



## **Second-hand Dealer and Pawnbroker Act - Overview**

Regulation of the second-hand and pawnbroking industries is provided under the Second-Hand Dealers and Pawnbrokers Act, 1996 (SHDPA) and the Second-Hand Dealers and Pawnbrokers Regulations, 2013 (SHDPR).

This document is produced to supply the industry and members of the public an overview of the legislation, it is recommended this document be read in conjunction with the Frequently Asked Questions (FAQ). For persons participating in the industry referral to the Second-hand Dealers and Pawnbrokers Act and Regulations should be undertaken for more detailed workings of the legislation.

### **Business Registration**

A business registration with the Commissioner of Police is required 1 month prior to commencing business for any person (including a company) who proposes to commence to carry on business as a;

1. Second-hand dealer
2. Pawnbroker
3. Operator of a market where second-hand goods are sold.

*Second-hand dealer* means a person who carries on the business of buying or selling second-hand goods either as a principal or agent and includes a pawnbroker.

Registration can be undertaken by completion of the PD173 (Second-hand dealers/Pawnbrokers) or a PD174 (Market Operator). These forms are available from the South Australia Police website or police stations.

Any person or director of a body corporate applying as a second-hand dealer or pawnbroker is subject to criminal history checks.

SAPOL Information Services Branch (INSB) receives all applications and notifications and conduct checks on applicant's criminal history to ascertain whether the applicant is approved to operate pursuant to the Second-hand Dealers and Pawnbrokers Act. A formal notification of the outcome is posted to the applicant.

A registered Second-hand dealer, Pawnbroker or Market Operator is also required to notify the Commissioner of Police in writing of any change of personal or business details within 14 days of the change. This may be done on a PD175 (Second-hand dealer/Pawnbroker) or PD174 (Market Operator) both available from the South Australia Police website or local police stations.

### **General principles relating to regulatory requirements**

1. A business registration is not required for an organisation involved in the sale of donated goods eg. Church/school fetes etc.
2. The Minister may exempt a person from application of the Act or specified provision/s of the Act.
3. The regulatory regime does not apply to businesses or persons dealing in second-hand goods covered by another Act, for example, second-hand firearms or second-hand vehicles.
4. The legislation precludes the need to register if, in the course of or as a matter ancillary to the carrying on of a business, the dealer:



- Y acquires any goods pursuant to a power conferred by the Unclaimed Goods Act 1987, or
- Y receives goods temporarily returned for the purposes of repair or maintenance.

### **Prescribed Goods**

Prescribed goods are listed in Section 3 of the Regulations and include the most commonly stolen and traded items. The categories of items include precious stones; precious metals such as gold and silver; jewellery, sporting or recreational goods (not including clothing or footwear); watercraft; musical instruments (not including pianos); portable engine powered or motorised tools or equipment; tool kits; photographic equipment and video camera equipment; computer hardware and interactive game consoles; electric or electronic goods (not including whitegoods); mobile phones, CDs and DVDs; bicycles; caravans, trailers motor vehicles and motor vehicle components. Please refer to the Regulations for a full list of the prescribed goods.

### **Prescribed Goods - Additional Requirements**

Persons or businesses dealing in prescribed goods are subject to the following additional requirements;

1. Dealers are required to verify the identification of persons who sell them prescribed goods and must view identification that has been issued by the government (State or Commonwealth) or statutory authority such as a driver's licence or passport which displays the customer's name, address, signature and photograph. Alternatively, a customer is required to produce two or more pieces of identification one of which must be issued by a government or statutory authority (State or Commonwealth) and the other for some official or proper purpose that together the identifications bear the name, address, and signature of the customer.
2. Dealers must keep records in relation to each of the prescribed second-hand goods bought or received in the course of the dealer's business. These records include the date acquired and full name and address of the person from whom the goods were bought or received and means used to verify that information. An accurate description of the goods is also required including where applicable the make, model, serial numbers and other distinguishing features such as marks or labels identifying ownership.
3. Each prescribed item acquired is to be labelled with a unique identifying code which enables it to be easily identified within the business.
4. Prescribed goods received by second-hand dealer are required to be retained and not offered for sale for a period of 10 days.
5. The retention period may be reduced to 3 days provided the dealer records the full name and address of the purchaser and the method used to verify their identity. This section only applies in relation to prescribed goods and does not apply to pawned goods or gemstones, precious metals, items of jewellery or watches.



## **Application of the Act**

Regulation 4 provides the following exemptions regarding the application of the Act.

