



Disposal of Uncollected Goods Act



Summary information for the motor vehicle industry

Many businesses are left holding goods, which customers do not return to collect. These goods often become a nuisance and take up valuable storage space.

Introduction

Many businesses are left holding goods, which customers do not return to collect. These goods often become a nuisance and take up valuable storage space.

The ***Disposal of Uncollected Goods Act 1970*** (the Act) and Disposal of Uncollected Goods Regulations 1971 (the Regulations) set out the procedures that need to be followed to dispose of uncollected goods. The Regulations include the forms you need to use when notifying various people of your intention to dispose of the uncollected goods.

Following these procedures and using the correct forms can save you problems at a later date, particularly if your customers turn up wanting their goods. You should be aware penalties apply for offences against the Act.

NOTE: It is always possible to reach an agreement with the customer when you accept the goods. This should be in writing and signed by the customer when the good(s) are left. You should seek independent legal advice should you wish to enter into agreements of this nature.

1. Goods covered by the Act

The Act covers bailment of three types of goods:

- 'Prescribed goods' under the regulations – e.g. motor vehicle parts, motor vehicle accessories and batteries.
- Goods not exceeding \$3,500 in value – e.g. a vehicle fit for wrecking only or vehicle parts.
- Goods exceeding \$3,500 in value – e.g. a motor vehicle.

'Bailment' is the delivery of goods by their owner (the bailor) to another person (the bailee) upon a promise that they will be returned by the owner.

For example, if a motor vehicle is left at a workshop for repair, the repairer is the bailee of the motor vehicle and the customer is the bailor as they are the owner of the goods.

2. Ready for redelivery

Whether or not goods are considered to be ready for redelivery will depend on the circumstances by which the goods were initially accepted.

For example, if a motor vehicle is left by a customer at a workshop for inspection and repair, the goods will be considered ready for collection when the inspection and repair have been carried out.

- If the goods were accepted for repair or other treatment, then they are ready for redelivery when the repair or other treatment has been carried out.
- If the goods were accepted for inspection, they are ready for redelivery when the inspection has been carried out.
- If the goods were accepted for custody, they will be ready for redelivery when the period of custody has expired:
 - ▶ if there is no specified period of arranged custody, then the period is taken to be seven (7) days after they are so accepted.
- If the goods were accepted for storage, they will be ready for redelivery when the period of arranged storage has expired, or seven (7) days if no arrangement was made.

3. Service of documents

Generally, service of documents can be done in the following ways:

- Personal service by delivering the document to the party personally.
- Posting the document to the party's last known address.
- Leaving the document at the party's residence, or if they are a principal of a business, at the usual or last known place of business.

- d. In the case of a corporation or association, by delivering or posting the document to its principal place of business or registered office in Western Australia.

It is a matter for you to decide how you will serve the documents and it may depend on the particular circumstances. If in doubt, you should seek independent legal advice.

It is recommended you use registered mail when posting documents as this will give you a received/return record.

4. Record keeping

It is important to consider what records you keep in relation to the goods which are held at your premises. Whatever disposal method is used for the goods, be sure to keep a record of communication with the customer, every notice sent and documents relating to your costs for storing and disposing of the goods.

The Act requires that within seven days of selling or disposing of uncollected goods you must record the details of the sale or disposal in either **Form 13** or **Form 14**, depending on whether it is a disposal by court order. This record together with the notices sent to your customer must be retained for a period of six years.

5. Disposal of uncollected goods which are prescribed goods

NOTE: All references to forms are those set out in Schedule 2 of the Regulations.

After the goods are ready for redelivery to the customer, the following action is required.

Written notice must be given to advise the customer that their goods can be collected by:

- completing a **Form 1 'notice that goods are ready for redelivery'**; and
- serving this notice on the person who left the goods with you.

If you have not already done so, you may wish to advise the customer at the same time as serving the **Form 1** that charges for storage will be incurred if the goods are not collected by a particular date.

Summary of procedure

- If you receive a **'Notice of dispute'** from the customer, please refer to Part 8 of this publication for further information.
- If you have not received a **'Notice of dispute'** and the customer has not collected the goods within three months of the date of serving the **Form 1** on the customer, a second notice must be given to the customer telling them that you are going to dispose of the goods. This notice is a **Form 2 'Notice of intention to sell or otherwise dispose of goods'**.

