

Queensland



Regulatory Impact Statement for SL 2004 No. 119

Second-hand Dealers and Pawnbrokers Act 2003

SECOND-HAND DEALERS AND PAWNBROKERS REGULATION 2004

1 Introduction

The proposed *Second-hand Dealers and Pawnbrokers Regulation 2003*¹ is being developed as subordinate legislation under the *Second-hand Dealers and Pawnbrokers Act 2003*, which has not yet commenced and will repeal the current *Second-hand Dealers and Collectors Act 1984* and the *Pawnbrokers Act 1984*.

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:

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

1 The proposed regulation became the *Second-hand Dealers and Pawnbrokers Regulation 2004*

The *Second-hand Dealers and Collectors Act 1984* and the *Pawnbrokers Act 1984* have been reviewed in accordance with the CPA. The review was conducted within the NCP Unit of the Office of Fair Trading.

Second-hand dealing and pawnbroking are related businesses in that they both involve the resale of pre-owned goods. There are currently 2,492 second-hand dealers, 54 collectors and 214 pawnbrokers licensed in Queensland. 189 of the pawnbrokers are also licensed as second-hand dealers. As a consequence of this connection, a combined NCP review was undertaken of both the Acts.

The *Second-hand Dealers and Pawnbrokers Act 2003* implements the following National Competition Policy recommendations:

- 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 alternative of disposal of sale through the premises where the pledge was made, being introduced.

It is proposed to amend the Regulations of these two Acts as a result of the NCP recommendations. This will involve the consolidation and reform of the two Regulations in accordance with the NCP recommendations. As a result of the changes to the licensing requirements, the existing registration fees and application fees will be replaced with a new single application fee of \$480.00 and a new single annual registration fee of \$305.00 for the regulation of the second-hand dealing and pawnbroking industry.

Under the *Statutory Instruments Act 1992*, if a proposed Regulation is likely to impose appreciable costs on the community or part of the community, then, before the legislation is made, a regulatory impact statement (RIS) must be prepared about the Regulation to evaluate its

impacts on the community, including the costs and benefits and any alternatives considered as part of the regulatory design process.

Submissions may be subject to Freedom of Information and other laws, which should be taken into consideration when making submissions. Submissions should be submitted by **close of business 30 January 2004** and can be forwarded to:

Second-hand Dealers and Pawnbrokers Regulation 2003 RIS Project
Office of Fair Trading
GPO Box 3111
BRISBANE QLD 4001
Facsimile: 07 3119 0019
Email: OFT-P&L@dtrft.qld.gov.au

2 Background

The Office of Fair Trading administers a number of Acts which impose occupational licensing requirements. These licensing requirements are designed for the protection of both consumers and industry alike in ensuring reputable business practices across a wide range of industries.

The *Second-hand Dealers and Collectors Act 1984* licenses and regulates second-hand dealers and collectors and the *Pawnbrokers Act 1984* performs a similar function in the pawnbroking industry. A second-hand dealer carries on the business of dealing in or buying, selling or exchanging second-hand goods. A pawnbroker carries on the business of advancing money on articles taken as a pawn or pledge in return for interest. Second-hand dealing and pawnbroking are related businesses in that both involve the resale of pre-owned goods.

3 Stakeholders

Stakeholders affected by the change in fees for licenses are:

- industry participants;
- the government in regulating industry to ensure that operators are suitable people and that compliance with the regulatory regimes is enforced;

- consumers and the general public who may be indirectly affected by licensees' services.

4 Authorising Law

The following legislative provisions allow for the making of Regulations imposing fees under the various Acts:

- *Second-hand Dealers and Collectors Act 1984* – section 72(2)(d)
- *Pawnbrokers Act 1984* – section 67(1)(d)
- *New Second-hand Dealers and Pawnbrokers Act 2003* – section 115(2)(a)

5 Policy Objective

The policy objectives of the Acts are to deter crime in the second-hand property market and to help protect consumers from purchasing stolen property.

The *Second-hand Dealers and Collectors Act 1984* creates a licensing regime for the regulation of persons who engage in the business of dealing and collecting second-hand goods. The *Pawnbrokers Act 1984* establishes a licensing regime for persons engaged in the pawnbroking industry. Typically, a pawnbroker loans money against an article offered by a client as collateral. The *Pawnbrokers Act 1984* requires pawnbrokers to perform certain duties and deals with the manner in which pawnbrokers handle pledged goods. The licensing restrictions provide a filter mechanism and prevent those persons who have criminal convictions from being licensed and in turn participating in pawnbroking, second-hand dealing or collecting businesses. The licensing regime also ensures that if people are convicted of offences against the Acts that their licence can be revoked and they are prevented from trading.

