

SECOND-HAND DEALERS AND PAWNBROKERS BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

At a meeting of the Council of Australian Governments on 11 April 1995, the Queensland Government, together with other Australian States and Territories, signed an agreement with the Commonwealth to implement National Competition Policy (NCP) and related reforms. The Competition Policy Agreement (CPA) requires all State and Territory Governments to review, and where appropriate, reform all anti-competitive legislation.

The CPA's guiding principle is that legislation should not restrict competition unless it can be demonstrated that:

- benefits of the restriction to the community, as a whole, outweigh the costs, and
- objectives of the legislation can only be achieved by restricting competition.

The *Second-Hand Dealers and Collectors Act 1984*, the *Pawnbrokers Act 1984* and the *Funeral Benefit Business Act 1982* have all been reviewed in accordance with the CPA. The review was conducted within the NCP Unit of the Office of Fair Trading (OFT).

The major objective of the Bill is to implement the NCP recommendations for the *Second-Hand Dealers and Collectors Act 1984*, the *Pawnbrokers Act 1984* and the *Funeral Benefits Business Act 1982*.

The *Funeral Benefits Business Act 1982*

The NCP Report found that the benefits of the anti-competitive provisions contained in the *Funeral Benefit Business Act 1982* (FBB Act) outweigh the costs to the community as a whole. However, the Report made a number of recommendations for reform of the FBB Act in order to

meet its policy objectives in a more cost-effective way. Therefore the following NCP amendments have been included in the Bill:

No changes to existing contracts

- the retention of Parts 3 and 4 of the FBB Act in their current form apply only in relation to existing contracts, to ensure the rights and obligations of the parties under those contracts are not changed.

New requirements for all new contracts:

- any type of entity will be permitted to operate as a funeral benefit business;
- the Act is to apply to any business that sells a funeral benefit in Queensland or to Queensland residents;
- all funeral benefit businesses are to be deemed to be trustees under the *Trusts Act 1973 (Qld)* in respect of pre-payment money entrusted to them unless they are already regulated under relevant Commonwealth legislation;
- contributors may choose whether they deposit their pre-payment money with a funeral director, or with an authorised investment manager;
- if contributors deposit their pre-payment money with a funeral director (rather than an authorised investment manager), the funeral director must comply with the provisions of Part 3 of the *Trusts Act* in respect of the investment of those pre-payment monies;
- a “cooling off” period of 30 days is to be introduced;
- a short “client care” statement, drafted or approved by the OFT, must be given, detailing in plain English the rights and responsibilities of each of the parties to the contract. This statement must be explained to the contributor, who must sign it as proof of understanding the explanation. The statement must also be signed by the other party to the contract; and
- substantial penalties for non-compliance with the Act are to be introduced.

New contracts will not include provision for the following:

- a cap on the value of funeral benefits;
- registration of funeral benefit businesses;
- explicit record and account-keeping requirements;
- notification to the OFT of a change in the business name;
- a requirement for residence or location of a public officer/ company secretary or registered office in Queensland;
- false and misleading statements; or
- approval from the OFT for any advertising.

Second-Hand Dealers and Collectors Act 1984 and the Pawnbrokers Act 1984

The NCP Report for the *Second-Hand Dealers and Collectors Act 1984* (SHDA) and the *Pawnbrokers Act 1984* (PBA) identified licensing and business conduct restrictions on competition in both of the Acts. The NCP recommendations implemented by this Bill include:

- consolidation of the two Acts into a single piece of legislation;
- retention of the licensing of second-hand dealers, pawnbrokers and entrepreneurs;
- repeal of the provisions relating to collectors;
- modification of licensing requirements including introduction of a single licence type for both second-hand dealers and pawnbrokers, multi-site licences, replacement of the “fit and proper person” test with a “suitability test” for applicants, and a new option for one or three year licence renewals;
- introduction of optional computerisation of transaction records; and
- the current disposal of unredeemed pledges by auction be made optional with the introduction of the alternative of disposal of sale through the premises where the pledge was made.

Administrative cost

Any expenditure associated with the implementation of the recommendations relating to the FBB Act will be met through existing appropriations. For the amendments to the SHDA and the PBA, the Cabinet Budget Review Committee, by Decision No. 612 of 24 January 2003, approved a proposal for a single licence regime under the Bill that will result in a budget-neutral outcome with a new single application fee of \$480.00 and a new single annual registration fee of \$305.00 for the regulation of the second-hand dealing and pawnbroking industry.

Fundamental legislative principles

The Bill does not infringe any fundamental legislative principles.

The powers given to authorised officers by the Bill are accompanied by adequate safeguards that balance the importance of enforcing the legislation while ensuring the rights and liberties of individuals are respected. These powers are consistent with other legislation dealing with fair trading issues such as the *Property Agents and Motor Dealers Act 2000* and the *Introduction Agents Act 2001*.

The general offence provisions, (section 49 of the SHDA and section 43 of the PBA) have been removed as the Scrutiny of Legislation Committee has questioned the use of such widely-framed offences in the past, on the basis that they seldom appear in current legislation and such a widely-drawn provision may not have sufficient regard to the rights and liberties of potential defendants. Specific penalties have instead been used in the Bill.

Consultation

Consultation occurred with the following government and non-government agencies and individuals.

Community

The portion of the Bill relating to amendments to the FBB Act was sent to the same 40 organisations contacted during the course of the NCP review; this included the 15 registered corporations under the FBB Act, the Australian Funeral Directors Association, the Queensland Funeral Directors Association, the Association of Australian Owned Funeral Directors Ltd, the Independent Funeral Directors Association, the Australian, Queensland and Brisbane Consumer Associations, the Trustees

of the Funeral Benefit Trust Fund Board, the Australian Prudential Regulation Authority, the Caxton Legal Centre, the Australian Finance Conference, the Financial Planning Association, the Financiers Association of Australia Ltd, the Insurance Council of Australia, the Queensland Association of Permanent Building Societies, the Credit Union Services Corporation, the Australian Pensioners and Superannuants League, the National Seniors Association Ltd, and the Probus Association of Queensland. In addition, all of the 35 Queensland funeral benefit funds listed in the Yellow Pages were sent the relevant portion of the Bill.

A letter was sent to the 2,492 second-hand dealers, 54 collectors and 214 pawnbrokers who are currently licensed in Queensland, advising them of the Bill and its availability for comment. The letter was also sent to the Queensland Pawnbrokers Association, the Pawnbrokers Industry Federation, the Insurance Council of Australia, the Anti-Counterfeiting Action Group, the Retailers Association of Queensland Ltd, the Queensland Retail Traders & Shopkeepers Association, the Queensland Antique Dealers Association, the Salvation Army and the Endeavour Foundation.

