

Western Australia

Motor Vehicle Dealers Amendment Act 2002

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Motor Vehicle Dealers Amendment Act 2002

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	The Act amended	2

Part 2 — Amendments relating to licensing

4.	Section 5 amended	3
5.	Section 5A inserted	6
	5A. Classes of business and categories of licence	6
6.	Section 15 amended	6
7.	Section 16 amended	9
8.	Section 17 amended	10
9.	Section 17A inserted	11
	17A. Training courses for dealers, yard managers and salespersons	11
10.	Section 17A amended	11
11.	Section 17B replaced by sections 17C and 17D	13
	17C. Power to refuse registration under section 17B or renewal of registration	13
	17D. Person cannot be car market operator and hold any other authorisation	14
12.	Section 18 amended	15
13.	Section 18A inserted	16
	18A. Licence conditions	16
14.	Section 19 amended	17
15.	Section 19A amended	18

Contents

16.	Sections 20 and 21 replaced by sections 20, 20A, 20B, 20C, 20D, 20E, 20F, 20G and 20H	18
20.	Disciplinary powers of Board	19
20A.	Orders that may be made under section 20(1)	20
20B.	Limitations on section 20A(4)	22
20C.	Recovery of penalties	22
20D.	Certain offences relating to disqualification	23
20E.	Premises at which dealers may carry on business	23
20F.	Changes in authorised premises	24
20G.	Certificate relating to premises to be displayed	25
20H.	Permits for special occasions	25
17.	Section 21A amended	26
18.	Section 21B replaced by sections 21A, 21B and 21C	26
21A.	Premises at which car markets may be provided	26
21B.	Changes in authorised premises	28
21C.	Certificate relating to premises to be displayed	28
19.	Section 21C amended	29
20.	Section 22 amended	29
21.	Section 22A amended	31
22.	Section 23 amended	32
23.	Section 24 amended	33
24.	Section 25 amended	34
25.	Section 26 amended	35
26.	Sections 30, 31 and 31A replaced by sections 30, 31, 31A, 31B, 31C and 31D	35
30.	Dealers to be licensed and premises to be authorised	35
31.	Exemptions from compliance with this Act	36
31A.	Yard managers to be licensed	37
31B.	Salespersons to be licensed	38
31C.	Unlicensed person not to be employed	38
31D.	Car market operators to be registered and premises to be authorised	38
27.	Section 32 amended	39
28.	Section 40A amended	39
29.	Section 41A amended	39
30.	Section 53 amended	40
31.	Various provisions amended because of change to expression "salesperson"	40

32.	Various sections amended to change “registered” to “authorised”	42
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Part 3 — Amendments relating to offences and penalties

33.	Section 14 amended	43
34.	Section 21A amended	44
35.	Section 21C amended	44
36.	Section 22A amended	44
37.	Section 23 amended	44
38.	Section 24 amended	44
39.	Section 25 amended	45
40.	Section 26 amended	45
41.	Section 27 amended	46
42.	Section 29 amended	46
43.	Section 33 amended	46
44.	Section 37 amended	47
45.	Section 40B amended	47
46.	Section 41 amended	47
47.	Section 43 amended	47
48.	Section 44 amended	48
49.	Section 45 amended	48
50.	Section 50 amended	48
51.	Section 52 amended	49
52.	Section 55A inserted	49
	55A. Infringement notices	49
53.	Section 56 amended	51

Part 4 — Amendments relating to dealings in vehicles

54.	Section 5 amended	53
55.	Heading inserted	53
56.	Section 32 amended	53
57.	Sections 32A to 32P and Division headings inserted	53
	Division 2 — Sales on consignment	
32A.	Definitions	53
32B.	Requirements for consignment agreements	54
32C.	Dealer selling on consignment to have trust account	55

Contents

	32D.	Payments to trust account	55
	32E.	Withdrawals from trust account	56
	32F.	Provisions relating to financial institutions	57
	32G.	Payment to consignor	58
	32H.	Dealers to maintain accounts	58
	32I.	Audit of trust account	59
	32J.	Special audit of trust account	59
	32K.	Trust accounts may be frozen by District Court	60
	32L.	District Court may restrain use of trust accounts of deceased dealer	61
	32M.	Discharge or variation of orders under section 32K or 32L	62
	32N.	Schemes for distribution of trust funds	62
	32O.	Order under section 32K, 32L or 32M to be served and complied with	64
	32P.	Regulations relating to trust accounts	65
		Division 3 — Obligation to display particulars of vehicle	
58.		Heading inserted	67
		Division 4 — Obligation to repair certain defects	
59.		Section 34 replaced by sections 34, 34A, 34B, 34C, 34D, 34E, 34F and 34G	67
	34.	Obligation to repair	67
	34A.	Vehicles covered by obligation to repair	68
	34B.	Defects for which dealer responsible	69
	34C.	Period during which dealer responsible: vehicles other than motor cycles	69
	34D.	Period during which dealer responsible: motor cycles	70
	34E.	Certain periods excluded from calculation	71
	34F.	Age of vehicle	71
	34G.	Exclusion of vehicles from this Division	72
60.		Section 35 amended	72
61.		Heading inserted	73
62.		Section 40 repealed	73
63.		Section 42A inserted	73
	42A.	Agreements for sale of vehicles by dealer	73
64.		Section 56 amended	74
		Part 5 — Miscellaneous amendments	
65.		Section 6 amended	75
66.		Section 8 amended	75
67.		Section 27 amended	75
68.		Section 28 replaced by sections 28 and 28A	75

