

PAWNBROKERS/SECOND-HAND DEALERS LICENSING GUIDELINES

WHO NEEDS TO BE LICENSED?

A Second-hand Dealer is a person who is in the business of buying or selling "prescribed goods" that have been used, or are represented by the dealer to be goods purchased, other than by the dealer, but are unused (such as an unwanted gift).

If you are carrying on the business of a Second-hand Dealer, buying or selling second-hand goods that are prescribed under the Pawnbroker and Second-hand Dealers Act 1996, you must be licensed.

A listing of prescribed goods can be found on page 2 of this information brochure.

It should be noted that, under the legislation, sell includes any of the following:

- sell by tender;
- barter or exchange;
- consign or deliver for sale;
- advertise for sale;
- offer for sale;
- have in possession for sale;
- agree to sell.

Any reference to sell also includes selling or doing any of the above as an agent or broker, or by an agent or broker.

A Pawnbroker is a person who is in the business of lending money on the security of pawned goods. If you are carrying on the business of a pawnbroker, you must be licensed. This is the case whether or not the goods you are dealing in are prescribed under the Act.

Depending on your business activities, you may need a Pawnbroker's licence, a Second-hand Dealer's licence or both. If you are granted a licence for both, you are issued with one licence authorising you to conduct business as a Pawnbroker and as a Second-hand Dealer.

PRESUMPTION THAT A PERSON IS CARRYING ON BUSINESS

A person who, on more than 6 days in any period of 12 months, sells any second-hand goods that are prescribed under the Act is presumed to be carrying on a business of buying or selling second-hand goods. It does not matter whether the second-hand goods were sold from a shop, market stall or other premises or from a vehicle or water-going vessel or by an itinerant.

LICENSING REQUIREMENTS - PRESCRIBED GOODS

A Second-hand Dealer's licence is required if you deal in any of the following:

- items of jewellery that include gemstones or precious metals, including watches;
- gemstones and precious metals;
- electric or electronic goods, including mobile phones, global positioning system equipment and audio devices;
- computer hardware, including tablet computers and video game consoles;
- photographic and video equipment, including digital cameras, digital imaging equipment and video recording devices;
- musical instruments;
- sporting and recreational goods;
- watercraft used or capable of being used as a means of transportation on water, including parts of a watercraft;
- portable engine-powered, motorised and air-powered tools and equipment;
- car accessories.

Exceptions: The following are not prescribed second-hand goods for the purposes of the Act and a Second-hand Dealer's licence is therefore not required when buying or selling them:

- motorised wheelchairs, wheeled lounges, spinal carriages and other similar goods designed to carry people with a disability;
- industrial machinery or farming machinery, that cannot be driven or is not portable; items like non-electronic pianos and machinery that are not easily able to be carried or moved; removable game cartridge or disc for a video games console or computer;
- wheelchairs and other mobility aids;
- microwave ovens, refrigerators, washing machines or other whitegoods;
- watercraft that cannot be lawfully towed or otherwise conveyed by a light vehicle within the meaning of the Road Transport Act 2013.

EXCEPTIONS FROM THE NEED TO BE LICENSED

You do not need to be licensed as a Second-hand Dealer to:

- conduct activities for which you hold a licence under the Property, Stock and Business Agents Act 2002, the Firearms Act 1996 or the Motor Dealers and Repairers Act 2013 or;
- take goods as trade-ins or to sell any goods that you have taken as trade-ins or;
- deal in second-hand goods as part of a fund raising appeal authorised under the Charitable Fundraising Act 1991 or;
- conduct the business of an auctioneer.

You do not need to be licensed as a Second-hand Dealer if you are conducting a rental business and sell goods that have become second-hand by reason of being used in the course of the rental business.

You do not need to be licensed as a Second-hand Dealer if you are an approved person:

- conducting a recycling program, or;
- selling any goods collected in a recycling program, or;
- contracting with another person to give that person ownership of goods collected in a recycling program;
- any activities you conduct for a local council and second-hand rubbish collection.

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In relation to recycling programs, "approved person means:

- a local government council or an employee of a local government council, or;
- a contractor, or an employee of a contractor, when acting on behalf of a local government council
- under a contract relating to the recycling program concerned (but only if tenders were invited for the contract and the contractor was the successful tenderer).

LICENSING REQUIREMENTS FOR PARTNERSHIPS

If you operate as a partnership, each partner must be individually licensed for the purpose of the business. Each partner must lodge an application for a licence but only one partner has to pay the prescribed fees, regardless of the number of partners.