The Bill and the NCP Reports for the FBB Act, and the SHDA and the PBA were publicly available on the Office of Fair Trading's web-site.

Government

Queensland Treasury approved the Public Benefit Test plan and Terms of Reference for the NCP Reports and oversaw the review process so that it was in accordance with NCP guidelines.

Key Fair Trading agencies in other State jurisdictions were contacted both during the NCP Review and with the Bill, as was the Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC) at the Commonwealth level in relation to the NCP amendments to the FBB Act.

The Bill was sent to the Department of Premier and Cabinet, Queensland Treasury, the Business Regulation Reform Unit of the Department of State Development, Queensland Police, Department of Justice and Attorney-General, Department of Employment and Training and Department of Primary Industries.

The portion of the Bill relevant to the FBB Act was also sent to the Seniors Interests Unit, Department of Families.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short title

Clause 1 sets out the short title of the Bill.

Commencement

Clause 2 sets out the commencement of the Bill.

Objectives of Act

Clause 3 sets out the objectives of the Bill. This is a new section as the NCP review suggested that the objectives of the Act should be clarified to reflect the current marketplace and social environment.

PART 2—INTERPRETATION

Definitions

Clause 4 provides the dictionary in schedule 3 which defines particular words used in the Bill.

Meaning of “associate” and “effective control”

Clause 5 replaces the concept of a “nominee” used in the SHDA and the PBA with the concept of “associate”. This is necessary as a result of NCP recommendations to change the licensing system and to allow a second-hand dealer and pawnbroker to have a multi-site licence. An associate is a person who is not the licensee but, through the associate’s actions, is in effective control of the licensee’s business. A person in “effective control” is defined as a person who is regularly or usually in control of the business, or regularly directs staff of the business in their duties, or is in a position to

control or influence the business in a substantial way. If the licensee is a corporation, each executive officer of the corporation is taken to be an associate.

PART 3—LICENCES

Division 1—Requirement to be licensed

Acting as licensee

Clause 6 states that if a person wants to carry on business as a second-hand dealer or a pawnbroker they must be licensed. Subsections (2) and (4) set out the persons that are not required to be licensed.

Division 2—Suitability of applicants and licensees

Suitability of applicants and licensees

Clause 7 replaces the “fit and proper” test for applicants with a “suitability” test. This was one of the NCP review recommendations. A person is not a suitable person to hold a licence if the person, or an associate of the person, is under 18 years of age; is an insolvent under administration; has been convicted of a disqualifying offence within the last 5 years; or is a corporation that is an externally-administered body corporate. A person who is not a suitable person may not hold a licence. “Disqualifying offence” is defined in schedule 1 and the terms “externally-administered body corporate” and “insolvent under administration” are defined in subsection (3). “Body corporate” is defined in section 9 of the *Corporations Act 2001*.

Investigations about suitability of applicants and licensees

Clause 8 specifies that the chief executive may make investigations about the applicant or licensee, and/or an associate of the applicant or licensee, to help decide whether an applicant or a licensee is a suitable person to hold a licence. The chief executive must ask the commissioner of

the police service for a written report about the criminal history of any of those persons.

Criminal history is a confidential document

Clause 9 states that an officer, employee or agent of the department must not, directly or indirectly, disclose to anyone else a report about a criminal history of an applicant or an associate of an applicant. However, the person does not contravene this section if disclosure of the report or information is authorised by the chief executive to the extent necessary to perform a function under the Bill or the disclosure is otherwise required or permitted by law. The chief executive must destroy the report as soon as practicable after considering the applicant's suitability to hold a licence.

Division 3—Applying for, renewing or restoring a licence

Application for licence

Clause 10 sets out how a person may apply for a licence and what information must be included in the application. The application must be in the approved form and state whether the person intends to carry on business solely as a second-hand dealer, solely as a pawnbroker or if they want to carry on business as both. The licence can be obtained for a term of 1 or 3 years. The application must state the names and addresses of the associates, each place the applicant intends to carry on business and be accompanied by the prescribed fee. This is a NCP recommendation and it removes the previous requirement that a separate licence had to be obtained for each occupation.

Principal place of business

Clause 11 specifies that if a person intends to carry on business at more than one place, they must specify in the application the place the person intends to be their principal place of business. This is a NCP recommendation and it removes the previous requirement that a separate licence had to be obtained for each premise.

If the applicant intends to carry on business at a location (for example, at a market) the applicant must specify a place as their principal place of business. For a second-hand dealer this must be a place where the applicant's transactions register is to be maintained and may be inspected.

For a pawnbroker, this must be a place where the applicant's property register it to be maintained and may be inspected and property taken as a pawn is located. The principal place of business cannot be a post office box.

Decision on application for a licence

Clause 12 modernises the drafting style currently used in the SHDA and the PBA. The chief executive must consider an application for a licence and either grant the licence with or without conditions or refuse to grant the licence. The chief executive must refuse to grant the application if the chief executive is not satisfied that the applicant is a suitable person to hold a licence. If the chief executive decides to grant the licence with a condition or refuses to grant the licence, the chief executive must give the applicant an information notice within 14 days after the decision is made.

Renewal of licence

Clause 13 updates the drafting style of the current section in the SHDA and the PBA for renewal of licenses. A licensee may apply to the chief executive to renew the licensee's licence, before the licence expires. The application must be in the approved form, state whether the licence is sought for a term of 1 or 3 years, state the names and addresses of the associates of the applicant and be accompanied by the prescribed fee.

Restoration of licence

Clause 14 provides that if a licence expires, the person who was the holder of the licence may, within 14 days after the licence expiry apply to restore the licence. The application must be in the approved form and state whether the licence is sought for a term of 1 or 3 years, state the names and addresses of the associates of the applicant and be accompanied by the prescribed fee.

Decision on application for renewal or restoration of a licence

Clause 15 sets out what the chief executive must do when considering an application for renewal or restoration of a licence. The chief executive must either grant the renewal or restoration of the licence, with or without conditions, or refuse to grant the renewal or restoration of the licence. 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. 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.

Licence continues pending decision about renewal

Clause 16 confirms that the licence continues while the decision is being made by the chief executive whether to renew the licence or not. If the chief executive renews the licence, the licence is taken to have been renewed from the time of expiry. If the licence is not renewed, it expires from the day the chief executive gives the licensee an information notice.

Licence continues pending decision about restoration

Clause 17 confirms that the licence is pending while the decision is being made by the chief executive whether to restore the licence or not. If the chief executive restores the licence, it is taken to have been renewed from the expiry day. If the licence is not restored, it expires from the day the chief executive gives the licensee an information notice.

