



Western Australia

Motor Vehicle Dealers Act 1973

Compare between:

[01 Jul 2011, 05-h0-03] and [04 Oct 2011, 05-i0-01]

Western Australia

Motor Vehicle Dealers Act 1973

An Act —

- **to regulate dealing in motor vehicles; and**
- **for related purposes.**

[Long title amended by No. 73 of 2003 s. 4; No. 58 of 2010 s. 33.]

Part I — Preliminary

1. Short title

This Act may be cited as the *Motor Vehicle Dealers Act 1973*¹.

2. Commencement

The provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation¹.

[3. Deleted by No. 87 of 1981 s. 3.]

[4. Omitted under the Reprints Act 1984 s. 7(4)(f).]

5. Terms used in this Act

(1) In this Act, unless the contrary intention appears —

approved means approved by the Commissioner;

authorisation means —

- (a) a dealer's licence;
- (b) a yard manager's licence;
- (c) a salesperson's licence; or
- (d) registration as a car market operator;

authorised officer means a person who is appointed to be an authorised officer under section 6;

authorised premises —

- (a) in relation to a dealer, means premises —
 - (i) particulars of which are included in the dealer's licence in accordance with section 20E(5); or
 - (ii) for which a temporary permit is in force under section 20H;

and

- (b) in relation to a car market operator, means premises particulars of which are included in the registration of the operator in accordance with section 21A(5);

buying or selling, in relation to vehicles, includes acting as agent for persons in connection with the buying or selling of vehicles;

car hire operator means a person who carries on the business of hiring vehicles, where the right to purchase the vehicle is not included in that hiring;

car market means a market for the sale, or offer, exposure or display for sale, of second-hand vehicles by persons other than the person providing the premises for the market but does not include an auction;

car market operator means a person who carries on the business of providing premises for a car market whether or not those premises are used for any other purpose;

cash price in relation to the sale of a second-hand vehicle means the price for which the vendor is willing to sell the vehicle for cash complete with all accessories and other attachments then fitted to or supplied with the vehicle;

certificate of registration means a certificate of registration under section 17B(4);

Commissioner has the meaning given in the *Fair Trading Act 2010* section 6;

dealer means —

- (a) a person who carries on any class or description of business of —
 - (i) buying or selling vehicles; or
 - (ii) acting as agent for other persons in relation to the buying or selling of vehicles,
(including a business of selling vehicles by auction) that is prescribed by regulations referred to in section 5A;
- (b) a financier; or
- (c) a car hire operator;

dealer's licence means a vehicle dealer's licence granted under section 15;

demonstration vehicle means a vehicle —

- (a) that is licensed under the provisions of the *Road Traffic Act 1974* in the name of the dealer by whom it is being sold or offered or exposed for sale and has been used by that dealer for the purposes of demonstration; and
- (b) in respect of which there remains an obligation on the part of the manufacturer to the purchaser of the vehicle from the dealer greater than the obligation which would be imposed on a dealer by the provisions of section 34 were that vehicle to be sold by him at the material time;

Department means the department of the Public Service principally assisting in the administration of this Act;

financier means a person whose ordinary business is not that of buying or selling vehicles but who carries on or acts in that business only for one or more of the following purposes, that is to say —

- (a) for the purpose of the hiring, under a hire-purchase agreement, of the vehicle bought or sold;
- (b) for the purpose of effectuating a security over the vehicle bought or sold;
- (c) for the purpose of the hiring, where the right to purchase the vehicle is not included in that hiring, of the vehicle bought or sold; or
- (d) for the purpose of disposing of vehicles acquired by him in connection with the purposes referred to in paragraphs (a), (b) or (c) of this interpretation;

grant, in relation to an authorisation, means —

- (a) the grant of a licence to a person or to persons constituting a firm; or
- (b) the registration of a person, or persons constituting a firm, under section 17B;

hire-purchase agreement includes any transaction or agreement which is a hire-purchase agreement within the interpretation

given to that term from time to time by the *Hire-Purchase Act 1959*, and where used in paragraph (a) of the interpretation “financier”, includes an agreement which would, but for paragraph (e) of the interpretation of the term in the *Hire-Purchase Act 1959*, be a hire-purchase agreement;

hold, in relation to an authorisation, means —

- (a) to hold a licence; or
- (b) to be registered under section 17B;

licence means a licence granted under this Act;

model designation in relation to a vehicle of a particular model, means the words or symbols (if any) applied by the manufacturer of that vehicle to identify a vehicle of that model;

salesperson means a person who is employed or engaged by or on behalf of a dealer in the buying or selling of motor vehicles other than in the capacity of yard manager;

salesperson’s licence means a salesperson’s licence granted under section 17;

section means section of this Act;

sell in relation to a vehicle, includes the entering into as owner of a hire-purchase agreement and a disposal of any interest in that vehicle, but does not include the hiring of that vehicle where a right to purchase the vehicle is not included in that hiring, and the expressions **sale** and **sold** should be construed accordingly;

trade owner in relation to a vehicle means any person who acquires that vehicle for the purposes of reselling that vehicle or for the purpose of the hiring of that vehicle where the right to purchase that vehicle is not included in that hiring;

yard manager means a person who is employed or engaged by or on behalf of a dealer to manage or supervise the carrying on of that dealer’s business of buying or selling vehicles at one of the premises at which the dealer carries on that business;

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yard manager's licence means a yard manager's licence granted under section 16;

year of first registration in relation to a vehicle, means the year in which that vehicle was first licensed or registered under the law of this State or elsewhere, for the time being in force regulating the use of vehicles;

year of manufacture in relation to a vehicle, means the year in which the vehicle was manufactured.

- (1a) For the purposes of this Act, **second-hand vehicle** includes a vehicle that has, at any time before being offered or exposed for sale, been licensed or registered whether under the law of this State or of any other State or Territory of the Commonwealth regulating the use of vehicles but does not include a demonstration vehicle.
- (2) In sections 25, 26, 28 and 29, and in section 27(1), (1a) and (2), **vehicle** means —
- (a) a motor vehicle within the meaning given thereto by the *Road Traffic Act 1974*; and
 - (b) a trailer, semi-trailer or caravan designed to be attached to a motor vehicle.
- (3) In this Act, other than in the provisions specified in subsection (2), **vehicle** means —
- (a) a passenger car;
 - (b) a passenger car derivative;
 - (c) a motor cycle;
 - (d) a camper van; or
 - (e) a vehicle of a type or class that is prescribed to be a type or class of vehicle to which this Act applies.
- (4) For the purposes of subsection (3) —
- camper van** means a vehicle specially fitted for camping or touring purposes and which is equipped with sleeping facilities and cooking facilities;

motor cycle means a self-propelled vehicle that has 2 wheels, or, where a side car is attached thereto, has 3 wheels;

passenger car means a vehicle (other than a motor cycle) constructed principally for the conveyance of persons;

passenger car derivative means a vehicle of the same make as a factory produced passenger car and in which the forward part of the body form and the greater part of the mechanical equipment are the same as those in the passenger car.

- (5) Unless the contrary intention appears, any reference in this Act to the grant or issue of any of the authorisations provided for by this Act or to an application therefor shall be read as including a reference to the grant or issue of the renewal of that authorisation or to an application therefor, as the case requires.
- (6) For the purposes of this Act, where a dealer sells a second-hand vehicle to a financier in the expectation that the financier will sell that vehicle to a third person and the financier so sells that vehicle to that third person, the dealer shall be deemed to have sold the vehicle to that third person.
- (7) In this Act a reference to the conduct of a car market at premises pursuant to a registration of a person as a car market operator is a reference to the conduct of a car market at the premises while the premises are being provided under the authority of the registration.
- (8) Where —
- (a) a licence is granted to 2 or more persons under section 15(2); or
 - (b) 2 or more persons are registered under section 17B(2),
- references in this Act to the holder of a licence or authorisation, to a registered person or to a person who is registered, as the case may be, are references to those persons jointly, unless a contrary intention appears.

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[Section 5 amended by No. 74 of 1975 s. 3; No. 66 of 1976 s. 2; No. 49 of 1979 s. 3; No. 87 of 1981 s. 4; No. 6 of 1982 s. 3; No. 1 of 1985 s. 25; No. 73 of 1994 s. 4; No. 57 of 1997 s. 39(10); No. 4 of 2002 s. 4, 31(2)-(3) and 54; No. 73 of 2003 s. 5 and 23(1) and (2); No. 28 of 2006 s. 107; No. 58 of 2010 s. 34 and 50.]

5A. Classes of business and categories of licence

Regulations may be made under section 56 prescribing —

- (a) different classes or descriptions of business for the purposes of the definition of “dealer” in section 5(1) including a business that consists of or includes —
 - (i) the buying of vehicles for wrecking; or
 - (ii) the selling of vehicles by auction;
 - (b) a different category of dealer’s licence —
 - (i) for each prescribed class or description of business; or
 - (ii) for any combination of them;
- and
- (c) different circumstances under which a particular category of licence may be granted.

[Section 5A inserted by No. 4 of 2002 s. 5.]

5B. Person may be taken to be a dealer

- (1) A person who —
 - (a) holds himself or herself out as a person carrying on the business of buying or selling vehicles; or
 - (b) sells or exchanges 4 or more vehicles in any 12 month period to or with persons who are not dealers,

is taken to be carrying on the business of selling vehicles for the purposes of the definition of *dealer*.

- (2) For the purposes of subsection (1)(a), a person holds himself or herself out as a person carrying on the business of buying or selling vehicles if that person —
- (a) advertises or notifies or states that the person carries on the business of buying or selling vehicles; or
 - (b) in any way represents that the person is ready to carry on, or is carrying on, the business of buying or selling vehicles.
- (3) Despite subsection (1), a person who sells or exchanges 4 or more vehicles in any 12 month period to or with persons who are not dealers is not taken to be a dealer if the person can prove that —
- (a) he or she was not carrying on the business of buying or selling vehicles; and
 - (b) the person did not hold himself or herself out as a person carrying on the business of buying or selling vehicles.
- (4) When counting the number of vehicles sold or exchanged for the purposes of this section, a sale or exchange of a type prescribed to be an exempt sale or an exempt exchange for the purposes of this subsection is not to be counted.
- (5) Nothing in subsection (1) prevents a person who sells or exchanges fewer than 4 vehicles in any 12 month period to or with persons who are not dealers from being a dealer carrying on the business of buying or selling vehicles under this Act.

[Section 5B inserted by No. 58 of 2010 s. 35.]

[5AA. Deleted by No. 58 of 2010 s. 36.]

6. Powers of investigation

The *Fair Trading Act 2010* section 61 and Part 6 of that Act apply to this Act.

[Section 6 inserted by No. 58 of 2010 s. 37.]

Part II — Licensing, registration, powers and offences

[Heading amended by No. 73 of 2003 s. 7; No. 58 of 2010 s. 38.]

[Division 1 (s. 7-14A) deleted by No. 58 of 2010 s. 39.]

Division 2 — Licensing and registration

[Heading inserted by No. 73 of 2003 s. 14.]

15. Application for vehicle dealer's licence

- (1) Subject to this Act, a person, not being a body corporate, who applies to the Commissioner in the approved form for a vehicle dealer's licence of a particular category and pays to the Commissioner the prescribed fee therefor shall be granted such a licence upon satisfying the Commissioner —
 - (a) that he is of or over the age of 18 years;
 - (b) that he is a person of good character and repute and a fit and proper person to hold such a licence; and
 - (c) that he has —
 - (i) sufficient resources; and
 - (ii) sufficient knowledge of this Act.
- (2) Subject to this Act, 2 or more persons constituting a firm who apply to the Commissioner in the approved form for a vehicle dealer's licence of a particular category and pay to the Commissioner the prescribed fee therefor shall be granted such a licence upon satisfying the Commissioner —
 - (a) that all of the natural persons (if any) by whom the firm is constituted and all of the persons concerned in the management or conduct of any body corporate by which the firm is constituted are persons of good character and repute and are persons fit to be concerned in the management or control of the business of buying or selling vehicles;

- (b) that the persons constituting the firm have sufficient resources; and
 - (c) that at least one of the natural persons referred to in paragraph (a) has sufficient knowledge of this Act.
- (2a) If there is a corporate member of a firm to which a licence is granted under subsection (2), the licence ceases to have effect if —
- (a) a change occurs in the person or persons concerned in the management or conduct of the corporate member;
 - (b) the Commissioner refuses to approve of the change under section 23(3); and
 - (c) the Commissioner does not approve of a further change under subsection (2b).
- (2b) The licence ceases to have effect 14 days after the dealer is notified of the refusal under section 23(5), unless, within that period or such further time as the Commissioner may by notice in writing allow, the change of which the Commissioner has refused to approve has been altered or revoked, and the Commissioner has approved of the change as so altered or revoked.
- (3) Subject to this Act, a body corporate which applies to the Commissioner in the approved form for a vehicle dealer's licence of a particular category and pays to the Commissioner the prescribed fee therefor shall be granted such a licence upon satisfying the Commissioner —
- (a) that all of the persons concerned in the management or conduct of the body corporate are persons of good character and repute and are persons fit to be concerned in the management or control of the business of buying or selling vehicles;
 - (b) that it has sufficient resources; and
 - (c) that at least one of the natural persons referred to in paragraph (a) has sufficient knowledge of this Act.

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- (4) A licence granted under subsection (3) ceases to have effect if —
- (a) a change occurs in the persons concerned in the management or conduct of the body corporate that holds the licence;
 - (b) the Commissioner has refused to approve of the change under section 23(3); and
 - (c) the Commissioner does not approve of a further change under subsection (5).
- (5) The licence ceases to have effect 14 days after the dealer is notified of the refusal under section 23(5), unless, within that period or such further time as the Commissioner may by notice in writing allow, the change of which the Commissioner has refused to approve has been altered or revoked, and the Commissioner has approved of the change as so altered or revoked.
- (6) In this section —

sufficient knowledge of this Act means a full understanding of the duties and obligations imposed by this Act on dealers, yard managers and salespersons, but only so far as the Commissioner considers that those duties and obligations are relevant to the category of licence applied for;

sufficient resources means sufficient material and financial resources available to the person or persons to enable the requirements of this Act to be complied with, but only so far as the Commissioner considers that those requirements are relevant to the category of licence applied for.

[Section 15 amended by No. 56 of 1995 s. 37; No. 4 of 2002 s. 6; No. 58 of 2010 s. 50.]

16. Application for yard manager's licence

- (1) Subject to this Act, a person who applies to the Commissioner in the approved form for a yard manager's licence and pays to

the Commissioner the prescribed fee therefor shall be granted such a licence upon satisfying the Commissioner —

- (a) of his identity;
- (aa) that he is of or over the age of 18 years;
- (b) that he is a person of good character and repute and a fit and proper person to hold such a licence;
- (c) that he understands fully the duties and obligations imposed by this Act on dealers, yard managers and salespersons; and
- (d) that he is employed by a dealer who is licensed under this Act or that such a dealer is prepared to employ him as a yard manager.

[(2) deleted]

[Section 16 amended by No. 74 of 1975 s. 4; No. 4 of 2002 s. 7 and 31(4); No. 73 of 2003 s. 23(3); No. 58 of 2010 s. 40 and 50.]

17. Application for salesperson's licence

- (1) Subject to this Act, a person who applies to the Commissioner in the approved form for a salesperson's licence and pays to the Commissioner the prescribed fee therefor shall be granted such a licence upon satisfying the Commissioner —
 - (a) of his identity;
 - (aa) that he is of or over the age of 18 years;
 - (b) that he is a person of good character and repute and a fit and proper person to hold such a licence;
 - (c) that he understands fully the duties and obligations imposed by this Act on salespersons and has sufficient knowledge of the duties and obligations so imposed on dealers and yard managers; and
 - (d) that he is employed by a dealer who is licensed under this Act or that such a dealer is prepared to employ him as a salesperson.

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[(2) deleted]

[Section 17 amended by No. 74 of 1975 s. 5; No. 4 of 2002 s. 8 and 31(1) and (5); No. 73 of 2003 s. 23(3); No. 58 of 2010 s. 41 and 50.]

[17A. Deleted by No. 73 of 2003 s. 15.]

