



Australian Capital Territory

Second-hand Dealers Act 1906 No 30

Republication No 4

Republication date: 14 March 2002

Last amendment made by Act 2001 No 70

Amendments incorporated to 14 March 2002

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Second-hand Dealers Act 1906* as in force on 14 March 2002. It includes any amendment, repeal or expiry affecting the republished law to 14 March 2002 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Second-hand Dealers Act 1906

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Amendments incorporated to
14 March 2002



Australian Capital Territory

Second-hand Dealers Act 1906

An Act to provide for the licensing and regulation of dealers in certain second-hand goods, to regulate the sale of certain second-hand goods, and for other purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Second-hand Dealers Act 1906*.

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

Part 2 Licences

3 Issue of licences

- (1) If a person applies to the commissioner for a licence, or for renewal of a licence, the commissioner must issue a licence to the person or renew the licence if—
 - (a) the application complies with this Act; and
 - (b) if the person is an individual—the person is 18 years old or older; and
 - (c) the person is a suitable person.
- (2) A licence must specify the premises where the holder of the licence may carry on business as a second-hand dealer.
- (3) A licence may be issued for up to 1 year.

Part 3 Second-hand dealers

4 Dealers must be licensed

A person must not carry on business as a second-hand dealer unless the person is licensed as a second-hand dealer.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

5 Name of dealer etc to be displayed on premises

A licensed second-hand dealer must clearly display on the outside of each place or premises where the dealer carries on business, in letters at least 10cm high—

- (a) his or her full name; and
- (b) the words 'licensed dealer in second-hand goods'.

Maximum penalty: 20 penalty units.

6 Records of second-hand dealers

- (1) A second-hand dealer must make, in accordance with the regulations, the records that the dealer is required to make under the regulations.

Maximum penalty: 20 penalty units.

- (2) A second-hand dealer must keep, in accordance with the regulations, the records required to be made under subsection (1).

Maximum penalty: 20 penalty units.

- (3) A second-hand dealer must give to the police, in accordance with the regulations, the records or copies of records that the dealer is required to give to the police under the regulations.

Maximum penalty: 20 penalty units.

7 Inspection of records and goods

- (1) A second-hand dealer must, if asked by a police officer, allow the police officer to inspect—
 - (a) any record the dealer is required to keep under this Act; or
 - (b) any second-hand goods in the dealer's possession; or
 - (c) any other record in the dealer's possession relating to second-hand goods.

Maximum penalty: 50 penalty units.

- (2) The police officer may—
 - (a) copy any record inspected under this section; and
 - (b) examine or photograph any second-hand goods in the dealer's possession that the police officer suspects on reasonable grounds have been stolen or fraudulently obtained.
- (3) This section is additional to, and not in substitution for, any other power of a police officer.

8 Keeping of second-hand goods—dealers

- (1) This section applies if a second-hand dealer buys or otherwise receives second-hand goods from someone else (other than a licensed auctioneer).
- (2) The second-hand dealer must not sell or otherwise dispose of the second-hand goods, and must keep them in the condition in which the dealer receives them for—
 - (a) if the dealer is a dealer for which a period of less than 5 working days is prescribed under the regulations—the prescribed period after the dealer buys or otherwise receives the goods; or

- (b) in any other case—5 working days after the dealer buys or otherwise receives the goods.

Maximum penalty: 50 penalty units.

- (3) The regulations may—
 - (a) exempt a second-hand dealer from subsection (2); or
 - (b) authorise the chief police officer to exempt a dealer from subsection (2).

9 Goods suspected of being stolen or fraudulently obtained

- (1) This section applies to a licensed second-hand dealer in relation to second-hand goods if—
 - (a) the dealer has or obtains possession of the goods or the goods are offered to the dealer; and
 - (b) either of the following subparagraphs applies:
 - (i) the dealer is or has been told by a police officer that the goods, or goods of their description, have been stolen or fraudulently obtained;
 - (ii) the dealer suspects, or should reasonably suspect in the circumstances, that the goods have been stolen or fraudulently obtained.
- (2) The licensed second-hand dealer must immediately tell a police officer that the goods are in the dealer's possession or have been offered to the dealer.

Maximum penalty: 50 penalty units.

10 Dealers—carrying on business

- (1) A licensed second-hand dealer shall not carry on the business of a second-hand dealer on premises other than those specified in the licence.

Maximum penalty: 50 penalty units.

- (2) A licensed second-hand dealer shall not, without reasonable excuse, fail to produce his or her licence on demand made by a police officer at any time on the premises specified in the licence.

