



Report of the
LICENSING AUTHORITY
OF SECONDHAND DEALERS
AND PAWNBROKERS

for the 12 months ended
30 June 2014

*Presented to the House of Representatives pursuant
to Section 77(2) of the Secondhand Dealers and Pawnbrokers Act 2004*

REPORT

1	INTRODUCTION	3
2	THE PRESCRIBED MATTERS.....	3
3	MATTERS OF CONCERN OVER THE PAST 9 YEARS	4
3A.	<i>The Potential Unfairness of Automatic Disqualification.....</i>	<i>4</i>
3B.	<i>Should companies such as Telcos be within the scope of the Act?</i>	<i>4</i>
3C.	<i>Hearings in Person of Applications and Complaints</i>	<i>5</i>
3D.	<i>Motor Vehicles Purchased for Scrap - “Articles” in Schedule 1 of the Act</i>	<i>6</i>
4	CURRENT ISSUES.....	6
4A.	<i>Suspension of Licences and Certificates</i>	<i>6</i>
4B.	<i>Police Vetting of Applicants.....</i>	<i>7</i>
5	ADMINISTRATION OF THE ACT	8
5A.	<i>Tribunal Case Management.....</i>	<i>8</i>
5B.	<i>Pawnbrokers.....</i>	<i>8</i>
5C.	<i>Practice Note</i>	<i>8</i>
5D.	<i>Secondhand Dealers and Pawnbrokers Amendment Regulations.....</i>	<i>8</i>
5E.	<i>Licence Cancelled for Serious Offending.....</i>	<i>9</i>
5F.	<i>Application Forms</i>	<i>9</i>
6	CONCLUDING REMARKS	9
7	ANNEXURE.....	10

The Hon. The Minister of Justice

Sir,

In accordance with the provisions of Section 77(1) of the Secondhand Dealers and Pawnbrokers Act 2004, I have the honour to forward the report of the Licensing Authority of Secondhand Dealers and Pawnbrokers for the 12 months ended 30 June 2014.

Yours faithfully,

A handwritten signature in blue ink, consisting of a stylized 'S' followed by a circular flourish and a long horizontal line extending to the right.

S L Cole
Licensing Authority of Secondhand Dealers and Pawnbrokers

Secondhand Dealers and Pawnbrokers Annual Report 2014

REPORT

1 INTRODUCTION

- 1.1 This is the annual report for the year ending 30 June 2014 under s.77(1) of the Secondhand Dealers and Pawnbrokers Act 2004 (the Act). It is my first annual report as the Licensing Authority of Secondhand Dealers and Pawnbrokers.
- 1.2 Section 77(1) of the Act requires the Licensing Authority to prepare and send to the Minister of Justice a report on the activities of the Licensing Authority during the previous year that contains the prescribed matters. The prescribed matters are described in regulation 17 of the Secondhand Dealers and Pawnbrokers Regulations 2005 (the Regulations). The prescribed matters are set out in the Annexure to this report.

2 THE PRESCRIBED MATTERS

- 2.1 Licences and certificates are issued for five years. They began to be issued in 2005. Applications for renewal of licences and certificates began in 2010 and continued thereafter.
- 2.2 This year the total number of applications for both licences and certificates combined is 1215 which is an increase from 1034 in the 2013 year.
- 2.3 The rate of applications for renewals has remained constant, 70 for the 2013 year and 69 this year.
- 2.4 It is noted here that where an application for renewal is received after the expiry date of a licence or certificate the application is treated for statistical purposes as an application for a new licence or certificate rather than a renewal application.
- 2.5 Although one of the 'Prescribed Matters' in the Regulations is the number of hearings conducted into Police *objections*, there is no requirement to report the number of hearings conducted into Police *complaints*. This year there were no hearings conducted into Police objections, and only 1 hearing conducted into a Police complaint. It is noted that a hearing may only be conducted after an applicant or certificate/licence holder makes a request under s.26 of the Act.
- 2.6 This year only 15 Police objections were filed (there were 20 in 2013 and 27 in 2012) and there were 5 Police complaints (which is about average for the past 7 years).
- 2.7 The number of undetermined applications at year's end decreased from 159 in 2013 to 62 this year.

3 MATTERS OF CONCERN OVER THE PAST 9 YEARS

3.1 In past reports the former Licensing Authority, Mr Frank Handy, mentioned a number of concerns about the Act some of which he repeated over several years. In his final report in 2013 he noted that, “Unfortunately, not one of the matters that I have mentioned seems to have received attention”.

3.2 I am happy to report that it seems progress has now been made and that some of the former Licensing Authority’s concerns have been addressed in the proposals contained in the proposed Courts and Tribunals Enhanced Services Bill.