	28.	Order to remedy defects in second-hand vehicle	75
	28A.	Return of number plates	78
69.		Section 29 amended	79
Part 6 — Consequential amendments			
70.		<i>Chattel Securities Act 1987</i> amended	80
71.		<i>Pawnbrokers and Second-hand Dealers Act 1994</i> amended	80
72.		<i>Road Traffic Act 1974</i> amended	81
Part 7 — Transitional provisions			
73.		Definition	82
74.		Licence applications in progress	82
75.		Existing dealer's licence	82
76.		Existing car market operator's licence	83
77.		Premises covered by existing certificate of registration	83
78.		Existing grounds for disciplinary action	84
79.		Time limit for prosecution of existing offences	84
80.		Application of Part III, Division 2	84
81.		Dealer's obligation to repair	84
82.		Application of section 42A	85
83.		Further transitional provision may be made	85

Western Australia

**Motor Vehicle Dealers Amendment
Act 2002**

No. 4 of 2002

A Bill for

An Act to amend the *Motor Vehicle Dealers Act 1973*, and to make consequential amendments to certain other Acts.

[Assented to 4 June 2002]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Motor Vehicle Dealers Amendment Act 2002*.

2. Commencement

- (1) The provisions of this Act come into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. The Act amended

The amendments in this Act are to the *Motor Vehicle Dealers Act 1973**.

[* *Reprinted as at 14 November 1996.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 298-9.]

Part 2 — Amendments relating to licensing

4. Section 5 amended

- (1) Section 5(1) is amended by inserting the following definitions in their appropriate alphabetical positions —

“

“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 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;

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

“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;

“hold”, in relation to an authorisation, means —

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

”.

- (2) Section 5(1) is amended by deleting the definition of “car market operator’s licence”.
- (3) Section 5(1) is amended by deleting the definition of “dealer” and inserting the following definition instead —

“

“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;

”.

- (4) Section 5(5) is amended as follows:
- (a) by deleting “issue of a licence” and inserting instead —
“
 issue of any of the authorisations provided for by this
 Act
”;
 - (b) by deleting “renewal of a licence” and inserting
instead —
“ renewal of that authorisation ”.
- (5) Section 5(7) is amended as follows:
- (a) by deleting “a car market operator’s licence” and
inserting instead —
“
 a registration of a person as a car market operator
”;
 - (b) by deleting “the licence” and inserting instead —
“ the registration ”.
- (6) After section 5(7) the following subsection is inserted —
“
- (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.
”.

5. Section 5A inserted

After section 5 the following section is inserted —

“

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.

”.

6. Section 15 amended

- (1) Section 15(1) is amended as follows:
 - (a) by inserting after “dealer’s licence” —
“ of a particular category ”;
 - (b) by inserting “and” after paragraph (b);

- (c) by deleting paragraphs (c) and (d) and inserting instead —

“

- (c) that he has —
- (i) sufficient resources; and
 - (ii) sufficient knowledge of this Act.

”.

- (2) Section 15(2) is amended as follows:

- (a) by inserting after “dealer’s licence” —
“ of a particular category ”;

- (b) by deleting paragraphs (b) and (c) and inserting instead —

“

- (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.

”.

- (3) After section 15(2) the following subsections are inserted —

“

- (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 Board refuses to approve of the change under section 23(3); and

- (c) the Board 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 Board may by notice in writing allow, the change of which the Board has refused to approve has been altered or revoked, and the Board has approved of the change as so altered or revoked.
- ”.
- (4) Section 15(3) is amended as follows:
- (a) by inserting after “dealer’s licence” —
“ of a particular category ”;
 - (b) by deleting paragraphs (b) and (c) and inserting instead —
“
 - (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.”.
- (5) After section 15(3) the following subsections are inserted —
“
 - (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 Board has refused to approve of the change under section 23(3); and”.

- (c) the Board 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 Board may by notice in writing allow, the change of which the Board has refused to approve has been altered or revoked, and the Board 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 Board 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 Board considers that those requirements are relevant to the category of licence applied for.
- ”.

