

QUEENSLAND LAW REFORM COMMISSION

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A REVIEW OF THE PAWNBROKERS ACT 1849 - 1971

REPORT NO. 23

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A Report of the Queensland Law Reform Commission

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QUEENSLAND

A REPORT OF THE LAW REFORM COMMISSION

ON A REVIEW OF THE PAWNBROKERS ACT
1849 - 1971

Q.L.R.C. 23

A REPORT OF THE LAW REFORM COMMISSION

RE: PAWNBROKERS ACT 1849 - 1971

Q.L.R.C.

The Honourable W.D. Lickiss, M.L.A.,
Minister for Justice and Attorney-General,
BRISBANE.

We forward herewith our Report concerning a review of the above Act comprising a draft Bill and Commentary thereto which embody our recommendation.

The working paper which preceded this Report was widely circulated and a number of comments, criticisms, and suggestions were received. In giving acceptance to some of these, amendments have been made to the original bill, which in our opinion will lead to improvements in the licensing of pawnbrokers and the management of their affairs generally.

(Hon. Mr. Justice D.G. Andrews) (Chairman)

(Mr. B.H. McPherson, Q.C.) (Member)

(Mr. G.N. Williams) (Member)

(Dr. J.M. Morris) (Member)

(Mr. J.J. Rowell) (Member)

(Mr. J.R. Nosworthy) (Member)

COMMENTARY

1. Short title and commencement. There would seem to be no occasion to alter the title of the original Act nor the method of fixing the date of commencement.
2. Acts terminated or repealed. As the Act originated in New South Wales as a Statute of that State, it is considered its application to this State should be terminated rather than the Act repealed. The amending Act of 1971 is to be repealed.
3. Arrangement of the Act. This clause is formal.
4. Savings and transitional. This Act will apply in dealing with applications made under the repealed Act which have not been determined as at the commencement of this Act. A licence issued under the existing legislation remains in force until it expires or is cancelled, revoked or suspended under this Act.
5. Interpretation. This clause defines expressions used in the Act. Subclause (2) reproduces s.37 of the repealed Act.
6. Application for licence. This provides the method for applying for a licence. The applicant gives the clerk of the court 14 days' notice in the prescribed form of his intention to apply accompanied by a certificate by two householders concerning his character.
7. Nominees of certain applicants. Representations were made to the Commission that notwithstanding s.36 of the Acts Interpretation Act 1954 - 1971 doubts had been raised as to a body corporate's right to hold a licence. This clause has been inserted to overcome any such doubts in relation both to bodies corporate and persons carrying on business under a business name.
8. Objections to application. Under existing legislation applications are expressed to be heard in open court. This clause sets out a Police Officer's right to object to the granting of a licence.
9. Hearing of Applications. This clause deals with the hearing and entitles the Police Officer making an objection to appear in person or by counsel, etc.
10. Persons within scope of licence issued to nominee. This clause sets out who may be considered the licensee when a licence is issued pursuant to clause 7.
11. Substitution of one nominee for another. This provides its procedure when a nominee is to be substituted.
12. Renewal of licence. The licence is current for 12 months unless cancelled revoked or suspended. The licence may be renewed at the end of 12 months and the procedure for applying for a renewal is the same as applying for a new licence.

13. Magistrates Court's order is final. No appeal lies in respect of an order under the preceding clause.
14. Replacement of lost licence. The Clerk of the Court may issue a duplicate licence in lieu of one lost or destroyed.
15. Licence to relate to premises. A licence relates to one premises only and permits the licensee to carry on business at that address only.
16. Register of licences. The Clerk of the Court is to keep register and record in alphabetical sequence the names of persons to whom licences are issued.
17. Pawnbroker's premises to be identified. The pawnbroker's name is to appear in a prominent position on his premises.
18. Pawnbroker restricted to licensed premises. A pawnbroker is restricted from carrying on business except at the premises to which his licence relates.
19. Licence to be kept on licensed premises. Self explanatory.
20. Licence to be produced on demand. Self explanatory.
21. Licence not to be given or lent. A licence is not to be given nor lent so that another can carry on business. If a licensee is convicted of a breach of this provision, the Court can cancel the licence and refuse to grant a new licence for a period of two years thereafter.
22. Pawnbroker must be licensed. An unlicensed pawnbroker is prohibited from carrying on business.
23. Signs, etc. prohibited unless pawnbroker licensed. An unlicensed person is prohibited from erecting a sign on premises from which an implication may be drawn as to the carrying on of a pawnbroking business.
24. Register of pledged articles. Pawnbrokers are required to keep a register in which are entered the date of the transaction, a description of the article pawned, the amount advanced and the name of the person pawning.
25. Duplicate entry to be delivered to customer. The customer is to be given a document containing the same details as recorded in the register referred to in the preceding clause. Ordinarily this document is to be produced to the pawnbroker when the article is being redeemed.
26. Period of redemption of pledges. This period is three months unless a longer period is fixed by agreement. If an article in respect of which less than \$10 is lent is unredeemed within such period it becomes the pawnbroker's property. If more than \$10

has been lent on an unredeemed article, it may be sold after such time free of all claims by the person who pawned it. Regard has been had to the English Pawnbrokers Act of 1872 in drafting these two subclauses. Selling in a manner otherwise than as prescribed by the clause constitutes an offence.

