

# House of Assembly—No 102

As laid on the table and read a first time, 15 November 2012

South Australia

## Second-hand Goods Bill 2012

A BILL FOR

An Act to regulate second-hand dealers and pawnbrokers; to repeal the *Second-hand Dealers and Pawnbrokers Act 1996*; and for other purposes.

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## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Application of Act
- 5 Non-derogation
- 6 Commissioner to be responsible for administration of Act
- 7 Criminal intelligence

### Part 2—Licences and approvals—class 1 goods

- 8 Requirement to be licensed
- 9 Requirement to be approved
- 10 Application for licence or approval
- 11 Applications to be furnished to Commissioner of Police
- 12 Applicant for approval taken to be approved
- 13 Entitlement to be licensed or approved
- 14 Factors to be taken into account in deciding whether to grant licence or approval
- 15 Conditions
- 16 Appeals
- 17 Power of Commissioner to require photograph and information
- 18 Identification to be carried
- 19 Duration of licence or approval
- 20 Annual fee and return
- 21 Change of particulars relating to licence or approval
- 22 Commissioner may require surrender of licence or approval etc

### Part 3—Registration—class 2 goods

- 23 Requirement to be registered
- 24 Annual returns etc.
- 25 Change of particulars relating to registration

### Part 4—Regulation of licensees and registered second-hand dealers

#### Division 1—Provisions applicable to licensees and registered second-hand dealers generally

- 26 Class 1 and 2 transactions
- 27 Labelling of goods
- 28 Retention of goods before sale
- 29 Staffing records

#### Division 2—Additional provisions applicable to pawnbrokers

- 30 Preliminary
- 31 Information to be provided to person pawning goods
- 32 Replacement of pawn ticket
- 33 Redemption
- 34 Extension of redemption period
- 35 Sale of pawned goods at end of redemption period
- 36 Fees and charges in respect of unredeemed pawned goods

37 Pawnbroker not to purchase pawned goods

### Part 5—Special powers relating to licences and approvals

38 Suspension or cancellation of licence or approval—prescribed offences

39 Suspension of licence or approval in urgent circumstances

40 Power of Commissioner of Police to prohibit employee or agent from working for licensee

41 Appeal

### Part 6—Discipline

42 Interpretation

43 Cause for disciplinary action

44 Complaints

45 Hearing by Court

46 Procedure on hearing of complaint

47 Disciplinary action

48 Contravention of orders

49 Joinder of Commissioner and Commissioner of Police as parties

### Part 7—Regulation of markets

50 Market operator to be registered

51 Annual returns etc.

52 Change of particulars relating to registration

53 Market to be supervised

54 Sale of goods at market

55 Records

### Part 8—Enforcement

56 Powers of entry and inspection

### Part 9—Barring orders

57 Interpretation

58 Barring orders

59 Issue of barring order in absence of respondent

60 Service

61 Variation or revocation of barring order

62 Burden of proof

63 Information relating to barring order

### Part 10—Miscellaneous

64 Where goods suspected of being stolen

65 Offence to deal with child or intoxicated person

66 No contracting out

67 False or misleading information

68 Statutory declaration

69 Investigations

70 Information to be provided to Commissioner of Police

71 Register of persons licensed, approved or registered

72 General defence

73 Liability for act or default of officer, employee or agent

74 Service of documents

75 Prosecutions

76	Evidentiary provision
77	Annual report
78	Regulations

## Schedule 1—Consequential amendment, repeal and transitional provisions

### Part 1—Amendment of *Magistrates Court Act 1991*

1	Amendment of section 3—Interpretation
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### Part 2—Repeal

2	Repeal
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### Part 3—Transitional provisions

3	Act applies to transactions occurring after commencement
4	Regulations

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Second-hand Goods Act 2012*.

#### 2—Commencement

5 This Act will come into operation on a day to be fixed by proclamation.

#### 3—Interpretation

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

**approval** means an approval under Part 2;

**approved person** means a person approved under Part 2;

10 **auctioneer** means a person who carries on a business that consists of, or includes, the sale of second-hand goods on behalf of other persons only by 1 or both of the following methods:

- (a) auction of the goods;
- (b) negotiation immediately after an auction of the goods;

15 **authorised officer** means—

- (a) the Commissioner; or
- (b) an authorised officer under the *Fair Trading Act 1987*; or
- (c) a police officer;

20 **class 1 goods** means second-hand goods of a kind prescribed by regulation for the purposes of this definition;

**class 2 goods** means second-hand goods of a kind prescribed by regulation for the purposes of this definition;

**class 1 transaction** means—

- (a) entering into a pawn agreement in relation to any goods; or
- (b) taking possession of class 1 goods; or
- (c) agreeing to buy, take on consignment or act as agent for the sale of class 1 goods;

**class 2 transaction** means—

- (a) taking possession of class 2 goods; or
- (b) agreeing to buy, take on consignment or act as agent for the sale of class 2 goods;

**Commissioner** means the Commissioner for Consumer Affairs;

**Court** means the Administrative and Disciplinary Division of the District Court;

**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, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to 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 other than—

- (a) intangible property; or
- (b) perishable food items; or
- (c) live animals or plants; or
- (d) property of a kind prescribed by regulation;

**licence** means a licence under Part 2;

**market operator** means a person who operates a second-hand market;

**pawn agreement** means an agreement by which goods are pawned;

**pawnbroker** means a person who carries on a business that consists of, or includes, lending money on the security of pawned goods;

**registered market operator** means a person registered under section 50;

**registered second-hand dealer** means a person registered under section 23;

**resale**, in relation to second-hand goods, includes—

- (a) sale of the goods in an altered form or condition; or
- (b) sale of goods that incorporate the goods; or
- (c) sale of goods manufactured or produced from the goods;

5 **second-hand dealer** means a person who carries on a business that consists of, or includes—

- (a) buying second-hand goods for the purpose of resale; or
- (b) taking second-hand goods on consignment for the purpose of resale; or
- (c) acting as an agent for the resale of second-hand goods,

10 but does not include a pawnbroker or an auctioneer;

**second-hand goods** means goods—

- (a) that have been used for a purpose not connected with their manufacture or sale; or
- (b) that have come into a person's possession other than as a manufacturer, or wholesale seller, of the goods or a retailer who has purchased the goods by wholesale,

and includes—

- (c) the goods in an altered form or condition; or
- (d) goods that incorporate the goods; or
- (e) goods manufactured or produced from the goods;

15 **second-hand market** means a market at which second-hand goods are sold (whether or not any other goods are also sold there);

**sell** includes—

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

**stolen goods** includes goods obtained by any unlawful means.

20 (2) For the purposes of this Act, goods will be regarded as being in the possession of a person when they are at any premises or place that is occupied by, or is under the control of, the person, or an employee or agent of the person, or when they are in any vehicle that is under the control of the person, or an employee or agent of the person.

30 (3) If a person—

- (a) takes possession of goods other than in the course of his or her business; and
- (b) subsequently deals with the goods in the course of his or her business,

35 the person will be taken, for the purposes of this Act, to have taken possession of the goods at the time he or she first deals with the goods in the course of his or her business.

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- (4) For the purposes of this Act, the premises at which a person carries on business will be taken to include premises at which goods are stored for the purposes of the business.
- (5) For the purposes of this Act, a person acts as a second-hand dealer in relation to a particular class of second-hand goods if the person carries on a business that consists of, or includes any of the activities specified in paragraphs (a), (b) or (c) of the definition of *second-hand dealer* in subsection (1) in relation to goods of that class.