3.3 Some of the concerns raised by Mr Handy are referred to immediately below:

3A. *The Potential Unfairness of Automatic Disqualification*

3.4 At present the Licensing Authority has discretion to waive most factors which might otherwise disqualify an applicant from obtaining a certificate or licence, which include convictions for certain criminal offences.

3.5 However any conviction for an offence within the scope of ss.217 to 265 of the Crimes Act 1961 (offences against the rights of property) within the past 5 years, which can extend from minor shoplifting involving a few dollars to serious property offences such as aggravated robbery, means that an applicant is automatically ineligible for a certificate or licence.

3.6 Similarly any conviction for an offence against the Fair Trading Act 1986, however minor, also means that an applicant is automatically ineligible for a certificate or licence.

3.7 The situation is the same where a licence or certificate holder is convicted of one of these offences during the currency of the licence or certificate. The Licensing Authority has no option but to cancel the licence or certificate.

3.8 The former Licensing Authority recommended that instead of the current regime the Licensing Authority be given discretion to waive *any* disqualification where the effect of denying a licence or certificate represents a penalty of disproportionate severity to the seriousness of the offence from which a disqualification results.

3.9 It seems that this issue has been addressed in the proposals contained in the proposed Courts and Tribunals Enhanced Services Bill.

3B. *Should companies such as Telcos be within the scope of the Act?*

3.10 As mentioned above a conviction under the Fair Trading Act 1986 (however minor) means the licence of a holder, whether a big company or a one man operation, must be cancelled

- 3.11 While one of the proposals contained in the proposed Courts and Tribunals Enhanced Services Bill would remove the mandatory disqualification consequent upon a Fair Trading Act conviction, and instead provide a discretion to the Licensing Authority, the former Licensing Authority went further and suggested legislation to exempt certain businesses from the scope of the Act.
- 3.12 He noted that in 2006 an amendment to the Secondhand Dealers and Pawnbrokers Regulations 2005 took the selling of traded-in white ware by the vendors of new white ware outside the scope of the Act. The reason for the exclusion must have been that the transactions of sellers of new white ware do not provide opportunities for criminals to dispose of stolen goods. The same reasoning could just as well apply to other categories of retailers who accept trade-ins on new sales.
- 3.13 Substantial companies such as Telcos (e.g. Vodafone, Telecom, 2Degrees etc) presently accept used mobile phones from their customers as trade-ins on the sale of new mobile phones (or some other devices or services) and then sell the traded-in mobile.
- 3.14 The purpose of the Act is to make it harder for criminals to dispose of stolen goods through secondhand dealers and pawnbrokers and to make it easier for the police to recover stolen goods and solve property crime.
- 3.15 It was suggested by the former Licensing Authority that transactions such as taking in used mobile phones when selling new ones and disposing of the traded-in phones should not be within the scope of the Act, just as the selling of traded-in white ware is not. He suggested that this was an area where the categories of transactions to which the Act applies could do with some consideration.
- 3.16 It does not seem that this concern has been addressed in the proposals in the proposed Courts and Tribunals Enhanced Services Bill.

3C. *Hearings in Person of Applications and Complaints*

- 3.17 Under the present legislation the only way in which a hearing in person can be conducted into an application is where the applicant for a licence or certificate, whose application is opposed by the Police, makes a request in writing. (Section 26 (1)(a)).
- 3.18 The situation is the same where the Police file a complaint about a licence holder or certificate holder. The licence or certificate holder must first request a hearing.
- 3.19 The former Licensing Authority recommended that the Licensing Authority should have the power to call for a hearing in person of his or her own motion. One reason given was that sometimes applicants need to be seen and questioned in person in order to gain some assurance that what is being alleged is credible or needs to be tested either by the Licensing Authority or by cross examination. Another reason given was that

occasionally the information about an applicant to whom the Police have objected, but who has not elected a hearing in person, is so vague that in the absence of a hearing in person, which would allow more information to be elicited quickly, there is a danger that any decision may be unfair.

- 3.20 It seems that this issue has been addressed in the proposals contained in the proposed Courts and Tribunals Enhanced Services Bill.

3D. *Motor Vehicles Purchased for Scrap - “Articles” in Schedule 1 of the Act*

- 3.21 In 2008 the former Licensing Authority raised the issue of secondhand dealers in the scrap metal business who purchase motor vehicles intending to strip them for the metal they contain. The issue was raised again in his 2013 annual report. The problem encountered by the Police was that cars purchased as scrap were treated as “scrap metal” rather than “articles” as defined in the Act with the result that they did not need to be labelled nor kept in an unaltered state for 14 days. The invariable practice seemed to be that cars purchased as scrap by secondhand dealers were dismantled very soon after acquisition and this added to the difficulties of the Police in tracing stolen vehicles which were often sold for scrap.

