



## **Second-hand Dealer and Pawnbroker Act – Legislative Changes**

There have been significant legislative amendments that affect the second-hand dealer industry.

**Second-hand dealer** means a person who carries on the business of buying or selling second-hand goods either as a principal or agent and includes a pawnbroker.

The legislation that applies to the second-hand dealer industry is contained within the Second-Hand Dealers and Pawnbrokers Act, 1996; Amendment of Second-hand Dealers and Pawnbrokers Act 1996 (contained in the Tattooing Industry control Act 2016); the Second-hand Dealers and Pawnbrokers Regulations 2013; and the Second-Hand Dealers and Pawnbrokers Variation Regulations, 2016.

While it is incumbent on second-hand dealers to have knowledge of the legislation and comply with it, this document has been produced by SAPOL to assist with the interpretation of the legislation.

### **Notification to the Commissioner of Police**

If you commence in the second-hand dealer industry after 1 July 2016 a second-hand dealer, pawnbroker or market operator or body corporate is legislatively obliged under **Section 8 Second-hand Dealers and Pawnbrokers Variation Regulations** to notify the Commissioner of Police within one month of specific information. Section 8 Second-hand Dealers and Pawnbrokers Variation Regulations is contained in Appendix A.

If you have already notified the commissioner of Police that you are in the second-hand industry you must notify the Commissioner of certain information under **Schedule 1—Transitional provision - 1—Dealers to give Commissioner of Police notice of certain information**. Schedule 1—Transitional provision - 1—Dealers to give Commissioner of Police notice of certain information is contained in Appendix A.

There are several situations outlined in **Section 6 Second-hand Dealers and Pawnbrokers Act 1996; Section 6(2); 6(3)(a)(i); Section 6(3)(b); and Section 6A of the Amendment of Second-hand Dealers and Pawnbrokers Act 1996 and 7A – Further powers of Commissioner of Police to disqualify person from carrying on business as second-hand dealer - Variation of Second-hand Dealers and Pawnbrokers Regulations 2013** where second-hand dealers are disqualified or may be disqualified from trading. You may now also be disqualified from trading dependent on your close associations. These sections of law and the definition of close associate are contained in Appendix A.



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SAPOL Licensing Enforcement Branch will receive all notifications and will conduct probity on second-hand dealers and their close associates to ensure the dealer does not fall within criteria within the legislation which disqualifies a person from carrying on a business of a second-hand dealer. The definition of a close associate is contained in **Section 3 of the Amendment of Second-hand Dealers and Pawnbrokers Act 1996** and appears in Appendix A of this document.

After notifying SAPOL that you are continuing to trade as a second-hand dealer or are commencing as a second-hand dealer you will receive notification that SAPOL has received your information and you will receive further notification if you are disqualified from trading.





## APPENDIX A

### **8—Notification by dealers, proposed dealers and former dealers (section 7 of Act)**

(1) For the purposes of section 7(3)(a) of the Act, the following information is required to be contained in a notice under section 7(1) of the Act:

(a) in the case of a natural person who is a proposed second-hand dealer—

(i) the full name, residential address, telephone number and email address—

(A) of the person; and

(B) if the business is to be carried on in partnership—of each partner; and

(ii) the full name, residential address and date of birth of each close associate—

(A) of the proposed dealer; and

(B) if the business is to be carried on in partnership—of each partner; and

(b) in the case of a body corporate that is a proposed second-hand dealer—

(i) the full name, residential address, telephone number and email address of each director of the body corporate; and

(ii) the full name, residential address and date of birth of each close associate—

(A) of the body corporate; and

(B) of each director of the body corporate; and

(iii) the address and telephone number of the registered corporate office of the body corporate;

(c) the full name, residential address and date of birth of each person who is to be employed in the proposed business;

(d) the business or trading name (if any) under which the proposed business is to be carried on;

(e) each address at which the proposed business is to be carried on;

(f) each address at which records required to be kept under the Act are to be kept;

(g) each address at which goods that are to be bought or received in the course of, or for the purposes of, the proposed business are to be kept;

(h) a brief description of the nature of the proposed business, including a description of the types of goods that are proposed to be bought or received in the course of, or for the purposes of, the proposed business;



- (i) a statement as to whether or not any circumstance applies by virtue of which the person would be disqualified under section 6 of the Act from carrying on business as a second-hand dealer;
- (j) an address for service.

## **Schedule 1—Transitional provision**

### **1—Dealers to give Commissioner of Police notice of certain information**

A person who, at the commencement of these regulations, is **carrying on a business** as a second-hand dealer must, within 1 month of that commencement, give the Commissioner of Police written notice containing the following information:

- (a) in the case of a natural person who is a second-hand dealer—
  - (i) the telephone number and email address of the person; and
  - (ii) the full name, residential address and date of birth of each close associate of the person; and
  - (iii) if the business is carried on in partnership—
    - (A) the telephone number and email address of each partner; and
    - (B) the full name, residential address and date of birth of each close associate of each partner;
- (b) in the case of a body corporate that is a dealer—
  - (i) the telephone number and email address of each director of the body corporate; and
  - (ii) the telephone number of the registered corporate office of the body corporate; and
  - (iii) the full name, residential address and date of birth of—
    - (i) each close associate of the body corporate; and
    - (ii) each close associate of each director of the body corporate.

Maximum penalty: \$2 500.

### **6—Disqualification from carrying on business as second-hand dealer**

(1) A person must not carry on business as a second-hand dealer if the person is disqualified under this section from doing so.

Maximum penalty: \$2 500.

