



Pawnbrokers and Second-hand Dealers Regulation 2003

under the

Pawnbrokers and Second-hand Dealers Act 1996

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Pawnbrokers and Second-hand Dealers Act 1996*.

REBA MEAGHER, M.P.,
Minister for Fair Trading

Explanatory note

The object of this Regulation is to replace the *Pawnbrokers and Second-hand Dealers Regulation 1997* which will be repealed on 1 September 2003 under section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation is substantially in the same terms as the repealed Regulation, but contains a Schedule of amendments to the new Regulation that replicate the uncommenced amendments to the repealed Regulation set out in Schedule 2 to the *Pawnbrokers and Second-hand Dealers Amendment Act 2002*. The Schedule of amendments to the new Regulation also contains a number of amendments that are consequential on the uncommenced amendments to the *Pawnbrokers and Second-hand Dealers Act 1996* made by Schedule 1 to the 2002 amending Act. The commencement of the Schedule of amendments to the new Regulation will be delayed until 1 November 2003.

This Regulation is made under the *Pawnbrokers and Second-hand Dealers Act 1996*, including section 43 (the general regulation-making power).

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Clause 1 Pawnbrokers and Second-hand Dealers Regulation 2003

Part 1 Preliminary

Pawnbrokers and Second-hand Dealers Regulation 2003

under the

Pawnbrokers and Second-hand Dealers Act 1996

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Pawnbrokers and Second-hand Dealers Regulation 2003*.

Note. This Regulation replaces the *Pawnbrokers and Second-hand Dealers Regulation 1997* which is repealed on 1 September 2003 under section 10 (2) of the *Subordinate Legislation Act 1989*.

2 Commencement

- (1) This Regulation commences on 1 September 2003, except as provided by subclause (2).
- (2) Clause 30 and Schedule 4 commence on 1 November 2003.

3 Definition

- (1) In this Regulation:
the Act means the *Pawnbrokers and Second-hand Dealers Act 1996*.
- (2) Notes in the text of this Regulation (other than notes included in a form) do not form part of this Regulation.

4 Meaning of “market”

For the purposes of the definition of *market* in section 3 of the Act, a *market* does not include:

- (a) an activity:
 - (i) conducted in the course of or for the purposes of a fundraising appeal within the meaning of the *Charitable Fundraising Act 1991*, and

- (ii) promoted by a person who is or is taken to be the holder of an authority under that Act in respect of such an appeal,

unless, for the purposes of the activity concerned, space is allocated for a consideration to stallholders or marketeers who are not members of a charitable organisation or other body connected with the promotion of the fundraising appeal, or

- (b) an assembly of stallholders or marketeers:
 - (i) none of whom is selling any second-hand goods (within the meaning of the Act), or
 - (ii) at which every person selling any such goods is selling them in household quantities only and has provided the promoter of the assembly with a signed declaration that the person has not traded in such goods on more than 12 days in the period of 12 months ending with the date on which the assembly is held.

5 Meaning of “second-hand goods”

- (1) For the purposes of the definition of *second-hand goods* in section 3 of the Act, the following classes of goods are prescribed:
 - (a) items of jewellery (including watches) that include gemstones or precious metals,
 - (b) gemstones and precious metals,
 - (c) sporting and recreational goods,
 - (d) musical instruments (other than pianos),
 - (e) photographic equipment,
 - (f) portable engine-powered, motorised or air-powered tools and equipment,
 - (g) microwave cookers and other electric or electronic goods (other than refrigerators, washing machines or other “whitegoods”),
 - (h) computer hardware and software,
 - (i) compact (laser-read) discs,
 - (j) watercraft and parts of watercraft,
 - (k) tool kits,
 - (l) car accessories,
 - (m) mobile phones.

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Clause 6 Pawnbrokers and Second-hand Dealers Regulation 2003

Part 1 Preliminary

- (2) Despite subclause (1), the following classes of goods are not prescribed for the purposes of the definition of *second-hand goods* in section 3 of the Act:
- (a) motorised wheelchairs, wheeled lounges, spinal carriages and other similar goods designed to carry a person with a disability,
 - (b) industrial machinery, or farming machinery, that cannot be driven or is not portable.
- (3) The fact, however, that a person, in the course of or as a matter ancillary to the carrying on of a business that does not require a licence under the Act:
- (a) sells any goods pursuant to a power conferred by the *Uncollected Goods Act 1995*, or
 - (b) takes goods as a trade-in or sells any goods so taken,
- does not, for the purposes of the Act, constitute carrying on a business of buying or selling second-hand goods.
- (4) In this clause:
- trade-in*, in relation to goods, means the taking of the goods as part payment for any new or used goods.

6 Act does not apply to local government recycling programs

For the purposes of section 4 (2) (c) of the Act, the Act does not apply in relation to any act or omission by a local government council or any employee of a local government council in:

- (a) conducting a recycling program, or
- (b) selling any goods collected in a recycling program, or
- (c) contracting with another person to give that person ownership of goods collected in a recycling program.

7 Exclusion of certain institutions from operation of section 5 of Act

Section 5 of the Act (Buy-back contracts regarded as pledge and loan) does not apply to goods received by an authorised deposit-taking institution or a bank.

8 Fees

- (1) The fees payable for the purposes of the Act are listed in Column 1 of Schedule 3.

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- (2) The amount of each fee is to be calculated by adding together the various components set out in Columns 2 and 3 of Schedule 3 in relation that fee.
- (3) An amount specified in relation to an application in Column 2 of Schedule 3 under the heading “**Processing component**” is taken to be a fee to cover the costs incurred by the Director-General in processing the application.

Note. This amount is consequently a **processing fee** for the purposes of Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002*.

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Clause 9 Pawnbrokers and Second-hand Dealers Regulation 2003

Part 2 Licensing of pawnbrokers and second-hand dealers

Part 2 Licensing of pawnbrokers and second-hand dealers

9 Unique identifier for combined licence

Despite section 20 (3) (b) (i) of the *Licensing and Registration (Uniform Procedures) Act 2002*, the same unique identifier may relate to a pawnbroker's licence and second-hand dealer's licence that are both contained in the same document, as referred to in section 20 (5) of that Act.

