**NORTHERN TERRITORY OF AUSTRALIA**

# UNCOLLECTED GOODS ACT

As in force at 1 May 2016

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# NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 May 2016

## UNCOLLECTED GOODS ACT

**An Act about the disposal of uncollected goods under bailment**

# Part 1 Preliminary

## Division 1 Introduction

### 1 Short title

This Act may be cited as the *Uncollected Goods Act*.

### 2 Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

### 3 Object

The object of this Act is to provide for the disposal of goods under bailment that remain uncollected if the parties to the bailment have not entered into an agreement for their disposal.

## Division 2 Interpretation

### 4 Definitions

In this Act, unless the contrary intention appears:

***Accountable Officer*** means the Accountable Officer, within the meaning of the *Financial Management Act*, of the Agency administering this Act.

***bailment*** includes bailment for reward, bailment in the course of business, gratuitous bailment, involuntary bailment and any sub-bailment.

***Court*** means the Local Court.

***disposal costs*** means the costs incurred by the receiver for the disposal of goods under Part 2.

***high value***, for goods, means the goods are of a value more than or equal to $1 000 and less than $7 000 or, if another value is prescribed by the Regulations, that other value.

***low value***, for goods, means the goods are of a value less than $200 or, if another value is prescribed by the Regulations, that other value.

***medium value***, for goods, means the goods are of a value more than or equal to $200 and less than $1 000 or, if another value is prescribed by the Regulations, that other value.

***motor vehicle*** means a motor vehicle as defined in the regulations made under the PPS Act.

***PPS Act*** means the *Personal Property Securities Act 2009* (Cth).

***PPS Register*** means the Personal Property Securities Register established under section 147 of the PPS Act.

***provider*** means the person who gives possession of goods under a bailment (whether or not the person is the owner of the goods).

***receiver*** means the person who takes possession of goods under a bailment.

***relevant charge*** has the meaning in section 6.

***uncollected goods*** has the meaning in section 5.

## 5 Uncollected goods

(1) Goods under bailment are uncollected goods if:

(a) the goods are ready for delivery to the provider in accordance with the terms of the bailment, but the provider has not taken delivery of the goods and not given directions as to their delivery;

(b) the receiver is required to give notice to the provider when the goods are ready for delivery but cannot locate or communicate with the provider;

(c) the receiver can reasonably expect to be relieved of any duty to safeguard the goods on giving notice to the provider but cannot locate or communicate with the provider; or

(d) the provider has not paid the relevant charge payable to the receiver in relation to the goods within a reasonable time after being informed by the receiver that the goods are ready for delivery.

(2) However, subsection (1)(a) does not apply if the provider's failure to take delivery arises from:

(a) the receiver refusing to make delivery; or

(b) the receiver preventing the provider from taking delivery.

### 6 Relevant charge

(1) The relevant charge is the amount payable by the provider to the receiver for goods under bailment and payment of which entitles the provider to take delivery of the goods.

(2) Unless determined otherwise by a Court order, the amount payable to the receiver is the sum of the following:

(a) for any carriage or storage of the goods or for any repairs, cleaning, treatment or other work done in connection with the goods:

(i) the amount agreed to by the provider and receiver as the charge payable to the receiver; or

(ii) in the absence of an agreement, an amount that is reasonable;

(b) the amount of costs for any storage, maintenance or insurance of the goods incurred by the receiver from:

(i) the giving of a notice under Part 2 of the receiver's intention to dispose of the goods until the disposal of the goods; or

(ii) the making of an application for a Court order under Part 3 until the disposal of the goods.

## Division 3 Operation of Act

### 7 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

## 8 Act applies to existing bailments

This Act applies to the possession of goods under a bailment regardless of when possession is taken.

## 9 Application of other Acts

(1) This Act does not apply to:

(a) goods over which an accommodation provider has a lien under section 9 of the *Accommodation Providers Act*;

(b) unsolicited goods to which section 41 of the Australian Consumer Law (NT) applies or goods the subject of a contract with a pawnbroker to which Part 14, Division 3 of the *Consumer Affairs and Fair Trading Act* applies;

(c) goods to which section 130B of the *Local Court (Criminal Procedure) Act* applies;

(d) goods to which section 166 of the *Police Administration Act* applies;

(e) abandoned goods to which section 109 of the *Residential Tenancies Act* or section 27 of the *Retirement Villages Act* applies;

(f) abandoned vehicles to which the *Traffic Act* applies; or

(g) the bailment, possession or custody of goods under another law of the Territory prescribed by the Regulations.

(2) This Act is in addition to and does not limit the disposal of goods that may be disposed of under the *Warehousemen's Liens Act*.

