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# **QUEENSLAND LAW REFORM COMMISSION**

***A BILL TO REPEAL "THE SECOND-HAND WARES ACT OF 1921"  
AND TO UPDATE LEGISLATION CONCERNING  
DEALERS AND COLLECTORS***

***REPORT NO. 29***

***A Report of the Queensland Law Reform Commission***

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QUEENSLAND

A REPORT OF THE LAW REFORM COMMISSION

ON A BILL TO REPEAL "THE SECOND-HAND  
WARES ACT OF 1921" AND TO UPDATE LEGISLATION  
..... CONCERNING DEALERS AND COLLECTORS

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QLRC 29



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QLRC 29

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

The previous Minister for Justice and Attorney-General has requested the Law Reform Commission to review "The Second-hand Wares Act of 1921" with a view to modernising its provisions and, if necessary, introducing an up to date Statute in substitution for the existing legislation.

The Commission has prepared a draft bill to provide for the licensing of any person who carries on the business or functions of a dealer or collector of second-hand wares.

The working paper was widely circulated to persons and bodies known to be interested in these matters from whom comment and criticism were invited.

The Commission now submits its report concerning this matter. The draft bill included herewith has been amended in the light of some of the comments received and the explanatory commentary adjusted accordingly.

Signed: The Hon. Mr. Justice D.G. Andrews  
(Chairman)

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

Signed: Mr. G.N. Williams, Q.C.  
(Member)

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

Signed: Mr. J.J. Rowell  
(Member)

Signed: Mr. J.R. Nosworthy

Brisbane.



## SECOND-HAND WARES ACT

### COMMENTARY ON DRAFT BILL

The Second-hand Wares Act of 1921 is one of a number of Acts which the Law Reform Commission has been asked by the Honourable the Minister to review with a view to modernising its provisions, and, if considered necessary, to introducing more up to date legislation.

The Act has been in force in Queensland for more than 57 years during which time its provisions have remained unaltered, although the New South Wales Statute on which the Queensland Act was modelled, namely the "Second-hand Dealers and Collectors Act 1906", has undergone substantial amendments throughout that time.

Police Officers have reported on a number of occasions on the increased trading in second-hand goods in Queensland. Members of the Police Department, including the former Commissioner of Police, have drawn the attention of the Law Reform Commission to certain illegal practices carried on in this field and have suggested a number of amendments to the Statute.

The recommendations made by the Commission in the draft Bill altering the method of applying for and granting licences, and in regard to the records required to be kept by persons licensed, will, it is hoped, curtail the illegal practices of which the Police have complained.

The Commission has considered the corresponding legislation in all other Australian States, and, whilst generally, the format of the present Queensland Statute has been adhered to, some of the provisions in the Statutes in force in other States, for example New South Wales, South Australia and Victoria, have been incorporated in the new Queensland draft Bill.

The Commission has also modernised the language and the scope of the Queensland Act with a view to bringing the legislation more into line with present day conditions as they effect the operation of second-hand dealers and collectors today.

The Commission circulated a working paper in regard to this matter on 17th April, 1978 which aroused a good deal of comment. A list of those people and organizations who forwarded written criticisms and suggestions in regard to the working paper is attached to the end of this report. These are acknowledged with thanks and, in a number of instances, the changes suggested have been incorporated in the new draft bill included in this report.

Specific reference has been made in the following commentary to any significant changes in the existing Statute.

1. Short title. As the draft Bill is concerned principally with the licensing and control of second-hand Dealers and Collectors rather than with the trading in second-hand goods, it is proposed that the title to be given to the new Act be altered accordingly.

2. Repeals. Formal.

3. 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 former Act remains in force until it expires or is cancelled, revoked or suspended under this Act.

4. Interpretation. All the terms in this clause are defined in the Queensland Act (Section 2). In the definition of "Dealer" in that section a "ships chandler" is exempted. This exemption has been deleted in this draft. According to the police, this exemption has proved a hindrance to their investigating illegal trafficking in motors and other items stolen from small vessels and craft. The exemption, in any event, is considered redundant. The definition "second-hand wares" in the Queensland Act is considered by the Commission to be unduly cumbersome and the suggested innovation has been adapted from the comparable South Australian legislation.

5. Application of the Act. In the present Queensland Act licensed Auctioneers and licensed Pawnbrokers have been excluded from the definition of "Dealer". It has been considered preferable to provide for their exclusion in the manner set out in paragraphs (a) and (b) of subclause 1 of this clause.

5(1)(c). Representations were made to the Commission that some charitable organizations be exempted from the operation of the Act. This provision has been inserted in response to those representations. The definition of "charity" referred to is as follows :-

"Charity" - Any association established for any charitable purpose :

The term includes any association which, pursuant to subsection (2) of this section, the Minister determines to be a charity as well as associations of such a class as may from time to time be determined in that behalf by the Governor in Council by Order in Council :

The term does not include any association established for any charitable purpose as well as some other purpose, nor does the term include any association established for the purpose of making one appeal for support only.



