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# 1.0 INTRODUCTION

This document reports the Public Benefit Test (PBT) undertaken on the *Hawkers Act 1984* and *Hawkers Regulation 1994*.

This legislation was identified in the Queensland Legislation Review Timetable as requiring review, in line with National Competition Policy guidelines, given the restrictions on competition contained within the legislation.

The guiding principle for the review of legislation, as set down by the Competition Principles Agreement, is that legislation should not restrict competition unless it can be demonstrated that:-

- the benefits of the restriction to the community as a whole outweigh the costs;  
and
- the objectives of the legislation can only be achieved by restricting competition.

In considering restrictions contained within the above legislation, the Department has considered a wide range of issues including fair trading, social justice issues and a balance of the commercial interest of providers and consumers respectively.

The Department would welcome submission from stakeholders in relation to the findings of this review by Thursday 21 December 2000. Submissions may be sent as a hard copy, or by email to:

Attention: NCP Legislative Review Unit  
Office of Fair Trading  
Department of Equity and Fair Trading  
GPO Box 3111  
BRISBANE QLD 4001  
Email: [ncp@defq.qld.gov.au](mailto:ncp@defq.qld.gov.au)

## 2.0 REVIEW DETAILS

### 2.2 Legislation Reviewed:

*Hawkers Act 1984 and the Hawkets Regulation 1994.*

### 2.2 Type of Review Undertaken:

A minor review of the above legislation has been conducted within the Legislative Review Unit of the Office of Fair Trading (OFT), with the aid of a review committee comprising:

- the Chair, being an officer from the Legislative Review Unit , OFT;
- one officer from the Licensing Branch of OFT;
- one representative from the Queensland Police Service;
- one representative from the Department of Communication and Information, Local Government, Planning and Sport;
- one officer representing Queensland Treasury.

The role of the review committee was to consider restrictions on competition contained within the existing regulatory regime, and alternative, less restrictive options. During the review the committee had regard to issues set out in the terms of reference outlined below and in PBT guidelines published by Queensland Treasury, with particular reference to social and employment impact assessments.

As part of this review, targeted consultation has been undertaken with key stakeholders including:

- Licensed hawkers;
- local government authorities with licensed hawkers trading in their shires;
- the Local Government Association of Queensland; and
- the Queensland Consumers Association.

Results of this consultation are outlined throughout this report, and summarised in Section 6.

## 2.3 Terms of Reference:

The review examined the extent to which competition may be restricted under the current model.

Without limiting the scope of the terms of reference, and as set out in Clause 5(9) of the Competition Principles Agreement, the review was required to:

- Clarify the objectives of the legislation.
- Identify the nature of restriction on competition.
- Analyse the likely effect of the restriction on competition and on the economy generally.
- Assess and balance the costs and benefits of the restrictions identified by conducting a Public Benefit Test.
- Consider other means for achieving the same results including alternative legislative or non-legislative approaches.

Key issues considered, during the course of the review included:

- Social welfare and equity considerations, including community service obligations;
- Government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- Economic and regional development, including employment and investment growth;
- The interests of consumers generally or of a class of consumers;
- The competitiveness of Australian businesses; and
- The effective allocation of resources.

Given the nature of the functions of the Office of Fair Trading, and the nature of the legislation; specific importance was placed on the consideration of the interest of consumers generally or of a class of consumers; and social welfare and equity issues, including community service obligations.

## 3.0 BACKGROUND

### 3.1 The Current Legislative Regime:

The *Hawkers Act 1984* (the Act) and the associated regulation is the primary legislation responsible for regulating the activities of hawkers in Queensland.

The activities of hawkers are also governed by the *Fair Trading Act 1989*, and, depending on the trading activities of hawkers, they may be specifically captured by the door to door provisions of that legislation.

In addition, hawkers are also required to abide by local laws administered by Local Government Authorities.

Further information relating to the above follows:

#### **3.1.1 Hawkets Act 1984 (“the Act”) and the Hawkets Regulation 1994 (“the Regulation”)**

The Act was introduced in 1984 to replace the *Hawkets and Pedlars Act 1849*.

The purpose of the Act is to regulate the activities of hawkets and for other purposes.

