

South Australia

Second-hand Dealers and Pawnbrokers Act 1996

An Act to regulate second-hand dealers and pawnbrokers; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Second-hand Dealers and Pawnbrokers Act 1996*.

3—Interpretation

(1) In this Act, unless the contrary intention appears—

Commissioner of Police means the Commissioner of Police or the person for the time being acting in the office of Commissioner of Police;

criminal intelligence means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or endanger a person's life or physical safety;

director of a body corporate includes—

- (a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act;

goods means any form of personal property except intangible property or live animals;

pawnbroker means a person who carries on 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;

prescribed organisation and ***member of a prescribed organisation*** have the same meanings as in the *Tattooing Industry Control Act 2015*;

redemption period, in relation to pawned goods, means the period of one month, or such longer period as is agreed between the pawnbroker and the person entitled to redeem the goods, during which the pawnbroker must not part with possession of the goods (see section 14(1));

second-hand dealer means a person who carries on the business of buying or selling second-hand goods either as a principal or agent and includes a pawnbroker;

second-hand goods means goods that have been used, or taken from other goods that have been used, for a purpose not connected with their manufacture or sale;

second-hand market means a market at which second-hand goods are sold (whether or not any other goods are also sold there), but does not include a market at which all of the second-hand goods are offered for sale by auction by an auctioneer who sells the goods on behalf of another and who complies with the requirements of the regulations;

sell includes—

- (a) barter or exchange; or
- (b) offer, or expose, for sale, barter or exchange; or
- (c) cause or permit to be offered, or exposed, for sale, barter or exchange,

and **sale** has a corresponding meaning;

stolen goods includes goods obtained by any unlawful means.

- (2) For the purposes of this Act—
 - (a) second-hand goods will be regarded as being in the possession of a second-hand dealer when they are at any premises or place that is occupied by, or is under the control of, the dealer or when they are in any vehicle that is under the control of the dealer; and
 - (b) if a pawnbroker receives goods under a contract for sale where the seller has a right to buy back the goods—
 - (i) the contract will be taken to be a contract of pawn; and
 - (ii) the price at which the goods are to be sold under the contract will be taken to be the amount lent; and
 - (iii) the difference between the amount lent and the price at which the goods may be bought back will be taken to be the interest payable; and
 - (iv) the right to buy back the goods will be taken to be a right to redeem the goods; and
 - (c) a person who arranges for the holding of a second-hand market will be taken to operate the market.
- (3) For the purposes of this Act, a reference to a parent, brother, sister or child of a person will be taken to include a reference to a step-parent, step-brother, step-sister or step-child (as the case requires) of the person.
- (4) For the purposes of this Act, 2 persons are **close associates** if—
 - (a) 1 is a spouse, domestic partner, parent, brother, sister or child of the other; or
 - (b) they are members of the same household; or
 - (c) they are in partnership; or
 - (d) they are related bodies corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth); or
 - (e) 1 has a right to participate (otherwise than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other; or

- (f) I is in a position to exercise control or significant influence over the conduct of the other.

4—Application of Act

- (1) The Governor may, by regulation, modify or exclude the application of this Act in relation to persons, goods or transactions of a specified class.
- (2) The Minister may, by notice in writing to a person—
 - (a) exempt the person from the application of this Act or a specified provision of this Act (either unconditionally or subject to conditions);
 - (b) vary or revoke a notice under this section.

5—Non-derogation

- (1) The provisions of this Act are in addition to and do not derogate from the provisions of any other Act.
- (2) The provisions of this Act do not limit or derogate from any civil remedy at law or in equity.

5A—Criminal intelligence

- (a1) Information that is classified by the Commissioner of Police as criminal intelligence for the purposes of this Act may not be disclosed to any person other than the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure.

- (1) If the Commissioner of Police—
 - (a) disqualifies a person from commencing or continuing to carry on business as a second-hand dealer under Part 2, or refuses to revoke a disqualification under that Part; and
 - (b) the decision to do so is made because of information that is classified by the Commissioner of Police as criminal intelligence,

the Commissioner of Police is not required to provide any grounds or reasons for the decision other than that it would be contrary to the public interest if the person were to carry on business as a second-hand dealer.

