

Queensland



**SECOND-HAND DEALERS
AND PAWNBROKERS
ACT 2003**

Act No. 73 of 2003

Queensland



SECOND-HAND DEALERS AND PAWNBROKERS ACT 2003

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Queensland



**Second-hand Dealers and Pawnbrokers
Act 2003**

Act No. 73 of 2003

**An Act to regulate the activities of second-hand dealers and
pawnbrokers, and for other purposes**

[Assented to 22 October 2003]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Second-hand Dealers and Pawnbrokers Act 2003*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Objectives of Act

The main objectives of this Act are to—

- (a) regulate the activities of second-hand dealers and pawnbrokers; and
- (b) deter crime in the second-hand property market; and
- (c) help protect consumers from purchasing stolen property.

PART 2—INTERPRETATION

4 Definitions

The dictionary in schedule 3 defines particular words used in this Act.

5 Meaning of “associate” and “effective control”

(1) An “**associate**” of an applicant for a licence or a licensee is a person who is not the applicant or licensee but is, or would be if the licence were granted, renewed or restored, in effective control of the applicant’s or licensee’s business at a place.

(2) A person who is in “**effective control**” of a business, includes a person who—

- (a) is regularly or usually in charge of the business; or
- (b) regularly directs staff of the business in their duties; or
- (c) is in a position to control or influence the business in a substantial way.

(3) If an applicant for a licence or a licensee is a corporation, each executive officer of the corporation is taken to be an “**associate**” of the applicant or licensee.

PART 3—LICENCES

Division 1—Requirement to be licensed

6 Acting as licensee

(1) A person must not carry on a business of dealing in second-hand property or act as a market operator unless the person is a second-hand dealer.

Maximum penalty—200 penalty units.

(2) However, the following persons do not contravene subsection (1)—

- (a) a pawnbroker to the extent the person may lawfully deal with second-hand property under the person’s licence under this Act;
- (b) an auctioneer, motor dealer or motor salesperson under the *Property Agents and Motor Dealers Act 2000* to the extent the person may lawfully deal with second-hand property under the person’s licence under that Act;
- (c) a dealer under the *Weapons Act 1990* to the extent the person may lawfully deal with second-hand property under the person’s licence under that Act;
- (d) a person dealing in second-hand property to the extent the dealing is part of a business that involves acquiring property and hiring the property to others;

- (e) a person dealing in second-hand property for a charity registered under the *Collections Act 1966*;
- (f) a charity, religious denomination, or an organisation formed for a community purpose, within the meaning of the *Collections Act 1966*;
- (g) a local government;
- (h) an authorised deposit-taking institution under the *Banking Act 1959* (Cwlth);
- (i) a company registered under the *Life Insurance Act 1995* (Cwlth);
- (j) a trustee company under the *Trustee Companies Act 1968*.

(3) A person must not carry on a business of advancing, on interest or in expectation of profit or reward, an amount on the principal or collateral security of property taken by the person as a pawn unless the person is a pawnbroker.

Maximum penalty—200 penalty units.

(4) However, the following persons making advances in the ordinary course of banking or mercantile transactions on the security of property taken as a pawn do not contravene subsection (3)—

- (a) an auctioneer under the *Property Agents and Motor Dealers Act 2000*;
- (b) an authorised deposit-taking institution under the *Banking Act 1959* (Cwlth);
- (c) a broker, commission agent or merchant.

Division 2—Suitability of applicants and licensees

7 Suitability of applicants and licensees

(1) A person is not a suitable person to hold a licence if the person, or an associate of the person—

- (a) is an individual under 18 years; or
- (b) is an insolvent under administration; or
- (c) has been convicted of a disqualifying offence within the last 5 years; or

(d) is a corporation that is an externally-administered body corporate.

(2) A person who is not a suitable person may not hold a licence.

(3) In this section—

“externally-administered body corporate” has the meaning given by the Corporations Act, section 9.

“insolvent under administration” has the meaning given by the Corporations Act, section 9.

8 Investigations about suitability of applicants and licensees

(1) The chief executive may make investigations about the following persons to help decide whether an applicant for a licence or licensee is a suitable person to hold a licence—

- (a) the applicant or licensee;
- (b) an associate of the applicant or licensee.

(2) If the chief executive makes investigations under subsection (1), the chief executive must ask the commissioner of the police service for a written report about the criminal history of any of the persons.

(3) The commissioner must give the report to the chief executive.

(4) The report is required to contain only criminal history in the commissioner’s possession or to which the commissioner has access.

9 Criminal history is a confidential document

(1) An officer, employee or agent of the department must not, directly or indirectly, disclose to anyone else a report, or information contained in the report, given under section 8.

Maximum penalty—100 penalty units.

(2) However, the person does not contravene subsection (1) if—

- (a) disclosure of the report or information to someone else is authorised by the chief executive to the extent necessary to perform a function under this Act; or
- (b) the disclosure is otherwise required or permitted by law.

(3) The chief executive must destroy the report as soon as practicable after considering the applicant or licensee's suitability to hold a licence.

Division 3—Applying for, renewing or restoring a licence

10 Application for licence

(1) A person may apply to the chief executive for a licence.

(2) The application must—

- (a) be in the approved form; and
- (b) include the following information—
 - (i) whether the licence is for 1 or both of the following types of business—
 - (A) a second-hand dealer;
 - (B) a pawnbroker;
 - (ii) whether the licence is sought for a term of 1 or 3 years;
 - (iii) each place the applicant intends to carry on business under the licence;
 - (iv) the names and addresses of the applicant's associates; and
- (c) be accompanied by the fee prescribed under a regulation.

11 Principal place of business

(1) If the applicant intends to carry on business at more than 1 place, the applicant must specify in the application the place the applicant intends to be the applicant's principal place of business.

(2) If the applicant intends to carry on business at a location, the applicant must specify, as the applicant's principal place of business—

- (a) for an application for a second-hand dealer's licence—an address where the applicant's transactions register is to be maintained and may be inspected; or
- (b) for an application for a pawnbroker's licence—an address where the applicant's property register is to be maintained and may be inspected, and property taken as a pawn is located.

(3) A place of business or an address under this section must be a place where a document may be served personally.

Example—

A post office box is not a place the applicant may use as a place of business or an address for this Act.

12 Decision on application for a licence

(1) The chief executive must consider an application for a licence and—

- (a) grant the licence, with or without conditions; or
- (b) refuse to grant the licence.

(2) However, the chief executive must refuse to grant the application if the chief executive is not satisfied the applicant is a suitable person to hold the licence.

(3) If the chief executive decides to grant the licence, the chief executive must—

- (a) grant the licence for the term stated in the application for the licence; and
- (b) give the applicant the licence.

(4) If the chief executive decides to grant the licence with a condition or to refuse to grant the licence, the chief executive must give the applicant an information notice within 14 days after the decision is made.

13 Renewal of licence

(1) A licensee may apply to the chief executive to renew the licensee's licence before the licence expires.

(2) The application must—

- (a) be in the approved form; and
- (b) state whether the licence is sought for a term of 1 or 3 years; and
- (c) state the names and addresses of the associates of the applicant; and
- (d) be accompanied by the fee prescribed under a regulation.

14 Restoration of licence

(1) If a licence expires, the person who was the holder of the licence may, within 14 days after the licence expires, apply to the chief executive to restore the licence.

(2) The application must—

- (a) be in the approved form; and
- (b) state whether the licence is sought for a term of 1 or 3 years; and
- (c) state the names and addresses of the associates of the applicant; and
- (d) be accompanied by the fee prescribed under a regulation.

15 Decision on application for renewal or restoration of a licence

(1) The chief executive must consider an application for renewal or restoration of a licence and—

- (a) grant the renewal or restoration of the licence, with or without conditions; or
- (b) refuse to grant the renewal or restoration of the licence.

(2) However, the chief executive must refuse the application if the chief executive is not satisfied the applicant is a suitable person to hold a licence.

(3) If the chief executive decides to grant the renewal or restoration of the licence, the chief executive must grant the renewal or restoration for the term stated in the application.

(4) If the chief executive decides to refuse to grant the renewal or restoration of the licence, the chief executive must give the applicant an information notice within 14 days after the decision is made.

16 Licence continues pending decision about renewal

(1) If a licensee applies for renewal of a licence under section 13, the licence is taken to be in force from the time it would, apart from this subsection, have expired until the day on which any of the following first happens—

- (a) the chief executive renews the licence;

- (b) if the chief executive decides to refuse to grant the renewal, the chief executive gives the licensee an information notice under section 15(4);
- (c) the licensee is taken to have withdrawn the application under section 18(2).

(2) If the chief executive renews the licence, the licence is taken to have been renewed from the time it would, apart from subsection (1), have expired.

(3) Subsection (1) does not apply if the licence is earlier cancelled or suspended.

17 Licence continues pending decision about restoration

(1) If a licensee applies for restoration of a licence under section 14, the licence is taken to be in force from the time the licence expired until the day on which any of the following first happens—

- (a) the chief executive restores the licence;
- (b) if the chief executive decides to refuse to grant the restoration, the chief executive gives the licensee an information notice about the decision under section 15(4);
- (c) the licensee is taken to have withdrawn the application under section 18(2).

(2) If the chief executive restores the licence, the licence is taken to have been restored from the time it expired.

(3) Subsection (1) does not apply if the licence is earlier cancelled or suspended.

18 Requirement to give chief executive information

(1) The chief executive may by signed notice require an applicant under this part to give the chief executive information or documents the chief executive reasonably considers are needed, to consider the applicant's application, within a stated reasonable period of at least 14 days.

(2) If the applicant fails to comply with the chief executive's requirement within the stated reasonable period, the applicant is taken to have withdrawn the application.