The Act regulates persons carrying on the business of selling, or holding themselves out as being ready to sell goods carried on their person, on an animal, or from a vehicle. Vehicles are defined by the Act as “...a conveyance of any kind, whether or not at the material time it is capable of being operated or moved in any manner, and includes a caravan or trailer”.

Persons who carry on business from a market, fair or in a house or shop occupied by the person are not captured by this legislation.

Items excluded from the definition of “goods” under the Act include newspapers, books, pamphlets or other printed publications; or fish, flowers, fruit, water, fuel, milk, vegetables or victuals.

In broad terms, the Act requires that hawkers be licensed, and sets certain conduct requirements that are largely associated with the ability to possess and to continue to hold a licence.

The Regulation covers forms, fees, the requirement for licences to be signed, the register of licences and the display of licensee's name etc on a vehicle.

The objective of government intervention into this type of trading practice is unclear and has not been specified in the legislation. However, it is likely that it was introduced for the following reasons:

- to protect members of the community against dealing with unscrupulous traders, which could potentially expose them to the risk of unwittingly purchasing stolen goods etc.; and
- given the mobility of traders, it is also likely that the legislation was intended to provide a mechanism, through the availability of a register of hawkers, to enable government to trace hawkers suspected of trying to trade in stolen goods and as a way of adequately enforcing the provisions of the legislation, and to enable consumers to locate hawkers where items purchased turned out to be in some way defective.

### **3.1.2 Fair Trading Act 1989 (FTA)**

The FTA is an Act to make provision with respect to certain unfair or undesirable trade practices, to regulate the supply of good and services, to provide for consumer authorities and for related purposes.

Part 3, Division 4 of the FTA relates specifically to door to door sellers. Door to door sellers provisions replaced the *Door to Door Sales Act 1966*. This legislation only covered certain goods and services as defined by the legislation, and only where the whole of the consideration was not paid by the consumer at or before the time of entering into the agreement. This being the case, it is unlikely that hawkers would have been captured by this legislation.

The scope of the door to door sales provisions within the FTA are wider, covering all goods and services, unless otherwise prescribed. The FTA defines "door to door trading" as "the trading practice under which:

- (a) a person-
  - (i) goes from place to place; or
  - (ii) makes telephone calls;seeking out persons who may be prepared to enter, as consumers, into contracts for the supply of goods or services; and
- (b) that person or some other person then or subsequently enters into negotiations with those prospective consumers with a view to the making of such contracts."

The broad definition applied by the FTA means that hawkers are now captured by these provisions where they sell their goods door to door, and are therefore required, where applicable, to abide by specific contractual and conduct requirements and restrictions contained within these provisions.

### **3.1.3 Local Laws**

Local Government Authorities are responsible for regulating activities occurring on a road, or another public place, under the control of local government.

A model local law exists, developed by the State Government, to assist Local Government Authorities in making laws to regulate the soliciting of business on roads and associated public places, and to regulate the use of roads and associated public places for the conduct of business.

The model local law, being the “Model Local Law No. 15 (Commercial Use of Roads)” includes provisions relating to permits, enforcement, and local law policies.

Where local government authorities have utilised this model, it is likely that hawkers will be required to obtain a permit where they wish to solicit for business on a road, or carry on business on a road. It is likely that a permit will only be granted where the local government is satisfied that the activities for which the permit is sought would not unduly interfere with the proper use of a road. Some local authorities may also specify other criteria in line with their specific local law policy that will also need to be satisfied.

Conditions may be applied on the granting of a permit, and the model provides examples of conditions that may be applied. Ultimately conditions will often be dependent upon the type of activity an applicant wishes to undertake.

While implementation of the model law is not mandatory, many local government authorities have adopted it, particularly larger authorities.

Hawkers are required, where applicable, to abide by local government authority requirements in each of the shires they trade in.