Under the Collections Act 1966 - 1977,  
"charitable purpose" is defined as :-

"Charitable purpose" - Any one or more  
of the following purposes :

- (a) a purpose which is exclusively charitable according to the law (other than statute law) of Queensland;
- (b) the supplying of help, aid, relief, or support to, or the education or instruction (whether spiritual, mental, physical, technical, social, or otherwise) of, or the care, housing, or assistance otherwise of, any persons in distress;
- (c) the aiding in any manner howsoever, of any hospital or ambulance or nursing service in the State, whether established or proposed to be established;
- (d) any charity;
- (e) any purpose which, pursuant to subsection (2) of this section, the Minister determines to be a charitable purpose;
- (f) any purpose which the Governor in Council by Order in Council declares to be a charitable purpose for the purposes of this Act :

The term does not include any of the objects or purposes specified in the definition "patriotic fund" contained in "The Patriotic Fund Acts, 1942 to 1953".

5(2) and 5(3). These subclauses are important as they provide for an application to the Minister for exemption from the provisions of the act.

The Commission has seen report 25 of the Tasmanian Law Reform Commission on the Second-hand Dealers Act of that State. Recommendation 2(g) on page 6 of that report reads :-

- (g) Antique Dealers and Dealers in Fine Art and Similar Merchandise - We find much merit in the submissions of the Hobart Town Antique Dealers Guild and the Tasmanian Antique Dealers' Association. These are clearly reputable bodies and we think their members would enjoy similar reputations. We understand their concern at being caught by legislation probably not basically designed to cover their business. There might, however, come into existence other individuals or organisations not of such good repute but in a similar type of business. We think that the legislation should be so framed that the Minister may on application grant exemptions to organisations of this nature as such, or to individual members, either generally or in

respect of specific classes of goods.

The Commission concurs in this recommendation and has inserted these subclauses as a result. Under the definition of 'second-hand wares' herein other goods may be exempted by regulations. Together, these provisions should protect any person or body who is concerned the act may otherwise disadvantage their business.

6. Dealers and Collectors to be licensed. This section provides for the necessity for obtaining a licence. Here the New South Wales provisions have been preferred to the existing Queensland Section 6, which in the opinion of the Commission, is far too brief.

7. Application for a licence. In the present Queensland Act provisions relating to Collectors and Dealers were separate. In its working paper the Commission introduced a concept of applying to the Magistrates Court for a licence which was the procedure followed in other licensing legislation previously considered. The Queensland Law Society, Inc., in its submission suggested combining these provisions and where possible this has been done. This clause, originally modelled on s.5 of the Victorian Act, makes provision for applications by both Dealers and Collectors.

8. Nominees of certain applicants. In its working paper the Commission did not include provisions for licensing bodies Corporate as these were considered unnecessary because of s.36 of the Acts Interpretation Act, 1954 - 1977. In view of the doubt some correspondents raised regarding this assertion, this clause has been inserted. In addition to bodies corporate, persons wishing to carry on business under a business name have also been provided for. Paragraph (b) of subclause 1 should also clarify the position where more than one person wishes to carry on business at the same premises which was also a matter for comment by correspondents.

9. Hearing of Applications. This was clause 10 of the working paper. Subclauses (1) and (2) have been modified to clarify areas of doubt referred to by Mr. Pincus, Q.C. in his submission. Alterations to these subclauses rendered subclause (3) of the earlier draft unnecessary and it has therefore been deleted. The other two subclauses are as they were in the working paper.

10. Transfer of Licence. The first three subclauses were in clause 9 of the working paper.

Subclause (4). A recommendation contained in Report No. 25 of the Tasmanian Law Reform Commission for the inclusion of some similar provision in the act it was reviewing has prompted the insertion of this subclause.

11. Substitution of one nominee for another. Insertion of this clause becomes necessary because of clause 8.

12. Objection to application. Subclause 1, 3 and 4 appeared in the clauses 9 and 15. Subclause 2 is adapted from South Australian s.9b and refers to grounds of objection where body corporate is an applicant. A paragraph in the nature of a proviso to these clauses in the working paper has been omitted at the suggestion of the Queensland Law Society Inc.

13. Offences by licensed dealer. These are as set out in clause 11 of the working paper with the following modifications :-

Subparagraph (b). Paragraph b of cl.11 was a transcript of s.8(vi) of the Queensland Act. The word "oral" appearing therein has been deleted so that the dealer now is requested to give notice with respect only to stolen property whose description has been given to him in writing. This has been done in response to submissions that confusion has arisen on past occasions where the description had been given to the dealer orally.

