



**THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA**

Project No 7

**The Disposal of Uncollected
Goods Report**

REPORT

APRIL 1970

REPORT ON THE DISPOSAL OF UNCOLLECTED GOODS

To: THE HON. ARTHUR F. GRIFFITH, M.L.C.
MINISTER FOR JUSTICE

1. By letter dated 13 March 1968 you made a reference to this Committee in the following terms-

"To consider the need for and if found necessary to recommend legislation to permit bailees to dispose of abandoned or uncollected goods."

MOVEMENT FOR REFORM

2. The problem came to notice as a result of representations made by the Automobile Chamber of Commerce and the Law Society of Western Australia, and criticisms in the press of the hardships imposed by the law on bailees. Each of these critics advocated the introduction of legislation to authorise bailees, in certain circumstances, to dispose of abandoned or uncollected goods held by them in the course of business. Legislation of the kind suggested exists in the United Kingdom, Victoria, New South Wales, Queensland and Tasmania.

3. A comparative analysis of the legislative provisions referred to in the previous paragraph revealed that they follow, in general, the same pattern and that none of them provide a means of relief to persons in possession of goods otherwise than pursuant to a contract of bailment. Further, the costly procedural provisions contained in most of the Acts render their use impracticable to bailees in possession of goods of low monetary value. In preparing the attached draft Bill the Committee has attempted to provide a measure which will not suffer from these defects.

PRESENT LAW

4. The law on bailments in Western Australia, apart from the statutory provisions listed in the Schedule to the draft Bill annexed, is to be found in the common law. Although

bailments may be classified in several ways, it is sufficient for present purposes to distinguish between bailments for reward and gratuitous bailments.

Bailment for Reward

5. A bailee for reward is a person who, generally in the course of business, takes goods into his possession for the purpose of inspection, custody, storage, repair, or other treatment. He is bound to use due care and diligence in keeping and preserving the article entrusted to him by the bailor and he may not, except in rare cases as an agent of necessity, dispose of goods by way of sale or otherwise.

Gratuitous Bailments

6. A gratuitous bailment may be created in several ways. It may arise by agreement, as where there is a bailment of a chattel to be kept for the bailor without recompense and to be returned on demand. It may be created when an article is sent without request or arrangement by one person to another and the recipient does an act which evidences an intention to take the article into his possession, even though he may not wish to keep it. It may also be created between a landlord and his tenant when the latter, having vacated premises, leaves furniture or other goods behind. In the latter type of case, the person in possession of the goods is sometimes referred to as an "involuntary bailee" in order to distinguish between that type of bailee and the bailee who has taken possession of goods by agreement.

7. Once a gratuitous bailment is created however, the bailee, whether voluntary or involuntary, is liable to the bailor if he fails to exercise a reasonable degree of care with respect to the article in his possession. Moreover, he cannot, without risk, by unilateral action dispossess himself of goods comprised in the bailment, even though the owner's identity or whereabouts are unknown to him and even though the owner may by his conduct appear to have lost all interest in resuming possession of the goods (see *Sache v Miklos*, [1948] 2 K.B. 23, *Munro v Wilmott*, [1949] 1 K.B. 295, and *Nelson Guarantee Corporation v Farrell*, [1955] N.Z.L.R. 405).

ENQUIRIES MADE BY THE COMMITTEE

8. A working paper issued on 24 December 1968 was distributed to some fifty organisations and individuals throughout the Commonwealth and in overseas countries. Material obtained from replies received was taken into consideration in the preparation of the draft Bill.

9. The Committee also consulted with and considered reports from the-

Australian Finance Conference;

Law Society of Western Australia;

Perth Chamber of Commerce;

Police Department of Western Australia, New South Wales, Victoria;

Real Estate Institute of Western Australia;

Retail Trade Association;

Trade Protection Association;

Western Australian Automobile Chamber of Commerce;

Western Australian Transport Association Incorporated.

In addition, information was obtained from several repairers, dealers and auctioneers.

COMMENTARY ON THE PROVISIONS OF THE BILL

10. The Committee now presents its recommendations in the form of a draft Bill (annexed hereto). As in the case of other reports, the draft is meant only to provide a guide for the Parliamentary Draftsman. The following is a commentary upon its main provisions.

Goods are divided into categories according to whether-

- (a) the goods were accepted by the bailor in the course of business for inspection, custody, storage, repair or other treatment; or
- (b) the goods came into possession of a person lawfully but not in the course of business (see Part VII of the draft Bill) .

Goods accepted in the course of business are sub-divided into categories according to value for the purpose of determining the procedural formalities to be followed in effecting their disposal.

11. The reason for the distinction between categories (a) and (b) is that in every case where goods are accepted in the course of business there is an agreement (express or implied) that as soon as the goods are ready for redelivery they will be collected, or directions will be given as to their redelivery. Moreover, agreements of this type are negotiated against a background of trade custom and usage and each of the parties has a right to expect that the other will honour his obligations. However, bailments to which category (b) relate may range from those which have been created by the most formal of agreements, to bailments of an involuntary nature and, accordingly, injustice could result if the right of disposal were left exclusively in the hands of the bailee. The question of disposal of goods within this category has therefore been left to the Court.

Goods Accepted by a Bailee in the Course of Business

12. Goods in this category range from expensive heavy machinery to second-hand shoes and some distinction as to procedure for disposal is required if the proposed legislation is to be effective. To prevent the proposed Act being used as an instrument of fraud strict procedural safeguards are necessary in relation to the disposal of expensive items, but, because such procedures are comparatively costly, it would be unrealistic to apply them to goods of little value. Goods under this heading are therefore divided into categories according to their value and different procedures are provided for each category. The recommended categories are-

- (a) goods of little value (to be prescribed goods);
- (b) goods (not being prescribed goods) assessed at an amount not exceeding \$300;
and
- (c) goods assessed at an amount exceeding \$300.

