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1.0 INTRODUCTION

This document is the Public Benefit Test (PBT) undertaken on the *Second-hand Dealers and Collectors Act 1984* (SD&C Act), the *Second-hand Dealers and Collectors Regulation 1994* (SD&C Regulation), the *Pawnbrokers Act 1984* (PB Act) and the *Pawnbrokers Regulation 1994* (PB Regulation).

These Acts were identified in the *Queensland Legislation Review Timetable* as requiring review, in line with National Competition Policy guidelines. The guiding principle for the review of legislation, as set down in the Competition Principles Agreement, 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.

In considering the restrictions contained in the above legislation, the Department has considered fair trading and social justice issues and the balance between commercial interests and consumers.

2.0 REVIEW DETAILS

2.1 Title of the Legislation

This review considered the following legislation:

Second-hand Dealers and Collectors Act 1984;
Second-hand Dealers and Collectors Regulation 1994;
Pawnbrokers Act 1984; and
Pawnbrokers Regulation 1994.

2.2 Reason for Review

In April 1995, the Commonwealth, State and Territory Governments signed a set of agreements to implement a National Competition Policy (NCP). Under the policy, each participating jurisdiction committed to implement competition reforms. Pursuant to these agreements, each participating jurisdiction was obliged to review and reform, where necessary, all legislation that contained measures restricting competition.

The *Queensland Legislation Review Timetable*¹ identified potential restrictions on competition in both the SD&C Act and the PB Act.

2.3 Type of Review Undertaken

This review has considered those restrictions in accordance with the Queensland Government's *Public Benefit Test Guidelines*² (PBT Guidelines).

In accordance with the PBT Guidelines, a minor review of the legislation was conducted within the National Competition Policy Unit of the Office of Fair Trading (OFT) of the Department of Tourism, Racing and Fair Trading.

A minor review was conducted because the complexity of the issues is low with a low degree of uncertainty as to the impact changes have on the stakeholders.

2.4 Government Priority Outcomes

In particular, the PBT Guidelines require that only those options that are consistent with, and support, the Government's Priority Outcomes should proceed for further consideration.

The Government's Priority Outcomes for Queensland are:
More Jobs for Queensland – Skills and Innovation – The Smart State
Safer and More Supportive Communities
Community Engagement and a Better Quality of Life
Valuing the Environment
Building Queensland's Regions

¹ Queensland Government, 1996.

² Queensland Treasury, 1999.

Safer and More Supportive Communities is the Priority Outcome of most relevance to the SD&C and PB Acts. The State Government is committed to building safer and more supportive communities by:

- Addressing the social and economic causes of crime;
- Promoting individual, family and community vitality that respects diversity;
- Minimising the risk and impact of emergencies and disasters; and
- Improving personal and public safety.

2.5 Terms of Reference

The Terms of Reference for this Review require that it comply with Clause 5 of the Competition Principles Agreement (CPA) to:

- i Clarify the objectives of the legislation;
- ii Identify the nature of the restriction on competition;
- iii Analyse the likely effect of the restriction on competition and on the economy generally;
- iv Assess and balance the costs and benefits of the restrictions identified by conducting a Public Benefit Test; and
- v Consider other means for achieving the same results including alternative legislative or non-legislative approaches.

The terms of reference also require that the Review, in assessing the most effective means of achieving the policy objective, should take the following issues into account in line with Clause 1(3) of the CPA:

- a) Government legislation and policies relating to ecologically sustainable development.
- b) Social welfare and equity considerations, including community service obligations.
- c) Government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity.
- d) Economic and regional development, including employment and investment growth.
- e) The interests of consumers generally or of a class of consumers.
- f) The competitiveness of Australian businesses.
- g) The efficient allocation of resources.

The Review takes into account the likely impact of reform measures on specific industry sectors and communities, including expected costs in adjusting to changes.

During the course of the review, consideration is being given to:

1. Whether the existing level of regulation is appropriate;
2. Alternative options for the regulation of pawnbrokers, second-hand dealers and collectors;
3. Regulatory arrangements in other jurisdictions; and
4. the PBT Guidelines.

3.0 INDUSTRY PROFILE

Under the provisions of the SD&C Act, persons operating as second-hand dealers, collectors, and market entrepreneurs are required to hold licences. Similarly, the PB Act provides that a pawnbroker must hold a license to operate in this State.

Industry estimates of activity indicate that about 600,000 Queenslanders use the services of second-hand dealers and pawnbrokers each year³. The estimated turnover from all transactions amounts to \$45,000,000 per annum which represents a significant role for the industry in Queensland's economy and social structure.

A second-hand dealer carries on the business of dealing in or buying, selling or exchanging second-hand goods from a designated premises or locations. The types of articles which constitute second-hand goods and the operators covered by or exempted from the operations of the SD&C Act are defined in section 4.2 of this report. There are currently 2,492 licensed second-hand dealers in Queensland.

A pawnbroker carries on business by advancing money on articles taken as a pawn or pledge in return for interest or in expectation of profit or reward. Despite changes to finance markets over recent years, pawnbroking is still an important source of funds for consumers unable to obtain finance from banks or financial institutions. There are currently 214 licensed pawnbrokers trading in Queensland. Of this number, 189 are also licensed as second-hand dealers.

Second-hand dealing and pawnbroking are related businesses in that both involve the resale of pre-owned goods and allow individuals to convert their assets into cash with relative ease. The second-hand sector provides a retail outlet for consumers who choose to purchase second-hand goods or who are unable or unwilling to purchase new goods. It also contributes to waste minimisation through recycling of used goods.

The second-hand goods market contains a large and diverse range of buyers and sellers. Apart from those licensed dealers who deal in traditional second-hand goods such as furniture, antiques, and jewellery, licence holders engage in a wide range of activities including second-hand clothing shops and scrap metal merchants. Some licence holders deal in second-hand goods as an adjunct or ancillary service to their main business. Typically these licensees operate in retail businesses selling whitegoods, electrical equipment and lawnmowers. Dealers compete not only with each other but also with private sellers who use such avenues as garage sales, markets and newspaper advertisements to dispose of unwanted personal property.

The SD&C Act recognises the role of markets in the disposal of second-hand goods and the definition of a "second-hand dealer" includes an "entrepreneur" who is described as a person in charge and responsible for the running of trash and treasure markets, flea markets, antique markets or antique fairs.

While it is not explicit in the legislation, the Honourable W. H. Glasson MLA, the then Minister for Lands, Forestry and Police, stated in his second reading speech on the *Second-*

³ Submission to the review from the Joint Committee representing the Cash Converters International Franchise Group and the Pawnbrokers Industry Federation Inc

hand Dealers and Collectors Bill on 6 March 1984, that it was intended that persons selling regularly at markets should be licensed but that persons selling on a once-only basis would not be required to hold a licence. According to data provided by the Anti Counterfeiting Action Group (ACAG), there were only about 80 casual and weekend markets operating in Australia in the early 1990s. By 1997 the number in Queensland alone had risen to 181. ACAG has identified 214 markets operating on a weekend or casual basis in Queensland as at 14 December 2000.

Another segment of the second-hand industry is conducted by charities and community groups. This usually entails the selling of donated second-hand goods such as clothing and furniture. Such organisations are exempt from being licensed under the SD&C Act.

Licensed collectors collect or hold themselves out to collect second-hand goods at locations other than at their own premises but may only dispose of those goods through a licensed second-hand dealer or an auctioneer licensed under the *Property Agents and Motor Dealers Act 2000*. For example, a collector will buy from a householder and then sell to a second-hand dealer. There are currently 54 collectors registered in Queensland. The SD&C Act requires collectors to perform certain duties and restricts the times a person may carry on business as a collector. Collectors deal in a variety of goods including antiques, jewellery and scrap metal.

4.0 CURRENT LEGISLATIVE REGIME

4.1 Objectives

The objectives of the legislation are not specified in either the SD&C Act or the PB Act. Both the *Second-hand Dealers and Collectors Bill 1983* and the *Pawnbrokers Bill 1983* were introduced into State Parliament on 21 December 1983 by the Honourable W. H. Glasson MLA, then Minister for Lands, Forestry and Police. The Minister indicated in both Second Reading speeches that the Bills were intended to modernise the existing Acts and to create a centralised licence issuing area to speed up the processing of licences and checking of applicants for criminal histories. Both Acts impose similar licensing and business conduct requirements on operators.

In the Issues Paper released in connection with the review, it was suggested that these Acts were both introduced with the objective of attempting to protect consumers from the activities of unscrupulous dealers of second-hand goods. While these Acts do confer a benefit on consumers in the sense of lessening the risk of consumers purchasing stolen goods, the strong focus in the legislation is on crime detection, investigation and prosecution. These objectives are achieved through licensing, law enforcement and crime prevention and detection mechanisms which seek to maximise the interception of stolen goods, identify persons involved in the theft of goods, and identify businesses which may be used in the disposal of stolen goods.

In addition to these broad objectives, the SD&C Act, in regulating collectors, also has the objective of protecting consumers from being subjected to undue pressure and dishonest practices. This is achieved by prohibiting calling at private residences outside of

prescribed hours, displaying identification, and prohibiting a collector from entering or remaining on a premises without the permission of the owner or occupier.

The *Consumer Credit (Queensland) Act 1994* and the *Consumer Credit Code* regulate consumer credit in this State. Pawnbrokers are specifically excluded from the provisions of the *Consumer Credit Code*. The PB Act provides some degree of consumer protection to persons seeking credit from pawnbrokers. These protections include requirements regarding licensee checks, maintenance of pledge registers, supplying copies of register entries, redemption periods, sale of unredeemed pledges and recovery rights for wrongly disposed of pledges.