Requirement to give chief executive information

Clause 18 provides the chief executive with powers to request information or documents from an applicant under this part of the Bill, in order for the chief executive to consider the applicant's application. If the applicant fails to provide the information or documents within 14 days of the request, the applicant is taken to have withdrawn the application and the chief executive must refund the fee paid by the applicant.

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

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

Clause 19 provides that each of the following is a ground for suspending, cancelling, refusing to renew or restore or imposing a condition on a licence: if a licence was obtained because of incorrect or misleading information; the licensee or an associate of the licensee has

failed to comply with a condition of the licence; if the licensee or an associate has been convicted of an offence against this Bill, the repealed Act or a law of another State that provides for the same matter as this Bill within the last 5 years; or the licensee is no longer a suitable person to hold a licence.

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

Clause 20 provides the procedure that the chief executive must follow to suspend, cancel, refuse to renew or restore or impose conditions on a licence, including the provision of a show cause notice if the chief executive believes there are reasonable grounds to do so. The licensee may appeal against the decision to a Magistrates Court within 28 days after the date of the notice.

Return of licence

Clause 21 provides that if the chief executive decides to suspend, cancel, refuse to renew or restore, or impose a condition on a licence, the licensee must within 14 days return the licence to the chief executive, unless the chief executive has otherwise given written consent for the retention of the licence for a period of time or if the licensee has a reasonable excuse.

Division 5—Other provisions about licences

Condition that licensee comply with local laws

Clause 22 replicates the existing provision that the licensee must comply with relevant local laws.

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

Clause 23 replicates section 36 of the SHDA. The NCP recommendation was to repeal all provisions relating to collectors. This means that existing collectors will have to obtain second-hand dealers licences if they wish to continue to operate collecting goods. Second-hand dealers under this Bill must not enter or remain at premises without the permission of the owner or occupier of the premises.

Authorised place

Clause 24 defines an “authorised place” for the purposes of the Bill. In the licensee’s application for a licence, they must state all of the places that they intend to carry on business. Those places stated in the application form are the only places that the licensee is then authorised to carry on business. There is provision in the Bill for the licensee to change the authorised place.

Change of authorised place

Clause 25 allows the licensee to change an authorised place, or in other words, the licensee can add, remove, alter or change a place on their licence. The clause sets out the procedure to change an authorised place. The licensee can only carry on business from the places stated on their licence.

Licence to include particular information

Clause 26 states the information that must be on all licences. It must include any conditions imposed on the licence, and the addresses of all of the locations (for example markets) and premises where the licensee is authorised to carry on business. The licensee can only carry on business from the locations and/or premises noted on the licence. If the licence is issued to a second-hand dealer for carrying on business at a location (for example they only carry on business at a market) the licence must also state the address where the transactions register is to be maintained and may be inspected. For a pawnbroker carrying on business at a location, the licence must also state the licensee’s address where the property register is to be maintained and may be inspected, and property taken as a pawn is located.

Change of licensee’s home address

Clause 27 sets out the requirements for a change of home address for all licensees and the requirements for a change of address by a licensee who carries on business at a location.

Licence to be kept on premises or with licensee

Clause 28 states the licence or a copy of the licence must be kept at the premises stated on the licence. If the licence authorises the licensee to

carry on business at a location (for example at a market), the licensee must carry the licence or a copy of the licence when carrying on business at the location.

Change of associate

Clause 29 states that if a licensee changes an associate, either by an associate ceasing to be an associate or if a new associate is appointed, the licensee must give the chief executive signed notice within 14 days.

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

Clause 30 states if a 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.

Replacement of lost, stolen, destroyed or damaged licence

Clause 31 states a licensee may apply for a replacement licence in writing, accompanied by the prescribed fee. The chief executive must consider each application and replace the licence if satisfied that the licence has been lost, stolen, destroyed, or damaged in a way that requires its replacement.

Surrender of licence

Clause 32 states a licensee may surrender their licence by signed notice to the chief executive. The licensee must return the licence to the chief executive within 14 days after the licensee surrenders the licence, unless the licensee has a reasonable excuse.

Return of expired licence

Clause 33 states the licensee must return the licence to the chief executive within 14 days after the licence expires unless the licensee has applied for the renewal or restoration of the licence and the application has not been decided by the chief executive or the licensee has a reasonable excuse.

Licence not transferable

Clause 34 states a licence can not be assigned or transferred to another person.

PART 4—CONDUCT OF BUSINESS***Division 1—Second-hand dealers*****Where business may be carried on**

Clause 35 states a second-hand dealer must not carry on business as a second-hand dealer at a place other than a place stated on the dealer's licence. The place of business includes both premises and locations (for example markets). This requirement is not breached if the dealer is only acquiring second-hand property at another place not stated on their licence, or is carrying on business at a public auction conducted by a licensed auctioneer.

Second-hand dealer must identify place of business

Clause 36 modernises the drafting style used in section 41 of the SHDA and sets out the requirements for identifying an authorised place to the public.

Second-hand dealer must keep a transactions register

Clause 37 modernises the drafting style used in section 44 of the SHDA and provides for the option of using a printed or an electronic transactions register. This is a NCP recommendation. The register must be kept in the way specified in a regulation and the details entered into the register as detailed in a regulation.

Place transactions register to be kept

Clause 38 states the transactions register must be kept at the premises for which it relates. If the transactions register is used at locations, when a second-hand dealer is not at the location, the transactions register must be

kept at the second-hand dealer's address stated on the licence, pursuant to section 26.

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

Clause 39 provides that a second-hand dealer must give the commissioner of the police service the particulars in the transaction register in the way and within the period prescribed under a regulation.

False or misleading entries in transactions register

Clause 40 states a person must not make a false or misleading entry in a transactions register.

Person must not alter transactions register

Clause 41 replicates and updates the drafting style of subsection 44(6) of the SHDA. A person must not remove an entry in the register. If an error is detected, the second-hand dealer may correct the entry by making a new entry for the transaction in the register.

Employees must not be under 17

Clause 42 states a second-hand dealer must not employ a person less than 17 years to acquire second-hand property.

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

Clause 43 provides that 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 the property is found in a place occupied by the second-hand dealer; or the property is under the control of the second-hand dealer or the second-hand dealer did not sell the property in good faith and the property has been moved to another place. This is not the case, if the contrary is proven.

Second-hand dealer to keep property for 7 days

Clause 44 replicates section 47A of the SHDA. “Nominated property” is defined in the dictionary in Schedule 3. Second-hand dealers must keep nominated property in their possession for 7 clear working days after acquiring it.

Second-hand dealer must not acquire property from particular persons

Clause 45 states that 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.

