



Disposal of Uncollected Goods Act 1967

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Queensland

Disposal of Uncollected Goods Act 1967

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Disposal of Uncollected Goods Act 1967

An Act to authorise the disposal of goods accepted in the course of a business for inspection, custody, storage, repair or other treatment but not re-delivered and for purposes connected therewith

Part 1 Preliminary

1 Short title

This Act may be cited as the *Disposal of Uncollected Goods Act 1967*.

3 Interpretation

(1) In this Act—

hire-purchase agreement means a hire-purchase agreement within the meaning of the *Hire-purchase Act 1959* or the *Credit (Rural Finance) Act 1996*.

Magistrates Court district or *district* means a district for the purposes of Magistrates Courts appointed under the *Justices Act 1886*.

motor vehicle means a motor car, motor carriage, motor cycle, tractor or other vehicle propelled, or designed to be propelled, wholly or partly by a volatile spirit, steam, gas, oil or electricity or by any means other than human or animal power.

(2) For the purposes of this Act goods shall be deemed to be ready for re-delivery—

(a) in relation to goods accepted for inspection—when the inspection has been carried out; and

- (b) in relation to goods accepted for custody—when the period of arranged custody has expired or, where there is no period of arranged custody, upon the expiration of 7 days from such acceptance; and
 - (c) in relation to goods accepted for storage—when the period of arranged storage has expired or, where there is no period of arranged storage, upon the expiration of 7 days from such acceptance; and
 - (d) in relation to goods accepted for repair or other treatment—when the repair or other treatment has been carried out.
- (2A) The terms *inspection*, *custody*, *storage*, *repair* or *other treatment* shall include, where applicable, the transport or towing of any goods to the premises used or appropriated by the bailee for acceptance for any such inspection, custody, storage, repair or other treatment as the case may be.
- (2B) The term *inspection* shall include, where applicable, the acceptance of goods for the purpose of submitting a quotation of the charges of the bailee for the repair or other treatment of such goods.
- (3) References in this Act to goods accepted by a bailee, in the course of a business, for inspection, custody, storage, repair or other treatment shall, in relation to goods of any class, be construed as references to goods of that class accepted by the bailee for inspection, custody, storage, repair or other treatment in the course of a business consisting of or comprising the acceptance by the bailee of goods of that class for inspection, custody, storage, repair or other treatment (whether or not the inspection, custody, storage, repair or other treatment is effected by the bailee) wholly or mainly from persons who deliver to the bailee, otherwise than in the course of a business, goods of that class for inspection, custody, storage, repair or other treatment.
- (4) References in this Act to the charges of the bailee in relation to any goods shall—
- (a) where an order authorising the sale of the goods is obtained under part 3—be construed as a reference to

the amount specified in the order authorising the sale in accordance with section 11(3)(a) and, in addition thereto, the amount (if any) specified in section 11(3)(b) and, in a case where the goods have been sold by virtue of the order, the subsidiary charges which the person authorised to sell the goods is entitled to make under subsection (5);

- (b) in any case not provided for in paragraph (a) and subject to the provisions of section 7(3) and to the provisions of any agreement between the bailor and the bailee, be construed as references to the amount agreed between them as the charge for the inspection, custody, storage, repair or other treatment of the goods or, if no amount has been so agreed, a reasonable charge therefor and, in a case where the goods have been sold the following additional amounts—
 - (i) a reasonable charge for storing the goods during the period beginning with the date of the giving of the notice that the goods are ready for re-delivery or, where there has been a dispute between the bailor and the bailee, the date on which the dispute was determined, and ending with the date of the sale;
 - (ii) any costs of or in connection with the sale;
 - (iii) the cost (if any) of insuring the goods.
- (5) Where the goods are sold by virtue of an order under part 3 authorising the sale of the goods, the subsidiary charges which a person authorised to sell the goods is entitled to make are—
 - (a) a reasonable charge for storing the goods during the period beginning with the date of the order authorising the sale of the goods and ending with the date of the sale, not exceeding a charge at a rate (if any) specified in the order in accordance with section 11(3)(c) of this Act; and
 - (b) any costs of or in connection with the sale not exceeding the costs (if any) specified in the order, in accordance with section 11(3)(c); and

- (c) the costs (if any) of insuring the goods.