Prescribed Goods

13. Investigations revealed that inexpensive and relatively inexpensive items such as shoes, clothing, radios, television sets, toasters, irons, tools, tyres, and the like are those which most frequently remain uncollected long after the date for redelivery has passed. The default is probably caused by the owner having lost interest in his goods or because he believes that the cost of repair exceeds what he is prepared to pay in respect of the particular article. The repairer is nevertheless not only bound to keep the uncollected goods but may have no practicable means of obtaining payment for the work and materials expended thereon. In most other jurisdictions where statutory provisions for disposal exist, a repairer is required to advertise his intention to dispose of the goods in a daily newspaper. The cost of such advertisement is, however, high, and when the cost of labour and materials is added and the total cost compared with the value of the article to be sold, it appears that the remedy offered by those Acts could be illusory. The Committee believes that the main reason underlying the requirements for advertising is to ensure that third parties, usually hire-purchase companies, are afforded an opportunity of having notice that property belonging to them is likely to be sold. We found that the local branch of the Australian Finance Conference was in complete agreement with dispensing with this requirement in respect of goods of little value.

14. The draft Bill provides for a list of goods to be prescribed by regulations. A bailee of such goods is entitled to dispose of them after three months, having given two notices at prescribed intervals the first of which is served on the bailor alone and the second to the bailor and to any other person whom the bailee knows has an interest in the goods. Disposal may be by public auction or private treaty and the bailee is entitled to deduct from the proceeds of sale all charges due to him in respect of the goods before paying any surplus to the bailor or the Treasurer. If the goods prove unsaleable, the bailee is given the authority to dispose of them by any other means namely, by destruction, abandonment or gift.

Goods Assessed at an Amount not Exceeding Three Hundred Dollars

15. Goods under this heading would include goods (other than prescribed goods) assessed by the bailee to be of a value not exceeding three hundred dollars. This figure was arrived at after discussions with members of the local branch of the Australian Finance Conference who thought it reasonable that goods not in excess of this value should be disposed of without any need for the approval of the Court. The Committee agrees with this view.

Before disposing of the goods the bailee must give notice to the bailor advising that the goods are ready for redelivery. If the bailor does not act upon the first notice within a period of six months, a second notice is given to the bailor and any other person known by the bailee to have an interest in the goods, stating that unless the goods are collected within one month, the bailee will dispose of them.

At the time of the giving of the second notice, the bailee is required to advertise his intention to dispose of the goods in the press and in the *Government Gazette*. The reason for the use of the *Government Gazette* as a means of advertising intention to sell or otherwise dispose of goods is that the finance companies will thereby be relieved of the necessity to examine daily the "Public Notice" columns in the press.

An attempt must be made to sell these goods by public auction but, if they prove unsaleable in this way over a period of one month, the bailee may dispose of them by private sale or any other means namely, by destruction, abandonment or gift.

From the proceeds of sale, the bailee is entitled to recoup his charges and costs and, if any surplus remains, it is to be paid to the Treasurer if it has not already been paid to the bailor (see clause 22 of the draft Bill).

Goods Assessed at an Amount in Excess of Three Hundred Dollars

16. The draft Bill provides that goods which have been assessed at a value exceeding three hundred dollars may be disposed of only after an order has been obtained from a Court of Petty Sessions presided over by a Magistrate.

The Committee is of opinion that goods under this heading are of sufficient value to warrant the imposition of stricter procedures than are applicable to less expensive goods.

Before applying to a Court for an order for disposal, the bailee must have fulfilled requirements relating to notices and advertisements similar to those applying to the disposal of goods valued at an amount not exceeding three hundred dollars.

Goods in Possession of a Person not in the course of business

17. As indicated earlier in this report, there are many ways in which a person may find himself possessed of goods of another of which he cannot, without serious risk of legal action, dispossess himself. The Committee recognises that there are inherent dangers in permitting persons who come into possession of goods not pursuant to a business transaction to dispose of them without first fulfilling strict procedural requirements and accordingly recommends that disposal should be allowed only after a Court has so ordered.

General

18. After consultation with the Commissioner of Police, the Committee decided that the draft Bill should contain an added safeguard by requiring that in every case where the bailee seeks to dispose of goods he must give notice to the Commissioner of Police of his intention. Such notice must give sufficient information to enable the Police to make a check against the reports of property lost or stolen.

19. The draft Bill also contains provisions requiring the bailee who has disposed of goods pursuant to the Bill, to make and keep for six years a full record of his dealings with the goods. These records may be inspected by the bailor or any other person who has an interest in the goods.

20. It is possible that in some cases the bailor may refuse to collect his goods from the bailee because a dispute as to charges or quality of work performed on goods has arisen. Likewise, the bailor may not agree with the bailee's assessment of the value of the goods, or with the bailee's description of the goods as being prescribed goods. In the event of any such dispute remaining unsettled, the Committee recommends that the question of disposal should be left to a Court.

21. Provision is made in the draft Bill to permit the bailor to take delivery of his goods at any time prior to their disposal. The bailee may then pursue his remedy against the bailor for any charges incurred in carrying out the contract of bailment and for any expenses to which he may have been put in meeting the requirement of the draft Bill.

22. The rights and powers presently enjoyed by third parties in relation to goods have been expressly preserved by the draft Bill except to the extent that where goods have been sold or otherwise disposed of pursuant to the provisions of the draft Bill, the new owner acquires an indefeasible title if he acquires the goods from the bailee in good faith and without notice of any failure to comply with the provisions of the draft Bill. A similar provision is found in all the other Acts.