10 Display of licence details

- (1) For the purposes of section 14 of the Act, the required particulars are:
 - (a) the name of the licensee, and
 - (b) the licence number, and
 - (c) the business authorised by the licence to be carried on by the licensee, and
 - (d) if the licensee is a pawnbroker, a statement to the effect that any information provided to the licensee by or about a customer in relation to the trading of second-hand goods may be furnished to the police.

Note. The obligation to furnish information to the Commissioner of Police is imposed by clause 16.
- (2) The particulars must be written in legible capital letters in the English language using letters and figures each not less than 5 centimetres in height.

Part 3 Records

11 Records generally

- (1) Records maintained for the purposes of the Act may be kept electronically or in a bound (not loose-leaf) book.
- (2) The records must have consecutively numbered pages.
- (3) The records must permanently record the date on which each record was first compiled and the date on which each entry was made.
- (4) The Director-General is to require the licensee, by way of a condition of the licence, to use electronic means of creation and storage of records kept for the purposes of section 16 or 28 of the Act using software specified, or of a kind specified, in the condition.
- (5) The records must include the contract number referred to in clause 13 (1) (b) and (2) (b) for each item taken in trade or pawn, and that number must be reproduced on a tag, label or other attachment to the item.
- (6) Despite subclauses (1) and (4):
 - (a) any hard copy of any written statement as to the ownership of goods obtained from a customer under clause 18 (3) may be kept in loose-leaf form, and
 - (b) any hard copy of the record of any agreement by which goods were pawned under section 28 of the Act may be kept in loose-leaf form.

12 Special provisions relating to keeping of records by certain licensees

- (1) A person who held a second-hand dealer's licence under the *Second-hand Dealers and Collectors Act 1906* immediately before the repeal of that Act on 30 April 1997 and who has never held a licence issued with a condition requiring the use of electronic means of creation and storage of records, may, when applying for the issue or renewal of a licence (being a licence authorising the person to carry on the business of a second-hand dealer, but not the business of a pawnbroker), apply to have the licence issued or renewed without such a condition.

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Clause 12 Pawnbrokers and Second-hand Dealers Regulation 2003

Part 3 Records

- (2) Despite clause 11 (4), if a person makes such an application, the Director-General must not impose such a condition if:
 - (a) the Director-General is satisfied that the person was entitled to make such an application, and
 - (b) the Director-General is satisfied, after having regard to both of the relevant documents in relation to the person's business, that the gross receipts of the business relating to used goods totalled \$150,000 or less in the previous financial year or (if appropriate) the financial year before that.
- (3) For this purpose, the relevant documents in relation to the person's business are:
 - (a) the person's income tax return or audited financial statement for the previous financial year, and
 - (b) a statutory declaration by the person declaring that the gross receipts of the business relating to used goods totalled \$150,000 or less in the previous financial year.
- (4) If the Director-General considers it appropriate, the Director-General may accept the following as relevant documents in relation to a person's business:
 - (a) the person's income tax return or audited financial statement for the year before the previous financial year,
 - (b) a statutory declaration relating to the gross receipts of the business for the year before the previous financial year.
- (5) If the Director-General accepts the person's income tax return or audited financial statement for the year before the previous financial year as the relevant documents for the purposes of this clause, the Director-General may impose a condition on the licence granted or renewed requiring the licensee to forward to the Director-General the licensee's income tax return or financial statement for the previous financial year within 14 days of the licensee receiving or finalising that document.
- (6) If at any time after the issue or renewal of a licence that does not contain a condition requiring the use of electronic means of creation and storage of records the Director-General is satisfied that the gross receipts for the licensee's business relating to used goods totalled more than \$150,000 in the previous financial year, the Director-General may impose a condition of that kind on the licence.
- (7) Any condition imposed under subclause (6) takes effect 90 days after written notice of the condition is given to the licensee.

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- (8) If, on such evidence as the Director-General may require, the Director-General is satisfied that:
- (a) a second-hand dealer's licence under the *Second-hand Dealers and Collectors Act 1906* was held by a person for the purposes of a business carried on by a corporation or partnership, and
 - (b) in the case of a partnership, there has not been any change in the membership of the partnership since the licence was held on its behalf (except for any person ceasing to be a partner or any spouse of an existing partner becoming a partner),
- the Director-General may determine that the corporation or each of those partners is to be regarded, for the purposes of this clause, as the holder of the licence. The determination has effect accordingly.
- (9) For the purposes of subclause (8), *spouse* includes the other party to a de facto relationship within the meaning of the *Property (Relationships) Act 1984*.
- (10) A reference in subclause (1) to a licence issued under the *Second-hand Dealers and Collectors Act 1906* includes a reference to a licence issued after 30 April 1997 pursuant to an application that was made but not dealt with before that date.
- (11) In this clause:
- used goods* means goods that have been used or that are represented by a vendor of the goods to be goods purchased (otherwise than by the vendor) previously but unused, and includes second-hand goods.

13 Records of goods pawned, purchased or sold

- (1) The following particulars are prescribed for the purposes of section 16 (1) of the Act in so far as the licensee carries on the business of a pawnbroker:
- (a) the name, address, date of birth and signature of the pledgor or his or her agent,
 - (b) a contract number for each transaction in which goods are pawned (that is, a number uniquely assigned by the licensee to distinguish it from any other pledge arising in the course of the licensee's business),
 - (c) the date on which any pledge was taken, forfeited, sold or otherwise dealt with,
 - (d) the sale price of any forfeited item sold,

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Clause 13 Pawnbrokers and Second-hand Dealers Regulation 2003