#### 4—Application of Act

- (1) Nothing in this Act applies in relation to an activity undertaken in accordance with a licence issued under another Act.
- (2) The Governor may, by regulation, modify or exclude the application of this Act in relation to persons, goods or transactions of a specified class.
- (3) 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); or
  - (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.

#### 6—Commissioner to be responsible for administration of Act

The Commissioner is responsible, subject to the control and directions of the Minister, for the administration of this Act.

#### 7—Criminal intelligence

- (1) No information provided by the Commissioner of Police to the Commissioner may be disclosed to any person (except to the Minister, the Minister responsible for the administration of the *Fair Trading Act 1987*, a court or a person to whom the Commissioner of Police authorises its disclosure) if the information is classified by the Commissioner of Police as criminal intelligence.
- (2) If the Commissioner—
- (a) refuses an application for a licence or approval; 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 is not required to provide any grounds or reasons for the decision other than that to grant the application would be contrary to the public interest.
- (3) If the Commissioner of Police lodges an objection to an application under section 11 because of information that is classified by the Commissioner of Police as criminal intelligence—
- (a) the Commissioner is not required to serve a copy of the notice of objection on the applicant; and

(b) the Commissioner must, before making a decision in relation to the application, advise the applicant in writing that the Commissioner of Police has objected to the application on the ground that to grant the application would be contrary to the public interest.

- 5 (4) If the Commissioner of Police makes a decision to issue a notice under section 40 because of information that is classified by the Commissioner of Police as criminal intelligence, the only reason required to be given is that the decision was made on public interest grounds.
- 10 (5) If an authorised officer lodges a complaint under Part 6 in respect of a person because of information that is classified by the Commissioner of Police as criminal intelligence, the complaint need only state that it would be contrary to the public interest if the person were to be, or continue to be, licensed or approved.
- (6) In any proceedings under this Act, the court determining the proceedings—
- 15 (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
- 20 (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.
- (7) 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.

## 25 **Part 2—Licences and approvals—class 1 goods**

### **8—Requirement to be licensed**

- (1) A person must not—
- (a) act as; or
- (b) advertise or otherwise hold himself or herself out as,
- 30 a second-hand dealer or pawnbroker unless licensed under this Part.  
Maximum penalty: \$20 000.
- (2) Subsection (1) does not apply to a second-hand dealer—
- (a) who does not act as a second-hand dealer in relation to class 1 goods; or
- 35 (b) who only acts as a second-hand dealer in relation to class 1 goods that have been received by way of trade-in.
- (3) Goods will only be taken to be received by way of trade-in for the purposes of this section if the goods are received as payment (in whole or in part) for other goods or in return for a credit to be used subsequently as such payment.



## 9—Requirement to be approved

A person must not act as, or advertise or otherwise hold himself or herself out as, an approved person unless approved under this Part.

Maximum penalty: \$20 000.

## 10—Application for licence or approval

- 5
- (1) An application for a licence or for an approval must—
    - (a) be made to the Commissioner in the manner and form approved by the Commissioner; and
    - (b) be accompanied by the fee fixed by regulation.
  - 10 (2) An application for an approval may only be made by a natural person.
  - (3) An applicant for a licence or approval must provide the Commissioner with such evidence as the Commissioner thinks appropriate as to the identity, date of birth and address of—
    - 15 (a) in the case of an applicant for a licence that is a body corporate—each director of the body corporate; or
    - (b) in any other case—the applicant,  
and any other information required by the Commissioner for the purposes of determining the application (including, in the case of a licence, information relating to the premises at which, and business name under which, the licensee intends to carry on business in accordance with the licence).
  - 20 (4) An identity card issued to a natural person who is the holder of a licence or approval will include a photograph of the holder of the licence or approval and, consequently, an applicant who is a natural person may be required by the Commissioner—
    - 25 (a) to attend at a specified place for the purpose of having the applicant's photograph taken; or
    - (b) to supply the Commissioner with 1 or more photographs of the applicant as specified by the Commissioner.
  - (5) If an applicant has previously failed to pay a fee or penalty that became payable under this Act, the Commissioner may require the applicant to pay the whole or a specified part of the fee or penalty.
  - 30 (6) The Commissioner may, by notice in writing, require an applicant, within a time fixed by the notice (which may not be less than 28 days after service of the notice), to comply with any requirement under this section to the Commissioner's satisfaction.
  - 35 (7) If the applicant fails to comply with the notice under subsection (6), the Commissioner may, without further notice, refuse the application but keep the fee that accompanied the application.

## 11—Applications to be furnished to Commissioner of Police

- (1) The Commissioner must, in relation to each application for a licence or approval—
  - (a) provide the Commissioner of Police with a copy of the application; or

(b) notify the Commissioner of Police of the identity, date of birth and address of the applicant or, if the applicant is a body corporate, the identity, date of birth and address of each director of the body corporate.

5 (2) As soon as reasonably practicable following receipt of an application, or information in respect of an application, under subsection (1), the Commissioner of Police—

(a) must make available to the Commissioner information about criminal history; and

(b) may make available to the Commissioner other information to which the Commissioner of Police has access,

10 relevant to whether the application should be granted.

(3) The Commissioner of Police may, following receipt of an application, or information in respect of an application, under subsection (1), object to the application by notice in writing provided to the Commissioner within the prescribed period.

(4) A notice of objection under subsection (3) must state grounds for the objection.

15 (5) Subject to section 7, a copy of the notice of objection must be served by the Commissioner on the applicant as soon as reasonably practicable after the notice is received by the Commissioner.

(6) The Commissioner must, before deciding whether to grant or refuse the application, give the applicant a reasonable opportunity to respond to the notice of objection.

## 20 **12—Applicant for approval taken to be approved**

A person who—

(a) has applied for approval in accordance with section 10; and

(b) has not previously been refused approval under section 10 or had his or her approval revoked; and

25 (c) is entitled to be approved under section 13(1),

will be taken, for the purposes of this Act, to be approved under this Part, until the day on which the Commissioner determines the person's application.

## **13—Entitlement to be licensed or approved**

(1) A natural person is entitled to be licensed or approved if the person—

30 (a) is of or above the age of 18 years; and

(b) has not been convicted of an offence of a class prescribed by the regulations for the purposes of this section; and

(c) is not suspended or disqualified from practising or carrying on a similar occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and

35 (d) in the case of an applicant for a licence—is not an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; and

(e) is a fit and proper person to be the holder of a licence or approval.

- (2) A body corporate is entitled to be licensed if—
- (a) the body corporate—
    - (i) is not suspended or disqualified from practising or carrying on a similar occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and
    - (ii) is not being wound up and is not under official management or in receivership; and
  - (b) no director of the body—
    - (i) has been convicted of an offence of a class prescribed by the regulations; or
    - (ii) is suspended or disqualified from practising or carrying on a similar occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; or
    - (iii) is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; and
  - (c) each director of the body is a fit and proper person to be the director of a body that is the holder of a licence.

#### **14—Factors to be taken into account in deciding whether to grant licence or approval**

- (1) In deciding whether a person is a fit and proper person to hold a licence or approval, or to be the director of a body corporate that is the holder of a licence, the Commissioner must take into consideration—
  - (a) the reputation, honesty and integrity of the person; and
  - (b) the reputation, honesty and integrity of people with whom the person associates or has associated.
- (2) If the Commissioner of Police has objected to an application for a licence or approval under section 11(3), the Commissioner must take into consideration the grounds for the objection when assessing the application.
- (3) An application for a licence or approval can only be granted if the Commissioner is satisfied that to grant the application would not be contrary to the public interest.