Subparagraph (c). This is now the same as s.8(vii) of the Queensland Act. In its working paper the period for holding had been extended. Most submissions considered the provision placed an unwarranted burden on dealers but if it was really considered necessary, there was no need to add to the burden by extending the period. The Commission has given heed to those submissions by returning to the original five days.

Subclause (d) in the working paper was s.8(viii) of the Act. This restricted carrying on business to licensed premises. However, it has been pointed out that most purchases are made from auctions or from deceased estates or from overseas countries. This facet of a dealer's business cannot be carried on from licensed premises. One correspondent suggested approximately 80% of his purchases were made in this way. This subclause now concerns only sales from licensed premises. Purchases are not mentioned.

Section 8(xiii) restricted hours during which purchases could be made. Subclause 11(g) had similar restrictions and referred to Sundays and holidays as well. Subparagraph (g) has been altered to provide for trading hours as fixed by the Industrial Commission.

14. Licence to cease if business premises assigned. This did not appear in the working paper. It is s.13 of the South Australian Act and has been inserted because of its apparent usefulness.

15. Offences by Collector. These subclauses were in clause 17 of the working paper. Subclause (c) which provided a holding-over period of seven days has been altered to provide for five days for the same reasons given in relation to clause 13(c) herein.

16. Books to be kept. The wording of clause 22 in the working paper has been changed : Only particulars of items the value of which exceeds \$50 are required to be entered in books. This will alleviate much of the burden associated with the recording of even the trivial transactions which the present act requires because as the Tasmanian report has pointed out the object of the Act would be to discourage dealing in and trading stolen property of reasonably substantial intrinsic value.

17. Police entitled to enter and inspect books. This was clause 12 in the working paper which followed s.9 of the Queensland Act.

Subclause 3. A memorandum by an officer of the Solicitor-General's Department suggested the inclusion of a provision similar to this sub-clause which has been taken from the New South Wales section 20.

18. Magistrate's Court may order delivery of goods. This clause is copied from clause 13 of the working paper. Subclause 2 has been modified to clarify an area of doubt referred to by the Queensland Law Society Inc.

19. Possession of Second-hand wares. This was clause 23 of the working paper which followed and added to s.14(2) of the Queensland Act.

20. Court to determine question of apparent age. This seemed a useful provision and is taken from s.26 of the South Australian Act.

21. Renewal of licence. Criticism of cl.19 of the working paper ranged from suggestions that renewal be automatic to having licences last five years. Subcl. 3 of that cl.19 provided that an application for a renewal would be dealt with in the same way as an application for a new licence. This has been altered to provide for renewal by the Clerk of the Court where the licence was issued. Provisions of s.17 and s.18 of the Auctioneers and Agents Act 1971 - 1978 have been followed in this regard.

22. Fee for licence. The fee for a licence will be prescribed by regulations. Fee paid is held until application is disposed of.

23. Application for revocation. Clause 21 of the working paper dealt with revocation. However that clause seemed inadequate and has been replaced by cl.23 which is modelled on s.10 of the South Australian Act. Change in procedure has become necessary because of insertion of provisions relative to bodies corporate and firms and also the new provision of applying to the Clerk of the Court for renewal of which Police would have no notice and therefore would be unable to object.

24. Register to be kept. The new duties imposed on the Clerk of the Court as regards renewal suggest he needs to keep a register.

25. Persons other than offender liable to penalties. This clause is necessary because of new provisions relative to bodies corporate and firms.

26. Recovery of penalties. This was clause 24 of the working paper.

27. Regulations. This was clause 25 of the working paper.

Schedules. Changes have been made in the forms to conform with changes in clauses in the draft bill.

MATTERS WHERE REQUESTS WERE MADE FOR AMENDMENT

WHERE REQUESTS WERE NOT MET

- Cl. 13(c) It was suggested Licensees should be able to display their licenses in the form of a placard.
- Cl. 19 The question was asked if the dealer was still in possession of goods if he can account for their disposal.
- Cl. 6 It was suggested that a Dealer's licence should automatically entitle the holder to carry on business as a collector also.
- Cl. 17 Some correspondents suggested a search of the premises could cause embarrassment to the licence holder. Another suggested a search should not be made unless the licence holder is present.

Amendments made in response to suggestions.

In addition to those referred to in the text, Clause 20 which provided that the order of the Magistrate's Court was final, has been deleted. No clause has been substituted but it could be implied the usual Appeal procedures apply.

Many of the correspondents referred to what they termed "the proliferation of flea markets" and the operations of people from their homes and by newspaper advertisements. The tenor of these letters suggested people in these circumstances could in fact carry on business as second-hand dealers even though they were unlicensed and in these circumstances there could be much dealing in stolen goods. The licence holders maintained that they were disadvantaged solely by being licensed.