- (2) In any proceedings relating to this Act, the court determining the proceedings—
 - (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
 - (b) may take evidence consisting of, or relating to, information that is so classified by the Commissioner of Police by way of affidavit of a police officer of or above the rank of superintendent.
- (3) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police.

Part 2—Second-hand dealers

6—Disqualification from carrying on business as second-hand dealer

- (1) A person must not carry on business as a second-hand dealer if the person is disqualified under this section from doing so.
Maximum penalty: Imprisonment for 2 years.
- (2) A natural person is disqualified from commencing to carry on business as a second-hand dealer if he or she—
 - (a) has been convicted of an offence of dishonesty; or
 - (b) has been convicted of an offence against this Act of a prescribed kind; or
 - (ba) is a member of a prescribed organisation; or
 - (bb) is a close associate of a person who is a member of a prescribed organisation or is subject to a control order under the *Serious and Organised Crime (Control) Act 2008*; or
 - (bc) is disqualified from carrying on business as a second-hand dealer (however described) under a law of the Commonwealth or another State or Territory; or
 - (bd) is a person, or is a person of a class, prescribed by the regulations for the purposes of this subsection; or
 - (c) is an undischarged bankrupt or subject to a composition or deed or scheme of arrangement for the benefit of creditors; or
 - (d) has, during the preceding five years, been a director of a body corporate wound up for the benefit of creditors—
 - (i) when the body was being so wound up; or
 - (ii) within the period of six months preceding the commencement of the winding up.
- (3) A body corporate is disqualified from commencing to carry on business as a second-hand dealer if—
 - (a) the body corporate—
 - (i) has been convicted of an offence against this Act of a prescribed kind; or
 - (ii) is being wound up or is under official management or in receivership; or
 - (iii) is a prescribed organisation; or
 - (iv) is disqualified from carrying on business as a second-hand dealer (however described) under a law of the Commonwealth or another State or Territory; or
 - (v) is a body corporate, or is a body corporate of a class, prescribed by the regulations for the purposes of this subsection; or
 - (b) a director of the body corporate—

- (i) has been convicted of an offence of dishonesty; or
 - (ii) has been convicted of an offence against this Act of a prescribed kind; or
 - (iii) has, during the preceding five years, been a director of a body corporate wound up for the benefit of creditors—
 - (A) when the body was being so wound up; or
 - (B) within the period of six months preceding the commencement of the winding up; or
 - (iv) is disqualified from commencing to carry on business as a second-hand dealer under subsection (2); or
 - (v) is disqualified from carrying on business as a second-hand dealer (however described) under a law of the Commonwealth or another State or Territory.
- (4) A person is disqualified from continuing to carry on business as a second-hand dealer if events occur after the commencement of this section such that the person would be disqualified under subsection (2) or (3) from commencing to carry on business as a second-hand dealer.
- (5) If a second-hand dealer—
 - (a) has been in possession of stolen goods on at least three separate occasions during the previous 12 months; and
 - (b) did not, on any of those occasions, notify a member of the police force in respect of the goods under section 11(2), (3) or (4),the Commissioner of Police may give the dealer written notice disqualifying the dealer from carrying on business as a second-hand dealer.
- (6) A disqualification notice given by the Commissioner of Police—
 - (a) must set out details of the grounds on which the notice is given; and
 - (b) has effect from a date specified in the notice (being not less than two months after the date on which the notice is given).
- (7) A person who is or will be disqualified under any provision of this section from carrying on business as a second-hand dealer may apply to the Administrative and Disciplinary Division of the District Court for an order removing the disqualification.
- (8) A disqualification takes or continues to have effect despite the making of an application under this section.
- (9) However, the Court may, on the application of the person who is or will be disqualified, make an order—
 - (a) suspending the disqualification until the application for an order removing the disqualification is determined, withdrawn or struck out;
 - (b) imposing conditions on the person carrying on business as a second-hand dealer while the disqualification is suspended.

- (10) On an application under this section, the Court may make an order removing the disqualification if satisfied—
- (a) in the case of an application relating to a disqualification notice given by the Commissioner of Police—
 - (i) that there were not proper grounds for giving the notice; or
 - (ii) that the applicant had taken reasonable care to comply with the requirements of sections 8 and 11 in relation to all of the goods in question;
 - (b) in any other case—that it is appropriate to make such an order having regard to the nature and circumstances of the events constituting grounds for the disqualification.
- (11) In proceedings under this section, the Court may make such other orders as to costs or otherwise as the Court thinks fit.