#### **15—Conditions**

- (1) Conditions may be imposed by the Commissioner on the grant of a licence or approval and may be varied or revoked by the Commissioner at any time on application by the holder of the licence or approval.
- (2) The holder of a licence or approval must not contravene, or fail to comply with, a condition of the licence or approval.  
Maximum penalty: \$20 000.

## **16—Appeals**

(1) An applicant for a licence or approval may appeal to the Court against a decision of the Commissioner refusing the application or imposing a condition on the licence or approval.

5 (2) A licensee or approved person may appeal to the Court against a decision of the Commissioner refusing to vary or revoke a condition of a licence or approval.

(3) Subject to subsection (4)(b), an appeal must be instituted within 1 month of the making of the decision appealed against.

(4) Subject to section 7—

10 (a) the Commissioner must, if so required by the appellant, state in writing the reasons for the Commissioner's decision; and

(b) if the reasons of the Commissioner are not given in writing at the time of making the decision and the appellant (within 1 month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the appellant receives the written statement of those reasons.

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## **17—Power of Commissioner to require photograph and information**

The Commissioner may, by notice in writing, require a licensee or an approved person, within a time fixed by the notice (which may not be less than 28 days after service of the notice)—

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(a) to—

(i) attend at a specified place for the purpose of having a photograph of the licensee or approved person taken; or

(ii) supply the Commissioner with 1 or more photographs of the licensee or approved person as specified by the Commissioner; or

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(b) to provide the Commissioner with such evidence as the Commissioner thinks appropriate as to the identity and residential address of—

(i) the licensee or approved person; and

(ii) in the case of a licensee that is a body corporate—any specified director of the body corporate,

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and information about any other specified matters.

## **18—Identification to be carried**

(1) The Commissioner must issue each licensee who is a natural person and each approved person with an identity card in a form approved by the Commissioner.

35 (2) A natural person who is a licensee or an approved person must, at all times when performing functions as a licensee or approved person, carry his or her identity card and produce it forthwith if requested to do so by—

(a) an authorised officer; or

- (b) a person with whom the licensee or approved person has dealings as a licensee or approved person.

Maximum penalty: \$1 250.

Expiation fee: \$160.

- 5 (3) This section does not apply to a person who is, in accordance with section 12, taken to be approved under this Part.

### **19—Duration of licence or approval**

A licence or approval granted by the Commissioner under this Part remains in force (except for any period for which it is suspended) until—

- 10 (a) the licence or approval is surrendered or cancelled; or  
(b) the licensee or approved person dies or, in the case of a licensed body corporate, is dissolved.

### **20—Annual fee and return**

- 15 (1) A licensee or approved person must, each year not later than the date fixed by regulation—
- (a) pay to the Commissioner the fee fixed by regulation; and
- (b) lodge with the Commissioner a return in the manner and form required by the Commissioner.
- 20 (2) If a licensee or approved person fails to pay the annual fee or lodge the annual return in accordance with subsection (1) or to comply with a notice under section 17, the Commissioner may, by notice in writing, require the licensee or approved person to make good the default and, in addition, to pay to the Commissioner the amount fixed by regulation as a penalty for default.
- 25 (3) If the licensee or approved person fails to comply with the notice within 28 days after service of the notice, the licensee's licence or the approved person's approval is cancelled.
- (4) The Commissioner must notify the licensee or approved person in writing of the cancellation.
- (5) A licensee or approved person may surrender the licence or approval.
- 30 (6) In this section—

*approved person* includes an approved person whose approval has been suspended;

*licensee* includes a licensee whose licence has been suspended.

### **21—Change of particulars relating to licence or approval**

- 35 A licensee or approved person must, within 14 days after a change to any prescribed particulars, provide written notice of the change to the Commissioner (in a manner determined by the Commissioner).

Maximum penalty: \$2 500.

Expiation fee: \$210.

## **22—Commissioner may require surrender of licence or approval etc**

(1) If a licence or approval is suspended or cancelled under this Act, the Commissioner may, by notice in writing to the licensee or approved person, require the licensee or approved person to surrender, within a period specified in the notice, the licence or approval and any identity card issued to the person under this Act.

(2) A person who, without reasonable excuse, fails to surrender a licence, approval or identity card in accordance with a requirement under this section is guilty of an offence.

Maximum penalty: \$1 250.

Expiation fee: \$160.

## **Part 3—Registration—class 2 goods**

### **23— Requirement to be registered**

(1) A person must not—

(a) act as; or

(b) advertise or otherwise hold himself or herself out as,

a second-hand dealer unless registered under this Part.

Maximum penalty: \$10 000.

(2) Subsection (1) does not apply to a second-hand dealer—

(a) who does not act as a second-hand dealer in relation to class 2 goods; or

(b) who only acts as a second-hand dealer in relation to class 2 goods that have been received by way of trade-in; or

(c) who is a licensee.

(3) Goods will only be taken to be received by way of trade-in for the purposes of this section if the goods are received as payment (in whole or in part) for other goods or in return for a credit to be used subsequently as such payment.

(4) An application for registration must—

(a) be made to the Commissioner in the manner and form approved by the Commissioner; and

(b) be accompanied by the fee fixed by regulation.

(5) An applicant must provide the Commissioner with such evidence as the Commissioner thinks appropriate as to the identity, date of birth and address of—

(a) in the case of an applicant that is a body corporate—each director of the body corporate; or

(b) in any other case—the applicant,

and any other information required by the Commissioner for the purposes of determining the application (including information relating to the premises at which, and business name under which, the applicant intends to carry on business in accordance with the registration).

- (6) If an applicant has previously failed to pay a fee or penalty that became payable under this Act, the Commissioner may require the applicant to pay the whole or a specified part of the fee or penalty.
- (7) The Commissioner may, by notice in writing, require an applicant, within a time fixed by the notice (which may not be less than 28 days after service of the notice), to comply with any requirement under this section to the Commissioner's satisfaction.
- (8) If the applicant fails to comply with the notice under subsection (7), the Commissioner may, without further notice, refuse the application but keep the fee that accompanied the application.

#### **24—Annual returns etc.**

- (1) A registered second-hand dealer must, each year not later than the date fixed by regulation—
- (a) pay to the Commissioner the fee fixed by regulation; and
  - (b) lodge with the Commissioner a return in the manner and form required by the Commissioner.
- (2) If a registered second-hand dealer fails to pay the annual fee or lodge the annual return in accordance with subsection (1) the Commissioner may, by notice in writing, require the dealer to make good the default and, in addition, to pay to the Commissioner the amount fixed by regulation as a penalty for default.
- (3) If the registered second-hand dealer fails to comply with the notice within 28 days after service of the notice, the dealer's registration is cancelled.
- (4) The Commissioner must notify the dealer in writing of the cancellation.

#### **25—Change of particulars relating to registration**

A registered second-hand dealer must, within 14 days after a change to any prescribed particulars, provide written notice of the change to the Commissioner (in a manner determined by the Commissioner).

Maximum penalty: \$2 500.

Expiation fee: \$210.

### **Part 4—Regulation of licensees and registered second-hand dealers**

#### **Division 1—Provisions applicable to licensees and registered second-hand dealers generally**

##### **26—Class 1 and 2 transactions**

- (1) A licensee must ensure that each class 1 transaction that occurs in the course of, or for the purposes of, the licensee's business is conducted or supervised by a natural person, being a licensee or an approved person, in accordance with any requirements prescribed by regulation.

Maximum penalty: \$10 000.

