

SOUTH AUSTRALIA

UNCLAIMED GOODS ACT, 1987

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at **1 July 1993**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

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UNCLAIMED GOODS ACT, 1987

being

Unclaimed Goods Act, 1987, No. 15 of 1987
[Assented to 9 April 1987]¹

as amended by

Statutes Amendment (Courts) Act 1993 No. 62 of 1993 [Assented to 27 May 1993]²

¹ Came into operation 1 August 1987: *Gaz.* 30 July 1987, p. 273.

² Came into operation 1 July 1993: *Gaz.* 24 June 1993, p. 2047.

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

An Act to provide for the disposal of unclaimed goods, and for other purposes.

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Unclaimed Goods Act, 1987*.

Commencement

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

Interpretation

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

"bailee" means a person in possession of goods belonging to another:

"bailor" means the owner of goods in the possession of a bailee:

"Court" means—

- (a) in relation to a question affecting unclaimed goods of which the value does not exceed \$60 000—the Magistrates Court;
- (b) in relation to a question affecting unclaimed goods of which the value exceeds \$60 000—the District Court or the Supreme Court:

"the relevant date" in relation to unclaimed goods means the date on which the goods become unclaimed goods for the purposes of this Act:

"scale 1" in relation to the value of unclaimed goods means a value of \$100 or less:

"scale 2" in relation to the value of unclaimed goods means a value of more than \$100 but less than \$500:

"scale 3" means in relation to the value of unclaimed goods means a value of \$500 or more.

- (2) This Act applies to all goods in the possession of a bailee, including goods in the bailee's possession immediately before the commencement of this Act.

Act binds Crown

4. This Act binds the Crown.

Unclaimed goods

5. (1) Where a person (the bailee) is in possession of goods belonging to another (the bailor), those goods are unclaimed goods for the purposes of this Act—

- (a) if the bailee received the goods in pursuance of an agreement or understanding under which the bailor was to collect the goods at a certain time or within a certain period, and the bailor has failed to do so;

3.

(b) if—

(i) the bailee has the goods in pursuance of an agreement or understanding under which the bailee was to deliver the goods to the bailor;

and

(ii) the bailee, after making reasonable attempts to do so, has not been able to deliver the goods in accordance with the agreement or understanding;

or

(c) if there is no agreement or understanding governing the collection or delivery of the goods but the bailee has requested the bailor to collect the goods and the bailor has refused to do so or has, at the expiration of 42 days from the date of the request, not done so.

(2) A request for the purposes of subsection (1)(c)—

(a) must state the address at which the goods are available for collection;

(b) must contain a brief description of the goods;

(c) must state the times at which, or the hours between which, the goods will be available for collection at that address;

and

(d) may be made—

(i) by post addressed to the last known address of the bailor;

or

(ii) if the identity or whereabouts of the bailor is unknown—by notice in the prescribed form published in a newspaper circulating generally throughout the State.

(3) A request will not be regarded as having been validly made for the purposes of subsection (1)(c) unless it allows the bailor a reasonable opportunity to collect the goods to which it relates.

Sale or disposal of unclaimed goods

6. (1) Subject to this section, a bailee of unclaimed goods may, after the expiration of three months from the relevant date—

(a) sell the goods;

or

(b) if the value of the goods would be insufficient to defray the costs of sale—otherwise dispose of the goods.

4.

(2) The sale or disposal of goods under subsection (1) may be authorized, on the application of the bailee, by the Court and, if the value of the goods lies within scale 3, the goods must not be sold or disposed of without such an authorization.

(3) Where a bailee applies for an authorization under subsection (2)—

(a) notice of the application must be given to the Commissioner of Police;

and

(b) such notice (if any) as the Court thinks appropriate must be given to the bailor and any other person who, in the opinion of the Court, may have an interest in the goods.

(4) Where the Court grants an authorization under subsection (2), it may give such directions in relation to the sale or disposal of the goods as it thinks fit.

(5) If the value of unclaimed goods lies within scale 1 or 2 the goods may be sold or disposed of under subsection (1) without any authorization by the Court but if goods whose value lies within scale 2 are to be sold without such an authorization—

(a) the goods must be sold by public auction;

and

(b) notice in the prescribed form of the time and place of the proposed sale must be given at least one month before the date of the proposed sale—

(i) to the Commissioner of Police;

and

(ii) to the bailor.

(6) A notice under subsection (5)(b) may be given by post and, if the identity or whereabouts of the bailor is unknown, the notice to the bailor may be given by advertisement in a newspaper circulating generally throughout the State.

Claim made by bailor after commencement of proceedings under this Act

7. (1) Subject to subsection (2), where a bailee has commenced proceedings for the sale or disposal of goods under this Act but before the goods are sold or disposed of the bailor claims the goods, the bailee must not proceed with the sale or disposal of the goods, and must hand them over to the bailor.

(2) The bailee may, before handing over goods under subsection (1), require the bailor to pay—

(a) the reasonable costs incurred by the bailee in proceeding under this Act;

(b) the reasonable costs incurred by the bailee in storing and maintaining the goods after the date on which the bailor should have collected or taken delivery of them;

(c) the amount of any lien that the bailee has over the goods.

5.

(3) If at the expiration of 42 days after the bailee has rendered a written account of the amounts claimed under subsection (2) the bailor has not paid those amounts, the bailee may, subject to subsection (4), proceed to sell or dispose of the goods.

(4) The bailor may apply to the Court for review of an account rendered under subsection (3) and, in that event—

(a) the goods must not be sold or disposed of until the review has been completed;

and

(b) the Court may, on the review, disallow the bailee's charges in whole or in part.

Proceeds of sale

8. (1) The proceeds of the sale of goods under this Act will be dealt with as follows:

(a) the bailee may retain from those proceeds—

(i) the reasonable costs of the sale and of proceeding under this Act;

(ii) the reasonable costs of storing and maintaining the goods prior to sale;

(iii) the amount of any lien that the bailee had over the goods;

and

(b) the balance will be paid to the Treasurer.

(2) Where the Treasurer is satisfied that a person had, prior to the sale, an interest in goods sold in pursuance of this Act, the Treasurer may pay to that person the whole or any part of the balance paid to the Treasurer in respect of the sale of those goods under subsection (1)(b).

Purchaser's title to goods sold under this Act

9. (1) A person who purchases goods that are sold in pursuance of this Act acquires a good title to the goods.

(2) The purchaser's title is free of—

(a) any mortgage, lien or charge in favour of the bailee;

(b) any other mortgage, lien or charge affecting the goods at the time of the sale of which the purchaser was then unaware.

This Act does not affect bailee's remedy under other Acts

10. This Act does not affect a bailee's right to dispose of goods in accordance with any other Act.

Regulations

11. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

6.

(2) In particular the regulations may—

(a) prescribe the information to be contained in any notice required to be given under this Act;

and

(b) vary the scales of values fixed under section 3.

7.

APPENDIX

LEGISLATIVE HISTORY

Section 3(1):

definition of "the Court" repealed and definition of "Court"
inserted in its place by 62, 1993, s. 41