

# **SECOND-HAND DEALERS AND PAWNBROKERS ACT 1996 AND REGULATIONS**

## **COMPETITION and REGULATORY ASSESSMENT**

### **1. THE INDUSTRY AND CURRENT LEGISLATION**

#### **1.1 Description of the Industry**

Second-hand dealing and pawnbroking are related business types in that both involve obtaining pre-owned goods for re-sale.

They are distinct, in that pawnbroking involves an obligation to allow the person “pledging” goods to reclaim them if repayment is made according to the contract.

Both forms of business provide a service in allowing individuals to convert assets into cash with relative ease. They provide buyers preferring second-hand prices or seeking particular items no longer in manufacture with a convenient source of supply. In facilitating the re-use of goods they also contribute to waste minimisation.

On the negative side, the second-hand goods industry is, by its nature, bound to be used as a major conduit for stolen property. Police estimate that around 20% of stolen property is disposed of by this means.

The industry deals in a wide range of goods. There are specialist outlets and more general second-hand stores. Sales may be made from a shop or a market stall. Such businesses are, for the most part, local in their sphere of operation, but activities such as dealing in antiques and of used car parts may have a much wider scope, including importation of stock.

## **1.2 Regulatory Arrangements prior to 1996.**

The legislation which applies to pawnbrokers and second-hand dealers is contained in the *Summary Offences Act* sections 49 -49G. These provisions resulted from a deregulation exercise undertaken in relation to second-hand dealers in 1988 and in relation to pawnbrokers in 1990, when both industries were relatively small and stable.

The *Summary Offences Act* imposes record keeping obligations on those who acquire second-hand goods so that matters such as an accurate description of the goods, serial number, description of any mark or label that identifies ownership, date of buying or receiving the goods, full name and address of person from whom goods were purchased, are recorded. There are also provisions dealing with the obligations of second-hand dealers where goods are suspected of being stolen. There are wide and comprehensive powers of entry and inspection of second-hand dealers premises, and second-hand goods markets. The legislation contains a simple negative licensing system and a Court is able to prohibit a person convicted of a dishonesty offence or other specified offences from carrying on the business as a second-hand dealer.

## **1.3 Police and community concerns about second-hand dealers and pawnbrokers**

Since the early 1990's, the industries of pawnbroking and secondhand dealing have burgeoned not only in South Australia but Australia wide and internationally.

South Australian Police are concerned about the role of second-hand dealers and pawnbrokers in the receipt and distribution of stolen property. The police believe that recidivist property offenders explore the opportunities available to commit crime. Often these offenders steal goods for resale.

Lowrie, J of the District Court, Adelaide, has suggested that at least one second-hand dealer chain appears “at times to aid and abet (housing breaking and other thefts)”(Advertiser 29 May 1996, p3)

Operation Basalt conducted by New South Wales Police involved police conducting business transactions as second-hand dealers and pawnbrokers, The police arrested 158 people and recovered about \$2m in stolen property. (NRMA 1994)

Operation Pendulum conducted by the South Australian Police related amongst other things to the retrieval of stolen property. Strategies were implemented to increase the likelihood of catching housebreaking and robbery offenders and to increase the rate of recovery and return of stolen property. The main strategy used during the Operation to identify offenders was to track the sale of stolen goods. Suspects were identified by locating stolen goods in places such as second-hand dealers shops, pawnbrokers shops,, second-hand markets and garage sales.

A review of Operation Pendulum found that:

- second-hand dealers and pawnbrokers were a channel for much stolen property;
- some stalls in second-hand markets in the city handled stolen goods.

Operation Pendulum was effective in containing property offences in that there were significant decreases in the number of break and enter offences reports during the period of the Operation and stolen property to the value of \$615 044 was recovered, which represented over 43% of stolen property associated with offences cleared during the Operation.

Following the success of Operation Pendulum, Command Response Divisions were established in both the Northern and Southern Commands to,, among other things, investigate thefts and to ascertain who is receiving stolen property,, and to implement strategies for the recovery of stolen property and its return to rightful owners.

