

SOUTH AUSTRALIA

SECOND-HAND DEALERS AND PAWNBROKERS REGULATIONS 1998

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LEGISLATIVE HISTORY

**REGULATIONS UNDER THE SECOND-HAND DEALERS AND PAWNBROKERS
ACT 1996**

Second-hand Dealers and Pawnbrokers Regulations 1998

being

No. 21 of 1998: *Gaz.* 19 February 1998, p. 964¹

as varied by

No. 143 of 1999: *Gaz.* 1 July 1999, p. 55²

¹ Came into operation 1 March 1998: reg. 2.

² Came into operation 1 July 1999: reg. 2.

N.B. The following regulations have been revoked:

No. 9 of 2001: *Gaz.* 8 February 2001, p. 582 revoked by No. 17 of 2001: *Gaz.* 1 March 2001, p. 816.

The amendments effected to these regulations by Regulation No. 17 of 2001 had not come into operation at the date of, and have not been included in, this consolidation.

Citation

1. These regulations may be cited as the *Second-hand Dealers and Pawnbrokers Regulations 1998*.

Commencement

2. These regulations will come into operation on the day on which the *Second-hand Dealers and Pawnbrokers Act 1996* comes into operation.

Interpretation

3. In these regulations—

"**the Act**" means the *Second-hand Dealers and Pawnbrokers Act 1996*;

"**prescribed goods**" means goods of any of the following kinds:

- (a) gemstones or precious metals;
- (b) items of jewellery that include gemstones or precious metals;
- (c) watches;
- (d) sporting or recreational goods (but not including clothing or footwear);
- (e) watercraft (including jet skis, windsurfers and surfboards) or parts of watercraft (including outboard motors);
- (f) musical instruments (but not including pianos other than electric or electronic pianos);
- (g) portable engine-powered, motorised or air-powered tools or equipment;
- (h) tool kits;
- (i) photographic equipment or video cameras;
- (j) computer hardware or software;
- (k) electric or electronic goods including—
 - (i) televisions, radios, compact disc players or other audio or audio-visual systems;
 - (ii) mobile or portable telephones;
 - (iii) microwave ovens,(but not including refrigerators, washing machines, clothes dryers, dishwashers, stoves, under bench ovens or wall ovens);
- (l) compact (laser-read) discs;

3.

- (m) vehicles without their own automotive power (including bicycles, caravans and trailers);
- (n) motor vehicles;
- (o) the following motor vehicle components:
 - (i) front left fenders;
 - (ii) front right fenders;
 - (iii) front left doors;
 - (iv) front right doors;
 - (v) rear left doors;
 - (vi) rear right doors;
 - (vii) rear left quarter panels;
 - (viii) rear right quarter panels;
 - (ix) body shells;
 - (x) front sections of body shells;
 - (xi) rear sections of body shells;
 - (xii) automatic or manual transmissions;
 - (xiii) engines;
 - (xiv) boot lids;
 - (xv) tailgates;
 - (xvi) hoods;
 - (xvii) air bags;
 - (xviii) frames.

Application of Act

4. (1) Sections 8 and 9 of the Act apply only in relation to the following kinds of goods:

- (a) goods that a dealer receives under a contract of pawn;
- (b) prescribed goods.

(2) Section 10 of the Act applies only in relation to prescribed goods.

4.

(3) Section 10(2) of the Act does not apply in relation to—

- (a) gemstones or precious metals; or
- (b) items of jewellery that include gemstones or precious metals; or
- (c) watches.

(4) Sections 6, 7, 8, 9 and 10 of the Act do not apply in relation to the sale of second-hand vehicles by a person licensed as a dealer, or exempt from the requirement to be licensed as a dealer, under the *Second-hand Vehicle Dealers Act 1995*.

(5) For the purposes of the application of the Act, an ADI or a registered corporation within the meaning of the *Financial Corporations Act 1974* (Cwth) will not be considered to be a pawnbroker only by reason of receiving goods under a contract for sale where the seller has a right to buy back the goods.