Based on the strong law enforcement focus in these Acts and statements at the time of their introduction, the Government's primary objective is considered to be law enforcement, crime prevention and detection, with consumer protection as the secondary objective.

Apart from suggesting that the objectives of these Acts should be clarified or modernised to reflect the current marketplace and social environment, none of the stakeholder submissions received in response to the Issues Paper disagreed with the objectives identified in the Issues Paper.

4.2 Legislative Framework

The objectives are achieved by licensing dealers, regulating conduct to protect consumers from exposure to the risk of unwittingly purchasing stolen goods or goods for which good title may be in dispute, and putting into place investigation and prosecution measures.

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 and collecting businesses. Licensing and conduct requirements provide law enforcement and consumer protection measures by identifying operators, where they are operating from, and by facilitating the auditing of second-hand property acquisitions and disposals.

The following outlines some of the key definitions contained in the SD&C Act and PB Act and section 4.3 identifies the potentially restrictive provisions that will be considered in this review:

Second-hand Dealers and Collectors Act 1984 and Second-hand Dealers and Collectors Regulation 1994

The SD&C Act regulates persons who engage in the business of dealing in "second-hand goods", which are defined as "*including goods or articles... which have been used, worn or otherwise employed, and includes second-hand vessels or outboard motors*"⁴. Certain categories of goods are excluded from the definition of "second-hand goods"⁵ namely:

- Newspapers, books, pamphlets, periodicals or other printed publications; or
- Stamps or coins; or

⁴ Section 6 *Second-hand Dealers and Collectors Act 1984*.

⁵ Section 6 *Second-hand Dealers and Collectors Act 1984*

- Goods or articles of any kind which have been returned for refund or exchange to the same person from whom they were purchased as new goods or articles; or
- Motor vehicle batteries; or
- Used tyres removed from various types of motor vehicles; or
- Other goods or articles declared, under a regulation, not to be second-hand goods for this Act.

The SD&C Regulation outlines details of goods or articles that are not second-hand goods including collectors' cards, used tyres, and used video cassettes.

A "second-hand dealer" is defined in the SD&C Act as a person who, wholly or partly, carries on the business of dealing in or buying, selling or exchanging second-hand goods whether on commission, or otherwise and whether or not the person deals in any other goods⁶. For the purposes of this Act, an entrepreneur is included within the definition of a dealer. An "entrepreneur" is defined as a person in charge of and responsible for the running of a trash or treasure, flea or antique market or antique fair⁷.

The SD&C Act excludes certain categories of people from the definition of a second-hand dealer. Those excluded include:

- A person employed merely as a clerk or servant; or
- A person acting as an auctioneer as defined by the *Property Agents and Motor Dealers Act 2000*; or
- A person acting as a motor dealer or motor salesperson for the purposes of the *Property Agents and Motor Dealers Act 2000*; or
- A Local Government; or
- A dealer under the *Weapons Act 1990*; or
- A registered banking or insurance company, trustee company, friendly society or building society; or
- Any person acquiring goods as new for hire or leasing and disposing of the goods, incidental to the business of hire or leasing.

A "collector" is defined in Section 6 of the SD&C Act as a person who collects or holds himself or herself out as being ready to collect, otherwise than at premises occupied by the person, second-hand goods, whether on the person's own behalf or on the behalf of another person, for the purpose of sale or trade.

The SD&C Act does not apply to charities registered under the *Collections Act 1966* or to a charity or religious denomination and community organisations within the meaning of the *Collections Act 1966*⁸.

The SD&C Regulation provides for fees and various requirements relating to licences, registers, the display of details on vehicles and the size and style of collectors' badges.

⁶ Section 6 *Second-hand Dealers and Collectors Act 1984*

⁷ Section 6 *Second-hand Dealers and Collectors Act 1984*

⁸ Section 7 *Second-hand Dealers and Collectors Act 1984*

Pawnbrokers Act 1984 & Pawnbrokers Regulation 1994

The PB Act defines a pawnbroker as a person who “...carries on business by advancing upon interest or in expectation of profit or reward a sum of money upon the principal security or collateral security of an article taken by the person as a pawn or pledge”⁹.

The PB Act requires pawnbrokers to perform certain duties and deals with the manner in which pawnbrokers handle pledged goods.

The PB Regulation provides for fees, the requirement for a licence to be signed, and the chief executive to keep a register containing the current details of each licence issued.

4.3 Restrictive Provisions

The following outlines provisions which have been identified as potential restrictions on competition or creating barriers to entry into the industry.

4.3.1 Second-hand Dealers and Collectors

Licensing restrictions

The SD&C Act creates a licensing regime for the regulation of second-hand dealers and collectors. In order to engage in the business of a second-hand dealer or collector, a person must hold a licence under the SD&C Act. This creates a barrier to entry into the market for the provision and collection of second-hand goods.

Section 10 of the SD&C Act restricts the persons to whom a licence may be issued. It provides that a licence may not be issued to a person who –

- Is under the age of eighteen years; or
- Is for the time being in a state of mental infirmity or mental disease whether temporary or otherwise; or
- Is not a fit and proper person to hold a licence.

Section 10 further provides that: -

- A collector’s licence is not to be issued in the name of a body corporate;
- A person may not hold both a dealer’s licence and collector’s licence; and
- A person may not hold both a collector’s licence and a pawnbroker’s licence.

The application fee for a dealer’s licence is \$231 and collector’s licence is \$48.50. The fees are refundable if the application is withdrawn or refused. These licences run for 12 months from the date of issue or renewal. The cost of renewal is the same as the application fee.

A dealer’s licence may be issued in the name of an incorporated company but a collector’s licence may only be issued to an individual.

⁹ Section 6 *Pawnbrokers Act 1984*

Geographic restrictions under licences

Section 25 of the SD&C Act provides that a collector may only carry on business as a collector within the part of the State specified in the licence or, where no part is specified, throughout the State.

Section 26 of the SD&C Act provides that a dealer's licence must be endorsed with the premises and location or locations at which the dealer is authorised to carry on business as a dealer. A dealer is not able to carry on business from more than one premises under any licence. The word "location" is defined as including a place where an antique fair, antique market, flea market or trash and treasure market is conducted.

Conduct restrictions for collectors

Part 3, Division 1, of the SD&C Act imposes numerous restrictions on the conduct of a collector's business, including: -

- Restrictions on the days and hours during which business may be conducted (section 30);
- Requirements to display certain information such as name and licence number (sections 31-33);
- Requirement to keep a register of transactions (section 34);
- Prohibiting the collection of goods from persons under the age of 17 years (section 35);
- The requirement that a collector produce his/her licence, within 24 hours, on request of a person from whom the collector collected goods (section 37);
- Requirement to retain goods for a minimum period (section 38); and
- Prohibiting the sale of goods to a person other than a licensed dealer or auctioneer (section 39).

Conduct restrictions for dealers

Part 3, Division 2, of the SD&C Act imposes restrictions on the conduct of a dealer's business, including: -

- Requirements to display certain information, such as name and licence number (section 41);
- Prohibiting the sale of goods other than at the premises listed on the licence (section 42);
- Requirement to keep a register of transactions (section 44);
- Restrictions on the age of employees who receive or purchase second-hand goods (section 45);
- Restriction on the collection of goods from a person under the age of 17 years (section 46);
- Requirement that dealers inform police if a stolen article comes into the dealer's possession (section 47);
- Requirement to retain certain goods for a minimum period (section 47A)

4.3.2 Pawnbrokers

Licensing restrictions

The PB Act creates a licensing regime for the regulation of pawnbrokers. In order to engage in the business of a pawnbroker, a person must hold a licence under the PB Act. This creates a barrier to entry into the pawnbroking market.

The Act provides that a licence may not be issued to a person who –

- Is under the age of eighteen years; or
- Is for the time being in a state of mental infirmity or mental disease whether temporary or otherwise; or
- Is not a fit and proper person to hold a licence.

A licence may be issued in the name of a body corporate, a firm registered under the *Business Names Act 1962* or an association of persons who jointly apply for the licence. In such cases, application must be made to the chief executive for approval of a person as the applicant's nominee. A nominee must be a fit and proper person and not be a disqualified from holding a licence under the PB Act.

Section 25 of the PB Act provides that a licence shall be restricted to the premises specified in the licence. Section 10 provides that only one licence may be issued in respect of any premises.

The application fee for a pawnbroker's licence is \$386 and is refundable if the application is withdrawn or refused. Pawnbrokers' licences run for a period of 12 months from the date of issue or renewal. The cost of renewal is the same as the application fee.

It should be noted that most licensed pawnbrokers are presently also licensed as second-hand dealers (189 licensed pawnbrokers are also licensed second-hand dealers – only 25 are licensed for pawnbroking only).

Conduct restrictions

Part 3 of the PB Act imposes restrictions on the conduct of a pawnbroker's business, including: -

- Requirements to display certain information, such as name and licence number (section 29);
- Prohibit the sale of goods, other than at the premises listed on the licence (section 30);
- Requirement to keep a register of articles pledged and disposed of (section 32);
- Requirement to provide information concerning the details of the pledge to the person pledging the goods (section 33);
- Requirements relating to the redemption of pledges (section 34);

- The procedure for the forfeiture and sale of pledges, and the distribution of sale funds (section 35);
- Restriction on the taking of a pawn or pledge from a person under 17 years (section 37);
- Restriction on the age of employees taking an article as a pawn or pledge (section 39);
- Requirement that pawnbrokers inform police if stolen articles come into their possession (section 40).

4.4 Other Jurisdictions

Legislation covering the activities of second-hand dealers and pawnbrokers varies considerably between jurisdictions. Some jurisdictions have completed their NCP assessments while others are still in progress. A brief outline of the legislation in each jurisdiction and the current status of the NCP reviews are at Appendix 1.