An evaluation of the Command Response Divisions concluded that the Divisions improved on the efficiency and effectiveness of previous operations and systems. During the months of January - May 1995, the Northern Command Response Division tasks included the monitoring and investigation of second-hand dealers targets. Dealers were identified, liaison initiated and records obtained. Several dealers were reported for failing to maintain records.

Data obtained during Operation Pendulum and the experience of the Command Response Divisions suggested several constraints on police when dealing with second-hand dealers and related areas. These constraints included:

- lack identification of dealers, pawnbrokers and persons operating stalls at second-hand markets;
- no holding period before re-sale of goods;
- lack of standardised records keeping, especially identification of the person or business from who/which goods are purchased;
- concerns about the 'character' of people in the business of dealing in second-hand goods and pawning goods.

In addition, significant concerns have been expressed by the Financial Counsellor's Association about lack of consumer protection in the pawnbroking industry. In particular concerns were expressed as to extremely high interest rates and lack of proper record keeping.

## **2. EFFECT OF LEGISLATION ON COMPETITION**

Regulation of business conduct creates costs and constitutes some barrier to entry. The extent of these effects is examined in later sections of this report.

### 3. NECESSITY OF REGULATION

#### 3.1 Objectives of Regulating Dealing

The major immediate objectives of regulating trade in second-hand goods generally, are to maximise:

- the interception of stolen goods;
- identification of persons implicated in seeking profit from theft of goods;
- the identification of businesses which may be used in the disposal of stolen goods.

Achievement of the first objective assists achievement of the second, as well facilitating the return of stolen goods to their rightful owners.

Achievement of the second objective facilitates the punishment of offenders, which is intended to deter them from re-offending and, by example, to deter others from theft.

Achievement of the third objective assists in the achievement of both the first and second objectives by giving the Police information about business locations in order that policing effort may be appropriately targeted and focussed.

It may be argued that deterrence of theft *per se* cannot be claimed as an objective of regulation of second-hand dealing. The interception of goods and detection of offenders by this means may only deter the use of second-hand dealers for disposal of stolen goods. In other words, the regulation may only influence the choice of avenues by which stolen goods are sold on.

However, despite the existing regulation and the efforts of the South Australia Police, the fact that a significant proportion of stolen goods is disposed of through dealers demonstrates a significant problem. The relative lack of regulation in South Australia is considered by South Australia Police to make it easier to dispose of goods through second-hand dealers.

## 3.2 Objective of Regulating Pawnbroking

The purpose of specific regulation of pawnbroking is to constrain the exercise of market power in respect of provision of that service.

## 3.3 Link to Restrictions

### 3.3.1 Second-hand Dealing Generally

The *Summary Offences Act* does not require licensing, a holding period or detailed record keeping.

Licensing facilitates the interception of stolen goods by providing police with a (theoretically) comprehensive list of persons in the business of tracking in second-hand goods. Random and specific-purpose checks can be made of goods in their possession.

The requirement of a holding period increases the probability that any goods received which were stolen will be found before being re-sold.

The record-keeping requirements facilitate enforcement of the retention period and the tracing of the source of goods known or suspected to have been stolen.

All of the above are neutral as to the deliberate involvement of the dealer in the disposal of stolen goods. Knowingly handling stolen goods, like theft itself, is an offence under the *Criminal Law Consolidation Act*. However, as with theft, the probability of detection and prosecution is not sufficiently high to deter such activity by those not constrained by other considerations. Proof of knowledge will always be difficult even if a suspect is identified and goods are found in that person's possession.

The conduct requirements of the *Summary Offences Act* are of limited value in addressing this problem. A dishonest dealer is unlikely to keep

records of goods known to be stolen which can be sold on quickly as there is no requirement to hold goods. The falsification of records for goods more likely to be found in the dealer's possession may be effectively concealed.

Under a licensing scheme, loss of the right to trade at all becomes an additional risk of misconduct, with a real additional deterrent effect, particularly as the licensee is, by definition, already known to the police.

Perhaps more significantly, licensing is a means of screening out persons likely to knowingly become involved in handling stolen goods before they enter the industry.

