

Regulatory Impact Statement
Pawnbrokers and Second-hand
Dealers Regulation 2015

June 2015



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TABLE OF CONTENTS

<u>ABOUT THE REGULATION</u>	4
<u>THE CONSULTATION PROCESS</u>	5
<u>OBJECTIVE AND RATIONALE OF THE REGULATION</u>	7
OBJECTIVE	7
RATIONALE	8
<u>OPTIONS FOR ACHIEVING OBJECTIVES</u>	9
<u>IMPACT ASSESSMENT OF OPTIONS</u>	10
ASSESSMENT OF OPTION 1	10
BENEFITS	10
CONCLUSION	11
ASSESSMENT OF OPTION 2	11
COSTS	11
BENEFITS	12
CONCLUSION	12
ASSESSMENT OF OPTION 3	12
COSTS	12
BENEFITS	12
CONCLUSION	13
SUMMARY OF COSTS AND BENEFITS FOR EACH OPTION	13
PREFERRED OPTION	13
<u>DISCUSSION OF THE PROPOSED REGULATION</u>	14
UPDATE TO THE DEFINITION OF PRESCRIBED GOODS	14
RECORDING PURCHASER DETAILS	14
FURNISHING RECORDS TO POLICE	15
CHANGES TO THE FORMS CONTAINED IN SCHEDULE 1	15
INFORMATION TO BE DISCLOSED ON A PAWN TICKET	16
RESTORATION NOTICES UNDER PART 4A OF THE ACT	16
EXTRA INFORMATION TO BE RECORDED BY PAWNBROKERS	17
<u>APPENDICES</u>	18
<u>APPENDIX 1 – SUMMARY OF THE DRAFT REGULATION</u>	19
PART ONE – PRELIMINARY	19



PART 2 – RECORDS	19
PART 3 – REGULATION OF LICENSED BUSINESSES	20
PART 4 – SPECIAL PROVISIONS RELATING TO PAWNBROKERS	21
PART 5 – DISPUTES AS TO OWNERSHIP OF GOODS AND RESTORATION OF GOODS	22
PART 6 – MISCELLANEOUS	22
<u>APPENDIX 2 – SUMMARY OF THE CHANGES TO THE REGULATION</u>	24
<u>APPENDIX 3 – BACKGROUND INFORMATION</u>	27
PROFILE OF THE INDUSTRY	27
<u>APPENDIX 4 – LIST OF STAKEHOLDERS</u>	29
KEY STAKEHOLDERS	29



About the Regulation

The Pawnbrokers and Second-hand Dealers Regulation 2015 (the Regulation) will be made under the *Pawnbrokers and Second-hand Dealers Act 1996* (the Act).

The main purpose of the Act is to restrict trade in stolen goods and regulate the industry through a business licensing regime and by imposing record keeping and reporting requirements. The Act also provides a mechanism to facilitate the return of stolen property to rightful owners quickly and equitably. Additionally, the Act aims to provide some measure of consumer protection to people engaging pawnbroking services by ensuring they are provided with key information to make informed decisions.

The main purpose of the Regulation is to provide legislative support and administrative detail for the operation of the Act. The Regulation is integral to the effective operation of both the licensing and information-gathering systems, and ensures the objectives of the Act can be achieved efficiently and effectively.

The Act is currently supported by the Pawnbrokers and Second-hand Dealers Regulation 2008, which is due to be automatically repealed on 1 September 2015 under the provisions of the *Subordinate Legislation Act 1989*. The proposed Regulation, currently in draft form only, is intended to replace the existing regulation. This Regulatory Impact Statement provides details of the objectives for proposing the Regulation.

A summary of the proposed changes to the Regulation is provided at Appendix 2.



The consultation process

Making a submission

Interested organisations and individuals are invited to provide a submission on any matter relevant to the proposed Regulation, whether or not it is addressed in this Regulatory Impact Statement. Matters covered by the Principal Act are not the subject of this consultation process.

We would prefer to receive submissions by email and request that any documents provided to us are produced in an 'accessible' format. Accessibility is all about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive). Further information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>

The closing date for submissions is 24 July 2015.