5.0 PUBLIC CONSULTATION PROCESS

5.1 Issues Paper

To facilitate the review, an Issues Paper was prepared. An advertisement was placed in the Public Notices section of *The Courier Mail* on 20 October 2001 inviting submissions by 5.00pm on 16 November 2001. An electronic version of the Issues Paper was also placed on the Office of Fair Trading website for downloading by interested parties. Copies of the Issues Paper were also forwarded directly to key stakeholders.

5.2 Public Responses

In response to the Issues Paper fifteen submissions were received from the following stakeholders:

- Endeavour Foundation;
- Queensland Pawnbrokers Association Inc;
- Queensland Retail Traders & Shopkeepers Association;
- Anti Counterfeiting Action Group;
- Major David Knight, Divisional Social Program Secretary, Salvation Army;
- Major Ken Sanz, Rehabilitation Services Commander, Salvation Army;
- Insurance Council of Australia;
- Mr Jim Gloftis, Starspec Pty Ltd;
- Queensland Antique Dealers Association Inc;
- Mr Meade Murphy;
- Cash Converters International Franchise Group & Pawnbrokers Industry Federation Inc (joint response);
- Retailers Association of Queensland Limited;

- Clarence Corner Monte de Piete Pty Ltd;
- Queensland Police Service; and
- Detective Senior Sergeant R Rolfe of the Queensland Police Service (personal submission).

Licensing

In general terms, most submissions supported the continuation of the current licensing regime for second-hand dealers and pawnbrokers or sought to have it extended to cover other areas, such as markets and garage sales.

Only one respondent, the Queensland Antique Dealers Association Inc (QADA), preferred total repeal of the SD&C Act. The QADA considered that the Act was an impost on honest traders and failed to capture or regulate all areas of the second-hand market such as weekend markets, fairs, fetes, church groups and charities, newspaper advertising and Internet sites. It further argued that consumer protection already existed under other legislation, for example the *Fair Trading Act 1989*.

While the issue of continuing to licence entrepreneurs (market operators) was supported in some submissions, the licensing of casual weekend market sellers was opposed by Mr Jim Gloftis, representing market operators. Modification of the role of entrepreneur to better reflect the current role was also suggested in some submissions.

There was some support for including currently excluded church groups and charities in the licensing regime but this was opposed by other stakeholders on the grounds that they were not involved in buying or selling but were recycling donated goods. It was further argued that such groups do not operate in competition with licensed dealers as the goods sold are of a lesser quality and that their clientele came from a different segment of the market. The Endeavour Foundation submission recognised the potential for stolen goods passing through second-hand dealers and proposed the introduction of a “charity licence”.

No submissions were received from licensed collectors. However, two submissions suggested their removal from the legislation as it was considered that collectors are obsolete or mainly trade at market venues. Queensland and the ACT are the only jurisdictions which currently licence collectors and the recent NCP review of the ACT legislation recommended the repeal of provisions relating to collectors.

The following is a summary of some of the arguments expressed in the submissions favouring the continuation of the current regime:

- Removal of restrictions would open channels for the disposal of stolen property.
- Whilst removal of licensing restrictions would reduce barriers to entry, it would also reduce the policing of stolen property.
- Removal would not prevent unscrupulous operators entering the industry.
- The present system ensures the right level of controls for legitimate businesses.
- Removal would reduce consumer confidence and place consumers at risk of purchasing stolen property.
- Removal would be irresponsible and detrimental to consumers.
- The current licensing restrictions have served the State well.

Registers

Stakeholder support for retaining the requirement for license holders to maintain registers of property varied. Where supported, it was identified by stakeholders that the Acts need to be modified to provide for computerised registers. Some stakeholders identified that computerised registers may enable cross referencing between registers and police data on stolen property. The Queensland Pawnbrokers Association Inc suggested removal of the requirement to keep a register on the grounds of personal privacy, client resentment, and not applying to other retail transactions. Arguments against the current requirements were generally on the basis that excessive record keeping was time consuming and that manual notation and potential transcription errors could lead to breaches of the legislation. Clarence Corner Monte de Piete Pty Ltd suggested that a mediation process should be introduced for legitimate register errors in place of prosecution and that computerisation of records should not be compulsory.

Pawnbroking – Auction of Unredeemed Pledges

The current method of auctioning unredeemed pledges was highlighted in submissions from pawnbroking organisations and representatives as being unsatisfactory. Abolition of auctions was proposed for the following reasons:

- Pawnbroking is the only industry with mandatory terms for governing debt recovery.
- Goods may be damaged in transit or during inspection.
- Suspected stolen goods sold at auction are difficult to recover.
- The Act assumes that all goods will be sold but this is often not the case.
- Auctions do not provide access to real value and often return less than the amount loaned.
- Auctions add high costs such as advertising, transport, venue rental and security and are time and cashflow intensive.
- Auctions are attended by dealers willing to pay bargain prices only and pawnbrokers are often forced to buy back items and pay other charges as well.
- Abolition of auctions will allow higher advances to borrowers.

The Queensland Police Service suggested that mandatory auctions of unredeemed pledges should be replaced by an option to auction or sale through the shop where the pledge was taken.

Other issues addressed in the submissions included licence portability, requirements for police character checks, limiting the number of garage sales per year without a licence, operators leasing larger premises for loan storage, pawnbrokers requiring second-hand dealer licences to dispose of lower value pledges, mediation where pledges have been wrongly sold, continuation of the requirement to notify police of stolen property, and for security reasons displaying licence number on premises only instead of both name and number.

A number of the issues raised by stakeholders were not directly related to competition. These issues have been referred to the Commissioner for Fair Trading for consideration and are identified later in this report.

5.3 Further Consultation

No responses were received in response to the Issues Paper from licensed collectors. To ensure that the views of collectors were represented, a random mail-out was conducted of 10 of 54 licensed collectors.

The four respondents to the mail-out supported the continuation of licensing due to the perceived credibility that it provides for licensees. The issue of hours of operations was divided and depended largely on the type of goods the collector was involved in collecting. For example, those responding to calls worked hours to suit the caller. Some collectors who collect goods from householders do so only between 9.00 am and 5.00 pm Monday to Saturday, as a matter of courtesy. Those collectors who acquire goods at auction did so at the scheduled auction times. Collectors dealing with scrap metal worked hours to suit their business suppliers. The current badge issued by the Office of Fair Trading was seen to be unsuitable and a proper photographic identification card was preferred by respondents. Signage on vehicles was used by some but not all and depended on the type of work performed. Retention of goods for a prescribed period was a problem for some but not an issue for others. This generally depended on the type of goods collected. For example, it may be appropriate to hold jewellery or small items but large quantities of scrap metal were usually transported directly to the dealer. Some collectors retain goods for personal use or sell directly to known clients who collect that particular type of article. The opinion was expressed that there may be scope to open the legislation to permit sale of goods to third parties other than second-hand dealers and auctioneers. The view was also expressed that computerisation of records may create problems for collectors who travel around Queensland and do not have access to computers. In such cases, a written register is more convenient.

5.4 Draft Public Benefit Test Report

On 17 April 2002 a copy of the Draft Public Benefit Test Report was forwarded to key stakeholders particularly those who had made submissions to the Issues Paper and to relevant government agencies. Stakeholders were invited to provide submissions on the draft recommendations contained in the Draft Report by 5.00 pm on Friday 10 May 2002.

Sixteen responses were received from individuals/organisations and generally there was support for the recommendations contained in section 10 of the Draft Report.

Some submissions again advocated mandatory computerisation of records and regular downloading of data to the Queensland Police Service to assist with crime detection and recovery of stolen property. A key concern for industry stakeholders was the licensing of or the issue of permits to casual market stallholders and persons holding regular garage sales. Some submissions called for a broadening of the scope of the present legislation to cover weekend market activities. Other issues raised included varying the definition of goods covered by the legislation and mediation of disputes. These issues have been identified in section 7.5 of this report as requiring further consideration by the Office of Fair Trading.

Pawnbrokers supported optional auctioning of unredeemed goods but did not support the notifying the owner of an unredeemed pledge by registered mail of its impending sale.

Concerns expressed related to privacy issues and compliance costs. The matter has been retained in the issues for further consideration by the Office of Fair Trading.

6.0 ISSUES – ASSESSMENT OF RESTRICTIONS ON COMPETITION

6.1 Second-hand Dealers and Collectors

6.1.1 Licensing Restrictions

The current licensing restrictions support the objectives of the SD&C Act by preventing persons with criminal convictions from entering the industry and by enabling identification of licensed persons and the location from where they operate. The costs for industry in the licensing regime are the application and annual renewal fees and administrative costs. The costs to government are the costs associated with the maintenance of the licensing database and systems, conducting fitness checks on applicants, administration and enforcement. Despite the costs imposed on both business and government, the licensing regime affords both consumers and business with a benefit by promoting confidence in the integrity of the industry and individual licensed traders.

Licences may not be issued to a person who is under eighteen years of age. Additionally, a licence may not be issued to a person who is for the time being in a state of mental infirmity or mental disease (temporary or otherwise), and is not a fit and proper person to hold a licence. These restrictions particularly relate to the capacity to contract and enter into legally binding contracts and are consistent with the objectives of the SD&C Act and the Government's Priority Outcomes.

The objectives of the SD&C Act are enhanced by ensuring that persons entering into the industry are first screened through criminal history and other appropriate inquiries to ensure that applicants are fit and proper persons to work in the industry. In practice, applicants are rarely refused licences on the present "fit and proper" test, although it is unlikely that persons with criminal histories would apply as they would expect to have their applications rejected.