6A—Further powers of Commissioner of Police to disqualify person from carrying on business as second-hand dealer

- (1) Without limiting section 6, the Commissioner of Police may, by notice in writing, disqualify a person from commencing or continuing to carry on business as a second-hand dealer if—
- (a) the person was, at any time within the 5 preceding years, a member of a prescribed organisation; or
 - (b) the person was, at any time within the 5 preceding years, a close associate of a member of a prescribed organisation; or
 - (c) the person is found guilty, or has within the preceding 10 years been found guilty, of an offence prescribed by the regulations for the purposes of this section; or
 - (d) the Commissioner of Police reasonably believes that to allow the person to commence or continue to carry on business as a second-hand dealer would otherwise not be in the public interest.
- (2) A disqualification notice has effect from the date specified in the notice and continues in force—
- (a) indefinitely; or
 - (b) for the period specified in the notice; or
 - (c) until the notice is revoked in accordance with this or any other Act,
- whichever is the sooner.
- (3) A disqualification notice—
- (a) must state the grounds on which the notice has been given; and
 - (b) must contain a statement advising the recipient that he or she is entitled to appeal against the decision to give the notice in accordance with subsection (7).
- (4) The Commissioner of Police may, at any time, vary or revoke a disqualification notice by notice in writing to the recipient.

- (5) A person who contravenes or fails to comply with a disqualification notice is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

- (6) A person does not commit an offence against this section in respect of an act or omission unless the person knew that the act or omission constituted a contravention of, or failure to comply with, the disqualification notice or was reckless as to that fact.
- (7) A person who is disqualified under this section from carrying on business as a second-hand dealer may apply to the Administrative and Disciplinary Division of the District Court for an order removing the disqualification as if the disqualification were a disqualification under section 6.

7—Notification by dealers or proposed dealers

- (1) A person who proposes to commence to carry on business as a second-hand dealer must, at least one month before so commencing, give the Commissioner of Police written notice in accordance with this section.

Maximum penalty: \$2 500.

- (2) A person who, at the commencement of this section, carries on a business as a second-hand dealer must, within six months of that commencement, give the Commissioner of Police written notice in accordance with this section.

Maximum penalty: \$2 500.

- (3) A notice under this section must—

- (a) contain the information required by the regulations and otherwise comply with the requirements of the regulations; and
- (b) be verified by statutory declaration.

- (4) A second-hand dealer or former second-hand dealer must notify the Commissioner of Police of any prescribed matter in accordance with the regulations.

Maximum penalty: \$2 500.

Expiation fee: \$210.

8—Records of second-hand goods

- (1) A second-hand dealer must keep records in accordance with this section and the regulations in relation to each of the second-hand goods bought or received in the course of or for the purposes of the dealer's business.
- (2) A single record may be kept in relation to second-hand goods received from the same person at the same time but the record must contain the required goods description and marking or labelling information in relation to each of the goods or, if the goods consist of a set of goods intended for use together, in relation to the goods making up the set.
- (3) Records need not be kept in relation to second-hand goods temporarily returned to the dealer for the purposes of repair or maintenance.
- (4) The records must contain the following information:
- (a) accurate descriptions of the goods including, where applicable, their types, sizes, colours, brands, serial numbers and other distinguishing features;

