

2000

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Justice and Community Safety Legislation
Amendment Bill 2000-~~XXXX~~**

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(Attorney-General)

**Justice and Community Safety Legislation
Amendment Bill 2000 (No 4)**

A BILL

FOR

**An Act to amend the law relating to justice and community
safety, and for other purposes**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Justice and Community Safety Legislation
5 Amendment Act 2000 (No 4)*.

2 Commencement

(1) The amendments of the *Second-hand Dealers and Collectors Act 1906* and the *Sale of Motor Vehicles Act 1977* made by this Act commence on a day fixed by the Minister by notice in the Gazette.

- 5 *Note 1* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Interpretation Act 1967*, s 10C (1)).

Note 2 If a provision has not commenced within 6 months beginning on the date of notification of the Act, it automatically commences on the first day after that period (see *Interpretation Act 1967*, s 10E (2)).

- 10 (2) The remaining provisions commence on the day this Act is notified in the Gazette.

3 Acts amended—sch 1

This Act amends the Acts mentioned in Schedule 1.

4 Regulations amended—sch 2

- 15 "This Act amends the regulations mentioned in Schedule 2.

SCHEDULE 1

(See s 3)

AMENDMENT OF ACTS

Children and Young People Act 1999

[1.1] New section 61A—

5 After section 61, insert the following section:

“61A Restriction on publication of certain identifying material from proceedings

“**(1)** This section applies to a proceeding, in relation to a child or young person—

- 10 (a) under this Act; or
(b) to which this Act applies; or
(c) under a State law if the law relates to the welfare of the child or young person.

“**(2)** In subsection (1):

15 *proceeding* includes a proceeding begun before the commencement of this section.

“**(3)** A person must not publish an account or report of the proceeding if the account or report—

- 20 (a) discloses the identity of the child or young person or a family member; or
(b) allows the identity of the child or young person, or a family member, to be worked out.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

25 “**(4)** A prosecution for an offence against subsection (3) may be begun only by, or with the written consent of, the Attorney-General or director of public prosecutions.”.

SCHEDULE 1—continued

[1.2] New section 439A—

After section 439 insert the following section:

“439A Notifications

5 “(1) If, before the commencement day, a person had notified the director under subsection 103 (1) of the repealed Act, the notification is taken to be a report made to the chief executive under section 158 (Voluntary reporting) of this Act.

10 “(2) If, before the commencement day, a person had notified the director under subsection 103 (2) of the repealed Act, the notification is taken to be a report made to the chief executive under section 159 (Mandatory reporting) of this Act.”.

[1.3] Section 446—

Omit the section, substitute the following section:

“446 Expiry of Ch 17

15 “(1) This Chapter, other than section 439A (Notification), ceases to have effect 1 year after it commences.

“(2) Section 439A ceases to have effect 3 years after it commences.”.

Crimes Act 1900

20 **[1.4] Section 4 (1) (definition of *domestic violence offence*, paragraph (b))—**

Omit “27”, substitute “19D”.

[1.5] Sections 428 and 470—

Omit the sections.

Crimes (Forensic Procedures) Act 2000

25 **[1.6] Subsection 95 (3) (definition of *excluded forensic material*, paragraph (b))—**

Omit “, if the suspect is subsequently convicted of the serious offence”.

SCHEDULE 1—continued

Liquor Act 1975

[1.7] Sections 1 and 2—

Omit the sections, substitute the following sections:

“1 Name of Act

5 This Act is the *Liquor Act 1975*.

“2 Dictionary

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

10 *Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition ‘*building code*—see the *Building Act 1972*, subsection 5 (1) (Interpretation).’ means that the expression ‘building code’ is defined in subsection 5 (1) of the *Building Act 1972* and the definition applies to this Act.

15 *Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).”.

[1.8] Section 4 (definitions of *approved form, building code, director, exempt person, exempt wholesale liquor sale, fire commissioner and State*)—

20 Omit the definitions.

[1.9] Section 4—

Relocate all the definitions (except those omitted by amendment [1.5]) to the dictionary.

[1.10] Section 4—

25 Omit the remainder of the section, substitute the following section:

“4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of notes.”.

SCHEDULE 1—continued

[1.11] Section 5—

Omit “and unless the contrary intention appears”.

[1.12] Subparagraph 9 (1) (b) (i)—

Omit “legally qualified medical practitioner”, substitute “doctor”.

5 **[1.13] Subparagraph 9 (1) (b) (ii)—**

Omit all the words after “pharmacist”.

[1.14] Paragraph 11 (d)—

Omit the paragraph, substitute the following paragraph:

10 “(d) exercising the other functions given to it under this Act or any other Territory law.”.

[1.15] Subsection 13 (1)—

Omit “legal practitioner”, substitute “lawyer”.

[1.16] Paragraph 13 (2) (b)—

15 Omit “, but is eligible for reappointment”, substitute “or the instrument evidencing the appointment”.

[1.17] Subsection 13 (4)—

Omit the subsection.

[1.18] Section 13—

Add at the end the following notes:

20 “*Note 1* A power to appoint a person to a position includes the power to appoint a person to act in the position (see *Interpretation Act 1967*, ss 28 (4)–(6)).

Note 2 A power to appoint a person to a position includes the power to reappoint a person if the person is eligible to be reappointed to the position (see *Interpretation Act 1967*, par 28 (3) (c)).”.

25 **[1.19] Section 14—**

Omit the section.

[1.20] Section 16—

Omit the section.

SCHEDULE 1—continued

[1.21] Section 18—

Add at the end the following note:

Note The appointment of an appointed member ends if the member resigns by signed notice of resignation given to the Minister (*see Interpretation Act 1967*, ss 28 (8)).”

5 **[1.22] Section 24—**

Omit the penalty, substitute the following penalty:

“Maximum penalty (subsection (2)): 1 penalty unit.”.

[1.23] Section 35—

Omit all the words after “instruments”.

10 **[1.24] Subsection 50 (1)—**

Omit the subsection, substitute the following subsection:

“(1) An application for the issue of a licence must be made to the registrar.”.

[1.25] Subsection 57 (2)—

15 Omit the subsection.

[1.26] Subsection 59 (1)—

Omit the subsection, substitute the following subsections:

“(1) This section applies if the holder of a licence that is in force applies to renew the licence.

20 “(1A) The registrar must renew the licence if—

(a) the licensee pays the determined fee; or

(b) the determined fee payable for renewal is the maximum fee payable for renewal of a licence and—

25 (i) the holder of the licence chooses to pay in accordance with subsection (1B); and

(ii) the holder of the licence pays the amount mentioned in paragraph (1B) (a).

SCHEDULE 1—continued

“(1B) If the determined fee payable for renewal of the licence is the maximum fee payable for renewal of a licence, the holder of the licence may pay the fee in the following 2 equal instalments:

- (a) the first instalment must be paid before the renewal of the licence;
- 5 (b) the second instalment must be paid on or before the next 30 April after the renewal of the licence.”.

[1.27] Subsection 59 (2)—

Omit “However”, substitute “Also”.

[1.28] Section 61—

10 Omit the section, substitute the following section:

“61 Failure to renew or pay instalment

“(1) This section applies if—

- (a) a licence is not renewed while it is in force under section 58 or 60;
or
- 15 (b) the determined fee for renewal of a licence is being paid by instalments under subsection 59 (1B) and the holder of the licence fails to pay the second instalment in accordance with that section.

“(2) The licence remains in force under this section for a further month, but is taken to be suspended.”.