Division 4—Suspending, cancelling, refusing to renew or restore, or imposing conditions on a licence

19 Grounds for suspending, cancelling, refusing to renew or restore, or imposing conditions on a licence

(1) Each of the following is a ground for suspending, cancelling, refusing to renew or restore, or imposing a condition on a licence—

- (a) the licence was obtained because of incorrect or misleading information;
- (b) the licensee or an associate of the licensee has failed to comply with a condition of the licence;
- (c) the licensee or an associate of the licensee has been convicted of an offence against this Act, the repealed Act or a law of another State that provides for the same matter as this Act within the last 5 years;
- (d) the licensee is no longer suitable person to hold a licence.¹

(2) In this section—

“repealed Act” means the *Second-hand Dealers and Collectors Act 1984* or the *Pawnbrokers Act 1984*.

20 Procedure for suspending, cancelling, refusing to renew or restore, or imposing conditions on a licence

(1) If the chief executive believes reasonable grounds exist to suspend, cancel, refuse to renew or restore, or impose a condition on a licence (the **“action”**), the chief executive must give the licensee a notice (the **“show cause notice”**) that—

- (a) states the action proposed and—
 - (i) if the proposed action is to suspend the licence—states the proposed suspension period; and
 - (ii) if the proposed action is to impose a condition on a licence—states the proposed condition; and
- (b) states the grounds for proposing to take the action; and

¹ See section 7 (Suitability of applicants and licensees).

- (c) outlines the facts and circumstances that form the basis for the chief executive's belief; and
 - (d) invites the licensee to make written representations, within a stated time of not less than 28 days, why the action proposed should not be taken.
- (2) If, after considering all written representations made within the stated time, the chief executive still believes grounds exist to take the action, the chief executive may—
- (a) if the show cause notice stated the action proposed was to suspend the licence for a stated period—suspend the licence for a period not longer than the stated period; or
 - (b) if the show cause notice stated the action proposed was to cancel the licence—
 - (i) cancel the licence; or
 - (ii) suspend the licence for a period; or
 - (c) if the show cause notice stated the action proposed was not to renew or restore the licence—
 - (i) refuse to renew or restore the licence; or
 - (ii) refuse to renew or restore the licence for a period; or
 - (d) if the show cause notice stated the action proposed was to impose a condition on a licence—impose the condition on the licence, or impose another condition on the licence to which the licensee has consented in writing.
- (3) The chief executive must give the licensee an information notice within 14 days after the decision is made.
- (4) The decision takes effect on the later of the following—
- (a) the day on which the notice is given to the licensee;
 - (b) the day stated in the notice.

21 Return of licence

(1) If the chief executive decides to suspend, cancel, refuse to renew or restore, or impose a condition on a licensee's licence, the licensee must,

within 14 days of the chief executive's decision taking effect,² return the licence to the chief executive unless—

- (a) the chief executive gives the licensee written consent for the licensee to keep the licence for a period; or
- (b) the licensee has a reasonable excuse for not returning the licence.

Maximum penalty—100 penalty units.

(2) If a licence returned to the chief executive after suspension is still current at the end of the suspension period, the chief executive must return the licence to the licensee.

(3) If a licence is returned to the chief executive after a condition is imposed on the licence, the chief executive must give the licensee another copy of the licence stating the condition.

Division 5—Other provisions about licences

22 Condition that licensee comply with local laws

It is a condition of a licence that the licensee comply with a local law about the carrying on of the licensee's business under the licence.

23 Condition that second-hand dealer not enter or remain at premises

It is a condition of a second-hand dealer's licence that the second-hand dealer, when acquiring property for the second-hand dealer's business from a person at premises, not enter or remain at the premises without the permission of the owner or occupier of the premises.

24 Authorised place

A place is an “**authorised place**” for a licence if—

- (a) the licensee's application for the licence under section 10 stated that the licensee intended to carry on business at the place; or

² See section 20(4) (Procedures for suspending, cancelling, refusing to renew or restore, or imposing conditions on a licence).

- (b) the place is a place approved by the chief executive under section 25 as an authorised place for the licence.

25 Change of authorised place

(1) A licensee may apply to the chief executive to approve a place as an authorised place for the licensee's licence.

(2) The application must be in the approved form and be accompanied by the fee prescribed under a regulation.

(3) The licensee must indicate in the application—

- (a) whether the place is to be the licensee's principal place of business; and
- (b) whether the licensee intends to continue to carry on business at each other approved place for the licence.

(4) The chief executive must consider each application and—

- (a) approve the place as an authorised place for the licence, with or without conditions; or
- (b) refuse to approve the place as an authorised place for the licence.

(5) If the chief executive decides to refuse to approve the place as an authorised place for the licence, the chief executive must give the applicant an information notice.

(6) If the chief executive approves the application, the licensee must, within 7 days of the licensee receiving notice of the approval, give the chief executive the licensee's licence.

Maximum penalty—50 penalty units.

(7) If the chief executive is given a licence under subsection (6), the chief executive must give the licensee another copy of the licence stating the authorised place approved by the chief executive for the licence.

26 Licence to include particular information

(1) A licence must include the following information—

- (a) each authorised place for the licence;
- (b) any condition imposed on the licence by the chief executive.

(2) However, if the licence is issued to a licensee for carrying on business at a location, the licence must state—

- (a) for a licence to carry on business as a second-hand dealer—an address where the licensee's transactions register is to be maintained and may be inspected; or
- (b) for a licence to carry on business as a pawnbroker—an address where the licensee's property register is to be maintained and may be inspected, and property taken as a pawn is located.

27 Change of licensee's home address

(1) If a licensee changes the licensee's home address or an address mentioned in section 26(2)(a) or (b), the licensee must, within 7 days after the change, give the chief executive—

- (a) signed notice of the change; and
- (b) if the licensee carries on business under the licence at a location, the licensee's licence.

Maximum penalty—50 penalty units.

(2) If the chief executive is given a licence under subsection (1)(b) and is satisfied of the correctness of the change, the chief executive must give the licensee another copy of the licence stating the new address.

28 Licence to be kept on premises or with licensee

(1) If a licence authorises the licensee to carry on business under the licence at premises, the licensee must keep the licence or a copy of it at the premises stated in the licence.

Maximum penalty—100 penalty units.

(2) If a licence authorises the licensee to carry on business under the licence at a location, the licensee must carry the licence or a copy of it when carrying on business at the location.

Maximum penalty—100 penalty units.

29 Change of associate

(1) Subsection (2) applies if either of the following events happen—

- (a) a person becomes an associate of a licensee;

(b) a person stops being an associate of a licensee.

(2) The licensee must give the chief executive signed notice of the event, within 14 days after the day it happens.

Maximum penalty—50 penalty units.

30 Licensee must give notice if licence lost, stolen, destroyed or damaged

If a licensee's licence is lost, stolen, destroyed or damaged in a way that requires its replacement, the licensee must give the chief executive signed notice as soon as practicable after becoming aware the licence is lost, stolen, destroyed or damaged in a way that requires its replacement.

Maximum penalty—50 penalty units.

31 Replacement of lost, stolen, destroyed or damaged licence

(1) A licensee may, by signed application, request the chief executive replace a licence that is lost, stolen, destroyed or damaged in a way that requires its replacement.

(2) The application must be accompanied by the fee prescribed under a regulation.

(3) The chief executive must consider each application and—

- (a) replace the licence; or
- (b) refuse to replace the licence.

(4) The chief executive must replace the licence if the chief executive is satisfied the licence has been lost, stolen, destroyed or damaged in a way that requires its replacement.

(5) If the chief executive decides to refuse to replace the licence, the chief executive must give the applicant an information notice.

32 Surrender of licence

(1) A licensee may surrender the licensee's licence by signed notice given to the chief executive.

(2) The surrender of the licence takes effect on the day the notice of surrender is given to the chief executive or, if a later day of effect is stated in the notice, the later day.

(3) The licensee must return the licence to the chief executive within 14 days after surrender takes effect, unless the licensee has a reasonable excuse.

Maximum penalty for subsection (3)—20 penalty units.

33 Return of expired licence

A licensee must return the licensee's licence to the chief executive, within 14 days after the licence expires, unless—

- (a) the licensee has applied for the renewal or restoration of the licence under section 13 or 14,³ and the application has not been decided by the chief executive; or
- (b) the licensee has a reasonable excuse.

Maximum penalty—20 penalty units.

34 Licence not transferable

A licence can not be assigned or transferred to another person.

PART 4—CONDUCT OF BUSINESS

Division 1—Second-hand dealers

35 Where business may be carried on

(1) A second-hand dealer must not carry on business as a second-hand dealer at a place other than an authorised place.

Maximum penalty—200 penalty units.

(2) However, the second-hand dealer does not contravene subsection (1) if the second-hand dealer is—

- (a) acquiring second-hand property from a person; or

3 Sections 13 (Renewal of licence) or 14 (Restoration of licence)

- (b) carrying on business at a public auction conducted by an auctioneer licensed under the *Property Agents and Motor Dealers Act 2000*.

36 Second-hand dealer must identify place of business

A second-hand dealer must clearly display at each authorised place the second-hand dealer is carrying on business as a second-hand dealer—

- (a) the second-hand dealer's name in legible characters at least 50 mm high; and
- (b) the words 'licensed dealer in second-hand property' near the name of the second-hand dealer; and
- (c) if the person in effective control of the business at the place is an associate of the second-hand dealer—
 - (i) the associate's name in legible characters at least 50 mm high; and
 - (ii) the word 'associate' near the name of the associate.

Maximum penalty—50 penalty units.

37 Second-hand dealer must keep a transactions register

(1) A second-hand dealer must keep a printed or an electronic register of transactions ("**transactions register**"), in a way prescribed under a regulation, for each authorised place for the second-hand dealer's licence.

Maximum penalty—200 penalty units.

(2) The second-hand dealer must, before or immediately after each second-hand property transaction at an authorised place, enter in the transactions register for the place the particulars prescribed under a regulation for the transaction.

Maximum penalty—200 penalty units.

(3) A second-hand dealer must not separate second-hand property into parts to avoid entering the particulars for a second-hand property transaction.