- (b) descriptions of marks or labels on or attached to the goods identifying ownership;
 - (c) the dates on which the goods were bought or received;
 - (d) —
 - (i) if the goods were bought at auction—the name and address of the auctioneer;
 - (ii) in any other case—the full names and residential addresses of the persons from whom the goods were bought or received and the details required by the regulations of the means of identification used to verify that information;
 - (e) if the goods are received at a place other than a place of business of the dealer—the address of the place at which they are received;
 - (f) the identification codes with which the goods are marked or labelled under section 9;
 - (g) any other information required by the regulations.
- (5) A second-hand dealer must, except if the goods were bought at auction—
- (a) obtain written confirmation of the information recorded under subsection (4) (other than paragraph (f)) from each person from whom the dealer buys or receives second-hand goods; and
 - (b) verify the identity of the person in accordance with the regulations.
- (6) A second-hand dealer is not required to comply with subsections (4) and (5) in relation to second-hand goods imported into Australia by the dealer but the dealer must, in relation to those goods, keep records that—
- (a) accurately describe the goods; and
 - (b) record the identification codes with which the goods are marked or labelled under section 9; and
 - (c) include the dates on which they entered Australia.
- (7) Records required to be kept under this section in relation to second-hand goods must be made as soon as possible after the goods are bought or received by the dealer.
- (8) Records kept under this section (or the repealed section 49A of the *Summary Offences Act 1953*) must be retained for five years from the time when the goods to which they relate are redeemed or sold.
- (9) Records kept under this section (or the repealed section 49A of the *Summary Offences Act 1953*) must be kept—
- (a) while the goods to which the records relate are at a place of business of the dealer—at that place;
 - (b) in any other case—at premises at which the person carries on business in the State as a second-hand dealer last notified to the Commissioner of Police under section 7 for that purpose.

- (10) A person who fails to comply with this section is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$210.

9—Labelling of second-hand goods

- (1) A second-hand dealer must ensure that each of the second-hand goods bought or received in the course of or for the purposes of the dealer's business is marked or labelled with a unique identification code as soon as possible after coming into the dealer's possession.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) If second-hand goods are bought or received from the same person at the same time, the same identification code may be used in relation to each of the goods and, if the second-hand goods consist of a set of goods intended for use together and kept in a container or bundled together, the identification code need only be applied to the container or bundle.

10—Retention of second-hand goods before sale

- (1) When a second-hand dealer comes into possession of second-hand goods in the course of or for the purposes of the dealer's business, the dealer must—

- (a) allow at least ten days to pass before altering the form of the goods or parting with possession of the goods; and
- (b) during that period, keep the goods at a place of business of the dealer and not move the goods from one place of business to another.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) Despite subsection (1), goods may be sold and delivered after three days if the dealer—
- (a) records, against the entry relating to the goods in the records kept under section 8, the full name and address of the purchaser; and
 - (b) verifies that information in accordance with the regulations; and
 - (c) records, together with that information, the details required by the regulations of the means used to verify that information.
- (3) This section does not apply in relation to—
- (a) pawned goods;
 - (b) second-hand vehicles received by a person carrying on business as a dealer within the meaning of the *Second-hand Vehicle Dealers Act 1995* in the course of or for the purposes of that business;
 - (c) second-hand goods of less than the prescribed value;
 - (d) second-hand goods temporarily returned to the dealer for the purposes of repair or maintenance;

- (e) an auctioneer who sells second-hand goods by auction on behalf of another and who complies with the regulations.

11—Where second-hand goods suspected of being stolen

- (1) A member of the police force may give a second-hand dealer a written notice describing goods suspected of being stolen goods.
- (2) After receiving a notice under subsection (1), the dealer must—
 - (a) make such checks as are reasonably required to determine whether goods that have been bought by the dealer or are in the dealer's possession, or that are subsequently bought or received by the dealer, appear to be goods described in the notice; and
 - (b) immediately notify a member of the police force if, as a result of such checking, the dealer suspects that goods bought or received by the dealer are goods described in the notice.

Maximum penalty: \$2 500.

- (3) If a person claims to a second-hand dealer that goods in the possession of the dealer are stolen goods and that the person is entitled to possession of the goods, the dealer must—
 - (a) immediately give the claimant a notice in the prescribed form to record the making of the claim (which notice must be completed and signed by the claimant and the dealer); and
 - (b) immediately on completion and signing of the notice give the claimant a copy of the notice; and
 - (c) notify a member of the police force of the making of the claim, and give the member a copy of the notice, in accordance with the regulations; and
 - (d) keep a copy of the notice at the place at which the goods are kept.

Maximum penalty: \$2 500.

- (4) A second-hand dealer who suspects for any other reason that goods bought or received by the dealer are stolen goods must immediately notify a member of the police force.

Maximum penalty: \$2 500.