(3) In this section:

***Australian Consumer Law (NT)*** means the provisions applying as a law of the Territory because of Part 4 of the *Consumer Affairs and Fair Trading Act*.

## 10 Common law

The common law relating to the bailment of goods remains in force to the extent to which it is not affected by this Act.

### 11 Agreements between provider and receiver regarding uncollected goods

(1) This Act applies to the disposal of uncollected goods if there is no agreement between the provider and the receiver about their disposal.

(2) If there is an agreement about the disposal of uncollected goods, this Act applies only to matters not dealt with by the agreement.

(3) This Act does not affect the right of a provider and receiver to make an agreement about the disposal of uncollected goods.

## Part 2 Disposal of uncollected goods

## Division 1 Right of receiver to dispose of uncollected goods

### 12 Receiver may dispose of uncollected goods

(1) Subject to subsection (2), a receiver may dispose of uncollected goods under this Part.

(2) A receiver must not dispose of uncollected goods if:

(a) a dispute exists between the provider and receiver regarding the relevant charge; and

(b) an application has been made to the Court under section 22.

(3) However, subsection (2) does not prevent the receiver from giving notice under Division 2 of the receiver's intention to dispose of the uncollected goods.

### 13 Payment of relevant charge

The provider, the owner of the uncollected goods or any other person with an interest in the goods is entitled, on payment of the relevant charge, to delivery of the goods at any time before their disposal.

## Division 2 Disposal of uncollected goods without Court order

### 14 Low value uncollected goods

(1) A receiver may dispose of low value uncollected goods if:

(a) the receiver has given the provider oral or written notice of the receiver's intention to dispose of the goods; and

(b) 28 days have elapsed since the giving of the notice and the provider has not taken delivery of the goods or given directions as to their delivery.

(2) Goods may be disposed of under this section by sale, destruction, appropriation or any other means.

**15 Medium value uncollected goods**

(1) A receiver may dispose of medium value uncollected goods if:

(a) subject to section 31, the receiver has given written notice of the receiver's intention to dispose of the goods to the following:

(i) the provider;

(ii) the owner of the goods;

(iii) any other person having or claiming an interest in the goods; and

(b) 2 months have elapsed since the giving of the notice and the provider has not taken delivery of the goods or given directions as to their delivery.

(2) Goods must be disposed of under this section by public auction or by private sale at a fair price.

**16 High value uncollected goods**

(1) A receiver may dispose of high value uncollected goods if:

(a) subject to section 31, the receiver has given written notice of the receiver's intention to dispose of the goods to the following:

(i) the provider;

(ii) the owner of the goods;

(iii) any other person having or claiming an interest in the goods;

(iv) the Commissioner of Police;

(b) 3 months have elapsed since giving the notice and the provider has not taken delivery of the goods or given directions as to their delivery; and

(c) 28 days prior to the disposal of the goods, a copy of the notice referred to in paragraph (a) has been published in a daily newspaper circulating generally in the Territory.

(2) Goods must be disposed of under this section by public auction or by private sale at a fair price.

### 17 Perishable goods

(1) A receiver may dispose of perishable uncollected goods by sale, appropriation or destruction if:

(a) the receiver has given the provider oral or written notice of the receiver's intention to dispose of the goods; and

(b) having regard to the nature and condition of the goods, a reasonable time in which to collect the goods has elapsed since the giving of the notice.

(2) A receiver may dispose of uncollected goods that have perished by any means but must, within a reasonable time, give the provider oral or written notice of the disposal of the goods.

## Division 3 Disposal of uncollected goods by Court order

### 18 Disposal by Court order

(1) A Court order under Part 3 must be obtained to dispose of uncollected goods of a value exceeding the high value.

(2) A receiver may dispose of uncollected goods of low value, medium value or high value under a Court order under Part 3.

## Division 4 Additional requirement for disposal of motor vehicles

### 19 PPS Register search result

A receiver must not dispose of a motor vehicle that is of, or greater than, medium value unless the receiver has obtained a written search result of the PPS Register in the appropriate form in relation to the vehicle under the PPS Act.

Maximum penalty: 100 penalty units.

### 20 Ownership details

(1) If, on receipt of an application accompanied by the fee prescribed under the *Motor Vehicles Act*, the Registrar of Motor Vehicles is satisfied the application is being made for the purposes of this Act, the Registrar must give details of the ownership of the motor vehicle to the receiver.