23. In Acts operating in other jurisdictions, a sub-bailee is denied the right of disposal of goods which came to him in the course of a bailee's business. It sometimes happens for example, that a bailee is unable to carry out all the repairs on goods bailed to him and he therefore gives possession of the goods to a sub-contractor. Unlike the other Acts, the draft Bill does not discriminate against a sub-contractor. It permits him to dispose of goods in the same way as other bailees.

The Committee is of opinion that it is wrong in principle to deprive sub-contractors of the benefit of the legislation. It believes that sufficient safeguards exist to prevent the occurrence of injustice.

24. Where any surplus moneys are in the possession of a bailee in respect of goods sold pursuant to the provisions of the draft Bill, he is required within a period of twenty-eight days to pay such surplus moneys to the Treasurer. The Treasurer is empowered to pay the moneys to any person appearing to him to be entitled thereto, and once this has been done, the right of any other person in respect of the recovery of that sum from the Treasurer is extinguished.

25. The draft Bill is intended to grant relief only to those bailees who have not already been catered for by existing Statute law. Accordingly, those Statutes mentioned in the Schedule to the draft Bill and which relate to particular types of bailment have been excluded from its operation.

26. The Committee is of opinion that a Court of Petty Sessions presided over by a Stipendiary Magistrate is the most suitable tribunal to hear and determine any application made pursuant to the draft Bill. The absence of the rules and procedures normally available in the case of civil proceedings means that matters can be dealt with more expeditiously. It is unlikely that goods of great value will often be involved. In this regard, the Committee is following the precedent set by the Acts of all the other States.

RECOMMENDATION

27. The Committee recommends that legislation be enacted to achieve the objectives outlined in the draft Bill annexed hereto.

CHAIRMAN

MEMBER

MEMBER

21 April 1970

A BILL FOR

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 redelivered and to authorise the disposal of goods which are in the possession of persons otherwise than pursuant to an agreement.

BE it enacted etc

PART I

PRELIMINARY

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|---------------------|---|
| Short title | 1. This Act may be cited as the <i>Disposal of Uncollected Goods Act, 1970</i> . |
| Division into Parts | 2. This Act is divided into Parts as follows-
PART I Preliminary.
PART II Disposal of Uncollected Prescribed Goods.
PART III Disposal of Uncollected Goods assessed at a value not exceeding three hundred dollars.
PART IV Procedure after Goods are sold or otherwise disposed of pursuant to Parts II and III.
PART V Provisions relating to Disputes.
PART VI Disposal of Goods valued in excess of three hundred dollars or in respect of which no valuation can be obtained.
PART VII Disposal of Goods in possession otherwise than pursuant to an agreement in the course of business.
PART VIII Powers of the Court.
PART IX Provisions as to Notices.
PART X General. |
| Interpretation | 3.(1) For the purposes of this Act, unless the contrary intention appears-
"Court" means a Court of Petty Sessions presided over by a Magistrate. |

The term "inspection" shall include, where applicable, the acceptance of goods for the purpose of submitting a quotation of the charges to be made for the repair or other treatment of such goods.

"Prescribed goods" means goods prescribed by regulation made under this Act.

(2) For the purpose of this Act, goods shall be deemed to be ready for redelivery-

in relation to goods accepted for inspection, when the inspection has been carried out;

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 seven days from such acceptance;

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 seven days from such acceptance;

in relation to goods accepted for repair or other treatment, when the repair or other treatment has been carried out.

(3) References in this Act to a bailor or bailee of goods shall, as respects a period during which his rights and obligations in relation to the goods are vested in any other person, be construed as references to that person.

PART II

DISPOSAL OF UNCOLLECTED PRESCRIBED GOODS

- Application of Part II 4. This Part shall apply to a bailment of prescribed goods accepted, whether before or after the commencement of this Act, by a bailee in the course of business for inspection, custody, storage, repair or other treatment, on terms (express or implied) that they will be redelivered to the bailor or to some other person in accordance with the bailor's directions when such goods are ready for redelivery.
- Rights of bailee to dispose of prescribed goods 5. Where prescribed goods, accepted pursuant to a bailment to which this Part applies, are ready for redelivery but the bailor fails to take delivery of the goods or, if the terms of any agreement between the bailor and the bailee so provide, to give directions as to their delivery, the bailee is, subject to the provisions of any agreement between him and the bailor and to the provisions of this Act, entitled, while the failure continues, to sell or otherwise dispose of the goods: provided that there shall not be any failure on the part of the bailor to take delivery of the goods where for whatever reason the bailee refuses to make delivery to the bailor or prevent him from taking delivery.
- Conditions as to disposal of prescribed goods 6.(1) A bailee shall not be entitled by virtue of section 5 to sell or otherwise dispose of goods unless the following conditions are complied with, that is to say –
- (a) after the goods are ready for redelivery, a notice in writing stating that the goods ready for redelivery as provided for in Part IX is given by the bailee to the bailor; and
 - (b) after the expiration of three months following compliance with the provisions of paragraph (a) of this subsection and not less than one month before the goods are sold or otherwise disposed of, a notice in writing of intention to sell or otherwise dispose of the goods as provided for in

Part IX is given by the bailee to the bailor and to every other person who, at the time that the notice is given to the bailor, the bailee actually knows has, or claims to have, an interest in the goods, and

- (c) a copy of the notice, given to the bailor under paragraph (b) of this subsection is served upon the Commissioner of Police not less than one month before the goods are sold or otherwise disposed of.