HOW TO APPLY FOR A LICENCE

An individual or a corporation may apply for a licence. The application asks for details about the applicant and, in the case of a corporation, details of both the corporation and of its directors. You are also asked to provide other details, such as your trading name, the location of your business, and any places at which goods or records are kept.

When you lodge your application, you are required to pay a processing fee and a licence fee. If the application is refused or withdrawn, the processing fee is not refundable.

CARRYING ON BUSINESS WHILE AN APPLICATION IS BEING ASSESSED

You cannot carry on the business of a pawnbroker while your licence application is being assessed. To be a pawnbroker, you must wait for your licence to be granted.

You cannot carry on the business of a second-hand dealer while your licence application is being assessed unless you only trade in the types of goods, which are not included in the list of prescribed goods. To deal in prescribed goods, you must wait for your licence to be granted.

NOTIFICATION OF BUSINESS & STORAGE PREMISES (including markets)

In your application, you must nominate all places of business and any addresses used for the storage of goods. You do not need to notify Fair Trading of any watercraft not kept at business premises, however you must keep an electronic record of the location and you may be required to provide this information on request from Fair Trading or NSW Police. In the case of market stalls and fairs, the name of the market or fair and the street or nearest street should be provided, also your stall number, if there is one.

If you trade as a Second-hand Dealer at markets, you must provide an address where, during normal business hours, an authorised officer can inspect your records.

WHO IS ELIGIBLE TO HOLD A LICENCE?

An individual is eligible to hold a licence only if the Commissioner for Fair Trading is satisfied that they:

- are at least 18 years of age and;
- are a fit and proper person to hold a licence and each person with whom they are in partnership is a fit and proper person to hold a licence and;
- are not a disqualified person (see page 10 for details of the disqualification provisions).

A corporation is eligible to hold a licence only if the Commissioner for Fair Trading is satisfied that:

- the corporation is a fit and proper person to hold a licence and;
- each director of the corporation is a fit and proper person to hold a licence and;
- the corporation is not a disqualified person.

Where a person has been charged with an offence involving dishonesty, the Commissioner for Fair Trading may await the outcome of proceedings on the charge before determining the application.

WHAT DISQUALIFIES AN INDIVIDUAL FROM HOLDING A LICENCE?

An individual is disqualified from holding a licence if they:

- are the holder of a licence that is suspended under the Act, or of a licence, permit or other authority that is suspended under the Fair Trading Act 1987 or;
- are disqualified from holding a licence, certificate of registration or other authority under a corresponding law or is the holder of such a licence, certificate of registration or other authority that is suspended or;
- are in breach of any provision of the Act or the regulations that is prescribed by the regulations as a disqualifying breach or;
- have a conviction in New South Wales or elsewhere for an offence involving dishonesty that was recorded in the last 10 years, unless the Commissioner for Fair Trading has determined that the offence should be ignored or;
- are an undischarged bankrupt, unless the Commissioner for Fair Trading has determined that this factor should be ignored or;
- at any time in the 3 years preceding the application for the licence, were an undischarged bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with their creditors or made an assignment of their remuneration for their benefit, unless the Commissioner for Fair Trading has determined that this factor should be ignored or;
- are an executive officer of a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed or; at any time in the 3 years preceding the application for the licence, were an executive officer of a corporation when the corporation was the subject of a winding up order or when a controller or administrator was appointed, unless the Commissioner for Fair Trading has determined that this factor should be ignored in relation to the individual or;
- are an executive officer of a corporation that is a disqualified person or;
- are a mentally incapacitated person or;
- are in partnership in connection with the business concerned with a disqualified person.

Note: "administrator" and "controller" have the same meaning above as in the Corporations Act 2001 of the Commonwealth.

WHAT DISQUALIFIES A CORPORATION FROM HOLDING A LICENCE?

A corporation is disqualified from holding a licence if it:

- is the holder of a licence that is suspended under the Act, or of a licence, permit or other authority that is suspended under the Fair Trading Act 1987 or;
- is disqualified from holding a licence, certificate of registration or other authority under a corresponding law or is the holder of such a licence, certificate of registration or other authority that is suspended or;
- is in breach of any provision of the Act or the regulations that is prescribed by the regulations as a disqualifying breach or;
- has a conviction in New South Wales or elsewhere for an offence involving dishonesty that was recorded in the last 10 years, unless the Commissioner for Fair Trading has determined that the offence should be ignored or;
- is a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed or;
- any of its executive officers is a disqualified person.

