

[2014] NZSHD 11

LASDP Number: 773034

**IN THE MATTER**

of the Secondhand Dealers and  
Pawnbrokers Act 2004

**AND**

**IN THE MATTER**

of a Police Complaint against  
**PICK-A-PART TAURANGA**  
**LIMITED** pursuant to s.29 of the  
Act

**BEFORE THE LICENSING AUTHORITY OF**  
**SECONDHAND DEALERS AND PAWNBROKERS**

**DECISION**

***Introduction***

[1] This is a Complaint by the Police against Pick-A-Part Tauranga Limited (“Pick-A-Part Tauranga”) in respect of Company Licence number 773034 (“the licence”) issued to this company on 25 November 2010 by the Licensing Authority of Secondhand Dealers and Pawnbrokers (“the Authority”) under the Secondhand Dealers and Pawnbrokers Act 2004 (“the Act”).

[2] The licence is currently due to expire on 25 November 2015.

[3] The company premises are located at 54 Maleme Street, Greerton, Tauranga.

[4] Pick-A-Part Tauranga has one company director.

[5] It is noted here that there are a number of related Pick-A-Part companies throughout New Zealand.

[6] The Police Complaint against Pick-A-Part Tauranga was received by the Authority by email on 29 July 2014.

[7] In their Complaint the Police say that they carried out a routine inspection of Pick-A-Part Tauranga on 20 June 2014 and discovered a number of breaches and possible breaches of the Act.

[8] The Police say that there were actual breaches of sections 37 and 38 of the Act (relating to access to employee records) and s.47 of the Act (relating to the requirement to keep articles in an unaltered state for 14 days).

[9] The Police say also that the relieving manager Ms Rowley did not hold a certificate of approval (“certificate”) under the Act and was possibly disqualified from holding such a certificate under the Act. They suggest that there were therefore possible breaches of sections 19 and 20 of the Act.

[10] In support of their Complaint the Police provided a copy of a purchase document relating to Mitsubishi motor vehicle SW2346 and a number of photographs of this vehicle in the yard at Pick-A-Part Tauranga.

[11] The Authority subsequently raised some issues with the Police and as a result the Police responded by email on 23 September 2014 advising that they were amending their Complaint. The Police advised that they no longer considered there were any breaches of sections 19 and 20 of the Act but confirmed that they still relied upon breaches of sections, 37, 38 and 47 of the Act.

### ***Relevant Provisions of the Act***

[12] Part 3 of the Act (Subparts 1 and 2) spells out the obligations for licensed secondhand dealers under the Act.

[13] Licence holders are required to display their licences, keep proper employee records and comply with certain requests from the Police. They have obligations to report and hold stolen goods, keep proper dealers records, verify the identity of sellers, label articles and retain articles in an unaltered state for a period of 14 days from the date of the transaction.

[14] These provisions are in line with the purpose of the Act which is defined in s.3 of the Act:

- [a] to make it harder for criminals to dispose of stolen goods through secondhand dealers and pawnbrokers; and
- [b] to make it easier for the Police to recover stolen goods and solve property crimes.

[15] Breaches of these provisions are offences against the Act. Penalties are provided, typically with a maximum fine of \$10,000.

[16] The Police Complaint was filed under s.29(1) of the Act and a copy of the Complaint was sent to Pick-A-Part Tauranga pursuant to s.29(2). At the same time the company was advised, in terms of s.26(1) of the Act, that it was entitled to request a *hearing in person* before the Authority, or instead could make written submissions in response to the Complaint.

[17] It is noted here that sections 26 and 27 of the Act, although referring specifically to Police 'Objections' are also applicable to Police 'Complaints' by virtue of s.29(2) of the Act.

[18] Pick-A-Part Tauranga has chosen to forgo its right to a *hearing in person* before the Authority and has instead filed written submissions through its National Operations Manager, Mr John Carter, pursuant to s.26(1)(b) of the Act.

[19] Section 26(3) of the Act provides that in such a situation the Authority must, on the basis of the written material before him or her, determine whether to uphold or dismiss the Police Complaint.

[20] The question for the Authority is whether, in light of the information communicated to it, Pick-A-Part Tauranga as a company is *fit and proper* to continue to hold a certificate, and thus its licence.

[21] In the event that the Authority upholds the Police Complaint, section s.29(3)(b) of the Act directs that the Authority *must* cancel Pick-A-Part Tauranga's licence.

### ***The Police Evidence***

[22] The Police Complaint consists of an email summarising the Complaint and a short Job Sheet detailing the Police visit to Pick-A-Part in Greerton, Tauranga on 20 June 2014.

[23] The Police have attached to their Complaint a purchase record for a Mitsubishi motor vehicle SW2346 and 4 photographs of this vehicle.

[24] In the Complaint the Police say they visited Pick-A-Part Tauranga on 20 June 2014 and spoke with Ms Rowley who was the temporary manager at the premises.