Maximum penalty: 5 penalty units.

- (3) A licensed second-hand dealer shall not purchase or receive second-hand goods from any person who is or is reasonably believed by the dealer to be under the age of 14 years.

Maximum penalty: 5 penalty units.

Part 4 Miscellaneous

11 Working out whether person *suitable* or *unsuitable*

- (1) This section applies in working out for this Act whether a person is a suitable person or an unsuitable person to be, or continue to be, a licensee.
- (2) However, subsection (6) only applies in relation to an application under section 12.
- (3) A person is a *suitable person* unless the person is an unsuitable person.
- (4) A person is an *unsuitable person* if the person is disqualified.
- (5) A person is *disqualified* if the person or, if the person is a corporation, the person or an executive officer of the person—
 - (a) has committed—
 - (i) an offence against this Act or a corresponding law of a State or foreign country; or
 - (ii) in Australia or a foreign country, an offence involving fraud or dishonesty; or
 - (b) has been refused a licence, or had a licence cancelled or revoked, under this Act or a corresponding law of a State.
- (6) A person is also *disqualified* if the person or, if the person is a corporation, the person or an executive officer of the corporation, has committed an offence against this Act or an offence involving fraud or dishonesty.
- (7) However, even if the person is disqualified, the person is a suitable person if the person satisfies the Magistrates Court that the person will not be disqualified again and the court makes a declaration to that effect.

12 Cancellation and suspension of second-hand dealers licences

- (1) On application made by anyone claiming that a person licensed as a second-hand dealer is an unsuitable person, the Magistrates Court may cancel the person's licence.
- (2) The Magistrates Court may suspend the person's licence until the application is decided.

13 Records of market promoters

- (1) The promoter of a market must make, in accordance with the regulations, the records that the promoter is required to make under the regulations.

Maximum penalty: 20 penalty units.

- (2) The promoter of a market must keep, in accordance with the regulations, the records required to be made under subsection (1).

Maximum penalty: 20 penalty units.

- (3) The promoter of a market must give to the police, in accordance with the regulations, the records or copies of records that the promoter is required to give to the police under the regulations.

Maximum penalty: 20 penalty units.

- (4) In this section:

market means a market in which second-hand goods are sold, bought or otherwise dealt with (whether or not the market also deals with other goods), but does not include an event or activity prescribed under the regulations.

promoter, of a market, includes someone who manages, controls or organises the market.

14 Register of licences

- (1) The commissioner must keep a register of licences under this Act.

- (2) The register must be available for public inspection at reasonable times.

15 Keeping of register

- (1) The register may include information about licences given to the commissioner under this Act and any other information the commissioner considers appropriate.
- (2) The register may be kept in the form of, or as part of, 1 or more computer databases or in any other form the commissioner considers appropriate.
- (3) The commissioner may correct any mistake, error or omission in the register subject to the requirements (if any) of the regulations.
- (4) This section does not limit the functions of the commissioner in relation to the register.

16 False or misleading information

A person must not, in relation to an application for a licence—

- (a) provide information that the person knows is false or misleading in a material particular; or
- (b) omit information without which the application is, to the person's knowledge, misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

17 Determination of fees and charges

- (1) The Minister may, in writing, determine fees and charges for this Act.

Note The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees and charges (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

18 Approved forms

- (1) The commissioner may, in writing, approve forms for this Act.
- (2) An approved form may include a consent for a police officer to make inquiries about any criminal record of—
- (a) the applicant; or
 - (b) if the applicant is a corporation—the applicant and each executive officer of the applicant.
- (3) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.
- (4) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

19 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may authorise the chief police officer to give written directions to licensed second-hand dealers imposing requirements with which they must comply for section 6 (Records of second-hand dealers).

Dictionary

(see s 2)

commissioner means the commissioner of fair trading.

executive officer, of a corporation, means the person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

licence means a second-hand dealers licence under this Act.

licensed auctioneer means a person who is licensed under the *Auctioneers Act 1959*.

licensed second-hand dealer means a person who is licensed under this Act as a second-hand dealer.

second-hand dealer means a person who carries on the business of dealing in or buying and selling second-hand goods, whether or not the person also deals in other goods.

second-hand goods means second-hand goods of a kind prescribed under the regulations.

suitable person—see section 11.

unsuitable person—see section 11.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
num = numbered	sdiv = subdivision
No = number	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced

Endnotes

3 Legislation history

3 Legislation history

This Act was originally a NSW Act—the *Second-hand Dealers and Collectors Act 1906* No 30 (NSW).