Maximum penalty—200 penalty units.

(4) If the second-hand property transaction happens at a place other than an authorised place, the second-hand dealer must, as soon as practicable

after the transaction, enter in the transactions register for the second-hand dealer's principal place of business the particulars prescribed under a regulation for the transaction.

Maximum penalty—200 penalty units.

(5) In this section—

“second-hand property transaction” means a transaction for the acquisition, sale or disposal of—

- (a) second-hand property with a resale value of at least \$55; or
- (b) second-hand property that is jewellery, contains precious metals or is property that may be identified by—
 - (i) a make, model or serial number on the property; or
 - (ii) an inscription.

38 Place transactions register to be kept

(1) Subsection (2) applies if a second-hand dealer is authorised to carry on business under the second-hand dealer's licence at premises.

(2) The second-hand dealer must keep the transactions register for the premises at the premises.

Maximum penalty—100 penalty units.

(3) Subsection (4) applies if a second-hand dealer is authorised to carry on business under the second-hand dealer's licence at a location and the second-hand dealer is not carrying on business as a second-hand dealer at the location.

(4) The second-hand dealer must keep the transactions register for the location at the address stated on the licence under section 26(2)(a).⁴

Maximum penalty—100 penalty units.

39 Second-hand dealer must give information to commissioner of police service

A second-hand dealer must give the commissioner of the police service the particulars prescribed under a regulation from the second-hand dealer's

4 Section 26 (Licence to include particular information)

transaction register in the way, and within the period, prescribed under a regulation.

Maximum penalty—200 penalty units.

40 False or misleading entries in transactions register

A person must not make a false or misleading entry in a transactions register.

Maximum penalty—200 penalty units.

41 Person must not alter transactions register

(1) A person must not remove an entry in a transactions register.

Maximum penalty—200 penalty units.

(2) If a second-hand dealer finds an error in an entry in the second-hand dealer's transaction register, the second-hand dealer may correct the entry by making a new entry for the transaction in the transactions register.

(3) In this section—

“**remove**” includes alter, disguise, erase and make illegible or unintelligible.

42 Employees must not be under 17

A second-hand dealer must not employ a person under 17 years to acquire second-hand property.

Maximum penalty—200 penalty units.

43 Second-hand dealer taken to be in possession of second-hand property

(1) A second-hand dealer is taken to be in possession of second-hand property located at a place other than a place stated on the second-hand dealer's licence if—

- (a) the property is found in a place occupied by the second-hand dealer; or
- (b) the property is under the control of the second-hand dealer; or

- (c) the second-hand dealer did not sell the property in good faith and the property has been moved to another place.

(2) Subsection (1) applies unless the contrary is proven.

44 Second-hand dealer to keep property for 7 days

If a second-hand dealer acquires nominated property, the second-hand dealer must keep the nominated property in the second-hand dealer's possession for 7 clear working days after acquiring it.

Maximum penalty—200 penalty units.

45 Second-hand dealer must not acquire property from particular persons

(1) A second-hand dealer must not directly or indirectly acquire second-hand property from a person under 17 years, or who is under the influence of alcohol or a drug.

Maximum penalty—200 penalty units.

(2) The second-hand dealer does not contravene subsection (1) if the second-hand dealer believed, on reasonable grounds, that—

- (a) for property acquired from a person under 17 years—the person was at least 17 years; or
- (b) for property acquired from a person under the influence of alcohol or a drug—the person was not under the influence of alcohol or a drug.

46 When a second-hand dealer may acquire property

(1) A second-hand dealer must not acquire second-hand property from a person at the person's home—

- (a) on a Sunday or public holiday; or
- (b) otherwise—between 6 p.m. and 7 a.m.

Maximum penalty—200 penalty units.

(2) However, the second-hand dealer does not contravene subsection (1) if the second-hand dealer obtains the person's consent for the property to be acquired at least 1 day before the day the property is acquired.

47 Second-hand dealer must ask for information

A second-hand dealer must, before acquiring second-hand property from a person, obtain from the person the following information—

- (a) the person's name and address;
- (b) verification of the person's name and address;
- (c) whether or not the person is the owner of the property;
- (d) if the person is not the owner of the property—
 - (i) the name and address of the owner; and
 - (ii) how the person acquired the property.

Maximum penalty—200 penalty units.

48 Second-hand dealer to inform police about stolen property

(1) Subsection (2) applies if a second-hand dealer acquires second-hand property that may be property described as stolen or unlawfully obtained in written, printed or oral information given to the second-hand dealer by a police officer or another person.

(2) The second-hand dealer must advise a police officer about the property, as soon as practicable after becoming aware that the property may be stolen or unlawfully obtained.

Maximum penalty—200 penalty units.

49 Second-hand dealer to produce licence if asked

(1) This section applies if a person—

- (a) acquires or intends to acquire second-hand property from a second-hand dealer; or
- (b) disposes of or intends to dispose of second-hand property to a second-hand dealer.

(2) The person may, immediately before or within 24 hours after acquiring or disposing of the property, ask the second-hand dealer to show the person the second-hand dealer's licence.

(3) The second-hand dealer must show the person the licence.

Maximum penalty for subsection (3)—50 penalty units.

50 Holding out place as second-hand dealer's business

A person must not hold out a place as being a place where a second-hand dealer carries on business if the place is not an authorised place for a second-hand dealer.

Maximum penalty—200 penalty units.

Division 2—Pawnbrokers

51 Where business may be carried on

A pawnbroker must not carry on business as a pawnbroker at a place other than an authorised place.

Maximum penalty—200 penalty units.

52 Pawnbroker must identify place of business

A pawnbroker must clearly display at each authorised place the pawnbroker is carrying on business as a pawnbroker—

- (a) the pawnbroker's name in legible characters at least 50 mm high; and
- (b) the words 'licensed pawnbroker' near the name of the pawnbroker; and
- (c) if a person in effective control of the business at a place is an associate of the pawnbroker—
 - (i) the associate's name in legible characters at least 50 mm high; and
 - (ii) the word 'associate' near the name of the associate.

Maximum penalty—50 penalty units.

53 Pawnbroker must keep a property register

(1) A pawnbroker must keep a printed or an electronic register of property taken as a pawn by the pawnbroker (“**property register**”) in a way prescribed under a regulation, for each authorised place for the pawnbroker’s licence.

Maximum penalty—200 penalty units.

(2) The pawnbroker must, before or immediately after the pawnbroker gives a person money for property taken as a pawn from the person, enter in the property register for the place the particulars prescribed under a regulation for the pawned property.

Maximum penalty—200 penalty units.

54 Place property register to be kept

(1) Subsection (2) applies if a pawnbroker is authorised to carry on business under the pawnbroker’s licence at premises.

(2) The pawnbroker must keep the property register for the premises at the premises.

Maximum penalty—100 penalty units.

(3) Subsection (4) applies if a pawnbroker is authorised to carry on business under the pawnbroker’s licence at a location and the pawnbroker is not carrying on business as a pawnbroker at the location.

(4) The pawnbroker must keep the property register for the location at the address stated on the licence under section 26(2)(b).

Maximum penalty—100 penalty units.

55 Pawnbroker must give information to commissioner of police service

A pawnbroker must give the commissioner of the police service the particulars prescribed under a regulation from the pawnbroker’s property register in the way, and within a period, prescribed under a regulation.

Maximum penalty—200 penalty units.

56 False and misleading entries in property register

A person must not make a false or misleading entry in a property register.

Maximum penalty—200 penalty units.

57 Person must not alter property register

(1) A person must not remove an entry in a property register.

Maximum penalty—200 penalty units.

(2) If a pawnbroker finds an error in an entry in the pawnbroker's property register, the pawnbroker may correct the entry by making a new entry for the transaction in the property register.

(3) In this section—

“**remove**” includes alter, disguise, erase and make illegible or unintelligible.

58 Pawnbroker must give a person a pawn ticket

(1) If a pawnbroker takes property as a pawn from a person, the pawnbroker must give the person a legible copy of the entry made in the pawnbroker's property register for the transaction (a “**pawn ticket**”).

Maximum penalty—200 penalty units.

(2) The pawn ticket must include the number allotted to the entry and the name of the pawnbroker.

(3) The person has a right to receive a copy of the pawn ticket (a “**replacement pawn ticket**”) from the pawnbroker, if the person is able to prove to the satisfaction of the pawnbroker, by declaration under the *Oaths Act 1867* or in another way—

- (a) the person's identity; and
- (b) the pawn ticket was lost, destroyed or stolen.

59 Presumption of right to redeem

(1) This section applies if a person asks to redeem property taken as a pawn by a pawnbroker and the person gives the pawnbroker a pawn ticket or a replacement pawn ticket for the property.

(2) The person is taken to be the owner of the ticket or to be acting under the authority of the owner.

(3) The person has a right to redeem the property unless—

- (a) the property has been seized under section 90⁵ or by a police officer, and has not been returned to the pawnbroker; or
- (b) before the pawnbroker gives the person the property, the pawnbroker is informed—
 - (i) by another person claiming to be the owner of the ticket that the ticket has been lost or taken without the other person's consent; or
 - (ii) by a credible person that the property has been stolen.

60 Pawnbroker must not sell property before redemption period expires

(1) A pawnbroker must not sell or dispose of property, taken by the pawnbroker as a pawn, before the redemption period expires for the property.

Maximum penalty—200 penalty units.

(2) The redemption period for property taken as a pawn is 3 months from the day the person pawned the property, or a longer period agreed between the pawnbroker and the person.

(3) If a redemption period longer than 3 months is agreed to, the pawnbroker must enter the agreed period in the property register for the transaction.

Maximum penalty for subsection (3)—20 penalty units.

61 Disposal of pawned property

(1) Subsection (2) applies if the redemption period for property taken as a pawn expires and the property is sold or disposed of.

(2) The pawnbroker must enter in the pawnbroker's property register the particulars prescribed under a regulation for the property.