[25] Ms Rowley, who was unlicensed under the Act, explained that she was filling in for the normal manager, Mr Phillip Carter, who was away on holiday for two weeks.

[26] Ms Rowley was unable to locate any records relating to employees on the premises. This was a potential breach of sections 37 and 38 of the Act.

[27] When the Police chose a random vehicle from the company's Articles Register (i.e. Mitsubishi Gallant - SW2346) which should have been kept in an unaltered state for 14 days after purchase, they discovered this vehicle in the yard in a partially dismantled condition. It had been purchased 11 days previously.

[28] Ms Rowley explained that Mr Phillip Carter's instructions to her were to hold any cars purchased for "one to two weeks", so she put all the cars she purchased into the yard after about a week.

[29] It seems the Police did not follow up with Ms Rowley how many vehicles were placed in the yard after one week, or if they did so there was no information provided by the Police to the Authority about the number or identity of any such vehicles.

[30] Ms Rowley was advised by the Police that they would be considering what follow-up action to take.

[31] In due course it seems that the Police did not prosecute either Pick-A-Part Tauranga or Ms Rowley for any alleged breaches of the Act but instead they filed this Complaint with the Authority.

### ***Submissions on Behalf of Pick-A-Part Tauranga***

[32] On 29 July 2014 a copy of the Police Complaint was sent to Pick-A-Part Tauranga. A response dated 12 August 2014 was subsequently received by the Authority from Mr John Carter (not to be confused with Mr Phillip Carter referred to above) who is described as the National Operations Manager for Pick-A-Part (presumably the parent company).

[33] Mr Carter explained:

- [a] Until the time of this Complaint all employee records from the different branches were held at Head Office in Auckland where they were available

if required. He has ensured that individual yards now hold their own up-to-date employee records.

- [b] The company was aware of the requirement to keep vehicles in an unaltered state for 14 days and he regrets that there was a lapse on this occasion. He has reinforced this point to yard staff.
- [c] Ms Rowley has now applied for and has been granted a certificate under the Act.
- [d] Pick-A-Part often has spot inspections by the Police and without incident.
- [e] Pick-A-Part has now endeavoured to immediately rectify the errors which have been identified.

### ***Police Complaints Generally***

[34] It seems there may be a misconception in the Police that the Authority is actually responsible for prosecuting alleged breaches of the Act by licensed secondhand dealers or their employees. This is not the case. It is the Police who investigate and where appropriate file charges in the District Court against companies or individuals whom they have good cause to suspect have breached the Act.

[35] A successful Police prosecution under the Act resulting in a conviction may then provide good grounds to support a Police Complaint to the Authority with the result that the Authority may cancel the licence or certificate involved.

[36] It seems also that some Police officers are of the view that a bare minimum of evidence is sufficient to support a Police Complaint. This is not the case. A Complaint should contain full details justifying the view of the Police that the licence/certificate holder is not a fit and proper person to hold a certificate and that the licence or certificate in question should be cancelled. The Authority is not a rubber stamp.

[37] It seems also that some Police officers do not realise that where the Authority upholds a Complaint against a licence holder the licence concerned *must* be cancelled.<sup>1</sup> There is no discretion to suspend or otherwise deal with the licence.

[38] Unfortunately there is no current Practice Note to assist Police officers with the way they should approach filing Objections and Complaints or on how they should prepare for *hearings in person* under sections 26 and 27 of the Act. Hopefully this will shortly be rectified under proposed new legislation.<sup>2</sup>

### ***Analysis of the Evidence***

[39] The Authority must decide under s.25 of the Act (which relates to Objections and Complaints by virtue of s. 29(2) of the Act) whether or not Pick-A-Part Tauranga is fit and proper to hold a certificate (and thus a licence).

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<sup>1</sup> *Whereas a licence must be cancelled when a Complaint is upheld, the Authority has the power to suspend or cancel a certificate.*

<sup>2</sup> *The Courts and Tribunals Enhanced Services Bill.*

[40] In the present case the Authority is directed by s.25(3) of the Act to determine whether to uphold or dismiss the Complaint on the basis of the written material submitted by the Police and on behalf of Pick-A-Part Tauranga.

[41] If the Complaint is upheld, Pick-A-Part Tauranga could possibly fold and/or staff may lose their jobs.

[42] Should therefore Pick-A-Part Tauranga lose its licence on the strength of the available evidence?

[43] The Police evidence is brief – a covering email, a 2½ page Job Sheet, 4 photos of a Mitsubishi Gallant (SW2346) and a purchase document relating to this vehicle.

[44] The Job Sheet reveals that the Police chose one entry at random in the Articles Register and followed it up. There seems to be no thorough investigation.

[45] There is no information as to the general state of the business at Pick-A-Part and in particular whether its compliance with the Act was good or bad.

[46] There is no evidence of a Police follow up visit to check compliance.

