



# Regulatory Impact Statement

Proposed Pawnbrokers and Second-hand  
Dealers Regulation 2020



**July 2020**

## **Disclaimer**

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# **1. Background Information**

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## **1.1 Why the Regulation is being remade**

The Pawnbrokers and Second-hand Dealers Regulation 2015 is due for automatic repeal on 1 September 2020.

Under the *Subordinate Legislation Act 1989*, most regulations are due for repeal after 5 years to ensure that they are still relevant and fit for purpose. Regulations can be remade, postponed or allowed to lapse.

As there is no reason to postpone the repeal of the current Regulation, the Department of Customer Service (the Department) plans to remake it and has drafted a proposed Pawnbrokers and Second-hand Dealers Regulation 2020 (the proposed Regulation) for consultation.

The proposed Regulation retains many of the current rules for the conduct of business. It also includes minor updates to improve the existing regulatory framework and processes.

Remaking the Regulation requires the preparation of a regulatory impact statement (RIS) and a period of public consultation. This RIS sets out the rationale and objectives of the Regulation and options for achieving the objectives, including an assessment of the costs and benefits.

## **1.2 Matters outside the scope of this consultation**

Matters covered by the principal Act – the *Pawnbrokers and Second-hand Dealers Act 1996* – are not the subject of the consultation process. This RIS only deals with matters within the scope of the Regulation not provisions contained in the Act itself.

The NSW Government is progressing amendments to the Act and current Regulation separately to this consultation process. The final Regulation will incorporate the amendments contained in the [Pawnbrokers and Second-hand Dealers Amendment \(Fees\) Regulation 2020](#). It will also incorporate the amendments in the Better Regulation Legislation Amendment Bill 2020, if it is passed by NSW Parliament.

## **2. Consultation Program**

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### **2.1 Public consultation**

The proposed Regulation and this RIS are publicly available on the ‘Have Your Say’ page of the Fair Trading website at [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au). They will be available for at least 28 days.

The Department has published a notice about the release of the Regulation and RIS in the NSW Government Gazette, the Daily Telegraph and the Sydney Morning Herald. Copies have been sent directly to the stakeholders listed at **Appendix 1**.

### **2.2 How to make a submission**

Interested organisations and individuals are invited to make a submission on any matter relevant to the Regulation, whether or not it is addressed in this RIS.

We would prefer to receive your submission by email in an ‘accessible’ format or using the online form. Accessibility is about making documents more easily available to members of the public who have some form of impairment (visual, physical, cognitive). More information on how you can make your submission accessible is available on the WebAIM website at <http://webaim.org/techniques/word/>.

Submissions can be made using the online form, by email or mail:

Email [PSHD@customerservice.nsw.gov.au](mailto:PSHD@customerservice.nsw.gov.au)

Mail  
PSHD Regulation 2020  
Policy & Strategy, Better Regulation Division  
Level 22, 4 Parramatta Square  
12 Darcy Street  
PARRAMATTA NSW 2150

**The closing date for submissions is 31 July 2020.**

### **2.3 Confidential submissions**

We will make all submissions publicly available on the Fair Trading website. If you do not want your personal details or part of your submission published, please say this clearly in your submission and tell us why. Automatically generated confidentiality statements are not enough.

Even if you state that you do not want us to publish certain information, we may need to release that information by law. For example, to comply with the *Government Information (Public Access) Act 2009*. The Department will also provide all submissions to the Legislation Review Committee of NSW Parliament. This is a statutory requirement.

## **2.4 Evaluation of submissions**

The Department will carefully consider each submission. If necessary, we will amend the proposed Regulation to address issues raised in the consultation process. If we need more information, we may consult with key stakeholders before finalising the new Regulation.

## **2.5 Commencement of proposed Regulation**

Once the Regulation has been finalised, the Department will submit it to the Governor for approval. The final Regulation will then be published on the NSW Government website for legislation at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) prior to commencing.

At this stage, we expect that the new Regulation will commence on 1 September 2020 at which time the current Regulation will be repealed.

### **3. Objective and rationale of the Regulation**

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#### **3.1 Need for government intervention**

The main purpose of the Regulation is to give legislative support and administrative detail for the operation of the Act. Without it, the Act could not be as effectively administered or enforced.

The implied objectives of the Act are to:

- limit the traffic in stolen goods through pawnbroker and second-hand dealer businesses
- regulate the dealing in certain categories of second-hand goods at high risk of theft
- require licensees to be more vigilant about clients who offer goods for sale or pawn, particularly for the documentation they produce to substantiate their identity and title
- enhance the enforcement capability of NSW Police to combat property theft through the rapid provision of up-to-date information on the sale/pawn of second-hand goods
- constrain the exercise of market power in respect of the provision of pawnbroking services
- facilitate the return of stolen property to rightful owners quickly and equitably.

The provisions in the proposed Regulation are directly related to these overall objectives of the Act.

For example, the Regulation prescribes:

- a list of goods that are ‘second-hand’ for the purposes of the Act to focus regulatory efforts on the areas of highest risk and minimise regulatory burden
- the information that licence holders must record and how it must be provided to NSW Police for other theft control purposes
- the information that NSW Police must include in a restoration notice served on a licensee to provide a fair mechanism to recover stolen goods
- the disclosure and notice obligations of licence holders to help consumers make informed decisions and reduce any information asymmetry
- penalty notice offences and demerit points so that offences do not always need to be prosecuted in court.

The Department takes a ‘stewardship’ approach to the administration of all legislation for which it is responsible. As such, pawnbroking and second-hand dealing laws are subject to ongoing monitoring and review to make sure they are still fit for purpose.

## **3.2 Options for achieving objectives**

In determining how best to achieve the objects of the Act, the following options were considered.

### **Option 1: Take no action**

Allow the existing Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989* and do not make any replacement Regulation.

### **Option 2: Maintain the status quo**

Remake the existing Regulation without amendment to maintain the current regime.

### **Option 3: Make the proposed Regulation**

Remake the existing Regulation with minor amendments to improve upon the current regime.

## **3.3 Criteria used to assess the regulatory options**

The following criteria have been used to evaluate the three options above:

- The extent to which the option:
  - reduces red tape and regulatory burden
  - enhances capability to combat property theft
  - provides an effective and fair mechanism for the recovery of stolen goods
  - supports the consumer protection measures of the Act.
- The cost effectiveness of the option, in terms of costs and benefits to business, consumers and government.

## 4. Impact assessment of options

### 4.1 Summary and preferred option

Option 3 is the preferred option. Remaking the regulation with amendments will have the benefits of the existing Regulation and added benefits provided by minor changes. While it involves some additional costs, Option 3 will ensure that the regulatory focus is only on goods at high risk of theft and will enhance capability to search for stolen goods. It also clarifies key aspects of the Regulations.

Option 2 is not supported. Remaking the Regulation without amendment will not impose any new costs on industry or consumers but it will not result in any significant benefits. The current Regulation regulates goods that are no longer at high risk of theft. It has out of date and overly prescriptive provisions that would continue to be in force.

Option 1 is not supported. Allowing the current Regulation to lapse, under the base option of doing nothing, would reduce the effectiveness of the Act and make parts inoperable. This option fails to meet the regulatory objectives and would create a high financial and intangible cost to consumers and the wider community. It may even lead to a net loss for business when the limitations provided by the current Regulations end. It would not be possible to give effect to the intention of the Act without some further action, such as amending the Act.