A NCP review of the two Acts has been undertaken. The NCP review identified a number of licensing and business conduct restrictions on competition in both Acts and the following NCP recommendations have been incorporated into the *Second-hand Dealers and Pawnbrokers Act 2003* which received royal assent on 22 October 2003 in Act No. 73 of 2003:

- consolidation of the two Acts into a single piece of legislation;

- retention of 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 alternative of disposal of sale through the premises where the pledge was made, being introduced.

As a result of the NCP review a second set of policy objectives has emerged, these being to rationalise the business licensing regime to remove restrictions on competition. The Regulations to the two Acts contain the licensing fees. The current fees do not align with the new licensing structure contained in the new Act and are not set at a level that allows for adequate enforcement and monitoring at current licensing levels. It is proposed to repeal the existing Regulations and consolidate and reform the two Regulations in accordance with the NCP recommendations. The proposed Regulation will set new fees.

6 Legislative intent

The primary objective of the new *Second-hand Dealers and Pawnbrokers Act 2003* is to protect consumers from purchasing stolen goods through the licensing system and regulating the conduct of second-hand dealers and pawnbrokers. The licensing system utilises a “suitable person” test, therefore preventing people convicted of criminal convictions from obtaining a licence. Second-hand dealers and pawnbrokers are required to maintain transactions and property registers and must give this information to the commissioner of the police service and authorised officers. This enables the police to identify stolen goods, as detailed information about goods sold second-hand or pawned must be detailed in the registers.

The new Act and the proposed Regulation aim to contribute towards the secondary policy objective of rationalising the licensing structure. The

new *Second-hand Dealers and Pawnbrokers Act 2003* creates the use of a single licence type, multi-site licences, three year licences and repeals the licensing of collectors.

The fees are an integral part of the licensing system, which enables government to enforce and maintain commercial standards of operators and to protect consumers. The policy objectives are achieved through the legislation by licensing dealers, regulating conduct to protect consumers from exposure to the risk of purchasing stolen goods and investigating and prosecuting breaches of the Acts. Licensing restrictions provide a filter mechanism and prevent those persons who have criminal convictions from being licensed and in turn participating in pawnbroking, second-hand dealing or collecting businesses.

Amendments to the Regulations will involve the repeal of the existing Regulations and the consolidation and reform of the two Regulations. They will introduce changes to fees to align them with the new licensing structure in the new Act.

7 Consistency with the authorising law

The proposed Regulation will be consistent with the authorising law. The primary policy objective of the authorising law is to protect consumers from purchasing stolen property and the secondary policy objective is to rationalise the licensing structure. The proposed Regulation supports the authorising law, as the changes to the fees align the new licensing structure with the Act and will allow for adequate enforcement and monitoring of the legislation.

8 Consistency with other legislation

The proposed Regulation does not conflict with any other legislation.

9 Options and alternatives

The RIS evaluates two possible alternatives under the *Second-hand Dealers and Pawnbrokers Act 2003*. The first considers the costs and benefits of the proposed changes in fees. The second considers the costs and benefits of not implementing the proposed changes in fees.

9.1 Option 1 – Fee changes

9.1.1 Impact on Industry

Occupational licensing, and conduct regulation create benefits to industry generally in ensuring a level playing field for all Queensland participants. The fee changes will impact differently on second-hand dealers, collectors and pawnbrokers, however in general terms they will provide resources to ensure that monitoring and enforcement of the legislation is maintained providing protection for legitimate businesses. Providing a regulatory environment that protects legitimate business and promotes competition will instil greater confidence in the industry and create conditions conducive to business growth.

This option presents minimal change for new entrants wishing to apply for a second-hand dealer's licence. There are 2,492 second-hand dealers currently licensed. The application fee will change from \$479.00 to \$480.00. There will be a negative financial impact on existing second-hand dealers with the annual renewal fee increased from \$244.00 to \$305.00 (an increase of \$61.00). This negative financial effect is counterbalanced by the benefit of the removal of the requirement for separate licences for multiple premises and separate licences for dual occupation licence holders.

189 second-hand dealers are also licensed as pawnbrokers in Queensland. There are 214 licensed pawnbrokers in Queensland. Dual occupation second-hand dealers will only be required to obtain the one licence as both a second-hand dealer and pawnbroker and will therefore benefit from the reduction in the fees. Under the existing *Second-hand Dealers and Collectors Act 1984*, 226 second-hand dealers currently pay for more than one licence as they operate from multiple premises. Fee changes proposed in this option will align with the new Act providing for one licence to cover multiple premises and involve some fee increases. As a consequence of operators only requiring 1 licence for multiple premises they should still benefit from a reduction in the fees.