- 3.22 Under the current legislation motor vehicles are not listed as “articles” in schedule 1 of the Act, and it seems they were intentionally omitted, probably because of potential conflict with the Motor Vehicle Sales Act 2003. It was suggested that one way of resolving the problem of stolen cars being sold to scrap metal dealers where they are immediately dismantled and disposed of was to add cars acquired by secondhand dealers as scrap to the list of “articles” in Schedule 1 of the Act.

- 3.23 In the absence of any legislative intervention to date on this issue, I have adopted the following position (which differs from that of the former Licensing Authority¹) in respect of the acquisition of functioning motor vehicles by secondhand dealers for the purposes of dismantling, where some parts of the vehicle are sold for scrap and other parts are retained for on-selling, namely ..*“Whereas a motor vehicle as a whole is not an “article”, the component vehicle parts and accessories are “articles” for the purposes of the Act, unless they are no longer fit for purpose”.*²

- 3.24 It does not seem that this issue has been addressed in the proposals contained in the proposed Courts and Tribunals Enhanced Services Bill.

4 CURRENT ISSUES

4A. *Suspension of Licences and Certificates*

- 4.1 The Act establishes a two tier system for those involved in secondhand

¹ *Re Warren Metals Ltd and Halloran* [2008] NZSHD 24 (28 August 2008) at [16] – [21]

² *Re Beauchamp* [2014] NZSHD 4 (30 March) 2014 at [5].

dealing and pawnbroking. All those engaged in the business of dealing in secondhand goods and those who act as pawnbrokers must hold a *licence*. Those who act on behalf of licence-holders in entering into transactions involving secondhand goods or accepting pledges must hold a certificate of approval (*certificate*), as must anyone who supervises, controls or manages another person carrying out these functions.

- 4.2 Currently the Licensing Authority has the power to *cancel* both licences and certificates, normally following a Police complaint, however while there is also a power to *suspend* a certificate, the Authority is not permitted to *suspend* a licence.

- 4.3 A legal opinion has confirmed that despite clearly conflicting provisions in the Act, one of which appears to rule out even the possibility of *suspension* of a certificate (i.e. s.29(3) of the Act), the Licensing Authority is in fact entitled to suspend a certificate pursuant to s.31(1) of the Act in appropriate circumstances.

- 4.4 There appears to be no obvious reason why the Licensing Authority should have discretion to *suspend* a certificate, but not a licence. Suspension may well be appropriate, regardless of whether a certificate or licence is involved, in cases for example where cancellation would be unfair and/or disproportionate to the matters complained of by the Police.

- 4.5 If anything it could be argued that there is more reason for discretion to suspend a *licence* rather than a *certificate*. Licence holders are companies or individuals running businesses. They generally have much more at stake than a certificate holder who is normally an employee.

- 4.6 At present the Licensing Authority *must* cancel a licence where a Police complaint is upheld. There is no middle ground. The company or individual businessman or woman will lose their licence and likely their business if a complaint is upheld.

- 4.7 I recommend an amendment to the Act which would correct the conflicting sections in respect of cancellation and suspension, and which would include a discretion which would enable the Licensing Authority to suspend *licences*.

4B. *Police Vetting of Applicants*

- 4.8 All applications for licences and certificates are received by the Licensing Authority in hardcopy form. Copies are promptly sent electronically to the Police pursuant to s.24 of the Act for vetting. The Police are advised that a response is required from them within 3 weeks.

- 4.9 While the majority of vetting requests are attended to within the required time frame there continue to be a significant number where no response is received from the Police despite 2 or more follow-ups from the Licensing Authority.

- 4.10 This issue has been raised on a number of occasions with the Police but continues to be a problem. As a result of Police delays applicants have become frustrated and additional work is created for the Licensing Authority.
- 4.11 Currently, where repeated requests are made to the Police without a response the Licensing Authority has resolved to grant applications where everything else is in order.

5 ADMINISTRATION OF THE ACT

5A. *Tribunal Case Management*

- 5.1 Although applications are received by the Licensing Authority in hardcopy form they are now loaded electronically to a Ministry of Justice software system called Tribunal Case Management (TCM).
- 5.2 This development has been operating for about 12 months and coincided roughly with the date of my appointment. The system appears to be operating well and allows for details of all applications, certificates and licences etc to be accessed by me remotely online.

5B. *Pawnbrokers*

- 5.3 In his 2008 annual report the former Licensing Authority reported that there had not been any proceedings before the Licensing Authority relating specifically to pawnbroking in the period the Act had been in force. That is still the position.
- 5.4 One consequence is that the Licensing Authority has no information about the conduct of pawnbrokers. It may be that pawnbroking activities are being conducted properly and in accordance with the purposes of the Act.