[47] On the surface it seems there may be a breach of s.47 of the Act in that vehicle SW2346 was found in the yard in a partially dismantled state 11 days after purchase.

[48] Similarly it seems that there may be a breach of s.37 of the Act in that the temporary manager was unable to locate employee records when asked by the Police.

[49] The Authority notes that when replying to an enquiry from the Authority the Police responded in an email dated 23 September 2014 which stated amongst other things that on the occasion of the Police visit to Pick-A-Part Tauranga on 20 June 2014 there were in fact many more vehicles than just one which were not kept in an unaltered state for 14 days.

[50] The Authority can find no evidence in the submitted Police material however, other than the final sentence in the Police Job Sheet to support this contention<sup>3</sup>.

[51] The Authority notes also that in the Police email referred to in paragraph 49 above the author concludes "*An audit of the company's business records at the time will reveal how many vehicles were involved (if that is deemed to be relevant)*".

[52] There is no evidence before the Authority of a breach of the Act in respect of more than one vehicle. If other vehicles were involved it was the responsibility of the Police to gather up all the relevant evidence and present it to the Authority as part of their Complaint if they wished it be taken into account.

[53] The Authority notes also that this is a Complaint against a company. There is no record that the sole director of the company has been interviewed. Nor is there any record that the absent manager Mr Phillip Carter has been interviewed.

[54] In terms of completeness it might be expected that the Authority would be presented with evidence from the Police of Pick-A-Part Tauranga's general

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<sup>3</sup> "I told ROWLEY that I had identified many breaches of the Secondhand Dealers and Pawnbrokers Act 2004, and would be considering what follow-up action to take".

compliance or non-compliance with the Act, and the reaction from management to any alleged breaches of the Act. In this case the reaction from management has been provided by Pick-A-Part directly to the Authority in response to the Police Complaint.

[55] The emphasis in the Complaint seems to be on Ms Rowley, who now holds a certificate under the Act. Notably her application for a certificate was not opposed by the Police when sent to them for vetting in July this year *after* the Police visit to Pick-A-Part Tauranga's premises.

[56] The Authority feels confident that it can rely on the content of the letter from Pick-A-Part's National Operations Manager (Mr John Carter) which describes how all the issues raised by the Police have been rectified and how the company genuinely regrets the fault in its procedure.

[57] The Authority is fortified in this view by the fact that when provided with a copy of Mr Carter's letter the Police officer concerned responded "*I have no more information to add, and leave this matter in your hands*".

### ***Discussion***

[58] In the past the Authority has been reluctant to prejudice the livelihood of secondhand dealers for failure to comply strictly with the requirements of Subparts 1 or 2 of Part 3 of the Act. Usually, when the failures or omissions in regard to compliance with these requirements are brought to the attention of secondhand dealers, the quality of compliance improves.

[59] The Licensing Authority has cancelled a licence for failure to comply with the record keeping requirements of the Act where there was persistent failure to comply and some intentional acts of deception.

[60] In the present case there is no evidence of persistent infringements or that Pick-A-Part Tauranga has been warned in respect of non-compliance in the past.

[61] The Authority is very aware that many licence holders face losing their livelihood if a Police Complaint is upheld and accordingly a Complaint needs to be carefully considered and prepared by the Police if they hope to effect the cancellation of a licence.

[62] The Authority would hope that in future proper consideration is given by the Police firstly to the question of whether in fact a prosecution before the District Court is a preferable option in the first instance rather than filing a Complaint.

[63] A Complaint is of course upon much firmer grounds if the Police can present evidence of a conviction as part of the material comprising their Complaint.<sup>4</sup>

[64] Similarly the Authority is loathe to deal with a Complaint where a charge or charges have been laid against a licence or certificate holder, but not finalised by the District Court.

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<sup>4</sup> For example certain criminal convictions within the past 5 years (i.e. for "specified offences" as defined in s.4 of the Act) mean a licence or certificate must automatically be cancelled.

**Decision**

[65] The Police Complaint is not as comprehensive as it might have been. This may be due to a mistaken understanding of the Act and the processes and powers of the Authority. A comprehensive Practice Note for the assistance of Police officers and licence/certificate holders and their legal representatives is being planned and will hopefully be available before too long.

[66] For its part, Pick-A-Part Tauranga has been careless in terms of management of the premises and has not been up to scratch in terms of employee record keeping at the premises. They would do well to ensure their operation is totally compliant in the future.

[67] The Authority is however not satisfied that Pick-A-Part Tauranga Limited is at present not a fit and proper entity to hold a certificate.

[68] It is the view of the Authority that the Police Complaint should be dismissed.

[69] The Police Complaint is Dismissed.

**DATED** at AUCKLAND this 30<sup>th</sup> day of September 2014.

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S L Cole

**Licensing Authority of Secondhand Dealers and Pawnbrokers**