17B. Application for registration as car market operator

- (1) Subject to this Act, a person, not being a body corporate, who applies to the Commissioner in the approved form to be registered as a car market operator and pays to the Commissioner the prescribed fee therefor shall be so registered upon satisfying the Commissioner —
 - (a) of his identity; and
 - (b) that he is of or over the age of 18 years.
- (2) Subject to this Act, 2 or more persons constituting a firm who apply to the Commissioner in the approved form to be registered as a car market operator and pay to the Commissioner the prescribed fee therefor shall be so registered upon satisfying the Commissioner —
 - (a) of their identity; and
 - (b) that each of them is of or over the age of 18 years.
- (3) Subject to this Act, a body corporate which applies to the Commissioner in the approved form to be registered as a car market operator and pays to the Commissioner the prescribed fee therefor shall be so registered upon satisfying the Commissioner —
 - (a) of the identity of each of the persons concerned in the management or conduct of the body corporate; and
 - (b) that each of those persons is of or over the age of 18 years.
- (4) The Commissioner shall give a certificate of registration to —
 - (a) a person;

- (b) persons constituting a firm; or
- (c) a body corporate,

that becomes registered under this section.

[Section 17B inserted as section 17A by No. 87 of 1981 s. 5; amended by No. 56 of 1995 s. 37; renumbered as section 17B and amended by No. 4 of 2002 s. 10; No. 58 of 2010 s. 50.]

17C. Power to refuse registration under section 17B or renewal of registration

- (1) Despite anything in section 17B, the Commissioner may refuse to register an applicant under that section if the Commissioner is satisfied that a relevant person has done or omitted to do any thing or engaged in any conduct that renders the applicant unfit to be registered.
- (2) Despite anything in section 19(3), the Commissioner may refuse to renew the registration of a car market operator if the Commissioner is satisfied as mentioned in subsection (1).
- (3) Subsections (1) and (2) are permissive only and do not impose a duty on the Commissioner to make enquiries concerning a relevant person.
- (4) In this section —
relevant person —
 - (a) means the applicant, where a person, not being a body corporate, has applied under section 17B(1) or 19(3), as the case may be;
 - (b) means any person —
 - (i) by which the firm is constituted; or
 - (ii) who is concerned in the management or conduct of a body corporate by which the firm is constituted,

where persons constituting a firm have applied under section 17B(2) or 19(3), as the case may be; and

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- (c) means any person concerned in the management or conduct of the body corporate where a body corporate has applied under section 17B(3) or 19(3), as the case may be.

[Section 17C inserted by No. 4 of 2002 s. 11; No. 58 of 2010 s. 50.]

17D. Person cannot be car market operator and hold any other authorisation

- (1) Registration of a person as a car market operator automatically —
- (a) cancels a licence held by the person; or
 - (b) ceases to have effect if the person becomes the holder of a licence.
- (2) Subsection (1) applies whether the registration or licence is granted to, or held by, a person solely or jointly as a member of a firm.

[Section 17D inserted by No. 4 of 2002 s. 11.]

18. Matters which may be considered in refusing the grant or renewal of an authorisation

- (1) The Commissioner may refuse an application by a person, or persons constituting a firm, for the grant or renewal of an authorisation, if, in the opinion of the Commissioner, there is any ground on which an allegation could be made under section 20(1) —
- (a) in respect of the person or persons; or
 - (b) in respect of a person concerned in the management or conduct of a body corporate that is the applicant or one of the applicants.
- (1A) If the Commissioner is considering making an adverse decision in relation to the application, the Commissioner must give the

applicant the opportunity to give additional information in relation to that application.

[(1a), (1b) deleted]

(1c) Subsection (1) is in addition to the other powers that the Commissioner has to refuse an application.

[(2) deleted]

[Section 18 amended by No. 49 of 1979 s. 7; No. 87 of 1981 s. 6; No. 4 of 2002 s. 12; No. 55 of 2004 s. 767; No. 58 of 2010 s. 42 and 50.]

18A. Licence conditions

- (1) The Commissioner may, when granting a licence, attach any condition or restriction to the licence.
- (2) The Commissioner may at any time decide that —
 - (a) a new condition or restriction shall be attached to an existing licence; or
 - (b) a condition or restriction attached to an existing licence shall be amended or removed.
- (3) A decision under subsection (2) does not take effect until a day determined by the Commissioner.
- (4) The day so determined cannot be before the Commissioner has —
 - (a) notified the licensee of the decision; and
 - (b) given the licensee a reasonable opportunity to make submissions on it either orally or in writing.
- (5) The Commissioner may determine that subsection (4) does not apply in the case of a decision to remove a condition or restriction.

[Section 18A inserted by No. 4 of 2002 s. 13; amended by No. 55 of 2004 s. 768; No. 58 of 2010 s. 50.]

19. Period of authorisation

- (1) Subject to this Act, an authorisation shall be valid and effectual for the purposes of this Act for such period not exceeding the period prescribed as shall be stated therein.
- (2) When the Commissioner grants an authorisation, other than by way of renewal, the authorisation may be granted for such period, not exceeding the period prescribed under subsection (1), as the Commissioner thinks fit.
- (3) If the holder of an authorisation applies to the Commissioner for the renewal of that authorisation, pays the appropriate prescribed fee and, in the case of an expired authorisation, pays any amount prescribed by way of penalty for a late application —
 - (a) not more than 2 months before the date on which the authorisation expires; and
 - (b) not more than 28 days after the date on which the authorisation expires,

the Commissioner may renew the authorisation for a further prescribed period.

- (3a) The renewal of an authorisation shall take effect on the day immediately succeeding the day on which the authorisation would have expired had it not been renewed or shall be taken for all purposes to have taken effect on the day immediately succeeding the day on which the previous authorisation expired, as the case requires.
- (3b) Without limiting the application of section 18 and subsection (5) of this section, the Commissioner shall not renew an authorisation unless the applicant satisfies the requirements of section 15, 16, 17 or 17B, as the case requires.
- (4) Subject to subsection (3a), an authorisation shall cease to be valid and effectual for the purposes of this Act —

- (a) upon the expiration thereof or, if it has been renewed, upon the expiration of the period for which it has been renewed;
 - (aa) if it is surrendered under section 19A; and
 - (b) during any period in which the holder or any joint holder thereof is disqualified from holding or obtaining such an authorisation.
- (5) A person is not entitled to be granted an authorisation at any time during which he is disqualified from holding or obtaining such an authorisation.

[Section 19 amended by No. 74 of 1975 s. 6; No. 87 of 1981 s. 7; No. 56 of 1995 s. 34; No. 10 of 1998 s. 53(1); No. 4 of 2002 s. 14; No. 8 of 2009 s. 94(2); No. 58 of 2010 s. 50.]

19A. Surrender of authorisation

- (1) The holder of an authorisation may, by notice in writing given to the Commissioner and accompanied by the relevant authorisation, surrender that authorisation.
- (2) If an authorisation is surrendered, the Commissioner shall refund to the former holder of the authorisation so much of the fee last paid for the authorisation as the Commissioner, on application by the former holder of the authorisation, specifies as appropriate to be refunded.
- (3) Despite the surrender by a person of an authorisation, this Act applies, for the purpose of enabling the person to be investigated or otherwise dealt with for a matter arising before the surrender, as if the authorisation had not been surrendered.

[Section 19A inserted by No. 10 of 1998 s. 53(2); amended by No. 4 of 2002 s. 15; No. 55 of 2004 s. 769; No. 58 of 2010 s. 50.]

20. Allegations by Commissioner to State Administrative Tribunal

- (1) The Commissioner may allege to the State Administrative Tribunal that a person —
- (a) has contravened or failed to comply with —
 - (i) a provision of this Act; or
 - (ii) an authorisation or a condition or restriction attached to an authorisation;
 - or
 - (b) has done or omitted to do any thing, or engaged in any conduct, that renders the person unfit —
 - (i) to be the holder, or a joint holder, of an authorisation; or
 - (ii) to be concerned in the management or conduct of a body corporate that is the holder or a joint holder of an authorisation.
- (2) The Commissioner may allege to the State Administrative Tribunal that a person, or the persons constituting a firm, should be disqualified from —
- (a) holding a dealer's licence of a specified category; or
 - (b) being registered as a car market operator,
- on the grounds that the person or persons has or have —
- (c) insufficient material and financial resources to enable the person or the firm, as the case may be, to comply with the requirements of this Act so far as those requirements are relevant to —
 - (i) the category of licence held by the person or persons; or
 - (ii) registration as a car market operator;
 - or

- (d) ceased to carry on the business of a dealer or a car market operator.
- (3) The Commissioner may allege to the State Administrative Tribunal that an authorisation of premises under section 20E or 21A should be revoked on the grounds that the premises no longer comply with all relevant requirements of written laws relating to planning that apply in respect of the premises.

[Section 20 inserted by No. 4 of 2002 s. 16; amended by No. 55 of 2004 s. 770; No. 58 of 2010 s. 50.]

20A. Orders that may be made under section 20(1)

- (1) In a proceeding commenced by an allegation under section 20(1) the State Administrative Tribunal may, if the matter alleged is established, make any order provided for by this section.
- (2) An order may be made disqualifying a person from holding or obtaining, whether solely or jointly, any authorisation or any specified kind of authorisation, whether or not at the time when the order is made that person is the holder of an authorisation.
- (3) An order may be made disqualifying a person from being concerned in the management or conduct of a body corporate that is the holder, or a joint holder, of an authorisation, whether or not at the time when the order is made the person is so concerned.
- (4) Subject to section 20B, an order may be made that a person pay a penalty not exceeding —
 - (a) \$1 500 in the case of a person who is or was the holder of a yard manager's licence or a salesperson's licence; or
 - (b) \$5 000 in the case of a person who is or was the holder of a dealer's licence or registered as a car market operator.

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- (5) An order may be made —
 - (a) attaching conditions or restrictions to an authorisation;
or
 - (b) amending a condition or restriction attached to an authorisation.
- (6) An order may be made reprimanding or cautioning a person.
- (7) An order under subsection (2) or (3) may be made to have effect —
 - (a) for a period named in the order; or
 - (b) until a further order is made by the State Administrative Tribunal.

[Section 20A inserted by No. 4 of 2002 s. 16; amended by No. 55 of 2004 s. 771.]

20B. Limitations on section 20A(4)

- (1) The powers described in section 20A(4) and the powers of a court to impose a penalty for an offence against this Act shall not both be exercised in respect of an act, omission or conduct of a person that is substantially the same.
- (2) A penalty that exceeds the relevant maximum fine cannot be imposed under the powers described in section 20A(4).
- (3) In subsection (2) —
relevant maximum fine means, if the penalty is to be imposed in respect of an act, omission or conduct that constitutes an offence against this Act, the maximum fine that could be imposed by a court for that offence.

[Section 20B inserted by No. 4 of 2002 s. 16.]

20BA. Order on allegation under section 20(2) and (3)

In a proceeding commenced by an allegation under section 20(2) or (3) the State Administrative Tribunal may, if

the grounds for making the order are established, make the order that it is alleged should be made.

[Section 20BA inserted by No. 55 of 2004 s. 772.]

20C. Suspension of authorisation by State Administrative Tribunal

- (1) Where the State Administrative Tribunal makes an order against the holder of an authorisation and payment is not made in accordance with the order or the order is otherwise not complied with or is breached, the State Administrative Tribunal may suspend the authorisation until the payment is made, or for such period or upon such event occurring as the State Administrative Tribunal thinks fit.
- (2) The power conferred on the State Administrative Tribunal by subsection (1) is in addition to, and does not derogate from, the powers conferred on it by the *State Administrative Tribunal Act 2004*.

[Section 20C inserted by No. 55 of 2004 s. 772.]

20D. Certain offences relating to disqualification

[(1) deleted]

- (2) A dealer or a car market operator shall not, during the period when a person is disqualified under an order described in section 20A(2) or (3) —
 - (a) employ the person in any capacity on authorised premises; or
 - (b) allow the person to frequent such premises,

without the prior consent of the Commissioner.

Penalty: \$5 000.

[Section 20D inserted by No. 4 of 2002 s. 16; amended by No. 55 of 2004 s. 773; No. 58 of 2010 s. 50.]

20E. Premises at which dealers may carry on business

- (1) A person shall not be granted a dealer's licence unless the application for the licence —
 - (a) specifies each of the premises at which the person proposes to carry on business under the authority of the licence; and
 - (b) is accompanied by a planning certificate to the satisfaction of the Commissioner in respect of the premises.
- (2) A planning certificate is a certificate from the authority responsible for planning matters in the district in which the premises are situated showing that the proposed use of the premises —
 - (a) will comply; or
 - (b) would comply if any specified consent were given,with all relevant requirements of written laws relating to planning that apply in respect of the premises.
- (3) If an application complies with subsection (1) in relation to any premises, the Commissioner, if the Commissioner grants the application, shall authorise the holder of the licence to carry on business at the premises under the authority of the licence.
- (4) If an application is accompanied by a certificate that is given in terms of subsection (2)(b), the Commissioner, in granting the application, may attach a condition to the licence that —
 - (a) the operation of the licence is suspended until the Commissioner is satisfied that all necessary consents have been given; and
 - (b) the grant lapses if the Commissioner is not so satisfied before the expiry of a period specified by it.
- (5) A dealer's licence shall include particulars of all premises authorised under this section.

[Section 20E inserted by No. 4 of 2002 s. 16; amended by No. 38 of 2005 s. 15; No. 58 of 2010 s. 50.]

20F. Changes in authorised premises

- (1) The Commissioner may on —
- (a) the application of the holder of a licence;
 - (b) the production of any planning certificate in terms of section 20E(2) that the Commissioner considers necessary; and
 - (c) payment of the prescribed fee,

at any time approve an alteration or addition to the particulars referred to in section 20E(5).

- (2) If necessary, the Commissioner may attach a condition of the kind described in section 20E(4) to an approval under subsection (1), and for that purpose section 20E(4) may be read with all necessary changes.

[Section 20F inserted by No. 4 of 2002 s. 16; No. 58 of 2010 s. 50.]

20G. Certificate relating to premises to be displayed

- (1) The Commissioner shall issue a certificate to the holder of a dealer's licence for each premises that are included in the licence in accordance with section 20E(5).
- (2) The certificate shall state that the holder is authorised under section 20E to carry on business at the premises under the authority of the licence.
- (3) The holder of a licence shall cause a certificate issued under subsection (1) to be displayed in a conspicuous position on the premises to which the certificate applies.

Penalty: \$1 500.

[Section 20G inserted by No. 4 of 2002 s. 16; amended by No. 58 of 2010 s. 50.]

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20H. Permits for special occasions

- (1) This section applies where —
 - (a) a special occasion is being, or is to be, held at a place for a limited period; and
 - (b) a licensed dealer wishes to carry on business in premises at the place in connection with the occasion.
- (2) The dealer may apply to the Commissioner in writing for a temporary permit to carry on business as mentioned in subsection (1)(b).
- (3) If such an application is made, and the prescribed fee is paid, the Commissioner may grant to the dealer a temporary permit to carry on business —
 - (a) at the premises;
 - (b) during the period; and
 - (c) subject to any conditions and restrictions, specified in the permit.
- (4) The Commissioner may, by notice in writing to the holder of a temporary permit, revoke the permit if the Commissioner considers that there is justification for doing so.
- (5) The Commissioner shall retain a copy of each temporary permit issued and the copy is taken to form part of the register.

[Section 20H inserted by No. 4 of 2002 s. 16; amended by No. 58 of 2010 s. 50.]

[21. Former section 21 deleted by No. 4 of 2002 s. 16.]

21. Dealer's premises and advertisements to bear name and number

A person who carries on the business of a dealer shall cause the business name stated in his application for a licence and the number of the licence issued to him to appear —

- (a) on a sign of reasonable dimensions affixed or erected at every premises at which he conducts the business of a dealer; and
- (b) in every advertisement published by him or on his behalf.

Penalty: \$1 500.

[Section 21 inserted as section 21A by No. 74 of 1975 s. 9; renumbered as section 21 by No. 4 of 2002 s. 17 and amended by No. 4 of 2002 s. 34.]

21A. Premises at which car markets may be provided

- (1) A person shall not be registered under section 17B as a car market operator unless the application for registration —
 - (a) specifies the premises that are proposed to be provided for a car market under the authority of the registration; and
 - (b) is accompanied by a planning certificate to the satisfaction of the Commissioner in respect of the premises.
- (2) A planning certificate is a certificate from the authority responsible for planning matters in the district in which the premises are situated showing that the proposed provision of the premises as a car market —
 - (a) will comply; or
 - (b) would comply if any specified consent were given,with all relevant requirements of written laws relating to planning that apply in respect of the premises.