When a second-hand dealer may acquire property

Clause 46 The NCP recommendation was to repeal all provisions relating to collectors. This means that existing collectors will have to obtain second-hand dealers licences if they wish to continue to operate. This provision replicates section 30 of the SHDA. A second-hand dealer must not acquire second-hand property from a person at the person’s home on the days and times specified in subsection (1). The second-hand dealer does not breach subsection (1) if the second-hand dealer has the person’s prior consent, at least 1 day before the day the property is acquired.

Second-hand dealer must ask for information

Clause 47 replicates and modernises the drafting style used in section 48 of the SHDA. This section sets out the information that the second-hand dealer must obtain from the person before acquiring second-hand property from that person.

Second-hand dealer to inform police about stolen property

Clause 48 replicates and modernises the drafting style used in section 47 of the SHDA. If a second-hand dealer acquires second-hand property that may be suspected stolen property, the second-hand dealer must advise a police officer as soon as practicable after becoming aware that the property may be stolen. Written, printed or oral information provided by a police officer or another person to the second-hand dealer that property may be

stolen, comprises sufficient grounds on which the second-hand dealer can base his/her suspicions.

Second-hand dealer to produce licence if asked

Clause 49 provides that the second-hand dealer must, if asked, show the licence to a person acquiring or intending to acquire or disposing or intending to dispose of second-hand property.

Holding out place as second-hand dealer's business

Clause 50 makes it an offence for a person to hold out a place as a place of business as a second-hand dealer, if they are not licensed to carry on business at an authorised place.

Division 2—Pawnbrokers

Where business may be carried on

Clause 51 states a pawnbroker must not carry on business as a pawnbroker at a place other than a place stated on their licence.

Pawnbroker must identify place of business

Clause 52 modernises the drafting style of section 29 of the PBA and sets out the requirements for identifying each authorised place to the public. An authorised place can be a premise or location (for example a market).

Pawnbroker must keep a property register

Clause 53 modernises the drafting style used in section 32 of the PBA and provides for the option for a printed or an electronic property register to be used. This is a NCP recommendation. The register must be kept in the way specified in a regulation and the details to be entered into the register are also detailed in a regulation.

Place property register to be kept

Clause 54 states the property register must be kept at the premises to which it relates. If the property register is used at locations, when the pawnbroker is not at the location, the property register must be kept at the pawnbroker's address stated on the licence, pursuant to section 26.

Pawnbroker must give information to commissioner of police service

Clause 55 provides that the pawnbroker must give the commissioner of the police service the particulars in the property register in the way and within the period prescribed under a regulation.

False and misleading entries in property register

Clause 56 states a person must not make a false or misleading entry in a property register.

Person must not alter property register

Clause 57 states a person must not remove an entry in the register. If an error is detected, the error may be corrected by making a new entry for the transaction in the register.

Pawnbroker must give a person a pawn ticket

Clause 58 replicates and modernises the drafting style used in section 33 of the PBA. 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, or in other words a "pawn ticket". The pawn ticket must include the number allotted to the entry and the name of the pawnbroker. A person has a right to receive a replacement pawn ticket if they can prove their identity and that the original pawn ticket was lost, destroyed or stolen, to the satisfaction of the pawnbroker. This may be done by way of declaration under the *Oaths Act 1867*.

Presumption of right to redeem

Clause 59 replaces section 55 of the PBA. If a person presents a pawn ticket or a replacement pawn ticket, they are presumed to be the owner of

the pawn ticket and have a right to redeem the property. Subsection (3) sets out the exceptions, namely that if the police or an authorised officer have seized the property and not returned it, or if the pawnbroker has previously been informed that the pawn ticket has been lost or that the property has been stolen, the pawnbroker does not have to give the property back to the person.

Pawnbroker must not sell property before redemption period expires

Clause 60 states the pawnbroker must not sell or dispose of property, taken as a pawn, before the redemption period expires for the property. The redemption period is 3 months from the day the person pawned the property, or if a longer period is agreed between the person and the pawnbroker, then not until after the expiry of that period. If the period is longer than 3 months, that period must be entered in the property register for the transaction.

Disposal of pawned property

Clause 61 states after the expiry of the 3 months or other agreed time (the redemption period) certain particulars prescribed by regulation must be entered in the property register.

If property is not redeemed within the redemption period

Clause 62 replicates section 34 of the PBA. If a pawnbroker has advanced an amount less than \$40, or a higher amount prescribed under a regulation, for property taken as a pawn and the property has not been redeemed before the redemption period expires; 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. If the pawnbroker has advanced an amount that is at least \$40 or a higher amount prescribed under a regulation, for property taken as a pawn, and the property has not been redeemed before the redemption period expires, on expiry the pawnbroker may sell the property free of any claim by the person who pawned the property.

Sale of pawned property

Clause 63 replicates and modernises the drafting style for section 35 of the PBA. This section of the Bill incorporates a NCP recommendation to

include the option of selling an unredeemed pledge from the place where the pawn was taken. There remains the option to sell by auction, if the pawnbroker wishes to do so. This clause specifies the procedure to follow when selling an unredeemed pledge by auction.

Proceeds of sale of property

Clause 64 replicates and modernises the drafting style for section 35(4) of the PBA, the meaning of the section has not changed. The section sets out what deductions may be made from the proceeds of the sale of the unredeemed pledge and how the proceeds must be dealt with.

Person may inspect property register

Clause 65 replicates the current section 56 of the PBA. The drafting style has been modernised, however the meaning is intended to be the same.

Recovery rights if pawn wrongly sold or disposed of

Clause 66 replicates the current section 36 of the PBA. The drafting style has been modernised, however the meaning is intended to be the same.

Employees must not be under 17

Clause 67 states a pawnbroker must not employ a person under the age of 17 years to take property as a pawn. This replicates section 39 of the PBA.

Pawnbroker taken to be in possession of property

Clause 68 modernises the drafting style of section 63 of the PBA. The clause provides that a pawnbroker is taken to be in possession of property located at a place other than a place stated on the pawnbroker's licence if the property is found in a place occupied by the pawnbroker; the property is under the control of the pawnbroker; or the pawnbroker did not sell the property in good faith and the property has been moved to another place. This is not the case, if the contrary is proven.

Pawnbroker must not acquire property from particular persons

Clause 69 modernises the drafting style of section 37 of the PBA. 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.

Pawnbroker must ask for information

Clause 70 replicates and modernises the drafting style used in section 41 of the PBA. This section sets out the information that the pawnbroker must obtain from a person before taking property as a pawn.

Pawnbroker to inform police about stolen property

Clause 71 replicates and modernises the drafting style used in section 40 of the PBA. If a pawnbroker acquires property that may be suspected stolen property, the pawnbroker must advise a police officer as soon as practicable after becoming aware that the property may be stolen. Written, printed or oral information that property may be stolen provided by a police officer or another person to the pawnbroker comprises sufficient grounds on which the pawnbroker can base his/her suspicions.