Email submissions to: policy@finance.nsw.gov.au

Postal submissions to:

Pawnbrokers and Second-hand Dealers Regulation 2015

Policy and Strategy

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Additional copies of this Regulatory Impact Statement and the proposed Regulation can be downloaded from: www.fairtrading.nsw.gov.au

Printed copies can be requested from NSW Fair Trading by phone on (02) 9895 0791.

Confidentiality of submissions

The consultation process is public and open. Submissions will be published on the NSW Fair Trading website. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission. Automatically generated confidentiality statements in emails are not sufficient. However, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information,



for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*. It is a statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament.

Identified stakeholders

This Regulatory Impact Statement has been provided directly to some stakeholder organisations. A list of these stakeholders is provided at Appendix 4.

Evaluation of Submissions

All submissions will be considered and assessed and the draft Regulation will be amended, if necessary, to address issues identified in the consultation process. If further information is required, targeted consultation will be held before the Regulation is finalised.

Commencement of the Regulation

After the Minister for Innovation and Better Regulation has finalised the Regulation, it will be submitted to the Governor for approval.

Once approved by the Governor, the Regulation will be published on the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au.

It is proposed that the Regulation will commence on 1 September 2015, when the existing Regulation is due to be repealed.



Objective and rationale of the Regulation

Objective

The primary objective of the draft Regulation is to ensure that the objectives of the Act can be achieved effectively and efficiently.

A review of the legislation under the National Competition Policy guidelines established the following implied objectives of the Act and Regulations:

- to regulate the dealing in certain categories of second-hand goods (those at high risk of theft) in order to limit the traffic in stolen goods through pawnbroker and second-hand dealer businesses;
- the rapid provision to NSW Police of up-to-date information on the sale/pawn of second-hand goods to enhance the enforcement capability of Police to combat property theft;
- requiring pawnbrokers and second-hand dealers to be more vigilant about clients who offer goods for sale or pawn, particularly in regard to documentation that customers are required to produce to substantiate their identity and their title to the goods;
- to constrain the exercise of market power in respect of the provision of pawnbroking services; and
- to provide a mechanism to facilitate the return of stolen property to rightful owners quickly and equitably.

The Regulation supports the Act by providing operational and administrative detail to ensure its effective operation. The main functions of the Regulation are to:

- define the meaning of 'second-hand goods' and 'market' for the purposes of the legislation. It also sets out the exclusions from the requirements of the Act, thereby defining the scope of operation of the Act;
- specify the scope and form of information that must be recorded and furnished to NSW Police to provide effective intelligence for the investigation of stolen goods;
- provide operational detail for law enforcement mechanisms designed to allow police an efficient, transparent and equitable means of removing dishonest operators from the market;
- specify the terms and conditions of pawnbroking transactions and set out the necessary disclosure requirements to ensure consumers pawning their goods are provided with adequate information to make informed decisions; and



- prescribe necessary details such as the level of fees to be charged and penalties that may be imposed.

Rationale

The Regulation is necessary as it provides the legislative support and administrative detail necessary for the effective operation of the Act. Without the Regulation, the Act could not be effectively administered or enforced.

It is necessary to remake the Regulation at this time because:

- The current Regulation will be automatically repealed on 1 September 2015 if it is not remade, under the sunset provisions contained in the *Subordinate Legislation Act 1989*
- A number of updates are required to improve the operation of the Act in light of developments in the industry.



Options for achieving objectives

The primary objective of the Regulation is to provide the legislative support and administrative detail necessary for the operation of the Act and ensure that its objectives can be achieved effectively and efficiently.

The options for achieving the objectives of the Regulation are:

Option 1

Maintain the status quo. Preserve the current situation by not making the proposed Regulation and instead remaking the existing Regulation.

Option 2

No action. Allow the existing Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989*, and not make any replacement Regulation.

Option 3

Make the proposed Regulation. The Regulation will provide updated legislative support and administrative detail for the Act.