4 Application of Act

- (1) This Act shall apply in relation to the bailment of any goods accepted, whether before or after the commencement of this Act, by the bailee, in the course of a business for inspection, custody, storage, repair or other treatment on the terms (express or implied) that they will be re-delivered to the bailor or in accordance with the bailor's directions when such goods are ready for re-delivery and on payment to the bailee of such charges as may be agreed between the parties or as may be reasonable.
- (2) This Act shall not apply to or with respect to a bailment of goods (other than motor vehicles) with a storer within the meaning of the *Storage Liens Act 1973*, section 2 for storage unless the bailment is in addition to storage of the goods for some other treatment of, or in respect of, the goods of a kind or nature referred to in subsection (1) other than a kind or nature lawful charges or claims for which are covered, pursuant to the *Storage Liens Act 1973*, section 4, by the lien conferred by that Act on the storer in respect of the bailment.

4A Bailee's charges in relation to goods

- (1) If goods are sold under this Act, whether under an order under part 3 or otherwise, the charges of the bailee in relation to the goods—
- (a) are declared to be statutory interests to which section 73(2) of the *Personal Property Securities Act 2009* (Cwlth) applies; and
- (b) have priority over all security interests in relation to the goods.
- (2) In this section—
- security interest* has the meaning given by the *Personal Property Securities Act 2009* (Cwlth), section 12.

Part 2 Disposal of uncollected goods

5 Rights of bailees to sell goods accepted for treatment but not re-delivered

Where goods, accepted pursuant to a bailment in relation to which this Act applies, are ready for re-delivery but the bailor—

- (a) fails to pay or tender to the bailee the bailor's charges in relation to the goods; or
- (b) having paid those charges, fails to take delivery of the goods or, if the terms of the bailment so provide, to give directions as to their delivery;

then, subject to any agreement between the bailee and the bailor and to this Act, and if the bailee did not, before carrying out the inspection, custody, storage, repair or other treatment of the goods, have notice that the goods were comprised in a hire-purchase agreement containing a provision prohibiting the creation by the hirer of a lien on the goods, the bailee is, while the failure continues, entitled to sell the goods.

6 Bailee to comply with certain provisions to be entitled to sell goods

- (1) The bailee shall not be entitled by virtue of section 5 to sell goods accepted by the bailee for inspection, custody, storage, repair or other treatment unless the following provisions are complied with—
 - (a) where the goods are accepted for inspection, custody, storage, repair or other treatment after the commencement of this Act—at all premises used or appropriated by the bailee for accepting for inspection, custody, storage, repair or other treatment goods of the class to which the goods accepted belong, there is, at the time of the acceptance (whether or not goods are accepted at any such premises), conspicuously displayed in the part of the premises so used or

appropriated a notice indicating that the acceptance by the bailee of goods of that class for inspection, custody, storage, repair or other treatment is subject to this Act, and that this Act confers on the bailee a right of sale exercisable in certain circumstances after an interval not less than 6 months from the date on which the goods are ready for re-delivery;

- (b) after the goods are ready for re-delivery, or after the commencement of this Act, whichever is the later, the bailee gives to the bailor a notice that the goods are ready for re-delivery, being a notice complying with the requirements relating to such a notice of subsection (2) and gives such a notice to every other person who, at the time the bailee gives the notice to the bailor, the bailee actually knows has or claims an interest in the goods;
- (c) where at the date of the giving to the bailor of the notice under paragraph (b) that the goods are ready for re-delivery or, if more than 1 notice was given, at the date of the giving of the first of the notices, the amount which the bailee claims to be due to the bailee by way of the bailee's charges in relation to the goods exceeds the sum of \$110, the bailee obtains an order under part 3 authorising the bailee to sell the goods;
- (d) save where an order under part 3 authorising the bailee to sell the goods is obtained—after the expiration of the period of 6 months beginning with the date of the giving of the notice that the goods are ready for re-delivery or, if more than 1 notice was given, beginning with the date of the giving of the later or latest of the notices, and not less than 28 days before the sale of the goods, the bailee—
 - (i) gives to the bailor a notice of the bailee's intention to sell the goods, being a notice complying with the requirements relating to such a notice of subsection (2); and
 - (ii) gives such a notice to every person who, at the time the bailee gives the notice to the bailor, the bailee

actually knows has or claims an interest in the goods; and

(iii) causes such a notice to be published—

(a) in a newspaper published in Brisbane and circulating throughout the State; and

(b) in a newspaper (if any) published in the district in which are situated the premises where the goods were accepted for inspection, custody, storage, repair or other treatment; and

(c) where the goods are a motor vehicle—in the gazette;

(e) the goods are sold by public auction in a lot in which no other goods are included.

