

1990

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

SECOND-HAND DEALERS AND COLLECTORS (AMENDMENT) BILL 1990

EXPLANATORY MEMORANDUM

Circulated by Authority of the Attorney-General

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SECOND-HAND DEALERS AND COLLECTORS (AMENDMENT) BILL 1990

The New South Wales Acts Act 1986 (the NSW Act) consolidated the laws of New South Wales which applied in the territory prior to the establishment of the Territory as the Seat of Government. The inherited New South Wales Acts are specified in Schedule 2 to the NSW Act. One of those Acts is the second-hand Dealers and Collectors Act 1906.

The Second-hand Dealers and Collectors Act 1906 regulates the business of dealing in second-hand goods and old wares through the licensing of dealers and collectors.

The Second-hand Dealers and Collectors (Amendment) Bill 1990 amends provisions in the Second-hand Dealers and Collectors Act 1906 which contain strict liability offences, powers of arrest without warrant and reversals of the onus of proof. The Bill gives effect to an undertaking given to the Senate Standing Committee on Regulations and Ordinances prior to Self-Government arising out of its consideration of the NSW Act. The Bill also revises penalty provisions in the Principal Act and makes certain changes of a drafting nature to reflect current drafting practice.

The Bill will have no effect on income or expenditure.

Details of each of the provisions of the Bill are included in the Attachment.

ATTACHMENT

SECOND-HAND DEALERS AND COLLECTORS (AMENDMENT) BILL 1990

Clause 1 provides for the short title of the Bill, once enacted, to be the Second-hand Dealers and Collectors (Amendment) Act 1990.

Clause 2 provides for the commencement of the Bill.

Clause 3 defines the Principal Act to be the Second-hand Dealers and Collectors Act 1906.

Clause 4 amends section 2 of the Principal Act which provides for the interpretation of terms used in the Act, to bring the section into accord with current drafting practice.

Clause 5 amends section 3 of the Principal Act which relates to the offence of carrying on business as a second-hand dealer without a licence. A penalty of \$1000 for that offence is stated separately to accord with current drafting practice.

Clause 6 amends section 8 of the Principal Act by adding a defence of reasonable excuse to offences associated with the method of dealing with goods in the course of the business, and by providing for a penalty of \$500.

Clause 7 inserts new section 8A into the Principal Act which requires a person to give notice to a police officer of any article coming into his or her possession which answers the description given by the police of an article stolen or fraudulently obtained and imposes a penalty of \$500.

Clause 8 repeals section 9 of the Principal Act which regulates the carrying on of business by a licensed second-hand dealer, and substitutes a new section 9. New subsection 9(1) requires a licensed second-hand dealer to carry on business only on premises specified in the licence and provides for a penalty of \$1000 for non-compliance with the requirement. New subsections 9(2), (3) and (4) create offences for failing to produce a licence on request by a police officer, for purchasing wares from a person under 14 years of age and for carrying on business before 7am, and provide for a penalty of \$500.

Clause 9 amends section 11 of the Principal Act to provide a defence of reasonable excuse to offences by a collector in failing to notify a change of address, in failing to produce a licence on request by specified persons, and in failing to hold for 4 days all wares purchased by him or her. The clause also provides for a penalty of \$500.

Clause 10 repeals section 12 of the Principal Act which prohibits various activities in the carrying on of the business of a collector and in particular prohibits hiring or lending his or her licence and confers a right on any person to arrest a collector in certain circumstances. New section 12 is substituted creating an offence for the hiring or lending of a licence by a licensee to another person with the intention of enabling that person to carry on business as a collector. A penalty of \$1000 will apply. The clause also inserts new section 12A which limits the business of trading in old wares to the hours between 7am and 6pm. A penalty of \$500 will apply.

Clause 11 restates section 13 of the Principal Act which provides for offences associated with misusing a licence and acting as a collector without a licence, and provides for a penalty of \$1000.

Clause 12 repeals sections 15, 16 and 17 of the Act which contain inadequate definitions and which reverse the onus of proof with respect to whether a person is licenced, whether goods are in his or her possession and whether entries in his or her books were authorised by him or her. A new section 15 is inserted which provides for the issue by the Clerk of the Magistrates Court of a certificate evidencing whether or not a person is the holder of a licence at a certain specified period.

Clause 13 repeals sections 20, 22 and 23 of the Act, these sections being antiquated and inappropriate. The sections cover power of entry into premises by a police officer, an offence for offering wares for sale in suspicious circumstances and a provision that all proceedings under the Act be summary matters.

Clause 14 provides that the Act is amended as set out in the Schedule. The Schedule makes amendments to various provisions in the Act to ensure that the provisions are expressed in gender neutral terms.