- Sections 8 (record keeping) and 9 (labelling) of second-hand goods before sale are only applicable to 'prescribed' and all pawned goods;
- Section 10 (retention period) only applies in relation to prescribed goods and does not apply to pawned goods and;
- Section 10(2) of the Act (Sale of goods after 3 days) does not apply in relation to gemstones or precious metals, items of jewellery or watches.
- Section 10 (retention period) does not apply in relation to second-hand goods transferred from another dealer if the transferee has complied with retention period and the dealer keeps a record certifying that retention.
- Sections 9 and 10 of the Act do not apply in relation to a written-off vehicle or a motor vehicle component from a written-off vehicle if the dealer records the serial number of a written-off vehicle notice affixed to the vehicle.
- Part 2 of the Act (disqualification, notification, records, labelling, retention, goods suspected of being stolen, powers of entry) do not apply in relation to the sale of goods by an organisation formed for religious, educational or other charitable or beneficial community purposes where all the goods sold have been donated to the organisation and the proceeds of the sale (after deduction of expenses relating to the sale) go to the organisation.
- Part 4 (Second-hand markets) does not apply in relation to a market conducted by an organisation formed for religious, educational or other charitable or beneficial community purposes where all the goods sold have been donated to the organisation and the proceeds got to the organisation; or a second-hand market where no prescribed goods are sold.

## **Second-hand dealers**

**All** second-hand dealers and pawnbrokers are subject to general provisions of the Act:

1. Dealers and pawnbrokers must
  - not buy second-hand goods or enter into a pawn agreement with a person under the age of 16 years.
  - immediately advise police if they suspect for any reason an item is stolen
  - provide members of the public with the required notice and advise police if there should be a claim or right on any property
2. Police have the authority to
  - enter premises, inspect records, goods and business premises
  - issue a hold notice on goods they suspect to be stolen
  - issue a notice for dealers to keep a look out for suspected stolen goods.
3. Operators of second-hand markets are required to keep certain records of people selling prescribed goods at their market;
4. Charities, school fetes and the like are excluded from the provisions of the Act.



## **Pawnbrokers**

A *pawnbroker* means a person who carries on the business of:

- lending money on the security of pawned goods; or
- receiving good under a contract for sale where the seller has a right to buy back the goods.

Pawnbrokers are governed by the same requirements as a second-hand dealer as described above, as well as requirements specific to the pawning of all goods.

Additional requirements include:

1. The recording of all transactions of property pawned.
2. Issue 'pawn tickets' to persons pawning property.
3. Sale of goods not redeemed under a pawn agreement.

## **Jewellers**

Jewellers who buy for resale second-hand jewellery including watches and precious metals or gemstones in any form, are required to be registered and must comply with the requirements of recording, tagging and retaining.

## **Auto Dismantlers**

Auto dismantlers who acquire motor vehicles and components for resale are required to be registered and comply with requirements of record keeping and labelling prescribed goods received. If a vehicle is acquired for the purpose of recycling the metal and not dismantling and resale of components, then they are not required to keep records.

Sections 9 (labelling) and 10 (retention period) of the Act do not apply in relation to a written-off vehicle or a motor vehicle component from a written-off vehicle if the dealer records, for the purposes of section 8 (record keeping) of the Act, the serial number of a written-off vehicle notice affixed to the vehicle.

## **Scrap metal dealers**

Under Regulation 4(6)(c) second-hand dealers commonly known as 'scrap metal dealers' who acquire prescribed goods for the purpose of recycling metal and selling scrap metal obtained from those goods are not required to be registered or keep records for the purpose of this Act.

## **Auction Houses**

Regulation 6 sets out particular requirements of an auctioneer who is defined as a second-hand dealer and an auctioneer who is not a second-hand dealer. The Regulation 6 'Note' defines an auctioneer as one who within a period of 12 months conducts 6 or more auctions for the sale of second-hand goods is presumed to be carrying on business as a second-hand dealer.

An auctioneer who is defined as a second-hand dealer is required to be registered with the Commissioner of Police.



Section 10(3) of the Act exempts an auctioneer who sells second-hand goods by auction on behalf of another and who complies with the regulations requirements is exempt from the retention period.

Auctioneers should refer to the Act and Regulations for the full list of their requirements.

### **Operators of second-hand markets**

A person who operates a market where second-hand goods are offered for sale is required to register with the Commissioner of Police 1 month prior to commencing business.

Records must be kept made and kept by the operator of any person who sells prescribed goods. These records include the date and place of the market and full name and residential or business address of each person offering for sale prescribed goods. These details are to be obtained from a person even if the person is a registered Second-hand dealer or pawnbroker.

### **Swap meets**

'Swap meets' are technically a second-hand market under the Act. Ministerial Exemptions however may apply where it was not the intention of the Act to bring the event under a regulatory regime. (e.g. the event is held infrequently, such as once a year, by a community organisation)

### **Garage Sales**

If a 'Garage sale' is held by a person, e.g. a family selling unwanted items, he or she is not captured under any part of the legislation. However, if a person acquires goods by other means and are regularly selling them via a 'Garage sale' he or she may be deemed to be carrying on a business as a second-hand dealer and subject to the legislation.