### 3.2 Industry Profile:

Only 20 people are currently licensed to operate as hawkers in Queensland. A breakdown of areas in which licensed hawkers appear to trade follows:

Bundaberg	1	Johnstone Shire	1	Toowoomba	1
Caboolture Shire	1	Mackay Shire	1	Weipa	1
City of Brisbane	4	Mount Isa Shire	2		
Cloncurry	2	Murgon Shire	1		
Cook Shire	1	Redland Shire	1		

It appears that three hawkers currently operate within multiple areas, one operating in Thuringowa, Carpentaria, Mount Isa, Townsville and Bowen; one in Ipswich, Bundaberg, Maryborough; Townsville and Cairns; and one in Mount Isa, Cloncurry, McKinlay, Boulia and Carpentaria.

From consultation with hawkers it has been established that products sold largely appear to fall within the following categories:

- household items, including cleaning products
- clothing and personal items such as perfumes
- souvenirs and gifts; and
- food items such as confectionery

The prices of goods sold appear to be largely in the range of 5c to \$340.

From information received from 10 hawkers who provided specific information to the review committee about their business operations it was revealed that about 76% of goods sold were under the value of \$49, 23% between the value of \$50 to \$100, and the remaining 1% over the value of \$100.

Of those 10 hawkers, five sold goods solely from a vehicle, with another selling from a horse. Four out of the five appeared to sell goods in specific areas, one focussing on industrial areas, one in known red light areas, one on a jetty and one around towns and aboriginal reserves. The other hawker sold goods in a mixture of places including fairs, rodeos, shows and race meetings, and also by appointment, on station properties.

Two hawkers identified only a proportion of their time as being spent selling from their vehicle as follows:

- one sold from a vehicle 50% of the time and door to door for the remainder; and
- one from a vehicle 95% of the time the remainder of the time on the internet.



These people advised selling their goods, from their vehicle, on the roadside and at markets.

The remaining three hawkers sold their goods in the following ways:

- one door to door 98% of the time, with the remainder through mail order or over the internet;
- one solely door to door; and
- one sold goods mainly from home.

### **3.3 Legislative Requirements in Other Jurisdictions:**

Only Queensland, the ACT and the Northern Territory specifically regulate the activities of hawkers, the ACT through the *Hawkers Act 1936* and the Northern Territory through the *Hawkers Act 1996*.

The ACT is reviewing its legislation. The ACT's legislation is much broader in scope than Queensland, for example, the definition of goods under this legislation is interpreted as "movable property". The focus of the legislation is wider to encompass issues usually managed at a local government level, namely regulation of the soliciting of business on a road or other public places.

While Victoria, New South Wales and Western Australia did have specific legislation to regulate hawkers, these have subsequently been repealed. There has been no evidence of detriment in any of these jurisdictions as a result of the deregulation of this specific trading activity.

## 4.0 ISSUES

### 4.1 Identification and Assessment of Restrictions on Competition Contained within the *Hawkers Act 1984* and *Hawkers Regulation 1994*:

An assessment of the *Hawkers* legislation has highlighted a number of restrictive provisions. These include market entry restrictions in the form of specific licensing requirements and business conduct restrictions. Details follow.

#### 4.1.1 Licensing Requirements

In order to engage in the business of a hawker, a person is required to hold a licence. Licences are to be renewed annually, not more than 60, and not less than 14 days before the expiry of the licence. The initial cost of obtaining the licence is \$222.00, with an annual renewal fee again totalling \$222.00. Licences cannot be transferred to another person.

There are restrictions on who may hold a licence. A licence will not be issued to or in the name of a person who-

- (a) is under the age of eighteen years;
- (b) is not a natural person (a person in the ordinary sense of the word, as opposed to artificial persons or corporations);
- (c) is for the time being in a state of mental infirmity or mental disease whether temporary or otherwise; or
- (d) is not a fit and proper person to hold a licence.

The requirement to be licensed does not apply to the sale or offering for sale of goods by or on behalf of a charity registered under the *Collections Act 1966*, or by the actual maker of the goods or the maker's agents, servants or employees.

Where a licensee wishes to trade in an additional local government area to that originally advised to the Chief Executive, an application is required to be made, in the approved form, to the Chief Executive. This notification attracts a fee of \$24.60. The Chief Executive may approve the application either unconditionally or with conditions or reject the application. Where an application is approved, details of the approval and any conditions are to be endorsed on the licence.