20 **[1.29] Subsection 62 (1)—**

Omit “in the approved form”.

[1.30] Subsection 63 (1)—

Omit the subsection, substitute the following subsection:

25 **“(1) An application for the transfer of a licence must be made to the registrar.”.**

[1.31] Section 66, heading—

Omit “Interpretation”, substitute “*Definition of conditional surrender*”.

SCHEDULE 1—continued

[1.32] Subsection 67 (1)—

Omit “, in the approved form,”.

[1.33] Subsection 69 (5)—

Omit the subsection, substitute the following subsection:

- 5 “(5) An applicant or licensee must not, without reasonable excuse, contravene subsection (1), (2) or (3).

Maximum penalty: 10 penalty units.”.

[1.34] Subsection 73 (2)—

Omit the subsection, substitute the following subsection:

- 10 “(2) A body corporate must not, without reasonable excuse, contravene subsection (1).

Maximum penalty (subsection (2)): 10 penalty units.”.

[1.35] Subsection 74 (6)—

Omit the subsection, substitute the following subsection:

- 15 “(6) A body corporate must not, without reasonable excuse, contravene subsection (1), (2) or (3).

Maximum penalty (subsection (6)): 10 penalty units.”.

[1.36] Section 80—

Omit “paragraph 78 (1) (d)”, substitute “section 77”.

20 **[1.37] Section 83—**

Omit “paragraph 78 (1) (c)”, substitute “section 77”.

[1.38] Section 87—

Omit “paragraph 78 (1) (b)”, substitute “section 77”.

[1.39] Section 92—

- 25 Omit “paragraph 78 (1) (a)”, substitute “section 77”.

[1.40] Subsection 94 (1)—

Omit “in the approved form”.

SCHEDULE 1—continued

[1.41] Paragraph 94 (2) (b)—

Omit the paragraph, substitute the following paragraph:

“(b) an approval in accordance with subsection 34 (5) of the *Building Act 1972*.”.

5 **[1.42] Subsection 107 (1)—**

Omit “in the approved form”.

[1.43] Section 111—

Omit the section, substitute the following section:

“111 Conditions to be stated in permit

10 A permit must state the conditions subject to which it is issued.”.

[1.44] Section 120, heading—

Omit “*Interpretation*”, substitute “*Definition of non-trading day*”.

[1.45] Subsection 139 (6)—

15 Omit “subsection (1) applies”, substitute “subsections (1) and (2) apply”.

[1.46] Section 162, heading—

Omit “*Interpretation*”, substitute “*Definition of matter*”.

[1.47] Section 169—

Omit “legal practitioner”, substitute “lawyer”.

20 **[1.48] Subsection 171 (3)—**

Omit “section 35 or 36 of the *Crimes Act 1914* (Cwlth)”, substitute “section 327 of the *Crimes Act 1900*”.

[1.49] Subsection 172 (2)—

Omit “legal practitioner”, substitute “lawyer”.

25 **[1.50] Paragraph 173 (v)—**

Omit “giving”, substitute “issuing”.

SCHEDULE 1—continued

[1.51] Subsection 175 (2)—

Omit the subsection, substitute the following subsection:

“(2) An application for a proof of age card must be—

(a) in the form approved by the road transport authority; and

5 (b) accompanied by the determined fee.”.

[1.52] Subsection 175 (3)—

Omit the subsection.

[1.53] Section 176—

**10 Omit “Commissioner for Australian Capital Territory Revenue”,
substitute “commissioner for revenue”.**

[1.54] Section 179—

Omit the section, substitute the following section:

“179 Determination of fees

“(1) The Minister may determine fees for this Act.

15 “(2) A determination under this section is a disallowable instrument.”.

[1.55] Section 180—

Add at the end the following subsection:

**“(2) If the registrar approves a form for a particular purpose, the form
must be used for that purpose.”.**

20 [1.56] Section 181—

Omit the section, substitute the following section:

“181 Regulation-making power

The Executive may make regulations for this Act.”.

[1.57] Dictionary

25 Add at the end the following dictionary:

SCHEDULE 1—continued

“DICTIONARY

(See s 2)

building code—see the *Building Act 1972*, subsection 5 (1) (Interpretation).

5 **conditional surrender**, for Division 4.6 (Surrender of licences)—see section 66.

director, for a body incorporated for a public purpose by a Territory, Commonwealth or State law, includes a member of the body.

exempt person means any of the following people:

- (a) the Governor-General;
- 10 (b) a member of the staff of the Governor-General who is not an Australian citizen;
- (c) the diplomatic representative in Australia of a foreign country;
- 15 (d) a consular representative or trade commissioner in Australia of a foreign country if the person is a citizen of the foreign country and is not otherwise engaged in a business, occupation or profession;
- (e) a member of the staff of a person mentioned in paragraph (c) if the person is a citizen of the country represented;
- 20 (f) a member of the family of a person mentioned in paragraphs (a) to (e) who ordinarily lives with the person.

exempt wholesale liquor sale, in relation to the sale of liquor by the holder of an off licence, means the sale of liquor by wholesale by the licensee under the licence to—

- 25 (a) a licensee; or
- (b) a person who, under the law of a State, is authorised to sell liquor; or
- (c) a permit holder; or
- (d) a person for the purpose of the duty-free sale of the liquor
- 30 by the person; or
- (e) a university; or

SCHEDULE 1—continued

(f) an exempt person.

function includes power.

matter, for Part 12 (Inquiries and hearings by the board)—see section 162.

5 *non-trading day*, for Part 10 (Offences)—see section 120.”.

Magistrates Court Act 1930

[1.58] New section 206I—

After section 206H, insert the following section:

“206I Exercise of certain powers by registrar

10 “(1) This section applies if—

(a) an application has been made; and

(b) the application has not been served on the respondent as required under this Part.

15 “(2) The registrar may exercise the power of the court to adjourn the hearing of the application and, if an interim restraining order is in force in relation to the application, extend the period for which the interim restraining order remains in force.

20 “(3) This section is additional to, and does not limit, the powers of the registrar under another provision of this Act or under the *Magistrates Court (Civil Jurisdiction) Act 1982*.”.

Mental Health (Treatment and Care) Act 1994

[1.59] Sections 142 and 143—

Omit “required by this Act”, substitute “to treatment for mental illness, convulsive therapy or psychiatric surgery”.

25

Powers of Attorney Act 1956

[1.60] Section 13—

Add at the end the following subsections

SCHEDULE 1—continued

“(3) This section does not allow an enduring power of attorney to confer on a donee power to consent to treatment for psychiatric illness, convulsive therapy or psychiatric surgery.

5 “(4) A donee under an enduring power of attorney does not have power to consent to treatment for psychiatric illness, convulsive therapy or psychiatric surgery, even if the enduring power of attorney purports to confer the power on the donee.

“(5) In this section:

10 *convulsive surgery*—see the *Guardianship and Management of Property Act 1991*, section 4.

psychiatric illness—see the *Guardianship and Management of Property Act 1991*, section 4.

psychiatric surgery—see the *Guardianship and Management of Property Act 1991*, section 4.

15 ***Sale of Motor Vehicles Act 1977***

[1.61] Sections 1 and 2—

Omit the sections, substitute the following sections:

“1 **Name of Act**

This Act is the *Sale of Motor Vehicles Act 1977*.

20 “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, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

25 For example, the signpost definition ‘*dealer*—see section 6A.’ means that the word ‘dealer’ is defined in the section 6A.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).”.