The SD&C Act provides the Chief Executive with discretionary powers, including the power to reject an application or to issue licenses either unconditionally or subject to conditions. While the current licensing requirements create costs for industry in application and renewal fees and for government in administration and database maintenance, they produce a net benefit to consumers in that they help to ensure the integrity of industry participants and support the objectives of the legislation.

In recent years, there has been a trend towards the replacement of the "fit and proper" test with a "suitability" test. It is considered that the "suitability" test is less subjective and more transparent than the "fitness" test as it clearly outlines the factors disqualifying applicants from obtaining a licence. The "fitness" test

provides for an inquiry or investigation to be made in respect of the applicant or nominee and the proposed premises or locations. If the current test were to be replaced with the suitability test, it is considered that a test similar to that in the *Property Agents and Motor Dealers Act 2000* (PAMDA) would be appropriate. PAMDA has previously been the subject of NCP assessment. Under PAMDA, an individual or a corporation is not suitable person to hold a licence if the individual or an executive officer of the corporation has been affected by bankruptcy action, has been convicted of a serious offence in Queensland or elsewhere within the preceding 5 years, or is currently disqualified from holding a licence. In determining the person's suitability, PAMDA provides that the chief executive must consider a number of issues set out in the legislation such as the character of the person, whether the person is capable of performing the activities of a licensee, the person's criminal history, any convictions under the legislation, any bankruptcy action, or any disqualifications under the Corporations Law.

The SD&C Act prohibits a collector's licence being issued in the name of a body corporate. Apart from being able to identify the name of the individual collector, no other reason for this restriction is apparent. Company information is readily available from the Australian Securities and Investment Commission (ASIC) and the provision appears to limit the manner in which a person may conduct his/her business. This provision seems to be an unnecessary restriction on business conduct impacting on the manner in which an operator may conduct the business and should be amended. By contrast, second-hand dealers are permitted to obtain a licence in the name of a body corporate, a firm registered under the *Business Names Act 1962* or an association of persons who jointly apply for a licence. Where second-hand dealers' licences are issued to a business or association, an individual is required to be the nominee of the business and similar provisions should be extended to collectors if licensing of collectors is retained.

Collectors are no longer licensed in other jurisdictions except the ACT where removal of licensing has been recommended in the NCP review. There are currently only 54 collectors licensed in Queensland and no complaints have been received by the Office of Fair Trading in relation to collectors over recent years. Having regard to modern transport and communications and the trend towards flexibility in the marketplace, the current role of collectors may no longer have relevance. While it may be argued that licensing of collectors should continue to avoid any gap in the licensing regime, it is considered that the marketplace would be best served by the category of collectors being removed from the legislation and that collectors be licensed as second-hand dealers. This change in the licensing arrangements would allow collectors to dispose of property to parties other than second-hand dealers and auctioneers. Such a change would be likely to increase fees for collectors but would allow collectors to compete more effectively with second-hand dealers and pawnbrokers. As collectors are already required to maintain registers, this change would not increase the administrative burden on collectors and would be consistent with the objectives of the legislation.

Second-hand dealers and pawnbrokers are restricted by the legislation from holding collectors' licences. It has been argued that second-hand dealers and pawnbrokers do not need collectors' licences to permit them to undertake collections from persons in their homes or from other places. However, the SD&C and PB Acts

refer to licensees operating from premises or locations. There would be some benefit in clarifying whether second-hand dealers and pawnbrokers are permitted to collect from homes and other places. If the proposal to change the status of collectors to second-hand dealers is accepted, the SD&C and PB Acts should be clarified to ensure that a level marketplace is provided by allowing all licensed operators to collect from homes or other places.

Licences are issued for a period of one year from the date of issue or renewal. A number of other pieces of fair trading legislation have been amended to provide licensed persons with a choice of a one, two or three-yearly renewals. There would be benefits for second hand dealers and pawnbrokers if similar amendments were made to the SD&C and PB Acts. The currency of the register would be maintained by requiring licence holders to notify the chief executive of any changes of particulars as they occur within the licence period. Triennial renewals would lessen administrative requirements for business and government without imposing any additional costs.

Geographic Restrictions under Licences

The SD&C Act provides that a dealer can only carry on business from the premises or location endorsed on the licence. The applicant is required to specify the premises (being not more than one) and locations where he/she proposes to carry on business as a dealer. "Location" is defined to include fairs and markets. A licensee may make an application to the chief executive to replace the premises or location or may add another location. The chief executive may approve the application either unconditionally or subject to conditions or may reject the application. If the application is approved, details of the approval of the premises and locations and any conditions imposed must be endorsed on the licence.

As the licence is issued to the individual on the basis of that person being "fit and proper" to hold a licence, it seems an unnecessary restriction on business to preclude the licensed person from operating a number of premises simultaneously or at a number of locations provided that a principal place of business is identified and other regular places of operation are recorded. If required, additional copies of the licence or photocopies could be placed in other premises operated by that person. Separate records for each premises would need to be kept and the licence holder would be responsible for the operations of each location.

Currently only five licensed collectors have specified locations on their licenses. The remaining 49 collectors are licensed to operate throughout the State. Restricting collectors to certain areas only is a restriction on business and, as only a few collectors are presently subject to these restrictions, if licensing of collectors is to continue, the legislation should be amended to allow operations in all areas.

6.1.2 Conduct Restrictions

Collectors

The SD&C Act provides a number of restrictions on the conduct of collectors. Essentially, these restrictions are designed to protect consumers from being

subjected to undue pressure and dishonest practices and, as such, comply with the objectives of the legislation. These restrictions relate to the hours a collector may call at a home, displaying personal details including licence number, producing the licence within 24 hours of a consumer's request, and wearing a collector's badge.

The SD&C Act prohibits the collection of goods from persons under 17 years. This provision places a statutory restriction on the capacity of persons under 17 years to enter into contracts. It recognises the vulnerability of young people to be influenced by authority figures. It also recognises the potential of persons under 17 years to participate in property offences and to endeavour to dispose of stolen goods. The restriction is consistent with the crime prevention objectives of the legislation and reduces the opportunity for persons under 17 to be involved in the acquisition and disposal of stolen property. This is also consistent with the Government's Priority Outcomes for Queensland to build a safer and more supportive community.

The requirements to maintain records and retain goods for a minimum period of seven days if not delivered directly to a second-hand dealer are intended to achieve the law enforcement and crime detection objectives through providing an audit trail to assist in identification and recovery of stolen property. However, the retention of large goods may be impracticable due to the need to maintain suitable premises for this purpose. Retention of small items such as jewellery may be appropriate but the present legislation does not make a distinction between large and small items. If licensing of collectors is to be retained, this area needs clarification.

The SD&C Act provides that collectors can only operate between the hours of 7.00 am and 6.00 pm Monday to Saturday. Collectors are prohibited from operating on Sundays or public holidays. With recent changes to trading hours, alteration to these hours may be appropriate. However, the current hours do offer protection to consumers from uninvited calls to their homes outside of these hours. The uninvited call is a completely distinct situation from consumers making a deliberate choice to visit a shopping centre. The *Fair Trading Act 1989* (FTA) contains provisions in relation to door-to-door sales. While the role of the collector seeking to acquire second-hand property is different from a salesperson attending a premises uninvited for the purpose of selling new goods to the householder, it may be appropriate to bring some consistency into the trading hours. The FTA is currently being reviewed as part of the NCP process and if the provisions relating to collectors are to be retained in the SD&C Act, further consideration should be given to the hours of operations to provide consistency.

The provision requiring collectors to sell only to second-hand dealers or licensed auctioneers is a restriction on business conduct. Provided that records are maintained of goods received and methods of disposal, collectors should be able to sell to other persons. In practice, dealers also collect from private homes. Dealers, unlike collectors, can then sell through their shopfronts. Collectors compete with dealers and are disadvantaged by the limit in their scope for disposal of goods. Removal of the restriction would in effect make collectors second-hand dealers. They would be distinguished from second-hand dealers only through operating without a fixed premises.

Having regard to the low number of licensed collectors (54) and in the absence of any complaints being received by the Office of Fair Trading over the past few years, it would appear that there is insufficient justification for the provisions relating to collectors to be retained. However, if licensing and conduct provisions for collectors were to be repealed, persons operating in the second-hand industry without formal premises would still be required to be licensed as second-hand dealers and the fees charged would be at the same level for other licensed dealers. During consultation, it was apparent that some collectors already sell directly to regular customers known to have an interest in the particular articles acquired by the collector.

Second-hand Dealers

The SD&C Act creates a number of restrictions on the conduct of second-hand dealers. Essentially, these restrictions are intended to put into place law enforcement and crime detection measures. These restrictions relate to the display of business details, the sale of goods to only those premises or locations shown in the licence, the maintenance of a register of transactions, and retention of certain goods for minimum periods.

The SD&C Act prohibits the acquisition of goods from persons under 17 years. This is similar to the restriction placed on collectors discussed earlier in this section and recognises the special circumstances of persons under 17 years particularly in relation to entering into contracts, their vulnerability to be influenced by authority figures and potential to participate in property offences.

The requirements to retain prescribed goods for a minimum period of seven days are intended to achieve the objectives of the legislation through its law enforcement and crime detection mechanisms by providing an audit trail to assist in identification and recovery of stolen property. While this represents a significant impost on dealers in acquiring storage space for this purpose, this restriction has potential for providing benefits for both law enforcement agencies and consumers in recovery of stolen property and prosecution of offenders.

To further pursue the law enforcement and crime detection objectives, submissions received from various stakeholders supported the replacement of written, bound registers with a computerised system which could be downloaded to the Queensland Police Service for matching against property crime reports. The costs of introducing such a system would initially be high in acquisition of hardware and software and training but time savings could be achieved in avoiding duplication and laborious transcription of records.