- (5) A member of the police force who receives notification from a second-hand dealer under subsection (2), (3) or (4) must ensure that the dealer is given written notice acknowledging receipt of the notification.
- (6) A member of the police force may give a second-hand dealer a written notice requiring the dealer not to part with possession of specified goods that the member suspects are stolen goods.
- (7) A second-hand dealer must not, without the written authority of a member of the police force, sell or part with possession of goods that—
 - (a) are goods in respect of which the dealer has been required to notify a member of the police force under this section; or
 - (b) are goods specified in a notice under subsection (6).

Maximum penalty: \$2 500.

- (8) The Magistrates Court may, on application by a person entitled to the possession of stolen goods that are or have been in possession of a second-hand dealer, order—
- (a) that the goods be returned to the person; or
 - (b) if the dealer has sold or parted with possession of the goods in contravention of subsection (7)—that the dealer pay to the person the value of the goods.
- (9) On an application under subsection (8), the Court may make such other orders as to compensation for damage to the goods or otherwise as it thinks fit.

12—Powers of entry and inspection in relation to second-hand goods

- (1) A member of the police force may, during ordinary business hours, enter and remain on any premises, place or vehicle that the member reasonably suspects is used by a second-hand dealer for or in connection with the business of the dealer and, if entry is refused, may employ such force as is reasonably necessary to gain entry.
- (2) A member of the police force may—
- (a) inspect any second-hand goods that are in the possession of a second-hand dealer or any records kept by a second-hand dealer under this Act and, for that purpose, require the dealer, or an employee or agent of the dealer, to produce the goods or records (including a written record that reproduces in an understandable form information stored by computer, microfilm or other process);
 - (b) examine, copy or take extracts from records kept by a second-hand dealer under this Act, or require the dealer, or an employee or agent of the dealer, to provide a copy of the records;
 - (c) remove and retain records kept by a second-hand dealer under this Act for so long as is reasonably necessary for the purpose of making a copy of the record.
- (3) A member of the police force may not exercise the power of entry conferred by this section in relation to residential premises except—
- (a) with the consent of the occupier of the premises; or
 - (b) on the authority of a warrant issued by a magistrate under this section; or
 - (c) if there are reasonable grounds to suspect that the premises are used on a continuing or regular basis as a place of business of a second-hand dealer.
- (4) A magistrate may issue a warrant for the purposes of this section if satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.
- (5) A person who—
- (a) hinders a member of the police force in the exercise of powers under this section; or
 - (b) refuses or fails to comply with a requirement made under this section,
- is guilty of an offence.

Maximum penalty: \$2 500.

Part 3—Provisions of special application to pawnbrokers

13—Pawn tickets

- (1) A pawnbroker must, at the time of receiving goods under a contract of pawn, give the person pawning the goods a pawn ticket that complies with the requirements of this section.
Maximum penalty: \$2 500.
Expiation fee: \$210.
- (2) A pawn ticket must—
 - (a) specify the amount provided to the person pawning the goods under the contract of pawn; and
 - (b) include an itemised statement of all fees and charges that are or may become payable under the contract of pawn and, if any of the fees or charges are not ascertainable at the time of contract, a statement of how those fees and charges will be determined; and
 - (c) comply with any other requirements of the regulations.
- (3) A pawnbroker must keep a copy of each ticket given under this section in relation to pawned goods at the same place and for the same period as the pawnbroker is required to keep records relating to the goods under section 8.
Maximum penalty: \$2 500.
Expiation fee: \$210.

14—Redemption period and sale of pawned goods at end of redemption period

- (1) When a pawnbroker comes into possession of goods under a contract of pawn, the pawnbroker must allow at least one month (or such longer period as is agreed from time to time with the person entitled to redeem the goods) to pass before parting with possession of the goods otherwise than by redemption of the goods.
Maximum penalty: \$2 500.
- (2) A pawnbroker must not alter the form of pawned goods during the redemption period.
Maximum penalty: \$2 500.
- (3) If at the end of the redemption period the goods have not been redeemed, the pawnbroker must, as soon as reasonably practicable, sell the goods in a manner conducive to securing the best price reasonably obtainable.
Maximum penalty: \$2 500.
- (4) If in proceedings a question arises as to whether a pawnbroker has complied with subsection (3), the onus of proving compliance is on the pawnbroker.
- (5) A pawnbroker must record, against the entry relating to the second-hand goods in the records kept under section 8, details of the sale of the goods as required by the regulations.
Maximum penalty: \$2 500.
Expiation fee: \$210.