7. Section 16 amended

- (1) Section 16 is amended as follows:
 - (a) by inserting before “Subject” the subsection designation “(1)”;
 - (b) by inserting immediately before paragraph (a) —
 - “ (a) of his identity; ”;

- (c) in paragraph (a) by deleting the paragraph designation “(a)” and inserting instead —
“ (aa) ”.
- (2) At the end of section 16 the following subsection is inserted —
“
 - (2) The secretary may, unless the Chairman otherwise directs, by instrument in writing authorise an applicant under subsection (1) to act as a yard manager as if the applicant were the holder of a yard manager’s licence until —
 - (a) the application is dealt with by the Board; or
 - (b) the expiry of a period specified in the instrument,whichever occurs first.”.

8. Section 17 amended

- (1) Section 17 is amended as follows:
 - (a) by inserting before “Subject” the subsection designation “(1)”;
 - (b) by inserting immediately before paragraph (a) —
“ (a) of his identity; ”;
 - (c) in paragraph (a) by deleting the paragraph designation “(a)” and inserting instead —
“ (aa) ”.
- (2) At the end of section 17 the following subsection is inserted —
“
 - (2) The secretary may, unless the Chairman otherwise directs, by instrument in writing authorise an applicant”.

under subsection (1) to act as a salesperson as if the applicant were the holder of a salesperson's licence until —

- (a) the application is dealt with by the Board; or
- (b) the expiry of a period specified in the instrument,

whichever occurs first.

”.

9. Section 17A inserted

After section 17 the following section is inserted —

“

17A. Training courses for dealers, yard managers and salespersons

In addition to its functions under sections 15, 16 and 17 the Board may approve —

- (a) courses for the training of dealers, yard managers and salespersons; and
- (b) the persons who provide those courses.

”.

10. Section 17A amended

- (1) Section 17A is amended by deleting “17A.” and inserting instead —

“ **17B.** ”.

- (2) Section 17A(1) is amended as follows:

- (a) by deleting “for a car market operator's licence” and inserting instead —

“ to be registered as a car market operator ”;

s. 10

- (b) by deleting “be granted such a licence upon satisfying the Board —” and inserting instead —
- “
- be so registered upon satisfying the Board —
- (a) of his identity; and
- (b) that he is of or over the age of 18 years.
- ”;
- (c) by deleting paragraphs (a), (b), (c) and (d).
- (3) Section 17A(2) is amended as follows:
- (a) by deleting “for a car market operator’s licence” and inserting instead —
- “ to be registered as a car market operator ”;
- (b) by deleting “be granted such a licence upon satisfying the Board —” and inserting instead —
- “
- be so registered upon satisfying the Board —
- (a) of their identity; and
- (b) that each of them is of or over the age of 18 years.
- ”;
- (c) by deleting paragraphs (a), (b) and (c).
- (4) Section 17A(3) is amended as follows:
- (a) by deleting “for a car market operator’s licence” and inserting instead —
- “ to be registered as a car market operator ”;
- (b) by deleting “be granted such a licence upon satisfying the Board —” and inserting instead —
- “
- be so registered upon satisfying the Board —

- (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.

”;

(c) by deleting paragraphs (a), (b) and (c).

(5) After section 17A(3) the following subsection is inserted —

“

- (4) The Board 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.

”.

11. Section 17B replaced by sections 17C and 17D

Section 17B is repealed and the following sections are inserted instead —

“

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

- (1) Despite anything in section 17B, the Board may refuse to register an applicant under that section if it 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 Board may refuse to renew the registration of a car market operator if it is satisfied as mentioned in subsection (1).

s. 11

- (3) Subsections (1) and (2) are permissive only and do not impose a duty on the Board 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
 - (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.

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.

”.

12. Section 18 amended

- (1) Section 18(1) is repealed and the following subsections are inserted instead —

“

- (1) The Board may refuse an application by a person, or persons constituting a firm, for the grant or renewal of an authorisation, if there is any ground on which an order 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) The Board shall not refuse an application mentioned in subsection (1) on a ground referred to in that subsection unless it has —
- (a) conducted an inquiry; and
 - (b) given the applicant an opportunity to show cause why the application should not be refused.
- (1b) If —
- (a) an application for renewal of an authorisation has been made; and
 - (b) the Board considers that —

s. 13

- (i) there is a matter that could constitute a ground for refusing the renewal under subsection (1); but
- (ii) there is insufficient time before the authorisation expires for the Board to hold an inquiry as required by subsection (1a),

the Board may grant the renewal in terms that the renewal does not affect the exercise after the renewal of the Board's power under section 20 in respect of that matter.

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

”.

- (2) Section 18(2) is amended by deleting “17A” and inserting instead —

“ 17B ”.

13. Section 18A inserted

After section 18 the following section is inserted —

“

18A. Licence conditions

- (1) The Board may, when granting a licence, attach any condition or restriction to the licence.
- (2) The Board 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 Board.
- (4) The day so determined cannot be before the Board 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 Board may determine that subsection (4) does not apply in the case of a decision to remove a condition or restriction.
- (6) The powers conferred by this section are in addition to the powers described in section 20A(5).

”.