Under the existing legislative framework, there are currently only 54 collectors licensed in Queensland. An annual licence fee of \$51.30 for collectors applies. Typically, collectors collect goods from private residences but may only dispose of those goods through second-hand dealers or auctioneers.

Under the new Act, collectors continuing to engage in the activities of second-hand dealers will be required to obtain second-hand dealers' licences. This represents an increase of \$253.70 in annual licensing fees. This would be counterbalanced however by the fact that they would no longer be limited in the method of disposal of goods and the economic benefit is that they may increase their business and profits selling to a wider market, for example being able to sell what they have collected at markets.

There are 214 licensed pawnbrokers in Queensland. Under existing legislation, a pawnbroker is restricted to the premises specified in the licence and only one licence may be issued in respect of each premises. The annual licensing fee is \$408.00 and the initial application fee for new entrants is \$801.00.

Under the new Act and Regulation, pawnbrokers will benefit from a reduction in their current annual fee from \$408.00 to \$305.00 (a decrease of \$103.00) and the fee for new entrants will be decreased from \$801.00 to \$480.00 (a decrease of \$321.00).

189 pawnbrokers are also licensed as second-hand dealers in Queensland. Dual occupation pawnbrokers will only be required to obtain the one licence as both a pawnbroker and second-hand dealer and will benefit from a reduction in the current annual fees from \$652.00 to \$305.00 (a decrease of \$347.00).

100 pawnbrokers currently pay for more than one licence as they operate from multiple premises or locations. Fee changes proposed in this option will align with the new Act providing for one licence to cover multiple premises. Operators with multiple premises will therefore benefit from the reduction in the fees, for example pawnbrokers operating two shops will have a reduction in fees from \$816.00 to \$305.00 (a decrease of \$511.00).

9.1.2 Impact on Consumers

Licensing of occupational groups gives consumers an indication that a potential supplier has been examined and assessed as having the character and skills required to undertake the work covered by the licence. This helps consumers choose between good and poor quality providers and promotes competition.

Industry and consumers will benefit from the fee changes by enabling the Office of Fair Trading to maintain current levels of monitoring compliance, handling of consumer and industry complaints and prosecution of serious breaches of both the licensing requirements and

conduct provisions more generally. Occupations such as second-hand dealing and pawnbroking can suffer from a poor image in the wider community. Licensing, with adequate regulatory support, promotes confidence in the integrity of the industry both from a consumer and industry perspective. If current regulatory activity is maintained, the policy objective of the legislation can be achieved by protecting consumers from purchasing stolen goods. If the trade in second-hand goods is adequately monitored, it makes it more difficult for stolen second-hand goods to be sold through second-hand dealers and pawnbrokers. This results in social and economic benefits for consumers, and if stolen goods can be tracked by police and recovered it protects consumers from subsequent financial loss.

The benefits to consumers as a result of collectors needing a licence but having fewer restrictions on the disposal of goods, is that there may be additional choice in the market and with extra competition in the second-hand dealers market there may be benefits in lower prices.

The costs to consumers of changing the licensing fees will be felt to the extent that they are passed on to the end user. However, if the industry is sufficiently competitive, it may be that some of these costs are absorbed into profit margins.

9.1.3 Impact on Government

The direct costs of licensing for the Office of Fair Trading include: administrative costs for wages; leasing and equipment costs; the maintenance of database systems; conducting fitness checks on applicants; and production of licenses. The Office of Fair Trading also pays Queensland Police a fee to conduct Queensland criminal history checks on applicants. Legal costs are incurred in administering and enforcing the legislation.

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.

Potential flow-on effects of achieving greater probity and integrity in these industries include the containment of associated professional liability insurance.

The Office of Fair Trading will be able to carry out its responsibilities under the new Act and Regulation and meet the strategic objectives of the

Government's *Smart State* strategy. Additional benefits are that there will be crime prevention and recovery of stolen goods in the community.

9.2 Option 2 – No fee changes

9.2.1 Impact on Industry

This option involves the introduction of a single multi-site licence and a licence fee based on current fee levels. The benefits to industry of this option are that, with no fee increases, the cost of establishing a new business for second-hand dealers or pawnbrokers will remain at current levels. Second-hand dealers would pay \$479.00 and pawnbrokers would pay \$801.00. Under option 1, the fee for new entrants would be \$480.00.