Part 3 Records

- (e) the location of any goods concerned in the business that are not kept at the notified business or storage premises of the licensee.
- (2) The following particulars are prescribed for the purposes of section 16 (1) of the Act in so far as the licensee carries on the business of a second-hand dealer:
- (a) the name, address, date of birth and signature of the vendor or consignor or his or her agent,
 - (b) a contract number for each transaction in which goods are bought or sold (that is, a number uniquely assigned by the licensee to distinguish it from any other sale or purchase arising in the course of the licensee's business),
 - (c) the date on which any goods were purchased, taken on consignment, sold or otherwise dealt with,
 - (d) the name and address of the purchaser of goods sold by the licensee (otherwise than at a market), except in cases where the value of the goods does not exceed \$50,
 - (e) a description of the goods that includes any characteristics specified in section 28 (2) (a) of the Act that appear on or in connection with the goods,
 - (f) the price paid for any goods purchased,
 - (g) the location of any goods concerned in the business that are not kept at the notified business or storage premises of the licensee.
- (3) The following particulars are also prescribed for the purposes of section 16 (1) of the Act in relation to all licensed businesses:
- (a) evidence of any search in public registers such as REVS for encumbrances in respect of goods,
 - (b) features peculiar to any card or document relied on for the purposes of clause 18 (1), such as:
 - (i) in the case of a passport or driver licence—the number of the passport or licence, or
 - (ii) in the case of a credit card—the account number displayed on the card, or
 - (iii) in the case of a bill addressed to the customer from a public utility—the customer's account number shown on the bill,

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- (c) in relation to jewellery, such particulars as the Commissioner of Police, by one or more notices served on the licensee, may specify.

14 Records of persons employed in licensed businesses

For the purposes of section 16 (2) of the Act, the prescribed particulars are the name, date of birth and residential address of each person employed in the licensed business.

15 Records relating to markets

For the purposes of section 16 (3) of the Act, the prescribed particulars are as follows:

- (a) the date on which the market is held,
- (b) the location of the market,
- (c) the name, residential address and vehicle registration number of any unlicensed stallholder offering second-hand goods (within the meaning of the Act) for sale,
- (d) a general description of the goods offered for sale by any such stallholder,
- (e) details of any identification documents produced by any such stallholder.

16 Furnishing of records to Commissioner of Police

- (1) For the purposes of section 16 (5A) of the Act, particulars of a record that is required, by way of a condition of a licence, to be created and stored in electronic form by a licensee must be furnished to the Commissioner of Police by transmission in electronic form within 3 working days of the record being made, or in accordance with other arrangements made by the Commissioner of Police with the licensee.
- (2) For the purposes of section 16 (5A) of the Act, particulars of a record that is required by or under the Act to be kept by a licensee, but that is not required to be created and stored in electronic form, must be furnished to the Commissioner of Police, if so directed by the Commissioner, in the manner and within the time directed by the Commissioner.

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Clause 17 Pawnbrokers and Second-hand Dealers Regulation 2003

Part 3 Records

17 Production of records at offices of Department

For the purposes of section 17 (4) of the Act, the prescribed distance is 100 kilometres.

Part 4 Regulation of licensed businesses

18 Evidence of identity and title of supplier of goods

- (1) For the purposes of section 15 (1A) of the Act, the identity of the person (the *customer*) offering to sell or pawn any goods to a licensee must be verified by the licensee by means of either:
 - (a) a card or document that:
 - (i) bears the customer's photograph, and
 - (ii) appears to be issued by the government or a statutory authority of New South Wales or the Commonwealth or a State or Territory, and
 - (iii) includes the name of the person who the customer claims to be and the address at which the customer claims to reside, and a signature, purporting to be the signature of that person that matches the signature of the customer, and
 - (iv) does not bear any indications of forgery or tampering, or
 - (b) a combination of cards or documents:
 - (i) that appear to be issued by organisations or persons other than the customer and that include the information and features described in paragraph (a) (iii), and
 - (ii) one of which appears to be issued by the government or a statutory authority of New South Wales or the Commonwealth or a State or Territory, and
 - (iii) none of which bears any indications of forgery or tampering.
- (2) For the purposes of section 15 (1B) of the Act, the person's date of birth is prescribed as a particular relating to the identity of the person. Evidence of the person's date of birth may be given in oral or documentary form.
- (3) For the purposes of section 15 (3) of the Act, the licensee must obtain from the customer a written statement as to the ownership of goods to the effect of the form set out in Form 2 in Schedule 1.

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Clause 19 Pawnbrokers and Second-hand Dealers Regulation 2003

Part 4 Regulation of licensed businesses

19 Retention of goods by licensee

- (1) Section 21 (1) of the Act does not apply to:
 - (a) goods that are on consignment with the licensee for sale, or
 - (b) goods purchased by the licensee at auction, or
 - (c) pawned goods.
- (2) For the purposes of section 21 (1) (a) of the Act, motor vehicles, watercraft and other goods of substantial size may be kept at any convenient place.

20 Goods alleged to be stolen in possession of licensee

For the purposes of section 22 (1) (a) of the Act, the licensee's statement is to be given using Form 1 in Schedule 1.

21 Penalty notice offences and demerit points

- (1) Each offence created by a provision specified in Column 1 of Schedule 2 is a prescribed offence for the purposes of sections 26 and 27 of the Act.
- (2) The penalty specified in Column 2 of Schedule 2 opposite any such provision specified in Column 1 of that Schedule is the amount of penalty prescribed for the offence concerned if dealt with under section 26 of the Act.
- (3) The number of demerit points specified in Column 3 of Schedule 2 opposite any such provision specified in Column 1 of that Schedule is the number of demerit points prescribed for the purposes of section 27 (2) of the Act in respect of the offence concerned.

Part 5 Special provisions relating to pawnbrokers

22 Equivalent annual interest rate

- (1) In this clause:

equivalent annual interest rate means the rate mentioned in section 28 (2) (c) of the Act (expressed as a percentage) calculated as prescribed by this clause.

interest period, in relation to a loan made by a pawnbroker, means a period of time in respect of which interest is charged on any outstanding balance.

outstanding balance, in relation to such a loan, means the portion of the amount advanced that remains unpaid.

periodic interest rate, in relation to such a loan, means the rate (expressed as a percentage) per interest period at which interest is chargeable on any outstanding balance.

- (2) The equivalent annual interest rate, in relation to a loan made by a pawnbroker, is the rate that bears to a year the same proportion as the periodic interest rate bears to the interest period. For example:
- (a) if the interest period is one month, the equivalent annual interest rate is 12 times the periodic interest rate, and
 - (b) if the interest period is one week, the equivalent annual interest rate is 52 times the periodic interest rate.

23 Pawnbroker's record of pledges

For the purposes of section 28 (2) (f) of the Act, particulars of the date of birth of the owner of the goods and of any agent through whom they are pawned are prescribed as particulars required to be included in the record of an agreement by which goods are pawned.

