; and
- (b) state that the pawnbroker or second-hand dealer is prohibited from altering the form of the goods, including by cleaning, repairing and repainting them, or disposing of the goods in any way within 21 days after service of the notice and that the goods specified in the notice are to be held separately from other goods for the period of the notice or a shorter period as agreed.

"(3) A notice under this section may be reissued once for a further period of 21 days from the day the first period ends.

"(4) A pawnbroker or second-hand dealer must not refuse or fail to comply with the provisions of a notice served on the pawnbroker or dealer under this section.

Penalty: \$5,000.

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"318. CERTIFICATE MAY BE ISSUED ENTITLING PERSON TO RETURN OF GOODS

"(1) Where a person alleges to the Commissioner of Police that goods that the person had possession of otherwise than as a pawnbroker or second-hand dealer -

- (a) have been stolen or otherwise unlawfully obtained from the person or have been pawned, sold or exchanged without the person's authority; and
- (b) are in the possession of a pawnbroker or second-hand dealer,

the Commissioner may issue to the person a certificate specifying that the goods are the property of the person specified in the certificate.

"(2) Where a certificate under subsection (1) is produced to a pawnbroker, a second-hand dealer, or an employee of a pawnbroker or second-hand dealer, in possession of the goods, the pawnbroker, second-hand dealer or employee must, within 7 days after production of the certificate -

- (a) deliver the goods to the person specified in the certificate; or
- (b) make an application under section 322 in relation to the goods.

Penalty: \$5,000.

"319. SEIZURE OF GOODS SUSPECTED STOLEN

"(1) Where a member of the Police Force has lawfully entered premises to which a licence applies and has reasonable cause to suspect that goods in the possession of a pawnbroker or second-hand dealer have been stolen or otherwise unlawfully obtained, the member may without warrant seize the goods.

"(2) Where goods are seized from a pawnbroker or second-hand dealer a member of the Police Force is to -

- (a) issue a receipt for the goods as soon as practicable; and
- (b) where the record is in a signable format and the person who at the time is apparently in charge of the premises so requests, sign the record made under section 279 or 281, as the case may be.

"(3) A pawnbroker or second-hand dealer may request that a member of the Police Force, before leaving premises at which goods have been seized under this section, sign a document accurately listing the goods seized, and the member is to comply with the request.

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"(4) Where it is established to the satisfaction of a member of the Police Force that goods seized from a pawnbroker or second-hand dealer have not been stolen or otherwise unlawfully obtained, a member of the Police Force is to return the goods to the pawnbroker or second-hand dealer as soon as practicable.

"(5) Where subsection (4) does not apply in relation to goods seized from a pawnbroker or second-hand dealer, a member of the Police Force -

- (a) is to return the goods to the owner of the goods; or
- (b) where the goods are not returned to the owner and competing claims have been made as to rights in respect of the goods, keep the goods in safe custody until the claims have been determined,

and in either case, is to notify the pawnbroker or second-hand dealer of the manner of disposal.

"(6) Nothing in subsection (5) affects a right of a pawnbroker or second-hand dealer to take proceedings to recover possession of goods seized from the pawnbroker or dealer but the proceedings are to be commenced within 6 months after the day the goods are seized.

"320. POWER OF PAWNBROKERS, DEALERS, &c., TO ARREST

"(1) In this section a reference to a pawnbroker or second-hand dealer is also a reference to a person who at the relevant time is in charge of the premises to which the licence relates.

"(2) Where a person offers to pawn, sell, exchange or deliver goods to a pawnbroker or second-hand dealer and the pawnbroker or dealer has reasonable cause to suspect that an offence has been committed by the person in relation to the goods, the pawnbroker or dealer may arrest the person.

"321. SUMMARY ORDERS WHERE GOODS STOLEN, PAWNED, &c.

"(1) A person may apply for an order under this section where goods -

- (a) have been stolen or unlawfully obtained from him or her or have been pawned, sold or exchanged without his or her authority; and
- (b) are in the possession of a pawnbroker or second-hand dealer.

"(2) A copy of an application for an order under subsection (1) is to be served on the pawnbroker or second-hand dealer in relation to whom the application is made.

Consumer Affairs and Fair Trading Amendment

"(3) The Local Court may make an order for -

- (a) the delivery of the goods to the owner of the goods; and
- (b) the payment by or to the pawnbroker or second-hand dealer of an amount of money as determined by the Court,

at or by the time stated in the order.