While these business conduct provisions impact on second-hand dealers in administrative and compliance costs, these requirements must be weighed against the benefits of the law enforcement and crime detection objectives of the SD&C Act to the community as a whole. In this case, the objectives of the legislation can best be achieved through business conduct restrictions as the costs/imposts on business are small or are not significant.

6.2 Pawnbrokers

6.2.1 Licensing Restrictions

The licensing requirements for pawnbrokers relating to age and mental capacity are the same as for second-hand dealers and collectors and are discussed earlier in 6.1.1.

The current licensing checks on applicants entering the pawnbroking industry produce a net benefit to consumers through consumer protection and law enforcement particularly in relation to ensuring integrity of the industry and recovering stolen goods. These provisions support the objectives of the legislation.

However, as discussed in 6.1.1 there has been a trend in recent years towards the replacement of the “fit and proper” test with a “suitability” test based on objective and relevant criteria and this may be appropriate in the PB Act also.

The PB Act restricts pawnbrokers to operating only from the premises shown on the licence. This means that an operator running two stores would be required to have two licences and pay two fees. While there may have been some justification such as lack of technology in earlier times, with modern transport and communications, the provision imposes additional costs on business and restricts competition. As the licence is issued to the individual on the basis of that person being “fit and proper” to hold a licence, it seems an unnecessary restriction on business to preclude the licensed person from operating a number of premises simultaneously or at a number of locations provided that a principal place of business is identified and other regular places of operation are recorded. There would be benefits for both industry and consumers in removing the restriction to allow for multi-site operations from all premises listed on the licence. Additional copies of the licence could be prepared to cover each of the premises listed. The licensed pawnbroker would be responsible for the operations of each location and maintaining separate records for each premises.

Licences are issued for a period of one year from the date of issue or renewal. As outlined in relation to second hand dealers, there would be benefits in providing licensed persons with a choice of a one, two or three-yearly renewals. The currency of the register would be maintained by requiring license holders to notify the chief executive of any changes of particulars as they occur within the licence period. Triennial renewals would lessen administrative requirements for business and government without imposing any additional costs.

Currently 189 licensed pawnbrokers are also licensed as second-hand dealers. Only 25 are licensed as pawnbrokers only. This dual licensing imposes a cost on business and the trend in other States has been towards a single or combined licence. Dual licensees currently pay two fees. A combined licence could potentially reduce compliance costs for licence holders and could potentially reduce administration fees to government. If a single licence were to be introduced, it would require amendment to both Acts or amalgamation of both into a single Act.

6.2.2 Conduct Restrictions

Provisions requiring the display of certain information such as name and licence number, to keep registers of articles pledged and disposed of, and to provide details of the pledge record to the person pledging the goods provide consumer protection against dealing with unscrupulous operators and provide a benefit to consumers which outweighs any costs involved. Moving from a hand written register to a computerised system with facilities to provide the Queensland Police Service with downloads of property records could enhance the law enforcement and crime detection process, but may not be practical in all circumstances, particularly in rural and remote areas.

The PB Act places restrictions on pawnbrokers employing persons under 17 years for the purpose of taking pledges or pawns. It also restricts receiving property from persons under 17 years of age. These provisions are similar to those imposed on second-hand dealers and collectors and are discussed earlier in this report at 6.1.2.

Currently, a separate licence is required for each premises operated by a pawnbroker and a pawnbroker is prohibited from carrying on business except in the premises specified in the licence. It is considered that this is a restriction on competition and this report proposes to permit pawnbrokers multi-site licenses which would be less restrictive than the present requirements.

Pawnbrokers are required to notify the officer in charge of the nearest police establishment of the receipt of any article answering the description of articles being stolen or unlawfully obtained. Such description may be given to the pawnbroker by any police officer in writing, printed or oral information. The restriction supports the objective of the legislation in respect to law enforcement and crime detection and the benefit of the provision to the public outweighs the costs involved. Crime detection could be enhanced by the Queensland Police Service notifying pawnbrokers and second-hand dealers on a regular basis of the details of any stolen property being sought rather than on an ad hoc basis.

Disposal of unredeemed pledges by auction has been identified as a restriction on business. Unredeemed pledges for which an amount of less than \$40 has been advanced become the property of the pawnbroker and the consumer loses all claims on such property. In the case of unredeemed pledges on articles for which an amount of not less than \$40 has been advanced, the pawnbroker must sell such articles by public auction. The person who pawned the article loses all claim to the article. Concerns have been expressed during consultation about the current procedures for the disposal of unredeemed goods. The PB Act provides that “articles shall be sold by public auction and no other manner”. Other provisions outline procedures relating to advertising, description of articles and dealing with the proceeds of sales.

Public submissions have strongly supported the abolition of auction requirements while retaining provisions for the disbursement of the proceeds of the sale. While the PB Act provides for the recovery of expenses for the sale, it is argued in submissions in response to the Issues Paper that persons attending auctions are only willing to pay bargain prices and that the auction does not provide access to the real

value of the item. The amount received is often less than the amount loaned. The provisions assume that all items will be sold by auction whereas this is not always the case. Pawnbrokers often buy goods at the auction for resale to ensure a reasonable price is obtained. This means that in addition to the costs involved in the auction process, they also have to outlay money to ensure a reasonable return. There is nothing in the current provisions requiring notification to be sent to the consumer to inform that person that the period of redemption has expired. The current system does create an impost on business in terms of time and efficiency and should be replaced by a system that reduces the burden on pawnbrokers but ensures the rights of consumers.

6.3 Fees

The application and renewal fees for a pawnbroker's licence (\$386) are considerably higher than the fees for licenses for second-hand dealers (\$231) and collectors (\$48.50).

Apart from annual adjustments, the fee structure has not been changed in recent years. The licensing requirements are similar and these variations are a concern in that these different categories operate in the same broad second-hand market and the fee structure may give a competitive cost advantage to the second-hand dealers and collectors.

As a comparison, the following fees apply in interstate jurisdictions:

Jurisdiction	FEES				RENEWALS	
	SHD	PB	Combined	Collectors	SHD	PB
QLD	231.00	386.00	-	48.50 a	231.00	386.00
NSW	325.00	325.00	-	-	235.00	235.00
Victoria	150.00	150.00	-	-	30.00	30.00
Tasmania	-	-	-	-	-	-
South Aust	-	-	-	-	-	-
WA	217.00 b	217.00	250.00 a	-	217.00	217.00
NT(Individ)	200.00	200.00	275.00 d	-	150.00 c	150.00 c
NT (Coy)	250.00	250.00	350.00 d	-	150.00 c	150.00 c
ACT	92.00	92.00	-	92.00	92.00	92.00

“a” – Fee is per annum.

“b” – WA fees are for second-hand dealers using computerised records. A fee of \$278 applies to dealers using manual systems.

“c” – Fees shown are for one year. Lower costs apply to licences for 2 or 3 years.

“d” – Renewal fees for 1 year are \$200. Lower costs apply to licences for 2 or 3 years.

While considerable variations exist between jurisdictions and occupational categories, in general terms, it is considered that the fees charged in Queensland are not excessive and do not represent a restriction on entry into the industry or impact significantly on competition. However, consideration of actual fee levels will depend upon the adoption of the various proposals in this report in relation to issues such as multi-site licences, combined licences, removal of collectors' licences, role of entrepreneurs, and triennial licences.

7.0 ASSESSMENT OF ALTERNATIVES TO THE CURRENT LEGISLATIVE REGIME

7.1 Option 1 – Deregulation/Voluntary Code of Conduct

An alternative to the current regime would be to deregulate the operations of second-hand dealers and pawnbrokers by repealing both Acts and the development of a voluntary code of conduct to replace the regulatory regime.

Deregulation, based on the repeal of both Acts, would reduce costs to business and administrative costs associated with existing record keeping and identification requirements. Deregulation would also remove barriers to entry into the industry by removing the requirement to hold a licence. While consumer protection may be reduced as consumers would not know with whom they were dealing and may not be able to locate the person in the event of some problem with their purchase, the market would rely on competitive forces to regulate behaviour. Good operators would make information available to customers in a competitive market. Unscrupulous operators would not be prevented from entering the industry and law enforcement and crime detection would be reduced to relying on participants cooperating fully with law enforcement agencies. Law enforcement would become reactive in that it could only act after the event rather than seeking to prevent problems by limiting entry to suitable applicants. Deregulation may increase government expenditure in relation to crime prevention and law enforcement costs particularly in the identification of traders, which will no longer be offset by the receipt of license fees.

Property crime has been estimated to have an annual financial and economic cost to Australians in excess of \$1,000 million excluding psychological effects on victims or the impact of increased security measures on the broader community¹⁰. Australians have a high concern about burglary and one report found that over 30% felt that they were “likely” or “very likely” to be burgled in the next 12 months¹¹. In view of this concern about property crime and the potential use by offenders of second-hand dealers and pawnbrokers to dispose of stolen property, deregulation would not be in the public interest.

Codes of conduct potentially improve industry standards and promote public confidence. An industry body could regulate its membership through an industry driven voluntary code of conduct. Codes of conduct are best suited to situations where there is a shared interest and commonality within an industry. However, in this instance there is fragmentation due to the various interests involved and this is likely to remain the case in the long term. As there is no single industry association to administer a voluntary code, effectively any code developed and regulated by an individual organisation would not contribute towards meeting the policy objectives of the legislation as consumer protection could be lessened and law enforcement inhibited as only some organisations, such as franchises, would develop and apply codes of conduct. While a voluntary code could include a requirement to record details of articles received, it would depend on the take up rate of industry

¹⁰ Walker, J. 1997. “Estimates of costs of crime in Australia in 1996”. *Trends and Issues in Crime and Criminal Justice*. No. 72. Australian Institute of Criminology. Canberra.