(6) Part 4 of the Act does not apply in relation to—

- (a) a second-hand market conducted by an organisation formed for religious, educational or other charitable or beneficial community purposes where all the goods sold have been donated to the organisation and the proceeds of the sale (after deduction of the expenses of the market) go to the organisation; or
- (b) a second-hand market where no prescribed goods are sold.

Requirements to be complied with by auctioneer

5. For the purposes of the definition of "second-hand market" in section 3 of the Act and for the purposes of section 10(3)(e) of the Act, an auctioneer must comply with the following requirements in relation to each lot of prescribed goods auctioned by the auctioneer:

- (a) in the case of an auctioneer who is a second-hand dealer¹—the auctioneer must record against the entry relating to the goods kept under section 8 of the Act—
 - (i) the date on which the goods were auctioned; and
 - (ii) the place at which the goods were auctioned; and
 - (iii) a note of whether or not the goods were sold at auction and, if the goods were sold, the amount for which the goods were sold;
- (b) in the case of an auctioneer who is not a second-hand dealer—the auctioneer must—
 - (i) keep records relating to the goods, and confirm and verify the information recorded, as required by section 8 of the Act as if the auctioneer were a second-hand dealer (except that identification codes need not be recorded as required by section 8(4)(f)); and

5.

- (ii) record against the entry relating to the goods kept under subparagraph (i)—
 - (A) the date on which the goods were auctioned; and
 - (B) the place at which the goods were auctioned; and
 - (C) a note of whether or not the goods were sold at auction and, if the goods were sold, the amount for which the goods were sold.

¹ Section 24(1)(c) of the Act provides that if in proceedings for an offence against the Act it is established that, within the period of 12 months immediately preceding the date of the alleged offence, the defendant 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.

Disqualification from carrying on business as second-hand dealer

6. For the purposes of section 6 of the Act, an offence against section 8, 10 or 16 of the Act is an offence of a prescribed kind.

Notification by dealers, proposed dealers or former dealers

7. (1) For the purposes of section 7(3)(a) of the Act, the following is required to be contained in a notice under section 7:

- (a) in the case of a natural person who is a second-hand dealer or proposed second-hand dealer—the full name and residential address of the person (and, if the business is to be carried on in partnership, of each partner);
- (b) in the case of a body corporate that is a dealer or proposed dealer—
 - (i) the name and residential address of each director; and
 - (ii) the address of the registered corporate office of the body corporate;
- (c) the name under which the business or proposed business is to be carried on;
- (d) each address at which the business or proposed business is to be carried on;
- (e) each address at which records required to be kept under the Act are or will be kept;
- (f) each address at which goods bought or received in the course of or for the purposes of the business or proposed business are or will be kept;
- (g) a brief description of the nature of the business or proposed business, including a description of the types of goods that are or are proposed to be bought or received in the course of or for the purposes of the business or proposed business;
- (h) a statement as to whether or not any circumstance applies by virtue of which the person would be disqualified under section 6 of the Act from carrying on business as a second-hand dealer;
- (i) an address for service.

6.

(2) For the purposes of section 7(4) of the Act, notice must be given to the Commissioner of Police as follows:

- (a) if there is any change in—
 - (i) the residential address of a second-hand dealer; or
 - (ii) the name in which a second-hand dealer carries on business; or
 - (iii) the address of the registered corporate office of a second-hand dealer that is a body corporate; or
 - (iv) the address at which the business of a second-hand dealer is carried on; or
 - (v) the address at which records required to be kept under the Act by a second-hand dealer or former second-hand dealer are kept; or
 - (vi) the address at which goods bought or received in the course of or for the purposes of the business of a second-hand dealer are kept; or
 - (vii) the address for service of a second-hand dealer or, unless the person is no longer required to keep records under the Act, the address for service of a former second-hand dealer,

the second-hand dealer or former second-hand dealer must, within 14 days, give written notice to the Commissioner of the new address or name (as the case may be);

- (b) if a second-hand dealer ceases to carry on business as a dealer, the person must, within 14 days, give written notice to the Commissioner of that fact;
- (c) if a person enters into a partnership to carry on business as a second-hand dealer or ceases to be in such a partnership, the person must, within 14 days, give written notice to the Commissioner of that fact, together with the names and addresses of the members of the new or former partnership;
- (d) if a person becomes a director of a body corporate that is a second-hand dealer, the body corporate must, within 14 days, give written notice to the Commissioner of the name and residential address of the new director;
- (e) if an event occurs by virtue of which a person is disqualified under section 6 of the Act from continuing to carry on business as a second-hand dealer, the person must immediately inform the Commissioner of the event.

