



Regulation Review Committee
Parliament of New South Wales

**Report on the Pawnbrokers and
Second-hand Dealers Regulation 1997**

Report No 16/51
September 1998

TABLE OF CONTENTS

Regulation Review Committee	1
Functions	2
Introduction	3
Pawnbrokers and Second-hand Dealers Regulation 1997	4

Regulation Review Committee

Members:

Mr D Shedden, MP (Chairman)
Ms J Hall, MP, (Vice Chairman)
Ms D Beamer, MP
Mr A Cruickshank, MP
Mr R Harrison, MP
Dr E Kernohan, MSc Agr., PhD., MP
Mr R Oakeshott, MP
Hon J Ryan BA (Hons), DipEd.(LP), MLC
Hon J Saffin, MLC

Secretariat:

Mr J Jefferis, B.A. L.L.B., Director
Mr G Hogg, Dip.Law (B.A.B.), Dip.Crim., Project Officer
Mr D Beattie, Acting Committee Clerk
Ms H Parker, B.A., Research Officer
Ms M Tyrogalas, Assistant Committee Officer

Functions of Regulation Review Committee

The Regulation Review Committee was established under the Regulation Review Act 1987. A principal function of the Committee is to consider all regulations while they are subject to disallowance by Parliament. In examining a regulation the Committee is required to consider whether the special attention of Parliament should be drawn to it on any ground, including any of the following:

- (a) that the regulation trespasses unduly on personal rights and liberties;
- (b) that the regulation may have an adverse impact on the business community;
- (c) that the regulation may not have been within the general objects of the legislation under which it was made;
- (d) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made;
- (e) that the objective of the regulation could have been achieved by alternative and more effective means;
- (f) that the regulation duplicates, overlaps or conflicts with any other regulation or Act;
- (g) that the form or intention of the regulation calls for elucidation; or
- (h) that any of the requirements of sections 4, 5 and 6 of the Subordinate Legislation Act 1989, or of the Guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.

The Committee may, as a consequence of its examination of a regulation, make such reports and recommendations to each House of Parliament as it thinks desirable.

A further function of the Committee is to report from time to time to both Houses of Parliament on the program for the staged repeal of regulations under the Subordinate Legislation Act 1989. Under this legislation all regulations currently in force in NSW are being reexamined, on cost benefit and cost effectiveness principles, starting on a chronological basis with the oldest of the regulations.

The staged repeal process involves the automatic repeal of existing regulations (except where exempt) made before 1 September 1990 in a staggered process commencing on 1 September 1991. Regulations made after 1 September 1990 are automatically repealed (unless their repeal is postponed) five years after they are made.

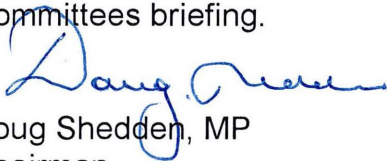
Introduction

The Pawnbrokers and Second-hand Dealers Regulation 1997 was first considered in the Committee's 12th report. A further briefing has been conducted on the regulation by the Committee to ensure that the Department of Fair Trading and the Police Service have undertaken appropriate consultation with the pawnbrokers and second-hand dealers industry.

A number of amendments have been made to the regulation but some problems are still outstanding, such as the implementation and testing of the new computerised records system before it starts being phased in on 1 January 1999 and prospective difficulties with the tight deadline for the electronic transfer of records to the police. While the Department of Fair Trading and the Police Service undertook to consult further on these matters at our briefing, this has not yet occurred. I am sure that with the industry's assistance the Departments can solve these problems.

I thank all the parties for their contributions to our briefings. The representatives of the industry who took time out of their busy working week to inform the Committee of their concerns are to be particularly thanked for their assistance.

I also thank the Member for Myall Lakes Mr John Turner MP who made many representations on behalf of the industry and made a significant contribution to the Committee's briefing.



Doug Shedden, MP
Chairman
10 September 1998

DESCRIPTION **Pawnbrokers and Second-hand Dealers Regulation 1997**

GAZETTE **28.4.1997, page 2249**

MINISTER **Fair Trading**

OBJECTIVES

The Committee previously reported on this regulation in its twelfth report to Parliament. The Regulation was cognate with the Pawnbrokers and Second-hand Dealers Act 1996.

The Committee received submissions on the regulation which indicated that certain second hand dealers had not been consulted before the regulation was introduced and were concerned over the costs of the computer system required under the regulation.

