

Victoria Police Manual

The Victoria Police Manual is issued under the authority of the Chief Commissioner in s.60, Victoria Police Act 2013. Non-compliance with or a departure from the Victoria Police Manual may be subject to management or disciplinary action. Employees must use the Code of Conduct – Professional and Ethical Standards to inform the decisions they make to support compliance.

Second-hand dealers

Context

The *Second-hand dealers and Pawnbrokers Act 1989* (SHDP) enables police to manage the second-hand dealer (SHD) industry (including motor vehicles and scrap metals), to address and disrupt any suspected offending among SHDs. This can apply to offending that is associated with non-compliance of registration requirements or the commission of other serious criminal offences.

This policy provides members with a framework for interacting with second-hand dealers and pawnbrokers during the course of their duties and investigations.

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Definitions

Exempt person – a person who is exempt from the requirement to be registered under the SHDP or the Regulations.

Exempt goods – goods which a SHD can pay cash for and does not need to keep records in relation to, including:

- goods collected under a local government recycling scheme
- all clothing
- kitchenware and tableware (excluding electrical appliances, and any glassware or cutlery where the SHD pays more than \$100)
- cans of any kind

- waste plastic and paper
- salvaged building materials
- domestic whitegoods (e.g. washing machines, ovens, refrigerators) excluding portable refrigerators and microwaves
- factory seconds
- books and magazines.

Interim closure notice – a notice, issued by a Sergeant or above, which prohibits a person at a specified location from carrying on business as a SHD and altering the form of any second-hand goods at the premises in any way for the period of that notice.

Long term closure order – an order, issued by a Magistrate, which closes a specified premises, or a part of those premises, in respect of any person carrying on business as a SHD for the period specified in the order.

Motor vehicle

- A motor vehicle within the meaning of the Road Safety Act 1986, whether in working condition or complete, or
- The body, engine or chassis of a motor vehicle.

Scrap metal – anything of commercial value that:

- is made from or contains metal
- is sold or obtained as scrap for recycling or reprocessing of the metal, but does not include any thing prescribed not to be scrap metal.

Second-hand dealer – a person who carries on the business of:

- buying
- selling
- exchanging, or
- otherwise dealing in second hand goods, whether or not they deal in other goods and regardless of where goods are bought.

Registered second-hand dealer – a person registered under Part 2 of the SHDP, which provides that a person:

- must not, either alone or in partnership, carry on business as a SHD unless the person is registered as a SHD
- who holds a motor car traders licence under the *Motor Car Traders Act 1986* (LMCT) may buy, sell, exchange or otherwise deal in second-hand goods that are motor car parts without being registered as a SHD. An LMCT licence holder is subject to, and must otherwise comply with, all other provisions in the SHDP.

Serious criminal offence – means an offence committed in Victoria that is punishable by a term of imprisonment of two years or more.

Scope and application

This policy applies to operational police members and their supervisors.

Policy

- The SHDP provides police with powers to regulate the industry, hold goods and stop businesses from operating. It is important that members record all interactions with SHD, so that information can be used to justify future regulation and enforcement.
- Members should submit an Information Report with the following naming convention SHD-(REGION/DIVISION)-(ACTION TAKEN INFORMATION/INSPECTION/ENFORCEMENT/CLOSURE)-(ADDRESS OF PREMISES) in the following circumstances:
 - on receipt of information regarding suspected stolen goods at a SHD premises
 - upon the service of a notice to stop dealing on a SHD
 - upon issue of any SHDP related charge (Infringement Notice or ITS)
 - when executing a search warrant (under any Act) or conducting an inspection at a SHD
 - upon service of an interim closure notice or long-term closure order.

Responsibilities and procedures

1. Requirement on SHD to hold goods

- SHDs are required to hold goods for seven days between obtaining and selling them. During that seven days, the item can be displayed, but cannot be sold.
- This holding period provides the owner of the property or police with the opportunity to identify stolen goods.
- Members should use the Notice to Stop Dealings [Form 260] to stop a SHD from selling goods which police reasonably suspect of being stolen goods. For more information, see section 4.2.