- (6) The pawnbroker must, at the request of the person who would have been entitled to redeem the goods if not sold, allow the person to inspect the record relating to the sale.
Maximum penalty: \$2 500.
Expiation fee: \$210.
- (7) If the proceeds of the sale of pawned goods exceed the amount owing to the pawnbroker under the contract of pawn, the balance of the proceeds is recoverable from the pawnbroker as a debt in a court of competent jurisdiction by the person who would have been entitled to redeem the goods if not sold.

Part 4—Second-hand markets

15—Notification by operator of second-hand market

- (1) A person who proposes to commence to operate a second-hand market must, at least one month before so commencing, give the Commissioner of Police written notice in accordance with this section.
Maximum penalty: \$2 500.
- (2) A person who, at the commencement of this section, operates a second-hand market must, within one month of that commencement, give the Commissioner of Police written notice in accordance with this section.
Maximum penalty: \$2 500.
- (3) A notice under this section must—
- (a) contain the information required by the regulations and otherwise comply with the requirements of the regulations; and
 - (b) be verified by statutory declaration.
- (4) A person who operates or formerly operated a second-hand market must notify the Commissioner of Police of any prescribed matter in accordance with the regulations.
Maximum penalty: \$2 500.
Expiation fee: \$210.

16—Records to be kept by operator of second-hand market

A person who operates a second-hand market must keep records, and verify the information recorded, as required by the regulations.

Maximum penalty: \$2 500.

Expiation fee: \$210.

17—Powers of entry and inspection in relation to second-hand market

- (1) A member of the police force may—
- (a) enter and remain on any premises or place that the member reasonably suspects is being, or is to be, used for or in connection with a second-hand market; and
 - (b) inspect any goods stored at the premises or place apparently in connection with a second-hand market; and

- (c) inspect any goods apparently in the possession or under the control of a person who is—
 - (i) attending a second-hand market to sell goods; or
 - (ii) leaving a second-hand market after attending it to sell goods; and
 - (d) require any such person to state his or her full name and address; and
 - (e) inspect any records kept under this Act by a person who operates a second-hand market and, for that purpose, require the person, or an employee or agent of the person, to produce the records (including a written record that reproduces in an understandable form information stored by computer, microfilm or other process); and
 - (f) examine, copy or take extracts from records kept under this Act by a person who operates a second-hand market, or require the person, or an employee or agent of the person, to provide a copy of the records; and
 - (g) remove and retain records kept under this Act by a person who operates a second-hand market for so long as is reasonably necessary for the purpose of making a copy of the record.
- (2) A person who—
- (a) hinders a member of the police force in the exercise of powers under this section; or
 - (b) refuses or fails to comply with a requirement made under this section,
- is guilty of an offence.
Maximum penalty: \$2 500.

Part 5—Miscellaneous

18—No contracting out

An agreement or arrangement that is inconsistent with a provision of this Act or purports to exclude, modify or restrict the operation of this Act is to that extent void and of no effect.

19—Offence to purchase goods or accept pawn from child

- (1) A second-hand dealer must not purchase second-hand goods in the course of or for the purposes of the dealer's business from a person under the age of 16 years.
Maximum penalty: \$2 500.
- (2) A pawnbroker must not enter into a contract of pawn with a person under the age of 16 years.
Maximum penalty: \$2 500.

20—False or misleading information

- (1) A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this Act.
Maximum penalty:

If the person made the statement knowing that it was false or misleading—\$10 000.

In any other case—\$2 500.

- (2) A person must not, in providing or confirming information to a second-hand dealer as contemplated by this Act, make a statement or provide a document that is false or misleading in any particular.

Maximum penalty:

If the person made the statement or provided the document knowing that it was false or misleading—\$10 000.

In any other case—\$2 500.