Note: "administrator" and "controller" have the same meaning above as in the Corporations Act 2001 of the Commonwealth.

LICENCE CONDITIONS

A licence may be issued with or without conditions or restrictions. If your licence is issued with any conditions or restrictions, you must ensure that at these conditions are met all times.

RIGHT OF APPEAL

You have a right to appeal against a decision to refuse to grant a licence or to grant a licence subject to conditions or restrictions. If your licence application is refused or is issued subject to conditions or restrictions and you wish to appeal against the decision, you can apply, within 28 days, to NSW Fair Trading for an internal review. The application must be in writing and be addressed to the Secretary and specify an address in Australia to which a notice of the result may be sent.

A senior officer will determine your request for an internal review. You will be notified in writing of the result of the review, together with the reasons for the decision, within 21 days. If you are dissatisfied with the result of the internal review, you may apply to the NSW Civil and Administrative Tribunal (NCAT) for a review of that decision. You have 28 days from the date of receiving the result of the internal review to apply to the Tribunal.

Enquiries relating to the operations of the Tribunal, including fees, should be directed to the Tribunal on telephone number: 1300 006 228.

USE OF NAMES IN CONNECTION WITH THE BUSINESS

You may only carry on business as a Pawnbroker and/or Second-hand Dealer under the name or names specified in the licence. This may be your name (where the licence is issued to an individual) or a corporation name (where the licence is issued to a corporation).

You can also trade under a business name. Any business names used must be registered with ASIC, showing the licensee as proprietor. You also must request that the business name be endorsed on the licence.

LICENCE DETAILS TO BE DISPLAYED

A licensee, at all premises from which they conduct business, must conspicuously display a sign stating:

- the name of the licensee and;
- the licence number.
- the business authorised by the licence (that is, either Licensed Pawnbroker OR Licensed Second-hand Dealer OR Licensed Pawnbroker and Second-hand Dealer) and;
- a statement containing the words 'any information provided to the licensee by or about a customer in relation to the trading of second-hand goods may be furnished to the Police'.

If you conduct business from different locations, these particulars must be displayed at each location. Portable signage is acceptable for Second-hand Dealers operating from markets.

There are other signage requirements that must be complied with.

Refer to the Regulation, for information on signage requirements.

RECORDS TO BE KEPT

A licensee must keep records for the acquisition or disposal of second-hand goods, or for the redemption of any pawned goods, or disposal of any forfeit pledge. The records must be made on the day the goods have been acquired or disposed of. If the goods were acquired at premises other than the registered business premises, the records must be made as soon as possible. A licensee must also keep records, containing the particulars prescribed by the regulations, of all persons employed in the licensed business.

For full details of the record keeping requirements, you should refer to sections 15, 16, 17 and 28 of the Pawnbrokers and Second-hand Dealers Act 1996 (as amended) and also Part 2 of the Pawnbrokers and Second-hand Dealers Regulation 2021.

For further information visit the Fair Trading website: www.fairtrading.nsw.gov.au and search for Pawnbroking and Second-hand Dealing.

ELECTRONIC (COMPUTERISED) RECORDS TO BE KEPT

Records kept under Sections 16 and 28 of the Act, must be created and maintained in an electronic format. You must be able to export and download records in a prescribed format to a database maintained by the NSW Police Service within three (3) days of a transaction being made. The system has been built in accordance with the NSW Police high security requirements and is accessed via the NSW Police home page on the Internet. It is only accessible to dealers with a valid username and password.

The software you use to fulfil your electronic record keeping requirements must comply with the technical specifications of the NSW Police Service. It is your responsibility to ensure that the software is compliant with the Service's specifications.

For further information visit the Fair Trading website: www.fairtrading.nsw.gov.au and search for Pawnbroking and Second-hand Dealing.

EXEMPTION FROM KEEPING ELECTRONIC (COMPUTERISED) RECORDS

If you held a Second-hand Dealer's licence under the Second-hand Dealers and Collectors Act 1906 you may have previously been eligible to apply to have your Second-hand Dealers licence renewed without a condition.

No new applications for exemptions may be made and existing exemptions will be grandfathered until 1 January 2023.

During this time licensees do not need to reapply for an exemption by 2023.

Licensees with any exemption will be required to use a computerised records system.

RECORDS (OTHER THAN COMPUTERISED RECORDS)

Where a Second-hand Dealer has been granted an exemption from keeping electronic records, the records may be kept in a bound (not loose-leaf) book with consecutively numbered pages.