27. Sale of pledges. This clause contains provisions similar to those in s.17 of the existing Act. However, subclause 3 provides for distribution of the proceeds of sale. The pawnbroker is entitled to the amount lent in the pledge together with interest and expenses of sale. If the proceeds exceed the total of these amounts, the excess is to be held to the credit of the customer for 12 months after which it is to be paid to the Public Curator to be placed in the Unclaimed Moneys Fund. The existing Act has no such provision.

28. Recovery of rights when pledge wrongly disposed of. The person who pawned an article which is subsequently disposed of by the pawnbroker in a manner other than that prescribed may take action against the pawnbroker as for a debt. This procedure differs from that in existing s.29.

29. Register of pledges disposed of. This clause is self explanatory.

30. Offence to make false entry. False entry in the books kept under clause 24 or clause 29 constitutes an offence. This is the case under the existing Act.

31. Hours of business as a pawnbroker. The hours provided are the normal business hours of trading and except Christmas Day, Good Friday and Sundays.

32. Certain transactions prohibited. Transactions with persons under 14 or under the influence of liquor or a drug are prohibited. Subclause (2) permits as a defence that the person did not appear to be under 14 or under the influence of liquor or a drug.

33. Replacement of lost pawn ticket. This is self explanatory.

34. Presumption of right to redeem. Unless the pawnbroker has been previously advised that the ticket has been lost or stolen or that the article pawned was stolen, the possessor of the pawn ticket is entitled to redeem the article.

35. Inspection of licensed pawnbroker's premises etc. These provisions for inspecting books, documents, pledges etc. are in the existing Act.

36. Magistrates Court may order delivery of goods. The first paragraph is, in substance, a restatement of the first part of the existing s.29. The second paragraph is on terms with s.142 of Justices Act 1886 - 1977. Subclause (2) provides that the Court dealing with the question of ownership of goods may order their return to the person appearing the rightful owner. A discretionary power has been given to the Court to award compensation should it think fit, for example where the pawnbroker has enhanced the value of the article. Subclause (3) provides that a Warrant may be

issued to secure recovery of the goods in the event of non-compliance with the order for their return.

37. Disposal of pledges on termination of licence. Whilst ordinarily a pawnbroker giving up his business would make arrangements for the disposal of unredeemed pledges, it was considered necessary to include a provision empowering a Magistrates Court to make such an order as might become necessary should the situation require.

38. Evidentiary provision. The provisions of this clause are self-explanatory.

39. Offences and general penalty. Although a specific penalty is provided for a number of offences, this clause provides a general penalty in the absence of any such provision.

40. Recovery of penalties. This is formal.

41. Persons other than the offender liable to penalties. This clause provides that when the pawnbroker is a body corporate or the business is being conducted under a business name, directors, partners or managers may be held liable for the offence unless they can show it occurred without their consent or connivance and that they had used all due diligence to prevent it.

42. Regulations. This clause is common to most Acts.

A Bill to provide for the licensing of Pawnbrokers and the regulation and control of persons carrying on business as Pawnbrokers.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same as follows :-

PART I - PRELIMINARY

1. Short title and commencement. (1) This Act may be cited as the Pawnbrokers Act 1977 .

(2) This Act shall commence on a day to be fixed by Proclamation.

2. Acts terminated or repealed. (1) The application in and for Queensland of The Pawnbrokers Act of 1849, an Act of the Legislature of New South Wales, is terminated.

(2) The Pawnbrokers Act Amendment Act 1971 is repealed.

3. Arrangement of Act. This Act is arranged in Parts as follows :-

PART I	-	PRELIMINARY
PART II	-	GRANT AND ISSUE OF LICENCES
PART III	-	OBLIGATIONS CONCERNING LICENCES
PART IV	-	CONDUCT OF PAWNBROKERS BUSINESS
PART V	-	GENERAL PROVISIONS

SCHEDULES

4. Savings and transitional. (1) Any application for a licence under the Pawnbrokers Act, 1849 - 1971 which has not been determined before the commencement of this Act shall be deemed to have been duly made under this Act and shall be heard and determined in accordance with this Act.