(2) A notice required or authorised by this section or by section 7 to be given by the bailee to the bailor must contain a sufficient description of the goods to which the notice relates or, where the goods are a motor vehicle, the particulars of that vehicle referred to in section 19(1) and (1A) and a statement of the sum which the bailee claims to be due to the bailee by way of the bailee's charges in relation to the goods, together with—

(a) in the case of a notice that the goods are ready for re-delivery or a notice to treat the dispute as determined—a statement that if the bailor fails within the period of 6 months beginning with the date of the giving of the notice to pay the said sum or, having paid the said sum, to take delivery of the goods or give directions as to their delivery, they are liable to be sold in accordance with this Act; and

(b) in the case of a notice of the bailee's intention to sell the goods—a statement of the date of the giving of the notice to the bailor that the goods are ready for re-delivery or, where there has been a dispute between the bailor and the bailee, the date on which the dispute was determined, and a statement that if the bailor fails, within the period of 28 days beginning with the date of

the giving of the notice of the bailee's intention to sell the goods, to pay the said sum or, having paid the said sum, to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Act.

7 **Bailee's rights to sell goods suspended upon dispute arising as to charges etc.**

- (1) Where, at any time before the giving to the bailor of the notice of the bailee's intention to sell the goods or before the giving to the bailor of the notice of the bailee's intention to apply to the court under part 3 for an order authorising the bailee to sell the goods, a dispute arises between the bailor and the bailee by reason of the bailor's refusal to pay the sum which the bailee claims to be due to the bailee by way of the bailee's charges in relation to the goods, or to take delivery thereof or give directions as to their delivery, on the ground that the charges are excessive or that the bailor is not satisfied that the inspection, custody, storage, repair or other treatment of the goods has been properly carried out, the bailee's right to sell the goods shall be suspended until the dispute is determined.
- (2) Without prejudice to any other mode of determining a dispute, it shall be treated for the purposes of this Act as having been determined if the bailee, at any time after the dispute has arisen, gives to the bailor a notice (a ***notice to treat the dispute as determined***)—
 - (a) stating that unless, within the period of 1 month beginning with the date of the giving of the notice, the bailor objects thereto, the dispute will be treated for the purposes of this Act as having been determined; and
 - (b) in other respects complying with the requirements relating to such a notice of section 6(2);

and within the said period of 1 month the bailor does not notify the bailee that the bailor objects to the notice.

- (2A) Where the dispute is so treated as having been determined, the date on which it shall be so treated as having been determined shall be the date of the giving of the notice.
- (3) If the bailor so notifies the bailee that the bailor objects to the notice to treat the dispute as determined, a Magistrates Court held in the district in which are situated the premises where the goods were accepted by the bailee may, on the application of the bailor or bailee—
- (a) make an order specifying the amount which the court deems reasonable in respect of the bailee's charges, and upon the making of such an order—
- (i) the dispute shall be treated for the purposes of this Act as having been determined on the date of the order; and
- (ii) the amount specified in the order shall for all purposes be the amount of the bailor's liability to the bailee for the bailee's charges; and
- (iii) where the bailor has paid to the bailee an amount in respect of the bailee's charges that is in excess of the amount so specified—the bailor shall be entitled to recover that excess as a debt in any court of competent jurisdiction; or
- (b) refuse to make such an order.
- (4) The jurisdiction conferred on a Magistrates Court by subsection (3) shall not be exercised except by a Magistrates Court constituted by a stipendiary magistrate sitting alone.
- (5) Where a dispute in relation to any goods is determined (whether by virtue of subsection (2) or (3) or otherwise) section 6(1) shall have effect in relation to those goods as if paragraph (b) were omitted and as if for the reference in paragraph (d) to the date of the giving of the notice that the goods are ready for re-delivery there were substituted a reference to the date on which the dispute is determined.