Recent amendments made to the New South Wales Act as S.4A and S.4AA have relevance to the substance of some of these submissions. S.4A was inserted by amending act in 1976. The Minister who introduced the Bill said an exhibition licence under the section would be issued for a particular day or days on which an exhibition is being held. The exhibition licence would not permit trading at trash and treasure markets.

S.4AA inserted by amending act in 1978. The Minister then said there was a growing popularity in the conduct of markets on a casual basis in and about metropolitan and country centres of Sydney at which both licensed second-hand dealers and unlicensed persons were selling second-hand goods.

The New South Wales Act as it stood made no provision for granting licences to second-hand dealers wishing to conduct business at markets. The Minister further said there appeared to be no adverse effect on the community by second-hand dealers operating at these markets subject to proper supervision.

Clause 7 of the bill provides that any person who carries on (etc.) the business of a dealer or collector of second-hand wares without being the holder of a licence commits an offence. There are provisions relating to offences in clauses 13 and 15.

It has appeared to the Commission that these clauses, properly enforced would be sufficient to minimize any unlicensed carrying on a business.

Sections 4A or 4AA if introduced could enable a person whose licence was so endorsed, to trade at these markets. A copy of the sections referred to is enclosed for the Minister's consideration. The Queensland Antique Dealers Association in its submission, recommends the inclusion of these sections from the New South Wales Act.

An Act to provide for the licensing and regulating of Dealers and Collectors of second-hand wares.

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 :-

1. Short title and commencement. (1) This Act may be cited as the Second-hand Dealers and Collectors Act, 197

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

2. Repeals. The Second-hand wares Act of 1921 in this Act referred to as the 'repealed act' is repealed.

3. Savings and Transitional.

(a) Any application for a licence under the repealed act 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.

(b) Every licence granted under the repealed act 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.

4. Interpretation. In this Act, save where a contrary intention appears :-

"Buy" and "Sell" include, respectively, exchange, pledge and barter and any dealing, and the derivatives of these terms have a corresponding signification;  
"Seller" includes any person acting or representing himself to be acting for a seller;

"Collector" - A person engaged in collecting second-hand wares of any kind, whether on his own behalf or on behalf of an employer, for the purpose of sale or trade : the term does not include a person who buys second-hand wares at an advertised auction sale conducted by a licensed auctioneer;



"Complaint" - A complaint pursuant to the Justices Act 1886 - 1977;

"Court" - A Magistrates Court duly constituted under the Justices Act 1886 - 1977;

"Dealer" - A person other than a licensed auctioneer or licensed pawnbroker who carries on the business of dealing in or buying or selling second-hand wares on commission or otherwise whether such person deals in any other goods or not.

"Justice" - A justice of the peace;

"Minister" - The Minister of the Crown for the time being charged with the Administration of this Act;

"Police Officer" - Any constable or other member of the police force;

"Police Station" - Includes a police office, watchhouse, stationhouse, and lockup;

"Prescribed" - Prescribed by this Act;

"Regulations" - Regulations made under this Act;

"Second-hand Wares" - Includes any goods which have been used, worn or otherwise employed and which have not been exempted by the regulations, but does not include goods purchased or received from a licensed Auctioneer;

"This Act" - This Act and all regulations made thereunder.

5. Application of the Act. (1) The provisions of this Act do not apply to :-

- (a) the holder of a licence issued under the Auctioneers and Agents Act 1971 - 1978;
- (b) the holder of a licence issued under the Pawnbrokers Act 1849 - 1971;
- (c) a charity registered under the Collections Act 1966 - 1977.

(2) An application may be made to the Minister for exemption from the provisions of this Act and if the Minister is satisfied that the application sets out sufficient grounds for so doing, he may, in writing, grant such exemption.

(3) Such exemption may be revoked at any time by the Minister, whereupon it shall cease to exist.

6. Dealers and Collectors to be licensed. Any person who :-

- (a) exercises or carries on;
- (b) advertises, notifies or states that he

exercises or carries on or is willing to exercise or carry on; or

- (c) in any way holds himself out to the public as ready to exercise or to carry on,

the business of a dealer or collector of second-hand wares whether on his own behalf or on behalf of any other person without being the holder of a licence as such commits an offence against this Act.

Penalty \$ .....

7. Application for licence. (1) Every person who desires to obtain a licence under this Act :-

- (a) shall apply for the licence to the Magistrates Court for the appropriate Magistrates Courts District; and
- (b) shall, fourteen days at least before the day on which the application is made to the court give to the clerk of the court and to the member of the police force in charge of the appropriate police district notice in writing in the form in the First Schedule to this Act of his intention to apply for the licence specifying the day on which the application will be made.

(2) The appropriate Magistrates Court District and the appropriate Police District referred to in subsections 1(a) and 1(b) will be as follows :-

- (i) in the case of a Dealer, where the premises in which he intends to carry on business are situated, or
- (ii) in the case of a Collector, where he resides.