(2) Every licence granted under the Pawnbrokers Act, 1849 - 1971 and in force immediately prior to the commencement of this Act shall continue in force as if it had been granted under this Act until it expires or is cancelled, revoked, or suspended under this Act, and shall be deemed to be granted and issued under this Act.

5. (1) Interpretation. In this Act, save where a contrary intention appears -

"article" means any item of chattels personal;

"business name" means a business name registered under the Business Names Act 1962 - 1971;

"clerk of the court" means the clerk of the Magistrates Court for the relevant Magistrates Court district;

"licensed pawnbroker" means a person who is the holder of a current licence issued or deemed to be issued under this Act;

"Magistrates Court" means a Magistrates Court constituted under the Justices Act 1886 - 1977;

"pawnbroker" means a person who carries on business by advancing upon interest or in expectation of profit or reward a sum of money upon the principal security or collateral security of an article taken by him as a pawn or pledge.

(2) This Act does not apply to the making of advances by bankers, brokers, commission agents, licensed auctioneers or merchants in the ordinary course of banking or mercantile transactions on the security of anything taken as a pledge."

PART II - GRANT AND ISSUE OF LICENCES

6. Application for licence. (1) A person who desires to obtain a licence under this Act -

- (a) shall apply for the licence to the Magistrates Court for the Magistrates Courts District in which are situated the premises where he intends to carry on business as a pawnbroker; and
- (b) shall, 14 days at least before the day on which the application is to be made to the court, give to the clerk of the court and to the member of the Police Force in charge of the police district in which those premises are situated -

- (i) notice in writing in the form in the schedule to this Act of the intention to apply for the licence, specifying the day on which the application will be made; and

- (ii) a certificate of each of two householders residing in the city, town or locality in which those premises are situated that, where the applicant is an individual, he is a person of good character and, where the applicant is a body corporate, the person nominated to represent the applicant at those premises is a person of good character.

(2) Every applicant for a licence shall pay to the clerk of the court, at the time when he gives to the clerk the notice referred to in subsection (1) (b), the appropriate fee prescribed by the regulations.

The amount of such fee paid to the clerk of the court shall be held by him until the application for the licence has been disposed of by the Magistrates Court and if such application is refused the amount of such fee shall be refunded to the applicant.

7. Nominees of certain applicants. (1) An applicant for a licence -

- (a) being a body corporate, shall in the notice referred to in section 6(1)(b) nominate a fit and proper person to be its representative at the premises where it intends to carry on business as a pawnbroker;
- (b) being a person who proposes to carry on business as a pawnbroker under a business name, either alone or in association with other persons shall in the notice

referred to in section 6(1)(b) nominate a fit and proper person to be the representative of the business at the premises where he intends to carry on business as a pawnbroker.

(2) In the case of an application for a licence made by an applicant to whom subsection (1) applies, the applicant may therein request that the licence, if granted, shall be granted and issued in the name of the person so nominated as the representative of the applicant or of the business as the case may be.

8. Objections to application. (1) The member of the Police Force in charge of the police district in which are situated the premises where an applicant for a licence proposes to carry on business as a pawnbroker may object to the grant of the licence on the ground that he has reason to believe that the applicant or, where a representative has been nominated under section 7, the nominee is not a fit and proper person to hold the licence or to be concerned in the business of a licensed pawnbroker.

(2) Notice of an objection by a member of the Police Force under subsection (1) shall be given by him to the clerk of the court and to the applicant for the licence seven days at least before the day appointed for the hearing by the Magistrates Court of the application.

This subsection shall not be construed to prejudice the right of a Magistrates Court to take into consideration any objection to the grant of a licence made by a member of the Police Force in the course of a hearing by the court of an application for a licence.

9. Hearing of applications. (1) The Magistrates Court shall consider every application for a licence duly made under this Act and in respect thereof shall take into consideration every objection to the grant of the licence duly made to the court by such member of the Police Force being such an objection as he might have made under section 8.

(2) A member of the Police Force who is entitled to make objection to the grant of a licence is entitled to appear, in person or by his counsel, solicitor or agent, before the Magistrates Court hearing an application for a licence, to lead evidence and to cross-examine witnesses and to be heard on such application.

(3) If upon the hearing of an application for a licence an objection is made by a member of the Police Force otherwise than in accordance with section 8 the Magistrates Court shall, at the request of the applicant, adjourn the hearing for such time as the court considers reasonable to enable the applicant to make answer to the objection.

(4) If upon the hearing of an application for a licence the Magistrates Court is satisfied that the applicant and, where a representative has been nominated under section 7, the nominee is a fit and proper person to hold a licence or, as the case may be, to be concerned in the business of a licensed pawnbroker it may grant a licence in the form in the schedule to this Act to the applicant or, at his request duly made by him under section 7, to the person so nominated by him.