Where a licensee changes address, the licensee must give written notice of the change to the chief executive and produce the licensee's licence to the Chief Executive for endorsement of the change within 7 days after the change. If the Chief Executive is satisfied of the correctness of the change of address, the Chief Executive must endorse the licence accordingly.

Both the Act, through Section 29, and the regulations, through Section 7, require a licensee to display and keep displayed the licensee's name, the words "licensed hawker" and the number of the licence issued to the licensee. This information is to be in letters of a prescribed size and style on a conspicuous part of every vehicle, whilst it is being used by the licensee, in connection with the licensee's business as a hawker.

The above licensing requirements create a barrier to entry into this particular marketplace, and an administrative and financial burden on hawkers.

***Background Information:***

It is likely that the above licensing requirements were put in place to ensure the probity of people carrying on this type of trading activity, and therefore reduce the risk of consumers purchasing stolen goods.

It is also likely, given the mobility of persons carrying out this type of trading activity, that licensing requirements were introduced as a means of enabling government, through the register, to trace hawkers suspected of trying to trade in stolen goods, and as a way of adequately enforcing the provisions of the legislation. The objective of having the register of hawkers accessible to the public may have been to provide consumers with a way, through the register, to seek out hawkers for redress where goods sold were of un-merchantable quality.

Ongoing licensing requirements are likely to have been put in place to ensure the integrity of information contained in the register of hawkers, and to ensure that consumers are adequately informed that they are dealing with a person who is licensed to carry on the trading practice of a hawker.

While there are only 20 licensed hawkers operating in Queensland, this figure may not necessarily represent a true picture of the number of persons undertaking this type of trading activity. It has been represented through consultation that there are hawkers trading without a licence.

It is worth noting that many of the people approaching the department in relation to this type of licence are in fact people who sell goods outside of the scope of the Act such as food vendors.

No complaints appear to have been received by OFT over the last 5 years in relation to the practices of hawkers, as defined by the Act, licensed or otherwise, and there have been no requests received for access to information contained in the register of hawkers.

Hawkers are required to abide by local government authority requirements in the areas in which they trade, where trading occurs on a road, or another public place. Requirements appear to differ from Shire to Shire. Out of the 10 hawkers who provided information to the review committee about their business operations, six advised that they were required to hold a permit in the areas they traded in. Those trading in multiple shires advised that they were required to hold permits in some shires but not others. The cost of permits ranged from \$55 to \$217. All permits held by these hawkers are renewable annually.

***Assessment of Restriction:***

It is unlikely that the objective of the licensing system, as a means of ensuring the probity of people carrying out the activities of a hawker, is realistic.

In practical terms the mobility of hawkers makes it difficult for the above objective to be effectively achieved. Persons could, and in fact may well be trading as a hawker without having obtained a licence to do so, and the chances of these people being detected would be small.

The task of tracking down unlicensed hawkers, and keeping check on the activities of licensed hawkers, would be both difficult and costly for government. The fact that there have been no complaints made about the activities of hawkers, licensed or otherwise, would make it difficult to justify the time and expense of undertaking such activities.

The fact that it is possible for people to operate in contravention of the Act with a significant chance of not being detected may however be placing legitimate hawkers at a competitive disadvantage.

The existence of a register of hawkers, while having the benefit of providing a mechanism to enable both consumers and government to track down hawkers, can only be effective for this purpose if it truly represents the number of participants in the marketplace. The accuracy of the register relies on the effectiveness of the licensing system to capture all participants in the marketplace, and from representations made during consultation, it is likely that the system is failing in this respect.

This being the case, and given that the register is clearly not being utilised for the purposes for which it appears to have been created, it is difficult to justify the costs associated with maintaining such a system.

The current regime places a financial and administrative burden on hawkers in terms of initially obtaining a licence, and in meeting ongoing requirements. This burden is increased by the requirement for hawkers to comply with relevant local laws in the area in which they trade.

Whether the very small number of licensed hawkers operating in Queensland is a direct result of this burden is unknown. Certainly it is likely that some people would risk trading illegally to avoid the burdens of the legislation, particularly given the high chance of their activities going undetected.

Another factor influencing the seemingly low participation rate within this particular industry is the likelihood that the method of selling, as defined by the Act, is to a large extent no longer in demand by consumers, aside from the purchase of general items such as food and papers etc, currently excluded from the Act.

