

## Queensland



### Explanatory Notes for SL 2004 No. 119

#### *Second-hand Dealers and Pawnbrokers Act 2003*

## **SECOND-HAND DEALERS AND PAWNBROKERS REGULATION 2004**

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### **1 Short title**

Second-hand Dealers and Pawnbrokers Regulation 2004

### **2 Authorising law**

The following legislative provisions allow for the making of regulations under the various Acts (the Acts):

- Section 115 (1) of the Second-hand Dealers and Pawnbrokers Act 2003
- Section 459 of the Police Powers and Responsibilities Act 2000
- Section 165 of the State Penalties and Enforcement Act 1999.

### **3 Objectives of the legislation**

The proposed legislation will amend the Regulations to the Second-hand Dealers and Collectors Act 1984 (SHD Act) and the Pawnbrokers Act 1984 (PB Act) as a result of the National Competition Policy (NCP) review undertaken on both these Acts. This will involve the consolidation and reform of the two Regulations in accordance with the NCP recommendations.

#### **4 Reasons for the subordinate legislation**

At a meeting of the Council of Australian Governments on 11 April 1995, the Queensland Government, together with other Australian States and Territories, signed an agreement with the Commonwealth to implement National Competition Policy (NCP) and related reforms. The Competition Policy Agreement (CPA) requires all State and Territory Governments to review, and where appropriate, reform all anti-competitive legislation.

The CPA's guiding principle is that legislation should not restrict competition unless it can be demonstrated that:

- benefits of the restriction to the community, as a whole, outweigh the costs, and
- objectives of the legislation can only be achieved by restricting competition.

The SHD Act and the PB Act were reviewed in accordance with the CPA. The review was conducted within the NCP Unit of the Office of Fair Trading.

The NCP Report identified licensing and business conduct restrictions on competition in both of the SHD Act and the PB Act. The NCP recommendations implemented include:

- consolidation of the two Acts into a single piece of legislation;
- retention of the licensing of second-hand dealers, pawnbrokers and entrepreneurs;
- repeal of the provisions relating to collectors;
- modification of licensing requirements including introduction of a single licence type for both second-hand dealers and pawnbrokers, multi-site licences, replacement of the "fit and proper person" test with a "suitability test" for applicants, and a new option for one or three year licence renewals;
- introduction of optional computerisation of transaction records; and
- the current disposal of unredeemed pledges by auction be made optional with the introduction of the alternative of disposal of sale through the premises where the pledge was made.

## **5 Consistency with authorising law**

The proposed regulation is consistent with the authorising law. It is necessary to make the proposed amendments to ensure that the proposed regulation is consistent with the new Second-hand Dealers and Pawnbrokers Act 2003.

## **6 Estimated cost of government implementation**

The fee changes, approved by the Government, permit a budget neutral option, providing the Office of Fair Trading with the same amount of revenue as under the current fee structure and as factored into the Department's forward estimates. This will ensure that current levels of monitoring and enforcement can be maintained.

## **7 Fundamental legislative principles**

The proposed regulation is consistent with fundamental legislative principles.

## **8 Consultation**

Consultation occurred with the following community and industry organisations and government agencies.

### **(a) Consumer and industry**

A Regulatory Impact Statement (RIS) was advertised in The Courier-Mail, the Government Gazette and the OFT web site as being available for public comment. It was also made available on the 'Queensland Regulations Have Your Say' web-site administered by the Department of State Development. It was released for public comment during the period from 10 December 2003 to 30 January 2004. It was advertised in The Courier-Mail on Saturday 13 December 2003.

OFT also wrote directly to relevant stakeholders notifying them of the availability of the RIS. This included a letter being sent to the 2,492 second-hand dealers, 54 collectors and 214 pawnbrokers who are currently licensed in Queensland notifying them of the release of the RIS and inviting comment. The letter was sent to the Queensland Pawnbrokers Association, the Pawnbrokers Industry Federation, the Insurance Council

of Australia, the Anti-Counterfeiting Action Group, the Retailers Association of Queensland Ltd, the Queensland Retail Traders & Shopkeepers Association, the Queensland Antique Dealers Association, the Salvation Army, and the Endeavour Foundation.

### **(b) Government**

Consultation was undertaken with all relevant government departments including the Department of the Premier and Cabinet, Queensland Treasury, the Business Regulation Reform Unit of the Department of State Development, Department of Justice and the Attorney-General, Queensland Police and the Department of Primary Industries.

### **Results of consultation**

The Department of State Development confirmed that a RIS was required under the provisions of the Statutory Instruments Act 1992 and were satisfied with the final RIS that was released for public consultation. Queensland Treasury advised that the NCP requirements have been satisfied as the proposed changes to licensing and fees were assessed during the Public Benefit Test (PBT) process conducted in relation to the SHD Act and the PB Act. There is no further requirement for PBT assessment as this Regulation is only carrying out the PBT report recommendations into effect.

There were fourteen responses to the RIS made by the community and industry stakeholders. These responses were made from three collectors, ten second-hand dealers, two of which were from industry associations and one pawnbrokers' industry association. Submissions received as a result of consultation confirmed the negative financial impact on second-hand dealers, particularly small business and collectors, as was previously identified and considered by Government.

It was identified that there would be a negative financial impact on second-hand dealers due to an increase in annual renewal fees from \$236 to \$305 (increase of \$69). Ten second-hand dealers, two of which were from antique dealers associations criticized the fee increase for second-hand dealers.