8 Special provisions applicable to certain cases of goods accepted before the commencement of this Act

- (1) Where the bailee of the goods accepted before the commencement of this Act for inspection, custody, storage, repair or other treatment does not at the commencement of this Act know any address of the bailor, the bailee shall not be disentitled to sell the goods by reason only that section 6(1)(b) and (d) are not complied with, if the following conditions are complied with—
- (a) within the period of 1 month beginning with the commencement of this Act, the bailee causes to be published—
 - (i) in a newspaper published in Brisbane and circulating throughout the State; and
 - (ii) in a newspaper (if any) published in the district in which are situated the premises where the goods were accepted for inspection, custody, storage, repair or other treatment; and
 - (iii) where the goods are a motor vehicle—in the gazette;
a notice complying with the requirements of subsection (3);
 - (b) at all premises used or appropriated by the bailee after the commencement of this Act for accepting for inspection, custody, storage, repair or other treatment, goods of the class to which the goods so accepted belong, there is, throughout the period of 6 months immediately following the said period of 1 month or throughout that portion of the said period of 6 months during which the premises are so used or appropriated, conspicuously displayed in the part of the premises so used or appropriated a notice indicating that in the case of goods of that class accepted before the commencement of this Act for inspection, custody, storage, repair or other treatment this Act confers on the bailee a right of sale exercisable in certain

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- circumstances after an interval of not less than 7 months from the commencement of this Act;
- (c) the goods are not sold before the expiration of the period of 7 months beginning with the commencement of this Act.
- (2) Where goods are sold by virtue of the fact that subsection (1) has been complied with, this Act shall have effect in relation to the goods subject to the following modifications—
- (a) for any reference in section 9(3) to a copy of the notice of the bailee's intention to sell the goods there shall be substituted a reference to a statement—
- (i) of the name and issue of the newspaper in which the notice under subsection (1)(a)(i) was published; and
- (ii) of the name and issue of the newspaper in which the notice (if any) under subsection (1)(a)(ii) was published; and
- (iii) where the notice was also published in the gazette—of the date and number of that gazette;
- (b) for the reference in section 3(4)(b)(i) to the giving of the notice that the goods are ready for re-delivery, there shall be substituted a reference to the publication of the notice under subsection (1)(a) or where more than 1 such notice is published the first of such notices.
- (3) A notice under subsection (1)(a) in relation to any goods must contain—
- (a) a sufficient description of the class to which the goods belong or, where the goods are a motor vehicle—the particulars of that vehicle referred to in section 19(1) and (1A); and
- (b) the name under which the bailee carries on the business consisting of or comprising acceptance of goods of that class for inspection, custody, storage, repair or other treatment and the address of the bailee's principal place of business or, where the bailee is a company, the

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registered office of the company, and if the name or the address has changed during the 6 months immediately preceding the date of the publication of the notice, the last such name, or, as the case may be, the last such address preceding the change thereof; and

- (c) a statement that if the bailor of the goods fails within the period of 7 months beginning with the commencement of this Act to pay the sum which the bailee claims to be due to the bailee by way of the bailee's charges in relation to the goods or, having paid that sum, to take delivery of the goods or give directions as to their delivery they are liable to be sold under this Act.
- (4) Where the bailee of goods accepted before the commencement of this Act for inspection, custody, storage, repair or other treatment does not at the commencement of this Act know any address of the bailor and at any time during the period of 7 months beginning with the commencement of this Act a dispute arises between the bailor and the bailee by reason of either or both of the grounds mentioned in section 7(1), subsections (1) to (3) shall not apply in relation to the goods, but sections 1 to 7 shall apply in relation thereto as they apply in a case where a dispute arises between the bailor and the bailee before the giving of the notice of the bailee's intention to sell the goods or to make an application for an order under part 3 to sell the goods.

9 Procedure after sale under this Act

- (1) Where goods are sold under this Act, any amount by which the gross proceeds of the sale exceed the charges of the bailee in relation to the goods shall be recoverable by the bailor from the bailee as a debt in any court of competent jurisdiction and any amount by which those charges exceed the gross proceeds of the sale shall be recoverable by the bailee from the bailor in the like manner.
- (2) Where goods are so sold the bailee shall, before the expiration of the period of 7 days beginning with the date of the sale of

the goods, prepare a record in relation to the goods containing the following particulars—