2. Exemptions from seven day holding requirements

2.1 *End-of-life vehicles*

Vehicles are exempt from the seven day holding requirements subject to conditions outlined below:

- a motor vehicle aged more than 15 years from the date of manufacture, but only if:
 - it has been acquired for the purpose of demolishing or dismantling
 - the SHD records and retains the results of a vehicle registration search verifying that it is not reported as stolen
 - the SHD records and retains photographic evidence of the motor vehicle that shows its vehicle identifier or, if the vehicle identifier cannot be clearly photographed, any other identifying mark or number.
- a motor vehicle aged 15 years or less from the date of manufacture but only if:
 - it is entered on the register of written-off vehicles as a statutory write-off in accordance with Division 3 of Part 2 of the *Road Safety Act 1986*
 - the SHD records and retains the results of a vehicle registration search verifying that it is not reported as stolen
 - the SHD records and retains photographic evidence of the motor vehicle that shows its vehicle identifier or, if the vehicle identifier cannot be clearly photographed, any other identifying mark or number.

- a SHD who obtains a motor vehicle with the intention of repairing the vehicle and returning it to the road must hold the vehicle for seven days before selling it. This is to help police trace or detect re-birthed stolen vehicles.

2.2 *Copper goods*

Copper goods are exempt from the seven day holding requirements subject to the conditions outlined below:

- goods containing more than 80 per cent by weight of copper (i.e. copper piping, copper plaques, switch gear) but only if the SHD records and retains photographic evidence of the thing, including any identifying marks
- if the SHD does not wish to retain photographic evidence, they must keep the copper goods for seven days
- most SHDs who deal in scrap metal use hand-held x-ray readers that determine the type and quantity of metal contained in the goods they obtain. These readers allow SHDs to record the amount of copper in goods for their record-keeping purposes
- the amount of copper in goods should be able to be determined by referring to the SHD records, which should contain the amounts detected by the x-ray readers.

2.3 *Scrap metal*

Scrap metal is exempt from the seven day holding requirements subject to the conditions outlined below:

- all scrap metal is exempt, including vehicles obtained for the purpose of scrapping and goods containing less than 80 per cent copper by weight
- SHDs must keep records in relation to all scrap metal they obtain and dispose of, including receipt records showing payment for the goods by cheque or electronic transfer.

2.4 *Goods purchased from another second-hand dealer*

Goods that have been purchased from another registered SHD are exempt where the first SHD has already complied with the requirement to hold the goods for seven days.

3. Recording requirements and offences

3.1 *Recording transactions*

- In accordance with section 20(1) of the SHDP, a SHD must keep accurate and complete records of every transaction involving second-hand goods as prescribed by the Regulations.
- A SHD must keep, in the prescribed form and containing the prescribed information, accurate and complete records of every transaction, whether conducted on the business premises or elsewhere, by which the dealer receives or disposes of scrap metal (section 20(2), SHDP). See Appendix 1 for further information about what a SHD must record.

3.2 *Recording transactions scrap metal*

Where a SHD receives scrap metal, they must record relevant details of the transaction as required under section 20(2) of the SHDP. These transactions include:

- receiving scrap metal
- receiving scrap metal in a lot or parcel
- selling, or otherwise disposing of scrap metal
- removal of scrap metal by shipping container.

Refer to Appendix 1 for the prescribed information that a SHD must record for these transactions.

3.3 *Payment for scrap metal*

A second-hand dealer who buys or sells scrap metal must not pay for or receive payment for scrap metal in cash. They must pay by:

- a cheque which is not transferable or payable to cash
- an electronic transfer of funds which does not involve e-currency
- any other prescribed form of payment.

3.4 *Offences committed by second-hand dealers*

- SHDP and its Regulations contain a number of offences applicable to SHD. Dependent upon the charge, members may issue process for those offences by way of an Infringement Notice and/or Summons.
- Infringeable offences are listed in the second-hand dealers and pawnbrokers offences section of the VP 508A code book, which should be referenced when issuing an infringement to ensure the correct penalty.
- Members should use the Crime Penalty Notice Book (508G) for infringement offences issued under the SHDP or Regulations.
- Members should submit an Information Report with the following naming convention SHD-(REGION/DIVISION)-ENFORCEMENT-(ADDRESS OF PREMISES) that details the nature of the offending and the enforcement action taken.