24 Redemption of pawned goods

- (1) For the purposes of section 29 (6) of the Act, the identity of the person (the *customer*) attempting to redeem any pawned goods from a licensee's premises is ascertained by production of the pawn ticket and reproduction, in the presence of the licensee or an employee of the licensee, of the signature shown on that ticket. If the customer does this, there are no other requirements for the purposes of that subsection.

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Clause 25 Pawnbrokers and Second-hand Dealers Regulation 2003

Part 5 Special provisions relating to pawnbrokers

- (2) The identity of a customer who cannot produce the pawn ticket must be ascertained by the licensee by means of:
- (a) a card or document that:
 - (i) bears the customer's photograph, and
 - (ii) appears to be issued by the government or a statutory authority of New South Wales or the Commonwealth or a State or Territory, and
 - (iii) includes the name of the person who the customer claims to be and the address at which the customer claims to reside, and a signature, purporting to be the signature of that person that matches the signature of the customer, and
 - (iv) does not bear any indications of forgery or tampering, or
 - (b) a combination of cards or documents:
 - (i) that appear to be issued by organisations or persons other than the customer and that include the information and features described in paragraph (a) (iii), and
 - (ii) one of which appears to be issued by the government or a statutory authority of New South Wales or the Commonwealth or a State or Territory, and
 - (iii) none of which bears any indications of forgery or tampering.
- (3) A customer who cannot produce the pawn ticket must:
- (a) complete a declaration in writing stating that he or she is the owner of the goods, or
 - (b) produce:
 - (i) an authority in writing specifying the name and address of the owner of the goods and signed by the owner, authorising the goods to be collected by that customer, or
 - (ii) such evidence as may, in the circumstances, be reasonably sufficient to prove the death or incapacity of the owner or the owner's inability to sign such an authority.

25 Sale of unredeemed goods

For the purposes of section 30 (1) of the Act, the prescribed amount is \$50.

Part 6 Miscellaneous

26 Lending or parting with licence

- (1) A licensee must not purport to transfer, and must not lend, the licence to another person or allow the use of the licence by another person.
- (2) A person must not purport to obtain a transfer of, or borrow or use, another person's licence.

Maximum penalty: 20 penalty units.

27 Carrying on of business in partnership

- (1) The prescribed fees under the first 4 items of Schedule 3 are the total amount of the fees payable by all applicants who carry on business in partnership. Accordingly, no amount is payable in connection with an application for a licence or the renewal of a licence by any such applicant if, at that time or during the 12 months before the application, the requisite amount has been paid by any other partner in the partnership (whether the payment is for an application for a licence or for the renewal of a licence).
- (2) The Director-General may, for the purposes of clause 12 (6), treat the gross receipts of a business partnership as the gross receipts of the business of each licensee in the partnership.

28 Carrying on of business by legal personal representatives and trustees

- (1) If the holder of a licence dies or becomes mentally incapacitated, or is by the order of any court declared to be bankrupt, the legal personal representative or trustee of the estate of the licensee may in person or by a designated agent carry on the business authorised by the licence for a period of 3 months after the death, incapacity or order, unless sooner notified by the Director-General under subclause (5).
- (2) A person carrying on a business in accordance with this clause must immediately notify the Director-General that he or she is doing so.
- (3) For the purposes of the Act, this Regulation and any powers of the Director-General with respect to licences, a person carrying on a business in accordance with this clause is taken, while so doing, to be the licensee, and any agent through whom the person acts for the purposes of the business is taken to be an employee of the business.

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Clause 29 Pawnbrokers and Second-hand Dealers Regulation 2003

Part 6 Miscellaneous

- (4) If the licence concerned expires during the period of 3 months referred to in subclause (1), the provisions of sections 6 and 7 of the Act do not apply so as to render the person carrying on business in accordance with this clause guilty of an offence by reason of doing so.
- (5) For any reason that appears to the Director-General to be sufficient cause to do so, the Director-General may at any time, by notice in writing to a person carrying on a business in accordance with this clause, revoke the authority conferred by this clause so far as the relevant business is concerned.

29 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Pawnbrokers and Second-hand Dealers Regulation 1997*, was done for the purposes of, or had effect under, that Regulation is taken to be done for the purposes of, and continues to have effect under, this Regulation.

30 Amendment of Regulation

This Regulation is amended as set out in Schedule 4.

Schedule 1 Forms

Form 1 Pawnbrokers and Second-hand Dealers Act 1996

(Clause 20 of Pawnbrokers and Second-hand Dealers Regulation 2003)

Statement by licensee as to goods claimed

*Name of claimant:

*Address of claimant:

Date:

Name of licensee:

Business address:

Licence number:

Description of goods claimed:

.....

.....

.....

.....

.....

Signed by licensee.....

* These particulars to be supplied by the claimant

Note. This statement must be completed by the licensee in duplicate (at least). A copy is to be given to the person claiming the goods. Another copy must be given to the officer in charge of the nearest police station within 24 hours. The goods concerned must not be altered, sold, redeemed or removed from the premises except with the consent of the person claiming the goods or in accordance with the order of a court. If the parties are unable to resolve the matter simply, staff at the Local Court are available for help in commencing a court action under the *Local Courts (Civil Claims) Act 1970* or as to other means of resolving the matter.

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Schedule 1 Forms

Form 2 Pawnbrokers and Second-hand Dealers Act 1996

(Clause 18 of Pawnbrokers and Second-hand Dealers Regulation 2003)

Statement by customer as to who is the owner of goods sold or pawned

I of

..... am the owner of the goods described below.

Signed:

Dated:

OR

I of

..... am not the owner of the goods described below. The owner of the goods is of

.....
and I am authorised by the owner to sell/pawn the goods. (*You should cross out either "sell" or "pawn" if you are not authorised to do that thing.*)

Signed:

Dated:

Description of goods:

.....
.....
.....
.....
.....

Important information

If you are pawning goods:

You must fill out this form and sign it so that the pawnbroker can be sure that you are the owner of the goods or that you have the authority of the owner to pawn the goods.

Any information that you provide to the pawnbroker will be passed on to the Commissioner of Police.