## Second-hand Goods Bill 2012

### Part 4—Regulation of licensees and registered second-hand dealers

#### Division 1—Provisions applicable to licensees and registered second-hand dealers generally

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- (2) A licensee or registered second-hand dealer must ensure that each class 2 transaction that occurs in the course of, or for the purposes of, his or her business is conducted or supervised by a natural person in accordance with any requirements prescribed by regulation.

5 Maximum penalty: \$5 000.

- (3) A licensee or registered second-hand dealer must ensure that, in relation to each class 1 or class 2 transaction that occurs in the course of, or for the purposes of, the business of the licensee or dealer, the identity of the person entering into the transaction with the licensee or dealer is verified in accordance with the regulations.

10 Maximum penalty: \$5 000.

Expiation fee: \$315.

- (4) A licensee or registered second-hand dealer must make and retain records in relation to class 1 and class 2 transactions in accordance with the regulations.

15 Maximum penalty: \$5 000.

Expiation fee: \$315.

- (5) A licensee or registered second-hand dealer must transfer particulars of records required to be made and retained under this section to the Commissioner of Police in accordance with the regulations.

20 Maximum penalty: \$5 000.

Expiation fee: \$315.

- (6) The regulations may require the electronic transfer of information.

### 27—Labelling of goods

- (1) A licensee or registered second-hand dealer must ensure that, if the licensee or dealer takes possession of any class 1 or class 2 goods in the course of, or for the purposes of, his or her business, the goods are marked or labelled with a unique identification code in accordance with the requirements prescribed by the regulations.

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Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) If any goods to which subsection (1) applies 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.

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### 28—Retention of goods before sale

- (1) If—

(a) a licensee takes possession of class 1 goods; or

35 (b) a registered second-hand dealer takes possession of class 2 goods,

in the course of, or for the purposes of, his or her business, the licensee or dealer—

(c) must not alter the form of the goods or part with possession of the goods until at least 14 days after the prescribed day; and

(d) must ensure that, during the period referred to in paragraph (c)—



- (i) the goods are kept at the premises at which the goods were received or premises notified to the Commissioner for the purposes of this section; and
- (ii) the goods are not moved to any other place.

5           Maximum penalty: \$2 500.  
           Expiation fee: \$210.

(2) This section does not apply to—

- (a) goods temporarily returned to the licensee or registered second-hand dealer for the purposes of repair or maintenance; or
- 10       (b) goods taken possession of pursuant to a pawn agreement.

(3) In this section—

*prescribed day*, in relation to goods, means—

- 15       (a) if regulations made under section 26(5) require particulars of a record relating to the goods to be transferred to the Commissioner of Police—the day on which the licensee or dealer transferred the particulars to the Commissioner of Police; or
- (b) in any other case—the day on which the licensee or dealer took possession of the goods.

## 29—Staffing records

20           A licensee or registered second-hand dealer must make and retain records in relation to the persons working in, or for the purposes of, his or her business in accordance with the regulations.

          Maximum penalty: \$2 500.  
           Expiation fee: \$210.

## 25   Division 2—Additional provisions applicable to pawnbrokers

### 30—Preliminary

In this Division—

*entitled person*, in relation to pawned goods, means—

- 30       (a) the person who pawned the goods; or
- (b) an executor or administrator of the estate of that person; or
- (c) a person who is otherwise lawfully authorised to deal with the property of that person;

*extension agreement* means an agreement under section 34 to extend the redemption period in respect of pawned goods;

35       *pawn ticket*—see section 31(1);

*redemption period*, in relation to pawned goods, means—

- (a) the period of 1 month commencing on the day the goods were pawned; or
- (b) such longer period as may be agreed under an extension agreement;

*surplus proceeds*, in relation to the sale of pawned goods, means any amount realised from the sale of pawned goods after deduction of the amount owing to the pawnbroker under the pawn agreement (being the principal specified in the agreement, interest and any applicable fees and charges).

5 **31—Information to be provided to person pawning goods**

- (1) A pawnbroker must give a person who pawns goods a document (a *pawn ticket*) which includes a signed copy of the pawn agreement setting out—
- (a) the interest and the fees and charges that are or may be payable including, as far as they are known or ascertainable—
    - 10 (i) the amounts of the interest, fees and charges; and
    - (ii) the manner of calculating the amounts of the interest, fees and charges; and
  - (b) the rights and obligations (as prescribed in the regulations) of the parties to the agreement; and
  - 15 (c) such other information as may be prescribed by the regulations.
- (2) No charge may be made for provision of the pawn ticket.
- (3) A pawn agreement is invalid if this section is not complied with.
- (4) A person who fails to comply with this section is guilty of an offence.

Maximum penalty: \$5 000.

20 Expiation fee: \$315.

**32—Replacement of pawn ticket**

A pawnbroker must replace (without charge) a pawn ticket alleged by a person to have been lost, stolen or destroyed if the person requesting the replacement ticket is an entitled person and verifies his or her identity in accordance with the regulations.

25 Maximum penalty: \$2 500.

Expiation fee: \$210.

**33—Redemption**

- (1) Pawned goods may be redeemed by an entitled person—
- (a) during the redemption period; or
  - 30 (b) if the redemption period has expired, before the goods are sold or consigned for auction.
- (2) A pawnbroker must, when permitting pawned goods to be redeemed, comply with any requirements prescribed by the regulations.

Maximum penalty: \$2 500.

35 Expiation fee: \$210.

- (3) A pawnbroker must, during the redemption period, keep the pawned goods at the premises at which the goods were received, or premises notified to the Commissioner for the purposes of this section, and must not move the goods to any other place.

Maximum penalty: \$2 500.

5 Expiation fee: \$210.

- (4) A pawnbroker must not sell any pawned goods during the redemption period.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (5) A pawnbroker must not alter the form of pawned goods during the redemption period.

10 Maximum penalty: \$2 500.

Expiation fee: \$210.

- (6) A pawnbroker must not charge interest or fees and charges (other than fees and charges of a kind referred to in section 36) in respect of any period after the end of the redemption period in relation to pawned goods.

15 Maximum penalty: \$2 500.

Expiation fee: \$210.

### 34—Extension of redemption period

- (1) A pawnbroker may enter into an extension agreement with an entitled person.

20 (2) A pawnbroker must, when entering into an extension agreement with a person, comply with any requirements prescribed by the regulations.

- (3) A pawnbroker must record, against the entry relating to the pawn agreement in the records made under section 26(4), details of the extension agreement as required by the regulations.

25 (4) A pawnbroker must give the entitled person a copy of the extension agreement without charge.

- (5) A redemption period may be extended under this section even if the period has expired.

- (6) A redemption period may not be extended otherwise than under this section.

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

30 Maximum penalty: \$5 000.

Expiation fee: \$315.

### 35—Sale of pawned goods at end of redemption period

- (1) If at the end of a redemption period pawned goods have not been redeemed, the pawnbroker must, within a reasonable time, sell the goods in a manner conducive to securing the best price reasonably obtainable.

35 Maximum penalty: \$5 000.

- (2) If in proceedings a question arises as to whether a pawnbroker has complied with subsection (1), the onus of proving compliance is on the pawnbroker.

**Second-hand Goods Bill 2012**

Part 4—Regulation of licensees and registered second-hand dealers

Division 2—Additional provisions applicable to pawnbrokers

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- (3) A pawnbroker must record, against the entry relating to the pawn agreement in the records made under section 26(4), details of the sale of the goods as required by the regulations.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (4) The pawnbroker must, at the request of an entitled person, allow the person to inspect the record relating to the sale.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (5) Any surplus proceeds arising from the sale of pawned goods must be paid, on request, to an entitled person (provided the request is made before the end of the prescribed period).

Maximum penalty: \$2 500.

Expiation fee: \$210.