### **3.3.2 Pawnbroking**

Historically, it has been accepted that market forces do not produce a fair market for people needing to borrow money for personal purposes. Regulation of "money lenders" was eventually superseded by state the *Consumer Credit Acts*, and a *Consumer Credit Code* has now come into operation nationally, from 1 November 1996, to enforce truth in lending principles.

Pawnbroking is unregulated in South Australia apart from the record keeping requirements. There are significant differences between pawnbroking and the mainstream consumer credit industry. The relatively small amount lent and short periods for repayment reflect the greater likelihood that the loan will be in the nature of bridging finance to meet general living expenses, rather than an aid to a discretionally purchase of goods or services.

An unregulated credit market is likely to produce unfair bargains because individual borrowers are not in a position to challenge industry-wide failure to disclose the price (and other potential costs) of an advance of credit in terms they can readily understand.

A pawn broking market regulated only to ensure disclosure may still produce unfair bargains if the borrower approaches the pawnbroker as a lender of last resort and there is no immediate local competition. Such circumstances may reduce the borrower to a virtually “captive” price-taker in dealing with the broker.

### **3.4 Regulatory Alternatives**

There are a range of strategies which could be adopted in meeting the objectives regulating dealing and pawnbroking.

#### **3.4.1 Consumer information strategies**

The rationale for regulating the industry as a whole is related to externalities (costs to persons from whom goods are stolen for disposal through the industry, and the cost to the community generally of policing property crime), rather than information asymmetry between trader and consumer.

There is a particular concern that those pledging goods to pawnbrokers in an unregulated market have been inadequately informed of the costs and other terms and conditions of the transaction. Consumer education could be part of a solution here, but disclosure requirements on pawnbrokers are likely to be far more efficient mechanisms.

#### **3.4.2 An industry code**

Although there is a small Pawnbrokers Guild and representative bodies for certain sectors (notably the Antique Dealer’s Association), there is no umbrella industry association for the second-hand goods trade. A self-regulated industry is therefore an impossibility.

The Pawnbrokers Guild had developed a Code of Conduct for its members but as there are only 15 members of the Guild out of an estimated 150 pawnbrokers across the state, the code has little or no effect in the market place.

In addition, while voluntary codes of practice can be useful alternative to self-regulation where improved standards of trader-consumer dealings are desired, such codes are not appropriate for dealing with the risk of criminal activity.

### **3.4.3 Trading standards codified in offence provisions**

Relying on a set of statutory proscriptions and prescriptions with regard to conduct does not bar or remove unsuitable traders from an industry. At best, a series of convictions may deter an habitual offender from further recidivism.

### **3.4.4 Negative licensing**

Negative licensing offers some control over industry participation, in that anyone convicted of nominated offences may at the same time be disqualified (by the court or by automatic operation of the statute) from further pursuit of the relevant form of business activity.

South Australia has experimented with this system for second-hand dealers (since 1988) and pawnbrokers (since 1990). Regulation was transferred to the *Summary Offences Act*, requiring only the keeping of records and making them available upon demand by police. However, following Operation Pendulum conducted by the South Australian Police to improve interception of housebreakers and other robbers and return of stolen goods, it was recognised that the inability to identify those operating as second-hand dealers presented a serious constraint, and then second-hand dealers and pawnbrokers were used by thieves as a channel for the disposure of stolen goods.

### **3.4.5 Licensing**

In some other States (and in past times in South Australia) pawnbrokers and secondhand dealers are licensed. The purpose of licensing in general, is to establish standards of integrity and service in the interests of consumers and to enhance legal dealing, and the purpose of compliance efforts, discipline and prosecution is to maintain both standards and an efficient industry.

Licensing can be complex with provision being made for both natural persons and corporations and the Police or some Government agency being required to assess

fitness and propriety of industry participants. In addition, there is the administrative burden of annual returns, annual licensing fees, and compliance.