¹¹ Steering Committee for the Review of Commonwealth/State Service Provisions (SCRCSSP). *Report on Government Services*, vol. 2.

participants to determine whether the objectives of the voluntary code are achieved.

CONCLUSIONS – DEREGULATION/VOLUNTARY CODE OF CONDUCT

Deregulation and a voluntary code of conduct would not adequately meet the policy objectives in law enforcement, crime prevention and detection and in protecting consumers through integrity checking of industry participants and ensuring title to goods purchased. As such, deregulation through legislative repeal and replacement by an industry specific voluntary code of conduct is not a viable option to meet the objectives of the legislation.

7.2 Option 2 – Alternative Regulation – Mandatory Code of Conduct

A mandatory code of conduct is similar to a voluntary code of conduct except that it would be made under legislation and that participation is mandatory rather than voluntary.

The following examines two approaches involving the introduction of mandatory codes of conduct. The first examines a non-industry specific code made under the *Fair Trading Act 1989* (FT Act) and the second considers a mandatory code made under industry specific legislation.

In the first approach, section 88A of the FT Act provides that a regulation may prescribe a code of practice for fair dealing between a particular type of supplier and consumer or about a particular type of person in relation to a consumer. However, a regulation is limited in what it can do and it cannot provide for industry specific licensing or registration. The FT Act model would entail repeal of the existing SD&C and PB Acts and replacement with a mandatory code of conduct under a regulation. This would reduce costs for business associated with licensing fees and administration and would reduce barriers to entry into the industry. The FT Act model would ensure industry compliance with prescribed conditions and would attract penalties for persons who do not comply with the code.

Under this approach in the absence of a licensing regime, the government may incur additional compliance and enforcement costs, particularly in establishing the identity of traders, which would no longer be offset by receipt of license fees. In addition, the government would incur the costs of development of the code. Consumer protection would be reduced as consumers would have difficulty in identifying the persons with whom they are dealing, although mandatory compliance with the code should ensure regulation of business conduct. While costs may be reduced for business, the burden for administering the regime would be transferred to government.

Alternatively, a mandatory code of conduct could be made under industry specific legislation such as the existing SD&C and PB Acts. Licensing requirements could be maintained under the legislation with conduct or best practice provisions being placed in the code.

Under this model, licensing could be maintained in the legislation with similar conduct restrictions to the existing legislation being introduced in the code. The costs for business in complying with such a model would effectively remain the same. Costs to government

for compliance and administration would also remain the same but additional costs may be incurred initially in development of the mandatory code. Effectively, this model would duplicate the existing level of regulation and retain the status quo.

CONCLUSIONS – MANDATORY CODE OF CONDUCT

1. An FT Act mandatory code of conduct is likely to have some advantages in terms of lowering compliance costs to industry. However, rather than eliminating these costs, they are simply shifted to enforcement agencies and increase the risk on consumers. Codes of conduct not supported by licensing or registration are difficult to enforce as consumers need to identify the persons with whom they are dealing and government needs to know who is operating in the marketplace.
2. Industry specific legislation and a mandatory code of conduct would not change compliance costs for industry but may add additional development costs to government.

The first approach is not considered to be a viable option as it would not provide for integrity checks on industry participants and, as such, does not meet the law enforcement, crime prevention and detection objectives of the legislation.

The second approach does not effectively change the present situation or reduce costs to industry. Some additional costs may be incurred initially by government and there would be no great advantages to either industry or government.

7.3 Option 3 – Alternative Regulation – Negative Licensing

Under a negative licensing scheme potential market participants are not required to seek Government approval prior to entering the market but are required under legislation to conduct themselves in accordance with predetermined standards. At present the industry is regulated by a positive licensing regime where persons are required to provide certain information to government and show they are fit and proper persons to hold a licence, before they are able, by law, to enter the market.

A negative licensing regime would allow anyone to enter the market, but would monitor market behaviour in accordance with legislative provisions. If a market participant's behaviour is inappropriate, a government authority could exclude that participant from the market place.

Negative licensing is a reactive approach to regulation that does not prevent the inappropriate behaviour initially occurring in the marketplace. An advantage of this approach is that it reduces costs of administration for industry in having to undergo the licensing process but, at the same time, it increases the cost of enforcement. The major impediment of the negative licensing model is in identification of persons operating as second-hand dealers or pawnbrokers.

South Australian and Tasmania have augmented the negative licensing approach by introducing a notification system whereby applicants must notify their intention to

commence operations and the Commissioner of Police has the opportunity to examine any criminal history of the applicant and may lodge a notice of objection with the Court of Petty Sessions. There are no fees involved with the lodgement of the notification regime.

However, costs may be involved in the event of any court actions where disputes over the right to commence operations occur. Other business conduct restrictions still apply.

The NCP review of the Victorian legislation recommended that the licensing for second-hand dealers and pawnbrokers be replaced by a registration system with provision for prescribing requirements for notification of the type of business being conducted. This effectively reduced the need for multiple licences thereby reducing costs to business. The registering authority is required to register an applicant unless the person is ineligible on prescribed grounds such as insolvency, a previous disqualification, or conviction on a disqualifying offence. Fees apply for the lodgement of applications and annual renewals.

Being able to readily identify compliant traders is important for consumers and a positive licence is an effective way of ensuring that consumers are dealing with a bona fide second-hand dealer or pawnbroker. A negative licensing approach is likely to increase consumer risk, although approaches used in Victoria, Tasmania and South Australia have endeavoured to address this situation.

Consultation did not reveal any significant support for this option. Apart from the reference of the Queensland Antique Dealers Association Inc to totally repeal the legislation or alternatively to move to an approach similar to that in South Australia and Tasmania, respondents to the Issues Paper strongly expressed support for the current positive licensing regime.

CONCLUSIONS – NEGATIVE LICENSING

Overall, negative licensing is likely to have some advantages in terms of lowering compliance costs to industry. However, rather than eliminating these costs, they are shifted to enforcement agencies and increase the risk on consumers. Notification seeks to address this situation but to move to this approach would not greatly change the existing licensing regime. In view of the industry support for the current regime and costs associated with moving to negative licensing, any benefits to all parties would be minimal. As such, negative licensing/notification is not considered to be the most viable option to meet the objectives of the legislation.

7.4 Option 4 – Modified Licensing/Business Conduct Restrictions

The following alternative was proposed for consideration.

- The current SD&C and PB Acts be consolidated into a new Act. (All jurisdictions except Queensland and ACT already have single legislation).
- Licensing of second-hand dealers and pawnbrokers be maintained in the public interest.

- A single licence type endorsed with the applicant's primary activity be introduced thereby removing the need for pawnbrokers to hold a separate second-hand dealers licence.
- Multi-site licences bearing all of the trader's operational locations be introduced.
- Provisions relating to collectors be repealed and persons desiring to operate without a formal premises should obtain a second-hand dealers licence.
- Any geographical restrictions on licensed operators be removed.
- Replacement of the "fitness" test with a "suitability" test as a licensing requirement.
- Transaction recording to be retained in the public interest but provision be made for optional computerised records.
- The disposal of unredeemed pledges by auction should be made optional with the alternative of disposal by sale through the premises where the pledge was made.
- Charities should continue to be exempt from the provisions of the legislation.
- Optional extension of licensing periods to one, two or three years be introduced.
- The role of the "entrepreneur" be changed to provide for greater supervision of market stallholders selling second-hand goods.
- In accordance with the intention of the current legislation, market stallholders selling second-hand goods on a casual or once-only basis should not be licensed but regular stallholders should be licensed. However, the definition of what constitutes "casual" or "regular" must be addressed and should be examined along with other issues identified in this section 7.5 of this Report as requiring further consideration.

This proposal would not seriously impact on the objectives of the SD&C and PB Acts but would remove unnecessary licensing costs, restrictions on competition and barriers to entry into the industry. It provides for continued industry integrity checks and business conduct restrictions but provides for more transparent suitability tests and modernisation of recording requirements.

Provisions for a single licence bearing the type of activity in which the trader is engaged, multi-site licences, and pawnbrokers not requiring a separate second-hand dealer's licence would reduce costs to industry. The reduction in the types of licences issued and the removal of the requirement to hold separate licences for different premises may impact on government revenue but would also remove the restrictions on competition allowing licensed traders to operate from other specified locations. Removal of any geographical licensing requirements would also enhance competition. By the optional extension of the licensing period to one, two or three years, the administrative burden would be reduced on industry and on government. The reduction in government revenue could be offset against administrative savings.

Modernisation of recording requirements with the introduction of optional use of electronic records may initially create an impost on business but this would be offset against savings in time and efficiency. Many businesses have computerised since the introduction of the goods and services tax and it would be beneficial to both consumers and business if optional electronic records were introduced. Optional electronic recording would not impact on collectors who may travel around the State.

Removal of the mandatory requirement to auction unredeemed pledges would reduce the administrative burden and costs on pawnbrokers created by the need to comply with the current legislation. This should allow pawnbrokers to operate more efficiently which should flow on to consumers in improved services.