4. Police powers

4.1 *Power of entry without warrant/production of goods*

- Members may, without warrant, enter business premises or storage premises occupied by or under the control of a SHD, at any time when the business is open, and inspect the premises or any goods at the premises.
- Additionally, a member may, without warrant, enter business premises or storage premises occupied by or under the control of a SHD and inspect the premises or any goods at the premises, when:
 - a business dealing in scrap metal is being carried on at the premises, or
 - the member reasonably believes that a business of dealing in scrap metal is being carried on at the premises.
- Police do not have a power to seize goods without warrant. See section 4.3 for more information on search warrants.
- A member may require the SHD to produce:
 - any good in the possession or control of the SHD
 - their certificate of registration under the SHDP

- any records kept by the SHD, either electronically or on a computer generated printout.

4.2 *Notice to stop dealing*

- If a member reasonably believes that goods in the possession or control of the SHD are stolen, the member may serve a notice to stop dealing [VP Form 260] specifying the suspect goods and prohibiting the sale or disposal of the goods for 21 days.
- That notice can be re-issued once to continue the stop dealing requirement for a further 21 days.

4.3 *Search warrants*

- A search warrant is required either under section 26ZG of the SHDP for offences under the SHDP or sections 92 or 465 of the *Crimes Act 1958* for other offences.
- Members may apply to a magistrate for the issue of a search warrant in relation to a particular premises for the purpose of monitoring compliance with the SHDP or the Regulations in relation to SHD.
- A search warrant issued under this section must state:
 - the purpose for which the search is required
 - any conditions to which the warrant is subject
 - whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night
 - a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- Except as provided by the SHDP, the rules to be observed with respect to search warrants under the *Magistrates' Court Act 1989* extend and apply to SHDP warrants.
- When applying for and/or executing a search warrant under the SHDP, members must also be aware of, and comply with, the provisions relating to the application and execution of search warrants under Part 5 of the SHDP.

4.4 *Embargo notice*

Members executing a search warrant under section 26ZG SHDP and authorised under the warrant to seize a thing, may, if that thing cannot be readily physically seized or removed, issue an Embargo Notice [Form 1490] on the SHD to stop the thing from being sold, transferred or removed by the SHD.

5. Applications for closure notices

5.1 *General considerations*

- Members should consider either an interim closure notice or long-term closure order application where they are satisfied on reasonable grounds that:
 - a person is carrying on business as a second-hand dealer
 - the person is not a registered second-hand dealer
 - the person is not exempt from the requirement to be registered under SHDP, or
 - any person is carrying on business as a SHD and police reasonably suspect that a serious criminal offence is being committed at or in connection with the specified premises that are also the business premises or storage premises of a registered SHD or an exempt person.

- Consideration must be given to all the circumstances when deciding which process to take (interim notice or long-term order application). If the circumstances warrant an application for a long-term order, then consideration should be given to utilising the interim process while that application process takes place.
- Police may make an application for a long-term closure order regardless of whether an interim closure notice has been issued with respect to the specified premises.

5.2 *Restrictions on interim closure notices*

Police must not issue:

- more than one interim closure notice for the same premises in any seven-day period; or
- more than three interim closure notices in relation to a course of conduct that constitutes a serious criminal offence under section 26ZT(1)(b).

6. Interim closure notices

6.1 *Application process*

Step	Action
1	Applicant • Complete Application for Interim Closure Notice [Form 1507] addressing the grounds for an interim closure notice (section 26ZT, SHDP). • The interim closure notice must specify the premises, or part of premises, that are the subject of the notice and duration of the notice's operation. • Record details on an Information Report in Interpose, using the following naming convention SHD-(REGION/DIVISION)-CLOSURE-(ADDRESS OF PREMISES)
2	Approval • An interim closure notice must be approved by a sergeant or above (approval enabled under Instrument of Delegation CI 20). • The applicant cannot also be the approver. • The authorising member must assess the application and advise the applicant of the outcome. • If not approved, the authorising member must make a comment on Interpose detailing any reason/s.
3	Approved application Applicant must: • upload the approved closure notice to the appropriate Interpose shell • notify the Business Licensing Authority via PBEA: bla@justice.vic.gov.au • advise the relevant area that an interim closure notice has been issued and the location of the documents on Interpose: - Vehicle Crime Squad via the PBEA – CRIME-VEHICLE CRIME SQUAD-OIC (where the applicant is not the Vehicle Crime Squad) - local CIU (where the applicant is from the Vehicle Crime Squad) - ensure that the local CIU has access to the Interpose shell.