- (a) a sufficient description of the goods, or, where the goods are a motor vehicle, the particulars of that vehicle referred to in section 19(1);
 - (b) where the sale of the goods was authorised by an order under part 3—a reference to that order;
 - (c) the date and place of the sale and the name and principal place of business of the auctioneer by whom the goods were sold;
 - (d) the amount of the proceeds of the sale;
 - (e) a statement of each item of the charges of the bailee in relation to the goods and the transaction to which each item relates.
- (3) Where the goods are sold pursuant to this Act otherwise than by virtue of an order authorising the sale of the goods under part 3, the bailee shall, during the period of 6 years beginning with the date on which the record is prepared under subsection (2) or during that portion of that period of 6 years during which the bailee continues to carry on the business in the course of which the goods were accepted for inspection, custody, storage, repair or other treatment, keep the record, together with a copy of the notice of the bailee's intention to sell the goods and shall, at any reasonable time during the said period of 6 years or the said portion of that period, as the case may be, if so requested by or on behalf of the bailor, produce the record and copy for inspection by the bailor, any person nominated by the bailor in that behalf, or any person who, at the time of the sale, had or claims to have had an interest in the goods.
- (4) Where the goods are sold by virtue of an order authorising the sale of the goods under part 3, the bailee shall, before the expiration of 14 days beginning with the date of the sale of the goods, lodge a copy of the record prepared under subsection (2) with the clerk of the court in which the order was made for filing with the records of the court relating to the order.

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- (c) with section 6(1)(a) (where applicable) and section 6(1)(b); or
 - (d) where the goods were accepted for inspection, custody, storage, repair or other treatment before the commencement of this Act, and bailee does not, at the commencement of this Act, know any address of the bailor—with section 8(1)(a) and (b);

the bailee may, subject to this part, make an application for an order under section 11 to sell the goods.

- (2) An application for an order under section 11 in respect of goods referred to in subsection (1) may be made whether or not at the date referred to in section 6(1)(c) the amount which the bailee claims to be due to the bailee by way of the bailee's charges in relation to the goods exceeds the sum of \$100.
- (3) No application for an order to sell the goods under section 11 shall be made while a dispute to which section 7(1) relates remains undetermined.
- (4) No application for an order under section 11 to sell the goods shall be made before the expiration of the period of 6 months beginning with the date of giving of the notice under section 6(1)(b) that the goods are ready for re-delivery or if more than 1 such notice was given, beginning with the date of the giving of the later or latest of the notices, or unless the bailee, not less than 28 days before the application is made—
 - (a) gives to the bailor a notice of the bailee's intention to apply for an order to sell the goods under section 11, being a notice complying with the requirements of subsection (7); and
 - (b) gives such a notice to every other person who, at the time the bailee gives the notice to the bailor, the bailee actually knows has or claims an interest in the goods; and
 - (c) causes such a notice to be published—
 - (i) in a newspaper published in Brisbane and circulating throughout the State; and

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- (ii) in a newspaper (if any) published in the district in which are situated the premises where the goods were accepted for inspection, custody, storage, repair or other treatment; and
 - (iii) where the goods are a motor vehicle—in the gazette.
- (5) Where the bailee of goods accepted before the commencement of this Act for inspection, custody, storage, repair or other treatment, does not at the commencement of this Act, know any address of the bailor, for any reference in subsections (4) or (7) to the date of giving of the notice that goods are ready for re-delivery, there shall be substituted a reference to the date of the publication of the notice under section 8(1)(a) or where more than 1 such notice is published, the last of such notices.
- (6) Where a dispute in relation to any goods is determined (whether by virtue of section 7(2) or (3) or otherwise), subsection (4) shall have effect in relation to those goods as if for the reference in that subsection to the date of the giving of the notice that the goods are ready for re-delivery there were substituted a reference to the date on which the dispute is determined.
- (7) A notice required or authorised by this section to be given by the bailee to the bailor must contain a sufficient description of the goods to which the notice relates or, where the goods are a motor vehicle, the particulars of that motor vehicle referred to in section 19(1) and a statement of the sum that the bailee claims to be due to the bailee by way of the bailee's charges in relation to the goods, together with—
 - (a) a statement of the date of the giving of the notice to the bailor that the goods are ready for re-delivery or, where there has been a dispute between the bailor and bailee, the date on which the dispute was determined; and
 - (b) a statement that if the bailor fails, within the period of 28 days beginning with the date of the giving of the notice of the bailee's intention to make application for an order to sell the goods under section 11, to pay the

said sum or, having paid the said sum, to take delivery of the goods or give directions as to their delivery, application will be made to the court under section 11 for an order authorising the bailee to sell the goods.