- Deliver a copy of **Form 2** to each of the following:
 - ▶ the person who gave you the goods;
 - ▶ every person who you know claims an interest in the goods; and
 - ▶ the Commissioner of Police.
- It is important to keep a record of the service details that is, who served the form, the date, the time, place of delivery, for each of the notices you serve under the Act.
- If you have not received a **'Notice of dispute'** within one month after serving of the **Form 2**, you may attempt to dispose of the goods by auction or private sale.
- Keep trying to sell the goods for one month.
- If you are unable to sell the goods, and if you have not received a **'Notice of dispute'**, you may dispose of the goods in whatever manner you choose.
- If you sell the goods:
 - ▶ deduct from the proceeds all of your lawful and reasonable moneys owed, charges and sale expenses including advertising, storage, sales commission, insurance, etc;
 - ▶ if there is a shortfall, you may claim the balance from the party who left the goods with you as a debt in a court of competent jurisdiction;
 - ▶ if there is a surplus, deliver the surplus to the person who left the goods with you; and
 - ▶ if the person who left the goods with you cannot be found and the surplus remains unclaimed for 28 days, lodge the surplus with the State Treasury along with a **Form 13 'Record of goods disposed of, not under court order'**.
- If you dispose of the goods other than by sale, you may claim your outstanding charges from the party who left the goods with you as a debt in a court of competent jurisdiction.
- Within seven days after the sale or other disposal you must complete a **Form 13 'Record of goods disposed of, not under court order'**.

6. Disposal of uncollected goods less than \$3,500 in value

NOTE: All references to forms are those set out in Schedule 2 of the Regulations.

After the goods are ready for redelivery to the customer, written notice must be given to advise the customer that their goods can be collected by:

- completing a **Form 1 'Notice that goods are ready for redelivery'**; and
- serving this notice on the person who left the goods with you.

If you have not already done so, you may wish to advise the customer at the same time as serving the **Form 1** that charges for storage will be incurred if the goods are not collected by a particular date.

Summary of procedure

- If you receive a **'Notice of dispute'** from the customer, please refer to Part 8 of this publication for further information.
- If you have not received a **'Notice of dispute'** and the customer has not collected the goods within six months of the date of serving the **Form 1** on the customer, a second notice must be given to the customer informing them that you are going to dispose of the goods. This notice is a **Form 2 'Notice of intention to sell or otherwise dispose of goods'**:
 - ▶ A copy of the **Form 2** must also be served on anyone you know who has an interest in the goods and the Commissioner of Police.
 - ▶ A notice must also be published in a newspaper with state circulation and in the Government Gazette.
- It is important to keep a record of the service details that is, who served the form, the date, the time and place of delivery for each of the notices that you serve under the Act.
- If after one month the customer does not respond to the second notice, you can sell the goods by public auction. If the goods are not sold at public auction after there have been two attempts at sale at auction not less than 14 days apart, then you may dispose of the goods in whatever manner you choose.
- If you sell the goods:
 - ▶ deduct from the proceeds all of your lawful and reasonable moneys owed, charges and sale expenses (including advertising, storage, sales commission, insurance, etc.);
 - ▶ if there is a shortfall, you may claim the balance from the party who left the goods with you, as a debt in a court of competent jurisdiction;
 - ▶ if there is a surplus, deliver the surplus to the person who left the goods with you; and
 - ▶ if the person who left the goods with you cannot be found and the surplus remains unclaimed for 28 days, lodge the surplus with the State Treasury along with a **Form 13 'Record of goods disposed of, not under court order'**.
- If you dispose of the goods other than by sale, you may claim your outstanding charges from the party who left the goods with you as a debt in a court of competent jurisdiction.
- Within seven (7) days after the sale or other disposal you must complete a **Form 13 'Record of goods disposed of, not under court order'**.

7. Disposing of uncollected goods in excess of \$3,500 in value

NOTE: All references to forms are those set out in Schedule 2 of the Regulations.

After the goods are ready for redelivery to the customer, written notice must be given to advise the customer that their goods can be collected by:

- completing a **Form 1 'Notice that goods are ready for redelivery'**; and
- serving this notice on the person who left the goods with you.

If you have not already done so, you may wish to advise the customer at the same time as serving the **Form 1** that charges for storage will be incurred if the goods are not collected by a particular date.

Summary of procedure

- If you receive a **'Notice of dispute'** from the customer, please refer to Part 8 of this publication for further information.
- If you have not received a **'Notice of dispute'** and the customer has not collected the goods within six months of the date of serving the **Form 1** on the customer, a second notice must be given to the customer informing them that you are going to dispose of the goods. This notice is a **Form 4 'Notice of intention to apply for an order to sell or otherwise dispose of goods in excess of \$3,500'**.
- Deliver a copy of **Form 4** to each of the following:
 - ▶ the person who gave you the goods;
 - ▶ every person who you know claims an interest in the goods;
 - ▶ the Commissioner of Police; and
 - ▶ a notice must also be published in a newspaper with state circulation and in the Government Gazette.
- It is important to keep a record of the service details that is, who served the form, the date, the time and place of delivery, for each of the notices that you serve under the Act.
- If after one month the customer does not respond to the second notice, you can apply to the Magistrates Court for an order to sell or dispose of the goods by filling out a **Form 8 'Application under part vi for an order to sell or otherwise dispose of goods valued in excess of \$3,500'**. There is a filing fee attached to this application. Visit www.magistratescourt.wa.gov.au for more information.
- A copy of the **Form 8** application must be served on the customer, along with anyone you know has an interest in the goods.
- A **Form 11 'Endorsement of service'** should be completed, with a copy of the **Form 8** attached, to prove the form was served in accordance to the Act.