SCHEDULE 1—continued

- [1.62] Section 3—
Omit the heading.
- 5 [1.63] Subsection 3 (1) (*definitions of car market operator licence, chief police officer, committee, convicted, dealer, dealings register, determined fee, good fame and character and inspector*)—
Omit the definitions.
- [1.64] Subsection 3 (1)—
Relocate all the definitions (except those omitted by amendment [1.60]) to the dictionary.
- 10 [1.65] Subsection 3 (1)—
Omit the remainder of the subsection.
- [1.66] Subsection 3 (2)—
Renumber as section 3 and insert the following heading:
“3 When is a motor vehicle *sold or manufactured etc*”.
- 15 [1.67] New section 4—
After section 3, insert the following section:
“4 Notes
A note included in this Act is explanatory and is not part of this Act.
Note See Interpretation Act 1967, s 12 (1), (4) and (5) for the legal status of notes.”.
- 20 [1.68] Section 3A—
Renumber the section as section 4A.
- [1.69] Section 4A, heading—
Omit the heading, substitute the following heading:
“4A Application of Act to motor dealings by Territory”.
- 25 [1.70] Subsections 5 (2) and (3), 5A (3) and (4) and 5B (2) and paragraph 5B (3) (a)—
Omit “government service”, substitute “public service”.

SCHEDULE 1—continued

- [1.71] **Subsection 6A (3)—**
Omit “paragraph 3 (2) (a)”, substitute “paragraph 3 (a)”.
- [1.72] **Section 6B, heading—**
Omit the heading, substitute the following heading:
- 5 **“6B Meaning of *relevant chief executive* in pt 2”.**
- [1.73] **Section 6B—**
Omit “, unless the contrary intention appears”.
- [1.74] **Sections 7, 7A and 7B—**
Omit the penalty, substitute the following penalty:
- 10 **“Maximum penalty: 50 penalty units, imprisonment for 6 months or both.”.**
- [1.75] **Paragraph 8 (1) (b)—**
Omit “of good fame and character”, substitute “a suitable person”.
- [1.76] **Paragraph 9 (a)—**
Omit “directors”, substitute “executive officers”.
- 15 **[1.77] Paragraph 9 (a)—**
Omit “person of good fame and character”, substitute “suitable person”.
- [1.78] **Paragraphs 10 (1) (a) and (b)—**
Insert “and” at the end of each paragraph.
- 20 **[1.79] Subparagraphs 10 (1) (c) (i) and (ii)—**
Insert “and” at the end of each subparagraph.
- [1.80] **Paragraphs 10 (1) (c) to (kb)—**
Insert “and” at the end of each paragraph.
- [1.81] **Paragraph 11 (1) (a)—a**
25 Omit “a director”, substitute “an executive officer”.

SCHEDULE 1—continued

[1.82] Paragraph 11 (1) (d)—

Omit “director”, substitute “executive officer”.

[1.83] Paragraph 11 (1) (d)—

Omit “director’s”, substitute “executive officers”.

5 **[1.84] Paragraph 11 (1) (i)—**

Omit “directors”, substitute “executive officers”.

[1.85] Paragraph 11 (1) (j)—

Omit “director”, substitute “an executive officer”.

[1.86] Paragraph 11 (1) (jb)—

10 Omit “directors”, substitute “executive officers”.

[1.87] Section 11A (heading)—

Omit “director”, substitute “executive officer”.

[1.88] Paragraphs 11A (1) (b) and 11B (1) (b) (definition of *relevant person*)—

15 Omit “a director”, substitute “an executive officer”.

[1.89] Paragraph 13 (1) (a)—

Omit “a director of the corporation, refuses or”, substitute “an executive officer of the corporation,”.

[1.90] Subsection 13 (2)—

20 Omit “directors”, substitute “executive officers”.

[1.91] Subsection 13 (2)—

Omit “a director”, substitute “an executive officer”.

[1.92] Paragraph 13 (4) (b)—

25 Omit “not a person of good fame and character”, substitute “an unsuitable person”.

SCHEDULE 1—continued

[1.93] Paragraph 14A (1) (a)—

Omit “person of good fame and character”, substitute “suitable person”.

[1.94] Paragraph 14A (2) (a)—

5 Omit the paragraph, substitute the following paragraph:

“(a) each of the executive officers of the corporation is a suitable person; and”.

[1.95] Subparagraph 14B (a) (ii)—

Omit “a director”, substitute “an executive officer”.

10 **[1.96] Paragraph 14C (1) (a)—**

Omit “a director of the corporation, refuses or”, substitute “an executive officer of the corporation,”.

[1.97] Subsection 14C (2)—

Omit “directors”, substitute “executive officers”.

15 **[1.98] Subsection 14D (4)—**

Omit the penalty, substitute the following penalty:

“Maximum penalty: 50 penalty units.”.

[1.99] Subsections 15 (1) and 16 (1), (2), (3) and (4)—

Omit the penalty, substitute the following penalty:

20 “Maximum penalty: 20 penalty units.”.

[1.100] Section 17—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 5 penalty units.”.

[1.101] Subsection 19 (1)—

25 Add at the end the following penalty:

“Maximum penalty: 20 penalty units.”.

SCHEDULE 1—continued

[1.102] Subsection 19 (2)—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 20 penalty units.”.

[1.103] Subsection 20 (1)—

5 Omit the penalty, substitute the following penalty:

“Maximum penalty: 10 penalty units.”.

[1.104] Subsection 20 (4)—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 30 penalty units.”.

10 **[1.105] Subsection 20 (5)—**

Omit the penalty, substitute the following penalty:

“Maximum penalty: 50 penalty units.”.

[1.106] Subsections 20 (6) and 21 (1)—

Omit the penalty, substitute the following penalty:

15 “Maximum penalty: 10 penalty units.”.

[1.107] Section 22—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 50 penalty units.”.

[1.108] Subsection 24 (1) (definition of *defect notice*)—

20 Omit “form 1 in Schedule 2”, substitute “the defect notice form approved by the registrar”.

[1.109] Subsection 25 (7)—

Omit “form 2 in Schedule 2”, substitute “the exemption notice form approved by the registrar”.

SCHEDULE 1—continued

[1.110] Subsection 25 (7)—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 10 penalty units.”.

[1.111] Subsection 25 (9)—

5 Omit the penalty, substitute the following penalty:

“Maximum penalty: 5 penalty units.”.

[1.112] Subsection 25B (2)—

Omit “form 3 in Schedule 2”, substitute “the loss of right to terminate form approved by the registrar”.

10 **[1.113] Subsections 26 (1A) and (2)—**

Omit the penalty, substitute the following penalty:

“Maximum penalty: 5 penalty units.”.

[1.114] Subsection 27 (1)—

15 Omit “after the commencement of the *Sale of Motor Vehicles (Amendment) Act 1983*”.

[1.115] Subsection 31 (1)—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 10 penalty units.”.

[1.116] Subsection 31 (3)—

20 Omit the penalty, substitute the following penalty:

“Maximum penalty: 5 penalty units.”.

[1.117] Subsection 32 (1)—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 50 penalty units.”.

SCHEDULE 1—continued

[1.118] Subsection 33 (2)—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 10 penalty units.”.

[1.119] Section 34—

5 Omit the penalty, substitute the following penalty:

“Maximum penalty: 10 penalty units.”.

[1.120] Subsection 35 (1)—

Add at the end the following penalty:

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

10 **[1.121] Subsection 35 (2)—**

Omit “and marked”.

