

## CLAUSE NOTES

### *Disposal of Uncollected Goods Bill 2019*

#### Part I - Preliminary

**Clause: 1**      **Short title**

This clause provides that, once passed, the Bill will be cited as the *Disposal of Uncollected Goods Act 2019*

**Clause 2:**      **Commencement**

All provisions of this Bill will commence on Royal Assent.

**Clause 3:**      **Interpretation**

Defines key terms in the Act, including:

- “provider” (the consumer) and “receiver” (the business expecting payment before goods are returned)
- Low, Medium and High Value goods categories and their monetary thresholds are also defined.

**Clause 4:**      **Application of Act**

Determines the circumstances when the provisions of this Act will apply. It applies to goods under a bailment agreement.

The Bill does not apply to unsolicited goods, or where there are special provisions in other legislation for the disposal of certain goods, such as:

- goods left behind by tenants subject to a tenancy agreement;
- pawned goods held by a pawnbroker;
- unclaimed lottery or gambling prizes;
- lost property received by the police service;
- vehicles seized by the police; and
- items obstructing public roads.

**Clause 5:**      **Act binds Crown**

Requires the Crown to comply in the same way as everybody else in the community.

**Clause 6**      **Effect of Act on common law**

The Act does not replace the common law in relation to bailment of goods, and the parties retain all their existing legal rights and remedies. Primarily the Act applies where parties have an agreement for the bailment of goods, but have not agreed on arrangements for the disposal of any goods left uncollected.

**Clause 7**      **Meaning of uncollected goods**

Determines the specific circumstances when goods will be regarded as uncollected and the provisions of this Act will then apply.

**Clause 8**      **Relevant charge**

Specifies that this charge includes the costs of keeping, carriage, storing, repairing, insuring the goods, and for this amount the receiver has a right to seek payment, before they are returned to the provider.

**Clause 9**      **Valuation of goods**

The Act establishes three main categories for the valuation of goods – High, Medium or Low. Different procedures for disposal of goods apply for each category.

The Act allows the Director of Consumer Affairs and Fair Trading to establish, by a Determination, the minimum dollar value of these value categories. This will allow the operation of the Act to take into account inflation and cost rises over time to remain relevant to businesses.

**Clause 10**     **Low value uncollected goods**

These are any goods valued at \$200 or less, except for a motor vehicle, which is valued at \$1,000 or less.

Process for their disposal:

- Goods disposal notice is given to provider and 28 days has elapsed, with no response or no instructions on how to take delivery; or
- If unable to locate or communicate with the provider to give the goods disposal notice, and 60 days has elapsed since they became uncollected.

The goods may then be disposed of by any appropriate means.

**Clause 11**     **Medium value uncollected goods**

These are any goods valued at between \$200 and \$5,000, except for a motor vehicle, which is valued at more than \$1,000 but less than \$5,000.

Process for their disposal:

- Goods disposal notice is given to provider and 28 days elapsed, with no response or instructions on how to take delivery; or
- If after taking reasonable steps to do so the receiver is unable to locate or communicate with the provider to give a goods disposal notice, and 90 days has elapsed since they became uncollected.

Goods may then be disposed of by a private sale or by public auction.

**Clause 12 High value uncollected goods**

These are any goods (including motor vehicles) valued at more than \$5,000.

Process for their disposal:

- Goods disposal notice is given to provider (or any other interested party) and 28 days has elapsed, with no response or instructions on how to take delivery; or
- If after taking reasonable steps to do so, the receiver is unable to locate or communicate with the provider to give the goods disposal notice, and 180 days has elapsed since they became uncollected.

Goods must then be disposed of by a public auction and advertised seven days in advance, or by a private sale, if the provider believes that it is the appropriate method to obtain the best price.

**Clause 13 Additional requirement for disposal of high value motor vehicles**

Before motor vehicles of a high value can be disposed of, a search under the Personal Property Securities Act 2009 (Commonwealth) must be performed for information on any parties that may have a registered interest in the vehicle.

**Clause 14 Perishable goods**

Process for their disposal:

- Receiver has given the provider either oral advice, or a goods disposal notice, and a reasonable time to collect the goods has elapsed since the notice was given.
- Receiver may then dispose of perishable goods by any means. They must then attempt to give the provider a notice that the goods have been disposed of.