(2) Where a dispute as is referred to in Part V has arisen in respect of the goods, the right to sell or otherwise dispose of the goods shall be postponed until the dispute has been determined.

(3) After complying with the provisions of this section and after the expiration of not less than one month from the date of the giving of the last of the notices required to be given by paragraph (b) of subsection (1) of this section, the bailee is entitled to sell prescribed goods either by public auction or by private treaty.

(4) When the bailee has, during a period of one month, made reasonable but unsuccessful efforts to sell prescribed goods, he may then dispose of them by any other means.

PART III

DISPOSAL OF UNCOLLECTED GOODS ASSESSED AT A VALUE NOT EXCEEDING THREE HUNDRED DOLLARS

Application of
Part III

7. This Part shall apply in relation to a bailment of goods (other than prescribed goods) of a value not exceeding three hundred dollars accepted, whether before or after the commencement of this Act, by the bailee in the course of business for inspection, custody, storage, repair or other treatment, on terms (express or implied) that they will be

redelivered to the bailor or some other person in accordance with the bailor's directions when such goods are ready for redelivery.

Rights of bailee to dispose of goods assessed at a value not more than \$300

8. Where goods accepted pursuant to a bailment to which this Part applies are ready for redelivery but the bailor fails to take delivery of the goods or, if the terms of any agreement between the bailor and the bailee so provide, to give directions as to their delivery, the bailee is, subject to the provisions of any agreement between him and the bailor and to the provisions of this Act, entitled, while the failure continues, to sell or otherwise dispose of the goods; provided that there shall not be any failure on the part of the bailor to take delivery of the goods where for whatever reason the bailee refuses to make delivery to the bailor or prevents him from taking delivery.

Conditions as to disposal of goods assessed at a value not more than \$300

9.(1) A bailee shall not be entitled by virtue of section 8 to sell or otherwise dispose of any goods unless the following provisions have been complied with, that is to say -

- (a) after the goods are ready for redelivery, a notice in writing stating that the goods are ready for redelivery as provided for in Part IX is given by the bailee to the bailor; and
- (b) after the expiration of a period of six months following compliance with the provisions of paragraph (a) of this subsection and not less than one month before disposal of the goods, a notice in writing of intention to sell or otherwise dispose of the goods as provided for in Part IX is given by the bailee to the bailor and to every other person who, at the time that the notice is given to the bailor, the bailee actually knows has, or claims to have, an interest in the goods; and
- (c) a copy of the notice given to the bailor under paragraph (b)

of this subsection is served upon the Commissioner of Police not less than one month before the goods are sold or otherwise disposed of; and

(d) at least one month before the date the goods are sold or otherwise disposed of, a notice of intention to sell or otherwise dispose of the goods as provided for in Part IX is published -

- (i) in a daily newspaper published in Perth and circulating throughout the State; and
- (ii) in the *Government Gazette*.

(2) Where a dispute as is referred to in Part V has arisen in respect of the goods, the right to sell or otherwise dispose of the goods shall be postponed until the dispute has been determined.

(3) After complying with the provisions of this section and after the expiration of not less than one month from the date of the giving of the last of the notices required to be given by paragraph (b) of subsection, (1) of this section, the bailee is entitled to sell the goods by public auction.

(4) Where the goods have been unsuccessfully offered for sale by public auction on two occasions not less than fourteen days apart and otherwise in circumstances calculated to offer a reasonable prospect of sale, the bailee may sell the goods by private treaty or dispose of them by any other means.

PART IV

PROCEDURE AFTER GOODS ARE SOLD OR OTHERWISE DISPOSED OF PURSUANT TO PARTS II AND III

Application of
Part IV

10. This Part shall apply to goods sold or otherwise disposed of pursuant to Part II or Part III of this Act.

11.(1) Where goods are sold-

- (a) any amount by which the gross proceeds of sale exceed the outstanding charges of the bailee in relation to the goods may be recovered by the person entitled thereto as a debt due to him by the bailee but whenever such amount has been paid by the bailee to the Treasurer pursuant to section 22 of this Act, no action under this paragraph shall be commenced against the bailee; and
- (b) any amount by which the bailee's outstanding charges exceed the gross proceeds of sale of the goods may be recovered from the bailor by the bailee as a debt due to him.

(2) Where goods are disposed of otherwise than by sale, the amount of the bailee's outstanding charges may be recovered by him as a debt due to him from the bailor.

(3) For the purposes of this section references to the charges of a bailee in relation to any goods shall, subject to any agreement between the bailor and the bailee, be construed as referring to the amount agreed upon for the inspection, custody, storage, repair or other treatment and the cost of transporting the goods to the premises used by the bailee or, if no amount has been agreed upon, reasonable charge therefore and the following additional amount, that is to say-

- (a) a reasonable charge for storing the goods during the period beginning with the date of the notice that goods are ready for redelivery and ending with the date of sale or other disposal ; and
- (b) any costs of or in connection with the sale or other

disposal including the reasonable and necessary expenses incurred by the bailee in serving notices and in publication of advertisements; and

- (c) the cost, if any, of insuring the goods during the period referred to in paragraph (a) of this subsection.

(4) Where goods are sold or otherwise disposed of the bailee shall, within seven days from the date of the sale or other disposal of the goods, prepare a record containing the following particulars-

- (a) a sufficient description of the goods; and
- (b) if the goods have been sold the-
 - (i) date and place of the sale;
 - (ii) name and address of the place of business of the person who conducted the sale;
 - (iii) amount of the gross proceeds of the sale; and
 - (iv) amount of any sum paid to the bailee on account of his charges prior to the sale;
- (c) if the goods have been disposed of by gift, the name and address of the person to whom the goods were given; or
- (d) if the goods were destroyed, the name and address of the person by whom they were destroyed; and
- (e) a statement specifying each item of the charges of the bailee in relation to the goods;

and shall, during the period of six years from the time the record is prepared keep the record together with a copy of the notice of intention to sell or otherwise dispose of the goods, and shall at any reasonable time during that period, if so requested by or on

behalf of any person who at the time of the sale or other disposal, had, or claimed to have had, an interest in the goods, produce the record and copy for inspection.