- The court will give you a place, date and time for the hearing of the application (the court notice).
- A copy of the court notice must be provided:
 - ▶ to the owner of the goods;
 - ▶ to every person who you know claims an interest in the article; and
 - ▶ for yourself.
- Attend the hearing at the time and place on the court notice.
- At the hearing:
 - ▶ ensure that any witnesses you wish to call, attend the hearing with you;
 - ▶ take copies of all the paperwork you have completed in complying with the Act; and
 - ▶ have details of all the costs and expenses you have incurred complying with the provisions of the Act and the court will decide what is a reasonable cost to pass on to the person who left the goods with you.

The court has the power to order the disposal of the goods and to award costs such as storage fees, advertising fees and any other fees you have paid to comply with the provisions of the Act.

Refer to Part 9, 'Once a court order has been obtained' of this publication for further information.

8. Summary of procedure when you receive a notice of dispute

There is no prescribed form set out in the regulations. The notice of dispute needs to set out in adequate detail what the owner is disputing.

- An owner of the goods may refuse to either:
 - ▶ pay the sum that you claim to be due by way of charges in relation to the goods;
 - ▶ take re-delivery of the goods;
 - ▶ give directions for re-delivery of the goods;
 - ▶ accept that the goods described in the notice are Prescribed Goods; or
 - ▶ accept the accuracy of the assessment of the value of the goods as not exceeding \$3,500.
- On any of the following grounds:
 - ▶ the charges are excessive; or
 - ▶ the owner is not satisfied that the inspection, custody, storage, repair or other treatment of the goods has been properly carried out.

If you receive a notice of dispute, you may not sell or otherwise dispose of the goods until the dispute has been determined.

The steps to take are:

- Contact the owner and attempt to resolve the dispute.
- If successful, you are likely to have resolved the whole problem but you may still wish to continue to dispose of the goods.

- Deliver to the owner a **Form 3 'Notice under part v to treat a dispute as determined'**.
- If one month after the owner has received the **Form 3**, the owner has not given you a notice in writing that he or she objects to the dispute being treated as determined, the dispute is deemed to be determined and you can continue the process.
- If either you cannot successfully resolve the dispute or within one month of receiving your notice of determination, the owner gives you a notice in writing that he or she objects to the dispute being treated as determined, you can apply to the court to determine the dispute by completing, filing and serving the owner with a copy of a **Form 7 'Application under part v for summary determination of a dispute'**.
- Once you have served a copy of the **Form 7**, you must complete a **Form 11, 'Endorsement of service'**, attaching a copy of the **Form 7**.
- The court will give you a court notice with the place, date and time for the hearing of the application.
- Deliver a copy of the court notice to the owner and keep one copy for yourself. The person who delivers the court notice should record when, where and to whom the court notice was given.
- At the hearing:
 - ▶ ensure any witnesses that you wish to call attend the hearing with you;
 - ▶ take copies of all the paperwork you have completed in complying with the Act; and
 - ▶ have details of all the costs and expenses you have incurred complying with the provisions of the Act and the court will decide what is a reasonable cost to pass on to the person who left the goods with you.

The court has the power to order the disposal of the goods and to award costs such as storage fees, advertising fees and any other fees you have paid to comply with the provisions of the Act.

Refer to Part 9 'Once a court order has been obtained' of this publication for further information.

9. Once a court order has been obtained

- If you sell the goods (pursuant to the court order):
 - ▶ deduct from the proceeds all of your lawful and reasonable moneys owed, charges and sale expenses including advertising, storage, sales commission, insurance, etc;
 - ▶ if there is a shortfall, you may claim the balance from the party who left the goods with you as a debt in any court with appropriate jurisdiction;
 - ▶ if there is a surplus, deliver the surplus to the person who left the goods with you; and
 - ▶ if the person who left the goods with you cannot be found and the surplus remains unclaimed for 28 days, lodge the surplus with the State Treasury with a **Form 14 'Record to goods disposed of pursuant to a court order'**.

- If you dispose of the goods, other than by sale you may claim your outstanding charges from the party who left the goods with you as a debt in any court with appropriate jurisdiction.
- Within seven days after the date of sale or other disposal you must complete a **Form 14 'Record of goods disposed of pursuant to a court order'**.
- Within 14 days after the date of sale or other disposal you must file a copy of **Form 14 'Record of goods disposed of pursuant to a court order'** in the court, where any person claiming an interest in the goods may inspect it.

*NOTE: Failure to comply with the above provisions regarding the completion and filing of **Form 14**, or preparation of a document that is false leaves you liable for prosecution under the Act.*

This fact sheet is a general guide only and is not a substitute for the legislation. You should seek expert or legal advice about your particular situation.

For more information refer to the **Disposal of Uncollected Goods Act 1970** and Disposal of Uncollected Goods Regulations 1971 available from State Law Publisher 6552 6000 or on their website: www.slp.wa.gov.au

The Department of Mines, Industry Regulation and Safety acknowledges the professional contribution of the Motor Trade Association of Western Australia's staff for the development of this information.

Disclaimer – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

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