[1.122] Subsection 35 (2)—

Omit the penalty, substitute the following penalty:

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

15 **[1.123] Section 37, heading—**

Omit the heading, substitute the following heading:

“37 Provisions applying to banks etc”.

[1.124] Subsections 38 (1) and (2)—

Omit the penalty, substitute the following penalty:

20 “Maximum penalty: 20 penalty units.”.

[1.125] Subsections 39 (1) and (2)—

Omit the subsections, substitute the following subsections:

“(1) If a licensed dealer receives trust money from a person, the dealer must give the person a receipt that—

25 (a) complies with subsections (3) and (4); and

SCHEDULE 1—continued

- (b) states briefly the subject matter or purpose for which the money was received.

Maximum penalty: 10 penalty units.

- 5 “(2) If a licensed dealer gives a person a receipt under subsection (1), the dealer must keep a legible carbon duplicate of the receipt that complies with subsections (3) and (4).

Maximum penalty: 10 penalty units.”.

[1.126] Paragraph 39 (4) (a)—

Omit “thereon”, substitute “on it”.

- 10 **[1.127] Subsection 39 (4), penalty—**

Omit the penalty.

[1.128] Section 40—

Omit the penalty, substitute the following penalty:

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

- 15 **[1.129] Subsection 43 (2)—**

Omit the penalty, substitute the following penalty:

“Maximum penalty: 50 penalty units.”.

[1.130] Part 6—

Omit the Part, substitute the following Parts:

- 20 **“PART 6—CHANGE OF EXECUTIVE OFFICES OF CORPORATE
LICENSES**

**“45 Intended change of executive officers—notification and
objection**

- 25 “(1) If a person (the *prospective executive officer*) intends becoming an executive officer of a corporate licensee, the person must notify that intention by notice published in a daily newspaper circulating in the Territory.

“(2) The notice must—

SCHEDULE 1—continued

- (a) include the full name and current residential address of the prospective executive officer; and
- (b) include the name of the corporate licensee; and
- 5 (c) state that, if a person wishes to object to the continuation of the licensee's licence if the prospective executive officer becomes a an executive officer, the person must object by notice given to the registrar within 14 days at the registrar's address stated in the notice.

10 “(3) The prospective executive officer must give a copy of the notice submitted to the newspaper to the chief police officer as soon as practicable after submitting it for publication.

“(4) The registrar must hold an inquiry to decide whether the prospective executive officer is a suitable person if—

- 15 (a) the registrar receives an objection within the time mentioned in paragraph (2) (c); and
- (b) the registrar is satisfied that the objection is not frivolous or vexatious.

“46 Change of executive officers—objection by chief police officer

20 “(1) If a person (the *new executive officer*) becomes a an executive officer of a corporate licensee, the licensee must, within 21 days after the new executive officer becomes an executive officer, give the registrar written notice that the new executive officer has become a director.

“(2) The notice must—

- 25 (a) state the full name and date of birth of the new executive officer; and
- (b) state the current residential address of the new executive officer and any other residential addresses during the last 3 years; and
- (c) if the person has, in the Territory or elsewhere, previously carried on the business of a dealer or been employed by a dealer—provide
30 details of the business or employment.

“(3) The registrar must give a copy of the notice to the chief police officer.

SCHEDULE 1—continued

“(4) The chief police officer may, by written notice given to the registrar, object to the continuation of the corporate licensee’s licence on the ground that the new executive officer is an unsuitable person.

5 “(5) The chief police officer must give the objection to the registrar within 21 days after the notice under subsection (1) is given to the registrar.

“47 Cancellation of licences by registrar

“(1) The registrar may cancel the licence of a corporate licensee if, after holding an inquiry, the registrar is satisfied that a person (the *relevant person*) who has become, or intends becoming, an executive officer of the licensee is an unsuitable person.

“(2) However, the registrar may cancel the licence of the corporate licensee without holding an inquiry if—

- (a) the registrar decided at an inquiry under subsection 45 (4) that the relevant person was an unsuitable person; and
- 15 (b) the registrar believes on reasonable grounds that the relevant person has become an executive officer of the licensee.

“PART 6A—DISCIPLINARY PROCEEDINGS

“48 When registrar may take action in relation to licences

20 “(1) The registrar may take action under section 48A in relation to a licensee if—

- (a) the licence held by the person was granted, or renewed or varied, because of a false or misleading statement made, or false or misleading information provided, by the person in or in relation to the application for the licence or for renewal or variation of it; and
- 25 (b) the person is no longer eligible to apply for, or for renewal of, a licence or the licence held by the person.

Examples of when individual licensees no longer eligible to apply

- 1 The licensee is an unsuitable person because the licensee has committed an offence against the Act.
- 30 2 The licensee has become bankrupt.

SCHEDULE 1—continued

- 3 The licensee is unlikely to be able to continue to comply with the obligations applying to the licence.
- 4 If the licensee holds a vehicle sale licence, the licensee does not have sufficient material and financial resources to carry on the business in accordance with this Act.
- 5 *Examples of when corporate licensees no longer eligible to apply*
- 1 An executive officer of the licensee is an unsuitable person because the executive officer has committed an offence involving dishonesty.
- 2 If the licensee holds a vehicle sale licence, the licensee does not have sufficient material and financial resources to carry on the business in accordance with this Act.
- 10 **“48A Procedures for registrar taking action in relation to licences**
- “(1) The registrar may take 1 or more of the following actions under this section in relation to a licence:
- (a) reprimand the licensee;
- 15 (b) require the licensee to comply with a stated requirement within a stated period;
- (c) impose a condition on the licence;
- (d) suspend the licence for not longer than 1 year;
- (e) disqualify the licensee from holding a licence permanently or for a stated period;
- 20 (f) cancel the licence.
- “(2) Without limiting paragraph (1) (b), a requirement under the paragraph may require the licensee—
- (a) to make an additional contribution to the compensation fund within a stated period; or
- 25 (b) to indemnify, within a stated time, the compensation fund to a stated extent if something happens because of anything done or omitted to be done by the licensee.
- “(3) If the registrar proposes to take any action under this section in relation to a licence, the registrar must give the licensee a notice that—
- 30 (a) states the proposed action, including any proposed suspension period and any proposed period of disqualification; and

SCHEDULE 1—continued

- (b) states the grounds for the proposed action; and
 - (c) invites the licensee to make written representations, within a stated period of at least 14 days after the licensee is given the notice, why the proposed action should not be taken.
- 5 “(4) If, after considering any written representations made by the licensee within the stated period, the registrar is satisfied on reasonable grounds that a ground mentioned in section 48 (When registrar may take action in relation to licences) exists to take action under this section in relation to the licensee, the registrar may take the following action:
- 10 (a) if the proposed action included reprimanding the licensee—reprimand the licensee;
 - (b) if the proposed action included requiring the licensee to comply with a stated requirement within a stated period—make the requirement, reprimand the licensee or both;
 - 15 (c) if the proposed action included imposing a condition on the licence—impose the condition, reprimand the licensee or both;
 - (d) if the proposed action included disqualifying the licensee from applying for a licence for a stated period—cancel the licence, or suspend the licence for not longer than that period, and disqualify
20 the person from applying for a licence for not longer than that period;
 - (e) if the proposed action included disqualifying the licensee from applying for a licence permanently—cancel the licence, or suspend the licence for not longer than 1 year, and disqualify the
25 person from applying for a licence permanently or for not longer than 5 years;
 - (f) if the proposed action included suspending the licence for a stated period—suspend the licence not longer than that period or reprimand the licensee;
 - 30 (g) if the proposed action included cancelling the licence—cancel the licence, suspend the licence for not longer than 1 year or reprimand the licensee.
- “(5) The registrar must tell the licensee in writing of the decision.