(2) An application made under subsection (1) must be in the form of a statutory declaration and include the following particulars:

(a) if the receiver is a natural person – the receiver's full name, address and date of birth;

(b) if the receiver is a body corporate – the receiver's business name and address and ABN;

(c) the vehicle's number plate and vehicle identification number;

(d) if the receiver intends to dispose of the vehicle under Division 2 – a copy of the notice given under that Division;

(e) if the receiver has applied under section 21 for an order to dispose of the vehicle – a copy of the application;

(f) if applicable – a copy of any certificate obtained under section 19;

(g) any other information prescribed by the Regulations.

## Part 3 Applications to Court, Court orders and related provisions

### 21 Application to Court for disposal order

(1) A receiver may apply to the Court for an order to dispose of uncollected goods.

(2) The application must:

(a) state fully the grounds on which it is made;

(b) include the information in section 32(a) to (d) (inclusive); and

(c) for the disposal of a motor vehicle – include the certificates required under section 19 and any details of ownership obtained under section 20.

(3) The receiver must give a copy of the application to:

(a) the provider;

(b) the owner of the goods;

(c) any other person known by the receiver to have or to be claiming an interest in the goods;

(d) the Commissioner of Police; and

(e) any person with a publicly registered interest in the goods.

**22 Other applications to Court**

If a dispute exists between the provider and the receiver regarding the relevant charge for uncollected goods, either party may apply to the Court for an order determining the amount of the relevant charge payable to the receiver.

**23 Court orders**

(1) On an application under section 21 or 22, the Court may make any of the following orders:

(a) an order authorising the disposal of specified goods under bailment;

(b) an order determining the relevant charge payable to the receiver;

(c) any other orders that it considers necessary to give effect to an order made under paragraph (a) or (b).

(2) An order under subsection (1)(a) must specify the following:

(a) the authorised means of disposal of the goods;

(b) the date by which the goods may be disposed of;

(c) the amount of the relevant charge payable to the receiver for the goods.

**24 Payment of relevant charge**

If a Court order has been made for the disposal of uncollected goods, the provider, the owner of the uncollected goods or any other person with an interest in the goods is entitled, on payment to the receiver of the relevant charge, to delivery of the goods at any time before their disposal.

### 25 Effect of other proceeding

(1) If, at any time prior to the disposal of uncollected goods under Part 2, a person (other than the provider) starts a proceeding for the recovery of the goods, an order made under section 23 is suspended until the proceeding is decided.

(2) If an order is made for the recovery of the goods, the order made under section 23 ceases to have effect.

## Part 4 Proceeds of sale, records keeping and liability of parties after disposal

### 26 No liability for due disposal of uncollected goods

A receiver who disposes of uncollected goods under Part 2 is not liable to any other person in relation to the goods by reason of the disposal.

### 27 Proceeds of sale

(1) If uncollected goods are sold under Part 2, the receiver is entitled to retain the relevant charge payable to the receiver for the goods and the disposal costs.

(2) If the proceeds of the sale are insufficient to pay the relevant charge and disposal costs, the receiver may recover the deficiency from the provider as a debt in any court of competent jurisdiction.

(3) If the proceeds of sale are more than sufficient to pay the relevant charge and disposal costs, the receiver must within 28 days after the sale of uncollected goods:

(a) pay the balance to the Accountable Officer for payment into the Accountable Officer's Trust Account; and

(b) give the Accountable Officer a copy of the records required under section 28(1).

Maximum penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

(4) If satisfied a person had an interest in the goods before the sale, the Accountable Officer must pay to that person out of the Trust Account:

(a) an amount equivalent to that person's interest in the goods; or

(b) if the person's interests in the goods expressed as a monetary amount exceeds the balance of the proceeds of sale – the balance of the proceeds of sale.

(5) A person claiming an interest in goods under subsection (4) must apply to the Accountable Officer within 3 years after the sale.

(6) The Accountable Officer is not liable to make any further payment for goods if the balance of the proceeds of sale of the goods has been paid under subsection (4)(b).

(7) Subsection (6) does not prevent a person making a claim against the person to whom the Accountable Officer has paid the balance of the proceeds of sale.

(8) A person must not give to the Accountable Officer a document for the purposes of subsection (4) that to the person's knowledge is false or misleading in a material particular.

Maximum penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

(9) Proceeds from the sale of goods that have remained unclaimed for 3 years must be paid into the Central Holding Authority.