6.2 Service of notice

- An interim closure notice must be personally served on the occupier of the premises, in accordance with section 391 of the *Criminal Procedure Act 2009*.
- A copy of the notice must also be posted in a conspicuous place at the entrance of the premises.

6.3 Commencement and length of an interim closure notice

- An interim closure notice takes effect as soon as it is served on the occupier of the premises, and a copy is posted at the entrance of the premises.
- An interim closure has effect for a period not exceeding 72 hours, unless it is cancelled prior to that time.
- An interim closure notice also ceases to have effect where the Magistrates' Court issues a long-term closure order.

6.4 Process for cancelling an interim closure notice

Step	Action
1	Applicant • Complete an Interim Closure Notice Cancellation Form [Form 1507A]
2	Approval • The cancellation of an interim closure notice must be approved by a sergeant or above (approval enabled under Instrument of Delegation CI 20).
3	Approved cancellation Applicant must: • upload the cancellation form to the appropriate Interpose shell • notify the Business Licensing Authority of the cancellation via PBEA: bla@justice.vic.gov.au • notify the occupier of the premises in person that the notice has been cancelled • remove any notice affixed to the premises • advise the relevant area that an interim closure notice has been cancelled and the location of the documents on Interpose: - Vehicle Crime Squad via the PBEA – CRIME-VEHICLE CRIME SQUAD-OIC (where the applicant is not the Vehicle Crime Squad) - local CIU (where the applicant is from the Vehicle Crime Squad).

6.5 Expiration of an interim closure order

Where no long-term closure is in force, the applicant must ensure that the expiration of the interim closure order is noted on the applicable Interpose shell.

7. Long-term closure orders

7.1 Application preparation

Step	Action
1	Applicant - Complete an Application for a long-term closure order [Form 1508] - Record details on an Information Report in Interpose, using the following naming convention SHD-(REGION/DIVISION)-CLOSURE-(ADDRESS OF PREMISES)
2	Approval - An application for a long-term closure order must be approved by a sergeant or above (approval enabled under Instrument of Delegation CI 20). - The applicant cannot also be the approver. - The authorising member must assess and advise the applicant of the outcome. - If not approved, the authorising member must make a comment on Interpose detailing any reason/s.
3	Approved application Applicant should: - have the matter listed at the relevant court and liaise with local prosecutions division - serve a copy of the application on the occupier of the premises specified in the application as soon as practicable after the application has been made - provide a copy of the application to the local prosecutions - be available to attend the hearing of the matter at court.

7.2 Status of interim closure notice

- Where the court makes a long-term order, any active interim closure notice ceases to have effect.
- Where the court declines to make a long-term closure order, the court may also cancel the interim closure notice where it considers that:
 - the notice should not have been issued, or
 - there are no longer sufficient grounds for the notice.

7.3 Service of a long-term order

- When the Court makes a long-term closure order and the person who is carrying on business as a SHD does not appear at the proceeding, the member who made the application must:
 - serve the order personally on the person in accordance with section 391, *Criminal Procedure Act*
 - post a copy of the order in a conspicuous place at the entrance to the premises.
- If personal service cannot be promptly effected, police may apply to the court for substituted service in accordance with s.397, *Criminal Procedure Act*.

7.4 Recording of a long-term closure order

- Upon the issuance of a long-term closure order, the applicant member must:
 - upload the long-term closure order to the appropriate Interpose shell
 - notify the Business Licensing Authority via PBEA: bla@justice.vic.gov.au

- advise the relevant area that a long-term closure order has been issued and the location of the documents on Interpose:
 - Vehicle Crime Squad via the PBEA – CRIME-VEHICLE CRIME SQUAD-OIC (where the applicant is not from the Vehicle Crime Squad)
 - local CIU (where the applicant is from the Vehicle Crime Squad)
 - OIC of the relevant station.