**Clause 15 Provider, &c., entitled to goods before disposal, on payment of relevant charge**

Clarifies that parties (including the provider) with an interest in the goods may receive them at any time before their disposal if the receiver's charges have been paid.

**Clause 16 No disposal of uncollected goods under this Part if application to court about dispute**

The provisions of this Act for disposal of goods cannot be used for goods that are the subject of a prior dispute that has been lodged with a court for a decision.

**Clause 17 Goods disposal notice**

A written notice given by the receiver to the provider of their intent to dispose of goods using the provisions of the Act.

The matters to be contained in each notice are specified.

- Clause 18**      **How goods disposal notice may be given**  
Provides the methods of how a disposal notice may be given to a person who has an interest in the goods. Modern means of electronic communication including text messages are included.
- Clause 19**      **Person disposing of goods under this Part not liable**  
Clarifies that a receiver who disposes of goods under this Act is not liable to the owner or others for their disposal.
- Clause 20**      **Proceeds of sale of goods under this Part**  
When uncollected goods are sold, the receiver is entitled to retain part of the sale proceeds to cover the costs of their charges in relation to those goods.  
If the sale proceeds are greater than the receiver's charges, that money is to be dealt with under the *Unclaimed Money Act 2015*.  
If the sale proceeds are less than the receiver's charges, that is a debt owing to them by the provider.
- Clause 21**      **Good title**  
The purchaser of uncollected goods sold under the Act, obtains good title to those goods.  
If the provider appropriates the goods, they also obtain good title to them.
- Clause 22**      **Receiver to prepare and keep record of disposal of goods under this Part**  
Provides a requirement that detailed records are to be kept by the receiver of all Medium and High Value goods disposed of.  
The required details recording the disposal of any Low Value goods, is to be Determined by the Director of Consumer Affairs and Fair Trading after consulting with businesses and other stakeholders.  
Specifies the time periods that the receiver is to retain such records.
- Clause 23**      **Receiver to provide receipt to purchaser of motor vehicle**  
Purchasers of vehicles disposed of are entitled to receive a receipt containing specific details including that the vehicle was disposed of under this Act.
- Clause 24**      **Application to court for disposal order**  
A receiver may choose to apply to a court for an order to dispose of uncollected goods and to make any ancillary decisions regarding their disposal.  
If a motor vehicle is to be disposed of, a search of the Motor Vehicles Registry to identify the current registered owner, must accompany the application to the court.
- Clause 25**      **Order as to amount of relevant charge payable**  
A court may determine any dispute over the charges the receiver is claiming in relation to uncollected goods.

- Clause 26 Court orders**  
Specifies what a court can do in relation to the disposal of uncollected goods, including authorising their disposal and determining what are the relevant charges of the receiver.
- Clause 27 Provider, &c., may have goods returned before disposal if relevant charge paid**  
Even if a court order for disposal has been made, the provider or any other interested party still take possession of goods at any time before their disposal, if the charges of the receiver are paid.
- Clause 28 Effect of other proceeding**  
Commencing an action in a court by an interested person (other than the provider) will suspend a court order for disposal made under this Act, until the court action is finally decided.  
Any order by another court or a tribunal regarding the recovery of uncollected goods takes precedence over an order made under this Act to dispose of those goods.
- Clause 29 Receiver may obtain details of registered operator of motor vehicle**  
Provides that the receiver of a motor vehicle may seek details of the registered operator of a vehicle from the Registrar of Motor Vehicles.  
The Registrar may then give a certificate with details of that operator. This is intended to allow for contact to be made with that operator, including sending them a notice of disposal of their vehicle.  
Safeguards in the Act to prevent wrongful disclosure of personal information include that the search applicant must be a business operator, the application is in the form of statutory declaration and a search fee paid.
- Clause 30 Determinations by the Director**  
Provides that the Director Consumer Affairs and Fair Trading may make Determinations specifying details of certain matters necessary for the administration of the Act.
- Clause 31 Regulations**  
Regulations may be made for the purposes of the Act.
- Clause 32 Administration of Act**  
Administration of the Act is assigned to the Minister for Building and Construction, and Department of Justice until changed in accordance with the *Administrative Arrangements Act 1990*
- Clause 33 Schedule 1. Legislation repealed**