Licensing in the area of secondhand dealing and pawnbroking is unlikely of itself to have any impact on the trade in stolen goods. Other complementary regulation is needed to deal with this aspect of the industry

#### **4. Regulatory Objectives and a new Regulatory Model**

In addressing Police and community concerns about the role of second-hand dealers and pawnbrokers in the receipt, distribution and disposal of stolen goods an enhanced regulatory regime to meet the following objectives was designed:

1. There must be a system to identify those in the industry and a system to stop persons with unsuitable criminal history from participating in the industry, but this need not necessitate the establishment of a *licensing* system entailing expert assessment of whether an applicant qualifies for entry to the industry.
2. There must be a holding period for certain goods.
3. There must be better identification of the sellers of goods and of the goods themselves.
4. There must be provision of detailed protection to pawnors of goods.
5. The regime must be the minimum consistent with the achievement of 1 - 4.

#### **4.1 New Regulatory Arrangement - Second-hand Dealers and Pawnbrokers Act and Regulations.**

The new *Second-hand Dealers and Pawnbrokers Act* has a number of provisions not contained in the *Summary Offences Act* or enhancements on those rules :

- a person or a body corporate may not commence or carry on business as a second-hand dealer (which for the purposes of the Act includes the term pawnbroker), if convicted of an offence of dishonesty or other prescribed offence, or if the person is an undischarged bankrupt. This is a stronger negative licensing provision than in the *Summary Offences Act*;
- if a second-hand dealer has been in possession of stolen goods on at least three occasions during the past 12 months and did not notify the police in respect of the goods, the Commissioner of Police may give the dealer a notice disqualifying the dealer from carrying on business as a second-hand dealer. The disqualification will take place from a date not less than two months after the notice is given and the dealer will be able to apply to the Administrative and Disciplinary Division of the District Court for an order removing the disqualification; persons commencing business as second-hand dealers will be required to give notice to the Commissioner of Police at least one month before commencing business.
- persons already in the business of second-hand dealing at the commencement of the Act will need to give the Commissioner notice of details of matters such as their name,, trading name, operating address, and address at which records required to be kept are available for inspection. These matters are detailed in the Regulations;
- records of second-hand goods will need to be more detailed than at present. At present the requirement is that an accurate description of the goods be recorded. The new requirement is that type, size, colour, brand also be recorded in a register;
- the identity of the person from whom the goods were bought or received will need to be kept as at present, but this information will need to be verified in the manner similar to that used by banks to verify customers opening accounts. This is the system which is now operating in Western Australia,, New South Wales, Victoria and Northern Territory;
- second-hand dealers will be required to label second-hand goods so that particular goods can be identified in the register required to be kept;

- a holding period of 10 days will be introduced (there is currently no holding period in South Australia - this has been a matter of particular concern to the Police);
- goods required to be held may be sold before the expiry of the holding period only if they are held for a minimum of 3 days and the full details of the purchaser are recorded (including the manner in which identify is verified). This is the only situation where details of the identify of the purchaser is required to be kept;
- requirements to notify the Police of suspected stolen goods are maintained;
- specific provisions for persons claiming ownership of goods in a dealer's possession are made, together with a right for the person to apply to the Magistrate's Court for return of the goods, and an obligation on the part of the dealer to hold goods until the issue of ownership is determined. The Magistrate's Court will hear these matters informally as minor statutory proceedings;
- Police powers of entry and inspection are strengthened to allow the Police access to computer information and to require copies of records;
- specific provisions in relation to pawnbroking are reintroduced. "Buy-Back" arrangements will be considered to be a contract of pawn,, a minimum redemption period of one month is set, a pawn ticket must be provided and will need to comply with requirements set by regulation. There is no ability to contract out of the provisions of the Act. In relation to issues of harsh and unconscionable contracts of pawn, the new *Credit Code*, while not applying to the provision of credit by a pawnbroker, does provide that unjust transactions including unjust pawnbroking transactions may be reopened. The Courts are given, under the Credit Code wide power to reopen unjust transactions. The Courts must have regard to the public interest and all the circumstances of the case and have wide powers to vary and set aside contracts;
- persons operating second-hand markets are required to notify the Police of their operations, keep records (as required by the Regulations) of persons who are stallholders and the verified identify of those persons. In this way there will be an equal regulatory burden on dealers in shops and markets

The Regulations under the Act have been drafted so as to focus regulatory attention on businesses dealing with goods most commonly stolen, and where possible to minimise the impact of the Act on businesses dealing with other goods. This is done in the following way:

**1. Focus on goods which are most commonly stolen**

The *Summary Offences Act* provisions relating to second-hand dealing and pawnbroking have very broad coverage, with the effect that all dealers and pawnbrokers must keep records of all goods from screws and buttons to agricultural goods.