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- (3) If an application complies with subsection (1) in relation to any premises, the Commissioner, if the Commissioner grants the application, shall authorise the car market operator to provide the premises for a car market under the authority of the registration.
- (4) If an application is accompanied by a certificate that is given in terms of subsection (2)(b), the Commissioner, in granting the application, may attach a condition to the registration that —
 - (a) the operation of the registration is suspended until the Commissioner is satisfied that all necessary consents have been given; and
 - (b) the grant lapses if the Commissioner is not so satisfied before the expiry of a period specified by the Commissioner.
- (5) The registration of a person as a car market operator shall include particulars of all premises for which an authorisation is in force under this section.

[Section 21A inserted by No. 4 of 2002 s. 18; amended by No. 38 of 2005 s. 15; No. 58 of 2010 s. 50.]

21B. Changes in authorised premises

- (1) The Commissioner may on —
 - (a) the application of the registered person;
 - (b) the production of any planning certificate in terms of section 21A(2) that the Commissioner considers necessary; and
 - (c) payment of the prescribed fee,at any time approve an alteration or addition to the particulars referred to in section 21A(5).
- (2) If necessary, the Commissioner may attach a condition of the kind described in section 21A(4) to an approval under

subsection (1), and for that purpose section 21A(4) may be read with all necessary changes.

[Section 21B inserted by No. 4 of 2002 s. 18; amended by No. 58 of 2010 s. 50.]

21C. Certificate relating to premises to be displayed

- (1) The Commissioner shall issue to the registered person a certificate for each premises that are included in the registration of a car market operator in accordance with section 21A(5).
- (2) The certificate shall state that the person is authorised under section 21A to provide the premises for a car market under the authority of the registration.
- (3) The registered person shall cause a certificate issued under subsection (1) to be displayed in a conspicuous position on the premises to which the certificate applies.

Penalty: \$1 500.

[Section 21C inserted by No. 4 of 2002 s. 18; amended by No. 58 of 2010 s. 50.]

21D. Car market premises and advertisements to bear name and number

A person who is registered as a car market operator shall cause the business name stated in his application for registration and the number of the registration to appear —

- (a) on a sign of reasonable dimensions affixed or erected at premises while a car market is being conducted at those premises pursuant to the registration; and
- (b) in every advertisement published by him or on his behalf in relation to his business as a car market operator.

Penalty: \$1 500.

[Section 21D inserted as section 21C by No. 87 of 1981 s. 9; renumbered as section 21D and amended by No. 4 of 2002 s. 19 and 35.]

22. Application for review

- (1) Any person aggrieved by a reviewable decision may apply to the State Administrative Tribunal for a review of the decision.
- (2) In subsection (1) —

person aggrieved means —

- (a) a person who applies for the grant, or renewal of an authorisation;
- (b) a person who applies for —
 - (i) the authorisation of premises under section 20E or 21A;
 - (ii) the grant of an approval under section 20F or 21B; or
 - (iii) the grant of a temporary permit under section 20H;

or

- (c) a person whose authorisation or temporary permit under section 20H is affected by a reviewable decision;

reviewable decision means a decision of the Commissioner —

- (a) refusing an application for —
 - (i) an authorisation; or
 - (ii) the renewal of an authorisation;
- (b) refusing —
 - (i) to authorise premises under section 20E or 21A;
 - (ii) to grant an approval under section 20F or 21B; or
 - (iii) to grant a temporary permit under section 20H;
- (c) in exercise of the Commissioner's powers in relation to conditions and restrictions under section 18A or 20H;
- (d) revoking a temporary permit under section 20H(4); or
- (e) refusing to approve of a change submitted to the Commissioner under section 23.

[(3) deleted]

[Section 22 inserted by No. 55 of 2004 s. 774; amended by No. 58 of 2010 s. 43 and 50.]

22A. Licence or certificate of registration to be returned

- (1) A person who has been issued with a licence or certificate of registration and who —
- (a) has been refused an application for the renewal thereof; or
 - (b) has been disqualified from holding that licence or registration,

shall, as soon as may be after being notified of that decision, return the licence or certificate of registration together with any certificates issued to him under section 20G or 21C to the Commissioner unless the State Administrative Tribunal otherwise orders pursuant to section 22.

- (2) A person who ceases to carry on business as a dealer or car market operator shall thereupon return to the Commissioner any licence or certificate issued to him relevant to that business.
- (3) Where an authorisation —
- (a) is cancelled; or
 - (b) ceases to have effect under section 17D,

the person who was the holder of the authorisation shall return to the Commissioner any relevant licence or certificate of registration.

Penalty: \$1 500.

[Section 22A inserted by No. 74 of 1975 s. 11; amended by No. 87 of 1981 s. 11; No. 4 of 2002 s. 21 and 36; No. 55 of 2004 s. 775; No. 58 of 2010 s. 50.]

23. Particulars to be endorsed on licence or registration and changes therein to be notified

- (1) Where a licence under section 15(2) or a registration under section 17B(2) is in force, 14 days before any change occurs in —
- (a) the membership of the firm; or
 - (b) the person or persons concerned in the management and conduct of any corporate member of the firm,

full particulars thereof shall be sent to the Commissioner by the holder of the licence or the registered person, as the case may require.

Penalty: \$2 000.

- (2) Where a licence under section 15(3) or a registration under section 17B(3) is in force, 14 days before any change occurs in the persons concerned in the management and conduct of the body corporate, full particulars thereof shall be sent to the Commissioner by the holder of the licence or the registered person, as the case may require.

Penalty: \$2 000.

- (3) Upon receipt of the particulars of a change of the kind referred to in subsection (1) or (2), the Commissioner may approve of or, if the Commissioner is satisfied that there are reasons to do so, refuse to approve of, all or any of the changes referred to in the particulars so submitted.

[(4) deleted]

- (5) Where the Commissioner refuses to approve of the changes submitted pursuant to subsection (3) the Commissioner shall notify the dealer or registered person, as the case may be, and any other person affected by the decision of the refusal.

[Section 23 amended by No. 74 of 1975 s. 12; No. 87 of 1981 s. 12; No. 10 of 1998 s. 53(3)-(6); No. 4 of 2002 s. 22 and 37; No. 58 of 2010 s. 44 and 50.]

24. Register to be kept

- (1) The Commissioner shall cause a register to be kept showing the prescribed particulars and matters relating to —
 - (a) authorisations;
 - (b) the holders of authorisations; and
 - (c) premises authorised under sections 20E and 21A.
- (2) Any entry in the register is *prima facie* evidence of the facts thereby recorded and, where the name of a person is not recorded in the register, as a holder of an authorisation of any particular kind, there is a presumption that the person is not the holder of a valid authorisation of that kind.
- (3) The holder of a salesperson's licence or a yard manager's licence shall give written notice to the Commissioner of any change in the address of the place of residence of the holder of that licence not later than 14 days after that change takes place.
Penalty: \$1 500.
- (4) The Commissioner shall enter in the register details of any change notified under subsection (3).
- (5) The register shall be open for inspection by any person, on payment of the prescribed fee, during normal office hours.
- (6) A person may, on payment of the prescribed fee, obtain from the Commissioner a certificate —
 - (a) showing whether or not a person was the holder of any authorisation on a specified date or during a specified period; or
 - (b) as to any other matter appearing in the register.
- (7) A certificate referred to in subsection (6) is admissible in proceedings as evidence of the matters stated in the certificate.

[Section 24 amended by No. 56 of 1995 s. 35; No. 4 of 2002 s. 23, 31(6) and 38; No. 58 of 2010 s. 45 and 50.]

Division 3 — Record-keeping and notification of authorities

[Heading inserted by No. 73 of 2003 s. 16.]

25. Register to be kept by licence holders

- (1) Every dealer, not being a financier or car hire operator, shall keep or cause to be kept a register, in the prescribed form, at any authorised premises in respect of which the licence is issued; and shall record or cause to be recorded in that register the prescribed particulars of every transaction entered into, in the course of dealing at those premises.
- (1a) Where a financier or car hire operator carries on the business of selling vehicles to persons other than persons who become trade owners the financier or car hire operator shall, at the place at which he carries on that business, keep or cause to be kept a register in the form referred to in subsection (1) and shall record or enter therein such particulars as are required to be recorded or entered pursuant to that subsection.
- (2) A dealer, yard manager, financier or car hire operator shall produce the register kept pursuant to subsection (1) or (1a), as the case requires, for inspection, on demand, by any authorised officer, any member of the Police Force, or by a traffic inspector duly appointed for the district wherein the premises are situated.
- (2a) A person who is registered as a car market operator shall keep or cause to be kept a register, in the prescribed form, for any premises authorised under section 21A in relation to that registration, and shall record or cause to be recorded in that register the prescribed particulars of —
 - (a) every vehicle offered, exposed or displayed for sale at the premises in the course of a car market conducted at the premises pursuant to the registration; and
 - (b) where he is notified under subsection (2e) of the sale at the premises of a vehicle referred to in paragraph (a) of this subsection, that sale.

- (2b) A car market operator shall produce the register kept pursuant to subsection (2a) for inspection, on demand, by any authorised officer or any member of the Police Force.
- (2c) Subsection (2a)(a) shall be complied with in relation to a vehicle before the vehicle is offered, exposed or displayed for sale.
- (2d) Subsection (2a)(b) shall be complied with in relation to a vehicle forthwith after notification of the sale of the vehicle is given under subsection (2e).
- (2e) Where a car market is being conducted by a person who is registered as a car market operator at premises authorised under section 21A in relation to that registration a person who sells a vehicle at the premises shall, forthwith after he sells the vehicle, notify the car market operator of the sale.
Penalty: \$1 000.

- (3) A person shall not knowingly —
(a) make a false entry; or
(b) cause a false entry to be made,

in any register kept for the purposes of this section.

Penalty applicable to subsections (1), (1a), (2), (2a), (2b) and (3): \$5 000.

[Section 25 amended by No. 58 of 1974 s. 21; No. 49 of 1979 s. 10; No. 87 of 1981 s. 13; No. 106 of 1981 s. 15; No. 68 of 1982 s. 2; No. 4 of 2002 s. 24, 32(1) and 39.]

26. Transactions in second-hand vehicles to be notified

- (1) Every dealer, not being a financier or car hire operator, acquiring a second-hand vehicle or selling a second-hand vehicle other than to a financier or car hire operator shall, forthwith after the acquisition or sale, send to the authority that licensed or registered the vehicle, if within the State, such particulars as may be prescribed; and, where that authority is not within the State, shall forthwith deliver the number plates (if

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any) attached to the vehicle to the nearest licensing or registering authority.

Penalty: \$2 000.

- (2) Upon the expiration or cancellation of the licence or registration of a second-hand vehicle that is in the possession of a dealer, the dealer shall, unless renewing the licence or registration, return any number plates attached to that vehicle to the nearest licensing or registering authority.

Penalty: \$2 000.

- (3) Nothing in this section affects the obligation of a person to apply for the transfer of the licence or registration of a vehicle, under the provisions of any other Act.

[Section 26 amended by No. 6 of 1982 s. 4; No. 4 of 2002 s. 25 and 40.]

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[Heading inserted by No. 73 of 2003 s. 17.]

27. Inspection of second-hand vehicles

- (1) Every dealer and every yard manager and salesperson acting for a dealer shall permit any member of the Police Force, any authorised officer or any traffic inspector, at all reasonable hours to enter upon any authorised premises of the dealer, with such persons as he may require to assist him, and there to examine any second-hand vehicle; and where in the opinion of that member, authorised officer or traffic inspector, it is necessary to road-test any such vehicle, the dealer, yard manager or salesperson shall permit him, or such other person as that member, authorised officer or traffic inspector may nominate, to remove the vehicle from the premises and drive it, for that purpose, but nothing in this subsection authorises any such member, authorised officer, traffic inspector, or person so

nominated, to remove or drive any agricultural implement for that purpose.

Penalty: \$5 000.

- (1a) In subsection (1) *dealer* includes any person carrying on the business of a wrecker of motor vehicles or of buying or selling vehicles for which a dealer's licence is not required under this Act, and in relation to such a person —
- (a) the terms *yard manager* and *salesperson* mean an employee of the person; and
 - (b) the term *authorised premises* means the premises at which that person carries on business.
- (2) Notwithstanding the provisions of any other Act, an unlicensed vehicle may be driven on a road by a person acting under the authority of subsection (1).
- (3) Subject to subsection (4) a dealer, or a yard manager or salesperson acting on behalf of a dealer, shall not, during any hours when the dealer is lawfully able to keep his authorised premises open to the public, cause or permit a second-hand vehicle of which the dealer is the trade owner to be kept or parked elsewhere than at the authorised premises of the dealer.
Penalty: \$5 000.
- (4) In any proceedings for an offence against subsection (3) it is a defence to prove —
- (a) that the vehicle was kept or parked at or adjacent to the residence or place of business or employment of a particular prospective purchaser for the purpose of displaying it to that prospective purchaser; or
 - (b) that during the period for which the vehicle was kept or parked elsewhere than at the authorised premises —
 - (i) it was not so kept or parked for the purpose of causing the vehicle to be offered or displayed for sale except as described in paragraph (a); and

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- (ii) it was not so kept or parked for the purpose of avoiding the provisions of this section or of any other section of this Act.

[Section 27 amended by No. 58 of 1974 s. 20 and 21; No. 106 of 1981 s. 16; No. 68 of 1982 s. 3; No. 4 of 2002 s. 31(1), 32, 41 and 67.]

28. Order to remedy defects in second-hand vehicle

- (1) This section applies where —
 - (a) an inspecting officer is examining or testing a second-hand vehicle under section 27; and
 - (b) the officer is of the opinion that the vehicle or its equipment is defective.
- (2) The inspecting officer may make an order in the approved form —
 - (a) specifying any defect in the vehicle or its equipment; and
 - (b) requiring the owner of the vehicle, not later than the day specified in the order, at the owner's option, to either —
 - (i) remedy each defect so specified; or
 - (ii) return the number plates relating to the vehicle to the nearest licensing or registering authority in accordance with section 28A.
- (3) Where an order is made under subsection (2) in respect of a vehicle, the inspecting officer shall attach to the vehicle a notice in the approved form —
 - (a) stating that the order has been made; and
 - (b) informing the owner that the sale of the vehicle is prohibited as provided by section 29(1).
- (4) If the dealer is the owner of the vehicle, the order shall be given to the dealer.

- (5) If the dealer is in possession of the vehicle under a consignment agreement —
- (a) the dealer shall inform the inspecting officer of the name and address of the consignor; and
 - (b) the inspecting officer shall give the order or cause it to be given to the consignor.
- (6) An order under subsection (2) and the corresponding notice under subsection (3) may be amended so far as is necessary to correct any error.
- (7) The powers in subsections (5) and (6) may be exercised by persons or classes of persons designated by the Commissioner.
- (8) An order under subsection (2) remains in force until the conditions provided for by either of the following paragraphs are met —
- (a) the number plates are returned to the nearest licensing or registering authority —
 - (i) as required by the order and the provisions of section 28A; or
 - (ii) under section 29(3);
 - (b) the vehicle has been examined by an inspecting officer and the officer —
 - (i) is satisfied that each defect specified in the order has been remedied; and
 - (ii) cancels the order and removes the notice attached to the vehicle under subsection (3).
- (9) An inspecting officer examining a vehicle as mentioned in subsection (8)(b) may make a further order under subsection (2) in respect of the vehicle if he is of the opinion that the vehicle or its equipment is defective.
- (10) The owner of a vehicle in respect of which an order is made under subsection (2) shall comply with the order.

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Penalty: \$2 000.

- (11) A person shall not wilfully remove, damage or obliterate a notice attached to a vehicle under subsection (3).

Penalty: \$2 000.

- (12) In this section —

consignment agreement has the same meaning as it has in section 32A;

defective, in relation to a vehicle, means that it requires work to be done to it, or other attention, to make it comply with any requirement of a written law that applies to the vehicle or its equipment; and **defect** has a corresponding meaning;

inspecting officer means a member of the Police Force or an authorised officer;

owner means —

- (a) the dealer at whose authorised premises the vehicle is being examined or tested, if he is the trade owner of the vehicle; or
- (b) if the dealer is in possession of the vehicle under a consignment agreement, the consignor under that agreement.