- (5) A person who-
- (a) fails to comply with any of the provisions of subsection (4) of this section; or
 - (b) produces or furnishes a document kept for the purposes of that subsection that to his knowledge is false in a material particular,

is guilty of an offence.

PART V

PROVISIONS RELATING TO DISPUTES

Disputes as to charges, etc.

12.(1) Where, at any time after notice that goods are ready for redelivery has been given and before the giving by a bailee to a bailor of notice of intention to sell or otherwise dispose of goods, a dispute arises between the bailee and the bailor by reason of the bailor's refusal in writing

- (a) to pay the sum that the bailee claims due to him by way of his charges in relation to the goods; or
- (b) 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 under Part II or Part III to sell or otherwise dispose of the goods may not be exercised

or otherwise dispose of the goods may not be exercised until the dispute is determined.

(2) Without prejudice to any other mode of determining a dispute it shall be treated as having been determined if the bailee gives the bailor a notice in writing-

(a) stating that unless, within one month from the giving of the notice, the bailor objects in writing to having the dispute determined in this way, the dispute shall be treated for the purposes of this Part as having been determined; and

(b) in other respects, complying with the requirements of Part IX,

and the bailor does not notify the bailee in writing that he objects within the prescribed time.

(3) Where, by virtue of subsection (2) of this section, a dispute is treated as having been determined, it shall be treated as having been so determined on the date of the giving of the notice first referred to therein.

(4) If, within the period of one month referred to in paragraph (a) of subsection (2) of this section, the bailor notifies the bailee that he objects to having the dispute determined in this way, the bailee or the bailor may apply to the Court for the summary determination of the dispute and the Court may exercise all or any of the powers contained in Part VIII.

(5) Upon the making of an order by the Court pursuant to an application for summary determination of the dispute made in accordance with subsection (4) of this section, the dispute shall for the purposes of this Act be deemed to have been determined.

(6) Where any costs are awarded in respect of an application under subsection (4) of this section in respect of any goods, the charges of the bailee in relation to the particular goods shall, if those costs are awarded against the bailee, be deemed to be reduced by, and if they are awarded to the bailee, increased by, the amount of so much of those costs as are not otherwise recovered.

Disputes as to description of goods

13.(1) Where, at any time after notice of intention to dispose of goods has been given by a bailee to a bailor and before the goods are sold or otherwise disposed of, a dispute arises between the bailee and the bailor by reason of the bailor's refusal in writing -

- (a) to accept that the goods described in the notice are prescribed goods; or
- (b) to accept as accurate the assessment of the value of the goods described in the notice as not exceeding three hundred dollars,
the bailee's right under Part II or Part III to sell or otherwise dispose of the goods may not be exercised until the dispute is determined.

(2) The provisions of subsection (2) , (3) , (4) , (5) and (6) of section 12 shall apply in relation to a dispute under this section.

PART VI

DISPOSAL OF GOODS VALUED IN EXCESS OF THREE HUNDRED DOLLARS OR IN RESPECT OF WHICH NO VALUATION CAN BE OBTAINED

Application of Part VI

14. This Part shall apply in relation to a bailment of goods (other than prescribed goods) of a value exceeding three hundred dollars, and to goods in respect of which no valuation can reasonably be obtained because of the nature of the goods or because the cost of valuation is disproportionate to the value of the goods, accepted, whether before or

after the commencement of this Act, by the bailee in the course of business for inspection, custody, storage, repair or other treatment, on terms (express or implied) that they will be redelivered to the bailor or some other person in accordance with the bailor's directions when such goods are ready for redelivery.

Application by
bailee for order to
dispose of goods
valued at more
than \$300 or in
respect of which
no valuation can
be obtained.

15.(1) Where goods accepted pursuant to a bailment in relation to which this Part applies, are ready for redelivery but the bailor fails to take delivery of the goods, or if the terms of any agreement between the bailor and the bailee so provide, to give directions for their delivery, the bailee is, subject to the provisions of any agreement between him and the bailor to the provisions of this Act, entitled while the failure continues, to make an application to the Court for an order to sell or otherwise dispose of the goods: provided that there shall not be any failure on the part of the bailor to take delivery of the goods where for whatever reason the bailee refuses to make delivery to the bailor or prevents him from taking delivery.

(2) The bailee shall not be entitled by virtue of subsection (1) of this section to make an application to the Court for an order to sell or otherwise dispose of the goods unless the following provisions have been complied with, that is to say-

- (a) a notice stating that the goods are ready for redelivery as provided for in Part IX is given by the bailee to the bailor, and
- (b) after the expiration of a period of six months following compliance with the provisions of paragraph (a) of this subsection, and not less than one month before an application is made to the Court for an order for sale or other disposal of the goods, a notice of intention to apply to the Court for an order to sell or otherwise dispose of the goods as provided for in Part IX is given to the bailor and to every other person who, at the time that the notice is

given to the bailor, the bailee actually knows has, or claims to have, an interest in the goods;

- (c) at least one month before applying to the Court for an order for sale or other disposal of the goods, the bailee causes a notice of intention to apply to the Court for an order to sell or otherwise dispose of the goods as provided for in Part IX to be published-
 - (i) in a daily newspaper published in Perth and circulating throughout the State; and
 - (ii) in the *Government Gazette*;
- (d) at least one month before applying to the Court for an order for sale or other disposal of the goods, the bailee causes a copy of the notice given to the bailor under paragraph (b) of this subsection to be served upon the Commissioner of Police.