(5) Upon the grant of a licence by the Magistrates Court the clerk of the court shall cause a licence in the form in the schedule to this Act to be issued in accordance with the grant.

10. Persons within scope of licence issued to nominee. (1) Where a licence under this Act is granted to a person nominated by the applicant (being a person referred to in section 7(1)(a) under

section 7 each of them -

- (a) the applicant; and
- (b) the person shown in the licence as the person to whom the licence is issued

shall be taken to be the holder of the licence.

(2) Where a licence under this Act is granted to a person nominated by the applicant (being a person referred to in section 7(1)(b)) under section 7 each of them -

- (a) the applicant;
- (b) each person in association with whom the applicant carries on business as a pawnbroker; and
- (c) the person shown in the licence as the person to whom the licence is issued

shall be taken to be the holder of the licence.

(3) Where a licence under this Act is granted to a person who proposes to carry on business as a pawnbroker in association with any other person or person (whether under a business name or not) each of them -

- (a) the applicant;
- (b) each person in association with whom the applicant carries on business as a pawnbroker;
and
- (c) the person shown in the licence as the person to whom the licence is issued.

shall be taken to be the holder of the licence.

11. Substitution of one nominee for another. (1) Where a licence under this Act is issued to a person nominated under section 7 as a representative and before the expiration of the period of 12 months from the day on which it was granted or renewed that person ceases to be such representative and another person is in his place, every holder of the licence shall apply in the form in the schedule to this Act, to the Magistrates Court by which the licence was granted or renewed for an order that the name of the person shown therein as the person to whom the licence is issued be removed therefrom and from the record thereof held by the clerk of the court and that the name of the person who is in his place be substituted therein and in such record as the person to whom the licence is issued.

(2) If the court to which application is made under subsection (1) is satisfied of the facts alleged and that the person whose name is to be substituted is a fit and proper person it may make the order sought and the clerk of the court shall thereupon cause the substitution applied for to be made and the person whose name is so substituted shall be taken to be the person to whom the licence is issued.

(3) Before or upon the hearing of an application made under subsection (1) the court may order that the application be referred to the member of the Police Force in charge of the police district in which are situated the premises to which the licence relates for an investigation into the matter of the application and the character of the person whose name is sought to be substituted in the licence and may adjourn the hearing of the application for such time as is necessary.

(4) A member of the Police Force to whom an application is referred under subsection (3) is entitled to appear, in person or by his counsel, solicitor or agent, before the Magistrates Court hearing the application, to lead evidence and to cross-examine witnesses and to be heard on such application.

(5) Where one holder of a licence makes an application under subsection (1) all other holders of that licence shall be freed of the obligation to make like applications under that subsection in respect of the matter to which the application made relates.

12. Renewal of licence. (1) Every licence granted or renewed under this Act shall, subject to this Act, be in force and be taken to be current for the period of 12 months from the day on which it is granted or renewed, unless it is sooner cancelled or revoked or if suspended for the period of its suspension.

For the purposes of this section a licence under this Act that is renewed shall be deemed to have been renewed on the day on which it would, but for such renewal, have ceased to be in force.

(2) A licensed pawnbroker who desires to renew the licence under this Act of which he is the holder shall apply for renewal of the licence at such time as will enable his application to be heard by the Magistrates Court within 14 days before the licence ceases to be in force or, if there is no day appointed for holding such court within that period, on the last day appointed for holding such court before the licence ceases to be in force.

(3) Every application for renewal of a licence under this Act shall be treated and dealt with as if it were an application for such licence in the first instance and sections 6 to 10 (both inclusive shall apply with all necessary adaptations.

(4) Where application for renewal of a licence under this Act is duly made but before the application is determined the licence to which it relates ceases to be in force by effluxion of time the licence shall be deemed to continue in force until the application is determined or is withdrawn, whichever first occurs.

13. Magistrates Courts order is final. No appeal shall lie in respect of an order of a Magistrates Court made under section 9 or 12 or in respect of a refusal of such an order.

14. Replacement of lost licence. (1) If a licence under this Act or a duplicate licence issued under this section is lost or destroyed any holder of the licence may apply in writing to the clerk of the court at the place where such licence or duplicate licence was issued for the issue of a duplicate or further duplicate licence in lieu of that lost or destroyed.

(2) If the clerk to whom application is made under subsection (1) is satisfied that the licence or duplicate licence to which the application relates is lost or destroyed he may, upon payment of the fee proscribed, and subject to subsection (3), cause a duplicate of such licence or a further duplicate of such licence, as the case may be, to be issued and given to the applicant.

(3) No more than one duplicate licence or further duplicate licence shall be issued consequent upon the loss or destruction of any one document evidencing a licence or duplicate licence.