[Section 28 inserted by No. 4 of 2002 s. 68.]

28A. Return of number plates

- (1) The owner of a vehicle who elects to return the number plates relating to the vehicle as mentioned in section 28(2)(b)(ii) shall send or deliver to the nearest licensing or registering authority —
- (a) the number plates; and
 - (b) a duly completed notice in the approved form.
- (2) The owner of a vehicle, by taking the action specified in subsection (1), surrenders any licence for the vehicle issued under the *Road Traffic Act 1974*.

[Section 28A inserted by No. 4 of 2002 s. 68.]

29. Restriction on sale of unroadworthy vehicles

- (1) Except where he has reasonable grounds for believing that the vehicle is being acquired for the purpose of being broken up (the proof whereof shall lie upon him), a dealer shall not sell, and a yard manager or salesperson shall not assist in the sale of, a second-hand vehicle in respect of which an order is in force under section 28.
- (2) A person shall not, by a representation that a second-hand vehicle is being acquired for the purpose of being broken up, induce another to sell the vehicle if the sale would, but for that representation, be prohibited by subsection (1).
- (3) A dealer selling a second-hand vehicle that he is led to believe is being acquired for the purpose of being broken up shall, before yielding up possession of it, remove from the vehicle any number plates attached to it and shall, forthwith, return them to the nearest licensing or registering authority, with the advice that the vehicle in respect of which they were issued is to be broken up.
- (4) The provisions of subsection (3) apply, *mutatis mutandis*, to a dealer acquiring a second-hand vehicle, from a person who is not a dealer for the purpose of breaking it up.
- (5) A dealer shall not break up a motor vehicle, or cause it to be broken up, unless and until it has been in his possession for 7 days.

Penalty applicable to subsections (1), (2), (3) and (5): \$5 000.

[Section 29 amended by No. 49 of 1979 s. 11; No. 4 of 2002 s. 31(1), 42 and 69.]

Division 5 — Offences: unlicensed dealing etc.

[Heading inserted by No. 73 of 2003 s. 18.]

30. Dealers to be licensed and premises to be authorised

- (1) A person shall not engage in unlicensed dealing.
Penalty: \$50 000 and a daily penalty of \$1 000.
- (2) A dealer shall not carry on business as a dealer at any premises except under and in accordance with —
 - (a) an authorisation under section 20E; or
 - (b) a permit granted under section 20H.Penalty: \$5 000.
- (3) For the purposes of subsection (1) a person engages in unlicensed dealing if he carries on any class or description of business as a dealer otherwise than —
 - (a) under and in accordance with a dealer's licence for that class or description of business; and
 - (b) in accordance with any condition or restriction attached to the licence.
- (4) Despite subsection (3) a person does not engage in unlicensed dealing if he —
 - (a) acts in a business only in the capacity of a yard manager or salesperson; or
 - (b) carries on or acts in a business only in the capacity of a financier, car hire operator or auctioneer and —
 - (i) has an exemption under section 31; and
 - (ii) complies with any condition or restriction to which the exemption is subject.

[Section 30 inserted by No. 4 of 2002 s. 26.]

31. Exemptions from compliance with this Act

- (1) The Commissioner may in writing grant an exemption from compliance with this Act to a financier, car hire operator or an auctioneer who —

- (a) applies for an exemption in the approved form and pays the prescribed fee; and
 - (b) satisfies the Commissioner —
 - (i) in the case of a financier, that he ordinarily disposes of vehicles which he has repossessed directly to dealers;
 - (ii) in the case of a car hire operator, that the buying or selling of vehicles does not comprise a significant part of his business as a car hire operator and that he ordinarily disposes of vehicles bought in the course of his business directly to dealers; or
 - (iii) in the case of an auctioneer, that the selling of vehicles by auction does not comprise a significant part of his business as an auctioneer.
- (2) An exemption under subsection (1) —
- (a) may be granted subject to conditions;
 - (b) extends to a person acting as an employee or agent of the financier, car hire operator or auctioneer; and
 - (c) may be revoked by the Commissioner at any time.

[Section 31 inserted by No. 4 of 2002 s. 26; amended by No. 58 of 2010 s. 50.]

31A. Yard managers to be licensed

A person shall not act in the capacity of a yard manager, other than for or on behalf of a financier or car hire operator, unless —

- (a) he is —
 - (i) the holder of a yard manager's licence under section 16(1); or
 - (ii) taken to be the holder of such licence under section 16(2);

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and

- (b) he complies with any condition or restriction attached to the licence.

Penalty: \$5 000 and a daily penalty of \$100.

[Section 31A inserted by No. 4 of 2002 s. 26.]

31B. Salespersons to be licensed

A person shall not act in the capacity of a salesperson, other than for or on behalf of a financier or car hire operator, unless —

- (a) he is —
- (i) the holder of a salesperson's licence under section 17(1); or
 - (ii) taken to be the holder of such a licence under section 17(2);

and

- (b) he complies with any condition or restriction attached to the licence.

Penalty: \$5 000 and a daily penalty of \$100.

[Section 31B inserted by No. 4 of 2002 s. 26.]

31C. Unlicensed person not to be employed

A dealer shall not have a person employed or engaged in his business if the performance of the person's duties involve the person contravening section 31A or 31B, as the case may be.

Penalty: \$5 000 and a daily penalty of \$100.

[Section 31C inserted by No. 4 of 2002 s. 26.]

31D. Car market operators to be registered and premises to be authorised

- (1) A person shall not —

-
- (a) carry on or act in the business of a car market operator;
or
- (b) advertise that he —
- (i) carries on or acts in; or
 - (ii) is willing to carry on or act in,
the business of a car market operator,

unless he is registered as a car market operator under section 17B.

Penalty: \$50 000 and a daily penalty of \$1 000.

- (2) A car market operator shall not provide premises for a car market unless the premises are authorised to be so provided under section 21A.

Penalty: \$5 000.

[Section 31D inserted by No. 4 of 2002 s. 26.]

Part III — Dealings in second-hand vehicles

Division 1 — Preliminary

[Heading inserted by No. 4 of 2002 s. 55.]

32. Application of this Part

- (1) Without limiting Division 2, the provisions of this Part do not apply to or in relation to the sale of a vehicle —
 - (a) to a dealer; or
 - (b) by auction, unless that vehicle is owned by a trade owner.
- (1a) The provisions of section 33(3)(c) do not apply where a vehicle owned by a trade owner is sold by auction.
- (2) Where a vehicle is sold by a financier or car hire operator, this Part does not apply to the financier or car hire operator or to any of his employees or agents, but the provisions of this subsection do not affect the duties or obligations under this Part of or attaching to a dealer who is not a financier or car hire operator, or to any yard manager or salesperson of such a dealer, in relation to any transaction or transactions by or under which the dealer is, pursuant to section 5(6), deemed to have sold a vehicle to a person.
- (3) Where in relation to the sale of a second-hand vehicle, the vehicle was delivered prior to the time at which the offer to purchase the vehicle was accepted, the time at which the vehicle was sold shall, for the purposes of sections 33, 34 and 35, be deemed to be the time at which the vehicle was so delivered.

[Section 32 amended by No. 74 of 1975 s. 14; No. 73 of 1994 s. 4; No. 4 of 2002 s. 27, 31(1) and 56.]

Division 2 — Sales on consignment

[Heading inserted by No. 4 of 2002 s. 57.]

32A. Terms used in this Division

In this Division —

consignment agreement means an agreement under which a dealer agrees —

(a) to sell a vehicle (including by auction) for a person who is not —

(i) a dealer or a trade owner; or

(ii) a person acting as an agent of a dealer or a trade owner;

and

(b) to pay the proceeds of sale after the deduction of any agreed commission and charges to, or partly to, each of the following —

(i) any person authorised by the consignor;

(ii) any person holding a security interest in the vehicle;

consignor means a person for whom a dealer agrees to sell a vehicle under a consignment agreement;

security interest has the same meaning as it has in the *Chattel Securities Act 1987*;

trust account means a trust account required to be maintained by a dealer under section 32C.

[Section 32A inserted by No. 4 of 2002 s. 57.]

32B. Requirements for consignment agreements

(1) A dealer shall not accept a vehicle under a consignment agreement unless the agreement —

(a) is in writing signed by the consignee, or his agent, and the consignor; and

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(b) contains the prescribed particulars, terms and conditions.

Penalty: \$5 000.

- (2) Subsection (1)(b) does not prevent a consignment agreement containing, or incorporating by reference, other terms and conditions so long as they are not inconsistent with, and do not limit or diminish, those that are prescribed.
- (3) A dealer shall ensure that a copy of a consignment agreement is given to the consignor immediately after the agreement is signed by the parties to it.

Penalty: \$5 000.

[Section 32B inserted by No. 4 of 2002 s. 57.]

32C. Dealer selling on consignment to have trust account

A dealer shall not accept a vehicle for sale under a consignment agreement unless the dealer has open with a prescribed financial institution at least one account designated as a trust account.

Penalty: \$5 000.

[Section 32C inserted by No. 4 of 2002 s. 57.]

32D. Payments to trust account

- (1) Where money is received by a dealer from the sale of a vehicle under a consignment agreement, the dealer shall pay all of the money into a trust account not later than the next day after the day of receipt on which the relevant financial institution is open for business.

Penalty: \$5 000.

- (2) Where the consideration or any part of the consideration received by a dealer from the sale of a vehicle under a consignment agreement is represented by another vehicle or other thing (*the trade-in*), the dealer shall pay an amount of money equivalent to the value of that trade-in into a trust

account not later than the next day after the day of receipt on which the relevant financial institution is open for business.

Penalty: \$5 000.

- (3) For the purposes of subsection (2) the value of a trade-in is —
- (a) where the trade-in represents part of the consideration for the sale of a vehicle under consignment, the value ascribed to the trade-in for the purposes of the sale by the parties to the sale or, if no agreed value is so ascribed, the market value of the trade-in at the time of the sale; or
 - (b) where the trade-in represents all of the consideration for the sale of a vehicle under consignment, the value ascribed to the trade-in for the purposes of the sale by the parties to the sale or, if no agreed value is so ascribed, the market value of the trade-in at the time of the sale, less any amount paid, or to be paid, by the dealer to the purchaser of the consigned vehicle in connection with the sale.
- (4) A dealer shall not pay money into a trust account other than money received from the sale of vehicles under consignment agreements or money referred to in subsection (2).

Penalty: \$5 000.

[Section 32D inserted by No. 4 of 2002 s. 57.]

32E. Withdrawals from trust account

- (1) A dealer shall not, without the prior written approval of the Commissioner, withdraw money paid into a trust account from the sale of a vehicle under a consignment agreement, except for the purpose of —
- (a) paying an amount properly payable to —
 - (i) the consignor of the vehicle concerned or a person authorised by him; or
 - (ii) the holder of a security interest in the vehicle;

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- (b) satisfying a debt due to the dealer by the consignor for commission or other charges; or
- (c) paying an amount that is authorised by the regulations to be paid.

Penalty: \$5 000.

- (2) Except as otherwise provided by the regulations, money held in a trust account is not available for payment of the debts of a dealer or liable to be taken in execution under the order or process of a court.
- (3) Nothing in this Division takes away or affects a lawful claim or lien that a person has against or on any money received from the sale of a vehicle under a consignment agreement.

[Section 32E inserted by No. 4 of 2002 s. 57; amended by No. 58 of 2010 s. 50.]

32F. Provisions relating to financial institutions

- (1) A financial institution does not incur any liability or obligation to any person by reason only that it has failed to secure compliance by a dealer with any provision of this Division, or of the regulations, relating to —
 - (a) the keeping of; or
 - (b) the withdrawal of money from,a trust account.
- (2) A financial institution at which a dealer maintains a trust account shall not have any recourse or right, whether by way of set off, counterclaim, charge or otherwise, to money standing to the credit of that account in respect of any liability of the dealer to the financial institution, other than a liability in connection with that account.

[Section 32F inserted by No. 4 of 2002 s. 57.]

32G. Payment to consignor

Where a dealer sells a vehicle under a consignment agreement he shall pay the proceeds of sale as required by —

- (a) the provisions of the agreement; and
- (b) the terms and conditions prescribed for the purposes of section 32B(1)(b).

Penalty: \$5 000.

[Section 32G inserted by No. 4 of 2002 s. 57.]

32H. Dealers to maintain accounts

A dealer shall —

- (a) keep full and accurate accounts and records of —
 - (i) all proceeds received from sales of vehicles under consignment agreements; and
 - (ii) all payments made by the dealer of or from those proceeds;
- (b) before the end of the next business day after the day on which proceeds of a sale are received or a payment is made, record particulars of —
 - (i) the amount so received or paid; and
 - (ii) the person from whom it was received or to whom it was paid;
- (c) keep the accounts and records in such a manner that they can be conveniently and properly audited; and
- (d) correctly balance the accounts at the end of each month.

Penalty: \$5 000.

[Section 32H inserted by No. 4 of 2002 s. 57.]

32I. Audit of trust account

- (1) A dealer shall ensure that each trust account of the dealer is audited by a person who is a registered company auditor at least

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once in each period of 12 months commencing on the day on which the account is opened.

Penalty: \$5 000.

(2) In subsection (1) and in section 32J —

registered company auditor has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

[Section 32I inserted by No. 4 of 2002 s. 57.]

32J. Special audit of trust account

(1) The Commissioner may exercise the power in subsection (2) if the Commissioner is of the opinion that it is desirable to do so because of the circumstances, or the alleged circumstances, of a dealer's business.

(2) The Commissioner may —

(a) at any time order that a special audit of a trust account of a dealer shall be carried out by a registered company auditor at the expense of the dealer; and

(b) for that purpose —

(i) appoint the auditor; and

(ii) specify the information that is to be furnished, and the time within which the auditor is to report, to the Commissioner.

(3) Where an order is made under subsection (2) in respect of a trust account of a dealer, the dealer shall do all things that are necessary to be done on his part to enable the audit to be completed.

Penalty: \$5 000.

[Section 32J inserted by No. 4 of 2002 s. 57; amended by No. 58 of 2011 s. 50.]

32K. Trust accounts may be frozen by State Administrative Tribunal

- (1) Where the Commissioner, on an application made by the Commissioner to the State Administrative Tribunal, shows by evidence on affidavit to the satisfaction of the State Administrative Tribunal that —
- (a) there are reasonable grounds for believing that there is a deficiency in a trust account of a dealer; or
 - (b) there has been undue or unreasonable refusal, neglect, or delay on the part of a dealer in paying money which was required to be paid into a trust account by the dealer under this Division to a person who is entitled to that money or is authorised to receive the money,

the State Administrative Tribunal may, if it thinks fit, make an order that the person for the time being in charge of the financial institution in which the trust account is kept be restrained, until the order is made absolute or discharged, from paying out, transferring or otherwise dealing with any moneys standing to the credit of the trust account or any other account kept at the financial institution in the name of the dealer.

- (2) An order under subsection (1) may —
- (a) contain such terms and conditions as the State Administrative Tribunal thinks fit; and
 - (b) relate to all or any one or more of the trust or other accounts, as the State Administrative Tribunal determines.
- (3) The order shall be made in the first instance *ex parte*, without any notice to the dealer, and is an order to show cause only.
- (4) Unless the dealer referred to in the order shows to the State Administrative Tribunal within the time specified in the order sufficient cause to the contrary, the order, after proof of service as required by section 32O, shall be made absolute.

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[Section 32K inserted by No. 4 of 2002 s. 57; amended by No. 55 of 2004 s. 780; No. 69 of 2006 s. 25; No. 58 of 2010 s. 46.]

32L. State Administrative Tribunal may restrain use of trust accounts of deceased dealer

- (1) Where the State Administrative Tribunal is satisfied, on the application of the Commissioner, that a licensed dealer has died, the State Administrative Tribunal may restrain the personal representative, and the former employees, agents and bankers, of the deceased dealer, and the employees and agents of those bankers, from dealing in all or any of the trust accounts of the deceased dealer, subject to such terms and conditions as the State Administrative Tribunal thinks fit.
- (2) The State Administrative Tribunal may order that the Commissioner —
 - (a) take possession of the money constituting a trust account of the deceased dealer or, where the case requires, the balance of such moneys;
 - (b) credit the money or balance to a separate agency special purpose account established for the Commissioner under section 16 of the *Financial Management Act 2006*; and
 - (c) deal with those moneys according to law.
- (3) The State Administrative Tribunal may, on the application of the Commissioner, or any person interested, give such directions as the State Administrative Tribunal thinks fit for the payment by the Commissioner of any part of the moneys credited to the separate agency special purpose account under the order.