The records must:

- be in the English language;
- permanently record the date on which each record was first compiled and the date on which each entry was made and;
- include the contract number for each item, and that number must be reproduced on a tag, label or other attachment to the item.

PRODUCTION OF RECORDS

An authorised officer (that is, a police officer, or a person authorised by the Commissioner for Fair Trading) may require the person in charge of a licensed premises to produce for inspection any record required to be kept by the licensee or to reveal the whereabouts of any goods or records kept by the licensee or to produce the licence.

An authorised officer may require a person carrying on a licensed business from a market stall to produce for inspection at the nearest police station within 24 hours any record required to be kept by the licensee, to identify, locate and produce for inspection at the nearest police station within 24 hours any goods kept by the licensee that correspond to particular records kept by the licensee or to produce the licence for inspection at the nearest police station within 24 hours.

An authorised officer may require the promoter of a market to produce for inspection at the nearest police station within 24 hours any record required to be kept by the promoter, or to reveal the whereabouts of such records. An officer authorised by the Commissioner for Fair Trading may instead require its production at a specified office of NSW Fair Trading.

In the case of a record that is electronically stored, the authorised officer may view the record, copy it by electronic means, require it to be reproduced in hard copy, or be reduced to some other portable form suitable for removal and capable of reproducing the record for viewing.

DUTY TO REPORT SUSPICIOUS GOODS

Licensees and their employees are required to report goods that they suspect are stolen. Goods whose unique identifier has been tampered with are to be treated as suspected of being stolen and therefore must also be reported.

DUTY OF LICENSEE TO REPORT CONVICTIONS

If a licensee, or employee of a licensee, is convicted of an offence involving dishonesty then the licensee must advise the Commissioner for Fair Trading in writing within 28 days of the conviction date, or the date of the licensee becoming aware of the employee's conviction.

RETENTION OF GOODS

A licensee must keep all prescribed second-hand goods purchased or received for a period of 14 days, from the day the purchase or receipt of the goods was recorded, on their licensed business or storage premises and not alter the goods or dispose of them, or allow them to be redeemed or part with possession of them, during that period.

Goods purchased by tender or auction from a Government department, State owned corporation or Statutory authority are not considered to be at high risk of theft and do not therefore have to be retained unaltered for 14 days.

RECOVERY OF STOLEN GOODS

The licensee has a responsibility to ensure that the person selling or pawning the goods is the rightful owner, and that victims of theft have their goods returned promptly.

If a person has reported the theft of their goods and then finds those goods in a licensee's premises, they can contact the Police and ask them to give a Restoration Notice to the licensee requiring the licensee to return the goods. If the Police believe the claimant is the owner, they can serve a Restoration Notice on the licensee. A licensee served with a Restoration Notice must return the goods within 28 days of being given the notice.

MAINTAINING YOUR LICENCE – RENEWAL OF LICENCES

There is a document called an Application for Renewal of Licence, on which you provide details, which help ensure continued compliance with licensing requirements. There is also a fee, which must accompany the Application for Renewal of Licence. In the case of a partnership, each partner must lodge an Application for Renewal of Licence but only one licence fee is payable for the partnership, regardless of the number of partners. The Application for Renewal of Licence will be sent to you twenty-eight days before it is due to be lodged.

If the renewal notice and fee are not received by close of business on the due date, the licence will expire. NSW Fair Trading will not accept responsibility for any delays in the postal service.

Unless suspended or revoked, a licence continues in force for 1, 3 or 5 years. Your licence will expire if you do not lodge an Application for Renewal of Licence and (if applicable pay the fee) by the due date.

Your licence can also be cancelled if you cease to be eligible to hold a licence.

MAINTAINING YOUR LICENCE - CHANGES OF PARTICULARS

If you change your business or storage address, commence trading at a different location, cease to carry on business or change any other particulars that have been previously provided, you must advise the NSW Fair Trading in writing of the changes within 14 days.

If you change any of the particulars shown on the licence, an amended licence will be issued.

GETTING YOUR COPY OF THE LAWS

To ensure you are aware of all of your responsibilities, it is important that you obtain copies of the legislation, namely:

- * Pawnbrokers and Second-hand Dealers Act 1996,
- * Pawnbrokers and Second-hand Dealers Regulation 2021 and any subsequent amendments to both the Act and the Regulations.

You can access the Act and Regulations on the internet at the Government of NSW Legislation home page: **www.legislation.nsw.gov.au**

This information must not be relied upon as legal advice. For more information about Pawnbrokers and Second-hand Dealers, refer to the appropriate legislation.