For existing second-hand dealers and pawnbrokers the current annual licensing fees are \$244.00 and \$408.00 respectively. Under option 1, the annual licensing fee for both second-hand dealers and pawnbrokers would be \$305.00.

There would be a negative financial impact on collectors who wish to continue by requiring them to become licensed as a second-hand dealer. Their initial application fee under this option would be \$479.00. The annual licensing fee would be increased from \$51.30 to \$244.00 (an increase of \$192.70). Under option 1, there is an increase of \$253.70 in annual licensing fees. The increase in fees would be counterbalanced however by the fact that they would no longer be limited in the method of disposal of goods and the economic benefit is that they may increase their business and profits selling to a wider market, for example being able to sell what they have collected at markets.

Both this option and option 1 would benefit second-hand dealers and pawnbrokers with multiple premises as they would only be required to obtain one licence. Those second-hand dealers and pawnbrokers that obtain both a second-hand dealers licence and a pawnbroker's licence would only have to obtain the one licence and not both.

The costs of this option to industry are found in the risk that it will result in unacceptable low levels of monitoring compliance and enforcement of the regulatory regimes. With fewer resources, there would be a greater risk that unlicensed operators would be allowed to flourish. Such illegal operators, offering lower prices, potentially take business away from the legitimate ones. There would also be greater risk that licensed operators

would conduct business in illegal and unethical ways and thus bring the industries into disrepute. Growth in unlicensed traders may force legitimate small businesses out of business.

9.2.2 Impact on Consumers

Negative impacts of this option include unacceptably low enforcement activities, greater risks of operators practising without licences, and resulting reductions in market and consumer confidence. If unlicensed operators were able to operate without sanction, there would be greater risk that consumers would be subject to illegal and unethical practices. Consumers may have a greater risk of purchasing stolen goods and less chance of recovering stolen goods, resulting in financial loss.

To the extent that the costs of any fee increase would be passed on to consumers, the benefits in not increasing the fees would be felt by consumers since licence fees would remain unaffected.

9.2.3 Impact on Government

Government will suffer a major annual revenue loss if this option is adopted and the fees are not changed. The Office of Fair Trading is the primary agency in the Queensland Government responsible for marketplace regulation. Economic and social change and the inadequacies of current regulatory responses to many existing and emerging marketplace issues are driving a growing community expectation that government will provide more effective regulation. There is a risk that these expectations will not be met.

If adequate enforcement and monitoring of legislation is not carried out, it may result in unlicensed traders operating and consumers being at greater risk of purchasing stolen goods. Stolen goods may not be able to be tracked if inaccurate records are kept by unethical traders. This will impact on the workload of the Queensland Police and increase the work load of the Office of Fair Trading where a shift of focus is likely from proactive monitoring to resource intensive, reactive complaint investigation and resolution, or prosecution.

10 Consistency with fundamental legislative principles

The legislation is consistent with fundamental legislative principles.

11 National Competition Policy

The amendments to the legislation are a result of National Competition Policy recommendations to remove restrictions to competition identified in the legislation.

SCHEDULE

Type of fee	Existing fee	Proposed fee
Application for a dealer's licence	\$479.00	\$480.00
Application for a dealer's licence for 3 years	–	\$1 090.00
Application for a collector's licence	\$51.30	*
Application for renewal of a dealer's licence	\$244.00	\$305.00
Application for a 3 year renewal of a dealer's licence	–	\$915.00
Application for renewal of a collector's licence	\$51.30	*
Application for a pawnbroker's licence	\$801.00	\$480.00
Application for a pawnbroker's licence for 3 years	–	\$1 090.00
Application for renewal of a pawnbroker's licence	\$408.00	\$305.00
Application for a 3 year renewal of a pawnbroker's licence	–	\$915.00
Application to change the place endorsed on a licence	\$29.30 (SHD) \$29.80 (PB)	\$29.30
Application for a replacement licence	\$27.10 (SHD) \$29.80 (PB)	\$27.10
Inspection of the register of licences	\$29.30 (SHD) \$27.10 (PB)	\$27.10

Notes

- *No longer a licence category. If collectors wish to trade in second-hand goods they must obtain a second-hand dealers licence. Collectors will no longer be restricted to selling the goods they collect to licensed dealers or auctioneers.

- Note that because the licenses are now amalgamated, licensees will no longer be paying two fees, as is currently the situation in many cases.
 - “SHD” means the current *Second-hand Dealers and Collectors Act 1984*.
 - “PB” means the current *Pawnbrokers Act 1984*.
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ENDNOTES

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