[Section 32L inserted by No. 4 of 2002 s. 57; amended by No. 55 of 2004 s. 780; No. 77 of 2006 s. 17; No. 58 of 2010 s. 50.]

32M. Discharge or variation of orders under section 32K or 32L

- (1) A dealer or the personal representative of a deceased dealer whose account is the subject of an order made under section 32K or 32L may apply to the State Administrative Tribunal to discharge or vary the order and to award such costs upon the application as it thinks fit.
- (2) The State Administrative Tribunal is by this section empowered to discharge or vary the order and to make such further orders as it thinks fit.

[Section 32M inserted by No. 4 of 2002 s. 57; amended by No. 55 of 2004 s. 780.]

32N. Schemes for distribution of trust funds

- (1) The State Administrative Tribunal may, on the application of the Commissioner, the Treasurer, the dealer, or the personal representative of a deceased dealer referred to in an order made under section 32K, 32L or 32M make further orders —
 - (a) discharging or varying any orders so made; and
 - (b) directing that any moneys in an account affected by the order shall be paid to the Treasurer by the financial institution on such terms and conditions as the State Administrative Tribunal thinks fit.
- (2) The Treasurer, on receiving moneys paid pursuant to an order made under subsection (1)(b) —
 - (a) shall cause the moneys to be credited to a separate Treasurer's special purpose account established under section 10 of the *Financial Management Act 2006*;
 - (b) may prepare a scheme for distributing the moneys as compensation to each person who —
 - (i) claims compensation at any time within 6 months after the Treasurer receives the money; and

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- (ii) proves to the satisfaction of the Treasurer that the person has, in respect of any consignment of a vehicle, sustained loss through any act or omission of the dealer in respect of whose accounts the order was made.
- (3) When the Treasurer prepares a scheme for distribution the Treasurer shall apply to the State Administrative Tribunal for approval of the scheme and for directions in respect of the scheme.
- (4) The State Administrative Tribunal may give such directions as it thinks fit in respect of —
 - (a) the separate Treasurer's special purpose account;
 - (b) the moneys standing to the credit of the account;
 - (c) the persons to whom and in what amounts the whole or any portion of the moneys standing to the credit of the account shall be paid by the Treasurer; and
 - (d) the payment of the balance of the moneys then standing to the credit of the account, if any.

[Section 32N inserted by No. 4 of 2002 s. 57; amended by No. 55 of 2004 s. 780; No. 77 of 2006 s. 17; No. 58 of 2010 s. 50.]

32O. Order under section 32K, 32L, 32M or 32N to be served and complied with

- (1) Where an order is made under section 32K, 32L or 32N on the application of the Commissioner, the Commissioner shall serve or cause to be served a copy of the order —
 - (a) on the person for the time being in charge of the office of the financial institution in which any account referred to in the order is kept;
 - (b) on the dealer, or the personal representative of the deceased dealer, in whose name the account is kept; and

- (c) where it is an order under section 32N(1)(b), on the Treasurer.
- (2) Where an order is made under section 32M or 32N on the application of a dealer, or the personal representative of a deceased dealer, the dealer or personal representative shall serve or cause to be served a copy of the order —
 - (a) on the person for the time being in charge of the financial institution in which any account referred to in the order is kept;
 - (b) on the Commissioner; and
 - (c) where it is an order under section 32N(1)(b), on the Treasurer.
- (3) Where an order is made under section 32N on the application of the Treasurer, the Treasurer shall serve or cause to be served a copy of the order —
 - (a) on the person for the time being in charge of the office of the financial institution in which any account referred to in the order is kept;
 - (b) on the dealer, or the personal representative of the deceased dealer, in whose name the account is kept; and
 - (c) on the Commissioner.

[Section 32O inserted by No. 4 of 2002 s. 57; amended by No. 55 of 2004 s. 776; No. 58 of 2010 s. 50.]

32P. Regulations relating to trust accounts

The regulations may make provision for or with respect to —

- (a) keeping and management of trust accounts including —
 - (i) information to be given to the Commissioner in relation to trust accounts;
 - (ii) reporting of overdrawn trust accounts;

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- (iii) the manner in which records are to be kept and the information that is to be included in the records;
 - (iv) the manner of accounting for moneys received; and
 - (v) the making of statutory declarations in relation to moneys held in trust;
- (b) duties of financial institutions in relation to trust accounts, including —
- (i) the interest to be paid on the balance of trust accounts; and
 - (ii) reporting of overdrawn trust accounts; and
- (c) auditing of trust accounts, including —
- (i) the appointment of auditors;
 - (ii) the production of records and information to auditors by dealers and financial institutions;
 - (iii) the manner in which auditing is to be conducted;
 - (iv) the information and matters to be contained in the auditor's report;
 - (v) the obligations of auditors to the Commissioner;
 - (vi) the costs of auditing;
 - (vii) when, and to whom, the auditor shall report; and
 - (viii) the confidentiality and examination of audit information.

[Section 32P inserted by No. 4 of 2002 s. 57; amended by No. 58 of 2010 s. 50.]

Division 3 — Obligation to display particulars of vehicle

[Heading inserted by No. 4 of 2002 s. 57.]

33. Particulars to be displayed

- (1) A dealer, yard manager or salesperson shall not —
- (a) offer or display a second-hand vehicle for sale; or
 - (b) cause, suffer or permit a second-hand vehicle to be offered or displayed for sale,

unless there is attached to the vehicle in the manner specified in subsection (6) a notice in the prescribed form containing the prescribed particulars.

Penalty: \$2 000.

- (2) Where the Commissioner is satisfied that —
- (a) a second-hand vehicle referred to in subsection (1) has been brought into this State from a place outside this State for the purposes of sale; and
 - (b) any one or more of the required particulars are not available to the person referred to in subsection (1),

he may by notice in writing direct that such of the required particulars as are referred to in that notice need not be contained in the prescribed form referred to in that subsection and the omission by a person of those required particulars will not constitute an offence against the provisions of that subsection if in any proceedings for such an offence that person proves that the omission of those particulars was authorised by a notice under this subsection.

- (3) For the purposes of this section the following are the required particulars —
- (a) the name and business address of the dealer by whom the vehicle is offered or exposed for sale;
 - (b) where the vehicle is equipped with an odometer, the reading on the odometer of the vehicle at the time the vehicle was acquired from the last owner of the vehicle;
 - (c) the cash price of the vehicle;

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- (d) the year of first registration of the vehicle and the year of manufacture of the vehicle;
 - (e) the licence plate number of the vehicle or, where the vehicle is not then licensed under the *Road Traffic Act 1974*, the word “unlicensed”; and
 - [(f) deleted]*
 - (g) such other particulars as are prescribed.
- (4) A person shall not insert, or suffer or permit to be inserted, in any notice referred to in subsection (1) any statement or representation that is false or misleading in a material particular.
Penalty: \$5 000.
- (5) In any proceedings for an offence that is a contravention of subsection (4) where the contravention consists of a false or misleading statement as to the year of first registration of the vehicle it shall be a defence for the accused to prove that —
- (a) he took reasonable steps to ascertain the year of first registration of the vehicle; and
 - (b) to the best of his knowledge and belief the statement made as to the year of first registration was a true and accurate one.
- (6) For the purposes of subsection (1), the notice shall —
- (a) except as provided in paragraph (b), be placed inside the vehicle where it can be clearly read through the windscreen; and
 - (b) where the vehicle is a motor cycle or is a vehicle not equipped with a windscreen, be attached to the vehicle in such a way and place as to cause the particulars contained in the notice to be clearly visible to a person standing near the vehicle.
- (7) Where a dealer sells a vehicle, he shall —
- (a) cause not less than 2 copies of the notice attached to the vehicle pursuant to the provisions of this section to be

made out and signed by him or a yard manager or salesperson acting on his behalf;

- (b) cause at least 2 of the copies of the notice made out pursuant to paragraph (a) to be signed by the purchaser;
- (c) cause one of the copies of the notice made out pursuant to paragraph (a) and signed by the purchaser pursuant to paragraph (b) to be given to the purchaser; and
- (d) retain for a period of not less than 2 years the notice displayed on the vehicle and one copy of the notice made out pursuant to paragraph (a) and signed by the purchaser pursuant to paragraph (b).

Penalty: \$1 000.

[Section 33 amended by No. 74 of 1975 s. 15; No. 49 of 1979 s. 14; No. 4 of 2002 s. 31(1) and 43; No. 73 of 2003 s. 19; No. 84 of 2004 s. 82.]

Division 4 — Obligation to repair certain defects

[Heading inserted by No. 4 of 2002 s. 58.]

34. Obligation to repair

A dealer who sells a vehicle to which this Division applies shall at his own expense repair or make good, or cause to be repaired or made good, a defect for which he is responsible under sections 34B, 34C and 34D so as to —

- (a) make the vehicle roadworthy; and
- (b) place the vehicle in a reasonable condition having regard to its age.

[Section 34 inserted by No. 4 of 2002 s. 59.]

34A. Vehicles covered by obligation to repair

- (1) This Division applies to a second-hand vehicle that —
 - (a) is sold by a dealer to a person who does not by reason of the sale become a trade owner of the vehicle;

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- (b) is sold (as mentioned in paragraph (a)) at a cash price of or over —
 - (i) in the case of a motor cycle, \$3 500 or such other amount as is prescribed; or
 - (ii) in the case of any other vehicle, \$4 000 or such other amount as is prescribed;
 - (c) on the day of the sale is within the limits specified in subsection (2); and
 - (d) is not excluded from the operation of this Division by an order under section 34G.
- (2) The limits referred to in subsection (1)(c) are that —
- (a) in the case of a motor cycle, it —
 - (i) is not more than 8 years old; and
 - (ii) has not been driven for more than 80 000 km;and
 - (b) in the case of any other vehicle, it —
 - (i) is not more than 12 years old; and
 - (ii) has not been driven for more than 180 000 km.
- (3) This Division does not apply to a vehicle that is sold by a dealer to a person if the person was in possession of the vehicle for a period of 3 months or more immediately preceding the day of sale.

[Section 34A inserted by No. 4 of 2002 s. 59.]

34B. Defects for which dealer responsible

- (1) The dealer is responsible under section 34 for any defect that renders, or is likely to render, the vehicle unroadworthy or unserviceable, but is not responsible for a defect —
- (a) that comes within section 35(2);
 - (b) arising from or incidental to any accidental damage to the vehicle that occurred after the sale;

- (c) arising from misuse or negligence on the part of a driver of the vehicle that occurred after the sale; or
 - (d) occurring in the tyres, battery or any prescribed accessory to the vehicle.
- (2) Subsection (1) applies to a defect whether or not it existed at the time of the sale.

[Section 34B inserted by No. 4 of 2002 s. 59.]

34C. Period during which dealer responsible: vehicles other than motor cycles

- (1) In this section —
- category 1 vehicle** means a vehicle that on the day of the sale —
- (a) is not more than 10 years old; and
 - (b) has been driven for not more than 150 000 km;
- category 2 vehicle** means a vehicle that on the day of the sale —
- (a) is more than 10 years but not more than 12 years old; or
 - (b) has been driven for more than 150 000 km but not more than 180 000 km;
- vehicle** means a vehicle to which this Division applies other than a motor cycle.
- (2) In the case of a category 1 vehicle, the dealer is responsible under section 34 for a defect that appears in the vehicle before —
- (a) the vehicle has been driven for 5 000 km after the sale; or
 - (b) the expiry of the period of 3 months following the day of the sale,
- whichever happens first.
- (3) In the case of a category 2 vehicle, the dealer is responsible under section 34 for a defect that appears in the vehicle before —

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- (a) the vehicle has been driven for 1 500 km after the sale;
or
- (b) the expiry of the period of one month following the day of the sale,

whichever happens first.

[Section 34C inserted by No. 4 of 2002 s. 59.]

34D. Period during which dealer responsible: motor cycles

The dealer is responsible under section 34 for a defect that appears in a motor cycle to which this Division applies before —

- (a) the motor cycle has been driven for 5 000 km after the sale; or
- (b) the expiry of the period of 3 months following the day of the sale,

whichever happens first.

[Section 34D inserted by No. 4 of 2002 s. 59.]

34E. Certain periods excluded from calculation

In determining the periods mentioned in section 34C(2)(b) and (3)(b) and section 34D(b), no account shall be taken of any period during which the dealer is in possession of the vehicle for the purpose or purported purpose of ascertaining or carrying out his obligations under section 34.

[Section 34E inserted by No. 4 of 2002 s. 59.]

34F. Age of vehicle

- (1) For the purposes of sections 34A(2) and 34C(1) the age of a vehicle shall be reckoned from the date of manufacture of the vehicle as determined under this section.
- (2) The date of manufacture of a vehicle is to be taken to be —

- (a) the date of manufacture shown on the vehicle's compliance plate;
 - (b) the "built date" shown on the vehicle; or
 - (c) if paragraph (a) or (b) does not apply —
 - (i) the date agreed in writing between the dealer and the purchaser of the vehicle; or
 - (ii) failing such agreement, the date fixed by the Commissioner exercising the jurisdiction conferred by section 36(d).
- (3) If for a vehicle only a month in a particular year is shown in a way mentioned in subsection (2)(a) or (b) the date of manufacture of the vehicle is to be taken to be the first day of the next month.
- (4) In subsection (2) —

"built date" shown on the vehicle means the date, or the month in a particular year, that follows the expression "built" or "built date" (or a similar expression) on —

- (a) a metal plate attached to the vehicle; or
- (b) a metal component of the vehicle;

compliance plate, in relation to a vehicle, means a plate attached to the vehicle that indicates that the vehicle complies with the standards required by law for vehicles of that make, model and year of manufacture.

[Section 34F inserted by No. 4 of 2002 s. 59.]

34G. Exclusion of vehicles from this Division

The Minister may by order published in the *Gazette* exclude a vehicle or any class or description of vehicles from the operation of this Division, and may in the same way revoke or amend an order so made.

[Section 34G inserted by No. 4 of 2002 s. 59.]

35. Excluded defects

- (1) A dealer may affix or attach to any second-hand vehicle offered or displayed for sale a notice, in the prescribed form, setting out with reasonable particularity any defect that he believes to exist in that vehicle together with, in relation to each such defect his estimate of the fair cost of repairing or making good that defect.
- (2) If—
 - (a) a notice referred to in subsection (1) has, at all material times, been attached to a second-hand vehicle in the same manner as is specified under section 33(6); and
 - (b) at or before the time of sale a copy of that notice has been signed by the purchaser and upon the sale a true copy of that notice as so signed has been delivered to the purchaser for retention by him,then that defect is not one for which the dealer is responsible under section 34.
- (3) If in any notice referred to in subsection (1) the amount estimated by the dealer as the fair cost of repairing or making good any defect is less than the amount of the fair cost of repairing or making good that defect the purchaser may sue for and recover the difference between those fair costs as a debt due to the purchaser from the dealer.

[Section 35 amended by No. 4 of 2002 s. 60.]

Division 5 — Disputes

[Heading inserted by No. 4 of 2002 s. 61.]

36. Disputes

Unless proceedings with respect to the dispute have commenced in a court of competent jurisdiction, where a dispute arises between a purchaser and dealer as to —

- (a) the extent of the obligations of the dealer under section 34;
- (b) the manner of the carrying out by the dealer of those obligations;
- (c) the amount of the fair cost of repairing or making good any defect referred to in section 35(1); or
- (d) any other matter or thing, whether or not of the same kind as the foregoing, arising out of the application of this Act,

the Commissioner may advise in writing both the dealer and the purchaser that he proposes to determine the dispute under section 37 and where he does so he shall request them to make written submissions to him on the matter within 14 days of the date of the request.

[Section 36 amended by No. 49 of 1979 s. 16; No. 59 of 2004 s. 141.]