14. Section 19 amended

- (1) Section 19 is amended by deleting “a licence” in each place where it occurs and inserting instead —

“ an authorisation ”.
- (2) Section 19(2), (3)(a) and (b) and (3a) are amended by deleting “the licence” in each place where it occurs and inserting instead —

“ the authorisation ”.
- (3) Section 19(3) is amended as follows:
 - (a) by deleting “that licence” and inserting instead —

“ that authorisation ”;
 - (b) by deleting “expired licence” and inserting instead —

“ expired authorisation ”.

s. 15

- (4) Section 19(3a) is amended by deleting “previous licence” and inserting instead —
“ previous authorisation ”.
- (5) Section 19(3b) is amended by deleting “17A” and inserting instead —
“ 17B ”.
- (6) Section 19(4)(b) is amended by inserting after “the holder” —
“ or any joint holder ”.

15. Section 19A amended

- (1) Section 19A(1) and (2) are amended by deleting “a licence” in both places where it occurs and inserting instead —
“ an authorisation ”.
- (2) Section 19A(1) is amended by deleting “licence, surrender that licence” and inserting instead —
“ authorisation, surrender that authorisation ”.
- (3) Section 19A(2) is amended by deleting “the licence” in each place where it occurs and inserting instead —
“ the authorisation ”.

16. Sections 20 and 21 replaced by sections 20, 20A, 20B, 20C, 20D, 20E, 20F, 20G and 20H

Sections 20 and 21 are repealed and the following sections are inserted instead —

“

20. Disciplinary powers of Board

- (1) The Board may make one or more of the orders authorised by section 20A in respect of a person if the person has been found by the Board —
- (a) to have 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) to have done or omitted to do any thing, or engaged in any conduct, where in the opinion of the Board the act, omission or conduct 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 Board may make an order disqualifying a person, or the persons constituting a firm, from —
- (a) holding a dealer's licence of a specified category; or
 - (b) being registered as a car market operator,
- if the person or persons has or have been found by the Board —
- (c) not to have sufficient material and financial resources to enable the person or the firm, as

s. 16.

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) to have ceased to carry on the business of a dealer or a car market operator.
- (3) The Board may make an order revoking an authorisation of premises under section 20E or 21A if the Board is no longer satisfied that the premises comply with all relevant requirements of written laws relating to planning that apply in respect of the premises.
 - (4) The Board may make an order under this section of its own motion or on the application of the Commissioner.
 - (5) The Board shall not make an order under this section in respect of a person unless it has —
 - (a) conducted an inquiry; and
 - (b) given the person an opportunity to show cause why the order should not be made.

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

- (1) The orders that the Board may make under section 20(1) are those 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 to the Board 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.
- (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 Board.

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.

20C. Recovery of penalties

- (1) An amount payable by a person under an order referred to in section 20A(4) may be recovered by the Commissioner as a debt in a court of competent jurisdiction to the extent that it remains unpaid after any time specified by the Board for payment.
- (2) If an amount referred to in subsection (1) has not been paid by a person after any time specified by the Board for payment, the Board may —
 - (a) treat the non-payment as an omission to which section 20(1)(b) applies; and
 - (b) make an order described in section 20A(2) or (3) against the person in respect of that omission.

20D. Certain offences relating to disqualification

- (1) A person to whom an order described in section 20A(3) applies shall not contravene or fail to comply with the order.

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

- (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 Board.

Penalty: \$5 000.

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 Board in respect of the premises.

- (2) A planning certificate is a certificate from the authority responsible for town planning matters in the district in which the premises are situated showing that the proposed use of the premises —

- (a) will comply; or

s. 16.

- (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 Board, if it 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 Board, in granting the application, may attach a condition to the licence that —
 - (a) the operation of the licence is suspended until the Board is satisfied that all necessary consents have been given; and
 - (b) the grant lapses if the Board 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.

20F. Changes in authorised premises

- (1) The Board 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 Board 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 Board 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.

20G. Certificate relating to premises to be displayed

- (1) The Board 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.

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 Board 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 Board may grant to the dealer a temporary permit to carry on business —

s. 17

- (a) at the premises;
 - (b) during the period; and
 - (c) subject to any conditions and restrictions,
specified in the permit.
- (4) The Board may, by notice in writing to the holder of a temporary permit, revoke the permit if the Board considers that there is justification for doing so.
- (5) The secretary shall retain a copy of each temporary permit issued and the copy is taken to form part of the register.

”.

17. Section 21A amended

Section 21A is amended by deleting “21A.” and inserting instead —

“ **21.** ”.

18. Section 21B replaced by sections 21A, 21B and 21C

Section 21B is repealed and the following sections are inserted instead —

“

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 Board in respect of the premises.
- (2) A planning certificate is a certificate from the authority responsible for town 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.
- (3) If an application complies with subsection (1) in relation to any premises, the Board, if it 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 Board, in granting the application, may attach a condition to the registration that —
 - (a) the operation of the registration is suspended until the Board is satisfied that all necessary consents have been given; and
 - (b) the grant lapses if the Board is not so satisfied before the expiry of a period specified by it.
- (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.