**28 Records held by receiver**

(1) Within 7 days after disposing of uncollected goods under Part 2, the receiver must prepare a record of the following particulars:

(a) a description of the goods;

(b) if the goods were disposed of under Part 2, Division 2:

(i) the date and means of giving notice of intention to dispose of the goods; and

(ii) the name and address of any person to whom the notice was given;

(c) if the goods were disposed of under Part 2, Division 3:

(i) the date of the Court order that authorised the disposal; and

(ii) the name and address of any person to whom a copy of an application under section 21 was given;

(d) the date of disposal;

(e) the manner of disposal;

(f) if the goods were sold:

(i) the name and address of the purchaser;

(ii) the sale price;

(iii) the amount retained by the receiver to cover the relevant charge payable to the receiver for the goods; and

(iv) the amount retained by the receiver to cover the disposal costs;

(g) if the goods were sold by public auction – the name and address of the principal place of business of the auctioneer who sold the goods;

(h) if applicable, the amount of the balance of the proceeds of sale paid to the Accountable Officer and the date of payment.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(2) The receiver must:

(a) retain the record for 3 years from the date of disposal; and

(b) make the record available on request by any of the following:

(i) the provider;

(ii) the owner;

(iii) any other person claiming to have an interest in the goods;

(iv) the Commissioner of Police;

(v) an authorized officer within the meaning of the *Consumer Affairs and Fair Trading Act*;

(vi) the Registrar of Motor Vehicles;

(vii) the Accountable Officer.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

**29 Good title**

(1) The purchaser of goods sold under Part 2 acquires good title to the goods, free from any interest that existed in the goods in favour of another person before the goods were sold, if the purchaser buys the goods:

(a) without notice of any failure of the receiver to comply with this Act; and

(b) without notice of any defect or want of title of the provider.

(2) A receiver who disposes of goods by appropriation in accordance with Part 2 acquires good title to the goods.

**30 Receiver to provide purchaser of motor vehicle with receipt**

(1) If a receiver sells a motor vehicle under Part 2, the receiver must provide the purchaser with a receipt that complies with this section.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(2) The receipt must contain the following:

(a) if the receiver is a natural person – the receiver's full name, address and date of birth;

(b) if the receiver is a body corporate – the receiver's business name and address and ABN;

(c) the vehicle's number plate and vehicle identification number;

(d) the purchaser's full name, address and date of birth;

(e) the date of sale;

(f) the sale price;

(g) the name of the owner of the vehicle;

(h) any other information prescribed by the Regulations.

(3) The receipt must state that the vehicle has been disposed of under this Act and must be signed by both the purchaser and the receiver.

## Part 5 Notice requirements

### 31 Persons to whom notice is not required to be given

(1) The receiver is not required to give notice to a person of the receiver's intention to dispose of goods if:

(a) the receiver is unaware that the person has or claims an interest in the goods; or

(b) the receiver cannot locate or communicate with the person.

(2) Subsection (1)(a) does not apply if the person is the provider or a person with a publicly registered interest in the goods.

### 32 Form of notices

A notice of the receiver's intention to dispose of uncollected goods under Part 2 must specify:

(a) the receiver's name;

(b) a description of the goods;

(c) an address from where the goods may be collected;

(d) a statement of the relevant charge payable to the receiver for the goods and, if the relevant charge is likely to increase, a statement of the current relevant charge and an estimate of further charges that will accrue;

(e) a statement to the effect that on or after a specified date the goods will be disposed of unless they are collected and the relevant charge paid; and

(f) if applicable, a statement to the effect that the receiver will retain from the proceeds of sale of the goods an amount not exceeding the sum of the relevant charge and the disposal costs.

### 33 Giving notice

(1) A notice under Part 2 may be given to the person personally or left at, or sent by post to, the person's last known address.

(2) A notice to a person with a publicly registered interest in uncollected goods is taken to have been given if it has been sent by post to the person's address in the register in which the interest is recorded.

## Part 6 Miscellaneous

### 34 Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Regulations may provide for the following:

(a) the keeping of records;

(b) the valuation of goods;

(c) penalties for offences against the Regulations not exceeding 100 penalty units for a natural person and 500 penalty units for a body corporate.

(3) The Regulations may:

(a) make different provision in relation to:

(i) different persons or matters; or

(ii) different classes of persons or matters; or

(b) apply differently by reference to stated exceptions or factors.

# Part 7 Repeal and transitional provisions

## Division 1 Repeal of Acts

### 35 Repeal

The following Acts are repealed:

(a) *Disposal of Uncollected Goods Act 1976* (No. 45 of 1976);

(b) *Disposal of Uncollected Goods Act 1977* (No. 21 of 1977).

## Division 2 Transitional provisions

### 36 Definitions

In this Division:

***commencement date*** means the date on which this Act comes into operation.

***repealed Act*** means the *Disposal of Uncollected Goods Act* as in force immediately before the commencement date.

### 37 Application of Division

This Division applies despite section 8 and the repeal of the repealed Act.