In view of the above, the benefits being derived by the community from this level of regulation, which would at best be minimal, are likely to be outweighed by costs incurred by hawkers in meeting the requirements of this level of regulation, and the government in terms of administering it.

#### **4.1.2 Business Conduct Restrictions**

Under Section 28 of the Act, Hawkets may not carry on business between the hours of 6pm on any day and 7am on the next following day.

##### ***Background Information:***

The restrictions on the trading hours of hawkers appear to have been included in response to complaints received prior to the introduction of the legislation from consumers,

particularly in country areas, that hawkers were knocking on their doors, sometimes as late as 10.00pm at night, to sell goods.

While trading hour restrictions applied to the trading activities of hawkers on the introduction of this Act, the legislation did not capture all door to door sellers, some falling outside the definition of a hawker. This being the case, problems being experienced by members of the public appear to have continued.

When door to door selling provisions were introduced as part of the FTA, trading hour restrictions were included to rectify this situation.

Under the door to door selling provisions a dealer may not, except by prior appointment, call on a person –

- (a) at any time on a Sunday or a public holiday; or
- (b) on a Saturday –
  - (i) between midnight and 9.00am; or
  - (ii) between 5.00pm and midnight; or
- (a) on any other day-
  - (i) between midnight and 9.00am; or
  - (ii) between 6.00pm and midnight;

for the purpose of negotiating a contract to which the division of the Act applies, or for an incidental or related purpose.

These trading hour restrictions capture everybody selling door to door including hawkers.

The restrictions conflict with the trading hour restrictions placed on hawkers through the Act whereby hawkers may not carry on business between the hours of 6pm on any day and 7am on the next following day.

It has been represented through consultation that out of three hawkers who said that they sold goods door to door, two were unaware of their obligations under the door to door selling provisions of the FTA, and one only partially aware of their obligations.

Where hawkers advised that they traded from a vehicle, three would be impacted by the trading hour restrictions under the Act for 100% of their trading activities. Four would be partially impacted given that a proportion of their activities fall outside of the hours set by this legislation (ie. through trading at venues such as fairs, markets, shows etc).

### ***Assessment of Restriction:***

The requirements under the Act restrict the way in which hawkers carry on business. However, no evidence has been received to suggest that hawkers have been impacted in any significant way from the trading hour restrictions of the Act.

The trading hour restrictions under the Act are however largely redundant now. As stated previously, the restrictions appear to have been included to regulate the activities of traders selling door to door. The inclusion of door to door selling provisions within the FTA, including stringent trading hour restrictions for all types of door to door traders, have over-ridden the requirements of the Act as they relate to hawkers selling door to door.

The fact that specific time restrictions exist for hawkers within industry specific legislation may be misleading to licensed hawkers trading wholly or partially door to door. The likelihood of hawkers being unaware of requirements of the FTA relating to door to door selling appears to be high. This potentially exposes hawkers to the risk of unintentionally breaching FTA requirements.

It should be noted that it is within the power of Local Government Authorities to set trading hour restrictions for persons selling goods on a road or another public area. This would be likely to occur where these activities could cause a disturbance of the peace that would be unacceptable to the public within certain timeframes.

There is no benefit in retaining trading hour restrictions specific to hawkers given the existence of relevant restrictions under the FTA where persons sell door to door, and requirements that may be put in place by local government authorities for activities carried out on a road or public area. Both should adequately protect the interests of the public.

## **4.2 Identification and Assessment of Alternatives to the Current Regulatory Regime**

As a result of the restrictive nature of this regulatory regime, alternatives to the existing regulatory model were developed and are set out below. To determine the viability of these options, a full analysis has been carried out on the costs and benefits of each option, and compared with the costs and benefits of the existing legislative regime.

#### **4.2.1 Option 1 – Modification of Existing Legislation**

Consideration was given to modifying the current regulatory model to replace the existing licensing regime with a one off registration scheme. Under this option hawkers would not be required to satisfy any criteria on applying for registration, reducing entry restrictions into the marketplace. This being the case, there would be no screening process of people prior to them operating as hawkers.