If you are offering any second-hand goods for sale by a second-hand dealer:

You must fill out this form and sign it so that the dealer can be sure that you are the owner of the goods or that you have the authority of the owner to sell the goods.

Any information that you provide to the dealer may be passed on to the Commissioner of Police.

Warning: It is a crime to give false information or make a false statement in this form.

Maximum penalty: 50 penalty units (currently \$5,500).

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Schedule 2 Penalty notice offences and demerit points

Schedule 2 Penalty notice offences and demerit points

(Clause 21)

Column 1	Column 2	Column 3
Provision of Act	Penalty if dealt with by penalty notice (in dollars)	Number of demerit points
Section 12 (2)	300	2
Section 12A (2)	300	2
Section 14	300	1
Section 16 (1)–(5A)	500	2
Section 16 (6)	300	2
Section 17	300	2
Section 19	500	2
Section 20	300	2
Section 21	500	2
Section 24	300	2
Section 25	300	2
Section 28	500	2
Section 29	300	2
Section 30 (2)	300	2
Section 31	300	2
Section 32	300	2
Section 37	100	Nil

Schedule 3 Fees

(Clause 8)

Column 1	Column 2	Column 3
Nature of fee payable	Processing component	Fixed component
Application fee for granting of licence	\$134	\$237
Application fee for renewal of licence	\$31	\$237
Application fee for restoration of licence	\$134	\$237
Application fee for replacement of licence	\$21	nil
Application fee for extract of register (per entry)	nil	\$12

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(Clause 30)

[1] Clause 4 Meaning of “market”

Omit “12 days” from clause 4 (b) (ii). Insert instead “6 days”.

[2] Clause 5 Meaning of “second-hand goods”

Omit clause 5 (1) (d). Insert instead:

- (d) musical instruments (but not including pianos other than electric or electronic pianos),

[3] Clause 5 (1) (h) and (h1)

Omit clause 5 (1) (h). Insert instead:

- (h) computer hardware and interactive game consoles,
- (h1) computer software and interactive game software,

[4] Clause 5 (1) (i)

Omit the paragraph. Insert instead:

- (i) compact (laser-read) discs (including compact discs, digital video discs and mini discs), and similar items that are used or designed for use with electric or electronic audio, visual or audio-visual systems,

[5] Clause 5 (4)

Insert in alphabetical order:

interactive game console means equipment for the playing of a game:

- (a) that involves a display on a computer monitor, television screen, liquid crystal display or similar medium, and
- (b) where the way in which the game proceeds and the result achieved at various stages of the game is determined in response to the decisions, inputs and direct involvement of the player.

interactive game software includes software (whether in a disc or cartridge or otherwise) that comprises a game and that is used or designed for use with an interactive game console.

[6] Clause 6 Application of Act

Omit “a local government council or any employee of a local government council”.

Insert instead “an approved person”.

[7] Clause 6 (2) and (3)

Insert at the end of clause 6:

- (2) For the purposes of section 4 (2) (c) of the Act, the Act does not apply in relation to a person to the extent that the person:
 - (a) buys second-hand goods only from a government department or public authority, or
 - (b) deals only in second-hand goods that have been bought from manufacturers as factory seconds.
- (3) A person is an *approved person* for the purposes of subclause (1) if the person is:
 - (a) a local government council or an employee of a local government council, or
 - (b) a contractor, or an employee of a contractor, when acting on behalf of a local government council under a contract relating to the recycling program concerned (but only if tenders were invited for the contract and the contractor was the successful tenderer).

[8] Clause 11

Omit the clause. Insert instead:

11 Records generally

- (1) Records that are required to be kept for the purposes of the Act:
 - (a) must be kept electronically or in a bound (not loose-leaf) book, and
 - (b) must be in the English language, and
 - (c) must have consecutively numbered pages, and
 - (d) must permanently record the date on which each record was first compiled and the date on which each entry was made, and

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- (e) must include the contract number referred to in clause 13 (1) (c) and (2) (c) for each item taken in trade or pawn.
- (2) The Director-General is to require the licensee, by way of a condition of the licence, to use electronic means of creation and storage of records kept for the purposes of section 16, 28 or 29A of the Act using software specified, or of a kind specified, in the condition.
- (3) Despite subclauses (1) (a) and (2):
 - (a) any hard copy of any written statement as to the ownership of goods obtained from a customer under clause 18 (4) may be kept in loose-leaf form, and
 - (b) any hard copy of the record of any agreement by which goods were pawned under section 28 of the Act may be kept in loose-leaf form so long as the record includes the contract number referred to in clause 13 (1) (c) and (2) (c) for each item taken in pawn and is kept in order of contract number.

[9] Clause 12 Special provisions relating to keeping of records by certain licensees

Omit “clause 11 (4)” from clause 12 (2). Insert instead “clause 11 (2)”.

[10] Clause 13

Omit the clause. Insert instead:

13 Records of goods pawned, purchased or sold

- (1) The following particulars are prescribed for the purposes of section 16 (1) of the Act in so far as the licensee carries on the business of a pawnbroker:
 - (a) if the pledgor is:
 - (i) an individual—the name, residential address and date of birth of the individual, or
 - (ii) a corporation—the name, business address and Australian Business Number of the corporation,
 - (b) if the transaction is conducted by an individual acting as agent of the pledgor—the name, residential address and date of birth of the agent,

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- (c) a contract number for each transaction in which goods are pawned (that is, a number uniquely assigned by the licensee to distinguish it from any other pledge arising in the course of the licensee's business),
 - (d) the date on which any pledge was taken, forfeited, sold or otherwise dealt with,
 - (e) the sale price of any forfeited item sold,
 - (f) the name and address of the purchaser of any forfeited item sold, except in cases where:
 - (i) the principal lent on the goods did not exceed \$50, or
 - (ii) the goods were sold by auction conducted away from business premises of the pawnbroker.
- (2) The following particulars are prescribed for the purposes of section 16 (1) of the Act in so far as the licensee carries on the business of a second-hand dealer:
- (a) if the vendor or consignor is:
 - (i) an individual—the name, residential address and date of birth of the individual, or
 - (ii) a corporation—the name, business address and Australian Business Number of the corporation,
 - (b) if the transaction is conducted by an individual acting as agent of the vendor or consignor—the name, residential address and date of birth of the agent,
 - (c) a contract number for each transaction in which goods are bought or sold (that is, a number uniquely assigned by the licensee to distinguish it from any other sale or purchase arising in the course of the licensee's business),
 - (d) the date on which any goods were purchased, taken on consignment, sold or otherwise dealt with,
 - (e) the name and address of the purchaser of goods sold by the licensee along with the sale price, except in cases where the sale price does not exceed \$50,
 - (f) a description of the goods that includes any characteristics specified in section 28 (2) (a) of the Act that appear on or in connection with the goods,