Verification of identification

8. (1) If a person is required by the Act or these regulations to verify the identity of another (a **customer**) and record details of the means used to verify that information, the person must verify the identity and record the details in accordance with this regulation.

7.

(2) The identity of a customer must be verified by examining in accordance with subregulation (3) evidence produced by the customer consisting of—

- (a) a single card or document that appears—
 - (i) to have been issued by the government or a statutory authority of the State or the Commonwealth or another State or a Territory; and
 - (ii) to bear the name, residential address and signature and a photograph of the customer; or
- (b) two or more cards or documents—
 - (i) at least one of which appears to have been issued by the government or a statutory authority of the State or the Commonwealth or another State or a Territory and the other or others of which appear to have been issued for some official or other proper purpose by a person or body other than the customer; and
 - (ii) that together appear to bear the name, residential address and signature of the customer.

(3) The person must examine the evidence produced by the customer so as to ensure—

- (a) that it does not appear to have been forged or tampered with; and
- (b) that it contains a name and address matching the name and address given to the person by the customer as the customer's name and residential address; and
- (c) that it contains a signature apparently matching the signature of the customer obtained by the person; and
- (d) if it consists of a single card or document—that the photograph is a likeness of the customer.

(4) The following details of each card or document used to verify the identity of a customer must be recorded:

- (a) if the card or document has an identifying number—that number;
- (b) if the card or document does not have an identifying number but does bear the date of its issue—that date;
- (c) details sufficient to enable identification of the body or person who apparently issued the card or document.

Claim to goods in possession of second-hand dealer

9. (1) For the purposes of section 11(3)(a) of the Act, the notice must be in the form prescribed by the Schedule.

8.

(2) For the purposes of section 11(3)(c) of the Act, the dealer must notify, and give a copy of the notice to—

- (a) the member of the police force in charge of the police station nearest to the place at which the goods subject to the notice are kept; or
- (b) a member of the police force designated for the purpose by the member in charge of the station.

Content of pawn tickets

10. For the purposes of section 13(2)(c) of the Act, a pawn ticket must contain, in addition to the information required by section 13(2), the following information:

- (a) the name, residential address and signature of the person pawning the goods;
- (b) an accurate description of each item of the goods including, where applicable, their types, sizes, colours, brands, serial numbers and other distinguishing features;
- (c) a unique identification code;
- (d) the date on which the goods are pawned;
- (e) the end date of the redemption period;
- (f) a statement that the redemption period may be extended by agreement between the pawnbroker and the person entitled to redeem the goods and a description of the procedures for doing so;
- (g) a statement that, if at the end of the redemption period the goods have not been redeemed, the pawnbroker is required, as soon as reasonably practicable, to sell the goods in a manner conducive to securing the best price reasonably obtainable;
- (h) the address at which the goods will be kept during the redemption period;
- (i) if the ticket covers more than one item of goods—a statement of whether or not the items may be separately redeemed;
- (j) the rate of interest charged by week, month, or other period, as the case may be, and an equivalent annual interest rate (*ie* the rate that bears to a year the same proportion as the periodic interest rate bears to the period in respect of which interest is charged);
- (k) a statement of any fees or charges that were not treated as interest for the purposes of calculating the rate of interest disclosed under paragraph (i).

Records of sale of unredeemed pawns

11. For the purposes of section 14(5) of the Act, the details of the sale of the goods that must be recorded are—

- (a) the date on which the goods are sold; and
- (b) the amount for which the goods are sold.