Under this model, there would be no ongoing requirements for hawkers after registration, except to notify the department of relevant changes to information provided at the time of registration.

A register would continue to be kept by the department of hawkers, and the ongoing requirements would help to protect the integrity of the register.

In addition to the above amendments, current trading hour restrictions would be removed.

#### ***Assessment:***

This option would undoubtedly be less restrictive and administratively and financially onerous on hawkers. However, in terms of registration requirements, a burden would still be imposed on hawkers, albeit a minimal one.

The value of a registration system would be minimal, providing little protection to consumers given the absence of a screening process of hawkers to ensure their probity. In this respect, this model would not meet the likely objectives of government intervention. Having said that, the effectiveness of the current regime is also doubtful in this respect given the representation, through consultation, that people are carrying on the activities of a hawker without being licensed, and the ease with which people could operate illegally without being detected.

The only purpose a registration process would serve would be to enable the department to keep track of hawkers, enabling a public register to be kept of hawkers for members of the public to access where necessary. The regulation of hawkers to this degree is however hard to justify given that the current register is not being utilised by either consumers or the government itself. The fact that the register is unlikely to accurately represent the true number of people carrying on the activities of a hawker also challenges the effectiveness of a register, and therefore the need for one.

As established previously, the trading hour restrictions are now redundant, and there would be little, if any detriment to the public resulting from their removal.



In reality, the current legislation provides little in the way of consumer protection aside from the current licensing regime, the effectiveness of which is doubtful. Consequently, this option would be even less likely to be effective.

In the absence of any evidence of consumer detriment, it is difficult to justify even having reduced regulation which would still place a burden on hawkers. The cost to government of amending the legislation to the extent outlined above, and the administration of the legislation, for such a small industry, would outweigh any benefits that would at best be minimal.

#### **4.2.2 Option 2 – Deregulation**

Consideration has been given to repealing the Act, which would result in no specific legislation existing to regulate the activities of hawkers. Hawkers would however still need to abide by local authority requirements, and other relevant pieces of legislation including the *Fair Trading Act 1989*. Where trading activities of a hawker fall within the definition of door to door selling under the *Fair Trading Act 1989*, these provisions would particularly need to be observed.

On the repeal of the Act hawkers would need to be provided with a pro-rata refund of the licence fee paid.

#### ***Assessment:***

Evidence suggests that the number of people trading as hawkers is very small. The extent to which consumers as a whole are impacted by the trading activities of hawkers is therefore likely to be minimal. The value, in dollar terms, of goods sold appears to be small, the majority of items sold being below \$100, with about 75% likely to be under \$49 in value. Therefore, the risk to consumers of any major financial detriment from this type of trading activity is also minimal.

Protection provided to consumers through the current regulatory regime is minimal, particularly in relation to the business conduct of hawkers. Provisions of the Act largely revolve around licensing requirements which it has been established have little benefit. The only significant conduct requirement relates to restrictions on the trading hours of Hawkers which, as previously established, are now redundant given protection offered to the public through the FTA, and where deemed necessary by Local Government.

Requirements already included in the FTA, including specific requirements under the door to door sales provisions, and requirements of local government authorities are likely to be

sufficient to regulate this industry. Deregulation is therefore considered to be a viable option.

Local Government Authorities consulted did not indicate that there would be any negative impact on them if this particular industry were to be deregulated.

While it is unlikely that deregulation would result in a significant rise in persons trading as hawkers, it is likely to create a more level playing field where current participants are concerned given the likelihood of unlicensed hawkers actively trading within the industry, as represented through consultation.

Based on the experience in other States, it is highly unlikely that deregulation will result in any negative impacts to consumers, or the community as a whole.

In view of the above, it is difficult to justify the cost being incurred by government to specifically regulate such a small industry. It is also difficult to justify the imposition placed on hawkers as a result of current legislative requirements, particularly given the lack of evidence of detriment being experienced by consumers, and the coverage that applies through the FTA.

## **5.0 EMPLOYMENT IMPACT STATEMENT**

The current regulatory regime has little impact on employment. Deregulation of this industry would also be expected to have little impact on employment, even with the removal of licensing fees.