### 38 Disposal of goods

(1) If, under section 8(1)(b) of the repealed Act, a person has given notice of intention to sell goods, Part II of the repealed Act applies to the goods.

(2) If, under section 12(1) of the repealed Act, a person has applied to the Court for an order to sell goods, Part III of the repealed Act applies to the goods.

### 39 Procedure after sale or disposal of goods

For goods sold or disposed of under Part II or III of the repealed Act, section 17 of that Act applies.

### 40 Record of sale or disposal

(1) For goods sold or disposed of under Part II or III of the repealed Act, section 18 of that Act applies.

(2) However, section 18(2) of the repealed Act applies as if the reference to 6 years were a reference to 3 years.

**41 Disposal of net proceeds of sale of goods**

(1) If they have not already been paid into a Trust Fund, proceeds of the sale or disposal of goods under the repealed Act must be dealt with under section 27 of this Act.

(2) Moneys deposited into a Trust Fund at the Territory Insurance Office or an ADI opened for section 19(3) of the repealed Act must, as soon as practicable after the commencement date, be transferred to the Accountable Officer's Trust Account.

(3) Section 27(4), (5) and (6) of this Act applies to the transferred moneys as if the goods to which the moneys relate were sold under Part 2 of this Act.

**42 Power of court to re-open transactions**

Section 20 of the repealed Act applies if an action to re-open a transaction began before the commencement date.

**43 Title of persons acquiring goods**

Section 22 of the repealed Act applies to goods sold under that Act.

**44 Notices**

For goods to which section 38 of this Act applies, sections 23 and 25 of the repealed Act apply.

**45 Offences**

Section 24 of the repealed Act applies if a person fails to comply with that Act if required to do so under this Part.

**46 Regulations**

If, under this Part, a provision of the repealed Act continues to apply, any regulation made under that Act and that is relevant to that continuing provision also continues to apply.

# ENDNOTES

## 1 KEY

Key to abbreviations

**amd = amended**
**app = appendix**
**bl = by-law**
**ch = Chapter**
**cl = clause**
**div = Division**
**exp = expires/expired**
**f = forms**
***Gaz* = *Gazette***
**hdg = heading**
**ins = inserted**
**lt = long title**
**nc = not commenced**
**od = order**
**om = omitted**
**pt = Part**
**r = regulation/rule**
**rem = remainder**
**renum = renumbered**
**rep = repealed**
**s = section**
**sch = Schedule**
**sdiv = Subdivision**
**SL = Subordinate Legislation**
**sub = substituted**

## 2 LIST OF LEGISLATION

***Uncollected Goods Act 2004* (Act No. 33, 2004)**

| | |
|---|---|
| Assent date | 4 June 2004 |
| Commenced | 1 July 2004 (*Gaz* G26, 30 June 2004, p 3) |

***Statute Law Revision Act 2007* (Act No. 4, 2007)**

| | |
|---|---|
| Assent date | 8 March 2007 |
| Commenced | 8 March 2007 |

***Justice Legislation Amendment (Penalties) Act 2010* (Act No. 12, 2010)**

| | |
|---|---|
| Assent date | 20 May 2010 |
| Commenced | 1 July 2010 (*Gaz* G24, 16 June 2010, p 2) |

***Personal Property Securities (National Uniform Legislation) Implementation Act 2010* (Act No. 30, 2010)**

| | |
|---|---|
| Assent date | 9 September 2010 |
| Commenced | ss 58 to 60: 30 January 2012 (*Gaz*, S2, 24 January 2012); rem: 25 November 2011 (*Gaz*,S68, 25 November 2011) |

***Consumer Affairs and Fair Trading Amendment (National Uniform Legislation) Act 2010* (Act No. 41, 2010)**

| | |
|---|---|
| Assent date | 8 December 2010 |
| Commenced | 1 January 2011 (*Gaz* S71, 20 December 2010) |

***Local Court (Related Amendments) Act 2016* (Act No. 8, 2016)**

| | |
|---|---|
| Assent date | 6 April 2016 |
| Commenced | 1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and *Gaz* S34, 29 April 2016) |

## 3 LIST OF AMENDMENTS

| | |
|---|---|
| s 4 | amd No. 30, 2010, s 53 |
| s 9 | amd No. 41, 2010, s 30; No. 8, 2016, s 45 |
| s 19 | amd No. 12, 2010, s 3 |
| | sub No. 30, 2010 s 53 |
| s 27 | amd No. 4, 2007, s 7; No. 12, 2010, s 3 |
| s 28 | amd No. 12, 2010, s 3 |
| s 30 | amd No. 12, 2010, s 3 |