In September, 1997 the Committee obtained a briefing on the regulation from officers of the Department of Fair Trading and the Police Department and certain organisations and businesses that had raised concerns in respect of the regulation.

In November 1997 the Minister advised that his Department had examined the issues raised at the briefing and that following some five months of operational experience of the Act and Regulation a comprehensive review of the legislation had been undertaken.

The Minister said that this resulted in proposed amendments which, among other things, exempt second-hand dealers from the requirement to be computerised on a yearly basis if:

1. their gross receipts for the previous financial year totalled \$150,000 or less, and
2. they held a second-hand dealers licence prior to the introduction of the new legislation.

On 20 March 1998 a regulation was published by the Minister which amended the principal regulation in order to delay the commencement of the computerisation scheme. The scheme was due to commence on 1 May 1998 but has been extended by this amendment to 1 January 1999.

On 29 April 1997 the Minister introduced the Pawnbrokers and Second-hand Dealers Amendment Bill into Parliament. The Bill contained the proposed amendments to the Act to exempt existing small-scale second-hand dealers from the need to keep computer records.

It also clarified a number of the other provisions in the Act to ensure that the objectives of the Act are achieved.

In his speech on the Bill the Minister said that amendments were also proposed to the Pawnbrokers and Second-hand Dealers Regulation 1997 which will exempt existing small-scale second-hand dealers from a condition which will attach to all licences issued or renewed on or after 1 January 1999, requiring licensees to keep computer

records.

Under the amendments an application for exemption supported by prescribed documentary evidence can be made if the gross receipts of their business relating to all second-hand goods totalled \$150,000 or less in the previous financial year.

In his speech the Minister also said that following consultation with the Police Service and the pawnbroker and second-hand dealer industries, it was proposed to amend the definition of "second-hand goods" in the regulation to exclude certain categories of goods, including furniture and copper, non-ferrous metal and metal alloys. The Minister said that such goods are either not at high risk of theft or that their coverage by the legislation is creating unwarranted administrative burdens for industry.

The Minister said that in response to concerns which have been expressed by the Privacy Committee, the amended regulation would require licensees to display a warning that any information provided to them by customers may be given to the police.

The draft regulation was made available for the information of the House during the debate on the bill. Although the draft regulation was not formally reviewable by the Committee it was relevant to the Committees consideration of the regulation published on 20 March 1998 which delayed the commencement of the computerisation scheme.

Briefing

The Committee resolved to seek a briefing from the same parties who attended the September meeting in order to obtain their views on the Regulation.

The briefing was held on Thursday 21 May 1998 at Parliament House and was attended by Mr John Turner MP the Shadow Minister for Fair Trading and representatives from the Department of Fair Trading, the Police Department, the Privacy Committee, Worboys and Associates, the Chester Hill Loan Office, the Pawnbrokers Association of NSW and the Antique Dealers Association.

Mr Clive Robertson, Director, Strategic Operations of the Department of Fair Trading outlined the Departments consultation process with industry representatives before the legislation was introduced. He believed there was general acceptance and agreement to the amendments. He said there were a few Police operational issues raised which are being reviewed by the Police Service and there were also matters raised which the Department indicated would be considered, such as the need to record details of imported goods.

There were other matters raised which Mr Robertson indicated were subject to consultation with the Police Service following which they would be considered by the Minister for Fair Trading.

Chief Inspector Gary Parkin, Operations Manager, North Metropolitan Region, NSW Police Service said that computerisation had been delayed because there was a problem in relation to the Internet service provider and the tendering process. He said that on advice from the Public Works Department they had approached two providers under the Public Works Service contract and were negotiating with those providers.

Mr John Gaudin, Research Officer, Privacy Committee indicated that the staff of the Committee still have concerns over the electronic transfer of purchaser information to the police.

Mr Warren Worboys of Worboys and Associates said that the consultation on the regulation was a credit to the Department of Fair Trading.

However he was concerned that the current deadline of 1 November for testing of the computer system and its implementation on 1 January 1999 was too tight. He said that his firm, as software developers, can meet that deadline but the re-education of existing users and the implementation of new systems can be achieved only if the police provide full assistance to the industry.

Mr Timothy Martin of the Chester Hill Loan Office said that the consultation process with the Department was a big improvement and that the draft amendments are largely very good.

However he was concerned that pawnbrokers are required to supply to the police within 24 hours all electronic records that are required to be kept. He believes this will provide a lot of headaches in software design and at the police end of the system, because dubious data will be sent down.