SCHEDULE 1—continued

“(6) If the registrar decides to suspend or cancel the licence, or disqualify the licensee from applying for a licence, the registrar must also tell the licensee in writing when the suspension, cancellation or disqualification takes effect.

5 “(7) A suspension or cancellation must not take effect earlier than 7 days after the licensee is told about the decision.

“(8) If the registrar suspends a licensee’s licence, the licensee is, during the period of the suspension—

(a) taken not to be licensed; and

10 (b) disqualified from applying for a licence.

“(9) If a person is disqualified from applying for a licence under this section, the person is not eligible to apply for a licence while the person is disqualified.”.

[1.131] Subsections 49 (7) and (8)—

15 Omit “legal practitioner”, substitute “lawyer”.

[1.132] Subsections 51 (1) and 52 (1)—

Omit the penalty, substitute the following penalty:

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

[1.133] Subsection 53 (1)—

20 Omit “legal practitioner”, substitute “lawyer”.

[1.134] Section 54—

Omit “of Motor Vehicle Dealers”.

[1.135] Paragraphs 57 (1) (k)—

Omit the paragraph, substitute the following paragraphs:

25 “(k) under section 47 to cancel a licence;

(l) under section 48A to take any action under that section;”.

[1.136] Section 58—

Omit the section.

SCHEDULE 1—continued

[1.137] Section 66—

Omit “, unless the contrary intention appears”.

[1.138] Section 66 (definitions of *determined fee* and *inspector*)—

Omit the definitions.

5 **[1.139] Section 67—**

Omit the section, substitute the following section:

“67 Hindering of registrar etc

10 **“(1)** A person must not, without reasonable excuse, hinder or obstruct the registrar, the deputy registrar or an inspector in the exercise of a function under this Act.

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

“(2) A person must not threaten or intimidate the registrar, the deputy registrar or an inspector in the exercise of a function under this Act.

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

15 **[1.140] Section 71—**

Omit the section, substitute the following section:

“71 Working out whether person *suitable* or *unsuitable*

20 **“(1)** This section applies in working out whether a person is a suitable person or an unsuitable person to be, or continue to be, an individual licensee or a director of a corporate licensee.

“(2) A person is a *suitable person* unless the person is an unsuitable person.

25 **“(3)** A person is an *unsuitable person* if the person or, if the person is a corporation, the person or a executive officer of the person has committed or engaged in a disqualifying act.

“(4) A *disqualifying act* is—

- (a) a contravention of this Act (including a requirement made by the registrar under this Act) or a corresponding law of a State, whether or not the contravention is an offence; or

SCHEDULE 1—continued

- (b) an offence against the *Trade Practices Act 1974* (Cwlth); or
 - (c) an offence against the *Fair Trading Act 1992* or a corresponding law of a State; or
 - (d) an offence involving fraud or dishonesty; or
 - 5 (e) an offence against a law of the Territory, the Commonwealth a State another Territory or foreign country punishable by imprisonment for a period of longer than 1 year; or
 - (f) the sale of a motor vehicle without passing unencumbered title to the vehicle.
- 10 “(5) An executive officer of a person is taken to have committed a disqualifying act if the executive officer was an executive officer of a person at the time the lastmentioned person committed the disqualifying act.
- 15 “(6) However, even if the person has committed or engaged in a disqualifying act, the person is a suitable person if the registrar is satisfied that, in all the circumstances, it would be reasonable to regard the person as a suitable person.
- “ (7) In making a decision under subsection (6) in relation to the person, the registrar must have regard to—
- 20 (a) the circumstances of the disqualifying act; and
 - (b) whether the person cooperated in the investigation of the disqualifying act; and
 - (c) the extent to which the person provided restitution for any loss suffered because of the disqualifying act; and
 - 25 (d) the time since the disqualifying act was committed or engaged in; and
 - (e) whether the disqualifying act was an isolated event.
- “ (8) Subsection (7) does not limit the matters to which the registrar may have regard in making the decision.
- 30 **[1.141] Subsections 73 (2), (4) and (7)—**
Omit the penalty, substitute the following penalty:

SCHEDULE 1—continued

“Maximum penalty: 5 penalty units.”.

[1.142] New section 73A—

After section 73, insert the following section:

“73A Return of licence

- 5 “(1) If a person’s licence is suspended or cancelled, the person must not fail, without reasonable excuse, to return his or her licence to the registrar as soon as practicable (but within 7 days) after the suspension or cancellation takes effect.”

Maximum penalty: 20 penalty units.

- 10 “(2) If the person’s licence is suspended and the licence has not expired when the suspension ends, the registrar must return the licence to the person if the person asks for its return.”.

[1.143] Subsection 74 (1)—

Add at the end the following penalty:

- 15 “Maximum penalty: 10 penalty units.”.

[1.144] Subsection 74 (2)—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 10 penalty units.”.

[1.145] Subsection 76 (4)—

- 20 Omit the penalty, substitute the following penalty:

“Maximum penalty: 50 penalty units.”.

[1.146] Subsection 79 (1)—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 10 penalty units.”.

- 25 **[1.147] Subsections 79 (2) and (3)—**

Omit the penalty, substitute the following penalty:

“Maximum penalty: 30 penalty units.”.

SCHEDULE 1—continued

[1.148] Subsection 79 (4)—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 10 penalty units.”.

[1.149] Section 79A—

5 Omit the penalty, substitute the following penalty:

“Maximum penalty: 10 penalty units.”.

[1.150] Section 81—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 10 penalty units.”.

10 **[1.151] Subsection 87 (2)—**

Omit “director”, substitute “executive officer”.

[1.152] Paragraph 89A (3) (a)—

Omit “a director”, substitute “an executive officer”.

[1.153] Paragraph 89A (3) (a)—

15 Omit “refuses or”.

[1.154] Subsection 89A (4)—

Omit “:director”, substitute “executive officer”.

[1.155] Subsection 89A (4)—

Omit “directors”, substitute “executive officers”.

20 **[1.156] Section 90A—**

Omit the section, substitute the following sections:

“90A Determination of fees and charges

“(1) The Minister may determine fees and charges for this Act.

“(2) A determination under this section is a disallowable instrument.

25 **“91 Approved forms**

“(1) The registrar may approve forms for this Act.

SCHEDULE 1—continued

“(2) If the registrar approves a form for a particular purpose, the form must be used for that purpose.”.

[1.157] Section 92—

Omit the section, substitute the following section:

5 **“92 Regulation-making power**

The Executive may make regulations for this Act.”.

[1.158] Schedule 2—

Omit the schedule.

[1.159] Dictionary

10 Add at the end the following dictionary:

“DICTIONARY

(See s 2)

compensation fund means the motor vehicle dealers compensation fund.

corporate licensee means a corporation that holds a licence.

15 *dealer*—see section 6A.

dealings register, of a licensed dealer, means a dealings register maintained by the dealer under section 15 (Licensees to maintain dealings register).

determined fee means—

20 (a) in relation to a provision (other than a provision of Part 10 (Enforcement))—the fee determined under section 90A for the provision; or

 (b) in relation to a provision of Part 10—the fee determined under section 90A for subparagraph 70A (2) (g) (ii).