Impact assessment of options

The following criteria, which relate to the objectives of the proposed Regulation, have been used to evaluate the options:

1. The extent to which the option supports the aims of the Act in restricting the trade in stolen goods, particularly the efficient and effective provision of up to date information to police.
2. The extent to which the option supports the consumer protection measures of the Act.
3. The extent to which the option provides an effective and fair mechanism for the recovery of stolen goods.
4. The extent to which the option enables the effective administration of the Act.
5. The financial and administrative costs to consumers, industry and the government.

Assessment of Option 1

This option involves remaking the existing Regulation with no changes.

Costs

The costs imposed by this option would remain substantially the same as they are in the existing regulation. These costs are:

- licensing fees incurred by applicants setting up or carrying on a second-hand dealing or pawnbroking business.
- the administrative burden on licensees in complying with record keeping and disclosure requirements as prescribed by the Regulation. In most cases this has the additional financial cost of purchasing or updating record keeping software.
- the administrative and financial costs incurred by Fair Trading and NSW Police in administering the Act.

Under this option, certain goods which are now at low risk of theft would still be left within the regulatory scope of the Act. This would result in unnecessary administrative burden on licensees due to the recordkeeping and reporting on these low risk classes of goods.

Benefits

This option continues the regulatory framework that has been in place since 2008 and has medium-high level associated benefits. The existing regulatory requirements:



- ensure consumers are provided with information to make an informed decision when engaging in pawnbroking services
- provide the Commissioner for Fair Trading and the Commissioner of Police with the means to effectively carry out compliance and enforcement that further the purposes of the Act
- are familiar to licensees and would not require any action to update business practices.

Conclusion

Although the Regulation in its current form enables the Act to operate and provides protection for consumers, it does not provide the additional benefits contained in the proposed Regulation. Consequently, remaking the current Regulation with no amendment would achieve the objectives of the Act and Regulation, but not in the most effective way.

Assessment of Option 2

This option would allow the existing Regulation to lapse on 1 September 2015 without making any replacement Regulation.

Costs

This option would involve significant costs to NSW Fair Trading and NSW Police. Several provisions in the Act would be unworkable including collection of licence fees. It would be more difficult for NSW Police to investigate property and locate stolen goods without the information provided by licensees as specified in the Regulation. The legislation would also be difficult to enforce without the administrative detail provided by the Regulation.

There would also be costs to industry. The Regulation defines the term 'second-hand goods' by prescribing certain classes of goods. It also excludes certain types of activity from the regulatory oversight of the Act. In the absence of the Regulation, large sections of the industry that are at low risk of dealing in stolen goods, and currently do not require a licence, would be caught by the operation of the Act. This would require them to obtain licences and adhere to the Act's recording and reporting requirements.

This option would also result in costs to consumers and, in particular, victims of theft. It would restrict the police's ability to investigate the theft of property and prevent victims of theft from having some means of recourse for recovering their stolen property.



This option would also mean that important information would not be disclosed to pawnbroking consumers before signing contracts which may result in uninformed and detrimental consumer choices.

Benefits

There is little to no benefit to this option. Without the details contained in the Regulation, the Act would not be able to be administered properly and would cease to be effective.

Conclusion

This option would have significant costs to consumers, industry, NSW Police and NSW Fair Trading and would not achieve the objectives of the Act. This option would expose consumers to risk and would enable pawnbroking and second-hand dealing businesses to more easily deal in stolen goods.

Assessment of Option 3

This option is to make the proposed Regulation.

Costs

There are no significant additional costs associated with this option. The costs imposed are similar to those in the existing regulation. These include licensing fees and administrative costs incurred by licensees in complying with the record keeping and disclosure requirements under the Regulation, and the administrative and financial costs incurred by Fair Trading and NSW Police in administering the legislation.

The timeframe within which licensees must provide electronic records to NSW Police will change from three working days to three days under this option, however this is unlikely to cause significant extra administrative burden.

The prescribed goods to which the Act and its requirements apply will be updated to ensure that only goods at high risk of theft will be regulated. Goods at lower risk of theft will not be caught by the proposed Regulation and this will lower the administrative costs for second-hand dealers dealing in low risk items as they will not need to abide by the Act's administrative requirements.