PART VII

DISPOSAL OF GOODS IN POSSESSION OTHERWISE THAN PURSUANT TO AN AGREEMENT IN THE COURSE OF BUSINESS

Disposal of goods in possession not pursuant to an agreement in the course of business

16.(1) Where a person has or acquires possession of goods otherwise than pursuant to an agreement to which Parts II, III or VI of this Act apply and not in circumstances which constitute a criminal offence on his part and –

- (a) he is unaware of either the identity or whereabouts of the person through whom he came into possession of the goods; or
- (b) the person through whom he came into possession of the goods refuses or fails to relieve him of the

possession thereof after having been given notice of the possessor's intention to apply to the Court to sell or otherwise dispose of the goods as provided for in Part IX; and

- (c) he has given to the Commissioner of Police in respect of the goods sought to be disposed of a notice containing-
 - (i) a sufficient description of the goods to which it relates; and
 - (ii) an account of how the goods came into his possession including the place and date of possession,

he may, one month after the giving of the notice referred to in paragraph (c) and, where the circumstances are those mentioned in paragraph (b) of this subsection, one month after the giving of the notice referred to in that paragraph, make application to the Court for an order to sell or otherwise dispose of the goods.

(2) A person shall not be entitled by virtue of subsection (1) of this section to make an application to the Court for an order to sell or otherwise dispose of the goods if he knows the address of the owner or of any person who has, or claims to have, an interest in the goods, such owner or other person not being a person who has received a notice pursuant to paragraph (b) of subsection (1) of this section, unless-

- (a) he has given a notice of intention to apply to the Court for an order to sell or otherwise dispose of goods to the owner and to every other such person who has, or claims to have, an interest in the goods, and
- (b) he has complied with the provisions of subsection (1)

of this section.

PART VIII

POWERS OF THE COURT

Power of Court to
make order for
disposal of goods

17.(1) On an application under anyone of sections 12, 13, 15, and 16, the Court may make such order as it thinks fit including an order authorising-

- (a) a sole applicant to sell or otherwise dispose of the goods;
- (b) joint applicants to sell or otherwise dispose of the goods,

provided that neither a sole applicant nor joint applicants shall be entitled to sell or otherwise dispose of the goods unless the sole applicant or at least one of the joint applicants remains in possession of the goods until the time when, in accordance with the order of the Court, they are entitled to sell or otherwise dispose of them.

(2) An order for sale or other disposal in relation to any goods made on application under anyone of sections 12, 13, 15 or 16 (providing that with regard to cases under section 16 there is a bailment) shall, if the bailor has not paid to the bailee the bailee's outstanding charges in respect of the goods, specify the amount that the Court, considers reasonable in respect of the bailee's charges. For the purposes of this subsection, the bailee's charges include the costs and charges referred to in subsection (3) of section 11 of this Act, incurred up to the date of the order.

(3) An order for sale or other disposal in respect of any goods-

- (a) may specify for the purposes of paragraph (a) of section 19 a rate of storage charge for those goods; and
 - (b) may specify for the purposes of paragraph (b) of that section, the amount that may be incurred in respect of the costs of or in connection with the sale or other disposal of the goods; and
 - (c) may specify the manner in which and the conditions subject to which the goods may be sold or otherwise disposed of pursuant to the order; and
 - (d) may prohibit the sale or other disposal of the goods until the expiration of such a period as the Court specifies, and may contain such conditions as to advertisement, notice to the bailor, interested persons and the Commissioner of Police, as the Court thinks fit.
- (4) The power of the Court to make an order for sale or other disposal in respect of any goods is subject to the provisions of any agreement between the bailor and bailee of the goods.
- (5) On an application to the Court under this Act, the Court may make such order with respect to costs as it considers just and reasonable and the costs awarded to any person in respect of any such application may be recovered by him as a debt due from the person against whom they were awarded, except in so far as they are otherwise recovered or accounted for under any other provision of this Act.

Effects of order for disposal

18.(1) A person in whose favour an order for sale or other disposal is made in respect of any goods is, subject to the order and the provisions of this Act, entitled to sell or otherwise dispose of the goods.

(2) An order for sale or other disposal in respect of any goods does not affect the right of any person to recover the goods by an action commenced before the goods are sold or otherwise disposed of.

(3) If such an action as is referred to in subsection (2) of this section is commenced before the goods are disposed of, the right under the order for disposal of the goods shall not be exercised until the action is heard and determined, or otherwise disposed of, and if in that action an order is made for the recovery of the goods from the person in whose favour the order for disposal was made, that person's right to dispose of the goods under the order is extinguished.

(4) For the purposes of this section an action shall be deemed not to have commenced until a writ or summons or other originating process in the action has been served upon the party from whom it is sought to recover the goods.

19. Where goods are sold or otherwise disposed of under an order for disposal the person authorised to dispose of the goods under the order is entitled to make the following subsidiary charges, that is to say-

(a) a reasonable charge for storing the goods during the period beginning with the date of the order for the sale or other disposal and ending with the date of sale or other disposal not exceeding a charge at the rate, if any, specified in the order pursuant to

the powers in paragraph (a) of subsection (3) of section 17; and

- (b) any costs of, or in connection with, the sale or other disposal not exceeding the amount, if any, specified in the order under paragraph (b) of subsection (3) of section 17; and
- (c) the cost, if any, of insuring the goods during the period referred to in paragraph (a) of this subsection.