If there are any classes of goods which are inherently unlikely to be stolen or classes of dealing business which are inherently unlikely to be used for trafficking in stolen property, the Act and Regulations should not impede activity in these areas. If there are classes of goods for which indicators of ownership are unlikely to be preserved once they have passed through the hands of thieves, there is little point in obliging second-hand dealers to comply with provisions predicated on goods being individually identifiable.

It is noted that the Western Australian Pawnbrokers and Second-hand Dealers Regulations 1996 contain a list of 23 categories of item which are not to be treated as second-hand goods for the purposes of the Western Australian legislation. The New South Wales Act and Regulations on the other hand, identifies a list of most commonly stolen items and focuses regulatory attention on the dealers who deal in those goods.

The focus of the new *Second-hand Dealers and Pawnbrokers Regulations* is on those goods which are most commonly stolen and likely to be recovered, following the New South Wales model. The list has been prepared with input from the Insurance Council of Australia.

Dealing in second-hand vehicle parts is somewhat distinct from the general trade in used goods. However, there is a concern that the second-hand car parts industry is used as a means of getting rid of stolen cars. Hence, provision is made for major motor vehicle components to be subject to the Act. The Government's Vehicle Theft

Reduction Task Force has assisted in the identification of those vehicle parts most at risk.

The Regulations introduce the concept of prescribed goods which will be the focus of the full regulatory regime under the Act. As the goods listed as prescribed goods have been identified as those goods at high risk of theft, in this manner the operation of the Act is targeted in order to allow the targeting of law enforcement activities.

The benefits of such an approach are that persons who trade in prescribed goods will be subject to the full regime of the Act, while those who trade in goods not on the list will not be subject to the record-keeping, labelling or holding period provisions of the Act. Dealers who deal in a mixture of goods will only have to comply with the Act in relation to the prescribed goods.

The net effect of the “prescribed goods” approach is that the only data required to be kept by dealers will be that of direct relevance to law enforcement. This will represent a significant saving of resources to the industry and the Police.

## **2. Clearer criteria for entry into the industry.**

The negative licensing system is strengthened in the following way:

First, a business notification scheme is introduced. This is a mechanism whereby persons proposing to commence business as second-hand dealers or pawnbrokers will need to provide information to the Commissioner of Police about themselves, their place of business and where their records will be kept. Existing dealers will also need to provide this information.

This Notification is a once only requirement (but any changes need to be notified), and does not cost anything. It is simply a mechanism to identify who is in the industry and where they are operating from.

Second, the provision that conviction of an offence involving dishonesty or against the relevant parts of the *Summary Offences Act*, may result in the Magistrates Court

disqualifying a person from the industry are altered. The new criteria are similar but result in a ineligibility to participate in the industry. The new stricter criteria apply only to new entrants to the industry, existing dealers are “grandfathered” in. There is new disqualifying power for the Commissioner of Police to disqualify if the dealer is found with stolen goods on 3 occasions in one year. The object of this provision is to place the onus on the dealer in regard to stolen goods. An appeal mechanism is provided for both persons with offences and persons to have been in possession of stolen goods.

## **Specific Proscriptions and Prescriptions**

### **1. Period for retention of goods**

The new Act requires second-hand dealers and pawnbrokers to retain goods in the form in which they were received for 10 business days. The purpose is to stop the movement of goods which may have been stolen for long enough to allow them to be identified and reclaimed.

It is recognized that this provision is unnecessary in relation to the material handled by many dealers so its application has been limited to those goods most commonly stolen (“prescribed goods”). Dealers who deal with other goods do not need to hold the goods for the statutory by period.

It is recognised that there is a business imperative in the second-hand dealing industry to have a rapid turnover of goods. To ameliorate the effect of the holding period, provision has been made for goods to be sold within the holding period as long as they are held for a minimum of 3 days and full identity details of the purchase are kept. This means that the audit trail for Police remains in tact while the business restriction of the holding period can be lessened.