He also said that from a management point of view it will be difficult to comply with the requirement to transmit data within 24 hours and particularly on weekends when casual staff often run the shop.

He believes it would be just as effective to the police if it were to be transmitted within a time negotiated with the Police.

It was pointed out to Mr Martin that such negotiation is permitted as the draft regulation said the data was to be transmitted within 24 hours or in accordance with other arrangements made by the Commissioner of Police.

However Chief Inspector Parkin indicated that the Steering Committee for the legislation, comprising representatives of his Department and the Department of Fair Trading, was inclined to proceed on the basis that they would require the transfer on a daily basis, unless there was some other exceptional circumstances which could be negotiated on an individual basis.

Mr Laurence White of the Pawnbrokers Association of New South Wales said that his Association had great cooperation from the Department of Fair Trading and in particular over the presentation of the bill. He said that the Association supported computerisation but that their biggest complaint was the fact that they don't have a great deal of dialogue with the police.

Mr White believed that a lot of the issues could be settled or considered in a round table discussion like the Committees briefing, particularly concerns about the new specifications that were recently put forward. Mr White said his Association was the

major target group of the legislation in relation to the tracing of stolen property and pawnbrokers are really the major user group of the new computerised system. Mr White said that if the police want compliance the computer system has got to be made user-friendly and relatively simple to staff and others to use.

The 24-hour limit isn't seen as being a major problem by Mr White but he said the difficulty could be in the Police Department if everybody has to download their records at the same time during the day. Mr White believes that can be changed by having alternate times during the day to do it, as long as it's within the 24-hour period.

Mr White said his Association is also concerned about downloading records on a weekend. He said that most businesses are small family-typed orientated businesses who bring in casual people at weekends who haven't always got the experience to be able to comply with the law. Mr White said his Association requests that weekend work be permitted to be downloaded on a Monday rather than over the weekend.

Mr Charles Aronson, President of the NSW Antique Dealers Association noted the difference between the two briefings. He said "in contrast to the last time I spoke to this Committee, I'd like this time to congratulate the Department of Fair Trading specifically, but also to a lesser extent the Police Department for their consultative process, because, whereas last time we got the feeling they were operating in a vacuum, certainly these amendments have come much more into line with what the industry expects and can use so we're really delighted with that".

Mr Aronson said his Association still has four issues which are very important. The first issue is that the Act covers all goods bought and sold within the certain categories by the dealer, and there are a number of dealers who buy a substantial proportion of their goods overseas. In respect of these overseas goods, a record of is made already at Federal Government level with appropriate documentation of Customs and Mr Aronson said his Association thinks their additional recording at the state level is only going to confuse the computer because they do not involve the police in any way.

The second concern of Mr Aronson was the fact that auction houses, market places and garage sales are excluded from the Act. He believes valuable items will be directed to people for sale at these venues and his Association is concerned that there is no form of registration of these other people so that the Department can keep track of them, particularly as they may be the source of stolen goods eventually.

Mr Aronson said the third problem was with the computerisation and concerned the mandatory fields in the computer database for describing vendors of goods. He said that the mandatory information includes things like date of birth, which isn't normally a problem, and forms of identification such as a passport or a driver's licence or an account from a government institution. While he believed this was appropriate for pawnbrokers, because they buy nearly everything over the counter, he didn't think it was for antique dealers.

Mr Aronson said this was because there are many antique dealers who buy from bona fide auction rooms or from other bona fide dealers and licensees, such as Christies. He therefore recommended that the Act or regulations be amended to provide that if a purchase is made from a bona fide existing vendor and not over the counter, a proper

invoice or other documentation is adequate proof of identity of the vendor.

The fourth item that he was concerned about was the required frequency of transmission of computerised information. Not only was his association concerned with the 24 hour deadline, he believed that licensees required a number of weeks leeway at certain times in the year. He said that most of the licensees in this State are relatively small businesses and every time a licensee is going on a holiday or going to go interstate or overseas for a week or two to buy stock they are entitled to some freedom of movement within the operation of their business.

Mr John Turner MP, the Shadow Minister for Fair Trading said he was heartened by the fact that there is a consultation process that is going on and congratulated all parties.

He said he was concerned that the computer system was only going out for testing on 1 November when it was due to come in on 1 January. He believed it had to be tested extensively and then if it had to be delayed further it should be delayed until it's absolutely right.