Pawnbroker to produce licence if asked

Clause 72 provides that the pawnbroker must, if asked, show the licence to a person acquiring property or intending to acquire property or pawning or intending to pawn property to the pawnbroker.

Holding out place as pawnbroker's business

Clause 73 makes it an offence for a person to hold out a place as a place of business as a pawnbroker if the place is not an authorised place for a pawnbroker.

Disposal of pledges if licence cancelled or not renewed

Clause 74 modernises the drafting style of section 42 of the PBA. 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 in a way the court considers appropriate.

PART 5—ENFORCEMENT

Division 1—Authorised officers

Part 5 of the Bill has been added to update the provisions in the SHDA and PBA relating to the enforcement of legislation. The provisions are the standard provisions used in other OFT legislation.

Appointment and qualifications

Clause 75 authorises the chief executive to appoint an officer of the department as an authorised officer or inspector provided that the chief executive is satisfied that the person has the necessary expertise or experience to be an authorised officer.

Appointment conditions and limit on powers

Clause 76 specifies that an authorised officer holds office on the conditions stated in the person's instrument of appointment, a signed notice given to the person, or a regulation and that the instrument of appointment, signed notice, or regulation may limit the authorised officer's powers under the Bill.

Issue of identity card

Clause 77 requires the chief executive to provide each authorised officer with an identity card containing a recent photo of the person and other relevant particulars.

Production or display of identity card

Clause 78 requires an authorised officer to produce the authorised officer's identity card before exercising any power under the Bill or display the card when exercising the power. However, if it is not practical to comply with this requirement, the authorised officer must produce the card at the first reasonable opportunity.

When authorised officer ceases to hold office

Clause 79 specifies the circumstances under which an authorised officer ceases to hold office.

Resignation

Clause 80 specifies how an inspector may resign.

Return of identity card

Clause 81 makes it an offence for a person who ceases to be an authorised officer, without a reasonable excuse, to fail to return the person's identity card to the chief executive within 21 days after ceasing to be an authorised officer.

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

Clause 82 sets out the circumstances in which an authorised officer may enter a place. In addition to the 'standard' power to enter public places, or other places if the entry is with the consent of the occupier or a warrant, an authorised officer may also enter an authorised place (as defined) if open for business or otherwise open for entry or required to be open for inspection under the licence. Subsection (3) makes it clear that the entry powers, other than those that may be exercised only by consent or warrant, do not apply to places, or part of places, where an individual resides.

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

Clause 83 outlines the procedures an authorised officer must follow when seeking consent to enter a place. Subsection (6) provides that, should the issue whether the occupier consented to the entry arise in a proceeding,

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

Application for warrant

Clause 84 makes provision for an authorised officer to apply to a Magistrate for a warrant to enter a place.

Issue of warrant

Clause 85 sets out the conditions under which a Magistrate may issue a warrant and specifies the information that must be stated in a warrant.

Special warrants

Clause 86 makes provision for an authorised officer to apply for a warrant by phone, fax, radio or another form of communication because of urgent or other special circumstances.

Warrants – procedure before entry

Clause 87 outlines the procedures that must be followed by an authorised officer prior to entering a place under a warrant.

Subdivision 3—Powers after entry

General powers after entering places

Clause 88 specifies what powers are available to an authorised officer who has entered a place for the purpose of monitoring and enforcing compliance with the Bill. Subsection (2)(f) provides an example, illustrating that 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.

Licensee to show licence if asked

Clause 89 makes it an offence for a licensee to fail to show an authorised officer the licence or a copy of the licence, unless the licensee has a reasonable excuse.

Subdivision 4—Power to seize evidence**Power to seize evidence**

Clause 90 provides the authorised officer with power to seize a thing at a place.

Receipt for seized things

Clause 91 requires the authorised officer to issue a receipt to the person from whom the thing was seized. However, if this is impractical, the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a secure way.

Access to seized things

Clause 92 provides for the person entitled to the seized thing, if it were not in the authorised officer's possession, to have access to it for inspection and copying (if a document) until it is returned.

Return of seized things

Clause 93 specifies when an authorised officer must return a seized thing to the person entitled to it.

Compensation

Clause 94 makes provision for a person to be compensated by the State, if the person incurs loss or expense because of the exercise or purported exercise of a power under this part of the Bill.

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

Clause 95 enables an authorised officer, if an offence has or appears to have been committed against the Act, to require a person to state the person's name and residential address and to produce evidence of the correctness of the stated name or address. When making such a requirement, the authorised officer must warn the person it is an offence to fail to state the person's name or address, unless they have a reasonable excuse.

**PART 6—GENERAL OFFENCES, LEGAL
PROCEEDINGS AND APPEALS*****Division 1—General offences*****False or misleading information**

Clause 96 makes it an offence for a person to give information to an authorised officer that the person knows is false or misleading in a material particular.

Obstruction of authorised officers

Clause 97 makes it an offence to obstruct an authorised officer or someone helping an authorised officer, in the exercise of a power under this Bill, unless the person has a reasonable excuse.

Forging a licence

Clause 98 makes it an offence for a person to forge a licence.

Person not to possess a licence without reasonable excuse

Clause 99 makes it an offence for a person who is not a licensee to have a licence or a document resembling a licence, without reasonable excuse. It

also makes it an offence for a person who is not a licensee, to possess a licence that has been cancelled, suspended, surrendered or expired, unless the person has a reasonable excuse.

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

Clause 100 makes it an offence for a person to use a licence issued to another person or to allow a licence issued to the person to be used by another person.

Person not to alter a licence

Clause 101 makes it an offence for a person to alter a licence, unless they are authorised to do so under the Bill.

Division 2—Legal proceedings

Proceeding for offence

Clause 102 provides for offences under the Bill to be dealt with as summary offences and specifies the period within which proceedings for an offence can be commenced.

Authorised officer may prosecute

Clause 103 states that an authorised officer may appear and act in court for the prosecution on a proceeding under this Bill, whether or not the authorised officer is the complainant in the proceeding.

Evidence

Clause 104 specifies those matters which do not have to be proved in a proceeding under the Bill unless a party by reasonable notice requires proof or which are considered to be evidence of those matters.

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

Clause 105 provides that 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, a court may, as well as imposing a penalty, cancel the licensee's licence and/or order that the licensee may not hold a licence for 5 years after the conviction.

Attempts to commit offences

Clause 106 makes it an offence for a person to attempt to commit an offence against this Bill. Any attempt to commit an offence against this Bill is an offence against the Bill.

Division 3—Appeals

Right to appeal to Magistrates Court

Clause 107 enables a person to appeal to a Magistrates Court against a decision of the chief executive to refuse to grant a licence.

