

1995

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

AUCTIONEERS (AMENDMENT) BILL 1995

PAWNBROKERS (AMENDMENT) BILL 1995

**SECOND-HAND DEALERS AND COLLECTORS (AMENDMENT)
BILL 1995**

EXPLANATORY MEMORANDUM

Circulated by authority of

**Mr Gary Humphries MLA
Attorney-General**

AUCTIONEERS (AMENDMENT) BILL 1995
PAWNBROKERS (AMENDMENT) BILL 1995
SECOND-HAND DEALERS AND COLLECTORS
(AMENDMENT) BILL 1995

OUTLINE

This package of cognate Bills will amend the *Auctioneers Act 1959*, the *Pawnbrokers Act 1902* (NSW) and the *Second-hand Dealers and Collectors Act 1906*. The two older Acts form part of the statute law inherited from New South Wales following the establishment of the Territory in 1911. They are continued in force here by the *New South Wales Acts Act 1986*.

The Magistrates Court is the licensing authority for each of the three Acts. The Auctioneers Act and the Second-hand Dealers and Collectors Act require, in effect, the Australian Federal Police to certify that a person is of good character before that person can be licensed which requires the individual investigation of each applicant, including interviewing friends and associates. The Pawnbrokers Act does not have a parallel process in relation to the suitability of a person to be licensed. The amendments will bring this Act into line with the scheme described below.

The Second-hand Dealers and Collectors Act will be amended to remove the power to transfer a second-hand dealers licence and in respect of collectors to give the police a right to object to a licensing application.

These Bills will amend each Act to provide for the police to furnish a certificate of criminal convictions (if any) to the Magistrates Court and to confer a right on the police to object to the grant or the renewal of a licence.

An application for a new licence will be made to the Magistrates Court. It will have to be accompanied by three written references furnished by persons who are electors of the Territory, qualified in terms of the *Electoral Act 1992*, and whose occupations are listed in the Schedule to the Statutory Declarations Regulations made under the *Statutory Declarations Act 1959* of the Commonwealth. If an applicant is unable to provide references from these people, the applicant will be able to seek the leave of the Court to use other references.

An applications will be referred to the Australian Federal Police who would be required to furnish a certificate of the applicant's convictions. The police will also be able to object to the Court if it is considered that the applicant is not a fit and proper person to be licensed.

In the case of auctioneers, whose applications must be advertised, any member of the public would have the opportunity to object to the Court in relation to both an application for a new licence or a renewal.

In determining whether a person is a fit and proper person to be licensed, the Court may have regard to whether the person has been convicted of an offence involving fraud or dishonesty or is the subject of a charge pending in respect of such an offence.

The Court may also have regard to whether the person, has, at any time, been convicted of an offence, or has been refused a licence, under the relevant Act or similar legislation in another jurisdiction

The renewal time for pawnbrokers, second-hand dealers and collectors will remain the anniversary of the date of issue rather than bringing it into line with that for auctioneers which is that a licence issued during the financial year will be in force until the next 30 June and a licence issued before 30 June to an existing licence holder comes into force on 1 July and remain in force until 30 June of the following year. This enables the licensing workload of the Court to be spread across the year.

In the case of an application for renewal of an existing licence, a copy of the application will be served on the Australian Federal Police. It would not need to be supported by the references referred to above.

Each Act provides for the payment of a nominal fee to the Magistrates Court in respect of the issue of a licence. Since an application for a licence also attracts the filing fee payable for an application to the Court this fee can also be seen as a licence fee charged by the Territory. Accordingly, the provision for the separate fees specified in the three Acts will be repealed.

FINANCIAL CONSIDERATIONS

The loss to revenue attributable to the abolition of the fees specified in the three Acts will be approximately \$5,000 per year.

AUCTIONEERS (AMENDMENT) BILL 1995 - DETAILS OF CLAUSES

Clauses 1, 2 and 3 are formal provisions relating to the Bill's short title, its commencement and the definition of the term "Principal Act" to mean the *Auctioneers Act 1959*.

Clause 4 will insert two new clarificatory definitions of the terms "charge" and "convicted". These provide that a charge includes a charge that has not been resolved by a court but does not include a charge that has withdrawn or otherwise not proceeded with. The term "convicted" will include the situation where a person is granted a discharge under section 556A of the *Crimes Act 1900* or similar law of another jurisdiction, but a conviction reversed following a successful appeal is excluded.