**Table 1: Summary of costs and benefits of each option**

Option		Costs	Benefits	Overall benefit
1	Take no action	High	Medium	Negative
2	Maintain status quo	Low	Low	Negative
3	Make proposed Regulation	Low	Medium	Positive

**Table 2: Summary of benefits of each option**

Evaluation criteria	Option 1: Take no action	Option 2: Maintain status quo	Option 3: Make new Regulation
Reduces regulatory burden	Yes	No	Yes
Enhances capability to combat theft	No	No	Yes
Fair mechanism to recover stolen goods	No	Yes	Yes
Supports consumer protection measures	No	Yes	Yes

## 4.2 Assessment of Option 1 – Take no action

Option 1, taking no action, would mean that the existing Regulation lapses under the sunset provisions of the *Subordinate Legislation Act 1989*. The current Regulation would not be replaced, meaning that the Act would continue to operate without the support of regulations.

This option would reduce the regulatory burden for existing licensees but create a burden for other unlicensed businesses. Existing licensees would not need to retain the records prescribed in the Regulations or report this information electronically. However the list of prescribed goods would become inoperable, meaning that the Act would apply to a broader range of second-hand goods including goods that are not at high risk of theft. Businesses who deal in these goods would need to apply for a licence to comply with the Act.

The option would not support the Act and its objectives. Essential provisions in the Act would be inoperable. Reduced record-keeping requirements would limit the ability of NSW Police to search for stolen goods. The mechanism to recover stolen goods would not be functional without the restoration notice. There would be no disclosure obligations for pawn agreements, further limiting consumers' market power. It would also be harder to achieve compliance with the Act as offences could only be prosecuted in court and the demerit point system would cease to operate.

For these reasons, option 1 is not supported.

**Table 3: Summary of costs and benefits for Option 1**

	<b>Business</b>	<b>Consumers and general public</b>	<b>Government</b>
<b>Costs</b>	<ul style="list-style-type: none"> <li>Licensing fees for individuals and business previously exempt (direct)</li> <li>Administration and legal costs (direct) to: <ul style="list-style-type: none"> <li>assess how to meet requirements of the Act</li> <li>defend action for non-compliance</li> <li>follow the Act where previously exempt</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>No increase or reduction in actual costs</li> <li>Increases risks to community (indirect) due to: <ul style="list-style-type: none"> <li>reduced disclosure obligations</li> <li>reduced ability to enforce the Act and manage non-compliance</li> </ul> </li> <li>Loss of goods due to reduced ability to recover (indirect)</li> </ul>	<ul style="list-style-type: none"> <li>Administration and legal costs (direct) to manage: <ul style="list-style-type: none"> <li>likely increase in number of disputes and enquiries</li> <li>assessment of compliance with the Act</li> <li>increasing pressure on the court system</li> <li>staff training</li> </ul> </li> <li>Reduced ability to combat property theft, including lower recovery rate (indirect)</li> </ul>
<b>Benefits</b>	<ul style="list-style-type: none"> <li>Administration cost savings from not having to follow regulations</li> </ul>	<ul style="list-style-type: none"> <li>No identifiable benefits</li> </ul>	<ul style="list-style-type: none"> <li>Administration cost savings from not having to enforce regulations</li> </ul>

## 4.3 Assessment of Option 2 – Maintain the status quo

Option 2, the base case, would involve remaking the current Regulation without amendment when it lapses.

This option would not reduce regulatory burden. Although the Regulation in its current form supports the Act and protects consumers, it does not provide the added benefits of the proposed Regulation. The current Regulation would be remade with no changes, meaning that outdated and unclear clauses would continue to be in force. The reduced regulatory burden associated with updates to the list of goods, the display of notices, and increases in the value thresholds would not be realised.

There would be some administration cost savings for business as the industry is already familiar with these requirements and would not require any action to update practices or systems. These savings are likely to be low and would not offset ongoing costs of inefficient provisions.

For these reasons, option 2 is not supported.

**Table 4: Summary of costs and benefits for Option 2**

	<b>Business</b>	<b>Consumers and general public</b>	<b>Government</b>
<b>Costs</b>	<ul style="list-style-type: none"><li>• No increase or reduction in actual costs</li><li>• Opportunity loss (indirect costs) from:<ul style="list-style-type: none"><li>- not having a more modern regime</li><li>- recordkeeping for goods not at high risk of theft</li><li>- continuing ambiguities</li></ul></li></ul>	<ul style="list-style-type: none"><li>• No increase or reduction in actual costs</li></ul>	<ul style="list-style-type: none"><li>• No increase or reduction in actual costs</li><li>• Opportunity loss (indirect costs) from not:<ul style="list-style-type: none"><li>- having a more modern regulatory regime</li><li>- updating provisions about partnerships</li></ul></li></ul>
<b>Benefits</b>	<ul style="list-style-type: none"><li>• Administration cost savings as no updates to processes or staff training needed</li></ul>	<ul style="list-style-type: none"><li>• No identifiable benefits</li></ul>	<ul style="list-style-type: none"><li>• Administration cost savings as:<ul style="list-style-type: none"><li>- no updates needed to guidance material for licensees</li><li>- no updates needed to digital application systems and forms</li><li>- no training needed for operational staff</li></ul></li></ul>

## 4.4 Assessment of Option 3 – Remake the Regulation

Option 3 would involve making the Regulation to replace the current regulation when it lapses.

This option would have a low cost for small-scale dealers and partnerships however these costs are balanced overall. There will be a reduction in the administration costs for licensees who deal in goods that are no longer at high risk of theft and will be removed from the list of prescribed goods. The Regulation also replaces prescriptive provisions with those that are more principles based, for example for the display of notices. The increases in the value thresholds to reflect inflation would reduce the costs of administration for all dealers.

The Regulation continues the current regulatory framework with minor updates to improve its operation and efficiency. Changes to the timeframe within which licensees must report to NSW Police will maximise the time available to NSW Police to search for stolen goods. This change may have low costs for licence holders, for example to train staff, but is not expected to create a significant cost as records must already be made by the end of the day.

For these reasons, Option 3 provides the **greatest net benefit** to businesses, consumers and the general public and Government in comparison to the other options and is the preferred option.

**Table 5: Summary of costs and benefits for Option 3**

	<b>Business</b>	<b>Consumers &amp; public</b>	<b>Government</b>
<b>Costs</b>	<ul style="list-style-type: none"><li>• Administration costs to update processes and train staff (direct)</li><li>• System costs when record exemptions end (direct)</li><li>• Licensing fees for non-principal partners (direct)</li><li>• Cost of penalties if non-compliant with period to send records (direct)</li></ul>	<ul style="list-style-type: none"><li>• Loss of income due to reduced notification regarding surplus proceeds of sale (direct)</li><li>• Loss of goods due to reduced ability to recover specific classes of goods no longer regulated (indirect)</li></ul>	<ul style="list-style-type: none"><li>• Administration costs to update processes and train staff (direct)</li><li>• Reduced ability to recover specific classes of goods no longer regulated (indirect)</li></ul>
<b>Benefits</b>	<ul style="list-style-type: none"><li>• Overall administration cost savings due to:<ul style="list-style-type: none"><li>- removal of goods from prescribed list</li><li>- higher value thresholds for notices and record-keeping provisions</li><li>- more flexible rules for the display of notices</li></ul></li><li>• Savings for dealers that no longer require licence</li></ul>	<ul style="list-style-type: none"><li>• Overall enhanced capability to combat property theft in high risk areas</li><li>• Updated regulation which is easier to understand</li></ul>	<ul style="list-style-type: none"><li>• Overall administration cost savings due to:<ul style="list-style-type: none"><li>- reduced licences and applications</li><li>- recovery of costs of processing multiple applications</li></ul></li><li>• Greater time (capability) to search for stolen goods</li></ul>

## 5. Discussion of the proposed Regulation

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Submissions are welcome on any aspect of the Regulation or any other relevant issue. The following discussion points give context for some provisions and explore regulatory options.