### **2. Verification of Identity of persons from whom goods are purchased and received.**

The *Summary Offences Act* requires the identity and addresses of the person from whom goods are purchased or received to be recorded. The problem with this is that dealers are not required to verify that information and fictitious/false information can be given.

The giving of a false name which cannot be traced is considered a major impediment by Police to the effective establishment of an audit trail and the recovery of stolen goods.

In keeping with the kind of regulation now in place interstate, the Regulations require that identity documents be provided as proof of identity. Essentially the basic criterion to be used is that name, address and signature should appear on one or a series of documents, one of which must be issued by a government body. The Regulation attempts to strike a balance between a standard high enough to be an adequate proof of identity and one which it is reasonable and possible to be met by the average customer.

### 3. **Record Keeping in general**

It is recognised that businesses keep records for a variety of reasons, but that statutory requirements to keep records should be targeted and focussed not at large.

Accordingly, the Regulations place the onus to keep records and label goods in stock only on those goods most frequently stolen.

Dealers who deal in other goods are not required to keep any records of those goods for the purposes of the Act.

It is noted that two other States (WA and NSW) are moving to a system requiring compulsory use of a computer modem link between dealers and the police. The estimated cost to dealers of this proposal is between \$2,500 - \$4,000 for equipment, with further costs for staff training and software. At this time it is not proposed that this form of record keeping be compulsory in SA.

### 4. **Pawnbrokers' terms and disclosure**

The new regulations require a pledge ticket to give details of the loan, including the date and period of the loan, the principal sum, the annual and monthly interest rates, and the maximum interest payable on redemption. They are also required to give a written notice to any person pledging goods, stating both the annual and monthly interest rates,

together with other information about the borrower's rights in relation to redemption and the sale of unredeemed goods.

From interstate experience it has been shown that some pawnbrokers purport to avoid regulation requirements by buying goods outright from consumers. An "informal" agreement is reached that the dealer will not sell the goods for a certain time, and they are later sold back to the consumer at a higher price. The difference in price can represent 40% or even more per month.

Such transactions are specifically caught by the Act as a person is deemed to have advanced money on the security of pledged goods, and to have received the goods in pawn, if he or she receives them under a contract for their sale under or in conjunction with which he or she gives the vendor the right to repurchase the goods;

Clear disclosure of the terms of a transaction is necessary to allow competition to function through customers comparing them amongst brokers and between brokers and other avenues which may be available to them to raise funds (such as outright sale of the goods).

As noted above, pawnbroking is different from mainstream forms of credit provision. The principal amounts involved are likely to be small, rarely in excess of \$500 and generally more in the \$100 range.

There have been some suggestions that there should be an interest rate cap on pawnbroker transactions.

To make the case for interest rate regulation, some evidence is needed than an unregulated market is problematic. Particularly given the penetration of credit cards over recent years, the familiar assertion that pawnbrokers are often a last resort for borrowers at the low end of the socio-economic spectrum appears likely to be true. However, this does not in itself justify intervention. Those who appear to consider otherwise may be assuming that there are no systemic constraints on pawnbrokers in setting terms for borrowers who approach them. In fact, pawnbrokers would be

expected to be constrained by the general second-hand price of the type of item being pawned.

There is some evidence that loan amounts are only equivalent to about a third of the second-hand value of the goods pawned. Low loan amounts are the only way to maximise profit given to “natural” limitation on the total repayment that can be required. However, there are market constraints here also. If the amount offered is too low, the potential borrower will prefer to sell the item outright, to meet the immediate requirement for funds, and buy a replacement later.

Another indicator suggestive of market failure would be a high incidence of unredeemed pledges. If it were standard for pawnbrokers’ clients to enter into transactions aware of the terms, believing that they would pay the loan out, but failing to do so, where using some alternative to pawning would leave them better off, the operation of the market would require examination. For example, there might be a residual information asymmetry regarding capacity to pay, even though common sense would suggest the client would be in a far better position than the pawnbroker to assess this for his or own case.

Again, however, although there are undoubtedly unfortunate cases of an inability to redeem goods, no-one claims that the problem is endemic.