21B. Changes in authorised premises

- (1) The Board may on —
 - (a) the application of the registered person;
 - (b) the production of any planning certificate in terms of section 21A(2) that the Board 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 Board 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.

21C. Certificate relating to premises to be displayed

- (1) The Board 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.

”.

19. Section 21C amended

Section 21C is amended as follows:

- (a) by deleting “21C.” and inserting instead —
“ **21D.** ”.
- (b) by deleting “The holder of a car market operator’s licence” and inserting instead —

“

A person who is registered as a car market operator

”;

- (c) by deleting “a licence” and inserting instead —
“ registration ”;
- (d) by deleting “the licence” in both places where it appears and inserting instead —
“ the registration ”.

20. Section 22 amended

- (1) Section 22(1) is amended by deleting “an order — ” and inserting instead —
“ order to which this subsection applies ”.
- (2) Section 22(1)(a), (b), (c) and (d) are deleted.
- (3) After section 22(1) the following subsection is inserted—

“

- (1a) Subsection (1) applies to a decision or order of the Board —
 - (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 its disciplinary powers under section 20(1), (2) or (3);
- (d) in exercise of its powers in relation to conditions and restrictions under section 18A or 20H;
- (e) revoking a temporary permit under section 20H(4); or
- (f) refusing to approve of a change submitted to it under section 23.

”.

(4) Section 22(1a) is amended as follows:

- (a) by deleting the subsection designation “(1a)” and inserting instead —
“ (1b) ”;
- (b) in paragraph (a) by deleting “a licence” and inserting instead —
“
an authorisation or the renewal of an
authorisation

”;

- (c) by deleting paragraph (b) and inserting instead —

“

- (b) authorising premises under section 20E or 21A;

”.

- (5) Section 22(2) and (6) are amended by deleting “(1a)” in each place where it occurs and inserting instead —

“ (1b) ”.

21. Section 22A amended

- (1) Section 22A(1) is amended as follows:

- (a) by deleting “and who pursuant to an order under section 20” and inserting instead —

“ or certificate of registration and who ”;

- (b) in paragraph (b) by deleting “a licence” and inserting instead —

“ that licence or registration ”;

- (c) by inserting after “the licence” —

“ or certificate of registration ”;

- (d) by deleting “21 or 21B” and inserting instead —

“ 20G or 21C ”.

- (2) Section 22A(3) is repealed and the following subsection is inserted instead —

“

- (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 secretary any relevant licence or certificate of registration.

”.

22. Section 23 amended

- (1) Section 23(1) is amended by deleting “is granted under subsection (2) of section 15 or subsection (2) of section 17A” and inserting instead —
- “
under section 15(2) or a registration under section 17B(2) is in force
”.
- (2) Section 23(1) is amended by inserting after “to the secretary” —
- “
by the holder of the licence or the registered person, as the case may require
”.
- (3) Section 23(2) is amended by deleting “is granted under subsection (3) of section 15 or subsection (3) of section 17A” and inserting instead —
- “
under section 15(3) or a registration under section 17B(3) is in force
”.
- (4) Section 23(2) is amended by inserting after “to the secretary” —
- “
by the holder of the licence or the registered person, as the case may require
”.
- (5) Section 23(5) is amended by deleting “car market operator” and inserting instead —
- “ registered person ”.

23. Section 24 amended

- (1) Section 24(1) is repealed and the following subsection is inserted instead —

“

- (1) The secretary 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) Section 24(2) is amended as follows:

- (a) by deleting “a licence” and inserting instead —
“ an authorisation ”;
- (b) by deleting “valid licence” and inserting instead —
“ valid authorisation ”.

- (3) After section 24(4) the following subsections are inserted —

“

- (5) The register shall be open for inspection by any person, on payment of the prescribed fee, during normal office hours of the Board.
- (6) A person may, on payment of the prescribed fee, obtain from the secretary a certificate under his hand —
 - (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.

”.

24. Section 25 amended

- (1) Section 25(1) is amended by inserting after “financier” —
“ or car hire operator ”.
- (2) Section 25(1a) is amended by inserting after “financier” in both places where it occurs —
“ or car hire operator ”.
- (3) Section 25(2) is amended by deleting “or financier” and inserting instead —
“ , financier or car hire operator ”.
- (4) Section 25(2a) is amended as follows:
- (a) by deleting “The holder of a car market operator’s licence” and inserting instead —
“
A person who is registered as a car market operator
”;
- (b) by deleting “in respect of which the licence is granted” and inserting instead —
“
authorised under section 21A in relation to that registration
”;
- (c) in paragraph (a) by deleting “licence” and inserting instead —
“ registration ”.

- (5) Section 25(2e) is amended by deleting “at premises pursuant to a car market operator’s licence” and inserting instead —

“

by a person who is registered as a car market operator at premises authorised under section 21A in relation to that registration

”.