Clause 5 will make a minor orthographical correction of paragraph 4(2)(a).

Clause 6 will omit the existing section 5 and substitute a new section 5 which specifies the procedures entailed in applying for a licence. A person's application will need to be supported by references furnished by either three Territory electors who are qualified to witness documents under the *Statutory Declarations Act 1959* of the Commonwealth or other persons approved by the Court. The second option is intended to cover the situation of a person newly arrived in Canberra who might not necessarily be in a situation to obtain references from local people. (The procedure for the renewal of an existing licence is dealt with in section 7 of the Act. It does not require an application for renewal to be supported by references.)

Clause 7 will omit the requirement that an application for renewal must be displayed in the applicant's place of business.

Clause 8 will omit the existing section 8, which requires the police to certify the character of an applicant and substitute a new section 8 which will require the Commissioner of the Australian Federal Police to furnish the Registrar of the Magistrates Court with a certificate indicating whether the applicant has been charged with or convicted of any offence against the laws of any Australian or overseas jurisdiction.

Clause 9 will amend subsection 9(4) to provide that an applicant for a licence will not have to pay the police's costs of objecting to a licence application.

Paragraph 10(a) will amend subsection 10(1) to omit the requirement to impose a licence fee, in addition to the application fee payable to the Court.

Paragraph 10(b) will insert a new subsection 10(1A) to make it clear that, in considering an application, the Court may have regard to any conviction or charge for an offence involving fraud or dishonesty or an offence against the Auctioneers Act or a corresponding law relating to the licensing or conduct of auctioneers elsewhere in Australia or overseas.

Paragraph 10(c) inserts a definition of the term "corresponding law" as outlined above.

Clause 11 omits subsection 11(2) which is a restriction on licensing which is inconsistent with the Mutual Recognition Scheme.

PAWNBROKERS (AMENDMENT) BILL 1995 - DETAILS OF CLAUSES

Clauses 1, 2 and 3 are formal provisions relating to the Bill's short title, its commencement and the definition of the term "Principal Act" to mean the *Pawnbrokers Act 1902* of New South Wales in its application to the Territory.

Clause 4 will insert two new clarificatory definitions of the terms "charge" and "convicted". These provide that a charge includes a charge that has not been resolved by a court but does not include a charge that has withdrawn or otherwise not proceeded with. The term "convicted" will include the situation where a person is granted a discharge under section 556A of the *Crimes Act 1900* or a similar law in another jurisdiction, but a conviction reversed following a successful appeal is excluded. It will also insert a definition of the terms "Court" and "Registrar".

Clause 5 repeals sections 6, 7 and 8 and substitutes new sections 6, 6A, 7, 7A, 8, 8A and 8B.

New section 6 specifies the procedures entailed in applying for a licence. An application from a person who is not the holder of a licence will need to be supported by references furnished by either three Territory electors who are qualified to witness documents under the *Statutory Declarations Act 1959* of the Commonwealth or other persons approved by the Court. The second option is intended to cover the situation of a person newly arrived in Canberra who might not necessarily be in a situation to obtain references from local people. An application for the renewal of a licence will not need to be supported by references (see new paragraph 6(1)(c))

The Act does not impose a minimum age requirement for a person to be licensed as a pawnbroker. In common with other licensing regimes the minimum age for the issue of a licence will be 18 years.

New section 6A requires the Registrar to fix a date for the hearing of the application, endorse the application with the date and advise the applicant who will then refer an endorsed copy to the Commissioner for Police.

New section 7 will require the Commissioner of the Australian Federal Police to furnish the Registrar of the Magistrates Court with a certificate indicating whether the applicant has been charged with or convicted of any offence against the laws of any Australian or overseas jurisdiction.

New section 7A confers the Commissioner for Police with the right to object to the granting of the licence upon the ground that the applicant is not a fit and proper person to be the holder of a licence. The Commissioner is not entitled to so object unless a notice of objection has been filed with the Registrar and served upon the applicant.

New section 8 empowers the Court to direct the Registrar to issue a licence to the applicant once satisfied that the applicant is a fit and proper person. It will make it clear that, in considering an application, the Court, which may determine such applications in chambers, may have regard to any conviction or charge for an offence involving fraud or dishonesty or an offence against the *Pawnbrokers Act* or a corresponding law relating to the licensing or conduct of pawnbrokers elsewhere in Australia or overseas. The Court may direct the Commissioner to make further inquiries.