15. Licence to relate to premises. A licence issued under this Act authorises the holder thereof to carry on business as a pawnbroker in the premises specified in the licence and every such licence shall relate to one premises only and shall set out therein the address or other description of the premises sufficiently to identify the same.

PART III - OBLIGATIONS CONCERNING LICENCES

16. Register of licences. Every clerk of the court shall keep a register in the form prescribed of all licences under this Act granted or renewed by the Magistrates Court at the place where he is clerk.

Such register shall be in alphabetical sequence of the names of the applicants for the grant or renewal of such licences and in the case of a licence issued to a person nominated under section 7 as a representative shall contain an entry of the name of the person to whom the licence is issued.

17. Pawnbroker's premises to be identified. Every licensed pawnbroker shall maintain above the entrance to or in a prominent position on premises used by him for carrying on business as a pawnbroker -

- (a) his name in legible characters at least 50 millimetres high; and
- (b) the words "Licensed Pawnbroker" in close proximity to his name,

so that the same may be easily seen and read.

Penalty : \$50.00.

18. Pawnbroker restricted to licensed premises. A licensed pawnbroker shall not carry on business as a pawnbroker except in premises to which his licence relates.

Penalty : \$100.00.

19. Licence to be kept on premises. A licensed pawnbroker shall at all times keep his licence under this Act on the premises to which it relates.

Penalty : \$100.00.

20. Licence to be produced on demand. A licensed pawnbroker shall produce his licence under this Act to a member of the Police Force upon demand made of him at the premises to which the licence relates.

Penalty : \$100.00.

21. Licence not to be given or lent. (1) A licensed pawnbroker shall not give or lend his licence under this Act to any person for the purpose of that person carrying on business as a pawnbroker under colour of that licence.

Penalty : \$100.00.

(2) The court before which a person is convicted of an offence defined in subsection (1), in addition to imposing a penalty, may order that the licence concerned in the offence be thereby cancelled whereupon the licence shall cease to be in force and thereafter for a period of two years from the date of the conviction a licence shall not be granted under this Act to the person convicted.

PART IV - CONDUCT OF PAWNBROKERS BUSINESS

22. Pawnbroker must be licensed. A person shall not act as pawnbroker or hold himself out as carrying on business as a pawnbroker unless he is a licensed pawnbroker.

23. Pawnbroking signs on or near unlicensed premises prohibited. A person shall not erect, exhibit or suffer to remain on or near premises used by him a sign, writing, painting or other mark or a device which implies or gives reasonable cause to believe that such premises are premises at which business as a pawnbroker is carried on unless he is a licensed pawnbroker.

24. Register of pledged articles. (1) Before a licensed pawnbroker advances money in a transaction in the course of his business as a pawnbroker he shall ascertain from the person who is pawning any article in the transaction sufficient particulars to enable him to comply with subsection (2).

(2) Before or immediately after a licensed pawnbroker advances money in a transaction in the course of his business as a pawnbroker he shall cause to be entered in a book kept by him for the purpose -

- (a) the date of the transaction;
- (b) a fair and reasonable description of every article pawned in the transaction;
- (c) the amount to be advanced by him in the transaction and the rate of interest to be paid in respect of the transaction;
- (d) the name and address of the person by or on whose behalf any article is pawned in the transaction; and
- (e) all other particulars required by this Act to be so entered in relation to the transaction.

(3) Every entry made under subsection (2) throughout each calendar year shall be numbered consecutively, the first pledge received on or after the first day of January next after the commencement of this Act and on or after every succeeding first day of January being respectively numbered one, the second two and so on progressively throughout the year.

25. Duplicate entry to be delivered to customer. (1) A pawnbroker shall not take an article as a pawn or pledge unless, at the time he receives it, there is given to and accepted by the person who is pawning the article a document that is clearly legible containing a duplicate of all the particulars entered in relation to that pledge under section 24(2), including the number allotted to that entry, and containing reference to the name of the licensed pawnbroker.

(2) A licensed pawnbroker is not obliged to re-deliver to any person an article taken by him as a pawn or pledge until there is produced to him by that person the document referred to in subsection (1) that was given and accepted when the article was so taken or a copy thereof duly given by the licensed pawnbroker under section 33.

26. Period of redemption of pledges. (1) The period of redemption of an article taken as a pawn or pledge shall be three months or such longer period as is agreed between the licensed pawnbroker and the person who is pawning the article.

(2) If a period longer than three months is agreed as the period of redemption of an article, the period so agreed shall be entered in the book referred to in section 24(2).

(3) If an article in respect of which an amount less than \$10 has been advanced by the licensed pawnbroker is not redeemed within the period of redemption of the article it shall become the property of the licensed pawnbroker upon the expiration of the period of redemption and the person who pawned it shall thereupon lose all claims thereto or in respect thereof.