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- (g) the price paid by the licensee for any goods purchased by the licensee,
 - (h) the location of any goods concerned in the business that are not kept at the notified business or storage premises of the licensee.
- (3) The following particulars are also prescribed for the purposes of section 16 (1) of the Act in relation to all licensed businesses:
 - (a) evidence of any search in public registers such as REVS for encumbrances in respect of goods,
 - (b) features peculiar to any card or document relied on for the purposes of clause 18 (1), such as:
 - (i) in the case of a passport or driver licence—the number of the passport or licence, or
 - (ii) in the case of a credit card—the account number displayed on the card, or
 - (iii) in the case of a bill addressed to the customer from a public utility—the customer's account number shown on the bill,
 - (c) in relation to jewellery, such particulars as the Commissioner of Police, by one or more notices served on the licensee, may specify.
- (4) For the purposes of section 16 (1) of the Act, a record required to be kept regarding the acquisition of second-hand goods by the holder of a licence to carry on the business of a second-hand dealer must be made:
 - (a) by close of business on the day on which the goods were acquired by the licensee, or
 - (b) as soon as possible after the acquisition of the goods, if they were received by the licensee at premises other than those nominated in the licensee's application for a licence or afterwards notified to the Director-General.
- (5) For the purposes of section 16 (1) of the Act, a record required to be kept regarding the disposal of second-hand goods by the holder of a licence to carry on the business of a second-hand dealer must be made by close of business on the day on which the goods were disposed of by the licensee.
- (6) Nothing in subclause (4) or (5) affects any other obligation imposed on a licensee.

(7) In this clause:

business address of a corporation means the address of the corporation's registered office.

[11] Clause 18

Omit the clause. Insert instead:

18 Evidence of identity and title of supplier of goods

- (1) For the purposes of section 15 (1A) of the Act, the identity of the person (the *customer*) offering to sell or pawn any goods to a licensee must be verified by the licensee by means of:
- (a) a card or document that:
 - (i) bears the customer's photograph, and
 - (ii) appears to be issued by the government or a statutory authority of New South Wales or the Commonwealth or a State or Territory, and
 - (iii) includes the name of the person who the customer claims to be and the address at which the customer claims to reside, and a signature, purporting to be the signature of that person that matches the signature of the customer, and
 - (iv) does not bear any indications of forgery or tampering, or
 - (b) a combination of cards or documents:
 - (i) that appear to be issued by organisations or persons other than the customer and that include the information and features described in paragraph (a) (iii), and
 - (ii) one of which appears to be issued by the government or a statutory authority of New South Wales or the Commonwealth or a State or Territory, and
 - (iii) none of which bears any indications of forgery or tampering, or
 - (c) a card or document (including, for example, a foreign passport) that:
 - (i) appears to be issued by the government or a government authority of a foreign country, and includes the information and features described

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- in paragraph (a) (i) and (iii) (including the customer's permanent or temporary residential address in Australia), and
 - (ii) does not bear any indications of forgery or tampering, or
 - (d) a combination of cards or documents (including, for example, a foreign passport):
 - (i) one of which appears to be issued by the government or a government authority of a foreign country, and includes the information and features described in paragraph (a) (i) and (iii) (but not including the customer's permanent or temporary residential address in Australia), and
 - (ii) one of which is in the form of a document (such as a letter from a landlord or proprietor of a hotel or similar premises) that includes the customer's permanent or temporary residential address in Australia, and
 - (iii) none of which bears any indications of forgery or tampering.
- (2) For the purposes of section 15 (1B) of the Act, if the person is an individual, the person's date of birth is prescribed as a particular relating to the identity of the person. Evidence of the person's date of birth must be given in a documentary form (such as a driver licence, passport, birth certificate or proof of age card) issued by the government or a statutory authority of New South Wales or the Commonwealth or a State or Territory or the government or a government authority of a foreign country.
- (3) For the purposes of section 15 (1B) of the Act, if the person is a corporation, the corporation's Australian Business Number is prescribed as a particular relating to the identity of the person. Evidence of the Australian Business Number must be given in a documentary form issued by the government or statutory authority of New South Wales, the Commonwealth or a State or Territory.
- (4) For the purposes of section 15 (3) of the Act, the licensee must obtain from the customer a written statement as to the ownership of goods that:
 - (a) is in the form set out in Form 2 in Schedule 1, and

(b) is set out in 10 point Arial type on A4 double-sided paper.

(5) In this clause:

foreign country means a country other than Australia, and includes a state, province or other part of such a country.

[12] Clause 18A

Insert after clause 18:

18A Contract or stock number to be reproduced on tag, label or other attachment

(1) A licensee must ensure that:

- (a) the contract number, or
- (b) a stock number,

for each item taken in trade or pawn during the course of the licensee's business is reproduced on a tag, label or other attachment to the item.

Maximum penalty: 20 penalty units.

(2) In this clause:

contract number for an item is the number referred to in clause 13 (1) (c) or (2) (c) in relation to the item.

stock number for an item is a number that:

- (a) is uniquely assigned by the licensee to distinguish the item from any other item held by the licensee in the course of the licensee's business, and
- (b) is the same as or different from the contract number for the item, and
- (c) is recorded electronically and in paper form, and
- (d) is linked to the contract number for the item in the electronic and paper record.

[13] Clause 19 Retention of goods by licensee

Insert at the end of clause 19 (1) (c):

, or

- (d) goods purchased by tender or auction from:

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- (i) a Government Department, or
- (ii) a State owned corporation, or
- (iii) a statutory authority constituted by or under an Act for a public purpose.

[14] **Clause 19 (2)**

Insert “so long as the licensee notifies the Director-General in writing of the address of that place” after “place”.