The proposal to clarify the role of the entrepreneur and require a greater supervisory role in the sale of second-hand goods by stallholders will provide a level playing field for licensed dealers competing with market stallholders. Currently, entrepreneurs fall under the definition of a second-hand dealer and as such should maintain records appropriate to a dealer selling second-hand goods. An entrepreneur is described as being a person in charge or responsible for running various types of weekend markets or fairs. As such, an entrepreneur may not necessarily be involved in the selling of second-hand goods. The intention of the legislation was not to licence stallholders operating on a once-off basis, but the proposal to provide a greater supervisory role for entrepreneurs could assist in the identification of persons trading on a regular basis without a licence. The role of the entrepreneur could be changed to retaining records of stallholders selling second-hand goods and where a stallholder is operating on a regular basis, the entrepreneur could advise the stallholder to contact the licensing authority to ascertain whether a second-hand dealer's licence should be held. Entrepreneur records could be available to an authorised officer upon request. Despite not being involved in transactions for the sale of second-hand goods and not receiving any reward for sales, entrepreneurs are currently required to hold full second-hand dealer licences. If the entrepreneur is involved in actual selling, a second-hand licence should be held, however, a lower licence fee could be charged if an entrepreneur is not involved in actual sales of second-hand goods, thereby offsetting the costs of maintaining an appropriate register of stallholders dealing in second-hand goods. Licensing requirements currently ensure the integrity of the entrepreneur and the proposed record keeping duties would be consistent with the law enforcement and crime detection objectives of the legislation. The issues of what constitutes "regular" or "casual" stallholders and the role of the entrepreneur need to be further considered by the Office of Fair Trading along with other issues identified in section 7.5 of this Report.

CONCLUSIONS – MODIFIED LICENSING/BUSINESS CONDUCT RESTRICTIONS

Modification of the current arrangements, maintains the current licensing and business conduct regime envisaged by the legislators to provide law enforcement, crime prevention and detection measures. This should provide consumer protection while reducing administrative burdens and restrictions on competition. The benefits to the community of the restrictions in the proposed approach outweigh the costs to industry, which obtains a benefit through public confidence in operators through integrity checks. The objectives of the legislation can only be achieved by restricting competition but the proposed modifications will reduce unnecessary imposts on business.

7.5 Issues for Further Consideration

During the course of the review stakeholders identified a number of additional issues which fall outside of the ambit of a NCP review. The Terms of Reference for the NCP review limit it to a consideration of the restrictions on competition.

The following broader issues were identified by stakeholders:

- that a policy assessment of the definition of second-hand goods should be made to consider whether it should be narrowed to only cover identifiable goods with a high risk of theft rather than the present broad definition.

- that provision be made for photographic identification for all licensees to enhance the industry's credibility and professionalism.
- that the role of second-hand dealers and pawnbrokers collecting from private residences be defined.
- that computerisation of records be made mandatory.
- that supply of computerised information by second-hand dealers and pawnbrokers to the Queensland Police Service be formally introduced.
- that the Queensland Police Service should regularly notify licensed operators of particular stolen goods being sought.
- that licensed operators should include their licence number in any advertising as this would identify persons regularly advertising second-hand goods without a licence.
- that the categories of goods covered by the legislation should be regularly reviewed to ensure that they remain both current and appropriate.
- that the issue of dealing with pledged goods in the case of the death of the pawnbroker or closure of the pawnbroking business should be considered.
- that pawnbrokers be required to notify the owner of an unredeemed pledge by registered mail or other suitable means of its impending sale and the excess proceeds of that sale.
- that the value of the item to be auctioned be raised above the current level of \$40.00.
- that an alternative dispute resolution system be considered.
- that internet selling and its impact on the industry be examined.
- that the issue of permits for garage sales be examined.
- that the duties of an entrepreneur be examined.
- that the definition of "regular" or "casual" market stallholders be determined.

All of these issues, identified throughout the review, should be referred to the Office of Fair Trading for further consideration. Part of that consideration will include an assessment of the impact of the various proposals on competition.

8.0 CONCLUSIONS

An impact statement on the proposed alternative models is attached to this report as Appendix 2.

The following conclusions are drawn on the assessment of the restrictions on competition, analysis of the alternatives and stakeholder responses to the Issues Paper.

Licensing Restrictions

Due to the public concern about property crime discussed at 7.1 and the potential risks to the community of stolen goods being disposed of through second-hand dealers, collectors or pawnbrokers, it is considered that the licensing restrictions and age limitations are in the public interest and should be retained. Restrictions on business could be reduced and the system made more efficient by changes being made to permit the use of a single licence type with the particular activity recorded, the introduction of multi-site licenses, and the present "fitness" test being replaced by a more objective and transparent "suitability" test to assist eligible applicants wishing to enter the industry. There are currently only 54 licensed collectors in Queensland. Collectors are not licensed in other jurisdictions except the ACT where deregulation is proposed. Collectors are required to dispose of goods only through second-hand dealers or auctioneers and to operate only in locations specified on

the licence. These requirements restrict competition and it is proposed to repeal the provisions relating to collectors. This means that collectors would have to obtain second-hand dealer licences operating without fixed premises. While increased licence fees may apply, collectors would not be restricted in their manner of disposal of property.

Conduct Restrictions

The current conduct restrictions are intended to achieve the objectives of the legislation through law enforcement, crime prevention and detection mechanisms including the requirement to maintain registers of transactions relating to second-hand property. Other restrictions assist consumers in knowing with whom they are dealing. While these provisions impose restrictions on business, having regard to the potential for stolen property to be disposed of through the industry and the need to guarantee title to consumers, the restrictions are justified in the public interest. However, the requirement to auction unredeemed pledges places an unnecessary administrative burden on pawnbrokers and this should be replaced with an optional system with goods being able to be sold from the receiving premises. Computerisation of the industry would reduce time consuming duplication of recording details of property received but would initially impose costs on traders. Many traders may already have computer access to deal with GST and extension of computer use to record second-hand transactions should be made optional. Currently, pawnbrokers holding second-hand dealer licences are required to maintain registers in accordance with the SD&C Act. The removal of the necessity to hold both licences should not remove the obligation from keeping appropriate records for goods received under the SD&C Act.

Geographical Restrictions

Geographical restrictions should be removed and multi-site licences should be available to second-hand dealers and pawnbrokers. Removal of these limitations would reduce costs to industry caused by the present requirement to have separate licenses for each location. The removal of this restriction could potentially increase competition.

Overall Conclusions

The current restrictive provisions in the SD&C and PB Acts are justified in the public interest and meet the objectives of the legislation and Government Priority Outcomes. However, both Acts are in need of extensive revision including consolidation into a single piece of legislation. The modifications discussed at section 7.4 offer proposals to retain licensing and business conduct provisions in the public interest while modifying restrictions on business.

9.0 TRANSITIONAL ISSUES

If the licensing system is modified to remove the requirement to hold separate licences for the type of activities or for operating from different locations, pro rata refunds of fees should be made to affected licence holders.

If the provisions relating to collectors are repealed, pro rata refunds should be made to licensed collectors and they should be informed of the need to obtain a full second-hand dealers licence.

10.0 RECOMMENDATIONS

The SD&C and PB Acts commenced in 1984 replacing earlier 1922 and 1849 legislation respectively. Apart from introducing new centralised licensing provisions and some modernisation, effectively these Acts were substantially unchanged.

In a rapidly changing marketplace and with the advent of new technology, these Acts are in need of substantial re-writing. In particular, consolidation into a single Act would bring Queensland into line with other jurisdictions.

The NCP review of the SD&C and PB Acts has identified a number of issues which require legislative amendment as they impact on competition and create barriers on entry into the industry. The review also identified many other issues not impacting on competition which warrant further examination in broad policy review.

This NCP report recommends:

1. the licensing of second-hand dealers and pawnbrokers be retained;
2. all provisions relating to collectors be repealed from the SD&C Act;
3. the SD&C and PB Acts be consolidated into a single Act;
4. a single licence type be introduced endorsed with the applicant's primary activity thereby removing the need to hold separate licences for each activity such as second-hand dealer, pawnbroker, entrepreneur;
5. multi-site licences endorsed with premises, principal place of business, or locations regularly used by the applicant be introduced thereby removing the restrictions on the issuing of a licence to one premises only and permitting licensees to operate without fixed premises;
6. the licensing of entrepreneurs be retained.
7. the "fit and proper" test for applicants for licences be replaced with a "suitability" test similar to that contained in the *Property Agents and Motor Dealers Act 2000*;
8. provisions relating to the recording of transactions be retained in the public interest but provision be made for optional use of computerised recording;
9. disposal of unredeemed pledges by auction be made optional with the alternative of disposal by sale through the premises where the pledge was made being introduced; and
10. optional extension of licensing periods to one, two or three years be introduced.

APPENDIX 1

OTHER JURISDICTIONS

New South Wales

In NSW, pawnbrokers and second-hand dealers are currently licensed. Initial application and renewal fees apply (\$325 and \$235 respectively). Restrictions on obtaining a licence include being over 18 years, not mentally incapacitated, not an undischarged bankrupt, and have no convictions for offences of dishonesty within the past 10 years.

Pawnbrokers must keep prescribed records on computer and must operate from fixed premises. Unredeemed goods on which \$50 or more was lent must be sold at public auction. The minimum redemption period is 3 months. Second-hand dealers must keep, unless exempt, prescribed records on computer and generally, must hold goods for 14 days after receipt.

NSW is currently finalising its NCP assessment.

Victoria

In Victoria, pawnbrokers and second-hand dealers currently must be registered. Initial application and renewal fees apply (\$150 and \$30 respectively). Applicants must have no disqualifying offences within the last five years and must not be insolvent.

Pawnbrokers must keep prescribed records and unredeemed goods over \$40 must be sold at public auction. Second-hand dealers must keep prescribed records and, in general, must hold goods for 7 days after receipt.

The Victorian NCP review recommended that:

1. The various licensing types be replaced by a registration system with provision for prescribing requirements for notification of the type of business being conducted (eg. dealing from business premises, dealing from markets, pawnbroking).
2. The “fit and proper test” for applicants be replaced by a “no serious offences” test similar to that used in the *Estate Agents Act 1980* (NSW).
3. The obligation to retain goods for seven days after acquisition no longer apply for metals except gold and silver (whenever obtained) and copper and brass (when acquired from a source not used in the preceding three months).
4. The requirement on dealers to conduct particular transactions only at a registered business premises or a market be removed, and that instead dealers be required to register any place habitually used for holding goods acquired and, where goods subject to seven day retention requirements are not to be kept at a registered place, to record on acquisition where they will be kept.