25 *executive officer*, of a corporation, means the person, by whatever named 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.

final infringement notice, for Part 10 (Enforcement)—see section 66.

SCHEDULE 1—continued

function includes power.

individual licensee means an individual who holds a licence.

infringement notice, for Part 10 (Enforcement)—see section 66.

5 *inspector* means an inspector under section 5B but, for Part 10 (Enforcement), does not include a police officer.

notified person, for Part 10 (Enforcement)—see section 66.

on-the-spot-fine, for Part 10 (Enforcement)—see section 66.

relevant amount, for Part 10 (Enforcement)—see section 66.

10 *relevant chief executive*, for Part 2 (Licences to carry on business as a dealer, wholesaler or car market operator)—see section 6B.

relevant period for payment, for Part 10 (Enforcement)—see section 66.

Schedule 3 offence, for Part 10 (Enforcement)—see section 66.

suitable person—see section 71.

15 *unsuitable person*—see section 71.”.

Second-hand Dealers and Collectors Act 1906

[1.160] Long title—

Omit the title, substitute the following title:

20 “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”.

[1.161] Sections 1 and 2—

Omit the sections, substitute the following sections:

“1 Name of Act

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

“2 Dictionary

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

SCHEDULE 1—continued

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 *Interpretation Act 1967*, s 11F and s 11G).”.

[1.162] Sections 2A, 2B, 2C, 2D, 2E and 2F—

Omit the sections, substitute the following section:

“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.”.

[1.163] Sections 3, 8 and 8A—

Omit the sections, substitute the following sections:

“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

SCHEDULE 1—continued

(b) the words ‘licensed dealer in second-hand goods’.

Maximum penalty: 20 penalty units.

“6 Records of second-hand dealers

5 “(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).

10 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.

15 **“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

20 (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

25 (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.

SCHEDULE 1—continued

“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).

5 “(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
10 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—

15 (a) exempt a second-hand dealer from subsection (2); or

(b) authorise the chief police officer to exempt a dealer from subsection (2).”.

[1.164] Section 9—

Renumber as section 10.

20 **[1.165] Section 9—**

Before section 10, insert the following section:

“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—

25 (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
30 goods, or goods of their description, have been stolen or fraudulently obtained;

SCHEDULE 1—continued

- (ii) the dealer suspects, or should reasonably suspect in the circumstances, that the goods have been stolen or fraudulently obtained.

5 “(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.”.

[1.166] Subsection 10 (1)—

Add at the end the following penalty:

10 “Maximum penalty: 50 penalty units.”.

[1.167] Subsection 10 (2)—

Add at the end the following penalty:

“Maximum penalty: 5 penalty units.”.

[1.168] Subsection 10 (3)—

15 Omit “old wares”, substitute “second-hand goods”.

[1.169] Subsection 10 (3)—

Add at the end the following penalty:

“Maximum penalty: 5 penalty units.”.

[1.170] Subsections 10 (4) and (5)—

20 Omit the subsections.

[1.171] Parts IV and V—

Omit the Parts, substitute the following Part:

“PART 4—MISCELLANEOUS

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

25 “(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.

SCHEDULE 1—continued

“(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.

5 “(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 been committed—

10 (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) been refused a licence, or had a licence cancelled or revoked, under this Act or a corresponding law of a State.

15 “(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.

20 “(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**

25 “(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.

SCHEDULE 1—continued

“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.

5 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.

10 “(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:

15 *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.

20 **“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

25 “(1) The register may include information about licences given to the commissioner under this Act and any other information the commissioner considers appropriate.

30 “(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.

SCHEDULE 1—continued

“(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.

5 **“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

10 (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 Approved forms

“(1) The commissioner may approve forms for this Act.

15 “(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.

20 “(3) If the commissioner approves a form for a particular purpose, the form must be used for that purpose.

“18 Determination of fees and charges

“(1) The Minister may determine fees and charges for this Act.

“(2) Without limiting subsection (1), a fee, charge or other amount may be determined—

25 (a) by specifying the fee, charge or amount; or

(b) by setting a rate, or providing a formula or other method, by which the fee, charge or amount is to be worked out.

“(3) A determination under this section—

SCHEDULE 1—continued

- (a) must provide who is liable to pay a fee, charge or other amount;
and
- (b) may make provision about when the fee, charge or other amount
is payable and how it is to be paid (for example, as a lump sum or
by instalments); and
- (c) may make provision about anything else relating to the fee, charge
or other amount.

“(4) A determination under this section is a disallowable instrument.

“19 Fees payable to Territory in accordance with determinations

“(1) A fee determined under section 18 is payable to the Territory, in
relation to the relevant matter mentioned in the determination and in
accordance with the determination, by the person liable to pay the fee under
the determination.

“(2) A fee determined under section 18 is payable in advance unless the
determination provides otherwise.

“(3) If a fee determined under section 18 is payable in advance and the
amount has not been paid, the commissioner or anyone else is not obliged
to exercise a function, or provide a service or facility, in relation to which
the amount is payable.

“20 Regulation-making power

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

“(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 licensed second-
hand dealers).”.

[1.172] Schedules—

Omit the Schedules.

[1.173] Dictionary

Add at the end the following dictionary:

SCHEDULE 1—continued

“DICTIONARY

(See s 2)

commissioner means the commissioner of fair trading.

5 **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*.

10 **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.

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

suitable person—see section 11.

unsuitable person—see section 11.”.

Trade Measurement Act 1991

20 **[1.174] Sections 1 and 2—**

Omit the sections, substitute the following sections:

“1 Name of Act

This Act is the *Trade Measurement Act 1991*.

“2 Dictionary

25 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, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

30 For example, the signpost definition ‘*Australian legal unit of measurement—see the National Measurement Act, subsection 3 (1) (Interpretation).*’ means that the expression

SCHEDULE 1—continued

'Australian legal unit of measurement' is defined in subsection 3 (1) of the National Measurement Act (defined as the *National Measurement Act 1960* (Cwlth)) and the definition applies to this Act.

5 *Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G)."

[1.175] Section 3, heading—

Omit "etc", substitute "for Act".

10 **[1.176] Subsection 3 (1) (definitions of *Australian legal unit of measurement, corresponding law, inspector, measurement, measuring instrument, reference standard of measurement and State primary standard of measurement*)—**

Omit the definitions.

[1.177] Subsection 3 (1)—

15 Relocate all the definitions (except those omitted by amendment [1.155]) to the dictionary.

[1.178] Section 3—

Omit the remainder of the section, substitute the following section:

"3 Determining certain quantities

20 In this Act—

- (a) time interval not related to the calendar is a physical quantity; and
- (b) time interval related to the calendar is not a physical quantity; and
- (c) any packaging or other thing that is not part of an article is to be disregarded when determining a physical quantity."

25 **[1.179] Subsection 7 (2)—**

Omit the penalty, substitute the following penalty:

"Maximum penalty: 100 penalty units."

[1.180] Subsections 7 (3) and (4)—

Renumber the subsections as subsections 7 (5) and (6).

SCHEDULE 1—continued

[1.181] Section 7—

After subsection (2), insert the following subsections:

“(3) If an inspector finds a measuring instrument that is being used in contravention of subsection (1) or (2), the inspector may give the owner or user of the measuring instrument a written notice—

(a) stating the measuring instrument—

(i) does not have an inspector’s mark or a licensee’s mark on it; or

(ii) for a weighbridge—does not comply with stated requirements of the regulations relating to weighbridges; and

(b) requiring the owner to remedy the contravention within a stated period of not more than 28 days.