37. Hearing of dispute by Commissioner

- (1) Where the Commissioner has advised the parties to a dispute that he proposes to determine the dispute under this section the Commissioner may, after the time referred to in section 36, and whether or not either party to the dispute has made any written submissions to him relating to the dispute, determine the dispute or the Commissioner may appoint some person to hear and determine the dispute.
- (2) Without limiting the generality of the powers conferred on the Commissioner or person pursuant to subsection (1), where the Commissioner or person is satisfied —
 - (a) that an obligation lies on the dealer under section 34; and
 - (b) that the dealer has unreasonably —
 - (i) refused or failed to carry out that obligation; or

- (ii) delayed or prevaricated in the carrying out of that obligation,

the Commissioner or person may order that any defect required to be repaired or made good under section 34 shall be repaired or made good by a person named in the order being a person other than the dealer, but the Commissioner or person shall not so order until —

- (c) not fewer than 2 quotations of the cost of repairing or making good the defect have been obtained; and
- (d) where the dealer has alleged that neither of those quotations is reasonable, the dealer has been afforded an opportunity to present, within such time as the Commissioner or other person allows, another quotation of that cost.

- (2a) In addition to any other power conferred on the Commissioner or the person appointed pursuant to subsection (1), where the Commissioner or person is satisfied in relation to any defect in a vehicle sold by a dealer to a purchaser that —

- (a) the defect is a defect which is, pursuant to section 34, an obligation of the dealer to repair and that the purchaser has paid the dealer or any other person for the repair or making good of the defect; or
- (b) the defect is a defect which is not an obligation of the dealer to repair but for which the dealer has been paid by the purchaser to repair or make good but which the dealer has refused or failed to repair or make good or has failed to repair or make good in a proper and workmanlike manner,

the Commissioner or person may order that the dealer pay to the purchaser any moneys so paid by the purchaser.

- (3) Where an order is made pursuant to subsection (2) and the purchaser has pursuant to an order under that subsection contracted to have the defect repaired or made good by a person

other than the dealer, the dealer against whom that order was made shall be liable to indemnify the purchaser against all costs or expenses payable by the purchaser pursuant to that contract and the amount of such indemnity may be sued for and recovered by the purchaser as a debt due from the dealer to the purchaser.

- (4) Where an order is made pursuant to this section, notwithstanding any Act or law to the contrary the dealer shall not have a lien over the vehicle to which the order relates in relation to any work done or purported to have been done in repairing or making good any defect to which the order relates.
- (5) A person shall not wilfully make any false or misleading statement or claim in or in relation to any determination or order under this section.

Penalty: \$5 000.

[Section 37 amended by No. 49 of 1979 s. 17; No. 4 of 2002 s. 44.]

37A. Enforcement of orders of Commissioner

- (1) An order made pursuant to section 37 may be made to take effect within such time as is fixed by the Commissioner or person appointed pursuant to subsection (1) of that section.
- (2) The Commissioner or person appointed pursuant to section 37(1) shall cause a copy of an order made pursuant to that section to be given to the dealer against whom the order is made as soon as is practicable after its making.
- (3) An order made pursuant to section 37 may be enforced by filing, free of charge, in the registry of the Magistrates Court at the place nearest to the premises of the dealer at which the vehicle the subject of the dispute was purchased or nearest to the place of business of the person applying to have the order enforced or the place where the person applying to have the order enforced resides —

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- (a) a copy of the order certified by the Commissioner or person appointed pursuant to section 37(1) to be a true copy; and
 - (b) the affidavit of the person enforcing the order, taken by a justice, as to the amount not paid under the order,
- whereupon the order shall be deemed to be a judgment that requires payment of money duly made by the Magistrates Court and may be enforced accordingly.
- (4) It shall be competent for a person to file a copy pursuant to subsection (3) of this section once only, and a second or subsequent filing purportedly pursuant to the subsection shall be ineffectual.
 - (5) If objection is taken that the registry of the Magistrates Court in which the copy of the order and the affidavit are filed is not the appropriate one in terms of subsection (3), the Commissioner or the person appointed pursuant to section 37(1) shall determine the question having regard to the relevant principles set out in the *Magistrates Court (Civil Proceedings) Act 2004* or the Magistrates Court's rules of court, and the determination of the Commissioner or the person so appointed, as the case requires, is final and conclusive.
 - (6) The *Limitation Act 2005* applies in respect of an order made under this section and in respect of any order made by the Commissioner or the person appointed pursuant to section 37(1) as it applies in respect of any judgment.

[Section 37A inserted by No. 49 of 1979 s. 18; amended by No. 59 of 2004 s. 141; No. 20 of 2005 s. 23; No. 8 of 2009 s. 94(3).]

37B. Effect of determination by Commissioner

- (1) Subject to this section, a determination or an order made pursuant to section 37 is final and conclusive and no appeal shall lie in respect thereof.

- (2) Where a determination or order made pursuant to section 37 —
- (a) requires the payment of money;
 - (b) requires the performance of work; or
 - (c) purports to grant relief from the payment of money,

in an amount or to a value, as the case may be, exceeding the sum of \$1 000 or such sum as is prescribed, any person who is aggrieved by the determination or order of the Commissioner or person appointed pursuant to section 37(1) may apply to the State Administrative Tribunal for a review of the determination or order.

- (3) No writ of *certiorari*, or prohibition, or other prerogative writ shall issue, and no declaratory judgment shall be given in respect of a proceeding taken or to be taken under section 37 before the Commissioner or a person appointed pursuant to section 37(1) or in respect of any determination or order made pursuant to that section unless the court before which such writ or judgment is sought is satisfied that the Commissioner or person had or has no jurisdiction conferred by that section to take the proceeding or that there has occurred therein a denial of natural justice to any party to the proceeding.

[Section 37B inserted by No. 49 of 1979 s. 18; amended by No. 55 of 2004 s. 777.]

38. Reference of a dispute to the court

- (1) Unless the Commissioner has, pursuant to section 36, advised the dealer and the purchaser that he proposes to determine the dispute, where a dispute arises as to any matter or thing referred to in that section, either party may apply to the Magistrates Court for the dispute to be heard and determined as a proceeding in that court and upon such an application being made the court shall hear and determine the matter as expeditiously as possible.

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- (2) For the purposes of a proceeding referred to in subsection (1) and subject to this subsection the Magistrates Court shall have and may exercise all the powers and functions conferred on the Commissioner under section 37 and that section shall apply and have effect as if in that section there were substituted for each reference to the Commissioner a reference to the Magistrates Court, but —
- (a) this section does not authorise or empower the Magistrates Court to appoint some other person to hear and determine the dispute; and
 - (b) the provisions of section 37A do not apply to or in relation to any proceeding in the Magistrates Court under this Act.

[Section 38 amended by No. 49 of 1979 s. 19; No. 55 of 2004 s. 778; No. 59 of 2004 s. 141.]

[39. Deleted by No. 49 of 1979 s. 20.]

[40. Deleted by No. 4 of 2002 s. 62.]

Part IIIA — Obligations of car market operators

[Heading inserted by No. 87 of 1981 s. 15.]

40A. Liability of car market operator for certain losses

- (1) Subject to subsections (4) and (5) where, after the coming into operation of section 15 of the *Motor Vehicle Dealers Amendment Act 1981*¹, a second-hand vehicle is sold —
- (a) at premises provided by a car market operator; and
 - (b) at the time of the conduct of a car market at those premises,

a person who has incurred loss in connection with the sale by reason of the fact that the vendor has not passed an unencumbered title to the vehicle may sue for and recover the amount of the loss as a debt due to the person from the car market operator.

- (2) Without limiting the generality of subsection (1), a vehicle shall be deemed to be sold —
- (a) at premises provided by a car market operator; and
 - (b) at the time of the conduct of a car market at those premises,

for the purposes of that subsection if negotiation of the sale is commenced at those premises and at that time but the sale is completed elsewhere.

- (3) The fact that a person —
- (a) has since the material time ceased to be registered under section 17B as a car market operator;
 - (b) was not, at the material time, registered under section 17B as a car market operator; or
 - (c) has, since the material time, ceased to be a car market operator,

does not affect his liability under subsection (1).

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- (4) A person who is or has been a car market operator is not liable under subsection (1) for any loss incurred in connection with the sale of a vehicle if he satisfies the court that a notice as required by section 40B was attached to the vehicle in the manner, and at the times, required by that section and that the notice contained a statement to the effect that the title to the vehicle was not guaranteed by him.
- (5) Subsection (1) does not apply to or in relation to the sale of a vehicle to a dealer.

[Section 40A inserted by No. 87 of 1981 s. 15; amended by No. 4 of 2002 s. 28.]

40B. Notice as to warranties to be displayed

- (1) A car market operator contravenes this section if a second-hand vehicle is offered, exposed or displayed for sale in the course of a car market conducted at premises provided by him unless there is attached to the vehicle in the manner specified in subsection (2) a notice in the prescribed form containing statements —
 - (a) to the effect that the title to the vehicle is either —
 - (i) guaranteed by the car market operator; or
 - (ii) not guaranteed by the car market operator;and
 - (b) to the effect that the sale of the vehicle does not create any obligation under section 34.

Penalty: \$2 000.

- (2) For the purposes of subsection (1), the notice shall —
 - (a) except as provided in paragraph (b), be placed inside the vehicle where it can be clearly read through the windscreen; and

- (b) where the vehicle is a motor cycle or is a vehicle not equipped with a windscreen, be attached to the vehicle in such a way and place as to cause the particulars contained in the notice to be clearly visible to a person standing near the vehicle.

[Section 40B inserted by No. 87 of 1981 s. 15; amended by No. 4 of 2002 s. 45.]

Part IV — Miscellaneous

41. Undesirable practices

- (1) A person shall not, in relation to the business of buying or selling vehicles, carry out or give effect to any undesirable practice.
Penalty: \$2 000.
- (2) In this section an undesirable practice means a practice prescribed to be an undesirable practice by regulation under this Act.

[Section 41 amended by No. 4 of 2002 s. 46.]

41A. Rescission of sale

- (1) Where —
 - (a) a vehicle has been sold by a dealer, not being a financier or car hire operator, to a purchaser; or
 - (b) a vehicle has been sold by a financier or car hire operator to a purchaser and a dealer, not being a financier or car hire operator, arranged or procured the sale of the vehicle,

and the Commissioner is of opinion that the vehicle as so sold —

- (c) was substantially different from the vehicle as represented to the purchaser; or
- (d) was a vehicle in relation to which a notice was, pursuant to section 33, required to be displayed but in relation to which no such notice was displayed,

the Commissioner may apply to the Magistrates Court for an order for rescission of the sale of the vehicle.

- (2) An application under this section shall set out the grounds on which it is made.

- (3) After hearing the Commissioner or a representative of the Commissioner and affording any other person likely to be affected by any order made under this section an opportunity of being heard, the Magistrates Court may —
- (a) order that the sale be rescinded; and
 - (b) make such further or consequential orders (including an order as to the payment of the costs of the application) as to it seem necessary or desirable.
- (4) The power to make further or consequential orders conferred on the Magistrates Court by subsection (3) shall extend to the making of orders concerning any collateral credit agreement associated with the sale.
- (5) In making any orders under subsection (3), the Magistrates Court shall so far as is possible apply the following principles in the following order:
- (a) That there should be returned to the purchaser —
 - (i) any moneys or other consideration paid or provided by him under any agreement for the sale (not being moneys or other consideration obtained by him under a collateral credit agreement associated with the sale for the purpose of being so paid or provided); and
 - (ii) any moneys or other consideration paid or provided by him under any collateral credit agreement associated with the sale.
 - (b) That —
 - (i) where the vehicle was sold by a financier or car hire operator, that financier or care hire operator; and
 - (ii) any person who has provided finance under any collateral credit agreement associated with the sale,

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should be indemnified by the dealer referred to in subsection (1) against any loss suffered by the financier, person or car hire operator in consequence of any order made by the Magistrates Court.

- (c) That the vehicle should be returned to the dealer, the financier or the car hire operator.
- (6) Notwithstanding any Act or law to the contrary, upon an order rescinding a sale being made, the rights and obligations of the parties under any contract or agreement relating to the sale or under any contract or agreement relating to a collateral credit agreement connected with the sale and, where applicable, of any dealer referred to in subsection (1) who is not such a party, shall be as provided for in that order or in any order ancillary to or consequential upon that order and without limiting the generality of the foregoing it shall not be a bar, to the making of an order rescinding a sale, that one or more of those persons cannot be restored to the position or positions that existed prior to the sale.
- (7) In this section *collateral credit agreement* means a contract or agreement for the provision of credit by a person other than the dealer referred to in subsection (1) for the purposes of the sale of a vehicle where that contract or agreement was arranged or procured by that dealer.

[Section 41A inserted by No. 49 of 1979 s. 21; amended by No. 4 of 2002 s. 29; No. 59 of 2004 s. 141.]

41B. Obligations in relation to demonstration vehicle

For the purposes of ascertaining the extent of an obligation by reference to time, and the extent of an obligation by reference to distance to be travelled, that remains in relation to a demonstration vehicle on the part of the manufacturer thereof the following provisions apply —

- (a) an obligation expressed by reference to time shall be regarded as having commenced on the date of the sale of

the vehicle to the purchaser or, if the sale was on terms and reduced to writing, on the date of execution of the written agreement by the parties thereto;

- (b) an obligation expressed by reference to the distance to be travelled by the vehicle shall exclude only the distance travelled by the vehicle, as indicated on the odometer on the vehicle, immediately before the sale of the vehicle to a purchaser or, if the sale was on terms and reduced to writing, immediately before the execution of the agreement by the parties thereto.

[Section 41B inserted by No. 49 of 1979 s. 21; amended by No. 73 of 1994 s. 4.]

42. Representation by employee of dealer

For the purposes of this Act, any statement or representation made by an employee of a dealer or a person appearing to act on behalf of a dealer, including but not necessarily being a yard manager or salesperson, in relation to the quality, description or history of a vehicle offered or displayed for sale by that dealer shall be deemed to be such a representation or statement of the dealer.

[Section 42 amended by No. 4 of 2002 s. 31(1).]

42A. Agreements for sale of vehicles by dealer

- (1) This section applies only where a dealer sells a vehicle, other than by auction, to a person who is not a dealer.
- (2) A contract or agreement for the sale of a vehicle —
 - (a) shall be in writing signed by the dealer, or his agent, and the purchaser; and
 - (b) shall contain the prescribed particulars, terms and conditions.
- (3) Subsection (2)(b) does not prevent a contract or agreement containing, or incorporating by reference, other terms and

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conditions so long as they are not inconsistent with, and do not limit or diminish, those that are prescribed.

- (4) Without limiting section 43(7) of the *Interpretation Act 1984*, particulars, terms and conditions that are prescribed for contracts or agreements for the sale of new vehicles may be different from those that are prescribed for contracts or agreements for the sale of second-hand vehicles.
- (5) A dealer or his agent shall not enter into a contract or agreement for the sale of a vehicle unless the contract or agreement complies with subsection (2).

Penalty: \$5 000.

[Section 42A inserted by No. 4 of 2002 s. 63.]

43. Value of vehicle or thing traded in

- (1) Where in respect of a contract or agreement in relation to a sale all or portion of the consideration passing from the purchaser is represented by a vehicle or other thing the dealer shall give to the purchaser a note in writing of the monetary value he ascribes to that vehicle or thing.

Penalty: \$1 000.

- (2) For the purposes of this Act or of any proceedings under section 39 the value ascribed pursuant to subsection (1) of this section shall be the value of that vehicle or thing.

[Section 43 amended by No. 49 of 1979 s. 22; No. 4 of 2002 s. 31(1) and 47.]

44. Tender of documents for signature

- (1) A person shall not submit or tender or suffer or permit to be submitted or tendered a document, to which this section applies, to any person for his signature unless at the time of the submission or tendering all material particulars in that document have been completed.

Penalty: \$5 000.

- (2) This section applies to any document evidencing or recording any contract or agreement for the sale of a vehicle or evidencing or recording any collateral credit agreement as defined in section 41A connected with such a sale.

[Section 44 amended by No. 49 of 1979 s. 23; No. 4 of 2002 s. 48.]

45. Misrepresentation

- (1) A person shall not —
- (a) alter or cause to be altered or connive in the alteration of the reading of an odometer on the vehicle;
 - (aa) state or represent as the reading of an odometer on the vehicle a reading other than the reading that is the same as the reading at the time the vehicle was acquired from the last owner of the vehicle, increased by the distance travelled by the vehicle since it was so acquired;
 - (b) state or represent as the year of manufacture of the vehicle a year other than the actual year of manufacture of the vehicle;
 - (c) state or represent as the year of first registration of the vehicle a year other than the actual year of first registration of the vehicle;
 - (d) state or represent as the model designation of the vehicle a model designation other than the actual model designation of the vehicle; or
 - (e) state or represent in any way that a vehicle which has been used as a taxi-car has not been so used,

wilfully and with intent to deceive another person.