"(4) Where a pawnbroker or second-hand dealer -

- (a) has disposed of goods after notice that the goods were stolen or unlawfully obtained; or
- (b) refuses or fails to deliver goods in accordance with an order of the Local Court,

the Court may order that the pawnbroker or dealer pay to the owner of the goods an amount determined by the Court as compensation for the value of the goods.

"322. SUMMARY ORDER WHERE SECOND-HAND DEALER OR PAWNBROKER CLAIMS GOODS

"(1) A pawnbroker or second-hand dealer may apply to the Local Court for an order under this section where -

- (a) a certificate under section 318(2) is produced to the pawnbroker or second-hand dealer, or an employee of the pawnbroker or second-hand dealer, in possession of the goods; or
- (b) goods in respect of which the pawnbroker or second-hand dealer has rights have been returned to a person under section 319(5) (a).

"(2) Where an application is made under subsection (1), a Justice may issue a summons for the production of the goods and the appearance before the Local Court of each person who appears to the Justice to have a claim of ownership of, or rights in respect of, the goods.

"(3) The Local Court may -

- (a) make an order for the delivery of the goods to the party who appears to be the rightful owner of the goods; or
- (b) where the owner cannot be ascertained, make any order with respect to the goods the Court thinks fit,

and may make an order for the payment by or to a party making a claim for the goods of an amount of money as determined by the Court at or by the time stated in the order.

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"323. SUMMARY ORDERS WHERE COMPETING CLAIMS TO GOODS

"(1) A member of the Police Force may apply to the Local Court for an order under this section where the member -

- (a) has seized under this Part; or
- (b) under any other written law has seized from -
 - (i) a pawnbroker or second-hand dealer; or
 - (ii) a person who obtained from a pawnbroker or second-hand dealer,

goods suspected to have been stolen or otherwise unlawfully obtained, and competing claims have been made as to rights in respect of the goods.

"(2) A copy of an application for an order under subsection (1) is to be served on each person who, in the opinion of the Local Court, has made a competing claim as to rights in respect of the goods.

"(3) The Local Court may -

- (a) make an order for the delivery of the goods to the party who appears to be the rightful owner of the goods; or
- (b) where the owner cannot be ascertained, make such order with respect to the goods as the Court thinks fit,

and may make an order for the payment by or to a party making a claim for the goods of an amount of money as determined by the Court at or by the time stated in the order.

"324. LICENSEE'S LIABILITY FOR EMPLOYEES, AGENTS

"(1) Where an employee or agent of the licensee commits an offence against this Part for which the licensee would have been liable had it been committed by the licensee, the licensee is to be treated as having committed an offence and is liable to the penalty prescribed for the offence committed by the employee or agent.

"(2) Proceedings under this section may be taken against a licensee whether or not proceedings are taken against the employee or agent and whether or not the employee or agent was convicted of the offence.

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"(3) In proceedings for an offence against this section -

- (a) it is not a defence that the licensee did not know of, or could not reasonably have been aware of or have prevented, the offence being committed by the employee or agent; and
- (b) it is a defence, proof of which is on the licensee, that the licensee had taken reasonable steps to prevent the commission of the offence.

"325. LIABILITY OF PARTNERS, BODIES CORPORATE AND OFFICERS

"(1) Where a licence is held by a partnership or body corporate and the licensee or an employee or agent of the partnership or body commits an offence against this Part -

- (a) subject to subsection (2), each of the partners; or
- (b) the body corporate,

as the case may be, is to be treated as having committed an offence and is liable to the penalty prescribed for the offence committed by the licensee or employee or agent of the partnership or body.

"(2) Subsection (1) does not apply to a partner who proves that -

- (a) the offence was committed without the partner's consent or connivance; and
- (b) the partner exercised all such due diligence to prevent the commission of the offence as ought to have been exercised, having regard to the nature of the partner's functions and to all the circumstances.

"(3) Where a body corporate is treated as having committed an offence against this Part, each of the body's officers may be treated as having committed the offence unless the officer proves that -

- (a) the offence was committed without the officer's consent or connivance; and
- (b) the officer exercised all such due diligence to prevent the commission of the offence as ought to have been exercised, having regard to the nature of the officer's functions and to all the circumstances.