(4) If an article in respect of which an amount of \$10 or more has been advanced by the licensed pawnbroker is not redeemed within the period of redemption of the article the licensed pawnbroker may sell the article in the manner prescribed free of all claims thereto or in respect thereof by the person who pawned the article.

(5) A licensed pawnbroker who sells in the manner prescribed an article taken by him as a pawn or pledge before the expiration of the period of redemption of the article or who in any other way disposes of an article taken by him as a pawn or pledge commits an offence against this Act.

27. Sale of pledges. (1) When the period of redemption of an article taken as a pawn or pledge has expired, if the article is one to which section 26(4) relates, the article may be sold by public auction and in no other manner.

(2) At least four days before the day on which it is proposed to sell an article referred to in subsection (1) the licensed pawnbroker shall cause notice of the proposed sale to be published at least twice in a newspaper that circulates generally in the locality in which he carries on business as a pawnbroker.

Each such notice shall contain a catalogue describing articles to be put up for sale and specifying the time when each such article was taken as a pawn or pledge.

(3) From the proceeds of the sale of an article there shall be deducted -

- (a) the amount of expenses of the sale; and
- (b) the aggregate of the amount of the advance made by the licensed pawnbroker upon the security of the article and the amount of interest he would have received had the article been redeemed on the day on which its period of redemption expired

and, if the proceeds of sale exceed the amount of the deductions, the licensed pawnbroker shall hold the balance of such proceeds for the person who pawned the article and if such balance is not claimed by or on behalf of such person within 12 months after the date of the sale the licensed pawnbroker shall pay the same to the Public Curator to be placed to the credit of the Unclaimed Money Fund and thereafter to be dealt with as unclaimed money.

28. Recovery rights where pledge wrongly disposed of. (1) If a licensed pawnbroker sells or in any other way disposes of an article and thereby commits the offence defined in section 26(5) the person who pawned the article may recover from the licensed pawnbroker in a court of competent jurisdiction by way of action for a debt due and owing to him by the licensed pawnbroker -

- (a) in the case of a sale, the fair value of the article as at the date of its sale or the gross proceeds of the sale, whichever is the greater; or
- (b) in the case of a disposal other than by sale, the fair value of the article as at the date of its disposal.

(2) The right to recover conferred by subsection (1) may be enforced whether or not the licensed pawnbroker is proceeded against for his offence in selling or disposing of the article in question.

29. Register of pledges disposed of. A licensed pawnbroker shall cause to be entered in a book kept by him for the purpose, in respect of the sale or other disposal of every article taken by him as a pawn or pledge, the following particulars :-

- (a) the name of the person who pawned the article;
- (b) the date when the article was received by him as a pawn or pledge;
- (c) the number allotted to the entry made under section 24 relating to the article;
- (d) the date of the sale or other disposal of the article; and
- (e) the amount of the gross proceeds of the sale or, if appropriate, of the disposal.

30. Offence to make false entry. Any person who knowingly enters or causes to be entered a particular that is false in an entry made under section 24 or 29 commits an offence against this Act.

31. Hours of business as pawnbroker. A licensed pawnbroker shall not -

- (a) take or suffer an employee of his to take an article as a pawn or pledge; or
- (b) suffer his premises to be open for business as a pawnbroker,

on any day that is -

- (c) Christmas Day, Good Friday or a Sunday;
- (d) a Saturday (not being Christmas Day), except between the hours of 8.00 o'clock before noon and 11.30 o'clock before noon;
- (e) a day other than one aforesaid, except between the hours of 8.00 o'clock before noon and 6.00 o'clock after noon.

32. Certain transactions prohibited. (1) A licensed pawnbroker shall not take or permit an employee of his to take an article as a pawn or pledge from a person who is under the age of 14 years or who is under the influence of liquor or a drug.

(2) It is a defence to a charge of an offence defined in subsection (1) to prove that the person from whom the article in question was taken as a pawn or pledge reasonably appeared to the defendant not to be a person under the age of 14 years or, as the case may be, a person under the influence of liquor or a drug.

PART V - GENERAL PROVISIONS

33. Replacement of lost pawn ticket. If the document given to and accepted by a person under section 25 is lost or destroyed or fraudulently taken from the owner thereof, such owner shall be entitled to receive from the licensed pawnbroker who gave the document a copy thereof upon his proving to the satisfaction of the licensed pawnbroker, by declaration under The Oaths Acts, 1867 to 1960 or by other means, that he is the owner of the document.