(2) A natural person is disqualified from commencing to carry on business as a second-hand dealer if he or she—



- (a) has been convicted of an offence of dishonesty; or
- (b) has been convicted of an offence against this Act of a prescribed kind; or
- (c) is an undischarged bankrupt or subject to a composition or deed or scheme of arrangement for the benefit of creditors; or
- (d) has, during the preceding five years, been a director of a body corporate wound up for the benefit of creditors—
  - (i) when the body was being so wound up; or
  - (ii) within the period of six months preceding the commencement of the winding up.

(3) A body corporate is disqualified from commencing to carry on business as a second-hand dealer if—

- (a) the body corporate—
  - (i) has been convicted of an offence against this Act of a prescribed kind; or
  - (ii) is being wound up or is under official management or in receivership; or
- (b) a director of the body corporate—
  - (i) has been convicted of an offence of dishonesty; or
  - (ii) has been convicted of an offence against this Act of a prescribed kind; or
  - (iii) has, during the preceding five years, been a director of a body corporate wound up for the benefit of creditors—
    - (A) when the body was being so wound up; or
    - (B) within the period of six months preceding the commencement of the winding up.

(4) A person is disqualified from continuing to carry on business as a second-hand dealer if events occur after the commencement of this section such that the person would be disqualified under subsection (2) or (3) from commencing to carry on business as a second-hand dealer.

(5) If a second-hand dealer—

- (a) has been in possession of stolen goods on at least three separate occasions during the previous 12 months; and
  - (b) did not, on any of those occasions, notify a member of the police force in respect of the goods under section 11(2), (3) or (4),
- the Commissioner of Police may give the dealer written notice disqualifying the dealer from carrying on business as a second-hand dealer.

### **Section 6 (2) —Disqualification from carrying on business as second-hand dealer now includes**

A natural person is disqualified from carrying on a business as a second-hand dealer if he or she is

- A member of a prescribed organisation; or
- A close associate of a person who is a member of a prescribed organisation or is subject to a control order under the *Serious and Organised Crime (Control) Act 2008*; or
- Disqualified from carrying on business as a second-hand dealer (however described) under a law of the Commonwealth or another State or Territory; or



- A person, or is a person of a class, prescribed by the regulations for the purposes of this subsection; or

### **Section 6(3)(a)(i) – Disqualification from carrying on business as second-hand dealer now includes**

A body corporate is disqualified from carrying on a business as a second-hand dealer if the body corporate;

- Is a prescribed organisation; or
- Is disqualified from carrying on business as a second-hand dealer (however described) under a law of the Commonwealth or another State or Territory; or
- Is a body corporate, or is a body corporate of a class, prescribed by the regulations for the purposes of this subsection

### **Section 6(3)(b) – Disqualification from carrying on business as second-hand dealer now includes**

A Director of a body corporate is disqualified from carrying on a business as a second-hand dealer if he or she

- Is disqualified from commencing to carry on business as a second-hand dealer under subsection (2); or
- Is disqualified from carrying on business as a second-hand dealer (however described) under a law of the Commonwealth or another State or Territory.

### **Section 6A – Further powers of Commissioner of Police to disqualify person from carrying on business as second-hand dealer**

(1) Without limiting section 6, the Commissioner of Police may, by notice in writing, disqualify a person from commencing or continuing to carry on business as a second-hand dealer if—

- (a) the person was, at any time within the 5 preceding years, a member of a prescribed organisation; or
- (b) the person was, at any time within the 5 preceding years, a close associate of a member of a prescribed organisation; or
- (c) the person is found guilty, or has within the preceding 10 years been found guilty, of an offence prescribed by the regulations for the purposes of this section; or
- (d) the Commissioner of Police reasonably believes that to allow the person to commence or continue to carry on business as a second-hand dealer would otherwise not be in the public interest.

### **Variation of Second-hand Dealers and Pawnbrokers Regulations 2013 7A—Further powers of Commissioner of Police to disqualify person from carrying on business as second-hand dealer**

For the purposes of section 6A(1)(c) of the Act, the following offences are prescribed:

- (a) an offence against Part 3A of the *Summary Offences Act 1953* (other than an offence against section 21C(1) or 21E of that Act);
- (b) a serious and organised crime offence (as defined in the *Criminal Law Consolidation Act 1935*);



- (c) an offence against the *Controlled Substances Act 1984* involving a controlled drug, controlled precursor or controlled plant (other than an offence constituted of possessing a controlled drug, controlled precursor or controlled plant);
- (d) an indictable offence involving violence;
- (e) an offence against the *Firearms Act 1977* (other than an offence against section 15C, 16, 21A, 21AB or 26 of that Act);
- (f) an offence of attempting to commit, or assault with an attempt to commit, an offence prescribed by a preceding paragraph;
- (g) an offence against the law of another jurisdiction that would, if committed in this State, constitute an offence prescribed by a preceding paragraph.

### **Section 3 of the Amendment of Second-hand Dealers and Pawnbrokers Act 1996 – Variation of Regulation 3 - Interpretation**

- (3) For the purposes of this Act, a reference to a parent, brother, sister or child of a person will be taken to include a reference to a step-parent, step-brother, step-sister or step-child (as the case requires) of the person.
  
- (4) For the purposes of this Act, 2 persons are **close associates** if—
  - (a) 1 is a spouse, domestic partner, parent, brother, sister or child of the other;  
or
  - (b) they are members of the same household; or
  - (c) they are in partnership; or
  - (d) they are related bodies corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth); or
  - (e) 1 has a right to participate (otherwise than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other;  
or
  - (f) 1 is in a position to exercise control or significant influence over the conduct of the other.