While evidence is lacking for general market failure, there may nonetheless be specific circumstances where pawnbrokers are in a position of very strongly disproportionate market power. If the specific goods to be pawned have personal significance to the owner they are effectively irreplaceable, regardless of the market rate for goods of that type. The constraints described above are ineffective in such circumstances. There may still be pressure on the individual pawnbroker not to lose the potential borrower to a competitor by asking for too one-sided a bargain. However, it may be clear that the borrower has insufficient time or mobility to explore other options.

Such situations may not be common, and it should not be assumed that pawnbrokers would always use them to maximise their profits. However, if it is possible to intervene

in such cases as do arise without affecting the normal operation of the market, competition policy will not be offended.

There is a potential remedy for the type of case described. However, the *Second-hand Dealers and Pawnbrokers Act* is not the appropriate place for this remedy. Sections 70-72 of the *Consumer Credit Code* allow unconscionable loan contracts to be re-opened (in SA through the District Court). While the Code is generally inapplicable to pawnbrokers, they are specifically brought within coverage of these sections.

The Act's new disclosure requirements and the Credit Code's unconscionable contract provisions appear sufficient to address the problems of an unregulated pawnbroking market.

## 5. Summary of New Requirements

1. That second-hand dealers and pawnbrokers be required to provide business notification before commencing business.
2. That the identity of persons who sell goods to dealers be verified.
3. That the obligation to retain goods for 10 days after acquisition be ameliorated by permitting sale after three days provided purchaser identification is sought and recorded.
4. That the record keeping, labelling and holding period provisions only apply to the list of goods most commonly stolen (prescribed goods).
5. That the pawn ticket be required to provide standard consumer information.

## 6. Costs and Benefits

### 6.1 **Who is Affected by Restrictions**

The restrictions primarily affect second-hand dealers and pawnbrokers. They are aimed at assisting the Police, and thereby the general public, in minimising traffic in stolen goods and maximising its detection where it does occur. To the extent that compliance costs influence dealers' pricing, both their suppliers and purchasers may be affected.

### 6.2 **Costs**

- By definition, a dishonesty offences test for entry will keep some operators out of the industry. Theoretically, this might reduce competition, keeping prices higher and the incentive for innovation and improved service provision lower than would otherwise be the case.

- The restrictions on second-hand dealers with regard to record-keeping and retention of goods before sale must result in some increase in unit cost, but only in relation to “prescribed goods”.
- The Regulations do not contain a mechanism for the costs of administration of the business notification scheme or the enforcement costs of the SA Police to be recovered. These costs are therefore met from general state revenue.

### **6.3 Benefits**

- The public benefit from traffic in stolen goods being more difficult (and therefore less frequent) would not be possible without regulation.
- Regulation also ensures that pawn transactions are adequately documented.

### **6.4 Weighing of Costs and Benefits**

- There are no licensing fees to deter any serious market participant.
- There is no evidence that the business notification scheme will have any significant adverse affect on the numbers of second-hand dealers and pawnbrokers available to provide these services.

Some persons will not now be eligible to commence a business, but an appeal mechanism is included for those who have disqualifying offences.

South Australia has experimented with negative licensing and concluded that the benefits of tightening the regulatory burden outweigh the costs to the community at large of relaxed supervision and allowing stolen property to be more easily disposed of.

It is considered the disqualifying criteria are a minimal barrier to entry, and the business notification scheme is no impediment to those persons who meet the criteria for industry entry.

- Regulation is unlikely to result in higher prices to consumers purchasing goods from dealers as there is strong competition from private individuals selling second-hand goods directly, particularly through *Trading Post* advertisements.
- Powers to exempt classes of persons or goods from the operation of all or part of the Act by regulation will allow the focus of the legislation to be narrowed over time as potential emerges.
- It is appropriate that enforcement costs be borne from general revenue, as the major benefit of the regulatory scheme is shared across the community.

It has not been possible to quantify either the full costs or the benefits of the regime of the new Act. However, there are clearly desirable benefits in terms of reduction in risk and the options chosen are the least restrictive alternatives for realising those benefits.