“(4) If the person complies with the notice, the person is taken not to have committed an offence against this section in relation to the circumstances to which the notice relates.”.

[1.182] New sections 7A and 7B—

After section 7, insert the following sections:

“7A Use of class 4 measuring instruments

A person must not use a class 4 measuring instrument for trade, other than—

(a) as airport baggage scales; or

(b) for freight scales with a capacity of up to 2000kg; or

(c) for weighing garbage; or

(d) for weighing earth, sand, gravel or other similar material; or

(e) as a crane-weigher; or

(f) for weighing timber in log form; or

(g) for another purpose prescribed under the regulations.

Maximum penalty:

SCHEDULE 1—continued

- (a) if the class 4 measuring instrument is a weighbridge—100 penalty units; or
- (b) in any other case—50 penalty units.

“7B Use of measuring instruments for prepacked articles

5 A person must not use a measuring instrument for measuring prepacked articles on premises where articles are prepacked unless at least 1 measuring instrument on the premises—

- (a) is approved for trade use under the National Measurement Act; and
- 10 (b) complies with this Act; and
- (c) is suitable for measuring the articles to be prepacked.

Maximum penalty: 50 penalty units.”.

[1.183] Subsection 8 (1)—

Omit “or unjust is guilty of”, substitute “commits”.

15 **[1.184] Subsections 8 (1), (2) and (3)—**

Omit the penalty, substitute the following penalty:

“Maximum penalty: 200 penalty units.”.

[1.185] Subsection 8 (4)—

Renumber the subsection as subsection 8 (6).

20 **[1.186] New subsections 8 (4) and (5)—**

After subsection (3), insert the following subsections:

“(4) If an inspector finds a measuring instrument being used for trade that is incorrect or is being used in a way that is unjust, the inspector may give the owner or user of the measuring instrument a written notice—

- 25 (a) stating—
 - (i) that the measuring instrument is incorrect; or
 - (ii) that the way the person is using the measuring instrument is unjust; and

SCHEDULE 1—continued

- (b) requiring the person to take stated steps to stop contravening the relevant subsection within a stated period of not more than 28 days.

5 “(5) If the person complies with the notice, the person is taken not to have committed an offence against this section in relation to the circumstances to which the notice relates.”.

[1.187] Subsection 9 (1)—

Omit “or unjust”.

[1.188] Subsection 9 (2)—

10 Omit the penalty, substitute the following penalty:

“Maximum penalty: 200 penalty units.”.

[1.189] Subsection 10 (1)—

15 Omit all the words after “classes”, substitute “and denominations of reference standards of measurement as the administering authority decides are necessary for this Act.”.

[1.190] Subsection 10 (2)—

After “classes”, insert “and denominations, decided by the administering authority,”.

[1.191] Section 16—

20 Omit the penalty, substitute the following penalty:

“Maximum penalty: 50 penalty units.”.

[1.192] Subsection 18 (2)—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 200 penalty units.”.

25 **[1.193] Subsection 20 (1)—**

Omit the penalty, substitute the following penalty:

“Maximum penalty: 200 penalty units.”.

SCHEDULE 1—continued

[1.194] Section 21—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 200 penalty units.”.

[1.195] Subsection 22 (3)—

5 Omit the penalty, substitute the following penalty:

“Maximum penalty: 50 penalty units.”.

[1.196] Section 23—

Omit “is guilty of”, substitute “or decides the measurement commits”.

10 **[1.197] Paragraph 23 (a)—**

Omit “the other party to the sale”, substitute “any other person who is a party to a sale of the article”.

[1.198] Sections 23 and 24—

Omit the penalty, substitute the following penalty:

15 “Maximum penalty: 200 penalty units.”.

[1.199] Subsections 25 (1) and (3)—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 50 penalty units.”.

[1.200] Subsection 26 (2)—

20 Omit the penalty, substitute the following penalty:

“Maximum penalty:

(a) 50 penalty units; or

(b) if a lesser maximum penalty is prescribed under the regulations in relation to the article—the maximum penalty prescribed.”.

25 **[1.201] Subsections 28 (1) and (2)—**

Omit the penalty, substitute the following penalty:

“Maximum penalty: 100 penalty units.”.

SCHEDULE 1—continued

[1.202] Subsection 30 (1)—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 50 penalty units.”

[1.203] Subsection 31 (1)—

- 5 After “article” (last occurring) insert “(without any packaging or other thing that is not part of the article)”.

[1.204] Subsections 31 (1) and 32 (1)—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 200 penalty units.”

10 **[1.205] Subsection 42 (2)—**

Renumber the subsection as subsection 42 (3).

[1.206] Subsection 42 (1)—

Omit the subsection, substitute the following subsections:

- 15 “(1) A person must not test a batch of measuring instruments or certify, or purport to certify, a measuring instrument unless the person is the holder of a servicing licence or an employee of the holder of a servicing licence.

Maximum penalty: 200 penalty units.

“(1A) A person who is the holder of a servicing licence, or an employee of that person, must comply with the conditions of the licence.

- 20 Maximum penalty: 200 penalty units.”

[1.207] Subsection 43 (1)—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 200 penalty units.”

[1.208] Subsections 44 (2) and (3)—

- 25 Renumber the subsections as subsections 44 (3) and (4).

[1.209] Section 44—

After subsection (1), insert the following subsection:

SCHEDULE 1—continued

“(2) However, if 2 or more persons who carry on business together as partners join in making an application, the licensing authority may only grant a single licence to the joint applicants.”.

[1.210] Paragraph 60 (1) (b)—

5 Omit the paragraph, substitute the following paragraph:

“(b) require a person in charge of such a vehicle to stop it, or move it a reasonable distance to a place stated by the inspector, to allow the inspector—

(i) to enter and search it; or

10 (ii) to weigh or measure it and its load.”.

[1.211] Section 61—

Add at the end the following subsection:

“(2) The inspector may record the details of a measuring instrument that is examined or tested under this section in the way the inspector considers appropriate, including by filming or photographing.”.

[1.212] Paragraph 62 (1) (a)—

After “examine”, insert “or measure”.

[1.213] Section 62—

Add at the end the following subsection:

20 “(4) The inspector may record the details of an article that is examined or measured under this section in the way the inspector considers appropriate, including by filming or photographing.”.

[1.214] Section 65—

Omit the penalty, substitute the following penalty:

25 “Maximum penalty: 100 penalty units.”.

[1.215] Section 68—

Omit the section.

SCHEDULE 1—continued

[1.216] Subsection 73 (1)—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 20 penalty units.”.

[1.217] Section 76—

5 Add at the end the following subsections:

“(5) A batch number on a prepacked article is evidence of the matters indicated by the number, including, for example, the date and place the article was packed and who packed it.

“(6) In this section:

10 *batch number* means a number marked on a prepacked article in accordance with a system of numbers, letters or symbols, or a combination of numbers, letters and symbols, used by the person packing the article to indicate when and where it was packed and who packed it.”.

15 **[1.218] Section 80—**

Omit the section.

[1.219] Section 81, heading—

Omit the heading, substitute the following heading:

“**81 Regulation-making power**”.

20 **[1.220] Subsection 81 (1)—**

Omit the subsection, substitute the following subsection:

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

[1.221] Subsection 81 (2)—

25 Omit “Without limiting the generality of subsection (1), the”, substitute “The”.

[1.222] Paragraph 81 (2) (g)—

Before “verified”, insert “certified”.