Penalty applicable to paragraph (a): \$50 000.

Penalty applicable to other paragraphs: \$5 000.

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- (2) If in any proceedings for an offence that is a contravention of subsection (1) it is proved that —
- (a) a second-hand vehicle, being a vehicle to which Part III applies, was offered or displayed for sale by a dealer; and
 - (b) the distance travelled by the vehicle as ascertained by reference to the reading of the odometer of the vehicle is less than that distance as ascertained by reference to the reading of the odometer of the vehicle set out in the notice displayed pursuant to section 33 in relation to that vehicle,

it shall be presumed in the absence of proof to the contrary that the dealer who so offered or displayed the vehicle has wilfully altered or caused to be altered or connived in the alteration of the odometer of the vehicle with intent to enhance the value of the vehicle.

- (3) Where a dealer or a person concerned in management or conduct of the business of a dealer, including but not necessarily being a yard manager or dealer, is convicted of an offence that is a contravention of subsection (1) a purchaser who purchased the second-hand vehicle in respect of which that offence was committed from that dealer relying on —
- (a) the reading of the odometer of the vehicle as altered;
 - (b) the statement or representation as to the year of manufacture of the vehicle; or
 - (c) the statement or representation as to the year of first registration of the vehicle or as to the model designation of the vehicle,

as the case may be, may sue for and recover from the dealer so convicted as a debt due to him an amount equal to 3 times the prescribed amount.

- (4) In subsection (3) *the prescribed amount* means the amount determined by the court hearing the matter as being the

difference between the sale price of the vehicle and its fair value at the time of the sale.

[Section 45 amended by No. 49 of 1979 s. 24; No. 4 of 2002 s. 49.]

46. Sale of vehicles by description and implied undertakings as to quality or fitness

- (1) Subject to subsection (3) —
 - (a) where there is a contract for the sale by a dealer of a vehicle to a person by description, there is an implied condition that the vehicle will correspond with the description, and the sale of a vehicle is not prevented from being a sale by description for the purposes of this paragraph by reason only that, being exposed for sale, the vehicle is selected by the purchaser;
 - (b) where a dealer sells a new vehicle to a person, there is an implied condition that the vehicle is of merchantable quality, except that there is no such condition by virtue only of this section —
 - (i) as regards defects specifically drawn to that person's attention before the contract is made; or
 - (ii) if the person examines the vehicle before the contract is made, as regards defects which that examination ought to reveal.
- (2) Any term of a contract or agreement for the sale or supply of a vehicle to a person by a dealer (including a term that is not set out in the contract or agreement, but is incorporated therein by another term thereof) that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying —
 - (a) the application to that contract or agreement of all or any of the provisions of subsection (1);
 - (b) the exercise of a right conferred by such a provision; or

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- (c) any liability of the dealer for breach of a condition or warranty implied by such a provision,
is void.
- (3) The provisions of subsection (1) do not extend to or in relation to —
 - (a) any contract or agreement for the sale, or for the hire and sale, of a vehicle which is in the form of a hire-purchase agreement to which the *Hire-Purchase Act 1959* applies; or
 - (b) any contract or agreement for the sale of a vehicle which —
 - (i) is not a vehicle to which Part III of this Act applies; or
 - (ii) is acquired by that person for the purposes of re-sale.

47. Other rights or remedies

Except as is expressly provided in this Act, nothing in this Act shall have the effect of limiting, restricting or otherwise affecting any right or remedy a person would have had had this Act not been enacted.

48. No waiver of rights

A person shall not without the prior consent of the Commissioner or of an authorised officer be competent to waive any rights conferred on him by this Act.

[Section 48 amended by No. 1 of 1985 s. 27.]

49. No indemnity for dealer

Where a dealer incurs any costs or expenses by virtue of the operation of this Act in relation to the sale of a second-hand vehicle, the dealer shall not be entitled to be indemnified in respect of those costs or expenses by any antecedent owner,

other than a trade owner, of that vehicle and any purported contract or agreement of such indemnity shall, by force of this section, be void and of no effect.

49A. No indemnity for car market operator

Where a person who is or has been a car market operator incurs any costs or expenses by virtue of the operation of this Act in relation to the sale of a second-hand vehicle, the person shall not be entitled to be indemnified in respect of those costs or expenses by the vendor or any antecedent owner of that vehicle and any purported contract or agreement of such indemnity shall, by force of this section, be void and of no effect.

[Section 49A inserted by No. 87 of 1981 s. 16.]

50. Confidentiality of information officially obtained

The *Fair Trading Act 2010* section 112 applies to information obtained for the purposes of this Act.

[Section 50 inserted by No. 58 of 2010 s. 47.]

51. Annual reports

- (1) The chief executive officer is to ensure that the matters set out in subsection (1a) are included in the Department's annual report.
- (1a) The annual report is to include details of —
 - (a) the number, nature, and outcome, of —
 - (i) investigations and inquiries undertaken by, or at the direction of, the Commissioner; and
 - (ii) matters that have been brought before the State Administrative Tribunal by the Commissioner;
 - (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
 - (c) any trends or special problems that may have emerged;

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- (d) forecasts of the workload of the Commissioner in the year after the year to which the report relates; and
- (e) any proposals for improving the performance of the Commissioner's functions.

[(2) deleted]

[Section 51 amended by No. 73 of 2003 s. 23(3); No. 55 of 2004 s. 779; No. 58 of 2010 s 48 and 50.]

52. General provisions relating to offences

[(1)-(2) deleted]

- (3) Except as provided in section 45(3), where a person, being a dealer (in this subsection referred to as ***the accused***), is convicted of an offence against this Act and the court by which he is convicted is of opinion that some other person was defrauded or suffered pecuniary loss by reason of the commission of the offence, the court may, in addition to imposing a penalty for the offence, order the accused to pay to that other person by way of recoupment of his loss, such sum as the court thinks fit and specifies in its order.
- (4) Notwithstanding anything in any Act proceedings for an offence against this Act may be brought within the period of 2 years after the commission of the alleged offence.

[Section 52 amended by No. 74 of 1975 s. 16; No. 49 of 1979 s. 25; No. 4 of 2002 s. 51; No. 84 of 2004 s. 82.]

53. Liability of yard manager for offences by other persons at premises under his supervision

- (1) Notwithstanding any other law or rule of law, where an offence against section 28 or 31B is committed at any authorised premises or in relation to the sale of a vehicle which was offered or exposed for sale at any authorised premises by a person (in this section referred to as ***the other person***) other than the person acting in the capacity of dealer or yard manager for those

premises, the yard manager is guilty of an offence against this Act in like manner as that person and may be proceeded against and convicted accordingly unless he proves that he had no knowledge of the commission of the offence and could not, by the exercise of due diligence, have prevented the commission of the offence.

- (2) The yard manager may be proceeded against and convicted pursuant to subsection (1) notwithstanding that the other person has not been proceeded against or has not been convicted under this Act.
- (3) Nothing in subsection (1) prejudices or affects any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.

[Section 53 amended by No. 4 of 2002 s. 30 and 32(1).]

54. Liability of dealer for offences by employees etc.

- (1) Notwithstanding any other law or rule of law, where any person in the capacity of yard manager or salesperson employed or engaged by a dealer or otherwise in the capacity as an employee of a dealer commits an offence against this Act, the dealer is guilty of an offence against this Act in like manner as the yard manager, salesperson or employee (whether or not the offence was committed without the dealer's authority or contrary to the dealer's orders or instructions) and may be proceeded against and convicted accordingly unless he proves that he had no knowledge of the commission of the offence and could not, by the exercise of due diligence, have prevented the commission of the offence.
- (2) The dealer may be proceeded against and convicted pursuant to subsection (1) notwithstanding that the yard manager, salesperson or employee has not been proceeded against or has not been convicted under this Act.

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- (3) Nothing in subsection (1) prejudices or affects any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.

[Section 54 amended by No. 4 of 2002 s. 31(1).]

55. Offences by corporations

- (1) Where a corporation is convicted of an offence against this Act, every person who at the time of the commission of the offence was a director or member of the governing authority of the corporation or an officer concerned in the management of the corporation and who authorised or permitted the commission of the offence is guilty of the like offence.
- (2) A person referred to in subsection (1) may, on the request of the prosecutor, be convicted on the proceedings on which the corporation is convicted if the court is satisfied that the person had reasonable notice that the prosecutor intended to make that request.

[Section 55 amended by No. 84 of 2004 s. 80.]

55A. Infringement notices

- (1) In subsection (3), (6) or (7) —
designated official means a person designated under subsection (13) by the Commissioner for the purposes of the subsection in which the term is used.
- (2) An authorised officer or a member of the Police Force who has reason to believe that a person has committed a prescribed offence against this Act may, within 6 months after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.
- (3) An infringement notice is to be in the prescribed form and is to —
- (a) contain a description of the alleged offence;

- (b) advise that if the alleged offender does not wish to be prosecuted for the alleged offence in a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to a designated official within a period of 28 days after the giving of the notice; and
 - (c) inform the alleged offender as to who are designated officials for the purposes of receiving payment of modified penalties.
- (4) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.
 - (5) The modified penalty that may be prescribed for an offence is not to exceed 20% of the maximum penalty that could be imposed for that offence by a court.
 - (6) A designated official may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.
 - (7) A designated official may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
 - (8) Where an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.
 - (9) Subsection (10) applies where the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.
 - (10) Where this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent

s. 56

that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

- (11) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.
- (12) Unless subsection (8) requires it to be refunded, an amount paid as a modified penalty is to be dealt with as if it were a penalty imposed by a court as a penalty for an offence.
- (13) The Commissioner may, in writing, designate persons or classes of persons for the purposes of subsection (3), (6) or (7) or for the purposes of 2 or more of those subsections, but an authorised officer or a member of the Police Force is not eligible to be so designated.
- (14) The Commissioner is to issue to each authorised officer a certificate of his authorisation under subsection (2), and the authorised officer is to produce the certificate whenever required to do so by a person to whom an infringement notice has been or is about to be given.

[Section 55A inserted by No. 4 of 2002 s. 52; amended by No. 84 of 2004 s. 80.]

56. Regulations

- (1) The Governor may make such regulations as are necessary or expedient for the purposes of giving effect to the provisions or objects of this Act.
- (2) Without limiting the generality of the provisions of subsection (1), the regulations may —
 - (a) prescribe any practice relating to the business of buying or selling second-hand vehicles that in the opinion of the Governor is an undesirable practice;
 - (b) prescribe the information and particulars that shall be included in any advertising material relating to

- second-hand vehicles and the form and manner in which that information or those particulars shall be set out in that advertising material;
- (c) prescribe fees to be payable and provide for and prescribe the forms to be used for the purposes of this Act;
 - (d) prescribe the manner in which any notice under this Act shall be attached or affixed to a vehicle;
 - (e) provide for the form of a notice that shall be affixed to a vehicle indicating that the vehicle has been excluded from the operation of Division 3 of Part III;
 - (f) provide for and prescribe the method of evidencing and the documents required to effectuate sales of second-hand vehicles between trade owners;
 - (g) require yard managers and salespersons to give notice of changes of employment or places of employment;
 - (ga) prescribe —
 - (i) offences for which an infringement notice may be given under section 55A; and
 - (ii) for each prescribed offence —
 - (I) a modified penalty; or
 - (II) a different modified penalty according to the circumstances of the offence,but not in any case exceeding the amount allowed by section 55A(5);and
 - (h) provide for and prescribe penalties not exceeding, in each case, \$2 000, for a contravention of or failure to comply with any provision of the regulations.
- (3) Section 45(1) and (2) of the *Interpretation Act 1984* apply in respect of fees prescribed under this Act despite sections 3(3) and 45(3) of that Act.

s. 56

*[Section 56 amended by No. 56 of 1995 s. 36; No. 4 of 2002
s. 31(7), 53 and 64.]*

Part V — Miscellaneous transitional matters

[Heading inserted by No. 58 of 2010 s. 49.]

57. Terms used

In this Part —

commencement day means the day on which the *Acts Amendment (Fair Trading) Act 2010* Part 4 comes into operation;

liability means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

right means any right, power, privilege or immunity whether actual, contingent or prospective;

the former Board means the Motor Vehicle Industry Board established by section 7 of this Act immediately prior to the commencement day.

[Section 57 inserted by No. 58 of 2010 s. 49.]

58. Former Board abolished

Subject to sections 63 and 64, at the beginning of the commencement day, the former Board is abolished and its members go out of office.

[Section 58 inserted by No. 58 of 2010 s. 49.]

59. References to the former Board

If in a written law or other document or instrument there is a reference to the former Board, that reference may, where the context so requires, be read as if it had been amended to be a reference to the Commissioner.

[Section 59 inserted by No. 58 of 2010 s. 49.]

s. 60

60. Immunity continues

Despite the abolition of the former Board, if the former Board had the benefit of any immunity in respect of an act, matter or thing done or omitted before the commencement day, that immunity continues in that respect for the benefit of the Commissioner.

[Section 60 inserted by No. 58 of 2010 s. 49.]

61. Unfinished investigations by the former Board

Investigations being carried out by the former Board under the Act as it was prior to the commencement day that are not complete by the commencement day —

- (a) are taken to have been commenced by the Commissioner for the purposes of the Act; and
- (b) are to continue under the direction and control of the Commissioner.

[Section 61 inserted by No. 58 of 2010 s. 49.]

62. Unfinished proceedings by the former Board

- (1) Proceedings before the former Board that are not complete by the commencement day —

- (a) are taken to have been commenced by the Commissioner for the purposes of the Act; and
- (b) are to continue under the direction and control of the Commissioner.

- (2) Proceedings before the State Administrative Tribunal or another court commenced by allegation against a licensed motor vehicle dealer or repairer brought by the former Board that are not complete by the commencement day —

- (a) are taken to have been commenced by an allegation by the Commissioner for the purposes of the Act; and

- (b) are to continue under the direction and control of the Commissioner.

[Section 62 inserted by No. 58 of 2010 s. 49.]

63. Winding-up by the former Board

As soon as reasonably practicable after the commencement day, the Board is to wind-up its affairs and in particular, but without limiting what may be done to wind-up its affairs, the Board is to apply its assets, together with any money in hand, in —

- (a) discharging its liabilities; and
- (b) transferring any assets which remain after the discharge of liabilities (*residual assets*) to the State to be administered in the department, or realising residual assets and causing the proceeds, together with any moneys in hand, to be credited to the Consolidated Account.

[Section 63 inserted by No. 58 of 2010 s. 49.]

64. Final report by the former Board

- (1) As soon as reasonably practical after the Board is satisfied that the winding-up of its affairs is concluded, it is to —
 - (a) make and submit to the Minister a report of its proceedings for the period beginning on the day after the commencement day and ending on the day on which the winding-up of its affairs is concluded; and
 - (b) deliver to the chief executive officer all records and information in its possession or under its control.
- (2) The chief executive officer is to include the final report submitted under subsection (1) in the department's annual report for that financial year.

[Section 64 inserted by No. 58 of 2010 s. 49.]

65. Powers in relation to transitional matters

- (1) If there is not sufficient provision in this Part for dealing with a transitional matter, the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to that matter.
- (2) In subsection (1) —
transitional matter means a matter that needs to be dealt with for the purpose of effecting the transition from this Act as enacted immediately before the commencement day to this Act as amended by the *Acts Amendment (Fair Trading) Act 2010*.
- (3) Regulations made under subsection (1) may provide that specific provisions of a written law —
 - (a) do not apply; or
 - (b) apply with specific modifications,to or in relation to any matter.
- (4) Regulations made under subsection (1) must be made within 12 months after the commencement day.
- (5) If regulations made under subsection (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.
- (6) In subsection (5) —
specified means specified or described in the regulations.
- (7) If regulations contain a provision referred to in subsection (5), the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State), the right of that person existing before the day of publication of those regulations; or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

[Section 65 inserted by No. 58 of 2010 s. 49.]