Benefits

This option continues the current regulatory framework with updates to improve its operation and efficiency. The proposed Regulation will ensure consumers are provided with sufficient information to make informed decisions and ensure Fair Trading and NSW Police can effectively carry out compliance and enforcement of the Act.



Updating the list of prescribed goods to which the Act applies ensures that regulatory focus is only on goods at high risk of theft, making the legislation more efficient and effective. Changes to the timeframe within which licensees are required to report to NSW Police will maximise the time during the statutory retention of goods period in which Police can investigate stolen goods and potentially locate and return them to owners.

Conclusion

This option provides both the benefits of the existing Regulation and the additional benefits provided by minor changes and updates to improve efficiency. It involves no significant extra costs and will ensure that regulatory focus is only on goods at high risk of theft and that goods at low risk of theft do not attract the financial and administrative burden of the Act's requirements.

Summary of costs and benefits for each option

	Costs	Benefits	Overall benefit
Option 1	Low	Medium	Medium
Option 2	High	Low	Low
Option 3	Low	High	High

Preferred Option

Option 3, making the proposed Regulation, is the preferred option. This is the option which provides the greatest benefit while balancing the cost to industry and the community.



Discussion of the Proposed Regulation

Submissions are welcome on any aspect of the proposed Regulation, whether or not raised in this Regulatory Impact Statement. The following discussion points provide context for some provisions in the draft Regulation and aim to focus submissions on important issues.

A summary of the changes in the draft Regulation is provided in Appendix 2.

Update to the definition of prescribed goods

Issue

The definition of 'second-hand goods' is prescribed by clause 5 of the Regulation, which contains a list of certain classes of goods. The prescribed goods are those at high risk of theft. The risk associated with different goods can change over time – some goods become obsolete while other goods become highly popular and therefore achieve high resale values.

The list set out in clause 5 has been updated to reflect the changes that have occurred in the market and the perceived risk of certain goods. Certain high risk goods have been added and redundant items have been removed.

Question

1. Is the proposed list of prescribed second-hand goods appropriate? Are there any classes of goods that should be removed or included?
2. Are any of the classes of goods currently contained in the list difficult to define and therefore identify?

Recording purchaser details

Issue

Clause 13(2)(e) of the draft Regulation retains the existing requirement that licensees must record a purchaser's details where the purchase price is greater than \$50.

This requirement ensures there are records to assist police conducting investigations or recovering stolen goods. However, there is some suggestion that consumers have privacy concerns about being asked to provide details before purchasing goods. The \$50 threshold means consumers are not requested for this information for smaller purchases, although this makes it more difficult to recover stolen items of lesser value.



Question

3. Are consumers reluctant to provide this information when purchasing second-hand goods?
4. Is the \$50 threshold still appropriate?

Furnishing records to police

Issue

Under clause 16 of the draft Regulation, the requirement to transmit electronic records has been changed from three 'working' days to three days. Licensees are required to keep all second-hand goods purchased or received for 14 days, which is the statutory retention period under section 21 of the Act. When Police are investigating stolen goods, transmitting records promptly maximises the time Police have for investigation and conducting searches for such goods. In addition, it can be difficult to know at face value whether a particular day is a working day.

This change should not be overly onerous for licensees. Second-hand dealers are required to make records by the close of business on the day on which goods are acquired, taken on consignment or disposed of or as soon as possible afterwards if received at other premises.

Question

5. Is three days an appropriate amount of time in which to transmit electronic records to NSW Police?

Changes to the forms contained in Schedule 1

Issue

The existing Regulation requires Forms 1 and 2 (set out in Schedule 1) to be set out in 10 point Arial font. This requirement was intended to ensure that disclosure of important information is in a clear readable format. The proposed Regulation does not stipulate a particular font but requires the information to be legible. This will achieve the same aim without being overly prescriptive.

The proposed Regulation also includes extra information on Form 1, including licensee details and identification details, to reflect standard industry practice and ensure necessary details are readily available.

Question



6. Do the changes to the forms better reflect industry practice? Is any other information required?

Information to be disclosed on a pawn ticket

Issue

Clause 28 of the Regulation sets out the additional information that pawnbrokers are required to disclose in or accompanying a pawn ticket. This includes information about interest charges and how they may be paid, as well as information about redeeming goods.