"(4) The reference in subsection (2) to a partner does not include a reference to a partner who is also the licensee and the defence available to an officer under subsection (3) is not available to an officer who is also the licensee.

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"Division 5 - Miscellaneous

"326. DUTY TO ADVISE PAWN TICKET HOLDERS WHERE PAWNBROKING BUSINESS SOLD

"(1) Where a pawnbroker sells or transfers his or her business to a person ('the purchaser'), the rights and obligations of the pawnbroker in relation to each pawn ticket issued by the pawnbroker are transferred to the purchaser.

"(2) The pawnbroker must notify each holder of a pawn ticket of the transfer to the purchaser of the rights and obligations of the pawnbroker in relation to the ticket, unless the purchaser agrees in writing to give the notice.

Penalty: \$2,000.

"(3) Where the purchaser agrees to give notice under subsection (2), he or she must notify each holder of a pawn ticket of the transfer of the rights and obligations of the pawnbroker in relation to the ticket to the purchaser.

Penalty: \$2,000.

"327. ORDERS TO ENABLE REDEMPTION OF GOODS WHERE LICENCE REVOKED, &c.

"(1) If a person who has pawned goods to a pawnbroker is unable to redeem the goods because the pawnbroker's licence has been subsequently suspended, revoked or not renewed, the Local Court may, on the application of any person, make the orders the Court thinks fit in relation to conducting business at the premises for the purpose of redeeming the goods.

"(2) Nothing in subsection (1) affects any power of the Commissioner or a court in relation to licences.

"(3) A person must not, without reasonable excuse, refuse or fail to comply with an order under this section.

Penalty: \$5,000.

"328. SECRECY

"(1) Except as provided in this section, a person must not directly or indirectly record, use or divulge any information obtained by reason of any function that person has, or at any time had, in the administration of this Act or the *Pawnbrokers Act* repealed by the *Consumer Affairs and Fair Trading Amendment Act 1997*.

Penalty: \$5,000.

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"(2) Subsection (1) does not apply to the recording, use or divulging of information -

- (a) in the course of duty;
- (b) under this Part or another law;
- (c) for the purposes of the investigation of a suspected offence or the conduct of proceedings against a person for an offence; or
- (d) with the consent of the person to whom the information relates, or each of them if there is more than one.

"(3) Subsection (1) does not apply to the recording, use or divulging of statistical or other information that could not reasonably be expected to lead to the identification of a person to whom it relates.

"329. EVIDENTIARY PROVISIONS

"In all courts and before all persons and bodies authorized to receive evidence -

- (a) goods are to be treated as being in the possession of a pawnbroker or second-hand dealer if the goods are in a place that is occupied by, or under the control of, the pawnbroker or dealer;
- (b) in the absence of evidence to the contrary -
 - (i) a certificate purporting to be issued by the Commissioner or the Commissioner's delegate and stating that a licence is or is not held by or on behalf of a person, the conditions or restrictions to which a licence is subject, or the premises to which a licence applies, on a day or days or during a period mentioned in the certificate, is evidence of the matters so stated; and
 - (ii) proof is not required of any delegation under this Part or of the appointment, or terms of appointment, of any licensing officer under this Part; and
- (c) judicial notice is to be taken, for the purposes of this Part, of the fact that a person is the Commissioner and of the signature of the Commissioner or the Commissioner's delegate on a certificate purporting to be issued under paragraph (b)."

Consumer Affairs and Fair Trading Amendment

6. NEW SECTION

The Principal Act is amended by inserting after section 232A the following:

"332. INFRINGEMENT NOTICES

"(1) Regulations made under this Act may -

(a) prescribe the payment of a prescribed amount in lieu of a penalty which may otherwise be imposed for an offence against this Act or Regulations made under this Act; and

(b) prescribe the service of notices on persons alleged to have infringed this Act or Regulations made in relation to this Act and particulars to be included in such notices.

"(2) The Commissioner is an enforcement agency for the purposes of Division 2A of Part IV of the *Justices Act*."

7. FURTHER AMENDMENTS

The Principal Act is further amended as set out in the Schedule.

8. REPEAL

The *Pawnbrokers Act*, being Act No. 23 of 1980, is repealed.