5C. *Practice Note*

- 5.5 It seems that the proposed Courts and Tribunals Enhanced Services Bill contains proposals empowering the Licensing Authority to regulate its own procedures, including a power to issue practice notes.
- 5.6 Coincidentally I have been working on a draft Practice Note in relation to Hearings in Person of Police objections and complaints. Once the legislation is passed, and subject to any legal requirements, the Practice Note can be issued promptly.

5D. *Secondhand Dealers and Pawnbrokers Amendment Regulations 2014*

- 5.7 This short amendment came into force on 1 August 2014.
- 5.8 It relates to the fees payable where an application for a certificate is filed by a person who is concerned in the management of a company at the same time as the company files its application for a licence.

5E. *Licence Cancelled for Serious Offending*

- 5.9 There was one notable cancellation of a licence this year.
- 5.10 In April the Police notified the Licensing Authority that a licence holder had been sentenced to 3½ years imprisonment following his conviction on a representative charge of Receiving. The licence holder operated a second hand shop in West Auckland. The offending occurred over several years and involved 'fencing' large quantities of gold and jewellery.
- 5.11 The licence was promptly cancelled.

5F. *Application Forms*

- 5.12 Following consultation with staff new application forms have recently been prepared and are now available to applicants.
- 5.13 These should help avoid common problems encountered by applicants in interpreting the questions and providing accurate answers.
- 5.14 The forms also reflect changes brought about by notice in the NZ Gazette in 2007, in the Policing Act 2008 and by an amendment to the Oaths & Declarations Act 1957.
- 5.15 All Police should now be aware for example that Statutory Declarations may only be taken by a properly appointed 'Declarations Officer' or by Police Officers of the rank of Sergeant or above.
- 5.16 It is noted that some of the changes that will be brought about by the proposals in the proposed Courts and Tribunals Enhanced Services Bill will likely mean more changes to the application forms.

6 CONCLUDING REMARKS

It seems that a number of recommendations made by the former Licensing Authority over the years will be enacted into law in the coming year. I look forward to the positive changes and working with the new provisions.

7 **ANNEXURE**

To the Report of the Licensing Authority of Secondhand Dealers and Pawnbrokers for the 12 months ended 30 June 2014.

Applications for Licences	
The number of applications for licences received under section 8 of the Act	369
The number of applications for renewed licences received under section 8 of the Act	37
The number of new licences issued to individual applicants under section 9 of the Act	144
The number of renewed licences issued to an individual under section 10 of the Act	23
The number of new licences issued to company applicants under section 10 of the Act	179
The number of renewed licence issued to company applicants under section 10 of the Act	19
The number of licence applications subsequently withdrawn	12
The number of refusals to issue a licence under section 11 of the Act	3
The number of licence applications not determined at end of year	26

Applications for Certificates	
The number of applications for certificates received under section 21 of the Act	846
The number of applications for renewed certificates received under section 21 of the Act	32
The number of certificates issued under section 28 of the Act	801
The number of renewed certificates issued under section 28 of the Act	23
The number of certificate applications subsequently withdrawn	11
The number of refusals to issue a certificate under section 28(3) of the Act	8
The number of certificate applications not determined at end of year	35

Disqualifications and Waivers	
The number of applicants found to be disqualified under section 22 of the Act	11
The number of waivers of disqualification under section 23 of the Act	3
The number of disqualified applicants who subsequently withdrew	0
The number of disqualified applicants whose applications were subsequently refused	8
The number of disqualified applicants whose applications were not determined at end of year	0

Cancellations and Suspensions	
The number of, and reasons for, licence cancellations under section 16 of the Act	4 ³
The number of, and reasons for, certificate cancellations under section 31 of the Act	3 ⁴
The number of, and reasons for, certificate suspensions under section 31 of the Act	0
The number of certificate suspensions lifted under section 31 of the Act	0

Police Objections	
The number of police objections under section 25 of the Act	15
The number of police objections subsequently withdrawn	1
The number of opposed applications subsequently withdrawn	4
The number of police objections upheld under section 26(3) of the Act	6
The number of police objections dismissed under section 26(3) of the Act	4
The number of hearings conducted into police objections under section 27 of the Act	0
The number of police objections upheld under section 27 of the Act	0
The number of police objections dismissed under section 27 of the Act	0
The number of opposed applications not determined at end of year	1

³ Four licences were cancelled, after the licence holders have abandoned their company/individual licence applications.

⁴ Three certificates were cancelled, after the applicants have abandoned their certificate applications.

Police Complaints	
The number of complaints by the Commissioner of Police under section 29 of the Act	5
The number of complaints upheld by the Licensing Authority under section 29 of the Act	4 ³
The number of complaints dismissed by the Licensing Authority	1
The number of complaints subsequently withdrawn by Police	0
The number of complaints not determined at end of year	0

³ Complaints upheld against a licence holder following a conviction for a specified offence.