[15] **Clause 20 Goods alleged to be stolen in possession of licensee**

Omit the clause.

[16] **Clauses 23–23B**

Omit clause 23. Insert instead:

23 Pawnbroker’s record of pledges

- (1) For the purposes of section 28 (2) (a) of the Act:
 - (a) a fair and reasonable description of a compact (laser-read) disc or similar item (as referred to in clause 5 (1) (i)) must include:
 - (i) the title of the disc or item or of any film recorded on it, and
 - (ii) except in the case of an interactive game disc or a DVD movie disc—the name of any one or more of any artists or groups whose performance is or performances are recorded on it, and
 - (b) a fair and reasonable description of a mobile phone must include its International Mobile Equipment Identity (IMEI) number.
- (2) For the purposes of section 28 (2) (f) of the Act:
 - (a) particulars of:
 - (i) the date of birth of the owner of the goods, if the owner is an individual, or
 - (ii) the Australian Business Number of the owner of the goods, if the owner is a corporation, and
 - (b) if the goods are pawned by an individual as agent of the owner of the goods—particulars of the date of birth of the agent, and

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- (c) the printed name and signature of the person who took the pawn on behalf of the pawnbroker,
- are prescribed as particulars required to be included in the record of an agreement by which goods are pawned.
- (3) For the purposes of subclause (2):
- (a) evidence of an individual's date of birth must be given in a documentary form (such as a driver licence, passport, birth certificate or proof of age card) issued by the government or a statutory authority of New South Wales or the Commonwealth or a State or Territory or the government or a government authority of a foreign country, and
- (b) evidence of a corporation's Australian Business Number must be given in a documentary form issued by the government or a statutory authority of New South Wales, the Commonwealth or a State or Territory.

23A Notice of rights and obligations of person pawning goods

- (1) For the purposes of section 28 (5A) (a) of the Act, the form set out as Form 3 in Schedule 1 is prescribed.
- (2) The prescribed form must:
- (a) be set out in 10 point Arial type on A4 size double-sided paper, and
- (b) not include any information other than the wording set out in Form 3 in Schedule 1.

23B Additional particulars or information to be disclosed in or to accompany pawn ticket

For the purposes of section 28 (5A) (d) of the Act, the following particulars or information are to be disclosed in a notice incorporated in or accompanying a pawn ticket:

- (a) a statement of the frequency with which interest charges are to be debited and of the times at which interest charges are payable,
- (b) a statement to the effect that, if provision is made for interest charges to be payable at intervals of greater than one month, the interest charges may instead be paid at monthly intervals at the option of the person who pawned the goods,

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- (c) particulars of the address of the premises where the goods will be located during the redemption period,
- (d) if the goods consist of more than one item—a statement as to whether or not the goods may be separately redeemed,
- (e) the date on which the redemption period ends.

[17] Clause 24 Redemption of pawned goods

Insert at the end of clause 24 (2) (b):

, or

- (c) a card or document (including, for example, a foreign passport) that:
 - (i) appears to be issued by the government or a government authority of a foreign country, and includes the information and features described in paragraph (a) (i) and (iii) (including the customer's permanent or temporary residential address in Australia), and
 - (ii) does not bear any indications of forgery or tampering, or
- (d) a combination of cards or documents (including, for example, a foreign passport):
 - (i) one of which appears to be issued by the government or a government authority of a foreign country, and includes the information and features described in paragraph (a) (i) and (iii) (but not including the customer's permanent or temporary residential address in Australia), and
 - (ii) one of which is in the form of a document (such as a letter from a landlord or proprietor of a hotel or similar premises) that includes the customer's permanent or temporary residential address in Australia, and
 - (iii) none of which bears any indications of forgery or tampering.

[18] Clause 24 (4)

Insert after clause 24 (3):

(4) In this clause:

foreign country means a country other than Australia, and includes a state, province or other part of such a country.

[19] Clause 24A

Insert after clause 24:

24A Notice specifying interest rates and other fees and charges

For the purposes of section 32C of the Act, a notice specifying the rate or rates of interest charged by a licensee and any other fees and charges:

- (a) must be written in legible capital letters in the English language using letters and figures each not less than 5cm in height, and
- (b) must use Arial text, and
- (c) must appear as black writing against a white background.

[20] Part 5A

Insert after Part 5:

Part 5A Disputes as to ownership of goods and restoration of goods**25A Restoration notices under Part 4A of Act**

- (1) For the purposes of section 32F (3) of the Act, a restoration notice must contain the following particulars and information:
 - (a) the name of the claimant (including, if the claimant is a corporation, the name of the person acting on behalf of the corporation),
 - (b) the claimant's address (including the registered business address if a corporation),
 - (c) the date of birth of the claimant (or ABN if a corporation),

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- (d) the signature of the claimant or the person acting on behalf of the claimant if a corporation,
 - (e) if the claimant is a corporation, a signed statement by an executive officer of the corporation authorising a named person to act on behalf of the corporation,
 - (f) the connection between the claimant and the goods concerned,
 - (g) evidence supporting the claimant's title to the goods,
 - (h) the present location of the goods,
 - (i) a description of the goods (including any serial number),
 - (j) any alternative means of identifying the goods (eg any engraving or permanent markings),
 - (k) the COPS event number (in the case of a theft report),
 - (l) the date the matter was first reported to a police officer,
 - (m) the police description of the goods on inspection and the licensee's contract number for the goods,
 - (n) the name, contact details and signature of police officer issuing the notice,
 - (o) the name and licence number of the licensee (including the name of the directors if the licensee is a corporation),
 - (p) the registered business address of the licensee,
 - (q) the address of the licensee's approved premises.
- (2) For the purposes of section 32F (7) of the Act, a restoration notice ceases to be operative if the claimant withdraws his or her allegation under section 32F (1) of the Act.

25B Jurisdiction of Local Courts

In accordance with section 32I (1) (a) of the Act, a Local Court has jurisdiction to determine an action referred to in section 28A of the *Local Courts (Civil Claims) Act 1970* that is brought by a claimant in connection with goods that are in the possession of a licensee and to which a restoration notice relates if the licensee does not make an application under section 32G in relation to the goods within 28 days of being served with the notice.