Maximum penalty—200 penalty units.

5 Section 90 (Power to seize evidence)

62 If property is not redeemed within the redemption period

(1) Subsection (2) applies if—

- (a) a pawnbroker has advanced an amount less than \$40, or a higher amount prescribed under a regulation, for property taken by the pawnbroker as a pawn; and
- (b) the property has not been redeemed before the redemption period for the property expires.

(2) On expiry of the redemption period, the property becomes the property of the pawnbroker and the person who pawned the property loses all claim to the property.

(3) Subsection (4) applies if—

- (a) a pawnbroker has advanced an amount that is at least \$40, or a higher amount prescribed under a regulation, for property taken by the pawnbroker as a pawn; and
- (b) the property has not been redeemed before the redemption period for the property expires.

(4) On expiry of the redemption period, the pawnbroker may sell the property free of any claim by the person who pawned the property.

63 Sale of pawned property

(1) If a redemption period for pawned property expires and section 62(4) applies to the property, the property may be sold at the place where the pawn was taken or by public auction.

(2) At least 4 days before property is sold by public auction, the pawnbroker selling the property must give notice of the sale at least twice in a newspaper circulating generally in the area the property was pawned.

Maximum penalty—100 penalty units.

(3) The notice must describe the property to be sold and state when it was pawned.

64 Proceeds of sale of property

(1) A pawnbroker may deduct the following amounts from the proceeds of the sale of property under section 63—

- (a) the costs of selling the property;

- (b) the total of the following amounts—
- (i) the advance made by the pawnbroker on the security of the property;
 - (ii) the amount of interest the pawnbroker would have received if the property was redeemed on the last day of the redemption period for the property.

(2) If the proceeds of the sale of the property are more than the amounts deducted under subsection (1), the pawnbroker must pay the balance of the proceeds into a trust account maintained by the pawnbroker.

Maximum penalty—200 penalty units.

(3) The balance of the proceeds must be held in the trust account for the person who pawned the property for 12 months after the property is sold.

Maximum penalty—200 penalty units.

(4) If the balance of the proceeds is not claimed by or for the person who pawned the property within 12 months after the property is sold, the pawnbroker must give the balance to the public trustee to be placed in the unclaimed moneys fund and dealt with as unclaimed money.

Maximum penalty—200 penalty units.

65 Person may inspect property register

(1) Subsection (2) applies if a person gives a pawnbroker a pawn ticket or a replacement pawn ticket for property taken by the pawnbroker as a pawn from the person and the pawnbroker has sold or disposed of the property.

(2) The person may—

- (a) inspect the property register containing the entry for the property; and
- (b) make a copy of the entry.

66 Recovery rights if pawn wrongly sold or disposed of

(1) This section applies if a pawnbroker sells or disposes of property taken by the pawnbroker as a pawn before the redemption period expires for the property.

(2) The person who pawned the property may recover from the pawnbroker as a debt—

- (a) if the pawnbroker sells the property, the greater of—
 - (i) the fair value of the property when it was sold; and
 - (ii) the gross proceeds of the sale; or
- (b) if the pawnbroker disposes of the property other than by sale—the fair value of the property when it was disposed of.

(3) The court in which the person starts the action for debt may award the person the costs the court considers reasonable.

(4) The person may recover an amount under this section whether or not the pawnbroker is charged with an offence against section 60.⁶

67 Employees must not be under 17

A pawnbroker must not employ a person under 17 years to take property as a pawn.

Maximum penalty—200 penalty units.

68 Pawnbroker taken to be in possession of property

(1) A pawnbroker is taken to be in possession of property located at a place other than a place stated on a pawnbroker's licence if—

- (a) the property is found in a place occupied by the pawnbroker; or
- (b) the property is under the control of the pawnbroker; or
- (c) the pawnbroker did not sell the property in good faith and the property has been moved to another place.

(2) Subsection (1) applies unless the contrary is proven.

69 Pawnbroker must not acquire property from particular persons

(1) A pawnbroker must not directly or indirectly take property as a pawn from a person under 17 years, or who is under the influence of alcohol or a drug.

⁶ Section 60 (Pawnbroker must not sell property before redemption period expires)

Maximum penalty—200 penalty units.

(2) The pawnbroker does not contravene subsection (1) if the pawnbroker believed, on reasonable grounds, that—

- (a) for property acquired from a person under 17 years—the person was at least 17 years; or
- (b) for property acquired from a person under the influence of alcohol or a drug—the person was not under the influence of alcohol or a drug.

70 Pawnbroker must ask for information

A pawnbroker must, before taking property as a pawn, obtain from the person pawning the property the following information—

- (a) the person's name and address;
- (b) verification of the person's name and address;
- (c) whether or not the person is the owner of the property;
- (d) if the person is not the owner of the property—
 - (i) the name and address of the owner; and
 - (ii) how the person acquired the property.

Maximum penalty—200 penalty units.

71 Pawnbroker to inform police about stolen property

(1) Subsection (2) applies if a pawnbroker acquires property that may be property described as stolen or unlawfully obtained in written, printed or oral information given to the pawnbroker by a police officer or another person.

(2) The pawnbroker must advise a police officer about the property, as soon as practicable after becoming aware that the property may be stolen or unlawfully obtained.

Maximum penalty—200 penalty units.

72 Pawnbroker to produce licence if asked

(1) This section applies if a person—

- (a) acquires or intends to acquire property from a pawnbroker; or
- (b) pawns or intends to pawn property to a pawnbroker.

(2) The person may, immediately before or within 24 hours after acquiring or pawning the property, ask the pawnbroker to show the person the pawnbroker's licence.

(3) The pawnbroker must show the person the licence.

Maximum penalty for subsection (3)—50 penalty units.

73 Holding out place as pawnbroker's business

A person must not hold out a place as being a place where a pawnbroker carries on business if the place is not an authorised place for a pawnbroker.

Maximum penalty—200 penalty units.

74 Disposal of pledges if licence cancelled or not renewed

If the chief executive cancels or refuses to renew a pawnbroker's licence, a person may apply to a Magistrates Court for an order to dispose of property taken as a pawn under the licence in a way the court considers appropriate.

PART 5—ENFORCEMENT

Division 1—Authorised officers

75 Appointment and qualifications

(1) The chief executive may appoint an officer of the department to be an authorised officer.

(2) However, the chief executive may appoint a person as an authorised officer only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

76 Appointment conditions and limit on powers

(1) An authorised officer holds office on any conditions stated in—

- (a) the authorised officer's instrument of appointment; or
- (b) a signed notice given to the authorised officer; or
- (c) a regulation.

(2) The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the authorised officer's powers under this Act.

(3) In this section—

“**signed notice**” means a notice signed by the chief executive.

77 Issue of identity card

(1) The chief executive must issue an identity card to each authorised officer.

(2) The identity card must—

- (a) contain a recent photo of the authorised officer; and
- (b) contain a copy of the authorised officers signature; and
- (c) identify the person as an authorised officer under this Act; and
- (d) state a date for the card.

(3) This section does not prevent the issue of a single card to a person for this Act and other purposes.

78 Production or display of identity card

(1) In exercising a power under this Act in relation to a person, an authorised officer must—

- (a) produce the authorised officer's identity card for the person's inspection before exercising the power; or
- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), an authorised officer does not exercise a power in relation to a person only because the authorised officer has entered a place as mentioned in section 82(1)(b) or (2).

79 When authorised officer ceases to hold office

(1) An authorised officer ceases to hold office if any of the following happens—

- (a) the term of office stated in a condition of office ends;
- (b) under another condition of office, the authorised officer ceases to hold office;
- (c) the authorised officer’s resignation under section 80 takes effect.

(2) Subsection (1) does not limit the ways an authorised officer may cease to hold office.

(3) In this section—

“**condition of office**” means a condition on which the authorised officer holds office.

80 Resignation

An authorised officer may resign by signed notice given to the chief executive.

81 Return of identity card

A person who ceases to be an authorised officer must return the person’s identity card to the chief executive within 21 days after ceasing to be an authorised officer unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

Division 2—Powers of authorised officers***Subdivision 1—Entry of places*****82 Power to enter places**

(1) An authorised officer may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant; or
- (d) the place is an authorised place and is—
 - (i) open for business; or
 - (ii) otherwise open for entry; or
 - (iii) required to be open for inspection under the licence.

(2) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent or a warrant—

- (a) enter land around the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(3) Subsection (1)(d) does not authorise entry to a part of a place where a person resides.

Subdivision 2—Procedure for entry**83 Entry with consent**

(1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place under section 82(1)(a).

(2) Before asking for the consent, the authorised officer must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) the occupier has been told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the authorised officer consent to enter the place and exercise powers under this part; and
- (d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the authorised officer must immediately give a copy to the occupier.

(6) If—

- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
- (b) an acknowledgment complying with subsection (4) is not produced in evidence for the entry;

the onus of proof is on the person relying on the lawfulness of the entry to prove that the occupier consented.

84 Application for warrant

(1) An authorised officer may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

85 Issue of warrant

(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is at the place, or, within the next 7 days, may be at the place.

(2) The warrant must state—

- (a) that a stated authorised officer may, with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry; and
 - (ii) exercise the authorised officer’s powers under this part; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant’s issue, the warrant ends.

86 Special warrants

(1) An authorised officer may apply for a warrant (a “**special warrant**”) by phone, fax, radio or another form of communication if the authorised officer considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the authorised officer’s remote location.

(2) Before applying for the special warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised officer may apply for the special warrant before the application is sworn.

(4) After issuing the special warrant, the magistrate must immediately fax a copy (a “**facsimile warrant**”) to the authorised officer if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the authorised officer—

- (a) the magistrate must tell the authorised officer—
 - (i) what the terms of the special warrant are; and
 - (ii) the date and time the special warrant is issued; and
- (b) the authorised officer must complete a form of warrant (a “**warrant form**”) and write on it—
 - (i) the magistrate’s name; and
 - (ii) the date and time the magistrate issued the special warrant; and
 - (iii) the terms of the special warrant.