For consumers to be able to make informed decisions about the terms under which they pawn their goods, they need clear information about how much money they will be required to pay in interest and the total money required to redeem their goods under the agreement. Sometimes the form that information takes may make it more or less clear to consumers. For example, a table may present financial information in a more easily understood way than a block of text.

Question

7. Is the information disclosed on pawn tickets adequate to enable consumers to make informed decisions?
8. Would a table format showing interest to be paid be helpful for consumers to understand the money they are required to pay under a pawn agreement?

Restoration notices under Part 4A of the Act

Issue

Clause 32 of the Regulation prescribes the information that must be included in a restoration notice served under section 32F of the Act. The draft Regulation includes the name and address of an insurer if an insurance claim has been made in respect of the goods.

When an insurance claim has been made, in some cases the insurer may effectively become the claimant. This information may be helpful to licensees who have been served with a restoration notice and elect to make an application to the Tribunal under section 32G of the Act.

Question

9. Is information about insurance claims and the relevant insurer useful in a restoration notice?



Extra information to be recorded by pawnbrokers

Issue

Clause 26 of the draft Regulation, which sets out the detail to be included in a pawnbroker's record of pledges under section 28(2)(a) of the Act, has been updated to include media access control (MAC) addresses. A MAC address is a unique identifier assigned to devices that are capable of connecting to a network. A device may have more than one MAC address if it has multiple network interfaces, for example a computer with an Ethernet connection and a wifi connection.

This number can be used to identify a device and pawnbroker records of MAC addresses may assist police with identifying and locating stolen electronic goods.

Question

10. Is a MAC address useful identifying information for licensees to record? Are there any other identifying features that should be included on a pawnbroker's record of pledges?



APPENDICES



Appendix 1 – Summary of the draft Regulation

Part One – Preliminary

Clauses 1, 2 and 3 set out the name, the proposed date of commencement and the meaning of certain terms used in the Regulation.

Clause 4 excludes charitable fundraising and markets not selling second-hand goods from the definition of markets so that these are not caught within the scope of the Act and its obligations.

Clause 5 defines ‘second-hand goods’ by prescribing certain classes of goods to ensure that only goods at high risk of theft and resale are regulated.

Clauses 6 and 7 excludes local councils, local council employees and successful tenderers who are involved in conducting, selling or contracting for recycling programs from the operation of the Act.

Clause 8 provides for the payment of fees relating to licensing as set out in Schedule 3 of the Regulation.

Part 2 – Records

Clause 9 sets out the meaning of electronic record-keeping condition.

Clause 10 specifies how records generally must be kept.

Clause 11 provides that a condition will be imposed on licences to keep records electronically using specified software.

Clause 12 provides an exemption from the requirement to keep electronic records for second-hand dealers who held a licence under the previous Act and whose gross receipts totalled \$150,000 or less in the previous financial year.

Clause 13 sets out the details that must be recorded by both pawnbrokers and second-hand dealers. It also provides that second-hand dealers must make the record by the close of business on the day goods are acquired, or as soon as possible after the acquisition if received at premises other than those notified to Fair Trading.

Clause 14 provides that licensees must record the name, date of birth and residential address of all employees, and the date on which each person commenced and finished employment.



Clause 15 provides that records of a market must contain the date and location of the market and the name, residential address and vehicle registration number of any unlicensed stallholder offering second-hand goods for sale. The record must also contain details of the goods offered for sale and any identification produced by such a stallholder.

Clause 16 requires that electronic records must be transmitted to the Commissioner of Police within 3 calendar days from the record being made or in accordance with other arrangements made by the Commissioner of Police. It also provides that records not required to be kept in electronic format must be furnished to the Commissioner of Police, if so directed, in the manner and timeframe directed by the Commissioner.

Clause 17 prescribes a distance of 100 kilometres for the purposes of 17(4) of the Act, which provides that an authorised officer may require production of records at the nearest office of NSW Fair Trading, within the prescribed distance, to where the requirement was imposed.