25. Section 26 amended

Section 26(1) is amended by inserting after “financier” —

“ or car hire operator ”.

26. Sections 30, 31 and 31A replaced by sections 30, 31, 31A, 31B, 31C and 31D

Sections 30, 31 and 31A are repealed and the following sections are inserted instead —

“

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 —

s. 26.

- (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.

31. Exemptions from compliance with this Act

- (1) The Board 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 Board —
 - (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 Board at any time.

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

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

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.

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.

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.

”.

27. Section 32 amended

Section 32(2) is amended by inserting after “financier” in the 3 places where it occurs —

“ or car hire operator ”.

28. Section 40A amended

Section 40A(3)(a) and (b) are amended by deleting “the holder of a car market operator’s licence” in both places where it occurs and inserting instead —

“ registered under section 17B as a car market operator ”.

29. Section 41A amended

- (1) Section 41A(1) is amended as follows:

- (a) in paragraph (a) by inserting after “financier” the following —

“ or car hire operator ”;

- (b) in paragraph (b) by inserting after “financier” in both places where it occurs the following —

“ or car hire operator ”.

- (2) Section 41A(5) is amended as follows:

s. 30

- (a) by deleting paragraph (b)(i) and inserting instead —
“
(i) where the vehicle was sold by a
financier or car hire operator, that
financier or care hire operator;
”;
- (b) in paragraph (b) by deleting “or person” and inserting
instead —
“ , person or car hire operator ”;
- (c) in paragraph (c) by deleting “or the financier” and
inserting instead —
“ , the financier or the car hire operator ”.

30. Section 53 amended

Section 53 is amended by deleting “subsection (5) of
section 30” and inserting instead —

“ 31B ”.

**31. Various provisions amended because of change to
expression “salesperson”**

- (1) The Act is amended by deleting “salesman” where it occurs in
the provisions referred to in the Table to this subsection and in
each case inserting —

“ salesperson ”.

Table

s. 17(d)	s. 32(2)
s. 27(1) (twice)	s. 33(7)(a)
s. 27(1a)(a)	s. 42
s. 27(3)	s. 54(1) (twice)
s. 29(1)	s. 54(2)

- (2) Section 5(1) is amended in the definition of “salesman” by deleting ““salesman”” and inserting instead —
“ **“salesperson”** ”.
- (3) Section 5(1) is amended by deleting the definition of “salesman’s licence” and inserting the following definition instead —
“
“**salesperson’s licence**” means a salesperson’s licence granted under section 17;
”.
- (4) Section 16(c) is amended by deleting “salesmen” and inserting instead —
“ salespersons ”.
- (5) Section 17 is amended as follows:
(a) by deleting “salesman’s” and inserting instead —
“ salesperson’s ”;
(b) in paragraph (c) by deleting “salesmen” and inserting instead —
“ salespersons ”.
- (6) Section 24(3) is amended by deleting “salesman’s” and inserting instead —
“ salesperson’s ”.
- (7) Section 56(2)(g) is amended by deleting “salesmen” and inserting instead —
“ salespersons ”.

s. 32

32. Various sections amended to change “registered” to “authorised”

- (1) The Act is amended by deleting “registered” where it occurs in the provisions referred to in the Table to this section and in each case inserting —

“ authorised ”.

Table

s. 25(1)	s. 27(4)(b)
s. 27(1)	s. 53(1) (twice)
s. 27(3) (twice)	

- (2) Section 27(1a)(b) is amended by deleting “ “registered” and inserting instead —

“ **“authorised** ”.

Part 3 — Amendments relating to offences and penalties

33. Section 14 amended

Section 14(3) is amended as follows:

- (a) by deleting “If any person” and inserting instead —
“ A person shall not ”;
- (b) in paragraph (a) —
 - (i) by deleting “who has” and inserting instead —
“ having ”;
 - (ii) by deleting “fails” and inserting instead —
“ fail ”;
- (c) in paragraph (b) by deleting “interrupts” and inserting instead —
“ interrupt ”;
- (d) in paragraph (c) —
 - (i) by deleting “refuses” and inserting instead —
“ refuse ”;
 - (ii) by deleting “fails” and inserting instead —
“ fail ”;
 - (iii) by deleting “makes a false statement to the Board,” and inserting instead —
“ make a false statement to the Board. ”;
- (e) by deleting “he shall be guilty of an offence and liable to a penalty not exceeding \$400.”;
- (f) by inserting at the foot of the subsection —
“ Penalty: \$5 000. ”.

34. Section 21A amended

Section 21A is amended by inserting at the foot of the section —

“ Penalty: \$1 500. ”.

35. Section 21C amended

Section 21C is amended by inserting at the foot of the section —

“ Penalty: \$1 500. ”.

36. Section 22A amended

Section 22A is amended by inserting at the foot of the section —

“ Penalty: \$1 500. ”.