Procedure after disposal under this Part

20.(1) Where goods are sold under an order for sale the amount by which the gross proceeds of sale exceed the aggregate of-

- (a) the amount specified in any order pursuant to subsection (2) of section 17; and
- (b) the amount of any subsidiary charges properly levied in accordance with section 19; and
- (c) the amount of any costs awarded to the person authorised to dispose of the goods in respect of the application for the order for disposal that are not otherwise recovered or accounted for under any other provisions of this Act,

is recoverable as a debt due to the bailor by the person authorised to sell the goods, and any amount by which the aggregate of the amounts referred to in paragraphs (a) , (b) and (c) of this subsection exceeds the gross proceeds of the sale is recoverable, as a debt due by the bailor to the person authorised to sell the goods.

(2) Where goods are sold or otherwise disposed of under the order of the Court, the person authorised by the order to sell or otherwise dispose of the goods shall, before expiration of a period of seven days beginning with the date of the sale or other disposal of the goods prepare a record in relation to the goods containing the following particulars, that is to say-

- (a) a reference to the order authorising the sale or other disposal of the goods; and
- (b) if the goods have been sold-
 - (i) the date and place of the sale;
 - (ii) the name and address of the place of business of the person who conducted the sale;
 - (iii) the amount of the gross proceeds of sale; or
- (c) if the goods have been disposed of by gift, the name and address of the person to whom the goods were given; or
- (d) if the goods were destroyed, the name and address of the person by whom they were destroyed; and
- (e) a statement specifying each of the items that constitute the amounts referred to in subsection (1) of this section;

and shall, before the expiration of the period of fourteen days beginning with the date of the sale or other disposal of the goods, file a copy of the record in the Court in which the order was made.

(3) A person who had, or claims to have had at the time of the sale or other disposal of the goods under the order for sale or other disposal, an interest in the goods, is entitled to inspect a copy of the record filed in the Court pursuant to this section.

(4) A person who-

(a) fails to comply with any of the provisions of subsection (2) of this section; or

(b) files a document for the purposes of that subsection, that to his knowledge, is false in a material particular,

is guilty of an offence.

PART IX

PROVISIONS AS TO NOTICES

Provisions as to notices 21.(1) This section applies to-

(a) notices that goods are ready for redelivery;

(b) notices of intention to sell or otherwise dispose of goods;

(c) notices of intention to apply to the Court for an order to sell or otherwise dispose of the goods;

(d) notices to treat a dispute as determined.

(2) A notice to which this section applies be in writing and shall contain-

(a) the names and address of the bailor and bailee or, in the case of goods to which Part VII applies, of the person in possession of the goods and, where possible, of the person through whom he acquired possession;

(b) a sufficient description of the goods to which it relates and of the place where they are situate; and

(c) a statement indicating the Part of the Act pursuant to which the notice is given.

(3) A notice that goods are ready for redelivery shall, in addition to the matter referred to in subsection (2) of this section, contain a statement that-

(a) the goods to which the notice relates are available for redelivery by the bailee at the place specified in the notice; and

(b) if the bailee claims that any sum is then due to him by way of his charges in relation to the goods a statement to that effect specifying the amount of the sum and the manner in which it has been calculated; and

(c) that unless-

(i) delivery is taken or directions as to redelivery of the goods are given; or

- (ii) the bailor gives to the bailee a notice in writing that he disputes all or any of the matters contained in the notice,

action will be taken in accordance with this Act to sell or otherwise dispose of the goods.

(4) A notice of intention to sell or otherwise dispose of goods shall, in addition to the matters referred to in subsection (2) of this section, contain a statement -

- (a) of the bailee's belief either that the goods are prescribed goods or that the goods are not prescribed goods and are of a value not exceeding three hundred dollars, whichever is applicable; and
- (b) of the fact of the giving to the bailor of the notice that the goods are ready for redelivery and of the date of such notice and, where there has been a dispute between the bailor and the bailee, the date on which the dispute was determined; and
- (c) that unless-
 - (i) delivery is taken or directions as to redelivery of the goods are given; or
 - (ii) within one month of the date of the giving of the notice the bailor gives to the bailee a notice in writing that he refuses to accept that the goods are prescribed goods or, as the case may be, the assessment of the value of the goods contained in the notice,

the goods are liable to be sold or otherwise disposed of not less than one month from the date of the giving of the notice.

(5) A notice of intention to apply to the Court for an order to sell or otherwise dispose of any goods shall, in addition to the matters referred to in subsection (2) of this section, contain-

- (a) where a notice that goods are ready for redelivery has been given, a statement of the fact of the giving of that notice and of the date thereof, and, where there has been a dispute between the bailor and the bailee and the dispute has been determined, a statement as to the manner in which and the date on which it was determined; and
- (b) a statement that if the bailor fails within a period of one month from the date of the giving of the notice to take delivery of the goods or give directions to their delivery, an application will be made for an order to sell or otherwise dispose of the goods in accordance with this Act.

(6) A notice to treat a dispute as determined shall, in addition to the matters referred to in subsection (2) of this section, contain a statement-

- (a) that the goods to which the notice relates are available for delivery by the bailee at the place specified in the notice; and
- (b) as to the nature of the dispute and how it has arisen; and
- (c) that action will be taken in accordance with this Act to sell or otherwise dispose of the goods unless they are taken delivery of or directions as to their delivery are given within a period of one month.

(7) A notice required or authorised by this Act to be given may be given-

- (a) by delivering it to the person to whom it is required or authorised to be given;
- (b) by leaving it for him at his last known place of abode or business with some person apparently an inmate thereof or employed thereat, and apparently of or over the age of sixteen years; or
- (c) by posting it addressed to him at his last known place of abode or business.