How to start appeal

Clause 108 specifies where and how an appeal may be started and the timeframes for filing the notice of appeal.

Stay of operation of decisions

Clause 109 makes provision for the Magistrates Court to stay the operation of a decision made by the chief executive, where an appeal has been made to the Magistrates Court regarding that decision.

Hearing procedures

Clause 110 specifies the hearing procedures that the Magistrates Court has in deciding an appeal and provides that the appeal is by way of rehearing.

Powers of court on appeal

Clause 111 sets out what actions the Magistrates Court may take in deciding an appeal.

PART 7—GENERAL PROVISIONS

Executive officers must ensure corporation complies with Act

Clause 112 places an obligation on the executive officers of a corporation to ensure that the corporation complies with the legislation. As such, this provision creates an offence on the part of each executive officer in situations where the corporation has committed an offence against this Act. However, it is a defence for an executive officer to prove that he or she exercised reasonable diligence to ensure the corporation complied with the provision, or were not in a position to influence the conduct of the corporation in relation to the offence.

Chief executive and authorised officers not civilly liable

Clause 113 provides that the chief executive or an authorised officer is not civilly liable for an act done, or omission made honestly and without negligence under this Bill. The liability attaches instead to the State.

Approval of forms

Clause 114 gives power to the chief executive to approve forms for use under this Bill.

Regulation-making power

Clause 115 provides that the Governor in Council may make regulations under this Bill.

PART 8—REPEALS AND CONSEQUENTIAL AMENDMENTS

Repeals

Clause 116 repeals the *Pawnbrokers Act 1984* and the *Second-hand Dealers and Collectors Act 1984*.

Consequential amendment

Clause 117 provides for schedule 2, which makes consequential amendments to other acts that refer to both or either the *Pawnbrokers Act 1984* and the *Second-hand Dealers and Collectors Act 1984*.

PART 9—TRANSITIONAL PROVISIONS***Division 1—Interpretation*****Definition for pt 8**

Clause 118 inserts a definition of “commencement” which means the commencement of this part of the Bill.

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

Clause 119 inserts a definition of “repealed Act, which means the *Second-hand Dealers and Collectors Act 1984*.”

Existing second-hand dealer’s licence

Clause 120 provides that a second-hand dealer’s licence in force under the repealed Act is taken to be a second-hand dealer’s licence under this Bill. The licence is subject to the conditions and restrictions on the licence, as far as practicable. The licence expires when it would have expired under the repealed Act. The licence cannot be renewed, restored or reinstated once it has expired. The licensee must apply for a new licence under the Bill if they wish to obtain a further second-hand dealer’s licence. The new licence will be subject to the new licensing structure of this Bill, for example if the licence is to be for one or three years, and the new licensing structure allows for multi-site licensing.

Existing applications for previous licences

Clause 121 provides that if an application for a second-hand dealer's licence, a renewal or restoration of a licence, or a replacement licence is requested before this Bill commences and the application has not been decided, then the chief executive is to decide the application as if the application was a similar application under this Bill. The chief executive has power to ask for further information under clause 18 of the Bill, in the event that all of the required information is not available in the application.

Notice of revocation

Clause 122 provides that if the chief executive has given a second-hand dealer a notice of revocation under the repealed Act, and the licence has not been revoked, the notice of revocation has effect as if the repealed Act had not been repealed.

Surrender notice

Clause 123 provides that if the chief executive has given a second-hand dealer 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.

Change of address

Clause 124 provides if a second-hand dealer has given 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 Bill.

Nominated property

Clause 125 provides if a second-hand dealer receives nominated property within 7 clear working days before the commencement of this Bill, section 47A of the repealed Act applies to the property as if the repealed Act had not been repealed.

Appeals to court

Clause 126 states if a person appealed to a Magistrates Court under the repealed Act before this Bill commences, and the appeal has not been decided, then the Magistrates Court may hear or continue to hear and decide the appeal, as if the repealed Act had not been repealed. If a person could have appealed to a Magistrates Court under the repealed Act before the commencement of the Bill and the person has not appealed, then the person may appeal under the repealed Act and the Magistrates Court may hear and decide the appeal, as if the repealed Act had not been repealed.

Existing authorised officers

Clause 127 provides that 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 Bill.

References to repealed Act

Clause 128 states that in an Act or a document, a reference to the repealed Act may, if the context permits, be taken as a reference to this Bill.

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

Clause 129 inserts a definition of “repealed Act”, which means the *Pawnbrokers Act 1984*.

Existing pawnbroker’s licence

Clause 130 provides that a pawnbroker’s licence in force under the repealed Act is taken to be a pawnbroker’s licence under this Bill. The licence is subject to the conditions and restrictions on the licence, as far as practicable. The licence expires when it would have expired under the repealed Act. The licence cannot be renewed, restored or reinstated once it has expired. The licensee must apply for a new licence under the Bill if they wish to obtain a further pawnbroker’s licence. The new licence will be subject to the new licensing structure of this Bill, for example if the licence

is to be for one or three years, and the new licensing structure allows for multi-site licensing.

Existing applications for previous licences

Clause 131 provides that if an application for a pawnbroker's licence, a renewal or restoration of a licence, or a replacement licence is requested before this Bill commences and the application has not been decided, then the chief executive is to decide the application as if the application was a similar application under this Bill. The chief executive has power to ask for further information under clause 18 of the Bill, in the event that all of the required information is not available in the application.

Notice of revocation

Clause 132 provides that if the chief executive has given a pawnbroker a notice of revocation under the repealed Act, and the licence has not been revoked, the notice of revocation has effect as if the repealed Act had not been repealed.

Surrender notice

Clause 133 provides that if the chief executive has given 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.

Change of address

Clause 134 provides if a pawnbroker has given 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 Bill.

Property pawned before the commencement

Clause 135 provides that certain sections of the repealed Act (termed "nominated sections") continue to apply to property taken as a pawn under the repealed Act before the commencement of this Bill, as if the repealed Act had not been repealed.

Appeals to court

Clause 136 states if a person appealed to a Magistrates Court under the repealed Act before this Bill commences, and the appeal has not been decided, then the Magistrates Court may hear or continue to hear and decide the appeal, as if the repealed Act had not been repealed. If a person could have appealed to a Magistrates Court under the repealed Act before the commencement of the Bill and the person has not appealed, then the person may appeal under the repealed Act and the Magistrates Court may hear and decide the appeal, as if the repealed Act had not been repealed.

Existing authorised officers

Clause 137 provides that 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 Bill.

References to repealed Act

Clause 138 states that in an Act or a document, a reference to the repealed Act may, if the context permits, be taken as a reference to this Bill.

**PART 10—AMENDMENT OF FUNERAL BENEFIT
BUSINESS ACT 1982****Act amended in pt 10**

Clause 139 explains that this part of the Bill amends the *Funeral Benefit Business Act 1982*.