New section 8A provides that a licence is for 1 year from the date of issue.

New section 8B will require the Registrar to keep a record of all licences issued by the Court.

Clause 6 amends references to the Magistrates Court in consequent upon the insertion of a definition of "Court" by clause 4.

Subclause 7(1) omits the existing headings to the Schedules.

Subclause 7(2) repeals existing First Schedule to the Act and substitutes a new Schedule 1 which is a simplified version of the form of application for a pawnbroker's licence. The operative change is that an application no longer has to be supported by five householders of the Territory.

Subclause 7(3) replaces the heading of the Second Schedule with the term "Schedule 2".

Clause 8 preserves existing licences given the repeal of the licensing provisions of the Act.

SECOND-HAND DEALERS AND COLLECTORS (AMENDMENT) BILL 1995 - DETAILS OF CLAUSES

Clauses 1, 2 and 3 are formal provisions relating to the Bill's short title, its commencement and the definition of the term "Principal Act" to mean the *Second-hand Dealers and Act 1902* of New South Wales in its application to the Territory.

Clause 4 will insert a new heading "Part I - PRELIMINARY" before section 1 of the Principal Act.

Clause 5 will insert two new clarificatory definitions of the terms "charge" and "convicted". These provide that a charge includes a charge that has not been resolved by a court but does not include a charge that has withdrawn or otherwise not proceeded with. The term "convicted" will include the situation where a person is granted a discharge under section 556A of the *Crimes Act 1900* or a similar law in another jurisdiction, but a conviction reversed following a successful appeal is excluded. It will also insert a definition of the term "Registrar".

Clause 6 inserts new Part II, headed "Licences", containing new sections 2A - 2F. These sections create a common licensing scheme for both second-hand dealers and collectors.

New section 2A specifies the procedures entailed in applying for a licence. An application from a person who is not the holder of a licence will need to be supported by references furnished by either three Territory electors who are qualified to witness documents under the *Statutory Declarations Act 1959* of the Commonwealth or other persons approved by the Court. The second option is intended to cover the situation of a person newly arrived in Canberra who might not necessarily be in a situation to obtain references from local people. An application for the renewal of a licence will not need to be supported by references (see new paragraph 2A(1)(c)).

The Act does not impose a minimum age requirement for second-hand dealers and allows a person aged 15 years to be licensed as a collector. In common with other licensing regimes the minimum age for the issue of both licences will be 18 years.

New section 2B requires the Registrar to fix a date for the hearing of the application, endorse the application with the date and advise the applicant who will then refer an endorsed copy to the Commissioner for Police.

New section 2C will require the Commissioner of the Australian Federal Police to furnish the Registrar of the Magistrates Court with a certificate indicating whether the applicant has been charged with or convicted of any offence against the laws of any Australian or overseas jurisdiction

New section 2D confers the Commissioner for Police with the right to object to the granting of the licence upon the ground that the applicant is not a fit and proper person to be the holder of a licence. The Commissioner is not entitled to so object unless a notice of objection has been filed with the Registrar and served upon the applicant.

New section 2E empowers the Court to direct the Registrar to issue a licence to the applicant once satisfied that the applicant is a fit and proper person. It will make it clear that, in considering an application, the Court, which may determine such applications in chambers, may have regard to any conviction or charge for an offence involving fraud or dishonesty or an offence against the Second-hand Dealers and Collectors Act or a corresponding law relating to the licensing or conduct of second-hand dealers or collectors elsewhere in Australia or overseas. The Court may direct the Commissioner to make further inquiries.

New section 2F provides that a licence is for 1 year from the date of issue

Clause 7 will effect a formal amendment by altering the heading to Part I to Part III. This reflects the insertion of the new Part II relating to the issue of licences

Clause 8 repeals sections 4 to 7 relating to the application process for a second-hand dealer's licence consequent upon the new Part II.

Clause 9 will effect a formal amendment by altering the heading to Part II to Part IV. This reflects the insertion of the new Part II relating to the issue of licences.

Clause 10 will repeal section 10 relating to the application process for a collector's licence consequent upon the new Part II

Clause 11 makes gender neutral the language of section 14 which relates to the cessation of being licensed

Clause 12 will amend section 14 in order to remove the ability to transfer a licence.

Clauses 13, 14 and 15 make consequential amendments to the forms in the Schedules to the Act

Clause 16 preserves existing licences given the repeal of the licensing provisions of the Act.