37. Section 23 amended

- (1) Section 23(1) is amended by inserting at the foot of the subsection —

“ Penalty: \$2 000. ”.

- (2) Section 23(2) is amended by inserting at the foot of the subsection —

“ Penalty: \$2 000. ”.

38. Section 24 amended

Section 24(3) is amended by inserting at the foot of the subsection —

“ Penalty: \$1 500. ”.

39. Section 25 amended

- (1) Section 25(2e) is amended in the penalty provision by deleting “\$200” and inserting instead —

“ \$1 000 ”.

- (2) Section 25(3) is repealed and the following subsection is inserted instead —

“

- (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.

”.

- (3) Section 25 is amended by inserting at the foot of the section —

“

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

”.

40. Section 26 amended

- (1) Section 26(1) is amended by inserting at the foot of the subsection —

“ Penalty: \$2 000. ”.

- (2) Section 26(2) is amended by inserting at the foot of the subsection —

“ Penalty: \$2 000. ”.

s. 41

41. Section 27 amended

- (1) Section 27(1) is amended by inserting at the foot of the subsection —

“ Penalty: \$5 000. ”.

- (2) Section 27(3) is amended by inserting at the foot of the subsection —

“ Penalty: \$5 000. ”.

42. Section 29 amended

Section 29 is amended by inserting at the foot of the section —

“

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

”.

43. Section 33 amended

- (1) Section 33(1) is repealed and the following subsection is inserted instead —

“

- (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) Section 33(4) is amended in the penalty provision by deleting “\$500” and inserting instead —

“ \$5 000 ”.

(3) Section 33(7) is amended by inserting at the foot of the subsection —

“ Penalty: \$1 000. ”.

44. Section 37 amended

Section 37(5) is amended in the penalty provision by deleting “\$500” and inserting instead —

“ \$5 000 ”.

45. Section 40B amended

Section 40B(1) is amended in the penalty provision by deleting “\$500” and inserting instead —

“ \$2 000 ”.

46. Section 41 amended

Section 41(1) is amended in the penalty provision by deleting “\$500” and inserting instead —

“ \$2 000 ”.

47. Section 43 amended

Section 43(1) is amended in the penalty provision by deleting “\$500” and inserting instead —

“ \$1 000 ”.

48. Section 44 amended

Section 44(1) is amended in the penalty provision by deleting “\$500” and inserting instead —

“ \$5 000 ”.

49. Section 45 amended

Section 45(1) is amended as follows:

- (a) by inserting after paragraph (a) the following paragraph —

“

- (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) by deleting the penalty provision and inserting instead —

“

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

Penalty applicable to other paragraphs: \$5 000.

”.

50. Section 50 amended

Section 50 is amended in the penalty provision by deleting “\$500” and inserting instead —

“ \$5 000 ”.

51. Section 52 amended

- (1) Section 52(1) and (2) are repealed.
- (2) Section 52(4) is amended by deleting “12 months” and inserting instead —
“ 2 years ”.

52. Section 55A inserted

After section 55 the following section is inserted —

“

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 have a complaint of the alleged offence heard and determined by 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 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.

”.

53. Section 56 amended

Section 56(2) is amended as follows:

- (a) by deleting “and” after paragraph (g);

(b) by inserting after paragraph (g) —

“

(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

”;

(c) in paragraph (h) by deleting “\$200” and inserting instead —

“ \$2 000 ”.

Part 4 — Amendments relating to dealings in vehicles

54. Section 5 amended

Section 5(1) is amended in the definition of “demonstration vehicle”, in paragraph (b), by deleting “subsection (1) of”.

55. Heading inserted

After the heading to Part III, the following heading is inserted —

“ **Division 1 — Preliminary** ”.

56. Section 32 amended

Section 32(1) is amended by deleting “The” and inserting instead —

“ Without limiting Division 2, the ”.

57. Sections 32A to 32P and Division headings inserted

After section 32 the following sections and Division headings are inserted —

“

Division 2 — Sales on consignment

32A. Definitions

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.

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

(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.

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.

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.

32E. Withdrawals from trust account

- (1) A dealer shall not, without the prior written approval of the Board, 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;
- (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.

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.

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.

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.

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 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.

32J. Special audit of trust account

- (1) The Board may exercise the power in subsection (2) if it 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 Board 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 Board.

- (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.

32K. Trust accounts may be frozen by District Court

- (1) Where the Board, on an application made by it to the District Court, shows by evidence on affidavit to the satisfaction of the District Court 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 District Court 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 District Court thinks fit; and

- (b) relate to all or any one or more of the trust or other accounts, as the District Court 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 agent referred to in the order shows to the District Court 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.

32L. District Court may restrain use of trust accounts of deceased dealer

- (1) Where the District Court is satisfied, on the application of the Board, that a licensed dealer has died, the District Court 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 District Court thinks fit.
- (2) The District Court may order that the Board —
 - (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 account at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, in the name of the Board; and

(c) deal with those moneys according to law.