The appendices summarise the Regulation making powers (**Appendix 3**), updates to the Regulation (**Appendix 4**), and the key discussion questions (**Appendix 5**).

### 5.1 Definition of market and requirements – Clause 4 and 14

The proposed Regulation does not make any significant changes to the definition of a market or the record-keeping requirements for market promoters.

The proposed Regulation retains the current exceptions from the definition of a ‘market’. Currently, legitimate charitable fundraising activities are excluded as well as small traders in some circumstances. Clause 4(b) excludes markets where stallholders sell in household quantities only, have not traded on more than 6 days in the last 12 months and provide a signed declaration.

The Act requires market promoters to verify a stallholder’s identity if they sell second-hand goods and to keep certain records. Clause 14 of the Regulation retains the current requirements as they are not expected to impose a large burden on promoters. There could be scope to remove the requirement to record the details of the identification documents and vehicle registration numbers.

- 1. What activities should be excluded from the definition of a ‘market’?
- 2. Are the record-keeping requirements for market promoters appropriate?

### 5.2 Definition of second-hand goods – Clause 5

The Regulation lists the classes of goods that are ‘second-hand’ for the purposes of the Act. The list of goods includes minor updates to regulate high-risk goods only and improve consistency. There may be scope to narrow and clarify the list further.

#### Overview

As goods are only regulated if they are listed in the Regulation, it is important that the categories are broad enough to cover all high-risk goods. However the categories also need to be clear for licence holders and officers. Categories that are very broad may be interpreted differently and can inadvertently prescribe goods that are not at high risk of theft.

## **Prescribed goods**

### **Car accessories**

The Regulation does not make any changes to the ‘car accessories’ category, but there could be scope to define it. Car accessories are at high risk of theft and some major accessories are also regulated under the *Motor Dealers and Repairers Act 2013*. A second-hand dealer’s licence is not needed in addition to a recycler’s licence to deal in these accessories, for example audio equipment, but is needed if a business does not hold a recycler’s licence.

### **Electric or electronic goods**

The Regulation does not make any changes to the ‘electronic goods’ category, but there could be scope to define what is and is not included. The current category is broad enough to ensure that new technologies are regulated as they are developed. It may inadvertently capture some items, however the impact is likely to be low as there may be no demand for very low-value items.

### **Jewellery and watches**

The Regulation does not make any changes to the ‘jewellery and watches’ category, but there could be scope to expand the regulation of watches. Currently watches are only regulated if they contain gemstones or precious metals. Many watches can achieve a high resale price even where they do not contain these materials, for example some luxury brands are made out of steel. South Australia and the Australian Capital Territory currently regulate all watches.

### **Musical instruments**

The Regulation expands the exemption for non-electronic pianos to include other items that are not portable and cannot be driven, for example other very large instruments. There are lower rates of theft for musical instruments than some non-regulated goods like non-registerable vehicles. A guitar was stolen in most cases where the theft of a musical instrument was reported last year.

### **Sporting and recreational equipment**

The Regulation updates the current ‘sporting and recreational goods’ category to ‘sporting and recreational equipment’. The aim is to exclude clothing, footwear and accessories while retaining equipment like bicycles. This category prescribes a very wide range of items. It could be limited further by prescribing specific items like bicycles, surfboards and fishing equipment.

### **Watercraft and parts**

Clause 5(2)(d) of the Regulation limits watercraft to those that can be conveyed by a light vehicle under the *Road Transport Act 2013*. Individuals would no longer need a licence to buy and sell large vessels that cannot be towed. There is some evidence that ‘trailerable boats’ may be at higher risk of theft, likely due to their accessibility and portability.

## **Items and activities that are not regulated**

### **Items that are not portable and cannot be driven**

The Regulation updates the exemptions to make them more consistent and cover a broad range of goods. Clause 5(2)(a) excludes all goods that are not portable and cannot be driven. This combines the exclusions currently provided for non-electronic pianos and machinery. It also excludes similar goods like other very large instruments that are not mobile and cannot be carried.

### **Non-registerable vehicles**

Non-registerable vehicles like quad bikes and motorcycles could be included in the prescribed list of goods. Last year there were more incidents where they were reported as stolen than some of the regulated goods. Including non-registerable vehicles is likely to have a significant impact on agricultural businesses who may be required to hold a licence.

### **Taking of goods as a ‘trade-in’**

Clause 5(3) provides that the Act does not apply to the taking of goods as a trade-in in certain circumstances. Stakeholders have suggested that the exemption for trade-ins could be exploited to move stolen goods. The condition of 'trade in' could be limited so that dealers must meet record-keeping and reporting requirements for high-risk items including mobile phones, laptops, tablets and jewellery. This may enhance the ability of NSW Police to identify stolen property.

### **Presumption for carrying on business as a second-hand dealer**

There are dealers who sell a very small number of prescribed goods incidentally as part of a business that does not otherwise require a licence, either with or without a licence. Feedback from stakeholders suggests that there is some uncertainty about when a licence is needed.

To provide greater clarity, it may be possible to explicitly allow dealers to sell a small number of prescribed goods in the Regulations. For example, by setting a quantity or value threshold in addition to the 6-day presumption for carrying on business in the Act. In practice the 6-day presumption would not apply to many dealers because goods are advertised for a number of days.

3. Are there any types of second-hand goods that should be removed from the list, included or clarified? If so, what should be changed?
4. Should the exemption for ‘trade-ins’ be limited so that dealers must record details for the purchase of mobile phones, tablets, laptops and jewellery?
5. Some licensed second-hand dealers only sell a very small number of regulated goods, if any at all. How can the Regulations be updated or clarified so that these businesses do not need to hold a licence?

## **5.3 Application of the Act – Clause 6**

Clause 6 expands the current exemption for local council recycling programs to include all recycling programs as well as rubbish collection programs. Currently, only persons and activities linked to local council programs are exempt from the operation of the Act. The broader exemption is provided by omitting the definition of an ‘approved person’ in the current Regulation.

- 6. Are there any other circumstances where the Act should or should not apply?**

## **5.4 Providing records to NSW Police – Clause 10**

Clause 10(1)(a) of the Regulation requires licensees to provide electronic records to NSW Police by the end of the day that they make the record. This reduces the period from three days.

### **The Regulation aims to maximise the time to search for stolen goods**

Reducing the reporting period from three days to the end of the day will support NSW Police to identify stolen goods and investigate these cases. Transmitting records promptly maximises the time to investigate within the 14-day statutory retention period under section 21 of the Act.

The change is not expected to be onerous as pawnbrokers and second-hand dealers must already make records on the day on which goods are acquired, taken on consignment or disposed of. If the goods are received or consigned at premises that they do not make regular use of, the record may be made as soon as possible afterwards. Files need to be submitted to NSW Police online.<sup>1</sup>

### **Impacts on business and implementation considerations**

Licensees should not be penalised for genuine issues that prevent reporting by the end of the day, including technical difficulties and administration errors. The Regulations could be amended to create an exception for these cases or to allow licensees to extend the period by emailing NSW Police as soon as possible after the record is due.

Stakeholders have also raised concerns that the current 3-day period poses a problem on public holidays and weekends as the staff who report data may not be at work. This may create low costs for licence holders to train staff, however as records must already be made by close of business staff should have some existing understanding of the requirements and systems used.