The report also recommended that there be a comprehensive review to identify any types of goods or business which should be exempted from coverage by the Act without practical detriment to the interception or tracing of stolen goods.

Tasmania

In Tasmania, a person wishing to open a new business as a pawnbroker or second-hand dealer must notify the Commissioner of Police at least one month before to permit the Commissioner to examine any criminal history of that person. If the Commissioner objects to that person operating as a second-hand dealer or pawnbroker, a notice of objection must be lodged with the Court of Petty Sessions. There are no fees associated with this legislative regime.

Pawnbrokers must keep prescribed records. The redemption period is 6 months and forfeited goods must be sold at auction unless under the prescribed value. Second-hand dealers must keep prescribed records and goods must be retained for 7 days after receipt.

A minor NCP review was conducted. The review found that restrictive provisions were justified in the public benefit.

South Australia

The position in South Australia is similar to Tasmania in that persons wishing to open a new business as a second-hand dealer or pawnbroker must give at least one month's notice to the police. This enables the Commissioner of Police to examine any criminal history of the applicant and if the Commissioner has any objections to that person operating as a second-hand dealer or pawnbroker, a notice of objection may be lodged with the Court of Petty Sessions. There is no fee for this regulatory regime.

Pawnbrokers must keep prescribed records and unredeemed goods must be sold as soon as possible. Second-hand dealers must keep records of prescribed goods which must be held for 10 days after receipt. Required records must be made as soon as possible after receipt.

The NCP review has been completed and no reform was recommended.

Western Australia

Pawnbrokers and second-hand dealers must be licensed. Applicants must be of good character and be a fit and proper person with no offences of dishonesty within the last 5 years. A pawnbroker's licence costs \$217. A second-hand dealer's licence with computerised records costs \$217 or \$278 where manual records are kept. A combined licence for a pawnbroker and second-hand dealer is \$250. These fees are paid annually.

Pawnbrokers must keep computerised prescribed records. Unredeemed goods must be sold as soon as practicable and pawners must be notified of any surplus of the proceeds of the sale. Second-hand dealers are not required to maintain computerised records. Certain goods must be held for 14 days after receipt.

The NCP review has been completed. The review recommended: retaining the current licensing provisions on the understanding that they may be modified following a future review; conducting a further review after the current legislation has been in operation for an additional three years; and examining alternative approaches including those likely to be introduced by other States.

Northern Territory

Pawnbrokers and second-hand dealers must be licensed. Applicants must be of good and reputable character and not have a criminal history of dishonesty or violence. Members of the public may object to the granting of a licence on specific criteria. Application fees of \$50 for individuals and \$100 for corporations apply with further fees of 1 year \$150, 2 years \$250 or 3 years \$350 applying on the granting of a licence. Combined pawnbroker/second-hand dealer licences are available. Application fees of \$75 for individuals, \$150 for corporations apply with fees on grant of licence being 1 year \$200, 2 years \$350, and 3 years \$450.

Pawnbrokers must keep prescribed records. Employees must wear name badges and certified photographs must be kept of each employee. A minimum redemption period of one month applies. Unredeemed goods must be sold as soon as practicable to receive the best market price and pawners must be notified of the surplus of the proceeds of the sale.

Second-hand dealers must keep prescribed records. Employees must wear name badges and certified photographs must be kept of each employee. Goods must be retained for 14 days.

A NCP review was conducted by the Centre for International Economics and recommended that provisions be retained with no amendments.

Australian Capital Territory

In the ACT, persons carrying on business as either a second-hand dealer or pawnbroker must be licensed. Applicants must be over 18 years and be a fit and proper person. Licensing fees are an initial application of \$92 and renewal fee of \$92.

Pawnbrokers must keep prescribed records and dispose of unredeemed goods on which \$10 or more was lent by public auction. Interest rates on loans must not exceed the rate of 14%.

Second-hand dealers must keep prescribed records and must hold certain goods for 5 days after receipt.

The NCP review of legislation relating to second-hand dealers and collectors recommended the retention of licensing and updating the definition of second-hand goods. It also recommended altering business conduct to take into account new technology and the repealing of a number of business rules. The review recommended the repealing of provisions relating to the licensing and regulation of collectors.

The NCP review in relation to pawnbrokers has not been completed.

APPENDIX 2 - IMPACT OF PROPOSED ALTERNATIVES

Key Stakeholder	Deregulation/Voluntary Code of Conduct	Mandatory Code of Conduct	Negative licensing option	Modified Licensing/Business Conduct
Current licence holders	(+) Would eliminate any barriers to entering the marketplace and compliance costs associated with the current regulatory regimes. (-) Current licensees may suffer detriment from greater competition. (-) May be a downturn in consumer confidence resulting from the removal of regulatory safeguards, which could have a negative impact on the industry.	(+) Would reduce compliance costs associated with the current regulatory regimes, particularly in relation to ongoing licensing requirements. (-) Current licensees may suffer detriment from greater competition. (-) May be a downturn in consumer confidence resulting from removal of regulatory safeguards, which could have a negative impact on the industry.	(+) Will remove costs associated with license compliance and renewal. (=) A modified negative licensing system with a notification process and fees will effectively maintain the status quo.	(+) Will reduce costs associated with licences for additional premises. (+) Will reduce costs to trade as both a pawnbroker and a second-hand dealer. (+) Will remove geographical restrictions on collectors and clarify the roles of second-hand dealers and pawnbrokers operating away from specified premises. (+) Will reduce administrative burden through optional 1 or 3 years licences. (+) Revision of the role of “entrepreneur” should provide a more level “playing field”. (=) Will continue existing licensing and conduct restrictions.
Potential new entrants to the market	(+) May benefit from increased ability to enter the market, and the reduction in compliance costs.	(+) May benefit from increased ability to enter the market, and the reduction in compliance costs.	(+) May benefit from increased ability to enter the market, and (+) the removal of licence compliance costs.	(+) May benefit from a more transparent “suitability” test rather than the subjective “fitness” test. (-) Licensing fees and business conduct restrictions will apply.
Private sellers of second-hand goods	(+) May benefit from greater flexibility in possible selling arrangements (eg. ability to sell through a wider choice of dealers). (-) May suffer a detriment through the inability to clearly identify the dealer and reduced consumer protection measures.	(+) May benefit from greater flexibility in possible selling arrangements (eg. ability to sell through a wider choice of dealers). (-) May suffer a detriment in the inability to clearly identify the dealer and reduced consumer protection measures.	(+) May benefit from greater flexibility in possible selling arrangements (eg. the ability to sell through a wider choice of dealer). (-) May face greater competition as barriers to entry to market are removed.	(+) May increase flexibility in possible selling arrangements (eg. the model will potentially expand competition and the ability to sell through a wider choice of dealers).
Purchasers of second-hand goods	(+) May benefit from increased competition resulting in improved price and quality. (+) May benefit from any reduction in compliance costs. (-) May suffer a detriment if the measures increase the likelihood of stolen goods being sold. (-) May suffer a detriment in being unable to clearly identify and have confidence in the integrity of the dealer.	(+) May benefit from any increase in competition resulting in improved price and quality. (+) May benefit from any reduction in compliance costs. (-) May suffer a detriment if the measures increase the likelihood of stolen goods being sold. (-) May suffer a detriment in being unable to clearly identify and have confidence in the integrity of the dealer.	(+) May benefit from any increase in competition resulting in improved pricing and service. (+) May benefit from any reduction in compliance costs. (-) Would suffer a detriment if the measures increase the likelihood of stolen goods being sold.	(+) May benefit from any reduction in compliance costs. (+) May benefit from ability to clearly identify dealer and have confidence in the dealer’s integrity and title to property.

APPENDIX 2 continued

Key Stakeholder	Code of Deregulation/Voluntary Conduct	Mandatory Code of Conduct	Negative Licensing Option	Modified Licensing/Business Conduct
Persons seeking credit from pawnbrokers	(-) May suffer a detriment from removal of consumer protection. (-) May suffer a detriment in being unable to clearly identify and have confidence in the integrity of the pawnbroker.	(-) May suffer a detriment from removal of some consumer protection. (-) May suffer a detriment in being unable to clearly identify and have confidence in the integrity of the pawnbroker.	(-) May suffer a detriment from removal of some protection.	(+) Removal of mandatory auctions of unredeemed pledges should ensure a better return on goods sold. (+) Confidence in the integrity of the Pawnbroker should be maintained.
Victims / potential victims of theft and their insurers	(-) May suffer a detriment from removal of compliance measures that help trace stolen goods.	(-) May suffer a detriment from removal of compliance measures that help trace stolen goods.	(-) May suffer a detriment from removal of compliance measures that help trace stolen goods.	(+) Retention of licensing and business restrictions should assist in the tracing of stolen property and identifying offenders.
Government	(-) Significantly reduced capacity to enforce compliance due to inability to clearly identify the trader and prevent receiving and dealing in stolen goods. (-) Significantly increased enforcement costs, which are no longer offset by licence fees.	(-) Significantly reduced capacity to enforce compliance due to inability to clearly identify the trader and prevent receiving and dealing in stolen goods. (-) Significantly increased enforcement costs, which are no longer offset by licence fees. (-) Costs of development of Code	(-) If government still regulates conduct under negative licensing may increase compliance costs, which will no longer be offset by licence fees. (-) Reduced capacity to enforce compliance and prevent receiving and dealing in stolen goods.	(+) Computerisation of records should enhance enforcement and detection of stolen property. (+) Optional 1 or 3 year licences should reduce administrative costs.