8. Nominees of certain applicants. (1) An applicant for a Dealer's licence or a Collector's licence under this Act :-

- (a) being a body corporate, shall in the notice referred to in section 7(b) nominate a fit and proper person to be its representative at the premises or for the District where it intends to carry on business as a Dealer or a Collector;

- (b) being a person who proposes to carry on business as a Dealer or a Collector under a business name, either alone or in association with other persons shall in the notice referred to in section 7(b) nominate a fit and proper person to be the representative of the business at the premises or for the District where he intends to carry on business as a Dealer or a Collector.

(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.

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 a member of the Police Force.

(2) A member of the Police Force 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 the Magistrates Court is satisfied that the applicant is a fit and proper person to hold a licence it may grant a licence in the form in the schedule to this Act to the applicant.

(4) 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 of this Act to be issued in accordance with the grant.

10. Transfer of Licence. (1) A person who holds a licence may apply to the clerk of the Magistrates Court by which the licence was issued to transfer his licence to other premises or to another person, and shall give at least seven days' notice of his application to the clerk of the court and to the member of the police force in charge of the police station nearest that Court.

(2) The Court may grant or refuse his application.

(3) If the Court grants the application the fact and date of the transfer, and the name and description of the person to whom or description of the premises to which, the licence is to be transferred, shall be indorsed upon the licence and the person named as the transferee, or the premises described in

such indorsement, shall thereupon and thenceforth for all purposes be deemed to be the person to whom or the premises in respect of which the licence was granted.

(4) If the holder of a licence dies, becomes bankrupt, or incapacitated by ill health or, for any other reason, is unable to carry on his business and there is another person who is prepared to carry on his business for the remainder of the term his licence is current, that person may apply to the Magistrates Court for a transfer of the licence to him. The provisions of the preceding subsections apply to that application.

11. Substitution of one nominee for another. (1) Where a licence under this Act is issued to a person nominated under section 8 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, the 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 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 hereunder 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 the said application is referred 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 such an application all other holders of that licence shall be freed of the obligation to make like applications in respect of the matter to which the application made relates.

12. Objection to application. (1) The member of the Police Force in charge of the police district nearest the place of business or the residence of the person applying for the grant

or renewal of a licence may object to that application on the ground that he has reason to believe that the applicant is not a fit and proper person to hold a licence.

(2) Where such application is made by a body corporate or a firm any objection to the grant or renewal of a licence may (without limitation of any other ground of objection) be upon one or more of the following grounds :-

- (i) that any of the directors or the manager of the body corporate has been convicted of an offence against this Act or has been guilty of such conduct as to make it undesirable that a licence should be granted or renewed, or
- (ii) that any employee of the applicant has been convicted of any offence against this Act or has been guilty of such conduct as to make it undesirable that a licence should be granted or renewed, as the case may be.

(3) Notice in writing of any such objection shall be given to the clerk of the court and to the applicant for the licence at least seven days before the hearing by the Magistrates Court of the application for the licence or renewal of the licence.

(4) The Magistrates Court may entertain any such objection although notice thereof was not given as aforesaid but in that case the applicant shall be entitled to an adjournment for such time as the Court thinks fit.

13. Every licensed dealer who :-

- (a) Name, etc., to be painted on outside of premises. Does not cause to be painted and kept painted, in such manner as may be prescribed, his name in full and the words "licensed dealer in second-hand wares" upon some conspicuous part of the outside of the premises in respect of which his licence is granted;
- (b) Dealer to inform police when article supposed to be stolen came into his possession. Does not, without delay, give notice to the police officer on duty at the police station nearest to the place where he carries on business of any article which comes into his possession answering the description of any article described as having been stolen or fraudulently obtained in any

written or printed information  
given to him by any police officer;

- (c) Form of second-hand wares not to be changed for five days. Does not keep all second-hand wares purchased or received by him (except second-hand wares purchased from a licensed auctioneer) without removing any identifying features or changing the form in which they were when so purchased or disposing of the same in any way for a period of five days after such second-hand wares have been purchased or received;
- (d) Dealer selling at other premises. Sells second-hand wares at any premises other than those to which his licence applies;
- (e) Dealer to produce licence. At any time, upon demand made to him, upon any part of the premises upon which he carries on the business of a dealer, by any police officer, refuses or (without reasonable excuse the proof whereof shall lie upon him) fails to produce and show to such officer his licence in force at the time of such demand;
- (f) Second-hand wares not to be purchased from children. By himself or any other person on his behalf, purchases or receives any second-hand wares from any person apparently under the age of eighteen years;
- (g) Restriction on purchase or receipt of second-hand wares. By himself or any other person on his behalf, at the premises to which his licence applies, buys or sells any second-hand wares of any description on Sundays or public holidays or outside the trading hours fixed by Order under Part VII of the Industrial Conciliation and Arbitration Act 1961 - 1976.

commits an offence against this Act.