This negative financial effect is counterbalanced by the removal of the requirement for separate licences for multiple premises and separate licences for dual occupation licence holders. Seven of the ten second-hand

dealers argued that this only benefited businesses with multiple sites and disadvantaged small business. Two small businesses subsequently requested a decrease in fees for small business.

The proposed fees will have a positive financial impact on pawnbrokers by reducing their current annual fee from \$395 to \$305 (reduction of \$95) and removing the requirement for separate licences for multiple premises and separate licences for dual occupation licence holders. No pawnbrokers responded, the Pawnbrokers Industry Federation provided a submission, but the comments were outside the scope of the Regulation.

It was identified that there would be a major financial impact on collectors who wish to continue by requiring them to register as second-hand dealers. Collectors currently pay \$51.30 as an application and annual renewal fee. The application fee under the proposed Regulation would be \$480 and the annual renewal fee would be \$305.00. One collector responded to the RIS and two had previously made comment on the draft Bill, criticizing the substantial increase. One of the collectors stated that they would not be able to afford the higher fees. One collector asked if they could be exempt from the application fee of \$480 as they have already been subject to the criminal history check.

Therefore the consultation confirmed the impacts already identified and considered by Government. The fee changes permit a budget neutral option, providing the Office of Fair Trading with the same amount of revenue as under the current fee structure and as factored into the Department's forward estimates. This will ensure that current levels of monitoring and enforcement can be maintained.

## **NOTES ON PROVISIONS**

### **Section 1 – Short title**

Provides for the short title of the new regulation.

### **Section 2 – Commencement**

Provides the commencement date for the regulation.

**Section 3 – Licence must be signed**

Replicates and amalgamates the existing section 5 of the Second-hand Dealers and Collectors Regulation 1994 (SHD Regulation) and the Pawnbrokers Regulation 1994 (PB Regulation).

**Section 4 – Register of licences**

Replicates and amalgamates the existing section 6 of the SHD Regulation and the PB Regulation. Identifies clearly what information is to be kept on the register of licences.

**Section 5 – Entries in transactions register – Act, section 37(1)**

This section removes the requirements with regards to registers from the Acts (section 44(2) SHD Act and section 32(4) PB Act) to the Regulation, as a result of the NCP recommendation to have the option of electronic registers. There is now an option to have a bound book as the register or an electronic register.

**Section 6 – Prescribed particulars – Act, section 37(2)**

This section replicates the existing section 10 of the SHD Regulation. The prescribed particulars are set out in more detail. This is due to the fact that registers no longer need to be bound books and can be electronic. Therefore, the electronic register must contain entries for the prescribed particulars set out in this section.

**Section 7 – Entries in property register – Act, section 53(1)**

This section removes the requirements with regards to registers from the Acts (section 44(2) SHD Act and section 32(4) PB Act) to the Regulation, as a result of the NCP recommendation to have the option of electronic registers. There is now an option to have a bound book as the register or an electronic register.

**Section 8 – Prescribed particulars – Act, section 53(2)**

This section replicates the existing section 32(2) of the PB Regulation. The prescribed particulars are set out in more detail. This is due to the fact

that registers no longer need to be bound books and can be electronic. Therefore, the electronic register must contain entries for the prescribed particulars set out in this section.

### **Section 9 – Prescribed particulars – Act, section 61(2)**

This section replicates the existing section 32(3) of the PB Regulation. The prescribed particulars are set out in more detail. This is due to the fact that registers no longer need to be bound books and can be electronic. Therefore, the electronic register must contain entries for the prescribed particulars set out in this section.

### **Section 10 – Property that is not second-hand property**

Replicates the existing section 11 of the SHD Regulation.

### **Section 11 – Fees**

Replicates and amalgamates the existing section 4 of the SHD Regulation and the PB Regulation.

### **Section 12 – Application fee for licence if person held a transitional licence**

This transitional provision provides for existing licensees to apply for a new licence under the Second-hand Dealers and Pawnbrokers Act 2003, at the lower renewal fee. Existing licensees are also entitled to a credit of any transitional amount remaining on their existing licence(s).

### **Section 13 – Application fee for licence if person held a collector's licence**

The transitional provision allows collectors who apply for a licence as a second-hand dealer under the Second-hand Dealers and Pawnbrokers Act 2003 to receive a credit for any residual amount remaining on their collector's licence and can be charged the lower renewal fee.

**Section 14 – Regulations amended in sch 3**

This section notes that Schedule 3 amends the regulations it mentions.

**Schedule 1 – Property that is not second-hand property**

This schedule replicates the existing schedule 2 of the SHD Regulation. Used video cassettes are removed, as section 6(2)(d) of the Second-hand Dealers and Pawnbrokers Act 2003 now covers this.

**Schedule 2 – Fees**

This schedule amalgamates the fee schedules from the existing SHD Regulation and the PB Regulation and amends the fees as a result of the NCP recommendations and as set out in the RIS.

**Schedule 3 – Consequential amendments**

This schedule details amendments to the Police Powers and Responsibilities Regulation 2000 and the State Penalties and Enforcement Regulation 2000. It omits the references to the SHD Act and the PB Act and inserts the new Act name. This continues the status quo, by allowing police officers to use their powers under the Police Powers and Responsibilities Act 2000 to enforce the Second-hand Dealers and Pawnbrokers Act 2003 and aligns the existing infringement notices with the new sections of the Second-hand Dealers and Pawnbrokers Act 2003.

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**ENDNOTES**

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Office of Fair Trading.