This Act was in force in NSW immediately before 1 January 1911 (the date of establishment of the ACT) and was continued in force by the *Seat of Government Acceptance Act 1909* (Cwlth), s 6.

Under the *Seat of Government (Administration) Act 1910* (Cwlth), s 4, the Act had effect in the ACT as if it were an ACT law (subject to ordinances made under the *Seat of Government (Administration) Act 1910*).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) converted certain former NSW laws in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on Self-Government (11 May 1989).

Under the *Interpretation Act 1967*, s 63 (all former NSW Acts in force in the ACT immediately before 10 November 1999 became, for all purposes, laws made by the ACT Legislative Assembly. This completed the process of making former NSW laws fully into ACT laws.

NSW legislation

Second-hand Dealers Act 1906 No 30

assented to 12 December 1906
commenced 1 January 1907

Commonwealth legislation

New South Wales Application Ordinance 1985 No 25

notified 28 June 1985
commenced 28 June 1985
disallowed by Senate 28 November 1985

Magistrates Court Ordinance 1985 No 67

notified 19 December 1985
commenced 1 February 1986 (Gaz 1986 No G3)

New South Wales Acts Ordinance 1986 No 91

notified 12 January 1987
commenced 12 January 1987

Legislation after becoming Territory enactment

Second-hand Dealers and Collectors (Amendment) Act 1990 No 34

notified 30 October 1990 (Gaz 1990 No S72)
ss 1-3 commenced 30 October 1990 (s 2 (1))
remainder commenced 1 December 1990 (s 2 (2) and Gaz 1990 No 46)

Magistrates and Coroner's Courts (Registrar) Act 1991 No 44 s 9

notified 20 September 1991 (Gaz 1994 No S95)
s 1, s 2 commenced 20 September 1991 (s 2 (1))
s 9 commenced 25 September 1991 (s 2 (2) and Gaz 1991 No S103)

Statute Law Revision (Penalties) Act 1994 No 81 sch

notified 29 November 1994 (Gaz 1994 No S253)
s 1, s 2 commenced 29 November 1994 (s 2 (1))
sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

Second-hand Dealers and Collectors (Amendment) Act 1995 No 16

notified 30 June 1995 (Gaz 1995 No S135)
commenced 30 June 1995 (s 2)

Legislation (Consequential Amendments) Act 2001 No 44 pt 362

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (s 10B)
amdt 1.3885 commenced 14 March 2002 (LA s 79)
remainder pt 362 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

Justice and Community Safety Legislation Amendment Act 2001 No 70 sch 1

notified LR 14 September 2001
s 1, s 2 commenced 14 September 2001 (LA s 75)
amds awaiting commenced 14 March 2002 (LA s 79)

4 Amendment history

The *New South Wales Acts Act 1986*, schedule 2, part 6 sets out the text of this Act in an amended form and provided for the amended form to apply as the text of the Act in force in the ACT. This endnote, therefore, only details amendments made after that date.

Title

title sub 2001 No 70 amdt 1.175

Endnotes

4 Amendment history

Preliminary

pt 1 hdg om 1995 No 16 s 7
ins 1995 No 16 s 4

Name of Act

s 1 sub 2001 No 70 amdt 1.176

Dictionary

s 2 am 1990 No 34 s 4
def **charge** ins 1995 No 16 s 5
def **collector** am 1990 No 34 sch
def **convicted** ins 1995 No 16 s 5
def **registrar** ins 1995 No 16 s 5
sub 2001 No 70 amdt 1.176

Licences

pt 2 hdg om 1995 No 16 s 9
ins 1995 No 16 s 6

Applications for licences

s 2A ins 1995 No 16 s 6
om 2001 No 70 amdt 1.177

Licences

s 2B ins 1995 No 16 s 6
om 2001 No 70 amdt 1.177

Certificates of convictions

s 2C ins 1995 No 16 s 6
om 2001 No 70 amdt 1.177

Objections to granting of licences

s 2D ins 1995 No 16 s 6
om 2001 No 70 amdt 1.177

Grant of licences

s 2E ins 1995 No 16 s 6
om 2001 No 70 amdt 1.177

Duration of licences

s 2F ins 1995 No 16 s 6
om 2001 No 70 amdt 1.177

Second-hand dealers

pt 3 hdg orig pt 3 hdg renum as pt 5 hdg R2 LRA
ins 1995 No 16 s 7

Issue of licences

s 3 am 1990 No 34 s 5; 1994 No 81 sch
sub 2001 No 70 amdt 1.177

Dealers must be licensed

s 4 om 1995 No 16 s 8
ins 2001 No 70 amdt 1.178

Name of dealer etc to be displayed on premises

s 5 am 1990 No 34 sch; 1991 No 44 s 9
om 1995 No 16 s 8
ins 2001 No 70 amdt 1.178