- 7. What is a fair and reasonable amount of time to report information to NSW Police?**
- 8. What may stop someone from reporting information, and how can this be addressed?**

<sup>1</sup> This RIS has been updated to correct information about submission. Licence holders need to submit files online.

## **5.5 Records of goods pawned, purchased or sold – Clause 12**

The proposed Regulation includes minor updates to clarify what details should be recorded for goods and to adjust value thresholds for inflation.

### **Description of the goods acquired**

Clause 12(2)(f) specifies that licensees must record the details of second-hand goods in the form that they are in when they are acquired. The intent of this change is to clarify that licensees must record the description of the goods in the form that they are first received, purchased or taken on consignment. Some businesses alter goods for resale, for example by smelting jewellery.

### **Recording the details of customers**

Currently, pawnbrokers do not need to record a purchaser's details where the principal lent on the goods does not exceed \$50. Second-hand dealers do not need to record a purchaser's details if the purchase price of the goods does not exceed \$50. Clause 12 of the proposed Regulation increases the thresholds to \$75 to more closely reflect the real value in 2019.

Licensees must record purchaser's details so that there are records to help police investigations. The threshold means that licensees do not need to request that consumers provide evidence of identity for smaller purchases, although this may make it more difficult to recover stolen items. Some licensees have questioned the need to record the details of purchasers at all, while others have suggested that consumers are reluctant to provide personal information.

- 9. Should it still be necessary to record a purchaser's details? If so, is the proposed threshold of \$75 appropriate? Should it be higher or lower?**

## **5.6 Display of licence details and notices – Clause 15 & 28**

The proposed Regulation removes the current requirements to display signs using specific colours, fonts and sizes. To comply with the new Regulation, signs would need to be clearly legible.

### **Updates to display requirements**

The Regulation omits the current display requirements for the signs required by sections 14, 32C and 32L of the Act. Only requiring signs to be legible will provide greater flexibility to new and existing traders and reduce costs. Some licensees purchase signs that are legible but do not comply with the current Regulation, for example black signs with white letters.

The benefit of the current provisions is that they set a clear minimum standard for licensees and officers to assess compliance. However in some cases, setting a minimum size may mean that the

licence holder displays the notice in a smaller font than they would otherwise. In other cases, such as at markets, smaller letters may be appropriate.

Clause 15(2) provides that second-hand dealers who conduct business as an itinerant, for example from a market stall, only need to display their licence details so that they are accessible to the public. This is a minor update that will not have any material costs.

### **Other options to modernise signs**

The Act requires licensees to display their licence details at each place of business, even if the public does not have access to the premises, and other signs at places the public can access. This is not always appropriate, for example where businesses communicate with customers online.

An alternative would be to require licensees to display legible notices so that the public can easily read them. This would include at each place of business that the public accesses and online. It could also allow licensees to provide the information directly to customers, for example via email.

There are limited regulation making powers in the Act to achieve this, but it could be partially implemented through the Regulations and by imposing a condition on each licence.

**10. Do the rules for displaying signs balance flexibility for licensees and protecting the public? If not, what could be changed?**

## **5.7 Retention of goods on notified premises – Clause 19**

Clause 19(2) of the proposed Regulation allows second-hand dealers to keep watercraft in any convenient place in NSW.

Under sections 12 and 21 of the Act, second-hand dealers must keep all second-hand goods received in the course of the licensed business for 14 days on ‘notified’ premises. It may not be practical for boat brokers to notify Fair Trading of locations that are not used regularly, for example where boats are kept at the owner’s residential premises. The Regulation reduces the reporting requirements by allowing dealers to keep boats at any convenient place.

Under clause 12(2)(h), second-hand dealers must record the details of the location of any goods that are not kept at the notified premises. An electronic record-keeping condition applies to this clause, meaning that NSW Police could request licensees to report it if necessary.

**11. Are there any other types of large goods that are not practical to keep on notified premises?**

## **5.8 Pawnbroker's record of pledges – Clause 22**

Clause 22(2)(c) requires the person who takes a pawn on behalf of the pawnbroker to include their printed name and signature on the agreement. Some staff may have security concerns and may not be comfortable giving their personal details to customers. The Regulations could require that the pawn ticket include their name or a unique identifier (such as an employee number) instead.

- 12. Should staff be able to choose whether to include their name or an identifier, such as their employee number or initials, on the pawn agreement?**

## **5.9 Proceeds of sale – Clause 34**

The proposed Regulation would only require pawnbrokers to notify customers of any surplus proceeds of sale if the amount that they can claim is \$75 or more.

### **Application of proceeds of sale**

Under section 31 of the Act, customers can claim any surplus proceeds of sale from a pawnbroker within 12 months. A surplus is where the pawnbroker sells the person's unredeemed goods for more than the amount of the loan, less interest and reasonable charges that are incidental to the sale. The intent is to protect both the interests of the customer and the pawnbroker.

### **Updates regarding notice of proceeds of sale**

Currently, pawnbrokers only need to provide customers with a notice if the amount that can be claimed is \$50 or more. This threshold has not been adjusted for inflation over many years. Clause 35 of the Regulation increases the threshold to \$75 to better reflect the real value in 2019.

There would be a decrease in the number of notices provided by pawnbrokers and an associated increase in revenue for licensees. Consumers would no longer receive notice for any surplus between \$50 and \$75 in value and may not realise that they can claim the money.

The impact on customers is likely to be low as it is a small increase. Anecdotally some customers may not receive notice because the pawnbroker incorporates a 'waiver' of the right to receive notice into the pawn agreement. There may also be no proceeds left once the unpaid loan, interest and other charges are deducted. Stakeholders have raised concerns that consumers may not be aware of their rights and that some of the fees may not reflect the costs incurred by licensees.

The Regulations can vary the monetary thresholds but there are limited regulation making powers to clarify or strengthen the other provisions in the Act.

- 13. Is the proposed threshold of \$75 appropriate? If not, what should it be?**

- 14. Do customers understand that they are entitled to claim any surplus proceeds of sale? What types of fees and charges are typically deducted?**

## **5.10 Refund if licence surrendered – Clause 38**

The proposed Regulation would entitle licensees to receive a refund of the fixed component of the licence fee if it is surrendered within 60 days of it being granted or renewed. There have been a small number of cases where a licensee realises shortly after being granted a licence that it is not needed. For example, second-hand dealers who are exempt from the operation of the Act.

- 15. Is the 60 day period to refund licence fees appropriate? Why or why not?**

- 16. Are the guidance materials and information provided to prospective licence holders clear and informative? If not, what can be changed?**

## **5.11 Exemption from electronic record-keeping – Clause 39**

The proposed Regulation phases out the electronic record-keeping exemptions provided to small-scale second-hand dealers who held a licence before the start of the Act in 1997.

### **The proposed Regulation grandfather's exemptions for two years**

Under clause 39, licensees with an exemption in place immediately prior to the start of the new Regulation would be exempt for two years. From 1 September 2022, the Department would apply an electronic record-keeping condition to each new and existing licence.

This change would directly impact 9 licensees who have a current exemption in place. Assuming that the cost of the software for a small business is \$700 per year, over the five years to 2025 the total ongoing system costs would be around \$30,000. There may also be some set-up costs.

### **Upcoming reforms will affect the current exemption process**

Upcoming reforms to licence durations will indirectly affect the exemption process. From 1 July 2020, licensees will be able to apply for 3 and 5 year licences. If clause 12 of the current Regulation is retained in its present form, licensees may only need to apply for an exemption every 3 or 5 years and provide statements for a single financial year.