Part 3 – Regulation of licensed businesses

Clause 18 sets out the information that must be displayed by licensees on their licensed premises including their name, licence number, the business authorised by the licence to be carried on and a prescribed statement alerting customers that information about a customer may be furnished to police. It also sets out the specific form of the signage.

Clause 19 prescribes acceptable documentation for the purposes of evidence of identity and title of supplier of goods and prescribes that an individual's date of birth is to be given in documentary form as additional evidence, while a corporation must provide evidence of an Australian Business Number.

Clause 20 provides that a licensee is exempted from having to comply with the evidence of identity requirement for goods purchased overseas if they are properly declared and that all original documentation provided by the Department of Immigration and Border Protection must be kept.

Clause 21 requires licensees to ensure that the contract or stock number which is uniquely assigned to each item taken in trade or pawn is attached to the item for the purposes of being able to readily identify the item.

Clause 22 provides that the requirement to keep goods purchased or received on the licensed premises for a period of 14 days does not apply to goods on consignment, goods purchased at auction, goods purchased from another licensee who has already



complied with the requirement, pawned goods or goods purchased by tender or auction from a government agency, a State-owned corporation or a statutory authority constituted for a public purpose. It also provides that water craft and other goods of substantial size may be kept at any convenient place if the licensee notifies Fair Trading in writing.

Clause 23 explains the penalty notice and demerit point system as contained in Schedule 2 of the Regulation.

Part 4 – Special provisions relating to pawnbrokers

Clause 24 provides a method of calculation for a pawnbroking loan that allows shorter interest periods to be expressed in terms of an equivalent annual interest rate for the purposes of section 28(2)(c) of the Act.

Clause 25 provides an exemption to the requirement to record a serial number for batteries and chargers for cordless second-hand goods.

Clause 26 specifies what is a fair and reasonable description of certain second-hand goods and other particulars required to be included in a pawnbroker's record of pledges including the date of birth of the owner of the goods (if an individual) and the Australian Business Number (for a corporation). If the goods are pawned by an agent then the date of birth of the agent must also be included.

Clause 27 prescribes the form for the notice of rights and obligations that must be incorporated into or accompany a pawn ticket under section 28(5A)(a) of the Act.

Clause 28 prescribes certain details that must be included in a notice incorporated into or accompanying a pawn ticket including:

- a statement of the frequency with which interest charges are to be debited and when they are payable;
- a statement that if provision is made for interest charges to be paid at intervals of greater than a month then a pawn consumer can opt to pay at monthly intervals instead;
- the address where the goods will be kept during the redemption period;
- whether goods that consist of more than one item can be redeemed separately; and
- the date the redemption period ends.

Clause 29 prescribes the requirements for a person to redeem pawned goods, including ascertaining the identity of a customer who cannot produce the pawn ticket.



Clause 30 specifies the details for the notice specifying the rate or rates of interest under section 32C of the Act.

Clause 31 prescribes that if a pawnbroker loans \$100 or more for goods and those goods are unredeemed, the pawnbroker must sell the goods as soon as practicable. This sale can occur through an off-site auction, or by any means of sale at the pawnbroker's business premises.

Part 5 – Disputes as to ownership of goods and restoration of goods

Clause 32 prescribes the information that must be contained in a restoration notice for the purposes of section 32F(3) of the Act and specifies the circumstances under which a notice becomes inoperative.

Clause 33 provides that the Local Court has jurisdiction to determine an action referred to in section 93 of the *Civil Procedure Act 2005* that is brought by a claimant in connection with goods to which a restoration notice relates, if the licensee does not make an application within the required 28 days.

Clause 34 provides the form and requirements for the notice to be displayed on licensed business premises by section 32L of the Act.

Part 6 – Miscellaneous

Clause 35 provides that it is an offence for a licence to be transferred, lent or allowed to be used by another person other than the licensee.

Clause 36 sets out how to calculate the fees for applicants carrying on a business in partnership and states that, for the purposes of clause 12A(6), gross receipts of the partnership are taken into consideration.

Clause 37 provides that if a licensee dies, is declared bankrupt or becomes mentally incapacitated, the legal personal representative, or trustee of their estate may carry on the licensee's business personally or by an agent for a period of three months. It also provides that this authority may be revoked at any time by a notice in writing.