Notes

¹ This is a compilation of the *Motor Vehicle Dealers Act 1973* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Motor Vehicle Dealers Act 1973</i>	101 of 1973	28 Dec 1973	s. 1-3 and 5-13: 15 Feb 1974 (see s. 2 and <i>Gazette</i> 15 Feb 1974 p. 375); s. 14-24, 30, 50 and 56: 5 Apr 1974 (see s. 2 and <i>Gazette</i> 5 Apr 1974 p. 1180); balance, except s. 40 ² : 12 Aug 1974 (see s. 2 and <i>Gazette</i> 9 Aug 1974 p. 2935)
<i>Acts Amendment (Road Traffic) Act 1974 Pt. III</i>	58 of 1974	3 Dec 1974	29 Aug 1975 (see s. 2 and <i>Gazette</i> 29 Aug 1975 p. 3085)
<i>Motor Vehicle Dealers Act Amendment Act 1975</i>	74 of 1975	14 Nov 1975	9 Jan 1976 (see s. 2 and <i>Gazette</i> 9 Jan 1976 p. 2)
<i>Motor Vehicle Dealers Act Amendment Act 1976</i>	66 of 1976	22 Sep 1976	22 Sep 1976
Reprint of the <i>Motor Vehicle Dealers Act 1973</i> approved 14 Dec 1978 (includes amendments listed above)			
<i>Motor Vehicle Dealers Act Amendment Act 1979</i>	49 of 1979	7 Nov 1979	1 Jan 1980 (see s. 2 and <i>Gazette</i> 21 Dec 1979 p. 3909)
<i>Motor Vehicle Dealers Amendment Act 1981</i>	87 of 1981	26 Nov 1981	Act other than s. 15 and 16: 26 Nov 1981 (see s. 2(1)); s. 15 and 16: 1 Feb 1982 (see s. 2(2) and <i>Gazette</i> 31 Dec 1981 p. 5364)
<i>Acts Amendment (Traffic Board) Act 1981 Pt. III</i>	106 of 1981	4 Dec 1981	2 Feb 1982 (see s. 2 and <i>Gazette</i> 16 Jul 1982 p. 2713)
<i>Motor Vehicle Dealers Amendment Act 1982</i>	6 of 1982	6 May 1982	1 Aug 1982 (see s. 2 and <i>Gazette</i> 2 Feb 1982 p. 393)
<i>Motor Vehicle Dealers Amendment Act (No. 2) 1982</i>	68 of 1982	6 Oct 1982	6 Oct 1982
Reprint of the <i>Motor Vehicle Dealers Act 1973</i> approved 1 Feb 1983 (includes			

Short title	Number and year	Assent	Commencement
amendments listed above)			
<i>Acts Amendment (Consumer Affairs) Act 1985 Pt. V</i>	1 of 1985	8 Mar 1985	s. 24 and 25: 6 Apr 1983 (see s. 2(1)); s. 26 and 27: 8 Mar 1985 (see s. 2(3))
<i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1994 s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Business Licensing Amendment Act 1995 Pt. 7³</i>	56 of 1995	20 Dec 1995	1 Jan 1996 (see s. 2(3))
<i>Industrial Relations Legislation Amendment and Repeal Act 1995 s. 68(4)</i>	79 of 1995	16 Jan 1996	18 May 1996 (see s. 3(2) and <i>Gazette</i> 14 May 1996 p. 2019)
Reprint of the Motor Vehicle Dealers Act 1973 as at 14 Nov 1996 (includes amendments listed above)			
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 39(10) and 90</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 53</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Motor Vehicle Dealers Amendment Act 2002⁴</i>	4 of 2002	4 Jun 2002	s. 1 and 2: 4 Jun 2002; Act other than s. 1 and 2: 1 Sep 2002 (see s. 2 and <i>Gazette</i> 13 Aug 2002 p. 4151)
<i>Motor Vehicle Dealers Amendment Act 2003⁵</i>	73 of 2003	15 Dec 2003	s. 1 and 2: 15 Dec 2003; Act other than s. 1, 2 and 19-21: 22 Dec 2004 (see s. 2 and <i>Gazette</i> 21 Dec 2004 p. 6133); s. 19: 1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)

Motor Vehicle Dealers Act 1973

Short title	Number and year	Assent	Commencement
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 86</i> ⁶	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80 and 82</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 4: The Motor Vehicle Dealers Act 1973 as at 17 Jun 2005 (includes amendments listed above)			
<i>Limitation Legislation Amendment and Repeal Act 2005 Pt. 10</i>	20 of 2005	15 Nov 2005	15 Nov 2005 (see s. 2)
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i>	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 4 Div. 15</i> ⁷	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Consumer Protection Legislation Amendment and Repeal Act 2006 Pt. 7</i>	69 of 2006	13 Dec 2006	14 Jul 2007 (see s. 2 and <i>Gazette</i> 13 Jul 2007 p. 3453)
<i>Financial Legislation Amendment and Repeal Act 2006 s. 17</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
Reprint 5: The Motor Vehicle Dealers Act 1973 as at 11 May 2007 (includes amendments listed above except those in the <i>Consumer Protection Legislation Amendment and Repeal Act 2006</i>)			
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 94</i>	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Acts Amendment (Bankruptcy) Act 2009 s. 57</i>	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Fair Trading) Act 2010 Pt. 4</i> ⁹	58 of 2010	8 Dec 2010	s. 37: 1 Jan 2011 (see s. 2(c) and <i>Gazette</i> 24 Dec 2010 p. 6805); Pt. 4 (other than s. 37): 1 Jul 2011 (see s. 2(c) and <i>Gazette</i> 7 Jun 2011 p. 2057)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Motor Vehicle Dealers Amendment Act 2003 s. 20 and 21</i> ⁸	73 of 2003	15 Dec 2003	To be proclaimed (see s. 2)
<i>Personal Property Securities (Consequential Repeals and Amendments) Act 2011 Pt. 4 Div. 7</i> ¹⁰	42 of 2011	4 Oct 2011	Operative immediately before the registration commencement time as defined in the <i>Personal Property Securities Act 2009</i> (Cwlth) s. 306(2) (see s. 2(c))

² The *Motor Vehicle Dealers Act 1973* s. 40 did not come into operation and was repealed by the *Motor Vehicle Dealers Amendment Act 2002* s. 62.

³ The *Business Licensing Amendment Act 1995* s. 38 is a transitional provision that is of no further effect.

⁴ The *Motor Vehicle Dealers Amendment Act 2002* Pt. 7 reads as follows:

“

Part 7 —Transitional provisions

73. Definition

In this Part —

the principal Act means the *Motor Vehicle Dealers Act 1973*.

74. Licence applications in progress

- (1) If, before the commencement of section 6, 7 or 8 of this Act, an application for the grant or renewal of a dealer's licence, yard manager's licence or salesman's licence —
 - (a) has been made; but
 - (b) has not been determined,the application is to be determined as if Part 2 of this Act had not been enacted.
- (2) If, before the commencement of section 10 of this Act, an application —
 - (a) has been made by a person, by persons constituting a firm or by a body corporate for the grant or renewal of a car market operator's licence; but
 - (b) has not been determined,the application is to be taken to be an application by the person, persons or body corporate to be registered as a car market operator under section 17B of the principal Act as in force after the commencement of section 10.

75. Existing dealer's licence

- (1) This section applies where a person, persons constituting a firm, or a body corporate held a dealer's licence under the principal Act (*the existing licence*) immediately before the commencement of section 6 of this Act.
- (2) The person, the persons constituting the firm, or the body corporate is or are to be taken on that commencement to hold a dealer's licence for each class or description of business prescribed by regulations referred to in section 5A of the principal Act.
- (3) Subject to the principal Act, the licence referred to in subsection (2) continues in force —
 - (a) until the expiry of the period stated in the existing licence; and
 - (b) on the same terms and conditions as applied to that licence.

76. Existing car market operator's licence

- (1) This section applies where a person, persons constituting a firm, or a body corporate held a car market operator's licence under the principal Act immediately before the commencement of section 10 of this Act.

- (2) The person, the persons constituting the firm, or the body corporate is or are to be taken on that commencement —
 - (a) to be registered as a car market operator under section 17B of the principal Act; and
 - (b) subject to the principal Act, to be so registered until the expiry of the period stated in the licence.

77. Premises covered by existing certificate of registration

- (1) Where immediately before the commencement of section 16 of this Act a certificate of registration is in force under section 21 of the principal Act in respect of premises at which a dealer carries on business, the premises are to be taken after that commencement to be authorised premises under the principal Act in relation to that dealer.
- (2) Where immediately before the commencement of section 17 of this Act a certificate of registration is in force under section 21B of the principal Act in respect of premises that are provided for a car market by a car market operator, the premises are to be taken after that commencement to be authorised premises under the principal Act in relation to that car market operator.

78. Existing grounds for disciplinary action

The powers of the Board under section 20(1) of the principal Act inserted by section 16 of this Act may be exercised in relation to acts, omissions and conduct that occurred before or after the commencement of section 16.

79. Time limit for prosecution of existing offences

Section 52(4) of the principal Act applies to an offence committed before the commencement of subsection (2) of section 51 of this Act as if that subsection had not been passed.

80. Application of Part III, Division 2

Division 2 inserted in Part III of the principal Act by section 57 of this Act does not apply to a consignment agreement (as defined in section 32A of the principal Act) that was entered into before the commencement of section 57.

81. Dealer's obligation to repair

- (1) Sections 34 to 34G inserted in the principal Act by section 59 of this Act do not apply to a second-hand vehicle that was sold before the commencement of section 59.

- (2) Section 34 of the principal Act repealed by section 59 of this Act continues to apply, despite the repeal, to second-hand vehicles sold by a dealer before the commencement of section 59.

82. Application of section 42A

Section 42A of the principal Act inserted by section 63 of this Act does not apply to a contract or agreement for the sale of a vehicle that was entered into before the commencement of section 63.

83. Further transitional provision may be made

- (1) The Governor may make regulations —
- (a) amending or supplementing the transitional provisions made by this Part; or
 - (b) making further transitional provisions,
- for the purpose of providing an effective and efficient transition from the principal Act as in force before the commencement of any provision of this Act to the principal Act as amended by this Act.
- (2) Regulations under subsection (1) may have effect before the day on which they are published in the *Gazette*.
- (3) To the extent that a regulation under subsection (1) has effect before the day of its publication in the *Gazette*, it does not —
- (a) affect in a manner prejudicial to any person the rights of that person existing before the day of its publication; or
 - (b) impose liabilities on any person in respect of anything done or omitted to be done before the day of its publication.

”.

⁵ The *Motor Vehicle Dealers Amendment Act 2003* s. 25 and 26 read as follows:

“

25. Transitional provision: membership of Board

The persons who were members of the Motor Vehicle Dealers Licensing Board immediately before the commencement of section 10 cease to hold office on that commencement.

26. Transitional provisions: change of title of Board

- (1) This section relates to the amendment made by section 9(1) which changes the title of the body established by section 7 of the *Motor Vehicle Dealers Act 1973* from the “Motor Vehicle Dealers Licensing Board” to the “Motor Vehicle Industry Board”.
- (2) The change of title of the body does not affect —

- (a) its corporate identity;
 - (b) any right, power, or obligation of the body;
 - (c) any proceedings in progress; or
 - (d) anything previously done by, to or in respect of the body.
- (3) On and after the commencement of this Act a reference to the “Motor Vehicle Dealers Licensing Board” in any instrument (including any subsidiary legislation) is to be construed, unless the context otherwise requires, as if the reference had been amended to be a reference to the “Motor Vehicle Industry Board”.

⁶ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

⁷ The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 4 Div. 23 (other than s. 151) (as amended by *Acts Amendment (Fair Trading) Act 2010* s. 184) reads as follows:

“

Division 23 — Transitional provisions

[151. Deleted by No. 58 of 2010 s. 184.]

152. Commissioner for Corporate Affairs and Registrar of Co-operative and Financial Institutions

- (1) A thing done or omitted to be done by, to or in relation to, the Commissioner for Corporate Affairs before commencement under, or for the purposes of, the *Companies (Co-operative) Act 1943* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.
- (2) A thing done or omitted to be done by, to or in relation to, the Registrar of Co-operative and Financial Institutions before commencement under, or for the purposes of, the *Co-operative and Provident Societies Act 1903* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.

153. Consumer Affairs Act 1971

Each office in existence immediately before commencement because of section 15(1) of the *Consumer Affairs Act 1971* does not cease merely because that subsection is repealed by this Act.

154. Petroleum Products Pricing Act 1983

Each office in existence immediately before commencement because of section 5(2)(b) of the *Petroleum Products Pricing Act 1983* does not cease merely because that paragraph is deleted by this Act.

155. Interpretation

In this Division —

commencement means the time at which this Division comes into operation;

Commissioner for Fair Trading means the Commissioner for Fair Trading referred to in section 15 of the *Consumer Affairs Act 1971* as in force before commencement;

Prices Commissioner means the Prices Commissioner referred to in section 5(1) of the *Petroleum Products Pricing Act 1983* as in force before commencement.

”.

⁸ On the date as at which this compilation was prepared, the *Motor Vehicle Dealers Amendment Act 2003* s. 20 and 21 had not come into operation. They read as follows:

“

20. Part III Division 5 Subdivision 1 heading inserted

Before section 36 the following heading is inserted —

“ **Subdivision 1 — Resolution of disputes** ”.

21. Part III Division 5 Subdivision 2 inserted

After section 38 the following Subdivision is inserted —

“

Subdivision 2 — Conciliation of disputes

39. Definition

In this Subdivision —

dealer includes a former dealer.

39A. When section 39B applies

(1) Section 39B applies if —

- (a) a dispute has arisen between a purchaser and a dealer as to any matter described in section 36(a), (b), (c) or (d); and

- (b) the dispute —
 - (i) has not been decided by the Commissioner acting under section 37, or by a court or tribunal; and
 - (ii) is not the subject of any proceedings.
- (2) A dispute is the subject of proceedings as mentioned in subsection (1)(b)(ii) if —
 - (a) the Commissioner has advised the parties under section 36 that he proposes to determine the dispute; or
 - (b) proceedings in respect of the issues in dispute are pending before a court or tribunal.
- (3) Section 39B does not apply to a dispute relating to —
 - (a) a dealer's obligations in respect of a second-hand vehicle that was sold; or
 - (b) any other matter that arose,

before the commencement of section 21 of the *Motor Vehicle Dealers Amendment Act 2003*.

39B. Conciliation by Board at request of purchaser

- (1) The purchaser of the vehicle concerned may in writing request the Board to act as a conciliator in a dispute to which this section applies, and the Board may at its discretion comply with the request.
- (2) A request under subsection (1) may be withdrawn at any time and the Board must then stop dealing with the matter.
- (3) The Board may appoint an authorised officer to assist it in the conciliation and may delegate any power in relation to the conciliation to such an officer.
- (4) Anything done by an authorised officer for the purposes of a conciliation is to be taken to be done by the Board.

39C. Conciliation function

- (1) The function of the Board as conciliator is to encourage the settlement of the dispute by —
 - (a) communicating with the purchaser and the dealer;
 - (b) arranging discussions between them and assisting in those discussions; and
 - (c) taking any other step that it considers appropriate.
- (2) It is not a function of the Board to conduct an arbitration of a dispute.

- (3) The Board must not perform the function under subsection (1) if, at any time after a request is made under section 39B(1), the dispute becomes subject to proceedings within the meaning in section 39A(2).

39D. Examination of vehicle

An authorised officer appointed under section 39B(3) may at any reasonable time —

- (a) enter premises of the dealer concerned at which the officer reasonably believes the relevant motor vehicle is situated; and
- (b) inspect the vehicle.

39E. False or misleading information

A person must not, in relation to a request under section 39B(1), or any attempt at conciliation by the Board, give information orally or in writing that the person knows to be —

- (a) false or misleading in a material particular; or
- (b) likely to deceive in a material way.

Penalty: \$5 000.

⁹ The amendments in the *Acts Amendment (Fair Trading) Act 2010* s. 177 will not come into operation (see s. 2(b)(i)).

¹⁰ On the date as at which this compilation was prepared, the *Personal Property Securities (Consequential Repeals and Amendments) Act 2011* Pt. 4 Div. 7 had not come into operation. It reads as follows:

Division 7 — *Motor Vehicle Dealers Act 1973* amended

56. Act amended

This Division amends the *Motor Vehicle Dealers Act 1973*.

57. Section 32A amended

In section 32A delete the definition of *security interest* and insert:

security interest has the meaning given in the *Personal Property Securities Act 2009* (Commonwealth) section 10;