### **Exemptions may no longer be needed**

The Regulation phases out the exemptions because they may no longer be necessary or appropriate. Electronic record-keeping is an important part of the licensing regime because it helps NSW Police identify and search for stolen goods. Changes in the adoption and cost of technology may mean that it is now more affordable for small-scale dealers to keep electronic records.

Other options include to retain the exemption and limit eligibility further so that a licensee cannot apply for an exemption once they exit the market. This may be appropriate as other licence holders are not eligible on the basis that they entered the market after the provisions were introduced.

**17. Are the exemptions from electronic record-keeping currently provided to small-scale dealers still necessary and appropriate? Why or why not?**

**18. Is the proposed transition period of two years sufficient?**

## **5.12 Penalties and demerit points – Schedule 1**

The proposed Regulation contains a minor update to increase the penalty for an offence under section 12(B)(2) of the Act from \$330 to \$550. This section relates to the retention of goods on notified premises by a pawnbroker. The change aligns the penalty to the similar offence for second-hand dealers under section 32B.

In general, the penalty amounts are lower than other licensing schemes administered by NSW Fair Trading. They are more similar to the regimes in other jurisdictions. However, unlike these other schemes, licensees also accrue demerit points which can act as a disincentive. Licensees who accrue 12 or more points within 3 years can be issued a notice to ‘show cause’.

**19. Are the penalty infringement notice offences and the penalty amounts fair and effective? If not, what should be changed?**

**20. Is the demerit point system working effectively? If not, what could be changed?**

## **5.13 Partnerships**

The proposed Regulation would require each individual who operates a business in partnership to pay the full licence fee. Currently, each partner is licensed but only the principal pays a fee.

### **The Regulation would require each partner to pay the full licence fee**

The proposed Regulation omits clause 36 of the current Regulation, meaning that each licence holder would need to pay the relevant fee. The change would ensure that the Department recovers the costs of processing multiple licences and simplify the administration of 1, 3 and 5 year licences.

It is not expected to create a significant cost for business as licence fees are tax deductible and there are a small number of partners. There are around 80 current licensees who have declared that they are in a partnership, including around 40 partners who do not currently pay fees. Over the five years to 2025, the Regulation would require these partners to pay around \$80,000 in licence fees or up to \$400 each per year.

Partnerships are complex to manage due to system design and fee structure. There is no way in the current licensing system to link and track changes to the partnership relationship. For example, there is no link between the durations of the individual licences and therefore the fees that apply. This will make administration more complex from 1 July 2020 when 3 and 5-year licences start.

The Regulation would increase the licensing costs for partnerships, but the impact of this increase could be partially offset by the savings for a 3 or 5-year licence. For new licences, individuals will save around \$800 for a 5-year licence and \$400 for a 3-year licence. For renewals, savings will be \$190 for 5 years and \$90 for 3 years.

### **Further changes to the licensing of partnerships may be needed in the future**

Changes to the fees payable by partnerships are necessary in the short-term but will not fully address the issues outlined above. Three options for reform in the future include:

1. Do not regulate or licence partnerships
2. Licence the ‘principal’ partner only and add the other partners as endorsed persons
3. Licence the partnership by creating a new licence category

Option 1 would involve continuing to licence each partner as an individual and requiring each partner to pay the relevant fees. NSW Fair Trading would amend the Act to remove the provisions relating to partnerships, meaning no information would be collected. The benefit of this option is that it would be the simplest to manage. However it would be more costly for licensees and may have unintended impacts on probity, compliance and enforcement.

Option 2 would involve issuing an individual licence in the name of a nominated partner. The other partners would be added as endorsed persons to that licence. Only one fee would be payable by the partnership. The Act may need to be amended to allow the partner to carry on business under the licence. This option would be more complex to manage than option 1 but would cost less for licensees and should not have negative probity or compliance impacts. The approach would be the same as, or similar to, the model for motor dealers.

Option 3 would involve issuing one licence in the name of the partnership. NSW Fair Trading would amend the Act to create a partnership licence category. A separate fee for the new licence type may apply. This option would be similar to option 2 however would require more extensive changes to the Act to implement. It would bring the licensing approach into alignment with some other schemes regulated by Fair Trading, such as home building.

- 21. Are the proposed changes to the fees for partnerships fair and reasonable? If not, what fees should be charged?**
  - 22. Do you support a broader review of the licensing of partnerships? If so, what is your preferred option?**

## **5.14 Information in and form of pawn ticket**

The proposed Regulation omits clause 28 of the current Regulation. The clause sets out additional information that pawnbrokers must provide to consumers as part of the pawn ticket or attached to it, including information about interest charges as well as information on how to redeem goods.

Pawnbrokers will need to provide this information to consumers as part of a form approved by the Secretary, making the current clause redundant.

**23. Is the information disclosed to consumers enough for them to make informed decisions? Is it presented in a way that is easy to understand?**

## **5.15 Other issues not raised in this RIS**

The regulation making powers of the Act are summarised at Appendix 3. Some of these powers are used in the current Regulation while other powers are not currently used.

**24. Do any of the regulation making powers that are not included in the proposed Regulation need to be used, and if so, why?**

**25. Are there any other issues that are not raised in this RIS that relate to the Regulation? If so, what is the issue and how could it be addressed in the Regulation?**

## Appendix 1 – List of targeted stakeholders

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A copy of the proposed Regulation and this RIS has been provided to current licence holders, market promoters and other key stakeholders. These include, but are not limited to:

*Industry associations and bodies*

- Auctioneers and Valuers Association
- Australian Antique Dealers Association
- Australian Industry Group, NSW
- Australian Music Association, NSW
- Australian Retailers Association
- Boating Industry Association
- Business Council of Australia, NSW
- Caravan & Camping Industry Association of NSW
- Farmers Association of NSW
- Gold & Silversmith Guild Australia
- Jewellers Association of Australia
- Motorcycle Council of NSW
- Motor Traders' Association of NSW
- National Auctioneers Association
- NSW Business Chamber
- NSW Pawnbrokers Association
- Watch and Clockmakers of Australia

*Consumer groups and services*

- Aged and Community Services Association of NSW
- CHOICE
- Community Legal Centres NSW
- Disability Advocacy NSW
- Ethnic Communities' Council of NSW
- Financial Counsellors' Association of NSW
- Financial Rights Legal Centre
- Homelessness NSW
- Law Society of NSW
- Legal Aid NSW
- Lifeline Australia
- Mission Australia
- NSW Council of Social Service
- NSW Financial Inclusion Network
- Public Interest Advocacy Centre
- Redfern Legal Centre
- Salvation Army Moneycare
- Seniors Rights Service
- St Vincent de Paul Society
- Youth Action

## Appendix 2 – Industry profile

NSW Fair Trading licences pawnbrokers and second-hand dealers in NSW. As of March 2020, there were 606 licence holders under the Act: 8 licensed as pawnbrokers only; 423 licensed as second-hand dealers only; and 175 licensed as both pawnbrokers and second-hand dealers.

The impact of COVID-19 on customers and licensees may limit growth in the industries over the short term, but there is potential for growth. The Act regulates a very wide range of individuals and businesses who deal in goods ranging in value from a few dollars to many thousands of dollars. Some pawnbrokers and second-hand dealers trade in general items, while others specialise in niche markets like jewellery, consumer electronics and boats.

The graph below shows that the number of licence holders has consistently declined over the last 10 years. This may be related to a range of factors including changes in the use of technology, the scope of the regime and the availability of other short-term credit options. Individuals are increasingly using platforms like eBay and Facebook to sell their own goods. There have also been reductions in the price for new goods and growth in short-term credit options like pay day lending.

