

## VICTORIA.



ANNO VICESIMO PRIMO

ELIZABETHÆ SECUNDÆ REGINÆ

No. 8246.

An Act to amend the *Disposal of Uncollected Goods Act 1961*.

[6th April, 1972.]

**BE** it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. (1) This Act may be cited as the *Disposal of Uncollected Goods (Amendment) Act 1972* and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.

Short title and commencement.

(2) In this Act the *Disposal of Uncollected Goods Act 1961* is called the Principal Act.

Principal Act No. 6815. Reprinted to No. 7181.

2. Section 3 of the Principal Act shall be amended as follows :—

Amendment of No. 6815 s. 3.

(a) In sub-section (1)—

(i) in paragraph (a) for the words “after an interval of not less than nine months from the date on which the goods are ready for redelivery” there shall be substituted the expression “after an interval of not less than one month from the date on which

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the goods are ready for redelivery or the date on which the bailor is informed is the date when they will be ready for redelivery (whichever is the later) ” ;

(ii) for paragraph (b) there shall be substituted the following paragraph :—

“ (b) After the date on which the goods are ready for redelivery or the date on which the bailor is informed is the date when they will be ready for redelivery (whichever is the later) the bailee—

(i) gives to the bailor and to every other person he actually knows has or claims an interest in the goods a notice, being a notice complying with the requirements of sub-section (5), that the goods are ready for redelivery ; and

(ii) publishes in a newspaper published in Melbourne and circulating throughout Victoria and in the district in which are situated the premises where the goods were accepted for repair or other treatment a notice of his intention to sell the goods (and such notice may include other goods intended to be sold by the bailor under this Act).”

(iii) paragraph (c) and all the words and expressions following paragraph (c) are hereby repealed ;

(b) After sub-section (1) there shall be inserted the following sub-section :—

“ (1A) The bailee shall not be entitled to sell the goods of a bailor—

(a) in a lot in which goods not accepted by him from the bailor are included ; and

(b) otherwise than by public auction or to dispose of them otherwise than by sale unless such other sale or such disposal

is authorized by this Act or unless the bailee certifies that in his opinion the best price cannot be obtained by a sale by public auction or the goods have no commercial value (whichever case applies) and gives reasons for that opinion.” ;

- (c) In sub-section (2) for the words “the giving of the notice of the bailee’s intention to sell the goods” there shall be substituted the words “the goods are sold” ;
- (d) In sub-section (4) for the expression “paragraph (b) thereof were omitted and as if for the reference in paragraph (c)” there shall be substituted the expression “for the reference in paragraph (b)” ;
- (e) For sub-section (5) there shall be substituted the following sub-section :—

“(5) A notice required or authorized by this section to be given by the bailee to the bailor shall contain—

Content of notices.

- (a) a sufficient description of the goods ;
- (b) the sum which the bailor claims to be due to him by way of his charges in relation to the goods ;
- (c) a statement that if the bailor fails within the period of one month beginning with the date of the giving of the notice both to pay the said sum and to take delivery of the goods or give directions as to their delivery the bailee is entitled to sell the goods in accordance with the provisions of this Act without any further notice being given to the bailor.”

3. After section 3 of the Principal Act there shall be inserted the following sections :—

No. 6815 s. 3A.

“3A. (1) Where in respect of goods accepted by a bailee in the course of a business for repair or other treatment the bailee certifies that the goods are of a value not exceeding \$20, then, instead of complying with paragraph (b) of sub-section (1) of section 3, the bailee may send an account for the payment of his charges to the bailor at the address given by the bailor to the bailee.

Alternative procedure where value of goods is less than \$20.

(2) Where a second account has also been sent to the bailor not earlier than 14 days after the sending of the first account the bailee shall be entitled to sell the goods by virtue of section 2 or to dispose of them in any other way he considers appropriate if after

six months beginning with the date of the sending of the first account his charges remain unpaid and the bailor has not taken delivery of the goods or given directions as to their delivery.

(3) Where at any time before the goods referred to in sub-section (1) are sold or disposed of a dispute of a nature described in sub-section (2) of section 3 arises between the bailor and the bailee, then the provisions of sub-sections (2) and (3) of that section shall with all modifications that are necessary extend and apply to that dispute, and without affecting the generality of the foregoing, in particular with the modification that where the dispute is treated as having been determined the date on which it is so treated as having been determined shall be the date of the sending of the first account.

Procedure where sufficient particulars of name and address of bailor are not available.