**36—Fees and charges in respect of unredeemed pawned goods**

The fees and charges that may be imposed in respect of unredeemed goods, or may be deducted from the proceeds of the sale of such goods, are—

- (a) the reasonable costs of storing the goods; and
- (b) administrative costs incurred in relation to the goods; and
- (c) the costs of, or reasonably incidental to, the sale; and
- (d) if expenses are incurred repairing the goods for the purposes of sale and the pawnbroker holds a receipt for the expenses—those expenses; and
- (e) any other fee or charge of a kind prescribed by regulation.

**37—Pawnbroker not to purchase pawned goods**

- (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, or on behalf of, the pawnbroker.

- (2) In the case of a partnership or body corporate carrying on business as a pawnbroker, a person who is—

(a) in the case of a partnership—a partner; or

(b) in the case of a body corporate—

(i) the body corporate; or

(ii) an officer or director of the body corporate; or

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

must not buy goods that have been pawned to and are being sold by, or on behalf of, the pawnbroker.

- (3) A sale of goods in contravention of this section is void and of no effect.

- (4) A person who fails to comply with this section is guilty of an offence.  
Maximum penalty: \$2 500.  
Expiation fee: \$210.

## Part 5—Special powers relating to licences and approvals

### 5 38—Suspension or cancellation of licence or approval—prescribed offences

- (1) If a licensee or approved person is charged with a prescribed offence, the Commissioner may, by notice in writing given to the licensee or approved person—
- (a) suspend the licence or approval from a date specified in the notice; or
- (b) impose such conditions on the licence or approval as the Commissioner  
10 thinks fit,
- until proceedings for the offence are determined by a court or are withdrawn, discontinued or stayed (or for any shorter period specified in the notice).
- (2) If a licensee or approved person is found guilty of a prescribed offence, the Commissioner may, by notice in writing given to the licensee or approved person—
- 15 (a) cancel the licence or approval from a date specified in the notice; and
- (b) impose any conditions the Commissioner thinks fit as to the conduct of the person or the person's business until the cancellation takes effect.
- (3) A licensee that is a body corporate will, for the purposes of this section, be taken—
- 20 (a) to have been charged with a prescribed offence if the body corporate or any director of the body corporate is charged with a prescribed offence; or
- (b) to have been found guilty of a prescribed offence if the body corporate or any director of the body corporate is found guilty of a prescribed offence.
- (4) The Commissioner may, at any time, on his or her own initiative, or on application by a person given a notice under this section, vary or revoke the notice.
- 25 (5) In this section—
- prescribed offence* means an offence of a class prescribed by regulation for the purposes of this section.

### 39—Suspension of licence or approval in urgent circumstances

- (1) If the Commissioner is of the opinion that—
- 30 (a) there are reasonable grounds to believe that a licensee or approved person has engaged or is engaging in conduct that constitutes grounds for disciplinary action under Part 6; and
- (b) it is likely that the licensee or approved person will continue to engage in that conduct; and
- 35 (c) there is a danger that a person or persons may suffer harm, or loss or damage, as a result of the conduct of the licensee or approved person unless action is taken urgently,

the Commissioner may, by notice in writing given to the licensee or approved person, suspend the licence or approval for a specified period (which may not exceed 6 months).

- 5 (2) The Commissioner may, at any time, on his or her own initiative, or on application by a person given a notice under this section, vary or revoke the notice.

#### 40—Power of Commissioner of Police to prohibit employee or agent from working for licensee

10 (1) If a person is found guilty of an offence of a kind prescribed by the regulations for the purposes of this section, the Commissioner of Police may, by notice in writing given to the person, prohibit the person from working as an employee or agent of a licensee either permanently or for a specified period.

(2) A notice given by the Commissioner of Police under subsection (1) has effect from a date specified in the notice.

15 (3) The Commissioner of Police may, at any time, on his or her own initiative, or on application by a person given a notice under this section, vary or revoke the notice.

#### 41—Appeal

(1) A person given a notice under this Part may appeal to the Court against the decision to issue the notice.

20 (2) Subject to subsection (4), an appeal must be instituted within 1 month of the making of the decision appealed against.

(3) The Commissioner or the Commissioner of Police (as the case may be) must, if so required by the person given the notice, state, in writing, the reasons for the decision to issue the notice.

25 (4) If reasons are not given, in writing, to the person at the time of making the decision and the person (within 1 month of the making of the decision) requires the Commissioner or the Commissioner of Police (as the case may be) to state the reasons in writing, the time for instituting an appeal runs from the time at which the person receives the written statement of those reasons.

30 (5) The Court must hear and determine an appeal under this section as expeditiously as possible.

### Part 6—Discipline

#### 42—Interpretation

In this Part—

*approved person* includes a former approved person;

35 *director* of a body corporate includes a former director of the body corporate;

*licensee* includes—

(a) —

(i) a second-hand dealer or former second-hand dealer; or

(ii) a pawnbroker or former pawnbroker,

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required, or previously required, to be licensed under this Act (whether or not currently or previously licensed); and

- (b) a licensee, whether or not carrying on business as a pawnbroker or as a second-hand dealer.

### 43—Cause for disciplinary action

(1) There is proper cause for disciplinary action against a licensee or approved person if—

- (a) the licensee or approved person has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*; or
- (b) the licensee or approved person has acted contrary to this Act or otherwise unlawfully, or improperly, negligently or unfairly, in the course of performing functions as a licensee or approved person; or
- (c) in the case of a licensee—the licensee, or any other person employed or otherwise engaged in the business to which the licence relates, has acted contrary to this Act or otherwise unlawfully, or improperly, negligently or unfairly, in the course of carrying on, or being employed or otherwise engaged in, that business; or
- (d) the licence or approval of the licensee or approved person was improperly obtained; or
- (e) events have occurred such that the licensee or approved person would not be entitled to be granted the licence or approval if he or she were to apply for it; or
- (f) in the case of a licensee who is a natural person, or an approved person—
- (i) the person is not a fit and proper person; or
- (ii) it would be contrary to the public interest if the person were to be or continue to be licensed or approved; or
- (g) in the case of a licensee that is a body corporate—
- (i) a director of the body corporate is not a fit and proper person; or
- (ii) it would be contrary to the public interest if the body corporate were to be or continue to be licensed.

(2) Disciplinary action may be taken against each director of a body corporate that is a licensee if there is proper cause for disciplinary action against the body corporate.

(3) Disciplinary action may not be taken against a person in relation to the act or default of another if that person could not reasonably be expected to have prevented the act or default.

(4) This section applies in relation to conduct occurring before or after the commencement of this Act.

### 44—Complaints

An authorised officer may lodge with the Court a complaint setting out, subject to section 7, matters that are alleged to constitute grounds for disciplinary action under this Part.

#### 45—Hearing by Court

(1) On the lodging of a complaint, the Court may conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action under this Part.

5 (2) Without limiting the usual powers of the Court, the Court may during the hearing—

(a) allow an adjournment to enable the Commissioner to investigate or further investigate matters to which the complaint relates; and

10 (b) allow the modification of the complaint or additional allegations to be included in the complaint subject to any conditions as to adjournment and notice to parties and other conditions that the Court may think fit to impose.

#### 46—Procedure on hearing of complaint

(1) On the hearing of a complaint against a licensee or approved person, the Court—

15 (a) is not bound by the rules of evidence but may inform itself as it thinks fit; and

(b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

20 (2) In determining whether there is proper cause for disciplinary action against a licensee or approved person, regard may be had to such evidence of the conduct (no matter when the conduct is alleged to have occurred) of the person or persons with whom the licensee or approved person associates (or has associated at any relevant time) as the Court considers relevant, including information that existed at the time the licence or approval was granted, regardless of whether that information was known or could have been made known to the Commissioner at that time.