Amendment of s.5 (Definitions)

Clause 140(1) inserts new definitions into section 5 of the *Funeral Benefit Business Act 1982*. “Entity” is not defined as there is a definition of “entity” in the *Acts Interpretation Act 1954*. The intention of the definition of “authorised investment manager” is to capture any friendly society, life office, bank, building society, credit union, superannuation fund, or any

other deposit taking institution already regulated under relevant Commonwealth or State legislation.

Clause 140(2) amends a section reference in the definition of “approved form”.

Clause 140(3) & (4) removes the word “corporation” from the definition of “contributor” and replaces it with “entity”. This change is necessary as any type of entity, whether a company or not, will be permitted to operate a funeral benefit business.

Clause 140(5) replaces the definition of “corporation”.

Clause 140(6) The heading for the definition of “funeral benefit” reads; “**funeral benefit or benefit**”. This clause removes the words “or benefit” from the heading of the definition, to make it clear that the definition is for a “funeral benefit”.

Insertion of pt 3 hdg (Funeral benefit businesses of corporations registered at commencement of this Act)

Clause 141 inserts a new part 3 heading.

Insertion of new s.8

Clause 142 inserts a new section 8 into the *Funeral Benefit Business Act 1982*. It makes it clear that Part 3 of the *Funeral Benefit Business Act 1982* only applies to those corporations or funeral benefit businesses that, in 1982 were already registered under the old *Friendly Societies Act 1913*. There are two corporations that are “part 3 corporations” for the purposes of the *Funeral Benefit Business Act 1982*.

Amendment of ss. 14, 15, 19, 20, 22 & 23

Clauses 143-148 amend sections 14, 15, 19, 20, 22 and 23 of the *Funeral Benefit Business Act 1982*. This is a result of the omission of section 73 the “General Penalty” provision. The general penalty provision has been removed on the grounds that the Scrutiny of Legislation Committee has questioned the use of such widely-framed offences in the past, because they seldom appear in current legislation and such widely-drawn offences may not have sufficient regard to the rights and liberties of potential defendants and may breach fundamental legislative principles. Instead, specific penalties have been introduced in alignment with the

current level of penalty specified in section 73. The penalty amount has not changed as the NCP recommendation was to maintain the existing responsibilities of parties.

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

Clause 149 inserts a new heading for part 4.

Replacement of ss.24 to 31

Clause 150 repeals sections 24 to 31 of the *Funeral Benefit Business Act 1982*. These provisions will not be required, as no corporations will be required to register under Part 4 once this Bill commences. The sections relating to new registrations become redundant and are therefore being repealed.

A new section (“Application of pt 4”) is being inserted to make it clear that Part 4 only applies to those corporations that registered after 1982 up until commencement of this Bill. The clause also inserts a definition for “nominated property” to re-create the definition of “nominated property” in s.31 of the *Funeral Benefit Business Act 1982*. Section 31 is no longer required, however, the definition may still need to be referred to.

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

Clause 151 replaces the words “The rules relating to the funeral benefit business of a corporation registered under this part to carry on such business shall” with the words “The rules relating to the funeral benefit business of a part 4 corporation must”. This is in order to incorporate the new definition of “part 4 corporation” and tidy up the start of the provision.

Omission of ss.33 to 35

Clause 152 omits sections 33 to 35. These provisions will not be required, as no corporations will be required to register under Part 4 once this Bill commences.

Amendment of s.36 (Certificate of registration)

Clause 153 omits subsection (1) of section 36 of the *Funeral Benefit Business Act 1982*. No new registrations will occur once this Bill commences, therefore subsection (1) is not required. Subsection (2) will remain and become subsection (1), as corporations that are registered, must still display the certificate of registration.

A specific penalty has been added as a result of the removal of section 73 the “General Penalty” provision. The general penalty provision has been removed on the grounds that the Scrutiny of Legislation Committee has questioned the use of such widely-framed offences in the past, because they seldom appear in current legislation and such widely-drawn offences may not have sufficient regard to the rights and liberties of potential defendants and may breach fundamental legislative principles. Instead, specific penalties have been introduced in alignment with the current level of penalty specified in section 73. The penalty amount has not changed as the NCP recommendation was to maintain the existing responsibilities of parties.

Omission of s.37 (Refusal of registration)

Clause 154 repeals section 37. No corporations will be able to register under Part 4 once this Bill commences, this section is not required.

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

Clause 155 repeals subsection (2)(b), and subsections (3) and (4) of section 38 of the *Funeral Benefit Business Act 1982*. It also removes the words “upon registration, open and” from subsection (1) of section 38.

A specific penalty has been added as a result of the removal of section 73 the “General Penalty” provision. The general penalty provision has been removed on the grounds that the Scrutiny of Legislation Committee has questioned the use of such widely-framed offences in the past, because they seldom appear in current legislation and such widely-drawn offences may not have sufficient regard to the rights and liberties of potential defendants and may breach fundamental legislative principles. Instead, specific penalties have been introduced in alignment with the current level of penalty specified in section 73. The penalty amount has not changed as the NCP recommendation was to maintain the existing responsibilities of parties.

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

Clause 156 repeals the words “a contract of insurance or a bond referred to in section 34” from section 39 of the *Funeral Benefit Business Act 1982* and replaces it with “an alternative financial arrangement” (which is defined), as this Bill repeals section 34.

Amendment of s.40 (Investment of moneys)

Clause 157 replaces subsection (3) of section 40. The meaning is intended to be the same, however the section has been redrafted to take into account modern drafting style and to make the responsibility of the corporation clear.

A specific penalty has been added as a result of the removal of section 73 the “General Penalty” provision. The general penalty provision has been removed on the grounds that the Scrutiny of Legislation Committee has questioned the use of such widely-framed offences in the past, because they seldom appear in current legislation and such widely-drawn offences may not have sufficient regard to the rights and liberties of potential defendants and may breach fundamental legislative principles. Instead, specific penalties have been introduced in alignment with the current level of penalty specified in section 73. The penalty amount has not changed as the NCP recommendation was to maintain the existing responsibilities of parties.

Amendment of ss.41, 42 & 43

Clauses 158, 159 and 160 add specific penalties as a result of the removal of section 73 the “General Penalty” provision. The general penalty provision has been removed on the grounds that the Scrutiny of Legislation Committee has questioned the use of such widely-framed offences in the past, because they seldom appear in current legislation and such widely-drawn offences may not have sufficient regard to the rights and liberties of potential defendants and may breach fundamental legislative principles. Instead, specific penalties have been introduced in alignment with the current level of penalty specified in section 73. The penalty amount has not changed as the NCP recommendation was to maintain the existing responsibilities of parties.