SCHEDULE 1—continued

[1.223] Subsections 81 (3) and (4)—

Omit the subsections, substitute the following subsections:

“(3) The regulations may create offences and prescribe a maximum penalty of not more than 20 penalty units for an offence against the regulations.

“(4) A provision of a regulation may authorise anything to be from time to time determined, applied or regulated by the administering authority or the licensing authority.”.

[1.224] Dictionary—

Add at the end the following dictionary:

“DICTIONARY

(See s 2)

Australian legal unit of measurement—see the National Measurement Act, subsection 3 (1) (Interpretation).

class 4 measuring instrument means a measuring instrument of an approved pattern that—

(a) has not less than 100 but not more than 1000 verification intervals, each of which is not less than 5gm; and

(b) is marked with a symbol that is an oval of any shape, or 2 parallel horizontal lines that are joined at each end by a semicircle, with 4 vertical lines in it.

corresponding law means a law of a State that corresponds to this Act.

function includes power.

inspector—see the Administration Act, subsection 3 (1) (Interpretation).

measurement means a determination of number or physical quantity, other than for descriptive purposes only.

measuring instrument—see the National Measurement Act, subsection 3 (1) (Interpretation).

reference standard of measurement—see the National Measurement Act, subsection 3 (1) (Interpretation).

SCHEDULE 1—continued

State primary standard of measurement—see the National Measurement Act, subsection 3 (1) (Interpretation).”.

[1.225] Further amendments—

5 The following provisions are amended by omitting “is guilty of” and substituting “commits”:

Subsections 7 (1) and (2), 8 (2) and (3), 9 (2), 16 (4), 18 (2) and 20 (1), section 21, subsection 22 (3), section 24, subsections 25 (1) and (3), 26 (2), 28 (1) and (2), 30 (1) and 31 (1), paragraphs 32 (1) (a) and (b), subsection 43 (1), section 65 and subsection 73 (1).

10 **[1.226] Renumbering—**

In the next reprint of the *Trade Measurement Act 1991* under the *Legislation (Republication) Act 1996*, the divisions of the *Trade Measurement Act 1991* must be renumbered as permitted under section 13 of the *Legislation (Republication) Act 1996*.

SCHEDULE 2

(See s 4)

AMENDMENT OF REGULATIONS

Sale of Motor Vehicles Regulations

[2.1] Regulation 1—

5 Omit the regulation, substitute the following regulation:

“1 Name of regulations

These regulations are the *Sale of Motor Vehicles Regulations 1977*.”.

[2.2] Paragraph 3 (a)—

10 Omit “or other Territory”.

[2.3] Subparagraph 3 (b) (iii)—

After “revoked”, insert “or cancelled”.

Trade Measurement (Measuring Instruments) Regulations

[2.4] Regulation 1—

15 Omit the regulation, substitute the following regulation:

“1 Name of regulations

These regulations are the *Trade Measurement (Measuring Instruments) Regulations 1991*.”.

[2.5] Regulation 2, heading—

20 Omit the heading, substitute the following heading:

“2 Definitions for regulations”.

[2.6] Regulation 2—

Omit “In these Regulations, unless the contrary intention appears—”, substitute the following:

25 “In these regulations:

Note A definition applies except so far as the contrary intention appears (see *Interpretation Act 1967*, s 11G).”.

SCHEDULE 2—continued

[2.7] Paragraph 4 (b)—

Omit “, crude or unworkmanlike construction”, substitute “or crude construction, is not well made”.

[2.8] Subregulation 9 (2)—

5 Omit the penalty, substitute the following penalty:

“Maximum penalty: 20 penalty units.”.

[2.9] Paragraph 11 (1) (a)—

Omit the paragraph, substitute the following paragraph:

“(a) any labour, materials, equipment, liquid or gas; or”.

10 **[2.10] Regulation 12, heading—**

Omit the heading, substitute the following heading:

“12 Definitions for pt 3”.

[2.11] Regulation 12 (definition of *glass measure*, paragraph (b))—

Omit the paragraph, substitute the following paragraph:

15 “(b) a measure made of glass or another rigid or semirigid substance intended for use for the sale of beer, ale, stout or spirits by quantity other than as a prepacked article.”.

[2.12] Regulation 15—

Omit the penalty, substitute the following penalty:

20 “Maximum penalty: 20 penalty units.”.

[2.13] Subregulations 22 (1), (2) and (3)—

Omit the penalty, substitute the following penalty:

“Maximum penalty: 20 penalty units.”.

[2.14] Regulations 23 and 24—

25 Omit the penalty, substitute the following penalty:

“Maximum penalty: 20 penalty units.”.

SCHEDULE 2—continued

[2.15] Paragraph 25 (c)—

Omit “0.1 CM”, substitute “0.05 CM”.

[2.16] Regulations 25 and 26—

Omit the penalty, substitute the following penalty:

5 “Maximum penalty: 20 penalty units.”.

[2.17] Further amendments—

The following provisions are amended by omitting “is guilty of” and substituting “commits”:

10 Subregulation 9 (2), regulation 15, subregulations 22 (1), (2) and (3), paragraphs 23 (a) and (b) and regulations 24, 25, 26 and 27.

Trade Measurement (Pre-packed Articles) Regulations

[2.18] Regulation 1—

Omit the regulation, substitute the following regulation:

“1 Name of regulations

15 These regulations are the *Trade Measurement (Prepacked Articles) Regulations 1991*.”.

[2.19] Regulation 2, heading—

Omit “**Interpretation**”, substitute “**Definitions for Act**”.

[2.20] Regulation 2—

20 Omit “In these Regulations, unless the contrary intention appears—”, substitute the following:

“In these regulations:

Note A definition applies except so far as the contrary intention appears (see *Interpretation Act 1967*, s 11G).”.

25 **[2.21] Regulation 3, heading—**

Omit “**Interpretation**”, substitute “**Definitions**”.

SCHEDULE 2—continued

[2.22] Regulation 3—

Omit “, unless the contrary intention appears”.

[2.23] Regulation 3 (definition of *cheese* and *cheese products*)—

Omit the definition, substitute the following definition:

- 5 “*cheese and cheese products* does not include articles for sale as processed cheese or cheese spreads.”.

[2.24] Regulation 4—

After subregulation (2), insert the following subregulation:

- 10 “(2A) However, if an exempt package has a name and address or measurement marked on it, the way the name and address or measurement is marked on the package must comply with this regulation.”.

[2.25] Regulation 14—

Add at the end the following subregulation:

“(4) In this regulation:

- 15 *ordinarily sold*, of an article sold by number or linear or superficial measurement, means the majority of the merchants selling the article in Australia ordinarily sell the article by number or linear or superficial measurement.”.

[2.26] Schedule 1 (Food goods, item 1)—

- 20 Omit “Chaff, maize, oats, potatoes, wheat and other like”, substitute “Any”.

[2.27] Schedule 3 (Paragraph 2 (a))—

Omit the paragraph, substitute the following paragraph:

“(a) litre, decilitre or centilitre is permissible for liquids in all cases;”.

25 **[2.28] Renumbering—**

- In the next reprint of the *Trade Measurement (Pre-packed Articles) Regulations* under the *Legislation (Republication) Act 1996*, the divisions of the *Trade Measurement (Pre-packed Articles) Regulations* must be renumbered as permitted under section 13 of the *Legislation (Republication) Act 1996*.
- 30

Endnote

Penalty units

Section 33AA of the *Interpretation Act 1967* deals with the meaning of offence penalties that are expressed in penalty units.