#### 47—Disciplinary action

25 (1) On the hearing of a complaint, the Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by order do 1 or more of the following:

(a) reprimand the person;

(b) impose a fine not exceeding \$20 000 on the person;

30 (c) suspend any licence or approval held by the person for a specified period or until the fulfilment of stipulated conditions or until further order;

(d) cancel any licence or approval held by the person;

(e) impose conditions or further conditions on any licence or approval held by the person;

(f) disqualify the person from being licensed or approved under this Act;

35 (g) prohibit the person from being employed or otherwise engaged in the business of a licensee;

(h) prohibit the person from being a director of, or having an interest in, a body corporate that is a licensee.

(2) The Court may—

40 (a) stipulate that a disqualification or prohibition is to apply—



- (i) permanently; or
- (ii) for a specified period; or
- (iii) until the fulfilment of stipulated conditions; or
- (iv) until further order;

5 (b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.

(3) If—

(a) a person has been found guilty of an offence; and

10 (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

#### **48—Contravention of orders**

15 (1) If a person contravenes an order of the Court, the person is guilty of an offence.

Maximum penalty: \$35 000 or imprisonment for 6 months.

(2) If a person—

(a) is employed or otherwise engaged in the business of a licensee; or

(b) becomes a director of a body corporate that is a licensee,

20 in contravention of an order of the Court, that person and the licensee are each guilty of an offence.

Maximum penalty: \$35 000 or 6 months imprisonment.

#### **49—Joinder of Commissioner and Commissioner of Police as parties**

25 (1) The Commissioner and the Commissioner of Police are each entitled to be joined as a party to any proceedings of the Court under this Act.

(2) The Commissioner or the Commissioner of Police may appear personally in any such proceedings or may be represented at the proceedings by counsel.

### **Part 7—Regulation of markets**

#### **50—Market operator to be registered**

30 (1) A person must not—

(a) act as; or

(b) advertise or otherwise hold himself or herself out as,

a market operator unless registered under this section.

Maximum penalty: \$10 000.

35 (2) Subsection (1) does not apply if a market operator takes reasonable measures to ensure that no class 1 or class 2 goods are sold at any second-hand market operated by the market operator.

- (3) An application for registration must—
- (a) be made to the Commissioner in the manner and form approved by the Commissioner; and
  - (b) be accompanied by the fee fixed by regulation.
- 5 (4) An applicant must provide the Commissioner with such evidence as the Commissioner thinks appropriate as to the identity, date of birth and address of—
- (a) in the case of an applicant that is a body corporate—each director of the body corporate; or
  - (b) in any other case—the applicant,
- 10 and any other information required by the Commissioner for the purposes of determining the application (including information relating to the premises or place at which, and business name under which, the applicant intends to operate a market in accordance with the registration).
- (5) If an applicant has previously failed to pay a fee or penalty that became payable under this Act, the Commissioner may require the applicant to pay the whole or a specified part of the fee or penalty.
- 15 (6) The Commissioner may, by notice in writing, require an applicant, within a time fixed by the notice (which may not be less than 28 days after service of the notice), to comply with any requirement under this section to the Commissioner's satisfaction.
- 20 (7) If the applicant fails to comply with the notice under subsection (6), the Commissioner may, without further notice, refuse the application but keep the fee that accompanied the application.
- (8) If an unincorporated group of people (the **group**) intend to operate a second-hand market—
- (a) 1 member of the group may, by notice in writing to the Commissioner, nominate himself or herself as the person to be registered under this section on behalf of the group; and
  - (b) the person so nominated is taken to be the market operator for the purposes of this Act (and the other members of the group are taken not to be acting as, advertising or otherwise holding themselves out as market operators for the purposes of this Act).
- 25
- 30

### **51—Annual returns etc.**

- (1) A registered market operator must, each year not later than the date fixed by regulation—
- (a) pay to the Commissioner the fee fixed by regulation; and
  - (b) lodge with the Commissioner a return in the manner and form required by the Commissioner.
- 35
- (2) If a registered market operator fails to pay the annual fee or lodge the annual return in accordance with subsection (1) the Commissioner may, by notice in writing, require the operator to make good the default and, in addition, to pay to the Commissioner the amount fixed by regulation as a penalty for default.
- 40

- (3) If the registered market operator fails to comply with the notice within 28 days after service of the notice, the operator's registration is cancelled.
- (4) The Commissioner must notify the operator in writing of the cancellation.

## **52—Change of particulars relating to registration**

5 A registered market operator must, within 14 days after a change to any prescribed particulars, provide written notice of the change to the Commissioner (in a manner determined by the Commissioner).

Maximum penalty: \$2 500.

Expiation fee: \$210.

## **53—Market to be supervised**

- (1) A market operator must ensure that a natural person acts as supervisor, for the purposes of this Part, of a second-hand market operated by the market operator.

Maximum penalty: \$5 000.

- (2) This section does not apply if the market operator establishes that he or she has taken reasonable measures to ensure that no class 1 or class 2 goods are sold at the second-hand market.

## **54—Sale of goods at market**

- (1) A person must not sell class 1 or class 2 goods at a second-hand market without the permission of the person acting as supervisor of the market.

20 Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) When permitting a person to sell class 1 or class 2 goods at a market, the person acting as supervisor of the market must ensure that the identity of the seller is verified in accordance with the regulations.

25 Maximum penalty: \$2 500.

Expiation fee: \$210.

## **55—Records**

- (1) The market operator of a second-hand market at which any class 1 or class 2 goods are sold must make and retain the following records in accordance with the regulations:

30 (a) records relating to the sale of the class 1 or class 2 goods;

(b) a record of the name and address of the person acting as supervisor of the market.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) A market operator must transfer particulars of records required to be made and retained under this section to the Commissioner of Police in accordance with the regulations.

35 Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) The regulations may require the electronic transfer of information.

## Part 8—Enforcement

### 56—Powers of entry and inspection

- (1) For the purposes of this Act, a police officer may—

- 5 (a) enter and remain on any premises, place or vehicle, that the officer reasonably suspects is used by a person for, or in connection with carrying on business as a second-hand dealer, pawnbroker, auctioneer or market operator (and, if entry is refused, may employ such force as is reasonably necessary to gain entry); and
- 10 (b) inspect any goods in such premises, place or vehicle; and
- (c) inspect any goods apparently in the possession or under the control of a person who is—
- (i) attending such premises, place or vehicle to sell or otherwise part with the possession of goods; or
- 15 (ii) leaving such premises, place or vehicle after attending it to sell or otherwise part with the possession of goods; and
- (d) require any such person to state his or her full name and address and date of birth; and
- (e) inspect any records kept by a second-hand dealer, pawnbroker, auctioneer or market operator and, for that purpose, require the second-hand dealer, pawnbroker, auctioneer or market operator, or an employee or agent of the second-hand dealer, pawnbroker, auctioneer or market operator, to produce the records (including a written record that reproduces in an understandable form information stored by computer or other process); and
- 20 (f) examine, copy or take extracts from records kept by a second-hand dealer, pawnbroker, auctioneer or market operator, or require the second-hand dealer, pawnbroker, auctioneer or market operator, or an employee or agent of the second-hand dealer, pawnbroker, auctioneer or market operator, to provide a copy of the records; and
- 25 (g) remove and retain records kept by a second-hand dealer, pawnbroker, auctioneer or market operator for so long as is reasonably necessary for the purpose of making a copy of the record.