Records of second-hand dealers

s 6 om 1995 No 16 s 8
ins 2001 No 70 amdt 1.178

Inspection of records and goods

s 7 om 1995 No 16 s 8
ins 2001 No 70 amdt 1.178

Keeping of second-hand goods—dealers

s 8 am 1990 No 34 s 6, sch; 1994 No 81 sch
sub 2001 No 70 amdt 1.178

Goods suspected of being stolen, embezzled or fraudulently obtained

s 8A ins 1990 No 34 s 7
am 1994 No 81 sch
om 2001 No 70 amdt 1.178

Goods suspected of being stolen or fraudulently obtained

s 9 orig s 9 renum as s 10
ins 2001 No 70 amdt 1.180

Dealers—carrying on business

s 10 am 1991 No 44 s 9
om 1996 No 16 s 10
(prev s 9) sub 1990 No 34 s 8
am 1994 No 81 sch
am 2001 No 70 amdts 1.181-1.185
renum 2001 No 70 amdt 1.179

Miscellaneous

pt 4 hdg ins 1995 No 16 s 9
pt 4 sub 2001 No 70 amdt 1.186

Working out whether person *suitable* or *unsuitable*

s 11 am 1990 No 34 s 9, sch; 1994 No 81 sch
sub 2001 No 70 amdt 1.186

Cancellation and suspension of second-hand dealers licences

s 12 sub 1990 No 34 s 10
am 1994 No 81 sch
sub 2001 No 70 amdt 1.186

Hours of business

s 12A ins 1990 No 34 s 10
am 1994 No 81 sch
om 2001 No 70 amdt 1.186

Records of market promoters

s 13 sub 1990 No 34 s 11

Endnotes

4 Amendment history

am 1994 No 81 sch
sub 2001 No 70 amdt 1.186

Miscellaneous

pt 5 hdg (prev pt 3 hdg) renum R2 LRA
om 2001 No 70 amdt 1.186

Register of licences

s 14 am 1995 No 16 s 11
sub 2001 No 70 amdt 1.186

Keeping of register

s 15 sub 1990 No 34 s 12
am 1991 No 44 s 9
sub 2001 No 70 amdt 1.186

False or misleading information

s 16 om 1990 No 34 s 12
ins 2001 No 70 amdt 1.186

Determination of fees and charges

s 17 om 1990 No 34 s 12
ins 2001 No 70 amdt 1.186
sub 2001 No 44 amdt 1.3885

Approved forms

s 18 sub 2001 No 70 amdt 1.186
sub 2001 No 44 amdt 1.3885

Regulation-making power

s 19 am 1991 No 44 s 9; 1995 No 16 s 12
sub 2001 No 70 amdt 1.186
sub 2001 No 44 amdt 1.3885

Regulation-making power

s 20 om 1990 No 34 s 13
ins 2001 No 70 amdt 1.186
om 2001 No 44 amdt 1.3885

s 22 om 1990 No 34 s 13

s 23 om 1990 No 34 s 13

Schedule 1

sch 1 am 1985 No 67; 1990 No 34 sch; 1991 No 44 s 9; 1995 No 16
s 13
om 2001 No 70 amdt 1.187

Schedule 5

sch 5 om 1995 No 16 s 14

Schedule 6

sch 6 am 1985 No 67; 1990 No 34 sch; 1991 No 44 s 9; 1995 No 16 s 15
om 2001 No 70 amdt 1.187

Dictionary

dict ins 2001 No 70 amdt 1.188
def **commissioner** ins 2001 No 70 amdt 1.188
def **executive officer** ins 2001 No 70 amdt 1.188
def **licence** ins 2001 No 70 amdt 1.188
def **licensed auctioneer** ins 2001 No 70 amdt 1.188
def **licensed second-hand dealer** ins 2001 No 70 amdt 1.188
def **second-hand dealer** ins 2001 No 70 amdt 1.188
def **second-hand goods** ins 2001 No 70 amdt 1.188
def **suitable person** ins 2001 No 70 amdt 1.188
def **unsuitable person** ins 2001 No 70 amdt 1.1880

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1991 No 44	30 November 1992
2	Act 1995 No 16	31 January 1998
3	<u>Act 2001 No 70</u>	19 February 2002

Authorised when accessed at www.legislation.act.gov.au or in authorised printed form

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