He also reiterated the industry's concerns with respect to the 24-hour transmission requirement.

The Chairman asked Mr Parkin to address the lack of consultation between the police and the industry that had been raised earlier.

Chief Inspector Parkin replied that there was some consultation in relation to computerisation in February or January this year but said that he agreed with the comments that had been made that if there had been a bit more consultation then the issues may well have been resolved at a more local level.

He said the Police are happy to consult in the future and that the issue in relation to the 24-hour transmission of information is still under consideration. He said there is room within the legislation for the Commissioner's discretion. It may well be that perhaps in isolated places they will be dealt with on a local level and not by the Commissioner of Police or that there'll be some other arrangement made.

On the issue of the commencement on 1 January, the representatives of the police and the Department of Fair Trading indicated that not all licensees will have to have computers or keep computerised records by 1 January 1999. It depends on when their licence falls due for renewal after that date. Only after the renewal will they be required to keep computer records and to have the necessary resources to be able to do that.

It was put to the police that the dealer should be contacted to check the validity of the data before it is acted upon. They responded that they are not going to get any other information that's not already on the system. The police said, as an example, an article would be described as a video-recorder, Akai brand, serial number 123456, that's been reported stolen. The data from the dealer indicates that he's on-sold that to Mr Smith of 6 Bloggs Street. The dealer is not going to be able to tell the police any more information, apart from what's in his records.

The Chairman said that many of these issues will be dealt with in the consultation process between now and when the system comes into operation.

The Committee asked what restrictions are on police officers getting access to the data for inappropriate purposes. The police indicated that access to the services mainframe computer requires a police officer to log on, using their registered number and password which is unique to that officer, which has to be changed once a month by that officer. The Police Service carries out random audits of police officers and asks them why they accessed particular types of information, which has to be justified. And if it is not justified then the management or disciplinary action is taken accordingly. There are significant offences for accessing computer information unlawfully.

Mr Robertson concluded by saying that the police have indicated they will take back the concerns of the Committee about the consultation in relation to the computerisation aspects to the Police Service to address those issues .

He said that the issues that Mr Aronson raised concerning overseas purchases, markets, garages sales and auctions will be monitored to see how the Act affects them. But he undertook to review them when the Department has more operational experience with the legislation.

Pawnbrokers and Second-hand Dealers Amendment Bill

In the debate on the Pawnbrokers and Second-hand Dealers Amendment Bill on 26 May 1998

the Chairman informed the house of the Committees briefing and acknowledged the role played by Mr John Turner MP in bringing about the necessary changes to the legislation.

He said that through the intervention of the Regulation Review Committee much more reasonable and workable legislation will be put in place and, most important, proper consultation will be undertaken.

The Committee noted that in reply the Minister for Community Services said the matter has had a long history but that it appeared that there is consensus and that peace had broken out in the Chamber. She also said that the Police Service has given an assurance that the pawnbroking and second-hand dealing industry will be further consulted on the computerisation specifications, and a consultation meeting would be held within a few weeks.

Pawnbrokers and Second-hand Dealers Amendment (Records and Goods) Regulation 1998

The draft regulation was finally published as the Pawnbrokers and Second-hand Dealers Amendment (Records and Goods) Regulation 1998 on 24 July 1998.

The Committee contacted the Department of Fair Trading and was advised that there was insufficient time before the regulation was published in which to honour the above undertakings with respect to consultation. However they had made a number of minor changes to the draft before it was finalised.

The Committee also contacted a number of the industry representatives who had attended the briefing and provided them with a copy of the published regulation. They confirmed that there had been no consultation on the published regulation or the

outstanding issues that they previously raised at the Committee's briefing. One representative suggested that the Department of Fair Trading and the Police Service should convene a round table discussion with representatives of the industry in order to resolve these matters.

The Committee recommends that the Department of Fair Trading and the Police Service further consult with industry before the computerisation scheme starts being phased in on 1 January 1999.

Job Name 23158-R.R.CMTE RE:PAWN 16/51 SEP'98
Account Number 999999999998
Printing Date/Time 23/09/98 8:50:21

Item	Number	Charge
Scans	0	0
1-Sided Prints	641	0
2-Sided Prints	2240	0
Binds	320	0
Single Stitches	0	0
Dual Stitches	0	0
B4, A3 or 11 x 17 Prints	0	0
B4, A3 or 11 x 17 Impressions	0	0
Total Impressions	4801	0
Total Bill		0