21—General defence

It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

22—Liability for act or default of officer, employee or agent

For the purposes of this Act, an act or default of an officer, employee or agent of a person carrying on a business will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

23—Service of documents

- (1) Subject to this Act, a notice or document required or authorised by this Act to be given to or served on a person may—
- (a) be served on the person personally; or
 - (b) be posted in an envelope addressed to the person—
 - (i) at the person's last known address; or
 - (ii) if the person is a second-hand dealer or operates a second-hand market—at the person's address for service; or
 - (c) if the person is a second-hand dealer or operates a second-hand market—be left for the person at the person's address for service with someone apparently over the age of 16 years; or
 - (d) be transmitted by facsimile transmission to a facsimile number provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) The address for service of a person who is a second-hand dealer or who operates a second-hand market is the address of which the Commissioner of Police has been last notified in writing by the person as the person's address for service.

24—Evidentiary provision

- (1) If in proceedings for an offence against this Act it is established that, within the period of 12 months immediately preceding the date of the alleged offence, the defendant—
 - (a) on not less than six days sold or advertised for sale different second-hand goods (not being second-hand vehicles); or
 - (b) sold or advertised for sale four or more different second-hand vehicles; or
 - (c) conducted six or more auctions for the sale of second-hand goods on behalf of other persons,

it will be presumed, in the absence of proof to the contrary, that the defendant was carrying on business as a second-hand dealer on the date of the alleged offence.

- (2) If in proceedings for an offence against this Act it is established that the defendant bought or received second-hand goods and was at that time a second-hand dealer, it will be presumed, in the absence of proof to the contrary, that the defendant bought or received the goods in the course of or for the purposes of the defendant's business as a second-hand dealer.

25—Continuing offence

- (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—
 - (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
 - (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.
- (2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

26—Offences by directors of bodies corporate

If a body corporate is guilty of an offence against this Act each of its directors is guilty of an offence and is liable to the same penalty as is prescribed for the principal offence unless it is proved that the director could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the body corporate.

27—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may require second-hand dealers or persons who operate second-hand markets to comply with a code of conduct or practice.

- (3) The regulations may—
- (a) incorporate or operate by reference to a specified code or standard as in force at a specified time or as in force from time to time;
 - (b) impose fines, not exceeding \$2 500, for offences against the regulations;
 - (c) fix expiation fees, not exceeding \$210, for alleged offences against the regulations;
 - (d) make provisions of a savings or transitional nature.
- (4) If a code or standard is referred to or incorporated in the regulations—
- (a) a copy of the code or standard must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and
 - (b) evidence of the contents of the code or standard may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code or standard.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation amended by principal Act

The *Second-hand Dealers and Pawnbrokers Act 1996* amended the following:

Magistrates Court Act 1991

Summary Offences Act 1953

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1996	101	<i>Second-hand Dealers and Pawnbrokers Act 1996</i>	19.12.1996	1.3.1998 (<i>Gazette 19.2.1998 p932</i>)
2015	44	<i>Tattooing Industry Control Act 2015</i>	10.12.2015	Sch 1 (cll 1—5)—1.7.2016 (<i>Gazette 2.6.2016 p2000</i>)
2017	70	<i>Statutes Amendment (Attorney-General's Portfolio No 3) Act 2017</i>	12.12.2017	Pt 10 (ss 20 & 21)—1.3.2018 (<i>Gazette 6.2.2018 p610</i>)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
s 3(1)		
criminal intelligence	inserted by 70/2017 s 20	1.3.2018

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prescribed organisation and member of a prescribed organisation	inserted by 44/2015 Sch 1 cl 1(1)	1.7.2016
s 3(3) and (4)	inserted by 44/2015 Sch 1 cl 1(2)	1.7.2016
Pt 2		
s 5A	inserted by 44/2015 Sch 1 cl 2	1.7.2016
s 5A(a1)	inserted by 70/2017 s 21(1)	1.3.2018
s 5A(2)	amended by 70/2017 s 21(2)	1.3.2018
s 5A(3)	inserted by 70/2017 s 21(3)	1.3.2018
s 6		
s 6(1)	amended by 44/2015 Sch 1 cl 3(1)	1.7.2016
s 6(2)	amended by 44/2015 Sch 1 cl 3(2)	1.7.2016
s 6(3)	amended by 44/2015 Sch 1 cl 3(3), (4)	1.7.2016
s 6A	inserted by 44/2015 Sch 1 cl 4	1.7.2016
Pt 5		
s 27		
s 27(3)	amended by 44/2015 Sch 2 cl 5	1.7.2016
<i>Sch</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	

Historical versions

1.7.2016