Licensees are widely distributed throughout the state. Most have a presence in metropolitan Sydney but the industries are also well established in regional areas. Historically most businesses were local in their sphere of operation, but the internet and technological advancements have significantly widened the scope of many businesses. They have also created new markets, for example the wholesale of used electronic goods in international markets.

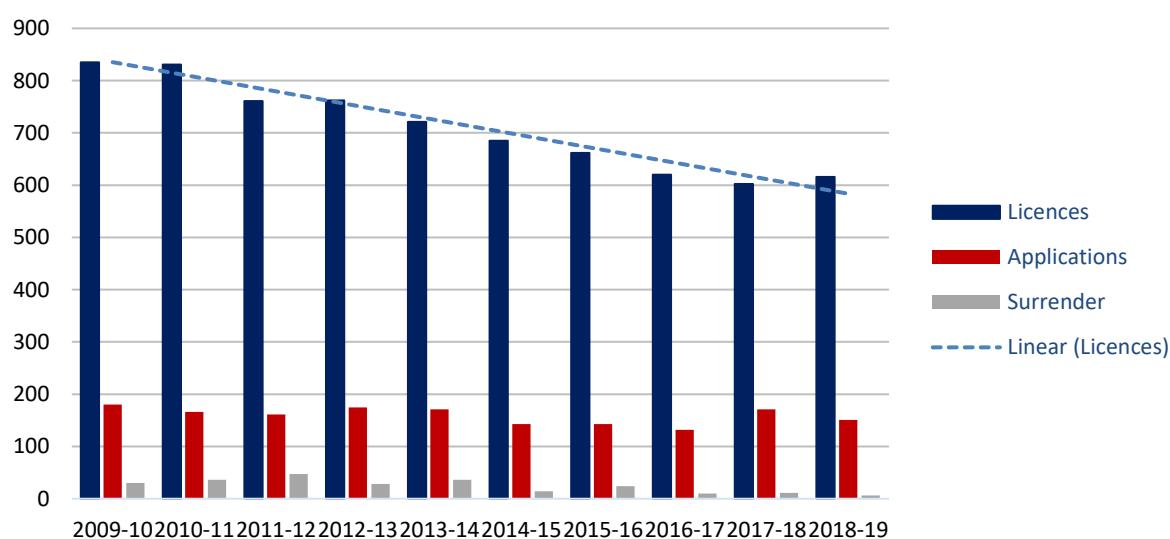


Figure 1: Number of licences, licence applications and surrendered licences, 2009-10 to 2018-19<sup>2</sup>

<sup>2</sup> The number of licences as the number that were current at the end of the financial year. The number of applications and surrendered licences are the total for the financial year.

## Appendix 3 – Regulation making powers

The following table sets out the existing regulation making powers in the Act. It also identifies the powers that are used in the proposed Regulation.

Section	Regulation making power under the Act	Scope of the proposed regulation
3(1)	Prescribe activities that do not constitute a “market”	Clause 4 prescribes activities that are not considered to be a ‘market’ for the purposes of the Act
3(1)	Prescribe the class or description goods that are “second-hand goods”	Clause 5 prescribes types of goods that are and are not considered second-hand for the purposes of the Act
3A(4)	Specify cases or circumstances that do or do not constitute the pawning of goods	Not prescribed
4(2)(c)	Prescribe persons and circumstances that the Act does not apply to	Clause 6 and 7 limit the application of the Act so that it does not apply to certain persons and circumstances
8A(1)(e)	Prescribe that a provision is a disqualifying breach	Not prescribed
8A(4)(e)	Prescribe grounds the Commissioner can ignore a conviction of dishonesty	Not prescribed
9(2)	Prescribe that the <i>Licensing and Registration (Uniform Procedures) Act 2002</i> applies to a licence subject to modifications/limitations prescribed by or under the Act	Clause 31 modifies the application of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i> regarding identifiers
9(4)	Make provision for matters concerning a licence as are relevant to the operation of Part 2 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i>	Not prescribed
11(2)	Make provision for conditions on the grant or renewal of a licence or at some later time	Not prescribed
12B(2)(d)	Prescribe requirements or authorisations to remove unredeemed pawned goods from approved premises	Not prescribed
12B(4)	Exclude a specified class of premises from section 12B (keeping pawned goods), either for all pawned goods or pawned goods of a specified class	Not prescribed
13(1)	Prescribe that additional particulars about licences be recorded on a register of licences	Not prescribed
13(2)	Prescribe a fee for extracts of the licence register	Schedule 2, Item 5 prescribes the application fee for an extract
14(1)	Prescribe what licence details must be conspicuously displayed in all licensed business premises	Clause 15(1) prescribes the details that must be displayed
14(2)	Prescribe what licence details must be conspicuously displayed by a licensee operating as an itinerant	Clause 15(2) prescribes the details that must be displayed

<b>Section</b>	<b>Regulation making power under the Act</b>	<b>Scope of the proposed regulation</b>
15(1A)	Prescribe what evidence can be used for identification purposes before accepting any goods for sale or pawn	Clause 16 prescribes the means that licensees must use to verify identity
15(1B)	Provide for additional evidence of identity to be required in oral or documentary form	Clause 16(3) and 16(5) provide that evidence must be in documentary form
15(3)	Prescribe the requirements to ascertain the title to the goods before accepting goods for sale or pawn	Clause 16(6) prescribes that the licensee must obtain a written statement in the form approved by the Secretary
16(1)	Prescribe what information must be kept as records and how that information is kept for: <ul style="list-style-type: none"> <li>• the acquisition or disposal of second-hand goods</li> <li>• the redemption of any pawned goods or the disposal of any forfeit pledge</li> <li>• any other matters pertaining to the business of the licensee.</li> </ul>	Clause 11 prescribes that records must be kept electronically or in a bound book. Clause 12 prescribes the information that pawnbrokers and second-hand dealers must keep regarding the goods pawned, purchased or sold. Clause 17(2) prescribes the information that licensees must keep regarding imported goods.
16(2)	Prescribe what particulars and in what manner records are to be kept regarding employees	Clause 13 prescribes the particulars that licensees must keep records of for each person employed in the business
16(3)	Prescribe what particulars and in what manner a market promoter should keep records of, for: <ul style="list-style-type: none"> <li>• all vendors selling second-hand goods</li> <li>• the kinds of goods sold</li> <li>• any other particulars.</li> </ul>	Clause 14 prescribes the particulars that a market promoter must keep records of
16(5A)	Prescribe the: <ul style="list-style-type: none"> <li>• circumstances where a licensee must provide the Commissioner of the Police record details</li> <li>• timeframe to do so after the record is made</li> </ul>	Clause 10 prescribes the timeframes to provide the details of a record to police, including records that an electronic recordkeeping condition applies to and other records required under the Act
16(6)	Prescribe whether a required record must be signed by any person making an entry into it or the owner or consignor of the related goods	Not prescribed
16(7)	Require licensees use electronic methods to create and store the records they must keep under section 16	Clause 9 prescribes that the Secretary must impose an electronic record-keeping condition on a licence and require the use of a specific software
21(1)	Prescribe any goods or circumstances where licensees do not need to keep the goods on approved premises for 14 days	Clause 19 prescribes circumstances where section 21(1) of the Act does not apply, i.e. that certain goods do not need to be kept on approved premises
26(2)	Prescribe a penalty notice offence	Schedule 1, Column 1 prescribes the offences for which a penalty infringement notice can be issued