7.5 *Cancellation of a long-term closure order*

- An occupier of a premises may apply to cancel a long-term closure order in respect of those premises.
- The occupier must serve a copy of their application on the Chief Commissioner of Police as soon as practicable after the application has been made.
- The member who applied for the long-term closure order (applicant police officer) must assess the application and determine whether or not to contest the application, including in view of the criteria described in section 26ZV(4).
- The applicant police officer must provide this advice to the local prosecutions who will attend the cancellation hearing.
- The prosecutor must advise the applicant police officer of the outcome of the cancellation hearing.
- Where the court upholds the order, the applicant police officer must make a note to that effect in Interpose.
- Where the court cancels the order, the applicant police officer must:
 - note the cancellation in the appropriate Interpose shell
 - notify the Business Licensing Authority via PBEA: bla@justice.vic.gov.au
 - advise the relevant area that a long-term closure order has been cancelled and the location of the documents on Interpose:
 - Vehicle Crime Squad via the PBEA – CRIME-VEHICLE CRIME SQUAD-OIC (where the applicant is not from the Vehicle Crime Squad)
 - local CIU (where the applicant is from the Vehicle Crime Squad)
 - OIC of the relevant station.

Related documents

- VPM Searches of property
- Delegation CI 20
- *Second-hand Dealers and Pawnbrokers Act 1989*
- *Second-hand Dealers and Pawnbrokers (General, Exemption and Record-Keeping) Regulations 2018*
- *Criminal Procedure Act 2009*

Further advice and information

For further advice and assistance regarding this policy, contact your supervisor or local training officer.

Update history

DATE UPDATED	SUMMARY OF CHANGE	FORCE FILE NUMBER
18/05/20	First issue for the <i>Justice Legislation Amendment (Police and Other Matters) Act 2019</i>	FF-126981
24/01/22	Update to reference VPM Searches of property	FF-187958 3

Appendix 1 – SHD Recording Requirements

Recording transactions

A SHD must make records during, or as soon as practicable, after every transaction. These must be recorded in a bound record book or on a computerised record-keeping system, including the following information:

- an accurate description of the goods received, including a description of any identifying mark or label on the goods
- the identifying mark or number assigned by the second-hand dealer to the goods
- the full name and address of the person from whom the goods were received
- details of identification provided by that person
- the date and time the goods were received
- the price, if any, paid for the goods
- if applicable, the name of the person acting on behalf of the second-hand dealer in the transaction.

Recording transactions for scrap metal

When a SHD receives scrap metal, they must record the following information:

- an accurate description of the scrap metal and its quantity or weight (or both if applicable)
- if the scrap metal consists of a motor vehicle, the vehicle identifier
- the full name and address of the person from whom the scrap metal was received
- details of identification provided by that person
- the date and time the scrap metal was received
- a clear and legible copy of the cheque or electronic transfer receipt relating to the transaction
- if applicable, the name of the person acting on behalf of the second-hand dealer in the transaction.

If a SHD receives scrap metal in a lot or parcel at the same time:

- in circumstances where the value of each item in the lot or parcel is less than \$100, the lot or parcel must be described in one entry in the record book or the computerised record-keeping system
- in circumstances where the value of an item in the lot or parcel is \$100 or more, the second-hand dealer must enter a record of that item in the record book or the computerised record-keeping system may record the remainder of the lot or parcel.

When a SHD sells or otherwise disposes of scrap metal, they must record the following information:

- an accurate description of the scrap metal and its quantity or weight (or both if applicable)
- if the scrap metal consists of a motor vehicle, the vehicle identification number

- the full name and address of any person to whom the scrap metal was sold
- the date, time, method and location of disposal
- a clear and legible copy of the cheque or electronic transfer receipt relating to the transaction
- if applicable, the name of the person acting on behalf of the SHD in the transaction.

If the scrap metal is removed from the SHDs premises by shipping container:

- the name of the shipping company
- the overseas port which is the intended destination of the shipping container
- any number or other identifying information displayed on the shipping container.