34. Presumption of right to redeem. Any person who produces to a licensed pawnbroker a document given by the licensed pawnbroker under section 25 or a copy thereof duly given by the licensed pawnbroker under section 33 and who seeks to redeem the article to which the document or copy relates shall be deemed to be the owner of the document or copy or to be acting under the authority of the owner thereof and to be entitled to redeem such article unless, previously to the production of such document or copy, the licensed pawnbroker has been informed -

- (a) by a person claiming to be the owner of such document or copy, that the same has been lost by him or fraudulently taken; or
- (b) by a credible person, that the article to which such document or copy relates is a stolen article.

35. Inspection of licensed pawnbroker's premises etc. (1) A member of the Police Force may, at any time when the premises of a licensed pawnbroker are open for business as a pawnbroker, enter the premises and therein -

- (a) inspect all books and documents that are required by this Act to be kept by the licensed pawnbroker and make copies thereof or extracts therefrom; and
- (b) inspect all articles held by the licensed pawnbroker as pawns or pledges.

(2) Upon the request of a member of the Police Force who has duly entered his premises a licensed pawnbroker shall produce to such member all books, documents and articles referred to in subsection (1).

(3) Where an article taken by a licensed pawnbroker as a pawn or pledge has been sold or in any other way disposed of, any person who produces to the licensed pawnbroker a document given by the licensed pawnbroker under section 24 relating to such article or a copy thereof given by the licensed pawnbroker under section 33 shall be entitled to inspect the book kept for the purposes of section

29 and to inspect and make copies of or extracts from the entry therein relating to such article.

36. Magistrates Court may order delivery of goods. (1) Upon a complaint made before a Justice that goods suspected of being stolen or unlawfully obtained are in the possession of a licensed pawnbroker it shall be lawful for the Justice to issue his summons directed to the licensed pawnbroker requiring him to appear before a Magistrates Court at a time and place specified therein to inform the court with respect to the matter of the complaint.

If at the time and place specified in the summons or at any time and place to which the hearing is from time to time adjourned and which are notified to the licensed pawnbroker he fails to appear any Justice then present may issue his warrant to apprehend the licensed pawnbroker and to cause him to be brought before a Magistrates Court to inform the court with respect to the matter of the complaint.

The provisions of the Justices Act 1886 - 1977 shall apply in relation to such a warrant as if it were a warrant to apprehend a defendant that he may answer a complaint.

(2) Upon the hearing of the complaint the court may make a finding as to the ownership of the goods to which it relates and, if it finds that such goods were pawned with the licensed pawnbroker without lawful authority, it may order the licensed pawnbroker to deliver such goods to the person who appears to the court to be lawfully entitled thereto, upon payment of a sum of money to the licensed pawnbroker or without such payment, as the court thinks fit.

The court may make such order as to costs as it thinks fit.

(3) If an order of the court that a licensed pawnbroker deliver goods to any person is not complied with any Justice, if he is satisfied that the person entitled to the goods under the order has paid as directed by the order or into the court moneys (including costs) that he is required by the court's order to pay, may issue his warrant directed to all members of the Police Force to seize such goods from any person in whose possession they are found and to deliver them to the person entitled to them under the order and any member of the Police Force is authorized to execute such a warrant.

(4) A licensed pawnbroker who -

- (a) fails to appear in answer to a summons issued under subsection (1) or at any time and place to which the hearing of the matter of complaint is adjourned and notified to him; or
- (b) fails to comply with an order of a court made under subsection (2)

commits an offence against this Act.

37. Disposal of pledges on termination of licence. (1) If -

- (a) a Magistrates Court refuses a renewal of a licence under this Act; or
- (b) a licence under this Act ceases to be in force for any reason,

then, in the case referred to in provision (a), that court or, in the case referred to in provision (b), a Magistrates Court may, on the application of any person, make such order with respect to the

disposal of articles taken as pawns or pledges under the authority of such licence as the court thinks fit.

(2) An order made under subsection (1) shall be given effect and complied with by all persons to whom it is directed.

38. Evidentiary provision. (1) Where in any proceedings it is relevant to prove that a person is or was at any time a licensed pawnbroker authorized to carry on business as a pawnbroker in particular premises the register of licences kept pursuant to section 16 by the clerk of the court for the Magistrates Courts District in which those premises are situated or an extract therefrom certified as correct under the hand and seal of such clerk of the court shall be evidence and, in the absence of evidence to the contrary conclusive evidence of the matters contained in such register or extract.

(2) Where in any proceedings it is relevant to prove that a person is not or was not at any time a licensed pawnbroker in particular premises proof that the register of licences kept pursuant to section 16 by the clerk of the court for the Magistrates Courts District in which those premises are situated -

(a) does not contain an entry showing that a licence under this Act is or was at the material time granted upon the application of such person in relation to such premises; or

(b) contains an entry showing that a licence under this Act granted upon the application of such person in relation to such premises is not or was not at the material time in force,

shall be evidence and in the absence of evidence to the contrary conclusive evidence of the matter to be proved.