- (2) A police officer may not exercise the power of entry conferred by this section in relation to residential premises except—

- 35 (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, pawnbroker, auctioneer or market operator and the entry is at a reasonable
- 40 time.

- (3) 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.
- (4) A police officer may, in exercising a power under this section, be accompanied by such assistants as may reasonably be required in the circumstances.
- (5) A person who—
- (a) hinders a police officer 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: \$5 000.

**Note—**

See also the powers of authorised officers under the *Fair Trading Act 1987*.

## Part 9—Barring orders

### 57—Interpretation

In this Part—

**barring offence** means an offence of a class prescribed by regulation for the purposes of this definition;

**barring order** see section 58(1);

**Court** means the Magistrates Court;

**respondent** means a person against whom a barring order is sought.

### 58—Barring orders

- (1) On a complaint made by a police officer, the Court may make an order (a **barring order**) barring a person who has been charged with, or found guilty of a barring offence from disposing of second-hand goods—
- (a) to, or through the agency of, a second-hand dealer, pawnbroker or auctioneer; or
  - (b) at a second-hand market,
- (either in general or in circumstances specified in the order).
- (2) The Court may make a barring order if satisfied that it is in the public interest to do so.
- (3) A barring order may operate for a period specified in the order or until further order.
- (4) A person who contravenes or fails to comply with a barring order is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

### 59—Issue of barring order in absence of respondent

- (1) A barring order may be made in the absence of the respondent if the respondent was required by summons or conditions of bail to appear at the hearing of the complaint and failed to appear in obedience to the summons or conditions.

(2) A barring order may be made in the absence of the respondent and despite the fact that the respondent was not summoned or otherwise required to appear at the hearing of the complaint, but in that case, the Court must summon the respondent to appear before the Court to show cause why the order should not be confirmed.

5 (3) The Court may make an order under subsection (2) on the basis of evidence received in the form of an affidavit but, in that case—

(a) the deponent must, if the respondent so requires, appear personally at the proceedings for confirmation of the order to give oral evidence of the matters referred to in the affidavit; and

10 (b) if the deponent does not appear personally to give evidence in pursuance of such a requirement, the Court may not rely on the evidence contained in the affidavit for the purpose of confirming the order.

(4) The Court may, from time to time without requiring the attendance of any party, adjourn the hearing to which a respondent is summoned under subsection (2) to a later date if satisfied that the summons has not been served or that there is other adequate reason for the adjournment.

15 (5) The date fixed in the first instance for the hearing to which a respondent is summoned under subsection (2) must be within 7 days of the date of the order, and the date fixed under subsection (4) for an adjourned hearing must be within 7 days of the date on which the adjournment is ordered, unless the Court is satisfied—

(a) that a later date is required to enable the summons to be served; or

(b) that there is other adequate reason for fixing a later date.

(6) A barring order made under subsection (2)—

25 (a) continues in force until the conclusion of the hearing to which the respondent is summoned or, if the hearing is adjourned, until the conclusion of the adjourned hearing; but

(b) will not be effective after the conclusion of the hearing to which the respondent is summoned, or the adjourned hearing, unless the Court confirms the order—

30 (i) on failure of the respondent to appear at the hearing in obedience to the summons; or

(ii) having considered any evidence given by or on behalf of the respondent; or

(iii) with the consent of the respondent.

35 (7) The Court may confirm a barring order in an amended form.

(8) If a hearing is adjourned under this section, the Court need not be constituted at the adjourned hearing of the same judicial officer as ordered the adjournment.

## **60—Service**

40 (1) A barring order must be served on the respondent personally and is not binding on the respondent until it has been so served.

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- (2) If a barring order is confirmed in an amended form or is varied before being confirmed or at any other time, the order in its amended form must be served on the respondent personally and until so served—
- (a) the variation is not binding on the respondent; but
  - (b) the order as in force prior to the variation continues to be binding on the respondent.
- (3) If a police officer has reason to believe that a person is subject to a barring order that has not been served on the person, the member may—
- (a) require the person to remain at a particular place for—
    - (i) so long as may be necessary for the order, and, if the order is subject to confirmation, the summons to appear before the Court to show cause why the order should not be confirmed, to be served on the person; or
    - (ii) 2 hours,whichever is the lesser; and
  - (b) if the person refuses or fails to comply with the requirement or the member has reasonable grounds to believe that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for the period referred to in paragraph (a).

### **61—Variation or revocation of barring order**

- (1) The Court may vary or revoke a barring order on application—
  - (a) by a police officer; or
  - (b) by the respondent.
- (2) An application for variation or revocation of a barring order may only be made by the respondent with the permission of the Court and permission is only to be granted if the Court is satisfied there has been a substantial change in any relevant circumstances since the order was made or last varied.
- (3) The Court must, before varying or revoking a barring order under this section allow all parties a reasonable opportunity to be heard on the matter.

### **62—Burden of proof**

In proceedings under this Part other than for an offence, the Court is to decide questions of fact on the balance of probabilities.

### **63—Information relating to barring order**

The Commissioner of Police may cause information relating to a barring order to be provided to second-hand dealers, pawnbrokers, auctioneers, market operators or such other persons as the Commissioner of Police thinks fit.

## Part 10—Miscellaneous

### 64—Where goods suspected of being stolen

(1) The Commissioner of Police may issue a second-hand dealer, pawnbroker or auctioneer a written notice describing goods suspected of being stolen goods.

5 (2) After a notice under subsection (1) has been issued to a second-hand dealer, pawnbroker or auctioneer, he or she must—

(a) make such checks as are reasonably required to determine whether goods that have been, or are being, dealt with in the course of his or her business appear to be goods described in the notice; and

10 (b) if he or she suspects that any goods that have been, or are being, dealt with in the course of his or her business are goods described in the notice—notify the Commissioner of Police as soon as is reasonably practicable in the manner specified in the notice.

Maximum penalty: \$2 500.

15 (3) If a person claims to a second-hand dealer, pawnbroker or auctioneer that goods in the possession of the second-hand dealer, pawnbroker or auctioneer are stolen goods and that the person is entitled to possession of the goods, the second-hand dealer, pawnbroker or auctioneer must—

20 (a) immediately give the claimant a notice in the form determined by the Commissioner of Police to record the making of the claim; and

(b) if the claimant completes and signs the notice—

(i) immediately on such completion and signing—

(A) give the claimant a copy of the notice; and

25 (B) notify the Commissioner of Police of the claim in accordance with any instructions specified in the notice; and

(ii) keep a copy of the notice at the place at which the goods are kept.

Maximum penalty: \$2 500.

Expiation fee: \$210.

30 (4) A second-hand dealer, pawnbroker or auctioneer must not, in the course of, or for the purposes of, his or her business, engage in a transaction involving goods with a person if he or she has reasonable grounds to believe that the person is not legally entitled to deal with the goods the subject of the transaction.

Maximum penalty: \$20 000.

35 (5) A second-hand dealer, pawnbroker, auctioneer or market operator who suspects for any reason that goods that have been, or are being, dealt with—

(a) in the case of a market operator—at a market operated by the market operator; or

(b) in any other case—in the course of the business of the second-hand dealer, pawnbroker or auctioneer,



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are stolen goods, must immediately notify the Commissioner of Police.

Maximum penalty: \$5 000.

- 5 (6) A person must not, without the authorisation of the Commissioner of Police, sell or part with possession of any goods in respect of which the person is required to notify the Commissioner of Police under this section.

Maximum penalty: \$20 000.