Clause 38 clarifies that, despite the *Licensing and Registration (Uniform Procedures) Act 2002*, licensees that hold both a pawnbroking and a second-hand dealing licence are only required to have one licence number on the same document.

Clause 39 provides specific limited exemptions from certain requirements of the Act for the named licensees.



Clause 40 provides that for the purposes of section 27(6) of the Act which relates to the demerit points scheme, the Commissioner for Fair Trading is a prescribed officer.

Clause 41 is a savings provision which provides that all matters in place under the existing Regulation, such as licences, will continue to have effect under the proposed Regulation when it commences.

Schedule 1 contains the prescribed forms under clauses 19(4), 27 and 34.

Schedule 2 lists the penalty notice offences and the associated penalty amounts and demerit points.

Schedule 3 contains the fee schedule for licences issued under the Act.



Appendix 2 – Summary of the changes to the Regulation

Clause	Proposed Regulation	Reason for change
cl. 5	<p>Changes to the list of prescribed classes of second-hand goods.</p> <p>Removed:</p> <p>(c) sporting and recreational goods</p> <p>(g) microwave cookers</p> <p>(j) laser-read digital discs (such as compact discs, digital video discs and mini discs), and similar items that are used or designed for use with electric or electronic audio, visual or audio-visual systems,</p> <p>Added:</p> <p>tablet computers</p>	<p>Crime statistics from the NSW Bureau of Crime Statistics and Research were used to assess which goods are no longer at risk of theft and which goods are now at high risk of theft and resale.</p>
cl. 7	Reference to banks removed.	<p>The definition of 'bank' is unclear. For the purposes of the clause, the expression 'bank' is covered by 'authorised deposit-taking institution'.</p>
cl. 10(3)(b)	Reference to clause 13(2)(c) removed.	<p>This clause relates to hard copies of pawn agreements under section 28 of the Act. Clause 13(2)(c) relates to the business of a second-hand dealer and is therefore unnecessary.</p>
cl. 11	Clause has been revised and split into two subclauses.	<p>Changed to make the clause easier to read. Its substance has not changed.</p>
cl. 12(4)	<p>Addition of the words 'both of' in relation to the relevant documents.</p> <p>Change from 'before' to 'immediately preceding' in relation to the previous financial year in subsection (b).</p>	<p>Changed to provide clarity.</p>
cl. 15 (c)	'Stallholder' changed to 'vendor'.	<p>Consistency with section 16(3) of the Act.</p>



cl. 16(1)(a)	Change to the period of time in which electronic records are required to be transmitted to the Commissioner of Police from three working days to three days.	The retention period under section 21 of the Act is only 14 days. This ensures Police have as much time as possible within that period to investigate the theft of stolen goods. In addition, it can be difficult to tell if a particular day is a working day at face value.
cl. 19(4)(b) and 27(2)(a)	Change to the requirements for Forms 1 and 2 set out in Schedule 1 – that is, a written statement from customers as to ownership and a notice of rights and obligations for pawn customers. The specifications for these documents will change from ‘10 point Arial type’ to ‘legible’.	The requirement for 10 point Arial type is unnecessary and overly prescriptive. It is sufficient that these documents are clearly legible.
cl. 20(1)(b) and (2)	Reference to ‘an Australian Customs Service Import Reference Number in respect of the goods’ changed to ‘licensee has communicated an import declaration in respect of the goods in accordance with the <i>Customs Act 1901</i> of the Commonwealth’. Reference to ‘documents provided by the Australian Customs and Border Protection Service (including the Australian Customs Service Import Reference Number)’ changed to ‘documents obtained in respect of the import declaration’.	As of 1 July 2015, the Australian Customs and Border Protection Service and its associated form names and identifiers will change. This change preserves the intent of the clause but prevents it being rendered obsolete by future Federal government name or organisational changes.
cl. 26	Removal of subclause relating to laser-read digital discs.	Laser-read digital discs removed from the list of prescribed classes of second-hand goods and therefore not within the scope of the Act.
cl. 26	Inclusion of media access control (MAC) addresses for devices capable of connecting to a network.	A MAC address is a unique identifier that may be used by NSW Police to identify stolen goods.
cl. 32	Change to the requirements for restoration notices under section 32F(3) of the Act. A restoration notice will require the name and business address of an insurer, if an insurance claim has been made in respect of the goods.	Licensees will be made aware of whether any insurance claim has been made, as this may affect claimant status.
cl. 36	The clause has been reworded to refer to an ‘application of that kind’.	Changed to provide clarity as an application under this section will