11 Orders to sell

- (1) An application for an order under this section shall be made to a Magistrates Court held in the Magistrates Courts district in which are situated the premises where the goods were accepted by the bailee for inspection, custody, storage, repair or other treatment.
- (2) Where an application is made to a Magistrates Court in accordance with this part, the court—
 - (a) may make an order authorising the applicant to sell the goods in respect of which the order is made if they remain in the applicant's possession until the applicant is entitled under subsection (7) to sell them; or
 - (b) may refuse to make such an order.
- (3) An order under this section—
 - (a) where the bailor has not paid or tendered to the bailee the bailee's charges in respect of the goods—shall specify the amount which the court deems reasonable in respect of the bailee's charges; and
 - (b) shall specify the amount (if any) allowed in respect of the costs of obtaining the order; and
 - (c) may specify, for the purposes of section 3(5)(a), a rate of storage charges, and for the purposes of section 3(5)(b), the amount that may be incurred in respect of the costs of or in connection with the sale; and
 - (d) shall prohibit the sale of the goods specified in the order until the expiration of a period of 28 days or such lesser period as may be specified in the order, after the date of the order.

- (4) The amount specified in accordance with subsection (3)(a) shall, for all purposes, be the amount of the liability of the bailor of the goods for the charges of the applicant for the order.
- (5) The power of a court to make the order under this section authorising the sale of goods shall be subject to any agreement between the bailor of the goods and the applicant for the order.
- (6) Where at the date referred to in section 6(1)(c) the amount which the bailee claims to be due to the bailee by way of the bailee's charges in relation to the repair of the goods exceeds the sum of \$110, the court shall not make an order authorising the applicant to sell the goods unless the bailee has obtained an order in writing for the repair of the goods signed by or on behalf of the bailor or the court is satisfied that it was reasonable in the circumstances that such an order was not obtained.
- (7) An applicant in whose favour an order is made under this section is entitled, subject to the order and this Act, to sell the goods specified in the order.
- (8) An order under this section shall not affect the right of any person to recover the goods specified in the order by an action commenced before the sale of the goods by virtue of the order.
- (9) If any such action is so commenced, the right of the person in whose favour the order is made to sell the goods shall be suspended until that action has been heard and determined and if in that action an order is made for the recovery of the goods from the person in whose favour the order was made, that person's right to sell the goods shall cease and determine.
- (10) The jurisdiction conferred on a Magistrates Court by this section shall not be exercised except by a Magistrate Court constituted by a stipendiary magistrate sitting alone.
- (11) The procedure of a Magistrates Court in relation to an application under this section shall be as prescribed by the *Justices Act 1886* or in so far as it is not so prescribed, as the court determines.

Part 4 General

12 Ambulatory operation of Act

Any provisions of this Act which apply to or in respect of any person by virtue of the person's rights or obligations in respect of any goods shall as respects a period during which those rights or obligations are vested in any other person apply to and in respect of that other person.

13 Saving of powers outside Act

The powers conferred on a person by this Act shall be in addition to and not in derogation of any powers exercisable by the person independently of this Act.

14 Notices

- (1) A notice required or authorised by this Act to be given to any person shall be in writing.
- (2) Any such notice may be given—
 - (a) by delivering it to the person to whom it is required or authorised to be given personally; or
 - (b) by leaving it for the person at the person's last known place of abode or business with some other person apparently an inmate thereof or employed thereat, and apparently of or over the age of 16 years; or
 - (c) by posting it addressed to the person at the person's last known place of abode.

15 Buyer of goods sold pursuant to this Act to acquire a good title

- (1) The buyer of any goods sold by a bailee in the exercise or purported exercise of the bailee's powers under this Act shall acquire a good title to the goods, and the interest of anyone

else ends, if the buyer buys them in good faith and without notice—

- (a) of any defect or want of title in the bailor; and
 - (b) of any failure by the bailee to comply with any of the provisions of this Act.
- (2) Upon any proceedings by or against the bailee in respect of any goods sold under this Act, the burden of proving that the provisions of this Act relating to the sale of those goods have been complied with shall be upon the bailee.

16 Rights of owner of goods sold under this Act

Where the bailor of any goods is not the owner thereof and the goods are sold by the bailee in the exercise or purported exercise of the bailee's powers under this Act without notice by the bailee to the owner, the owner shall not be entitled to the return of the goods but shall have the same rights in respect of the proceeds of the sale of the goods as the owner would have had in respect of the goods if the property therein had not passed to the buyer under this Act.