- (3) The District Court may, on the application of the Board, or any person interested, give such directions as the District Court thinks fit for the payment by the Board of any part of the moneys credited to the separate account under the order.

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 District Court to discharge or vary the order and to award such costs upon the application as it thinks fit.
- (2) The District Court is by this section empowered to discharge or vary the order and to make such further orders as it thinks fit.

32N. Schemes for distribution of trust funds

- (1) The District Court may, on the application of the Board, 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 District Court 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 account to be kept at the Treasury as part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*;
 - (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
 - (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 District Court for approval of the scheme and for directions in respect of the scheme.
- (4) The District Court may give such directions as it thinks fit in respect of —
- (a) the separate account at the Treasury;
 - (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.

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

- (1) Where an order is made under section 32K, 32L or 32N on the application of the Board, the Board 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 Board; 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 Board.
- (4) Every person on whom an order is served shall —
- (a) comply with the order; and
 - (b) permit others affected by the order to comply with the order.
- Penalty: \$5 000.
- (5) Nothing in subsection (4) affects any other penalty or liability a person may incur in failing to comply with the order or in failing to permit others affected by the order to comply with the order.
- (6) This section is sufficient authority and indemnity for complying with an order so made and served.

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 Board in relation to trust accounts;

- (ii) reporting of overdrawn trust accounts;
- (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 Board;
 - (vi) the costs of auditing;
 - (vii) when, and to whom, the auditor shall report; and

- (viii) the confidentiality and examination of
audit information.

Division 3 — Obligation to display particulars of vehicle

”

58. Heading inserted

After section 33 the following heading is inserted —

“

Division 4 — Obligation to repair certain defects

”

59. Section 34 replaced by sections 34, 34A, 34B, 34C, 34D, 34E, 34F and 34G

Section 34 is repealed and the following sections are inserted instead —

“

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.

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;
 - (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.

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.

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 —
 - (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.

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.

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.

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.

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.

”.

60. Section 35 amended

Section 35(2) is amended by deleting “subsection (1) of section 34 shall not apply to and in relation to that defect” and inserting instead —

“

that defect is not one for which the dealer is responsible under section 34

”.

61. Heading inserted

After section 35, the following heading is inserted —

“ **Division 5 — Disputes** ”.

62. Section 40 repealed

Section 40 is repealed.

63. Section 42A inserted

After section 42 the following section is inserted —

“

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 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.

”.

64. Section 56 amended

Section 56(2)(e) is amended by deleting “exempted from the provisions of subsection (1) of section 34” and inserting instead —

“

excluded from the operation of Division 3 of Part III

”.

Part 5 — Miscellaneous amendments

65. Section 6 amended

Section 6(1) is amended by deleting “to 25, both inclusive” and inserting instead —

“ to 23A, 24 and 25 ”.

66. Section 8 amended

Section 8(1)(b) is amended by deleting “Western Australian Automobile Chamber of Commerce (Inc.)” and inserting instead —

“

Motor Trade Association of Western Australia
Incorporated

”.

67. Section 27 amended

Section 27(1a) is amended by deleting “and selling” and inserting instead —

“ or selling ”.

68. Section 28 replaced by sections 28 and 28A

Section 28 is repealed and the following sections are inserted instead —

“

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.
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.

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*.

”.

69. Section 29 amended

- (1) Section 29(1) is amended by deleting the passage from and including “of which the sale” to the end of the subsection and inserting instead —

“ in respect of which an order is in force under section 28. ”.

- (2) Section 29(2) is repealed and the following subsection is inserted instead —

“

- (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).

”.

Part 6 — Consequential amendments

70. *Chattel Securities Act 1987* amended

The *Chattel Securities Act 1987** is amended in section 7(2) by deleting the passage from “the security interest from” to the end of the subsection and inserting instead —

“

the security interest from —

- (a) a motor vehicle dealer licensed; or
- (b) a car market operator registered,

under the *Motor Vehicle Dealers Act 1973*, the security interest of the secured party is extinguished.

”.

[*Act No. 101 of 1987.

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 56.]

71. *Pawnbrokers and Second-hand Dealers Act 1994* amended

The *Pawnbrokers and Second-hand Dealers Act 1994** is amended by deleting section 4(1)(c) and inserting instead —

“

- (c) a holder of an authorisation under the *Motor Vehicle Dealers Act 1973* who is acting in accordance with the authorisation.

”.

[*Act No. 88 of 1994.

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 326, and Act No 10 of 2001.]

72. Road Traffic Act 1974 amended

The *Road Traffic Act 1974** is amended in section 23A as follows:

- (a) by deleting “or” after paragraph (b);
- (b) in paragraph (c) by deleting “Act.” and inserting instead —
“ Act; or ”;
- (c) by inserting the following paragraph —
“
 - (d) the licence for the vehicle is surrendered in accordance with section 28A of the *Motor Vehicle Dealers Act 1973*.”.

[* *Reprinted as at 19 October 2001.*]

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.