<b>Section</b>	<b>Regulation making power under the Act</b>	<b>Scope of the proposed regulation</b>
26(4)	Prescribe the amount payable for a penalty notice offence not exceeding the maximum amount that could be imposed by a court	Schedule 1, Column 2 prescribes the amounts payable for a penalty infringement notice
27(1)	Prescribe an offence for which demerit points will be deducted from the licence	Schedule 1, Column 1 prescribes the offences for which demerit points will be deducted from the licence
27(2)	Prescribe the number of demerit points to be allocated to an offence	Schedule 1, Column 3 prescribes the number of demerit points to be allocated to an offence
27(6)	Prescribe an officer who can certify the number of demerit points accrued to a licensee in a period by signing a certificate	Clause 33 prescribes that the Secretary can certify the number of demerit points accrued to a licensee
28(2)(a)	Prescribe what matters must be included in a pawnbroker's record of pledges to provide a fair and reasonable description of the goods	Clause 22(1) prescribes the details that pawnbrokers must include as part of the description of the goods  Clause 21 exempts licensees if the goods are batteries or charges for mobile phones or power tools.
28(2)(c)	Prescribe how an equivalent interest annual rate is to be calculated for the purposes of a pawnbroker's record of pledges	Clause 20 prescribes that it is the rate that bears to a year the same proportion as the periodic interest rate bears to the interest period
28(2)(f)	Prescribe what other particulars a pawnbroker is required to include in a record of pledges	Clause 22(2) prescribes further particulars that pawnbrokers must include in the record of a pledge and the form that evidence must be provided in
28(5A)(a)	Prescribe the form the notice must take that specifies the rights and obligations of the person who pawned the goods	Clause 23 prescribes that the notice must be legible, printed on both sides of A4 paper and only include the approved wording
28(5C)	Require pawnbrokers to use electronic methods to create and store records they must keep under section 28	Clause 9 prescribes that the Secretary must impose an electronic record-keeping condition on a licence and require the use of a specific software
29(6)	Prescribe what steps need to be taken by a pawnbroker to ascertain the identity of the person redeeming goods	Clause 24 prescribes the methods or steps that a pawnbroker must use to verify the identity of a person who wants to redeem a good
29A(3)(a)	Prescribe steps to be taken by a pawnbroker when entering into an extending agreement to ascertain the identity of a customer when redeeming goods	Not prescribed
29A(3)(b)	Prescribe other steps to be taken by a pawnbroker when entering into an extending agreement relating to redemption of goods	Not prescribed

Section	Regulation making power under the Act	Scope of the proposed regulation
29A(5)(f)	Prescribe additional particulars that must be included in a record of an extending agreement	Not prescribed
29A(8)	Require licensees use electronic methods to create and store records they must keep under section 29A	Clause 9 prescribes that the Secretary must impose an electronic record-keeping condition on a licence and require the use of a specific software
29B(1)(b)	Prescribe the conditions under which a pawn agreement can be varied	Not prescribed
30(1)	Prescribe an amount that, if the principal lent on unredeemed goods is greater than it, requires a pawnbroker to sell the goods in a manner that will secure the best price reasonably possible	Clause 25 prescribes that the amount is \$75
30A(2)(d)	Prescribe what kinds of fees and charges may not be deducted from the proceeds of the sale of unredeemed pawned goods	Not prescribed
31A(2)(b)	Prescribe an amount that, if the proceeds of sale of an unredeemed item are less than it, a pawnbroker does not need to provide the owner with notice of the sale and the amount that could be claimed	Clause 34 prescribes that the amount is \$75
32C	Prescribe the form and appearance of a notice specifying the rate or rates of interest charged and any other fees and charges	Not prescribed
32D(5)(a)	Prescribe a period for a pawnbroker to provide notice of the sale or transfer of business	Not prescribed
32D(5)(b)	Prescribe a period for a purchaser to provide notice of the sale or transfer of business	Not prescribed
32E(2)	Prescribe what manner criminal proceedings may be started	Not prescribed
32F(3)	Prescribe what particulars and information a Restoration Notice must contain and if it must be accompanied by any other material	Clause 26(1) prescribes the details that must be included in a restoration notice
32F(7)	Prescribe that in certain circumstances a Restoration Notice becomes inoperative or prescribe compliance procedures which render Restoration Notices inoperative	Clause 26(2) prescribes that a restoration notice ceases to be operative if the claimant withdraws their allegation under section 32F(1) of the Act
32H(1)(e)	<p>If a restoration notice is served on a licensee in possession of the goods to which the notice relates, the licensee must not:</p> <ul style="list-style-type: none"> <li>• alter the form of the goods, sell them or grant any rights over them, or</li> <li>• cause or allow them to be altered, sold or have any rights granted over them, or</li> <li>• cause or allow them to be redeemed or removed,</li> </ul>	Not prescribed

<b>Section</b>	<b>Regulation making power under the Act</b>	<b>Scope of the proposed regulation</b>
	Except with the consent of the claimant or otherwise in accordance with the regulations.	
32I(1)(a)	Specify circumstances where Local Courts have jurisdiction to determine certain actions brought by a claimant to which a Restoration Notice relates	Clause 27 prescribes that the Local Court has jurisdiction in certain circumstances
32J(3)	Make provision for or with respect to the handling and disposition of [stolen] goods delivered to an authorised officer under s32F(4).	Not prescribed
32L	Prescribe the form and appearance of a notice specifying disputes as to ownership and restoration of goods (Part 4)	Clause 28 prescribes that the notice must be in the approved form
39A	Authorise the Secretary to delegate the exercise of any function to any person or class of persons	Not prescribed
43(1)	Prescribe any matter which is necessary or convenient to be prescribed to carry out or give effect to the Act	Clause 29 prescribes that a licensee must not purport to transfer or lend a licence
43(1)(a)	Make provisions on the rights and obligations of the parties and the procedure to be followed when pawn tickets are lost, stolen or destroyed	Not prescribed
43(1)(a1)	Make provisions for documents or information that must accompany an application for the issue or renewal of a licence	Not prescribed
43(1)(b)	Make provisions for the replacement of licences that are lost, stolen or destroyed	Not prescribed
43(1)(c)	Make provisions for the recognition of licences issued in other Australian jurisdictions	Not prescribed
43(1)(c1)	Make provisions for the carrying on of a business as a second-hand dealer or pawnbroker or both	Not prescribed
43(1)(d)	Make provisions for the carrying on of a licensed business by legal personal representatives or trustees of the licence	Clause 30 provides that a legal personal representative or trustee can carry on a licensed business for up to 3 months in certain circumstances
43(1)(e)	Make provisions for the electronic transmission, between the Secretary and the Commissioner of Police, of information relevant to the administration of the Act	Not prescribed
43(1)(f)	Make provisions for the electronic transmission, by a pawnbroker or licensee to the Commissioner of Police, of information required under the Act to be furnished	Not prescribed
43(1)(g)	Make provisions for fees chargeable for any service provided by the Secretary under the Act or the regulations	Schedule 2 prescribes the fees that are payable for services

<b>Section</b>	<b>Regulation making power under the Act</b>	<b>Scope of the proposed regulation</b>
43(1)(g1)	Make provisions for the waiver, reduction, postponement or refund by the Secretary of fees	Clause 37 provides for fee relief special circumstances or financial hardship Clause 38 provides for the refund of licence fees in certain circumstances
43(1)(h)	Make provisions for the service of notices for the purposes of the Act or the regulations	Not prescribed
43(1)(j)	Make exemptions from the operation of the Act or specified provisions of the Act, either unconditionally or subject to conditions	Clause 32 provides exemptions from sections of the Act for the specified licensees
43(2)	Create an offence punishable by a penalty not exceeding 20 penalty units	Clause 18(1) creates a penalty of 20 penalty units
43(3)	Specify monetary limits on the jurisdiction of the Civil and Administrative Tribunal to hear and determine applications or make orders under section 32G	Not prescribed
44(1)(f)	Prescribe circumstances in which a person who is or was involved in the management of a licensed business can disclose information about a person or their affairs obtained under the Act or the regulations in the course of conducting the licensed business	Not prescribed
44(3)(d)	Prescribe a class of persons who are to be considered involved in the management of a licensed business for section 44	Not prescribed