(6) The facsimile warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the other powers stated in the special warrant issued.

(7) The authorised officer must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the authorised officer completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the special warrant.

(9) If—

- (a) an issue arises in a proceeding about whether an exercise of power was authorised by a special warrant; and
- (b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

87 Warrants—procedure before entry

(1) This section applies if an authorised officer named in a warrant issued under this part for a place is intending to enter the place under the warrant.

(2) Before entering the place, the authorised officer must do, or make a reasonable attempt to do, the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the authorised officer's identity card or other document evidencing the authorised officer's appointment;
- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 86(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the authorised officer is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.

(3) However, the authorised officer need not comply with subsection (2) if the authorised officer believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

Subdivision 3—Powers after entry

88 General powers after entering places

(1) This section applies to an authorised officer who enters a place under this part.

(2) For monitoring or enforcing compliance with this Act, the authorised officer may—

- (a) search any part of the place; or
- (b) examine, inspect, photograph or film any part of the place or anything at the place; or
- (c) take a sample of anything at the place; or
- (d) take an extract from, or copy, a document at the place; or
- (e) take into or onto the place any person, equipment or material the authorised officer reasonably requires for exercising a power under this part; or

- (f) require the occupier of the place, or a person at the place, to give the authorised officer reasonable help to exercise the authorised officer's powers mentioned in paragraphs (a) to (e).

Example of paragraph (f)—

It may be reasonable for a person who can operate a computer to help an authorised officer access a document on the computer so it can be inspected.

(3) When making a requirement mentioned in subsection (2)(f), the authorised officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

(4) A person required to give reasonable help under subsection (2) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(5) If the help is required to be given to an authorised officer by—

- (a) answering a question; or
- (b) producing a document, other than a licence or a register required to be kept under this Act;

it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

89 Licensee to show licence if asked

(1) An authorised officer who enters a place under this part may ask a licensee to show the authorised officer the licensee's licence or a copy of the licence.

(2) The licensee must show the authorised officer the licence or a copy of the licence, unless the licensee has a reasonable excuse.

Maximum penalty—50 penalty units.

Subdivision 4—Power to seize evidence

90 Power to seize evidence

(1) An authorised officer who enters a place under this part other than under a warrant may seize a thing in the place if—

- (a) the authorised officer reasonably believes the thing is evidence of an offence against this Act; and
- (b) for an entry made with the occupier's consent, seizure of the thing is consistent with the purpose of entry as told to the occupier.

(2) An authorised officer who enters a place under a warrant may seize the evidence for which the warrant was issued.

(3) An authorised officer entering a place under this part may also seize anything else in the place if the authorised officer reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to commit, continue or repeat the offence.

91 Receipt for seized things

(1) As soon as possible after an authorised officer seizes a thing (“**seized thing**”), the authorised officer must give a receipt for the seized thing to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at the place of seizure, in a reasonably secure way and in a conspicuous position.

(3) The receipt must describe generally each seized thing and its condition.

(4) This section does not apply to a seized thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

92 Access to seized things

(1) Until a seized thing is returned, an authorised officer must allow a person who would be entitled to the seized thing, if it were not in the authorised officer's possession, to inspect it and, if it is a document, to take extracts from it or copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

93 Return of seized things

(1) An authorised officer must return a seized thing to the person entitled to the possession of the thing at the end of—

- (a) 1 year; or
- (b) if a proceeding for an offence involving it is started within 1 year— the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), the authorised officer must immediately return the seized thing to the person entitled to the possession of the thing if the authorised officer is satisfied that—

- (a) its retention as evidence is no longer necessary; and
- (b) its return is not likely to result in its use in repeating an offence against this Act.

94 Compensation

(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this part.

(2) Payment of compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against this Act brought against the person making the claim for compensation.

(3) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

*Subdivision 5—Power to require information***95 Power to require name and address**

(1) This section applies if an authorised officer—

- (a) finds a person committing an offence against this Act; or

- (b) finds a person in circumstances that lead, or has information that leads, the authorised officer to reasonably suspect the person has just committed an offence against this Act.

(2) The authorised officer may require the person to state the person's name and address.

(3) When making the requirement, the authorised officer must warn the person it is an offence to fail to state the person's name or address, unless the person has a reasonable excuse.

(4) The authorised officer may require the person to give evidence of the correctness of the stated name or address if the authorised officer reasonably suspects the stated name or address is false.

(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(6) A person does not commit an offence against subsection (5) if—

- (a) the person was required to state the person's name and address by an authorised officer who suspected the person had committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

PART 6—GENERAL OFFENCES, LEGAL PROCEEDINGS AND APPEALS

Division 1—General offences

96 False or misleading information

(1) A person must not give information to the chief executive or an authorised officer that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to information given in a document if the person when giving the document—

- (a) informs the chief executive or the authorised officer, to the best of the person's ability, how the information is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the information was 'false or misleading', without specifying whether it was false or was misleading.

97 Obstruction of authorised officers

(1) A person must not obstruct an authorised officer, or someone helping an authorised officer, in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) If a person obstructs an authorised officer in the exercise of a power under this Act and the authorised officer decides to exercise the power, the authorised officer must first warn the person that—

- (a) it is an offence to obstruct the authorised officer, unless the person has a reasonable excuse; and
- (b) the authorised officer considers the person's conduct is an obstruction.

(3) In this section—

“**obstruct**” includes hinder, resist and attempt to obstruct.

98 Forging a licence

(1) A person must not forge a licence.

Maximum penalty—200 penalty units.

(2) In this section—

“**forge**” see the Criminal Code, section 1.

99 Person not to possess a licence without reasonable excuse

(1) A person who is not a licensee must not, without a reasonable excuse, possess—

- (a) a licence; or
- (b) a document resembling a licence.

Maximum penalty—200 penalty units.

(2) A person who is not a licensee must not, without a reasonable excuse, possess a licence that has been—

- (a) cancelled or suspended; or
- (b) surrendered or expired.

Maximum penalty—

- (a) if paragraph (a) applies—100 penalty units; or
- (b) if paragraph (b) applies—20 penalty units.

100 Person not to use or allow another person to use a licence

A person must not—

- (a) use a licence issued to another person; or
- (b) allow a licence issued to the person to be used by another person.

Maximum penalty—200 penalty units.

101 Person not to alter a licence

A person must not, unless authorised under this Act, alter a licence.

Maximum penalty—200 penalty units.

Division 2—Legal proceedings

102 Proceeding for offence

(1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

(2) A proceeding may be started within the later of the following—

- (a) 1 year after the offence is committed;
- (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

103 Authorised officer may prosecute

An authorised officer may appear and act in court for the prosecution on a proceeding under this Act, whether or not the authorised officer is the complainant in the proceeding.

104 Evidence

(1) This section applies to a proceeding under this Act.

(2) Unless a party by reasonable notice requires proof, the appointment of an official, or the authority of an official to do anything under this Act, must be presumed.

(3) A signature purporting to be the signature of an official is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by an authorised officer and stating any of the following matters is evidence of the matter—

- (a) that a specified document is a licence, or a copy of a licence, granted under this Act;
- (b) that on a specified day, or during a specified period, a specified person was or was not a licensee;
- (c) that a licence—
 - (i) was or was not granted for a specified term; or
 - (ii) was or was not in force on a specified day or during a specified period; or
 - (iii) was or was not subject to a specified condition;
- (d) that a document is a copy of a document kept under this Act.

(5) Unless a party by reasonable notice requires proof, an entry in a book, register or record kept by or found at a person's premises, must be presumed to be made by or with the authority of the person.

(6) In this section—

“official” means—

- (a) the chief executive; or
- (b) the commissioner of the police service; or
- (c) an authorised officer.

105 Effect of conviction for dealing in or selling property obtained by fraud

(1) Subsection (2) applies if a licensee is convicted of an offence involving the licensee knowingly dealing in or selling property obtained by fraud or by a dishonest means.

(2) A court may, as well as imposing any other penalty on the licensee, do either or both of the following—

- (a) cancel the licensee's licence;
- (b) order that the licensee may not hold a licence for 5 years after the conviction.

106 Attempts to commit offences

A person who attempts to commit an offence against this Act commits an offence against this Act.

Maximum penalty—half the penalty for the completed offence.

Division 3—Appeals**107 Right to appeal to Magistrates Court**

(1) An applicant for a licence may appeal against a decision of the chief executive to refuse to grant the licence.

(2) A licensee may appeal against a decision of the chief executive to—

- (a) suspend a licence; or
- (b) cancel a licence; or
- (c) refuse to renew or restore a licence; or
- (d) impose a condition on a licence; or
- (e) refuse to replace a licence.

(3) The appeal may be made to the Magistrates Court nearest the place where the applicant or licensee resides or carries on, or proposes to carry on, business under the licence.

108 How to start appeal

(1) An appeal is started by—

- (a) filing a notice of appeal with the registrar of the Magistrates Court; and
- (b) serving a copy of the notice on the chief executive.

(2) The notice of appeal must be filed within 28 days after the appellant receives an information notice of the decision appealed against.

(3) The court may at any time extend the period for filing the notice of appeal.

(4) The notice of appeal must state the grounds of the appeal.

109 Stay of operation of decisions

(1) The court may grant a stay of a decision appealed against for the purpose of securing the effectiveness of the appeal.

(2) A stay—

- (a) may be granted on conditions the court considers appropriate; and
- (b) has effect for the period specified by the court; and
- (c) may be revoked or amended by the court.

(3) The period of a stay specified by the court must not extend past the time when the court decides the appeal.

110 Hearing procedures

(1) The procedure for an appeal to a Magistrates Court under this Act is to be in accordance with—

- (a) the rules of court for Magistrates Courts; or
- (b) in the absence of relevant rules, directions of the court.