Penalty \$ .....

14. Licence to cease if business premises assigned, etc.  
If the holder of a licence assigns, demises or parts with the possession of the premises in respect of which the licence is granted, the licence shall thereupon cease and become void, unless transferred to some other premises or to some other person in manner provided by this Act.

15. Every licensed collector who -

- (a) Change of address to be notified to police. Whenever and so often as he changes his place of residence, fails to advise in writing within seven days the police officer in charge of the police station nearest his new place of residence of such change;
- (b) Licence to be produced on demand. Without reasonable excuse, the proof whereof shall be upon him, does not at any time, upon demand, produce his licence to any police officer or to any person from whom he has within twenty-four hours previously bought or offered to buy or collected or offered to collect, any second-hand wares;
- (c) Wares to be kept for five days. Does not, unless he sooner sells the same to a licensed dealer, keep all second-hand wares purchased or received by him (other than second-hand wares purchased from a licensed auctioneer) in the same state and condition as they were in when so purchased or received for five days at least next after such purchase or receipt, or, if he sells the same within the said period, deliver the same to the licensed dealer purchasing the same in the same state and condition as when purchased or received;
- (d) Second-hand wares not to be purchased from children. By himself or any other person on his behalf, purchases or receives any second-hand wares from any person apparently under the age of eighteen years;
- (e) Collectors to sell to licensed dealers only. Sells or otherwise disposes of any second-hand wares to any person other than a licensed dealer;
- (f) Entry on premises. Enters any premises without the permission of the owner or occupier thereof;
- (g) To depart when directed. Having entered upon any premises with or without the permission of the owner or occupier thereof, neglects or refuses to leave such premises immediately when directed to do so by such owner or occupier or his servant or agent;

commits an offence against this Act.

Penalty \$ .....

16. Books to be kept. (1) Every holder of a licence shall keep a Purchases Book and a Despatch Book in the form in the Second Schedule and after each transaction where the value of the individual items involved exceeds \$50 he shall forthwith enter therein particulars of each such transaction, including :-

- (a) a proper and distinctive description of each article purchased received or despatched by him;
- (b) the name and place of abode of the person from whom he purchased or received or to whom he despatched the article;
- (c) the date and hour of the day of each transaction;
- (d) the price paid or agreed to be paid for the article of the goods exchanged or agreed to be exchanged therefor; and
- (e) any other prescribed matters.

(2) Making false, etc. entry in book. Every person who :-

- (a) fails to make an entry, or causes to be made a false entry in any book required by this Act or by the regulations to be kept by any dealer or collector; or
- (b) makes or causes to be made in such book any entry that is misleading or deceptive,

commits an offence against this Act.

Penalty \$ .....

17. Police entitled to enter and inspect books and second-hand wares. (1) A member of the Police Force may at any time when the premises of the holder of a licence are open for business enter the premises and therein :-

- (a) inspect all books and documents that are required by this Act to be kept and make copies thereof or extracts therefrom; and
- (b) inspect all second-hand wares in the possession of the holder of the licence.



(2) Any person who refuses to admit the member of the police force without delay or, if requested, fails to produce all books and documents that are required by this Act to be kept and any second-hand wares in his possession to the member of the police force for inspection commits an offence against this Act.

(3) A reference in this Act to the place of business of a collector shall be construed as a reference to any premises used by the collector in connection with his business as a collector, and includes any structure, building, vehicle, vessel or place, whether built upon or not, and any part thereof.

Penalty \$ .....

18. 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 the holder of a licence it shall be lawful for the Justice to issue his summons directed to the holder of the licence 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 him, the holder of the licence fails to appear any Justice then present may issue his warrant to apprehend the holder of the licence 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) If, upon the hearing of a complaint the court finds that goods suspected of being stolen or unlawfully obtained are in the possession of the holder of a licence it may order the delivery of such goods to the person who appears to the court to be lawfully entitled thereto, upon payment of a sum of money to the holder of a licence 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 relating to delivery of 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) Any person 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.

19. Possession of second-hand wares. (1) Second-hand wares shall be deemed to be in the possession of a dealer or collector when they are placed in any house, outhouse, yard, garden, or place occupied by him, or have been removed with his knowledge and permission to any other place without a bona fide sale of such second-hand wares having been made by him.

(2) Entries in books deemed made by holder of licence. Every entry in any book kept or belonging to any dealer or collector, or found on his licensed premises or at his residence, shall be deemed, unless the contrary is shown, to have been made by or with the authority of such dealer or collector.