- (7) The Commissioner of Police—

- 10 (a) may give a second-hand dealer, pawnbroker or auctioneer a notice requiring the second-hand dealer, pawnbroker or auctioneer not to sell or part with possession of specified goods (being goods suspected of being stolen) during a period specified in the notice; and
- (b) may vary or revoke such a notice by subsequent notice given to the second-hand dealer, pawnbroker or auctioneer.

- 15 (8) A second-hand dealer, pawnbroker or auctioneer must comply with a notice under subsection (7).

Maximum penalty: \$20 000.

- 20 (9) The Magistrates Court may, on application by a person entitled to the possession of stolen goods that are or have been in the possession of a second-hand dealer, pawnbroker or auctioneer (and that have not otherwise been returned to the entitled person) order—

- (a) that the goods be returned to the person; or
- (b) if the second-hand dealer, pawnbroker or auctioneer has sold or parted with possession of the goods in contravention of subsection (6) or a notice under subsection (7)—that the second-hand dealer, pawnbroker or auctioneer pay to the person the value of the goods.

- (10) On an application under subsection (9), the Court may make such other orders as to compensation for damage to the goods or otherwise as it thinks fit.

### **65—Offence to deal with child or intoxicated person**

- 30 (1) A person must not, in the course of a business—

- (a) buy second-hand goods from a child or an intoxicated person; or
- (b) take second-hand goods on consignment from a child or an intoxicated person; or
- (c) agree with a child or an intoxicated person to act as an agent for the resale of second-hand goods.

35 Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) A person must not enter into a pawn agreement with a child or an intoxicated person.

Maximum penalty: \$2 500.

Expiation fee: \$210.

(3) In this section—

*child* means a person under the age of 16;

*intoxicated person* means a person who is apparently affected by alcohol or a drug.

### **66—No contracting out**

5 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.

### **67—False or misleading information**

10 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 made, under this Act.

Maximum penalty:

- 15 (a) if the person made the statement knowing that it was false or misleading—  
\$10 000;
- (b) in any other case—\$2 500.

### **68—Statutory declaration**

20 If a person is required to provide information to the Commissioner or the Commissioner of Police under this Act, the Commissioner or the Commissioner of Police may require the information to be verified by statutory declaration and, in that event, the person will not be taken to have provided the information as required unless it has been verified in accordance with the requirements of the Commissioner or the Commissioner of Police (as the case may be).

### **69—Investigations**

- 25 (1) The Commissioner of Police must, at the request of the Commissioner, investigate and report on any matter relevant to—
- (a) the determination of an application under this Act; or
- (b) a matter that might constitute proper cause for disciplinary action under this Act.
- 30 (2) The Commissioner of Police must, as soon as reasonably practicable after becoming aware of information relevant to a matter that might constitute proper cause for disciplinary action under this Act, make the information available to the Commissioner.

### **70—Information to be provided to Commissioner of Police**

35 The Commissioner must advise the Commissioner of Police of a change in any prescribed particulars of persons licensed, approved or registered under this Act.

### **71—Register of persons licensed, approved or registered**

- (1) The Commissioner must keep a register of persons licensed, approved or registered under this Act.
- 40 (2) The Commissioner must record on the register the particulars prescribed by regulation.

- (3) A person may inspect the register on payment of the fee fixed by regulation.

## 72—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.

## 73—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 or ostensible authority.

## 74—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 licensed, approved or registered under this Act—at the person's address for service; or
  - (c) if the person is licensed, approved or registered under this Act—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 to the person by fax transmission or email to the fax number or email address last provided to the Commissioner by the person for that purpose; or
  - (e) if the person is licensed or registered under this Act—be published on a website, or in some other electronic manner, if the Commissioner has previously notified the licensee or registered person that such notices or documents will be published on that website or in that manner.
- (2) The address for service of a person who is licensed, approved or registered under this Act is the address of which the Commissioner has been last notified in writing by the person as his or her address for service.

## 75—Prosecutions

- (1) Proceedings for an offence against this Act must be commenced—
- (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
  - (b) in any other case—within 2 years of the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within 5 years of that date.
- (2) A prosecution for an offence against this Act cannot be commenced except by an authorised officer or a person who has the consent of the Minister to commence the prosecution.

- (3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorisation of, or consent to, a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

## 76—Evidentiary provision

- (1) In any proceedings, an apparently genuine document purporting to be a certificate of the Commissioner certifying that a person—
- (a) did or did not hold a specified licence on a specified date; or
  - (b) was or was not an approved person on a specified date; or
  - (c) was or was not a registered second-hand dealer on a specified date; or
  - (d) was or was not a registered market operator on a specified date,
- constitutes proof of the matters so certified in the absence of proof to the contrary.
- (2) If, in proceedings for an offence against this Act, it is established that a licensee or registered second-hand dealer engaged in a class 1 or class 2 transaction, it will be presumed, in the absence of proof to the contrary, that the transaction occurred in the course of, or for the purposes of, the licensee's or dealer's business.

## 77—Annual report

- (1) The Commissioner must, on or before 31 October in each year, submit to the Minister a report on the administration of this Act during the period of 12 months ending on the preceding 30 June.
- (2) The Minister must, within 6 sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

## 78—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—
- (a) impose requirements on second-hand dealers, pawnbrokers, auctioneers and market operators including (without limitation) requirements relating to the display of signs or other material, advertising, the conduct of transactions, record keeping and the transfer of information (including by electronic means) to the Commissioner of Police;
  - (b) make provision in relation to the electronic transfer of information for the purposes of this Act, including specifying—
    - (i) technical or operational requirements relating to such transfer; or
    - (ii) a particular application, software or device, or a particular class of application, software or device, to be used for that purpose;
  - (c) fix fees to be paid in respect of any matter under this Act and regulate the recovery, refund, waiver or reduction of such fees;
  - (d) impose a penalty, not exceeding a fine of \$10 000, for contravention of, or non-compliance with, a regulation;

- (e) fix expiation fees, not exceeding \$315, for alleged offences against the regulations.
- (3) Regulations under this Act—
- (a) may be of general application or limited application;
- 5 (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
- (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Minister responsible for the administration of the *Fair Trading Act 1987*, the Commissioner or the Commissioner of Police.
- 10

## **Schedule 1—Consequential amendment, repeal and transitional provisions**

### **Part 1—Amendment of *Magistrates Court Act 1991***

#### **1—Amendment of section 3—Interpretation**

- 15 Section 3(1), definition of *minor statutory proceeding*, paragraph (bb)—delete  
"section 11(8) of the *Second-hand Dealers and Pawnbrokers Act 1996*" and substitute:  
section 64(9) of the *Second-hand Goods Act 2012*

### **Part 2—Repeal**

#### **2—Repeal**

- 20 The *Second-hand Dealers and Pawnbrokers Act 1996* is repealed.

### **Part 3—Transitional provisions**

#### **3—Act applies to transactions occurring after commencement**

- Subject to any regulations made under clause 4, this Act applies in relation to—
- (a) second-hand goods bought, taken on consignment, or agreed to be resold; or
- 25 (b) goods pawned; or
- (c) second-hand markets held,
- after the commencement of this clause.

#### **4—Regulations**

- (1) The regulations may make provisions of a savings or transitional nature consequent on the enactment of this Act.
- 30 (2) Without limiting subclause (1), the regulations may, for transitional purposes—
- (a) provide that this Act, or specified provisions of this Act, will not apply in relation to a person or class of persons or an activity or class of activities, until a specified day; or

**Second-hand Goods Bill 2012**

Schedule 1—Consequential amendment, repeal and transitional provisions

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- (b) modify the application of this Act, or provisions of this Act, in relation to a person or class of persons, or an activity or class of activities, until a specified day.