(2) An appeal is to be by way of rehearing, unaffected by the chief executive's decision.

(3) In deciding an appeal, the court—

- (a) is not bound by the rules of evidence; and
- (b) must observe natural justice.

111 Powers of court on appeal

(1) In deciding an appeal, the court may—

- (a) confirm the decision appealed against; or
- (b) vary the decision; or
- (c) set aside the decision and substitute another decision; or
- (d) set aside the decision and return the matter to the chief executive with directions the court considers appropriate.

(2) The decision as varied or substituted may be any decision that the chief executive may make.

(3) If the court substitutes another decision, the substituted decision is, for the purposes of this Act other than this division, taken to be the chief executive's decision.

PART 7—GENERAL PROVISIONS**112 Executive officers must ensure corporation complies with Act**

(1) The executive officers of a corporation must ensure that the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has committed an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove that—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer took all

reasonable steps to ensure the corporation complied with the provision; or

- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

(5) For subsection (4)(a), it is sufficient for the executive officer to prove that the act or omission that was the offence was done or made without the officer's knowledge despite the officer having taken all reasonable steps to ensure the corporation complied with the provision.

113 Chief executive and authorised officers not civilly liable

(1) The chief executive or an authorised officer is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to the chief executive or an authorised officer, the liability attaches instead to the State.

114 Approval of forms

The chief executive may approve forms for use under this Act.

115 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may be made about any of the following matters—

- (a) fees, including refunding of fees;
- (b) the keeping of registers and other records by licensees;
- (c) duties of licensees;
- (d) conditions on licensees;
- (e) attaching or displaying names of licensees or associates to or on premises.

(3) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of the regulation.

PART 8—REPEALS AND CONSEQUENTIAL AMENDMENTS

116 Repeals

The following Acts are repealed—

- Pawnbrokers Act 1984 No. 12
- Second-hand Dealers and Collectors Act 1984 No. 59.

117 Consequential amendment

Schedule 2 amends the Acts it mentions.

PART 9—TRANSITIONAL PROVISIONS

Division 1—Interpretation

118 Definition for pt 8

In this part—

“**commencement**” means the commencement of this part.

Division 2—Transitional provisions for repeal of the Second-hand Dealers and Collectors Act 1984

119 Definition for div 2

In this division—

“**repealed Act**” means the repealed *Second-hand Dealers and Collectors Act 1984*.

120 Existing second-hand dealer's licence

(1) A second-hand dealer's licence in force under the repealed Act immediately before the commencement (a **“previous second-hand dealer's licence”**) is taken to be a second-hand dealer's licence under this Act.

(2) The licence—

- (a) is taken to be subject to conditions and restrictions in the same terms, as far as practicable, as the conditions and restrictions the previous second-hand dealer's licence was subject to; and
- (b) expires when the previous second-hand dealer's licence would have expired; and
- (c) must not be the subject of renewal, restoration or reinstatement under this Act.

121 Existing applications for previous licences

(1) If, before the commencement, an application was made under the repealed Act and the application had not been decided, the application must be decided by the chief executive as if the application were a similar application under this Act.

(2) In this section—

“application” means an application for—

- (a) a second-hand dealer's licence; or
- (b) renewal or restoration of a second-hand dealer's licence; or
- (c) replacement of a second-hand dealer's licence.

122 Notice of revocation

If, before the commencement, the chief executive gave a second-hand dealer a notice of revocation under the repealed Act, and the second-hand dealer's licence has not been revoked, the notice of revocation has effect as if the repealed Act had not been repealed.

123 Surrender notice

If, before the commencement, the chief executive gave a second-hand dealer a surrender notice under the repealed Act, and the surrender notice

has not had effect, the repealed Act has effect in relation to the notice as if the repealed Act had not been repealed.

124 Change of address

If, before the commencement, a second-hand dealer gave the chief executive written notice of a change of address, and the chief executive has not endorsed the second-hand dealer's licence with the change of address, the notice is taken to be a notice of change of address under this Act.

125 Nominated property

If a second-hand dealer received property mentioned in section 47A of the repealed Act within 7 clear working days before the commencement, section 47A of the repealed Act applies to the property as if the repealed Act had not been repealed.

126 Appeals to court

(1) Subsection (2) applies if a person appealed to a magistrates court under the repealed Act before commencement and the appeal has not been decided.

(2) The magistrates court may hear, or continue to hear, and decide the appeal under the repealed Act as if the repealed Act had not been repealed.

(3) Subsection (4) applies if a person could have appealed to a magistrates court under the repealed Act before commencement and the person had not appealed before the commencement.

(4) The person may appeal as provided under the repealed Act, and the magistrates court may hear and decide the appeal, as if the repealed Act had not been repealed.

127 Existing authorised officers

A person who held an appointment as an authorised officer under the repealed Act immediately before the commencement is taken to be appointed as an authorised officer under this Act.

128 References to repealed Act

In an Act or document, a reference to the repealed Act may, if the context permits, be taken as a reference to this Act.

Division 3—Transitional provisions for repeal of the Pawnbrokers Act 1984

129 Definition for div 3

In this division—

“**repealed Act**” means the repealed *Pawnbrokers Act 1984*.

130 Existing pawnbroker’s licence

(1) A pawnbroker’s licence in force under the repealed Act immediately before the commencement (a “**previous pawnbroker’s licence**”) is taken to be a pawnbroker’s licence under this Act.

(2) The licence—

- (a) is taken to be subject to conditions and restrictions in the same terms, as far as practicable, as the conditions and restrictions to which the previous pawnbroker’s licence was subject; and
- (b) expires when the previous pawnbroker’s licence would have expired; and
- (c) must not be the subject of renewal, restoration or reinstatement under this Act.

131 Existing applications for previous licences

(1) If, before the commencement, an application was made under the repealed Act and the application had not been decided, the application must be decided by the chief executive as if the application were an application under this Act.

(2) In this section—

“**application**” means an application for—

- (a) a pawnbroker’s licence; or

- (b) renewal or restoration of a pawnbroker's licence; or
- (c) replacement of a pawnbroker's licence.

132 Notice of revocation

If, before the commencement, the chief executive gave a pawnbroker a notice of revocation under the repealed Act, and the pawnbroker's licence has not been revoked, the notice of revocation has effect as if the repealed Act had not been repealed.

133 Surrender notice

If, before the commencement, the chief executive gave a pawnbroker a surrender notice under the repealed Act, and the surrender notice has not had effect, the notice has effect as if the repealed Act had not been repealed.

134 Change of address

If, before the commencement, a pawnbroker gave the chief executive written notice of a change of address, and the chief executive has not endorsed the pawnbroker's licence with the change of address, the notice is taken to be a notice of change of address under this Act.

135 Property pawned before the commencement

(1) The nominated sections of the repealed Act continue to apply to property taken as a pawn under the repealed Act before the commencement as if the repealed Act had not been repealed.

(2) In this section—

“**nominated sections**” means, to the extent that the sections are relevant, sections 32, 33, 34, 35, 36, 38, 42, 55, 56 and 63.

136 Appeals to court

(1) Subsection (2) applies if a person appealed to a magistrates court under the repealed Act before commencement and the appeal has not been decided.

(2) The magistrates court may hear, or continue to hear, and decide the appeal under the repealed Act as if the repealed Act had not been repealed.

(3) Subsection (4) applies if a person could have appealed to a magistrates court under the repealed Act before commencement and the person had not appealed before the commencement.

(4) The person may appeal as provided under the repealed Act, and the magistrates court may hear and decide the appeal, as if the repealed Act had not been repealed.

137 Existing authorised officers

A person who held an appointment as an authorised officer under the repealed Act immediately before the commencement is taken to be appointed as an authorised officer under this Act.

138 References to repealed Act

In an Act or document, a reference to the repealed Act may, if the context permits, be taken as a reference to this Act.

PART 10—AMENDMENT OF FUNERAL BENEFIT BUSINESS ACT 1982

139 Act amended in pt 10

This part amends the *Funeral Benefit Business Act 1982*.

140 Amendment of s 5 (Definitions)

(1) Section 5—

insert—

‘ **“authorised investment manager”** means an entity that carries on a business, regulated by Commonwealth or State legislation, of investing money for another person.

“benefit” means funeral benefit.

“funeral benefit agreement” means an agreement, for the supply of a funeral benefit, between a contributor and an entity.

“nominated property” see section 25.

“part 3 corporation” means a corporation to which repealed section 7 applied.

“part 4 corporation” means a corporation, other than a part 3 corporation, registered under this Act immediately before the commencement of the *Second-hand Dealers and Pawnbrokers Act 2003*, section 139, to carry on a funeral benefit business.

“registered corporation” means a part 3 corporation or part 4 corporation.

“repealed section 7” means section 7 as in force immediately before its repeal by the *Statute Law Revision Act 1995*, section 4, schedule 1 and to which, under section 5(3) and schedule 9 of that Act, the *Acts Interpretation Act 1954*, section 20A applies.’

(2) Section 5, definition **“approved form”**—

omit, insert—

‘ **“approved form”** means a form approved by the chief executive under section 88.’

(3) Section 5, definition **“contributor”**, ‘a corporation’—

omit, insert—

‘an entity’.

(4) Section 5, definition **“contributor”**, ‘such corporation’—

omit, insert—

‘the entity’.

(5) Section 5, definition **“corporation”**—

omit, insert—

‘ **“corporation”**—

(a) generally, has the meaning given by the Corporations Act, but does not include an exempt body within the meaning of that Act; and

(b) for part 5, see section 49.’

(6) Section 5, definition “**funeral benefit**”, ‘or “**benefit**”’—
omit.

141 Amendment of pt 3, hdg (Funeral benefit businesses of corporations registered at commencement of this Act)

Part 3, heading, ‘**FUNERAL BENEFIT BUSINESSES OF**’—
omit, insert—
‘**EXISTING AGREEMENTS WITH**’.