Notification by operator of second-hand market

12. (1) For the purposes of section 15(3) of the Act, a notice under section 15 must contain the following information:

- (a) in the case of natural person who operates or proposes to operate a second-hand market—the full name, residential address and business address (if any) of the person;
- (b) in the case of a body corporate that operates or proposes to operate a second-hand market—
 - (i) the name and residential address of each director; and
 - (ii) the address of the registered corporate office of the body corporate;
- (c) the name in which the second-hand market is or is to be operated;
- (d) the address at which the second-hand market is or is to be held;
- (e) a statement of whether or not the second-hand market is or is to be operated on a continuing basis and details of when the market operates or is to operate;
- (f) each address at which records required to be kept under the Act are or will be kept;
- (g) a statement of whether or not prescribed goods are or may be sold at the second-hand market;
- (h) a brief description of the nature of the second-hand market or proposed second-hand market, including a description of the types of goods that are or are proposed to be sold at the market or proposed market;
- (i) an address for service.

(2) For the purposes of section 15(4) of the Act, notice must be given to the Commissioner of Police as follows:

- (a) if there is any change in—
 - (i) the residential address of the person who operates a second-hand market; or
 - (ii) the address of the registered corporate office of a body corporate that operates a second-hand market; or
 - (iii) the name in which a second-hand market is operated; or
 - (iv) the address at which a second-hand market is operated; or
 - (v) the address at which records required to be kept under this Act by a person who operates or formerly operated a second-hand market are kept; or

10.

- (vi) the address for service of a person who operates a second-hand market or, unless the person is no longer required to keep records under the Act, the address for service of a person who formerly operated a second-hand market, the person who operates or formerly operated the second-hand market must, within 14 days, give written notice to the Commissioner of the new address or name (as the case may be);
- (b) if a second-hand market that has been operated on a continuing basis ceases to be operated, the person who operated the market must, within 14 days, give written notice to the Commissioner of that fact;
- (c) if a person enters into a partnership to operate a second-hand market or ceases to be in such a partnership, the person must, within 14 days, give written notice to the Commissioner of that fact, together with the names and addresses of the members of the new or former partnership;
- (d) if a person becomes a director of a body corporate that operates a second-hand market, the body corporate must, within 14 days, give written notice to the Commissioner of the name and residential address of the new director.

Records to be kept by operator of second-hand market

13. (1) For the purposes of section 16 of the Act, the following records must be kept in relation to each day on which second-hand goods are sold at the second-hand market:

- (a) the date on which and the place at which the second-hand market is held; and
- (b) the full names and residential or business addresses of each person who sells prescribed goods at the second-hand market.

(2) For the purposes of section 16 of the Act, the identity of the persons recorded under subregulation (1)(b) must be verified, and details of the means used to verify the identity must be recorded, in accordance with these regulations.

SCHEDULE

Notice of claim to goods in possession of second-hand dealer

CLAIM TO GOODS IN POSSESSION OF SECOND-HAND DEALER

CLAIMANT

Name of claimant

Address of claimant

I claim that the following goods are stolen goods and that I am entitled to possession of the goods.

Description of goods:

I claim that the goods were stolen on

from

[Police station at which goods reported stolen (if so reported):

Police report number (if known):]

I can identify the goods as goods to which I am entitled because of the following marks or features:

.....
.....

Date Signature of claimant

SECOND-HAND DEALER

Name of second-hand dealer

Business address of dealer

Address at which claimed goods located

Date: Signature of dealer

INFORMATION

- 1 This notice must be completed and signed by the claimant and the dealer.
- 2 The dealer must—
 - immediately on completion and signing of the notice, give the claimant a copy of the notice; and
 - 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
 - keep a copy of the notice at the place at which the goods are kept.
- 3 The dealer must not, without the written authority of a member of the police force, sell or part with possession of the goods.
- 4 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 that the goods be returned to the person or, if the dealer has unlawfully sold or parted with possession of the goods, that the dealer pay to the person the value of the goods;
 - make such other orders as to compensation for damage to the goods or otherwise as it thinks fit.

12.

APPENDIX

LEGISLATIVE HISTORY

Regulation 4(5):

varied by 143, 1999, reg. 3 (Sched. cl. 18)