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

Clause 161 removes references to section 31 in section 44(d) and in the footnote, as this Bill repeals section 31 of the *Funeral Benefit Business Act 1982*.

Amendment of ss.46, 47 and 48

Clauses 162, 163 and 164 add specific penalties as a result of the removal of section 73 the “General Penalty” provision. The general penalty provision has been removed on the grounds that the Scrutiny of Legislation Committee has questioned the use of such widely-framed offences in the past, because they seldom appear in current legislation and such widely-drawn offences may not have sufficient regard to the rights and liberties of potential defendants and may breach fundamental legislative principles. Instead, specific penalties have been introduced in alignment with the current level of penalty specified in section 73. The penalty amount has not changed as the NCP recommendation was to maintain the existing responsibilities of parties.

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

Clause 165 repeals the old part heading and replaces it with the words “For Part 3 and 4 Corporations”. This is because the sections relating to the sale of funeral benefit businesses and the cancellation of registrations is only applicable to the corporations currently registered under Part 3 or Part 4.

Replacement of s.49 (Interpretation)

Clause 166 repeals section 49 and replaces it with a definition of “corporation” for part 5 of the *Funeral Benefit Business Act 1982*. This confirms that this part is only applicable to part 3 and part 4 corporations and not “corporations” generally.

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

Clause 167 amends section 50(1) so that a part 3 or part 4 corporation, with the approval of the registrar, may impose, sell, assign or dispose of

their funeral benefit business to another entity, it is not restricted to another registered part 3 or part 4 corporation.

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

Clause 168 removes a reference to section 35 from section 52(1)(a) of the *Funeral Benefit Business Act 1982*, as this Bill repeals section 35. It also removes a reference to section 52(17), as there is no subsection (17) in section 52.

Omission of pt 6

Clause 169 repeals part 6 of the *Funeral Benefit Business Act 1982*. Part 6 provides offences should providers of funeral benefit businesses fail to register. The registration requirements are being removed by this Bill and part 6 is therefore no longer required.

Replacement of pt 7, heading (General provisions)

Clause 170 inserts a new part heading.

Replacement of s.58 (Reference to registered corporation)

Clause 171 omits the current section 58 and replaces it. The clause states that part 6 only applies to registered corporations in relation to funeral benefit agreements entered into immediately before the commencement of this Bill.

Amendment of ss.59, 60, 61, 63, 66, & 67

Clauses 172, 173, 174, 175, 176 and 177 add specific penalties as a result of the removal of section 73 the “General Penalty” provision. The general penalty provision has been removed on the grounds that the Scrutiny of Legislation Committee has questioned the use of such widely-framed offences in the past, because they seldom appear in current legislation and such widely-drawn offences may not have sufficient regard to the rights and liberties of potential defendants and may breach fundamental legislative principles. Instead, specific penalties have been introduced in alignment with the current level of penalty specified in section 73. The penalty amount has not changed as the NCP recommendation was to maintain the existing responsibilities of parties.

Amendment of s.69 (Powers of inspectors)

Clause 178 clarifies that the section relates to registered corporations as defined by the Bill.

Omission of s.73 (General penalty)

Clause 179 removes section 73 of the *Funeral Benefit Business Act 1982*. The general offence provision has been removed on the grounds that the Scrutiny of Legislation Committee has questioned the use of such widely-framed offences in the past, because they seldom appear in current legislation and such widely-drawn offences may not have sufficient regard to the rights and liberties of potential defendants and may breach fundamental legislative principles. Instead, specific penalties have been introduced in alignment with the current level of penalty specified in section 73. The penalty amount has not changed as the NCP recommendation was to maintain the existing responsibilities of parties.

Amendment of s.75 (Institution of proceedings)

Clause 180 removes subsection 75(1), this is because section 56 is removed by this Bill. The words “subject to subsection (1)” are removed from subsection (2).

Amendment of s.76 (Offences by body corporate)

Clause 181 repeals the word “body corporate” in the heading and the section and replaces it with “corporation”. This is to ensure consistent terminology is used throughout the *Funeral Benefit Business Act 1982*.

Amendment of s.80 (Regulations)

Clause 182 omits subsections 80(2)(d) and (k).

Relocation and renumbering of ss.74 to 81

Clause 183 relocates and renumbers sections 74 to 81 of the *Funeral Benefit Business Act 1982*. This is because these sections are the current general sections which will apply to all funeral benefit agreements whether they are entered into before or after the commencement of this Bill.

Insertion of new pt 7

Clause 184 inserts a new part 7 implementing the NCP recommendations relating to funeral benefit agreements entered into after the commencement of this Bill. A new part heading and a new section 73 are included to confirm the application of part 7.

A new section 74 introduces a client care statement for all agreements entered into after the commencement of this Bill. The entity providing the funeral benefit agreement to the person must give the person a clear and legible client care statement, in the approved form, stating the rights and obligations of the parties to the agreement.

A new section 75 provides that a signed copy of the funeral benefit agreement must be given to the person immediately after the agreement has been entered into.

A new section 76 allows for a 30 day cooling-off period for all funeral benefit agreements entered into after the commencement of this Bill.

The new section 77 sets out the consequences if a person exercises their rights under the cooling-off period. The entity providing the funeral benefit agreement is entitled to a penalty amount of \$50 or the amount prescribed under a regulation. The person is entitled to a full refund less the penalty of \$50, and the refund must be made within 7 days after receiving the person's signed notice. This section has effect despite anything to the contrary in the contract.

A new section 78 provides that an entity other than an authorised investment manager, must advise the person prior to entering into a funeral benefit agreement with the entity, that the person may enter into a funeral benefit agreement with an authorised investment manager instead.

The new sections 79 and 80 provide that particular entities offering funeral benefit agreements should comply with the nominated sections of both the *Trusts Act 1973* and the *Trusts Accounts Act 1973* in respect of pre-payment monies entrusted to them. For example, if consumers choose to deposit their pre-payment monies with a funeral director, the funeral director is required to comply with the nominated provisions of the *Trusts Act 1973* and the *Trusts Accounts Act 1973*.

The new part heading for part 8 is also inserted by *clause 184* of the Bill.

SCHEDULE 1

DISQUALIFYING OFFENCE PROVISIONS UNDER THE CRIMINAL CODE

Schedule 1 sets out what comprises a “disqualifying offence” for the purposes of the Bill.

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS

Clause 117 provides for schedule 2, which makes consequential amendments to other acts that refer to both or either the *Pawnbrokers Act 1984* and the *Second-hand Dealers and Collectors Act 1984*.

SCHEDULE 3

DICTIONARY

Clause 4 provides for schedule 3 which provides the defined terms for the purposes of the Bill.