3B. Where in respect of goods accepted by a bailee in the course of a business for repair or other treatment the bailee does not have sufficient particulars of the name and address of the bailor in order to give to the bailor a notice that the goods are ready for redelivery, then the bailee shall be entitled to sell the goods by virtue of section 2 after the expiration of a period of six months after the goods are ready for redelivery if without giving the notice to the bailor that the goods are so ready for redelivery he complies with the other provisions of section 3."

Amendment of No. 6815 s. 5.

4. For sub-section (2) of section 5 of the Principal Act there shall be substituted the following sub-section :—

Records..

"(2) Where goods are sold or disposed of by virtue of the provisions of this Act the bailee shall, before the expiration of the period of seven days beginning with the date of the sale of the goods, prepare a record in relation to the goods containing the following particulars :—

- (a) A sufficient description of the goods ;
- (b) The date on which the goods were accepted for repair or other treatment ;
- (c) The date on which notice was given that the goods are ready for redelivery and the names and addresses of the persons to whom notice was so given, or the dates on which the two accounts were sent pursuant to section 3A and the name and address of the person to whom they were sent (whichever case applies) ;
- (d) The method, date and place of sale or disposal ;
- (e) Where the goods are sold by public auction, the name and principal place of business of the auctioneer ;

(f) Where

- (f) Where the goods are sold other than by public auction or are disposed of other than by sale—
- (i) the reason for the action so taken ;
  - (ii) the name and address of the person or institution to whom the goods are sold or disposed of (if applicable) ; and
  - (iii) the market value of the goods and the gross amount that the bailee believes the goods would have fetched if sold by public auction.
- (g) The amount of the gross proceeds of any sale ; and
- (h) A statement of each item of the charges of the bailee in relation to the goods and the transaction to which each item relates—

and shall, during the period of six years beginning with the date on which the record is prepared, keep the record together with any certificate made or copy of any notice or account given pursuant to this Act in respect of the goods, and shall at any reasonable time during the said period of six years, if so requested by or on behalf of the bailor, produce the record and the certificate or copy for inspection by the bailor, any person nominated by him in that behalf, or any person having or claiming an interest in the goods.”

5. For sub-section (1) of section 6 of the Principal Act there shall be inserted the following sub-section :—

Amendment of  
No. 6815 s. 6.

“(1) References in this Act to goods accepted by a bailee in the course of a business for repair or other treatment—

- (a) shall, in relation to goods of any class, be construed as references to goods of that class accepted by him for repair or other treatment in the course of a business consisting of or comprising the acceptance by him of goods of that class for repair or other treatment (whether or not the repair or other treatment is effected by him) wholly or mainly from persons who deliver to him, otherwise than in the course of a business, goods of that class for repair or other treatment ;
- (b) shall include references to goods being accepted for examination in order to ascertain the cost of repair and to give a quotation of that cost of repair to the bailor, and in such a case the date on which the goods are deemed ready for redelivery shall be the

date

date on which the quotation of the cost of repair is ready to be given to the bailor or the date on which the bailor is informed is the date when it will be so ready (whichever is the later).”

No. 6815.

New ss. 12 and 13.

6. After section 11 of the Principal Act there shall be inserted the following sections :—

Bailee to keep records in certain cases where entitlement to sell is not obtained under the Act.

“ 12. Where there is a bailment of goods accepted by a bailee in the course of a business for repair or other treatment on the terms set out in sub-section (1) of section 2, and the goods are sold or disposed of by the bailee for non-payment of his charges and the failure of the bailor to take or give directions for delivery of the goods under an entitlement other than one obtained by virtue of the provisions of this Act, the provisions of sub-sections (2) and (3) of section 5 shall with such modifications as are necessary extend and apply as if the goods were sold by virtue of the provisions of this Act.

Power of court to re-open certain transactions.

13. (1) Where in respect of any sale of goods under this Act it appears to a court that because of the method of sale or disposal of or the price obtained for the goods the transaction is unfair to the bailor or is otherwise such that a Court of Equity would give relief the court may re-open the transaction and take an account between the parties thereto.

(2) The court re-opening any transaction under this section may, notwithstanding any statement or settlement of accounts or any agreement purporting to effect a settlement between the bailee and the bailor—

- (a) re-open any account already taken between the parties ;
- (b) determine whether the sum obtained from a sale other than a sale by public auction is or could reasonably be the best price for the goods ;
- (c) determine the amount of the sale price which should reasonably be returned to the bailor by the bailee ; and
- (d) give judgment for any party for such amount as the court thinks fit having regard to any relief that the court determines is due to the bailor.

(3) Proceedings may be instituted in any court by the bailor for the purpose of obtaining relief under this section.”