20. Court may determine question of apparent age. Where in any proceedings in respect of any offence against this Act any question of apparent age arises, the Magistrates Court may determine such question on view, or on evidence, whether of opinion or fact but before so determining, shall hear and consider the evidence (if any) tendered for all parties.

21. 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.

(2) A licensed dealer or collector who desires to renew a licence under this Act of which he is the holder shall forward to the clerk of the Magistrates Court by which the licence was issued his application for such renewal not later than one calendar month before the anniversary in the year in which the licence will expire if not renewed of the day upon which the licence was granted or, where a renewal of the licence had been granted, of the day of the last renewal thereof.

(3) The clerk of the court shall thereupon issue a renewal of the licence the date of which shall, subject to subsection 4 be the anniversary in the year in which the renewal is granted of the date of issue of the licence or, where a renewal of the licence has been previously granted, the date of issue of the last preceding renewal.

(4) Where a licence granted under the repealed act is first renewed after the commencement of this Act the date of issue of that first renewal shall be the date on which that renewal is granted.

(5) 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.

22. Fee for licence. An application to the clerk of the court for a licence or for a renewal of a licence shall be accompanied by the appropriate fee prescribed by 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.

23. Application for revocation of licence. (1) The Commissioner of Police or any person authorised by him may apply to the Magistrates Court by which a licence was granted for the revocation of such licence.

(2) At least fourteen days' notice of the hearing of such application and of the grounds thereof shall be given to the holder of the licence. Such notice shall be given by being delivered or served personally or by being sent by post by letter to his last known address.

(3) A licence may be revoked upon any of the following grounds, namely :-

- (i) That the holder of the licence has been convicted of any offence against this Act:
- (ii) That the holder of the licence is not a fit and proper person to continue any longer to be licensed:

- (iii) Where a licence is held by a body corporate, that any of the persons mentioned in section 25 has been convicted of an offence against this Act or has been guilty of any conduct which, in the court's opinion, would justify its revoking the licence:
- (iv) Where a licence is held by a body corporate, that any of the persons mentioned in section 25 is no longer a fit and proper person to be licensed:
- (v) That any person employed by the holder of the licence has been convicted of an offence against this Act or has been guilty of such conduct as to make it desirable that the licence should be revoked.

24. Register to be kept. (1) The clerk of the court in which any licence is granted, renewed, transferred, revoked, or cancelled shall :-

- (a) enter the particulars of the same in a register, and
- (b) without delay send a copy of such entries to the Commissioner of Police, who shall cause the same to be entered in a register to be kept at his office and at any other place which may be prescribed.

25. 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 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.

26. Recovery of penalties. All proceedings for penalties and for the revocation of any licence under this Act shall be taken under the Justices Act 1886 - 1977 upon the complaint of a member of the Police Force or of a person aggrieved.

27. 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 or 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.10

SECOND-HAND DEALERS AND COLLECTORS ACT 197  
NOTICE OF APPLICATION FOR TRANSFER OF A SECOND-HAND  
DEALER'S LICENCE (COLLECTOR'S LICENCE)

I, \_\_\_\_\_ of \_\_\_\_\_  
being the holder of a licence to carry on the business of a  
Dealer in second-hand wares in the house or premises situated  
at, \_\_\_\_\_  
Collector of second-hand wares  
hereby give notice that it is my intention to apply to the  
Magistrates Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
for a transfer of such licence to

\*

\* alternative premises situated at \_\_\_\_\_

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

\*Delete which is not applicable.

(Signed) .....

I, the abovenamed consent to the  
application and will accept the  
transfer of such licence if  
approved by the Court.

(Signed) .....

F I R S T   S C H E D U L E

COLLECTOR'S LICENCE

s.9

Whereas  
of  
has applied to the Magistrates Court at  
this                      day of                      19  
for \*a licence  
a renewal of a licence to carry on the business of a  
Collector of second-hand wares. Being satisfied that the  
said  
is a fit person to have such licence granted to him, I do  
hereby authorise and empower him to carry on the business of  
a Collector and this licence shall continue in force for twelve  
months from the date hereof and no longer.

Dated at                      aforesaid, the  
day of                      19 .

Stipendiary Magistrate.

Clerk of the Court.

\* Delete which is not applicable.





SECOND-HAND DEALER'S AND COLLECTOR'S ACT

S.16

PURCHASE [OR] DESPATCH BOOKS TO BE KEPT BY DEALER OR COLLECTOR

Date and hour of transaction	Description of article purchased received or despatched	Amount Paid	Name and address of person from whom received or to whom despatched

Section 4A. (1) -

Omit the subsection, insert instead :-

(1) In this section -

"exhibition" does not include a market within the meaning of section 4AA;

"exhibition license" means a license granted under subsection (3);

"fair" does not include a market within the meaning of section 4AA;

"function" does not include a market within the meaning of section 4AA.