## Appendix 4 – Summary of the proposed Regulation

The following table sets out the main changes in the proposed Regulation, compared to the current Regulation:

Issue	Current Regulation	Proposed Regulation
Meaning of market	Excludes markets if no second-hand goods are sold from the definition of a market [clause 4].	Omits the exclusion as these markets are already excluded in the Act.
Meaning of second-hand goods	Lists goods that are and are not considered ‘second-hand’ for the purposes of the Act, based on the risk of theft [clause 5].	Updates list of goods to reflect changes in the risk of theft, to provide consistency and to improve readability. Watercraft that cannot be lawfully towed by a light vehicle are excluded as they may not be at risk of theft. Goods that are not portable and cannot be driven are excluded, expanding the existing exclusions for machinery and pianos. The category for sporting and recreational ‘goods’ is renamed ‘equipment’ to include high risk items like bicycles and exclude clothing and sport accessories [clause 5].
Application of the Act	Provides that the Act does not apply to recycling programs organised by an approved person, i.e. by local council and their agents [clause 6].	Omits the definition of an approved person and excludes rubbish collection programs. There are a range of recycling and rubbish collection programs, including programs run by the Australian Government and community recycling schemes [clause 6].
Electronic records	Certain small-scale dealers that held a licence under the previous Act can be exempt from electronic record-keeping requirements upon application [clause 12].	Phases out the exemptions by omitting clause 12 of the previous Regulation. Inserts a savings provision instead to grandfather any exemptions in place immediately prior to the start of the new Regulation for two years, until 1 September 2022. Licensees do not need to reapply for an exemption in this time [clause 39].

Issue	Current Regulation	Proposed Regulation
Providing electronic records to police	Licensees must create electronic records of the transaction by close of business on the day of the sale, with some exceptions, and transmit the records to the police within 3 days of creating the record [clause 11].	Reduces the period to provide records to NSW Police from 3 days to the end of the day that the record is made [clause 10]. This change will maximise the time to identify and search for stolen goods within the 14-day statutory retention period.
Records of goods	Licensees do not need to record a purchaser's details if the principal lent on the goods or purchase price \$50 or less [clause 13]	Increases the \$50 threshold to \$75 to more closely reflect the real value in 2019 [clause 12]. The threshold has not been adjusted for inflation before.
Display of signs	Prescribes the format to display licence details and notices, including the font, font size, colours and language [clause 16, 27 and 31].	Omits the display requirements for the signs with licence details, fees and charges, and the restoration of goods. There have been cases where licensees purchase legible signs that are not compliant [clause 15 and 26].
Display of licence details by itinerants	No current clause	The Act requires licensees to display licence details at all premises used for business. The Regulation only requires itinerants to display licence details so that they are accessible to the public [clause 15].
Retention of goods by licensee	Second-hand dealers must retain goods on notified premises with a limited number of exceptions [clause 22].	Allows second-hand dealers to keep watercraft at any convenient place in NSW [clause 20]. The location must be recorded and furnished to NSW Police if requested.
Additional particulars for pawn ticket	Pawnbrokers must provide additional information in or attached to the pawn ticket, such as the date the redemption period ends [clause 28]	Omits the clause as the information can be included as part of an approved form, making the clause redundant.

Issue	Current Regulation	Proposed Regulation
Notice of proceeds of sale	No current clause	The Act provides that a pawnbroker who sells an unredeemed good must notify the pawner of their entitlement to claim proceeds, except if the amount that can be claimed is less than \$50 or the customer requests in writing not to receive a notice [section 31A]. The Regulation increases the \$50 threshold to \$75 to account for inflation as it has not been adjusted before.
Refund of licence fees where surrendered	No current clause	Entitles a licensee to receive a refund of the fixed component of the licence fee if the licence is surrendered within 60 days of being granted or renewed. This will not apply where the licence was surrendered because it was revoked [clause 38]. Some new traders realise that they do not require a licence shortly after being granted one because they are exempt from the operation of the Act or do not deal in prescribed goods.
Partnerships	Currently, each partner must hold a licence. However only one partner needs to pay the licence fee [clause 36]	Omits clause 26 of the current Regulation, meaning each partner will need to pay the full licence fee.
Penalties	Prescribes the penalties and demerit points. In general, the same penalties apply to individuals and corporations. Most offences have a penalty of \$330 however it ranges from \$110 to \$550. There are two offences, for unlicensed trading, that have penalties of \$1,100 for an individual and \$2,200 for a corporation.	Increases the penalty for section 12B(2) from \$330 to \$550 to align with the penalty for section 21. Both of these sections relate to the retention of goods on notified premises [Schedule 1].

## Appendix 5 – List of questions from the RIS

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Questions	Clause	Page
1. What activities should be excluded from the definition of a ‘market’?	4 & 14	11
2. Are the record-keeping requirements for market promoters appropriate?		
3. Are there any classes or types of second-hand goods that should be removed, included or clarified? If so, what should be changed?	5	13
4. Should the exemption for ‘trade-ins’ be limited so that dealers must record details for the purchase of mobile phones, tablets, laptops and jewellery?		
5. Do some licensees only deal in a small number of prescribed goods, incidental to their main business? What types of goods do they sell and in what quantities?		
6. Are there any other circumstances where the Act should or should not apply?	6	14
7. What is a fair and reasonable amount of time to report information to NSW Police?	10	14
8. Are there any barriers that may prevent reporting by the end of the day? If so, how can these issues be addressed in the Regulations?		
9. Does the requirement to record a purchaser’s details remain necessary? If so, is the proposed threshold of \$75 appropriate?	12	15
10. Do the rules for the display of notices strike the right balance between providing flexibility to licensees and protecting the public? If not, what could be changed?	15 & 29	16
11. Are there any other types of goods that are not practical to keep on notified premises?	19	16
12. Should staff be able to choose whether to put their name or an identifier, such as their employee number or initials, on the pawn agreement?	22	17
13. Is the proposed threshold of \$75 appropriate? If not, what should it be?	34	17
14. Do customers understand that they are entitled to claim any surplus proceeds of sale? What types of fees and charges are typically deducted?		
15. Is the 60 day period to refund licence fees appropriate? Why or why not?	38	18
16. Are the guidance materials and information provided to prospective licence holders clear and informative? If not, what can be changed?		
17. Are the exemptions from electronic record-keeping currently provided to small-scale dealers still necessary and appropriate? Why or why not?	39	19
18. Is the proposed transition period of two years sufficient?		
19. Are the penalty infringement notice offences and the penalty amounts fair and effective? If not, what should be changed?	Sch 1	19
20. Is the demerit point system working effectively? If not, what could be changed?		
21. Are the proposed changes to the fees for partnerships fair and reasonable? If not, what fees should be charged?	N/A	20

Questions	Clause	Page
22. Do you support a broader review of the licensing of partnerships? If so, what is your preferred option?		
23. Is the information disclosed to consumers adequate to make informed decisions? If not, what could be changed?	N/A	21
24. Do any of the regulation making powers that are not included in the proposed Regulation need to be used, and if so, why?	N/A	21
25. Are there any other issues that are not raised in this RIS that relate to the Regulation? If so, what is the issue and how could it be addressed in the Regulation?		