		be for a separate licence.
	References to government entities and systems, and various titles and terms updated to their current versions.	Legislative consistency and accuracy
Schedule 1	Requisite details have been added to the top of Form 1 including licensee details and identification details.	To reflect standard industry practice and ensure necessary details are readily available.
Schedule 3	The fees contained in Schedule 3 reflect the existing amounts charged for the financial year 2014-15.	These fees are due to increase on 1 July 2015 in line with the Consumer Price Index.



Appendix 3 – Background information

Profile of the industry

NSW Fair Trading is responsible for licensing pawnbrokers and second-hand dealers in NSW. As of May 2015 there are a total of 1022 licence holders under the Act. Only six are licensed as pawnbrokers only, 727 are licensed as second-hand dealers only and 289 are licensed as pawnbrokers and second-hand dealers. It is the general practice in NSW for pawnbrokers to also hold a second-hand dealer's licence.

Pawnbroking and second-hand dealing are similar businesses in that they both involve obtaining pre-owned goods for resale. However, pawnbroking is distinct because it involves the business of lending money on the security of pawned goods. The person 'pledging' the goods is able to reclaim them if repayment is made in accordance with the pawn agreement.

Licensed second-hand dealers are dispersed throughout the state and deal in goods ranging in value from a few dollars to many thousands of dollars. Some dealers trade in general items, while others specialise in niche markets. Under the Act, dealers in second-hand goods are only required to hold a licence if they trade in certain goods at high risk of theft, for example jewellery and car accessories.

The majority of licensed second-hand dealers are located in metropolitan Sydney (approximately 57 per cent), however the industry is also well-established in Wollongong and northern New South Wales.

In general, pawnbroking and second-hand dealing businesses are local in their sphere of operation but activities such as dealing in antique jewellery, for example, may have a much wider scope, including importing stock from overseas.

Prior to 1997, the pawnbroking industry was regulated by the *Pawnbrokers Act 1902* and the second-hand goods industry was regulated by the *Second-hand Dealers and Collectors Act 1906*. When the *Pawnbrokers and Second-hand Dealers Act 1996* was introduced, Fair Trading took over the responsibilities of licensing from the Local Courts.

Following the introduction of the new Act, licensing numbers decreased due to the narrowing of the regulatory focus under the new legislation. The Act only required a licence to be held if a business traded in certain high risk goods prescribed within the



Regulation. Consequently, many second-hand dealers who were licensed under the previous legislation were not required to be licensed under the new Act.

Licensing figures have since continued a gradual downward trend each year. This could be due to a number of reasons. In the pawnbroking industry, one of the causes of the decline in licence numbers may be due to consolidation in the industry. Individual licensees may operate either a chain of shopfront stores or many individual shopfronts. The decline in second-hand dealing licences may be due to individuals choosing to sell their goods using internet trading and auction sites as opposed to a second-hand dealer.



Appendix 4 – List of stakeholders

Key stakeholders

The following organisations have been provided with a copy of this Regulatory Impact Statement:

- Pawnbrokers Association of NSW
- The Australian Antique Dealers Association (NSW Chapter)
- Auctioneers & Valuers Association of Australia
- Combined Auctions Pty Ltd
- Cash Converters Pty Ltd
- Captain Cash Pty Ltd
- Jewellers Association of Australia (NSW State Branch)
- Boating Industry Association of Australia
- The Law Society of New South Wales
- Financial Rights Legal Centre (NSW)
- Australian Finance Conference
- NSW Council of Social Services
- Ryde Eastwood Financial Counselling Service
- Ministry for Police and Emergency Services
- NSW Police