PART X

GENERAL

Application of surplus proceeds of sale

22.(1) Where any sum recoverable from a bailee by a bailor pursuant to section 11 or section 20 and, within a period of twenty-eight days of becoming so recoverable has not been recovered, the person from whom it is recoverable shall on the expiration of that period deposit it with the Treasurer.

(2) A person who deposits any sum with the Treasurer under subsection (1) of this section shall, at the same time, furnish to the Treasurer a copy of the record required to be made under section 11 or section 20 in respect of the sale of the goods from which the sum arose.

(3) The Treasurer may pay any sum deposited with him under this section to a person appearing to him to be entitled thereto and if any sum is so paid the rights of any other person in respect of the

recovery of that sum from the Treasurer are extinguished.

- (4) A person who-
- (a) being required on the expiration of the period referred to in subsection (1) of this section to deposit any sum with the Treasurer, fails within one month of the expiration of that period so to deposit that sum; or
 - (b) fails to comply with the provisions of subsection (2) of this section; or
 - (c) furnishes for the purposes of that subsection a document that to his knowledge is false in any particular,

is guilty of an offence.

Provisions for payment before sale of goods

23. Where at any time after notice that goods are ready for redelivery has been given to the bailor and before the goods specified in that notice have been sold or otherwise disposed of, the bailor takes delivery of the goods the bailee shall be entitled to recover as a debt due to him from the bailor the reasonable and necessary expenses incurred by him in serving notices, in publication of advertisements and in preparing for sale up to the time of payment.

Title of person acquiring goods

24.(1) A person who acquires goods sold or otherwise disposed of in the purported exercise of the powers given under this Act obtains a good title thereto if he acquires them in good faith and without notice of-

- (a) any failure, arising in connection with the sale or

other disposal of the goods, to comply with any of the provisions of this Act; or

- (b) any lack of title in the bailor or other person who has given possession of the goods to the person effecting the sale or other disposal thereof under this Act.

(2) In any civil proceedings by or against the bailee or any person authorised by the provisions of this Act to sell or otherwise dispose of any goods, the burden of proving that the provisions of this Act relating to the sale or other disposal of those goods have been complied with lies on the bailee or person so authorised to sell or otherwise dispose of the goods.

Procedure for application to court

25.(1) Applications to the Court for an order to sell or otherwise dispose of goods or for an order to determine a dispute shall be commenced by application in the form prescribed.

(2) Subject to subsection (3) of this section, a Court shall not hear an application under this Act, unless it is satisfied that a copy of the application has been served upon all such person or persons as appear to the Court to be affected by the application.

(3) Where a copy of the application referred to in subsection (2) of this section has not been served on a person affected by the application but the Court is satisfied by evidence on oath that every reasonable effort has been made to serve the copy of the application on him, it may, nevertheless, proceed to hear and determine the application.

(4) Where the Court is satisfied, by evidence on oath, that the identity of a person who appears to the Court to be affected by such an application as is referred to in this section is not known

and all reasonable steps that can be taken to establish his identity have been taken, it may proceed to hear and determine the application notwithstanding that a copy of the application has not been served on him.

Service of applications 26.(1) A copy of the application may issue pursuant to the provisions of Part IV of the *Justices Act, 1902-1968* to any person appearing to be affected by the application as though the copy of the application was a summons and as though the application was a complaint and the person appearing to be affected was a person against whom a complaint has been made.

(2) Subject to the provisions of this Act, the provisions of Part IV of the *Justices Act, 1902-1968* as to service, endorsement and proof of service of summonses shall apply mutatis mutandis to copies of applications issued as the result of applications made pursuant to this Act.

(3) A copy of the application required to be served under this Act may be served -

- (a) by delivering it to the person upon whom it is required or authorised to be served personally;
- (b) by leaving it for him at his last known place of abode or business with some person apparently an inmate thereof or employed thereat, and apparently of or over the age of sixteen years; or
- (c) by sending it by registered post addressed to him at his usual or last known place of abode or business.

Act not to apply to 27. The provisions of this Act shall not apply to any bailment,

certain bailments etc. possession, or other custody of goods to which the Acts mentioned in the Schedule apply.

Savings 28. Subject to the provisions of section 24 nothing in this Act shall be construed as derogating in any way from the rights or powers of any person other than a bailor of goods to which this Act applies conferred by or under another enactment or by the rules of equity or common law, and all such rights and powers may continue to be exercised in the same manner as if this Act had not been passed.

Penalties 29. A person who is guilty of an offence against this Act is liable to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Regulations 30.(1) The Governor may make regulations for giving effect to this Act.

(2) Without limiting the generality of the foregoing power, the regulations may provide for each of the following matters-

(a) prescribing goods which may be sold pursuant to Part II of this Act;

(b) prescribing the forms to be used under this Act.

THE SCHEDULE

Section 27

CITY OF PERTH PARKING FACILITIES ACT, 1956-1969

FIREARMS AND GUNS ACT, 1931-1969

FREMANTLE PORT AUTHORITY ACT, 1902-1969

GOVERNMENT RAILWAYS ACT, 1904-1967

INNKEEPERS ACT, 1887

JETTIES ACT, 1926-1965

METROPOLITAN (PERTH) PASSENGER TRANSPORT TRUST ACT, 1957-1966

PAWNBROKERS ACT, 1860-1948

POLICE ACT, 1892-1969

SHIPPING AND PILOTAGE ACT, 1967

WAREHOUSEMEN'S LIENS ACT, 1952-1954.