17 Provisions for payment before sale of goods

- (1) At any time before goods are sold under this Act any person claiming any interest or right of possession in the goods may pay the bailee the amount necessary to satisfy the amount of the charges of the bailee including the reasonable and necessary expenses incurred in serving notices, in publication of advertisements and in preparing for sale up to the time of payment.
- (2) The bailee shall deliver the goods to the person making the payment if he or she is the person entitled to the possession of the goods on payment of the bailee's charges thereon, otherwise the bailee shall retain possession of the goods according to the contract (express or implied) for the acceptance of the goods.

18 Provision to be implied in bill of sale or other encumbrance

There shall be implied in every bill of sale or other encumbrance over or in respect of any goods in favour of the grantee or encumbrancee, a covenant that the amount of any payment made by him or her in relation to those goods in terms of section 17 shall be added to or be deemed to be included in, the principal moneys secured by such bill of sale or other encumbrance.

19 Special provisions applicable to sale of motor vehicles

- (1) Where the bailee of any motor vehicle intends to sell the motor vehicle under this Act, the bailee shall, not less than 1 month before the sale and before making any application for an order to sell the vehicle under part 3, give notice to the commissioner of the police service of the bailee's intention to sell, or to make application to sell, the vehicle, together with the particulars of the make, model type, colour, registration number, chassis number (if any), body number (if any), and engine number of the vehicle and how and when it came into the bailee's possession.
- (1A) Where any part of a motor vehicle is removed under the contract under which the goods were accepted by the bailee and the number thereof is required to be furnished under subsection (1), the notice under subsection (1) shall include the number of the part so removed.
- (2) Upon receipt of any such notice and particulars, the commissioner shall cause a search to be made of the records in the commissioner's custody and shall forward to the bailee a certificate as to whether or not the motor vehicle referred to is for the time being recorded as stolen.
- (3) Any bailee who sells a motor vehicle under this Act, or makes an application for an order under part 3 to sell the vehicle, without first having obtained from the commissioner of the police service a certificate that the motor vehicle is not recorded for the time being as stolen, is guilty of an offence against this Act.

- (4) In any proceedings arising out of the sale of a motor vehicle under this Act, a certificate purporting to be signed by the commissioner of the police service or by a police officer who has been authorised in writing in that behalf by the commissioner of the police service, to the effect that any motor vehicle was or was not at any time stated in such certificate recorded as being stolen shall be prima facie evidence of the facts stated therein.

20 Disposal of net proceeds of sale of goods

- (1) Where, after goods have been sold by virtue of the provisions of this Act and the bailee has deducted the bailee's charges in relation to those goods, there remains a surplus of moneys in the hands of the bailee, the bailee shall within 14 days after the sale pay those moneys to the public trustee unless they have previously been paid by the bailee to the person entitled thereto.
- (2) Where the bailee pays the surplus of any moneys to the person entitled thereto, the bailee shall furnish to that person a copy of the record prepared by the bailee in relation to the goods in accordance with the requirements of section 9(2).
- (3) Any moneys paid to the public trustee under this section shall be held by the public trustee on behalf of the person for the time being entitled thereto, and such person shall be entitled to be repaid such sum less any prescribed charges.
- (3A) The State's interest under subsection (3) in prescribed charges is declared to be a statutory interest to which section 73(2) of the *Personal Property Securities Act 2009* (Cwlth) applies.
- (4) Any such sum lying unclaimed in the hands of the public trustee for a period of 6 years shall be deemed to be unclaimed moneys under and within the meaning of the *Public Trustee Act 1978* and shall be dealt with accordingly.

21 Right of owner to inspect goods

- (1) Where the bailor of the goods is not the owner thereof, then, at any time after notice has been given to the bailor that the goods are ready for re-delivery, the owner may, at a reasonable time and upon reasonable notice to the bailee, enter upon the premises of the bailee whereat the goods are kept under the bailment and inspect the goods.
- (2) Where a bailee fails to permit the exercise by an owner of the right conferred by subsection (1), a court may refuse to make an order under section 11.

22 Penalties and proceedings

- (1) A person guilty of an offence against this Act is liable to a penalty not exceeding 4 penalty units or 3 months imprisonment.
- (2) Proceedings for an offence against this Act may be taken by way of summary proceedings under the *Justices Act 1886*.

23 Regulation making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may prescribe a penalty of not more than 2 penalty units for an offence against a regulation.