142 Insertion of new s 8

Part 3—
insert—

‘8 Application of pt 3

‘This part applies to a part 3 corporation in relation to funeral benefit agreements entered into by the corporation and in force immediately before the commencement of the *Second-hand Dealers and Pawnbrokers Act 2003*, section 139.’.

143 Amendment of s 14 (Benefits trust funds)

(1) Section 14(1), (2) and (3)—
insert—

‘Maximum penalty—2 penalty units.’.

(2) Section 14—
insert—

(4) An offence against subsection (1), (2) or (3) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (1), (2) or (3)—1 penalty unit.’.

144 Amendment of s 15 (Payment of moneys into the fund)

(1) Section 15(1)—

insert—

‘Maximum penalty—2 penalty units.’.

(2) Section 15—

insert—

‘(3) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.’.

145 Amendment of s 19 (Annual returns to be furnished by corporation)

Section 19—

insert—

‘Maximum penalty—2 penalty units.

‘(2) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.’.

146 Amendment of s 20 (Quinquennial valuation)

Section 20(3)—

insert—

‘Maximum penalty—2 penalty units.

‘(3A) An offence against subsection (3) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (3)—1 penalty unit.’.

147 Amendment of s 22 (Where assets more than sufficient to meet liabilities)

Section 22(3)—

insert—

‘Maximum penalty—2 penalty units.

‘(3A) An offence against subsection (3) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (3)—1 penalty unit.’.

148 Amendment of s 23 (Corporation to change rules)

Section 23(1)—

insert—

‘Maximum penalty—2 penalty units.

‘(1A) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.’.

149 Replacement of pt 4, hdg (Registration of corporations under this Act to carry on funeral benefit business)

Part 4, heading—

omit, insert—

**‘EXISTING AGREEMENTS WITH CORPORATIONS
REGISTERED AFTER THE COMMENCEMENT OF
THIS ACT’.**

150 Replacement of ss 24 to 31

Part 4, sections 24 to 31—

omit, insert—

‘24 Application of pt 4

‘This part applies to a part 4 corporation in relation to funeral benefit agreements entered into by the corporation and in force immediately before the commencement of the *Second-hand Dealers and Pawnbrokers Act 2003*, section 139.

‘25 Meaning of “nominated property”

“Nominated property”, for a part 4 corporation, means—

- (a) the property, if any, that was the corporation’s nominated property for section 31 (the “**repealed section**”) as in force immediately before its repeal by the *Second-hand Dealers and Pawnbrokers Act 2003*; and
- (b) property nominated under section 44(d) as nominated property or additional nominated property that would be nominated property for the repealed section were it not repealed.’.

151 Amendment of s 32 (Provisions to be contained in rules)

Section 32, from ‘The rules’ to ‘business shall’—

omit, insert—

‘The rules relating to the funeral benefit business of a part 4 corporation must’.

152 Omission of ss 33 to 35

Sections 33 to 35—

omit.

153 Amendment of s 36 (Certificate of registration)

(1) Section 36(1)—

omit.

(2) Section 36(2)—

insert—

‘Maximum penalty—2 penalty units.’.

(3) Section 36(2), as amended—

renumber as section 36(1).

(4) Section 36—

insert—

‘(2) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.’.

154 Omission of s 37 (Refusal of registration)

Section 37—

omit.

155 Amendment of s 38 (Funeral benefit business trust fund account)

(1) Section 38(1), ‘, upon registration, open and’—

omit.

(2) Section 38(2)(b)—

omit.

(3) Section 38(1) and (2)—

insert—

‘Maximum penalty—2 penalty units.’.

(4) Section 38(3) and (4)—

omit, insert—

‘(3) An offence against subsections (1) or (2) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (1) or (2)—1 penalty unit.’.

156 Amendment of s 39 (Funeral benefit business trust fund)

Section 39, from ‘or moneys paid’ to ‘section 34’—
omit.

157 Amendment of s 40 (Investment of moneys)

Section 40(3)—
omit, insert—

‘(3) Subject to subsection (6), a corporation must pay any interest, rent, dividend or other income or return derived from the investment of moneys under this section or from nominated property, immediately on its receipt, into the funeral benefit business trust fund account.

‘Maximum penalty—2 penalty units.

‘(3A) An offence against subsection (3) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.’.

158 Amendment of s 41 (Application of funeral benefit business trust fund)

(1) Section 41(7) and (8)—
insert—

‘Maximum penalty—2 penalty units.’.

(2) Section 41—
insert—

‘(12) An offence against subsection (7) or (8) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (7) or (8)—1 penalty unit.’.

159 Amendment of s 42 (Annual returns to be furnished by corporation)

Section 42—

insert—

‘Maximum penalty—2 penalty units.

‘(2) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.’.

160 Amendment of s 43 (Quinquennial valuation)

Section 43(3)—

insert—

‘Maximum penalty—2 penalty units.

‘(3A) An offence against subsection (3) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (3)—1 penalty unit.’.

161 Amendment of s 44 (Where assets insufficient to meet liabilities)

Section 44(d), ‘in accordance with section 31,’ and footnote—

omit, insert—

‘by a valuer.’.

162 Amendment of s 46 (Corporation to change rules)

Section 46(1)—

insert—

‘Maximum penalty—2 penalty units.

‘(1A) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.’.

163 Amendment of s 47 (Register of contributors)

(1) Section 47(1), (2), (3), (4), (5) and (6)—

insert—

‘Maximum penalty—2 penalty units.’.

(2) Section 47—

insert—

‘(7) An offence against subsection (1), (2), (3), (4), (5) or (6) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (1), (2), (3), (4), (5) or (6)—1 penalty unit.’.

164 Amendment of s 48 (Receipts)

Section 48—

insert—

‘Maximum penalty—2 penalty units.

‘(2) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.’.

165 Amendment of pt 5, hdg (Sale of funeral benefit businesses and cancellation of registration provisions)

Part 5, heading, after ‘**PROVISIONS**’—

insert—

‘**FOR PART 3 AND 4 CORPORATIONS**’.

166 Replacement of s 49 (Interpretation)

Section 49—

omit, insert—

‘49 Definition for pt 5

‘In this part—

“**corporation**” means a part 3 corporation or a part 4 corporation.’.

167 Amendment of s 50 (Sale of funeral benefit business)

(1) Section 50(1), from ‘another corporation’ to ‘such a business’—

omit, insert—

‘another entity’.

(2) Section 50(7)(a), from ‘property or,’ —

omit, insert—

‘property; and’.

168 Amendment of s 52 (Cancellation of registration by court)

(1) Section 52(1)(a), ‘, 35’—

omit.

(2) Section 52(11B), ‘, (17)’—

omit.

169 Omission of pt 6

Part 6—

omit.

170 Replacement of pt 7, hdg (General provisions)

Part 7, heading—

omit, insert—

**‘PART 6—GENERAL PROVISIONS FOR REGISTERED
CORPORATIONS FOR PARTICULAR FUNERAL
BENEFIT AGREEMENTS’.**

171 Replacement of s 58 (Reference to registered corporation)

Section 58—

omit, insert—

‘58 Application of pt 6

‘This part applies to a registered corporation in relation to funeral benefit agreements entered into by the corporation and in force immediately before the commencement of the *Second-hand Dealers and Pawnbrokers Act 2003*, section 139.’.

172 Amendment of s 59 (Nominated office)

(1) Section 59(1) and (2)—

insert—

‘Maximum penalty—2 penalty units.’.

(2) Section 59—

insert—

‘(1A) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.’.

173 Amendment of s 60 (Secretary)

(1) Section 60(1) and (2)—

insert—

‘Maximum penalty—2 penalty units.’.

(2) Section 60—

insert—

‘(1A) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.’.

174 Amendment of s 61 (Provisions as to rules)

Section 61(3)—

insert—

‘Maximum penalty—2 penalty units.

‘**(3A)** An offence against subsection (3) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (3)—1 penalty unit.’.

175 Amendment of s 63 (Change of name of registered corporation)

Section 63(1) and (2)—

insert—

‘Maximum penalty—2 penalty units.’.

176 Amendment of s 66 (How payments from accounts to be made)

Section 66—

insert—

‘Maximum penalty—2 penalty units.’.

177 Amendment of s 67 (Compliance with requirements of registrar)

Section 67—

insert—

‘Maximum penalty—2 penalty units.

‘**(2)** An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

‘Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.’.

178 Amendment, relocation and renumbering of s 69 (Powers of inspectors)

(1) Section 69(1)(a), ‘corporation or any person carrying on’—

omit, insert—

‘corporation or an unincorporated body, or any person, carrying on a’.

(2) Section 69, as amended—

relocate and renumber in part 8, as section 81.

179 Omission of s 73 (General penalty)

Section 73—

omit.

180 Amendment of s 75 (Institution of proceedings)

(1) Section 75(1)—

omit.

(2) Section 75(2), ‘Subject to subsection (1), proceedings’—

omit, insert—

‘Proceedings’.

181 Amendment of s 76 (Offence by body corporate)

(1) Section 76, heading, ‘**body corporate**’—

omit, insert—

‘**corporation**’.

(2) Section 76, ‘body corporate’—

omit, insert—

‘corporation’.

182 Amendment of s 80 (Regulations)

(1) Section 80(2)(d) and (k)—

omit.

(2) Section 80(2)(b) to (j)—

renumber as section 80(2)(a) to (h).

183 Relocation and renumbering of ss 74 to 81

Sections 74 to 81, as amended—

relocate and renumber in part 8, as sections 82 to 89.

184 Insertion of new pt 7

After section 72—

insert—

**‘PART 7—AGREEMENTS ENTERED INTO AFTER THE
COMMENCEMENT OF THE SECOND-HAND
DEALERS AND PAWNBROKERS ACT 2003****‘73 Application of pt 7**

‘This part applies if a person enters, or proposes to enter, into a funeral benefit agreement with an entity after the commencement of the *Second-hand Dealers and Pawnbrokers Act 2003*, section 139.

