

Disposal of Uncollected Goods

Terms of Reference

In 1968 the Committee was asked to consider the need for legislation to permit bailees to dispose of abandoned or uncollected goods.

Background of Reference

In general terms a bailee is a person who, for whatever reason, has possession of goods which should have been collected by the owner, the bailor. Bailor/bailee relationships occur in a wide range of circumstances and therefore any reform to this area of law had the potential to impact upon a wide variety of people in situations from landlords to small businesses. At the time of the reference the law governing bailments (the goods and their disposal) was generally found in the common law. Case law imposed upon the bailee a duty of care (and resultant liability if breached) over all uncollected or abandoned goods. Furthermore, except in rare cases the bailee could not, without risk, unilaterally dispose of the property even where the owner's whereabouts were unknown and their conduct suggested abandonment of the property.

The reference arose as a result of calls for reform from various interested groups and associations. The Automobile Chamber of Commerce drew attention to the difficulties facing motor traders when vehicles left for repair were not collected. The Law Society of Western Australia brought attention to similar difficulties confronting keepers of boarding houses when furniture and other goods were left on premises following the decampment of a lodger. The media had also focused attention on similar problems faced by parties from shoe repairers to landlords.

The Committee produced a working paper on the subject in December 1968 which analysed the existing law in Western Australia and in other comparable jurisdictions both within Australia and overseas.¹

Nature and Extent of Consultation

The working paper was distributed for comment to approximately 50 organisations and individuals throughout Australia and overseas including the Chief Justice and judges of the Supreme Court of Western Australia, The Australian Finance Corporation (WA Division) and the Law School of the University of Western Australia. As a result of the discussion generated by the paper and the significance that reform in this area had to the wider commercial community, the Committee held consultations with and considered reports from a great variety of interest groups. These included the Australian Finance Conference, the Law Society of Western Australia, the Perth Chamber of Commerce, the Police Department of Western Australia, the Real Estate Institute of Western Australia, the Retail Trade Association, the Trade Protection Association and the Western Australian Automobile Chamber of Commerce. The Committee submitted its final report in April 1970.²

Recommendations

The Committee recommended that specific legislation be enacted to deal with the disposal of uncollected goods.³ Principally, the Committee recommended that:

- Goods should be divided into categories dependent on whether they had resulted from a commercial transaction or by other lawful, non-business means.

¹ Specifically, the United Kingdom, Victoria, New South Wales, Queensland and Tasmania.

² Law Reform Committee of Western Australia, *Disposal of Uncollected Goods*, Project No 7 (1970).

³ The Committee's detailed recommendations may be found in the draft Bill annexed to the final report.

- Goods accepted in the course of business should then be further categorised according to their monetary value, thus determining whether it is economic to apply the provisions of the Act. The Committee recommended separate methods for dealing with such goods ranging from legal disposal after three months, to the necessity for a court order to dispose of more valuable goods.
- Goods that did not originate in the course of business should only be disposed of by court order.
- A bailee that seeks to dispose of goods should be required to give notice to the Police Commissioner of their intention (thus enabling the police to ensure such goods are not stolen).
- Actions under the new legislation should be heard by a magistrate in the Court of Petty Sessions.
- The court should determine any questions in respect to unsettled disputes between bailor and bailee.
- The Bill should expressly preserve third party rights and, subject to good faith and notice requirements, the third party should gain an indefeasible title.
- Contrary to other legislation, sub-contractors have all the disposal rights that the principal bailee holds.
- Surplus money should be paid within twenty-eight days to the Treasurer who has power to pay the money to whomever he or she deems entitled.

A comprehensive summary of recommendations may be found at pages 3–9 of the Committee's final report.

Legislative or Other Action Undertaken

In 1970 Parliament passed the *Disposal of Uncollected Goods Act 1970 (WA)* which was almost identical in language, purpose and process to the draft Bill produced by the Committee. The Act implemented all of the Committee's recommendations.