SCHEDULE

Section 6

Provision	Amendment	
	omit	substitute
Heading to Part I	"PART I"	"PART 1"
Section 3(2)	"Part XI"	"Part 11"
Section 4(1) -definition of "authorized officer"	"Parts IV to XII"	"Parts 4 to 14"
Section 5(2)	"Parts V and VI"	"Parts 5 and 6"
Heading to Part II	"PART II"	"PART 2"
Section 12(2)	"Parts X, XI and XIA"	"Parts 10, 11 and 12"

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Heading to Part III	"PART III"	"PART 3"
Sections 18(1), (2) and (3)	"Parts IV to XII"	"Parts 4 to 14"
Section 18(4)	"Part X"	"Part 10"
Heading to Part IV	"PART IV"	"PART 4"
Heading to Part V	"PART V"	"PART 5"
Heading to Part VI	"PART VI - ENFORCEMENT, &c., OF PART IV AND PART V, DIVISION 1"	"PART 6 - ENFORCEMENT, &c., OF PART 4 AND PART 5, DIVISION 1"
Section 87(1)	"Part IV or Division 1 of Part V"	"Part 4 or Division 1 of Part 5"
Section 88(1)	"Part IV, or a provision of Division 1 of Part V"	"Part 4, or a provision of Division 1 of Part 5"
Sections 88(3) (a), (4) (a), (5), (6) and (8) and 89(1) (a)	"Part IV or Division 1 of Part V"	"Part 4 or Division 1 of Part 5"
Sections 90 and 91(1)	"Part IV, or of Division 1 of Part V"	"Part 4, or of Division 1 of Part 5"
Sections 92(b), 93(1) and (3) and 94(1)	"Part IV or Division 1 of Part V"	"Part 4 or Division 1 of Part 5"
Section 94(4)	"Part V"	"Part 5"
Sections 95(1), (2) (3) and (4) and 96(1) (a)	"Part IV or Division 1 of Part V" (wherever occurring)	"Part 4 or Division 1 of Part 5"
Heading to Part VII	"PART VII"	"PART 7"
Heading to Part VIII	"PART VIII"	"PART 8"
Heading to Part IX	"PART IX"	"PART 9"
Heading to Part X	"PART X"	"PART 10"
Heading to Part XI	"PART XI"	"PART 11"
Section 185 - definition of "exempted person"	"section 236A(1), or by a notice under section 236A(2)"	"section 337(1), or by a notice under section 337(2)"

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Section 188A(1)	"section 236A"	"section 337"
Heading to Part XIA	"PART XIA"	"PART 12"
Section 225(c)	"section 236A"	"section 337"
Heading to section 225A	"225A"	"226"
Heading to section 225B	"225B"	"227"
Heading to section 225C	"225C"	"228"
Section 225C(1) (a)	"225B"	"227"
Section 225C(1) (c)	"225B(1) "	"227 (1) "
Heading to section 225D	"225D"	"229"
Heading to section 225E	"225E"	"230"
Heading to Section 225F	"225F"	"231"
Heading to section 225G	"225G"	"232"
Heading to section 225H	"225H"	"233"
Section 225H(1)	"225B"	"227"
Heading to section 225J	"225J"	"234"
Heading to section 225K	"225K"	"235"
Heading to section 225L	"225L"	"236"
Heading to section 225M	"225M"	"237"
Heading to Part XII	"PART XII"	"PART 13"
Heading to section 226	"226"	"238"
Heading to section 227	"227"	"239"
Heading to section 228	"228"	"240"

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Heading to section 229	"229"	"241"
Heading to section 230	"230"	"242"
Heading to section 231	"231"	"243"
Heading to Part XIII	"PART XIII"	"PART 15"
Heading to section 232	"232"	"330"
Heading to section 232A	"232A"	"331"
Heading to section 233	"233"	"333"
Section 234	"234"	"334"
Sections 234(2) and (3)	"Part X or XI" (wherever occurring)	"Part 10 or 11"
Heading to section 235	"235"	"335"
Heading to section 236	"236"	"336"
Heading to section 236A	"236A"	"337"
Section 236A(1)	"Part XI"	"Part 11"
Heading to section 237	"237"	"338"
Heading to section 238	"238"	"339"
Heading to section 239	"239"	"340"
Schedule 1	"Section 238"	"Section 339"
Schedule 2	"Section 239"	"Section 340"