(2) An application for an exhibition license may only be made -

(a) by a person holding a second-hand dealer's license that has been issued to him and is in force at the time the application is made; and

(b) in the prescribed manner.

(3) An exhibition license may, subject to subsection (4), be granted to a licensed second-hand dealer by -

(a) any court; or

(b) the clerk of the court of petty sessions to which the application therefor is made.

(4) An application for an exhibition license shall not be granted unless a copy of the application has been referred to the senior officer of police for the police district in which are situated the premises in respect of which the license has been applied for and -

(a) a report made by that officer on the application has been lodged with the clerk of the court to which the application has been made and, if the license is to be granted by that clerk, the report contains no objection to the grant of the license; or

(b) a period of 10 days has elapsed since the copy of that application has been referred to that officer.

(5) A court that, or clerk of a court who, grants an exhibition license shall, in the license -

(a) describe the premises and the exhibition, fair or other function in respect of which it is granted; and

(b) specify any conditions to which it is subject.

(6) Subject to subsection (7), an exhibition license is in force on the date or dates and during the hours specified in the license.

(7) Where any function in respect of which an exhibition license has been granted is postponed, the license is in force for the date or dates to which the function has been postponed.

(8) While an exhibition license in force, the person to whom it has been granted is authorised, subject to the conditions of the license, to carry on the business of a second-hand dealer at the premises described in the license.

(9) A person who breaches a condition of his exhibition license shall be guilty of an offence under this Act.

(2) Section 4AA -

After section 4, insert :-

4AA. (1) In this section, "market" means -

- (a) any market provided, maintained, controlled or managed by the Sydney Farm Produce Market Authority or by a council within the meaning of the Local Government Act, 1919, but only on such days or dates and during such hours as that Authority or the council permits second-hand goods to be bought and sold thereat; or
- (b) any other place declared to be a market by order under subsection (2), but only on such days or dates and during such hours as are specified in the order in relation to the place.

(2) For the purposes of this section, the Minister may, by order published in the Gazette, declare any place described in the order to be a market on such days or dates and during such hours as are specified in the order in relation to the place.

(3) An application for a market indorsement may be made only -

(a) by a person -

- (i) making application for a second-hand dealer's license; or
- (ii) holding a second-hand dealer's license issued to him and in force at the time the application is made;

(b) in the prescribed manner; and

(c) if accompanied by the prescribed fee.

(4) An application under this section may be made in respect of one market only, but more than one market indorsement may be made on a second-hand dealer's license.

(5) As soon as practicable after an application under this section has been made, the clerk of the court at which it was made shall refer a copy of the application to the senior officer of police for the police district in which is situated the market in respect of which the application was made, for the purpose of enabling that officer to make a report on the applicaiton.

(6) An application under this section may be granted -

(a) where a report referred to in subsection (5) contains no objection to the making of the market indorsement or one month has elapsed since the copy of the application was referred to the senior officer of police in accordance with subsection (5) and no report has been made to the clerk by that officer - by the clerk of the court at which the application was made; or

(b) in any other case - by the court at which the application was made;

and may be granted subject to conditions.

(7) Where an application under this section is granted, the court that, or the clerk of the court who, grants the application -

(a) shall indorse or cause to be indorsed on the second-hand dealer's license of the person who made the application -

(i) a description of the market to which the indorsement relates; and

(ii) any conditions subject to which the indorsement is made; and

(b) may indorse or cause to be indorsed on the license a description of the market stall or pitch to which the indorsement relates.

(8) A market indorsement is, unless sooner cancelled, in force while the license on which it is made is in force.

(9) A market indorsement shall be deemed to be cancelled where the license on which it is made is permitted to be transferred to any person under section 4(1).

(10) While a market indorsement is in force, the holder of the license on which the indorsement is made is authorised, subject to this Act and to his complying with the conditions,

if any, of the indorsement, to carry on the business of a second-hand dealer -

- (a) except as provided by paragraph  
(b) - at the market; or
- (b) if a description under subsection  
(7) (b) is indorsed on the license -  
at the market stall or pitch,

described in the indorsement.

COMMENTS WERE RECEIVED FROM:

BRISBANE AND PROVINCIAL ANTIQUE DEALERS ASSOCIATION

COMMISSIONER OF POLICE

DIAMONDS FURNITURE PTY LTD

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MR. R. GRAY ("THE DUKA")

MRS. E.M. HANSON

MRS. K.B. KENT

MESSRS. KOOTSOOKOS & QUINN (on behalf of Mr. B.E. Cox)

MR. R.J. MAGRATH

MR. C.W. PINCUS, Q.C.

QUEENSLAND ANTIQUE DEALERS ASSOCIATION

QUEENSLAND LAW SOCIETY INC.

MR. K.E. SMITH (Ann St. Furniture Market)

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TREASURE MARKETS PTY LTD

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