## **6.0 STAKEHOLDER INVOLVEMENT IN THE REVIEW PROCESS**

Consultation was undertaken with hawkers licensed with the Office of Fair Trading to gain more information about the nature of their business, including the types of goods sold, the cost of goods sold and the method used by hawkers to sell their goods. The department also sought to establish the impact of the current legislative regime on hawkers, and their views on alternatives identified to it.

From consultation with hawkers it was established that goods sold largely fall within the categories of household items; clothing and personal items; and souvenirs and gifts. It was also established that items sold were relatively low in value, many items under \$49. It was evident that hawkers sell their goods in a variety of different ways, including door to door, from their vehicle at various sites, and some also partially selling goods on the internet and through mail order.

A number of hawkers acknowledged that the licensing requirements did impose a financial and administrative burden on them, although it was also highlighted that local government requirements were more onerous, particularly where hawkers trade in more than one Shire. While it was also acknowledged by hawkers that trading hour requirements were restrictive on their trading activities, no major problems were highlighted by hawkers as a result of the requirements.

It was represented through consultation that there were hawkers trading without a licence, and that there was no evidence of the department enforcing licensing requirements.

While 40% of hawkers providing comment to the review committee expressed no opinion/comment on the options put forward, about 20% were supportive of retaining legislation with modifications to it, while the remainder appeared to be in favour of deregulation.

Consultation was also undertaken with Local Government Authorities with licensed hawkers trading in their area to establish what their requirements were in relation to these

traders, and their views on the current legislative regime, and the alternatives to it. Very few Authorities provided feedback to the review committee.

Of those who did, four in total, only the Brisbane City Council provided information about its requirements. This Council is concerned to regulate the use of roads to prevent nuisances and interference with the safe management of traffic; to protect infrastructure; to safeguard the health, safety and amenity of the community; and to facilitate the free and safe passage of people along footpaths. The Brisbane City Council had no particular comments in relation to the current regulatory regime, or alternatives to it. Its main concern was that its capacity to regulate and monitor this type of trading activity not be impaired or diluted in any way as a result of the review.

Submissions received from Murgon Shire Council, and Redland Shire Council suggested that the current legislative regime continue, while Mackay City Council suggested that while the Act might well be modified, it felt that deregulation was unwarranted.

No information was provided by Local Government Authorities to suggest that there would be any negative impact resulting from deregulation.

Both the Local Government Association and the Queensland Consumers Association were also approached, neither of which provided feedback to the Review Committee.

## 7.0 CONCLUSIONS

The activities of hawkers do not appear to be causing any concern within the community.

The number of people trading as hawkers, within the scope of the current legislation, appears to be very small. This being the case, the extent to which consumers as a whole are impacted by the activities of this type of trader is likely to be minimal.

The dollar value of goods sold appears to be small, the majority of items sold being below \$100, and about 75% of goods being under \$50 in value. Therefore, the risk to consumers of experiencing any major financial detriment from this type of trading activity is also minimal.

The Act, as it currently stands, provides little in the way of protection to consumers. A large proportion of the Act relates to licensing requirements that have little benefit, being unlikely to ensure the probity of hawkers, and to be useful where the register is concerned, this not being utilised for the purposes for which it appears to have been created. The restrictions on trading hours are now redundant, adequate protection being provided to the public through both the FTA, and, where necessary, through local government authority requirements.

Deregulation will result in a net benefit. The operational burdens on hawkers would be reduced; and the regulatory burden on government removed. Consumers are unlikely to suffer any detriment from deregulation, their interests being adequately protected by other means such as the FTA. Experiences in jurisdictions where the legislation has been repealed tends to support this claim, there being no evidence of detriment to consumers resulting from this action.

In view of the review findings, the Review Committee recommends that the Act be repealed.

## **8.0 TRANSITIONAL ISSUES**

Where the legislation is repealed, it is recommended that prior to deregulation taking effect, an education campaign be undertaken targeted at both licensed hawkers, and Local Government Authorities, the latter in consultation with the Department of Communication and Information, Local Government, Planning and Sport. This education campaign should be funded by competition payments.

An issue that will need to be addressed prior to repealing the legislation will be the process for discontinuing licensing.