(3) In any proceedings proof of particulars entered in a book kept by a licensed pawnbroker under section 24 or 29 by -

(a) production of such book or of a copy of or extract from an entry therein, being a copy or extract made pursuant to a power or entitlement conferred by this Act; or

(b) in the case of particulars entered in a book kept under section 24, production of the duplicate thereof given by the licensed pawnbroker under section 25 or of a copy thereof duly given by him under section 33,

shall be evidence and in the absence of evidence to the contrary conclusive evidence of the matters shown by such particulars.

39. Offences and general penalty. (1) A person who contravenes or fails to comply with any provision of this Act (other than section 16) commits an offence against this Act.

(2) A person who obstructs or hinders another in the exercise of any power or entitlement conferred by this Act commits an offence against this Act.

(3) A person who commits an offence against this Act is liable, if a specific penalty is not otherwise prescribed for that offence, to a fine not exceeding \$500 or to imprisonment for a term not

exceeding 6 months or to both such fine and imprisonment.

(4) A person convicted of an offence against this Act that is of a continuing nature who fails to rectify his default may thereafter be again charged with that offence and shall be liable to a fine not exceeding \$50 for each day on which his default has continued from and after the day on which he was convicted of the offence.

40. Recovery of penalties. All penalties in respect of offences against this Act may be sued for and recovered by way of summary proceedings under the Justices Act 1886 - 1977 upon the complaint of a member of the Police Force or of a person aggrieved.

41. Persons other than offender liable to penalties. (1) Where an offence against this Act is committed by a body corporate a person who at the time the offence is committed is a director or member of the governing body of the body corporate or the manager of or an officer concerned in the management of the business of the body corporate shall be deemed to have committed a like offence and be liable therefor unless he proves that the offence occurred without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence.

(2) Where an offence against this Act is committed by a person who carries on business as a licensed pawnbroker in association with other persons under a business name each of those other persons shall be deemed to have committed a like offence and be liable therefor unless he proves that the offence occurred without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence.

42. Regulations. The Governor in Council may make regulations not inconsistent with this Act with respect to all or any of the following matters:-

- (a) the revocation, cancellation and suspension of licences under this Act and the effect thereof;
- (b) the procedure to be followed in doing anything for the purposes of this Act;
- (c) prescribing what officer or class of officer is to be deemed for the purposes of this Act, to be members of the police force in charge of police districts generally or of a particular police district;
- (d) the forms to be used for the purposes of this Act;
- (e) the fees to be paid for the purposes of this Act;
- (f) matters required or permitted by this Act to be prescribed;
- (g) matters necessary or convenient to be prescribed for carrying out of giving effect to this Act;
- (h) penalties for breaches of the regulations not exceeding the sum of \$100.

F I R S T
S C H E D U L E

S.2

CITATION	SHORT TITLE	EXTENT OF TERMINATION OF APPLICATION OR REPEAL
	<u>Part I</u>	
13 Vic. No.37	Pawnbrokers Act	The Whole
No.16 of 1971	Pawnbrokers Act Amendment Act	The Whole

S E C O N D S C H E D U L E

S. 8

NOTICE OF OBJECTION BY POLICE OFFICER

WHEREAS
has given notice of an intention to apply to the Magistrates
Court at in the State of Queensland
on the day of 197..
for a licence to carry on business as a pawnbroker at
premises situated at

I, Officer in Charge of the Police
District of in the said State, the
District in which the said premises are situated, HEREBY
GIVE NOTICE that I intend to object to the grant of the
licence on the ground that I have reason to believe that the
applicant is not a fit and proper person to hold the licence.
(or, in the case of an application in the name of a Body
Corporate or a business name)
that its nominee is not a fit and
proper person to be concerned in the business of a pawnbroker.

Dated at aforesaid, this.....day of,.....197 .

Officer in Charge of Police.

S E C O N D S C H E D U L E

Ss. 9 & 12

PAWNBROKERS LICENCE

WHEREAS
of
has applied to the Magistrates Court at
this day of 19..
for a *licence
renewal of a licence to carry on business as a
Pawnbroker in the house or premises situated at
..... in this District, and the said
Magistrates Court having heard the application and being
satisfied *that the said applicant is a fit and proper person
to hold a licence
or *that who has been nominated as
representative of the applicant is a fit and proper person to
be concerned in the business of a licensed pawnbroker has
granted () a licence to carry on business as a Pawnbroker in
the said house or premises and not elsewhere and this licence
shall continue in force for twelve months from the date hereof
and no longer.

Dated at aforesaid, the..... day of 197

Clerk of the Court.

* Delete which is not applicable.