25C Notice relating to operation of Part 4A of Act

For the purposes of section 32L of the Act, a notice relating to the operation of Part 4A of the Act must:

- (a) be in the form set out in Form 4 in Schedule 1, and
- (b) be written in legible capital letters in the English language using letters and figures each not less than 5cm in height, and
- (c) use Arial text, and
- (d) appear as black writing against a white background.

[21] Schedule 1 Forms

Omit Form 1.

[22] Schedule 1, Form 2

Insert under the heading “**Important information**”:

If you are acting on behalf of a corporation:

You must attach a statement signed by an executive officer of the corporation consenting to the transaction.

[23] Schedule 1, Forms 3 and 4

Insert after Form 2:

Form 3 Pawnbrokers and Second-hand Dealers Act 1996

(Clause 23A of Pawnbrokers and Second-hand Dealers Regulation 2003)

Notice to person pawning goods

Note. The information contained in this notice is to be treated only as a guide to your rights and obligations. In order to fully ascertain your legal rights and obligations you should refer to the relevant legislation.

Pawn ticket

- (1) You must sign an original record of your pawn agreement that contains all the required information.
- (2) You must be given a copy of this record (a pawn ticket) and this ticket must include the following information:
 - (a) The total amount lent on the goods.
 - (b) The date the pawn was made and the agreement signed.
 - (c) The date that the redemption period ends.

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- (d) If the goods consist of more than one item, whether or not the items can be separately redeemed.
- (e) The interest that you will be charged and the fees and charges that you will or may have to pay including any that may be deducted from the sale of your goods and how those fees and charges are calculated. Note that the interest rate and the fees and charges must not be more than those that are displayed on a sign in the pawnbroking shop.
- (f) The equivalent annual interest rate.
- (g) How often interest will be charged with an option to pay interest monthly if you want to.
- (h) The address of where the goods will be kept during the redemption period.
- (i) A fair and reasonable description of your goods, including serial numbers or other identifying numbers of every component.
- (j) The name and address of the owner and any agent.
- (k) By what method your goods may be sold if you were not to redeem them, for example, sold on the shelf or by auction at the pawnbroking shop or sold by auction at other premises (the address must be given).

Redemption of goods

- (1) You may reclaim the goods that you have pawned by paying the outstanding amount of the loan, and any interest due and any fees and charges payable, as stated on your pawn ticket. You must also produce your pawn ticket to the pawnbroker and reproduce the signature on the ticket. If you have lost your ticket, you can provide evidence of your identity and a statutory declaration that you are the owner of the goods instead. If you wish an agent to collect the goods on your behalf they will need an authorisation from you or evidence that you are unable to collect the goods yourself or provide an authorisation.
- (2) You may reclaim the goods at any time before the pawnbroker sells or disposes of them, even if the period of the loan has passed. The pawnbroker cannot charge interest after the end of the loan period but may charge you a safekeeping fee (this must be on your pawn ticket). This safekeeping fee cannot be more than that stated on the pawn ticket and the sign in the pawnbroking shop.

Period of loan and payments

- (1) The pawnbroker must provide you with a minimum 3-month loan period. The period of the loan commences on the day the goods are pawned.
- (2) You have a right to pay your interest charges on a monthly basis, the interest does not all have to be paid at the end of the loan period and you can make an interest payment to the pawnbroker at any time during business hours.

Lost or stolen pawn ticket

If your pawn ticket is lost or stolen and you give the pawnbroker a statutory declaration stating that you are the owner of the goods, or an authority from the owner to collect the goods and you also produce proof of your identity, you have a right to redeem the goods.

Sale of unredeemed goods and payment of surplus

The following provisions apply if the period of the loan expires and you have not reclaimed the pawned goods:

- (a) The pawnbroker must, if the loan is greater than \$50, offer the goods for sale as soon as possible in a way that will get the best price possible.
- (b) The only fees and charges that may be taken off the price paid for the goods are those that are stated on your pawn agreement (these must also be shown on a sign in the pawnbroking shop).
- (c) If the goods are sold for more than the loan and any interest or charges payable, then that excess money (or surplus) is payable to you. It is your right to collect that money within 12 months of the sale.
- (d) If there is a surplus which is greater than \$50, then not more than 21 days after the goods are sold the pawnbroker must send you a notice (unless you have requested the pawnbroker not to send you a notice) stating that the goods have been sold and there is a surplus due to you and that you have 12 months to collect it.
- (e) The pawnbroker, an employee of the pawnbroker or a person acting on behalf of a pawnbroker cannot buy the goods. If they do so they will not have legal ownership of the goods.

Pawn agreement cannot be varied other than to extend

- (1) You and the pawnbroker cannot vary the original agreement to pawn your goods other than to extend the loan period (this can be done even if the original loan period has already finished).
- (2) You must sign the agreement to extend and be provided with a copy of that agreement. The copy must:
 - (a) include a reference to the original agreement and state the date the extension agreement is made and what the new redemption period is, and
 - (b) state any new fees, charges or interest payable as a result of the extension agreement and include the date on which the extension agreement was entered into.

What happens if the pawnbroking shop closes or the pawnbroker sells the business?

- (1) If the pawnbroker sells the pawnbroking shop, the pawnbroker must write to you within 14 days of the sale, at the address that you have supplied, and notify you as to who has bought the business and will be in charge of the pawn.
- (2) If a pawnbroker surrenders the pawnbroker's licence, the Office of Fair Trading may require the pawnbroker to advise you as to where you can redeem your goods.

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Form 4 Pawnbrokers and Second-hand Dealers Act 1996

(Clause 25C of Pawnbrokers and Second-hand Dealers Regulation 2003)

Disputes about ownership and restoration of goods

You have a legal right to claim goods from these premises that you have good reason to believe are yours. Go to any Police Station and a police officer will advise you of your rights and what you will need to do.

[24] Schedule 2 Penalty notice offences and demerit points

Insert after the matter relating to section 32:

Section 32F (4)	500	2
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[25] Schedule 2

Insert at the end of the Schedule:

Column 1	Column 2	Column 3
Provision of this Regulation	Penalty if dealt with by penalty notice (in dollars)	Number of demerit points
Clause 18A	300	2

BY AUTHORITY