‘74 Client care statement

‘(1) Before entering into the funeral benefit agreement with the person, the entity must give the person a clear and legible written statement (a “**client care statement**”) in the approved form.

Maximum penalty—134 penalty units.

‘(2) After giving the person the client care statement and before entering into the agreement with the person, the entity must—

- (a) explain the contents of the client care statement to the person; and
- (b) obtain a written acknowledgement from the person that the person has received and understands the client care statement.

Maximum penalty—134 penalty units.

‘(3) The client care statement may be in the form of a separate document or a part of the funeral benefit agreement entered into with the person.

‘75 Person must be given copy of agreement

‘Immediately after entering into a funeral benefit agreement with a person, the entity must—

- (a) if the client care statement is not part of the funeral benefit agreement—give the person a clear and legible copy of the agreement signed by the person and the entity; or
- (b) if the client care statement is part of the funeral benefit agreement—sign the copy of the agreement given to the person.

Maximum penalty—134 penalty units.

‘76 Cooling-off period

‘Within 30 clear days after the entity gives the person the signed copy of the funeral benefit agreement, the person may, by signed notice given to the entity, end the agreement.

‘77 Consequences of exercising rights in cooling-off period

‘(1) If the person ends a funeral benefit agreement under section 76—

- (a) the entity is entitled to the amount prescribed under a regulation or, if no amount is prescribed, \$50; and
- (b) the entity must refund to the person the whole of the amount the person has paid to the entity under the agreement, other than an amount the entity is entitled to under paragraph (a); and
- (c) subject to paragraph (a), the person is not liable to the entity in any way for ending the agreement.

‘(2) The entity must refund the amount mentioned in subsection (1)(b) within 7 days after receiving the person’s notice.

Maximum penalty—134 penalty units.

‘(3) Subsection (1)(c) has effect despite anything to the contrary in the contract.

‘78 Person to be advised that the person may enter into an agreement with an authorised investment manager

‘(1) Subsection (2) applies to an entity other than an authorised investment manager.

‘(2) Before the entity enters into a funeral benefit agreement with a person, the entity must advise the person that the person may instead enter into a funeral benefit agreement with an authorised investment manager.

Maximum penalty—134 penalty units.

‘79 Application of Trusts Act 1973

‘(1) This section applies to an entity other than—

- (a) an authorised deposit-taking institution under the *Banking Act 1959* (Cwlth); or
- (b) a company registered under the *Life Insurance Act 1995* (Cwlth).

‘(2) The nominated Trusts Act provisions apply to payments made by a contributor to the entity under a funeral benefits agreement as if the entity were a trustee, and the payments were trust property, within the meaning of the *Trusts Act 1973*.

‘(3) In this section—

“nominated Trusts Act provisions” mean the following provisions of the *Trusts Act 1973*—

- (a) part 1;
- (b) part 2, other than sections 17 and 18;
- (c) part 3, other than sections 28, 30 and 30A;
- (d) part 4, other than sections 32 to 48, 53 and 57;
- (e) part 5;
- (f) part 6, other than sections 66, 67, 73 to 75, and 78;
- (g) part 7, other than sections 84, 86 to 89, 93 and 95;
- (h) part 9, other than sections 110, 112 and 113.

‘80 Application of Trust Accounts Act 1973

‘(1) This section applies to an entity other than—

- (a) an authorised deposit-taking institution under the *Banking Act 1959* (Cwlth); or
- (b) a company registered under the *Life Insurance Act 1995* (Cwlth).

‘(2) The nominated Trust Accounts Act provisions apply to payments made by a contributor to the entity under a funeral benefits agreement as if the entity were a trustee, and the payments were trust moneys, within the meaning of the *Trust Accounts Act 1973*.

‘(3) In this section—

“**nominated Trust Accounts Act provisions**” mean the provisions of the *Trust Accounts Act 1973*, other than sections 4C, 4D, 8, 11, 28A, 29, 31, 32, 34, 35 and 36.

‘PART 8—GENERAL PROVISIONS FOR FUNERAL BENEFIT BUSINESSES’.

SCHEDULE 1**DISQUALIFYING OFFENCE PROVISIONS UNDER THE
CRIMINAL CODE**

schedule 3, definition “disqualifying offence”, paragraph (b)

1. Chapter 16 (Offences relating to the administration of justice)
2. Chapter 20 (Miscellaneous offences against public authority)
3. Chapter 36 (Stealing)
4. Chapter 37 (Offences analogous to stealing)
5. Chapter 38 (Stealing with violence—extortion by threats)
6. Chapter 40 (Other fraudulent practices)
7. Chapter 41 (Receiving property stolen or fraudulently obtained and like offences)
8. Chapter 42 (Frauds by trustees and officers of companies and corporations—false accounting)
9. Chapter 42A (Secret commissions)
10. Chapter 49 (Punishment of forgery and like offences)
11. Chapter 52 (Personation)
12. Chapter 56 (Conspiracy)

SCHEDULE 2**CONSEQUENTIAL AMENDMENTS**

section 117

CREDIT ACT 1987

- 1** Schedule 9, section 3(a), '*Pawnbrokers Act 1984*'—
omit, insert—
'Second-hand Dealers and Pawnbrokers Act 2003'.

**ELECTRONIC TRANSACTIONS (QUEENSLAND) ACT
2001**

- 1** Schedule 1, part 1, '*Pawnbrokers Act 1984*' and '*Second-hand Dealers and Collectors Act 1984*'—
omit.
- 2** Schedule 1, part 1—
insert—
'Second-hand Dealers and Pawnbrokers Act 2003'.

POLICE POWERS AND RESPONSIBILITIES ACT 2000

- 1** Schedule 4, definition "identifying particulars offence", paragraph (b), '*Pawnbrokers Act 1984*' and '*Second-hand Dealers and Collectors Act 1984*'—
omit.

SCHEDULE 2 (continued)

2 Schedule 4, definition “identifying particulars offence”, paragraph (b), —*insert—*

- ‘*Second-hand Dealers and Pawnbrokers Act 2003*’.

SCHEDULE 3

DICTIONARY

section 4

“**acquire**”, property, includes buy the property and receive the property as a gift.

“**approved form**” means a form approved by the chief executive under section 114.

“**associate**” see section 5(1).

“**authorised officer**” means a person who holds an appointment as an authorised officer under section 75.

“**authorised place**” see section 24.

“**commencement**” for part 9, see section 118.

“**conviction**” means the acceptance of a plea of guilty, or a finding of guilt, by a court, whether or not a conviction is recorded.

“**criminal history**”, of a person, means the person’s criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than convictions for which the rehabilitation period has expired, and not been revived, under that Act.

“**dealing**”, in property, includes acquiring, disposing of, exchanging and selling property, and includes dealing on commission.

“**disqualifying offence**” means—

- (a) an offence wherever committed in Australia involving fraud or dishonesty that is punishable by imprisonment for 3 months or more; or
- (b) an offence against a provision of the Criminal Code mentioned in schedule 1; or
- (c) an offence against a provision of a law of another State or of the Commonwealth that provides for the same matter as a law mentioned in paragraph (b).

“**effective control**” see section 5(2).

SCHEDULE 3 (continued)

“executive officer”, of a corporation, means a person who is concerned with, or otherwise takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

“information notice”, for a decision of the chief executive, means a notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the person applying for the decision may appeal against the decision to a Magistrates Court within 28 days after the date of the notice.

“licence” means a second-hand dealer’s licence or a pawnbroker’s licence.

“licensee” means the holder of a licence.

“location” means a place, other than premises, where a licensee may carry on business under a licence, and includes a place where an antique fair, antique market, flea market or trash and treasure market is carried on.

“market operator” means a person who carries on the business of conducting—

- (a) a trash and treasure market; or
- (b) a flea market; or
- (c) an antique market; or
- (d) an antique fair.

“nominated property” means second-hand property that is—

- (a) property, other than an item of household furniture, that may be identified by—
 - (i) a make, model or serial number on the property; or
 - (ii) an inscription; or
- (b) electrical property, other than a refrigerator, washing machine, clothes dryer, stove or dishwasher; or
- (c) jewellery; or

SCHEDULE 3 (continued)

- (d) a precious metal; or
- (e) a musical instrument; or
- (f) photographic equipment; or
- (g) a natural diamond or gem stone.

“pawn” includes pledge.

“pawnbroker” means a person who—

- (a) carries on the business of advancing, on interest or in expectation of profit or reward, an amount on the principal or collateral security of property taken by the person as a pawn; and
- (b) holds a pawnbrokers licence.

“pawn ticket” see section 58(1).

“place” means premises or a location.

“premises” means a building or structure, or part of a building or structure, where a licensee carries on the licensee’s business, other than on a casual basis.

Example of a licensee carrying on business on a casual basis—

A licensee conducting a stall at an established market.

“property” means personal property, other than money or things in action.

“property register” see section 53.

“redemption period”, for pawned property, means the period stated under section 60(2) for redeeming the property.

“repealed Act”—

- (a) for part 9, div 2, see section 119; or
- (b) for part 9, div 3, see section 129.

“replacement pawn ticket” see section 58(3).

“second-hand dealer” means a person—

- (a) who—
 - (i) carries on the business of dealing in second-hand property; or
 - (ii) is a market operator; and

SCHEDULE 3 (continued)

(b) who holds a second-hand dealers licence.

“second-hand property” means personal property that has been used, other than the following types of property—

- (a) newspapers, books, pamphlets, periodicals or other printed publications; or
- (b) stamps or coins; or
- (c) property returned for refund or exchange by a person who purchased it as new property; or
- (d) motor vehicle batteries; or
- (e) used tyres removed from a car, motorbike or trailer within the meaning of the *Transport Operations (Road Use Management) Act 1995*; or
- (f) other property prescribed under a regulation.

“sell” includes barter, exchange or agree or offer to sell.

“transactions register” see section 37(1).

“used” includes worn or otherwise applied for any purpose.