

MOTOR VEHICLE DEALERS.

No. 87 of 1981.

AN ACT to amend the Motor Vehicle Dealers Act 1973-1979.

[Assented to 26 November 1981.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Motor Vehicle Dealers Amendment Act 1981*. Short title and citation.

(2) In this Act the Motor Vehicle Dealers Act 1973-1979 is referred to as the principal Act. Approved for reprint 14 December 1978.

(3) The principal Act as amended by this Act may be cited as the Motor Vehicle Dealers Act 1973-1981. Amended by Act No. 49 of 1979.

Commence-
ment.

2. (1) Subject to subsection (2) of this section this Act shall come into operation on the day on which it is assented to by the Governor.

(2) Sections 15 and 16 of this Act shall come into operation on a day to be fixed by proclamation.

Section 3
repealed.

3. Section 3 of the principal Act is repealed.

Section 5
amended.

4. Section 5 of the principal Act is amended—

(a) in subsection (1) by inserting before the definition “cash price” the following definitions—

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

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

“car market operator’s licence” means a car market operator’s licence, granted under section 17A. ’ ;

(b) in subsection (2) by deleting “sections 26” and substituting the following—

“ sections 25, 26 ” ; and

(c) by inserting after subsection (6) the following subsection—

“ (7) In this Act a reference to the conduct of a car market at premises pursuant to a car market operator’s licence is a reference to the conduct of

a car market at the premises while the premises are being provided under the authority of the licence. ” .

5. After section 17 of the principal Act the following sections are inserted—

Sections 17A
and 17B
inserted.

“ 17A. (1) Subject to this Act, a person, not being a body corporate, who applies to the Board in the approved form for a car market operator's licence and pays to the Board the prescribed fee therefor shall be granted such a licence upon satisfying the Board—

Application
for car
market
operator's
licence.

- (a) that he is of or over the age of 18 years;
- (b) that he is a person of good character and repute and a fit and proper person to hold such a licence;
- (c) that he has sufficient material and financial resources available to him to enable him to comply with the requirements of this Act; and
- (d) that he understands fully the duties and obligations imposed by this Act on car market operators.

(2) Subject to this Act, two or more persons constituting a firm who apply to the Board in the prescribed form for a car market operator's licence and pay to the Board the prescribed fee therefor shall be granted such a licence upon satisfying the Board—

- (a) that all of the natural persons (if any) by whom the firm is constituted and all of the persons concerned in the management or conduct of any body corporate by which the firm is constituted are persons of good character and repute and are persons fit to be concerned in the management or control of the business of providing premises for a car market;

- (b) that the persons by whom or by which the firm is constituted have sufficient material and financial resources available to them to enable them to comply with the requirements of this Act; and
- (c) that at least one of the natural persons referred to in paragraph (a) of this subsection understands fully the duties and obligations imposed by this Act on car market operators.

(3) Subject to this Act, a body corporate which applies to the Board in the prescribed form for a car market operator's licence and pays to the Board the prescribed fee therefor shall be granted such a licence upon satisfying the Board—

- (a) that all of the persons concerned in the management or conduct of the body corporate are persons of good character and repute and are persons fit to be concerned in the management or control of the business of providing premises for a car market;
- (b) that it has sufficient material and financial resources available to it to enable it to comply with the requirements of this Act; and
- (c) that at least one of the persons referred to in paragraph (a) of this subsection understands fully the duties and obligations imposed by this Act on car market operators.

Car market operator's licence and other licence under this Act not to be held by same person.

17B. (1) A dealer's licence, yard manager's licence or salesman's licence ceases to have effect if the holder of the licence is granted a car market operator's licence.

(2) A car market operator's licence ceases to have effect if the holder of the licence is granted a dealer's licence, yard manager's licence or salesman's licence. ” .

6. Section 18 of the principal Act is amended in subsection (2) by inserting after “sections 15, 16, 17” the following—

Section 18
amended.

“ 17A ” .

7. Section 19 of the principal Act is amended in subsection (3) by deleting “or 17” and substituting the following—

Section 19
amended.

“ , 17 or 17A ” .

8. Section 20 of the principal Act is amended in paragraph (e) of subsection (1) by inserting after “licence” the following—

Section 20
amended.

“ or a car market operator's licence ” .

9. After section 21A of the principal Act the following sections are inserted—

Sections 21B
and 21C
inserted.

“ 21B. (1) An applicant for the grant of a car market operator's licence shall specify in his application the premises that he proposes to provide for a car market under the authority of that licence.

Premises at
which car
markets may
be conducted

(2) Where the Board grants an application for a car market operator's licence, it shall then consider whether each of the premises specified in the application pursuant to subsection (1) of this section is suitable for the purpose of the conduct thereof of a car market and shall issue a certificate of registration in the approved form in respect of each of the premises which it considers suitable for that purpose.

(3) Subject to this section, a car market operator may at any time during the currency of his car market operator's licence apply to

the Board in the approved form for the issue of a certificate in respect of any premises that he proposes to provide for a car market under the authority of his licence but in respect of which a certificate was not issued when that licence was granted, and where such an application is duly made, the Board—

- (a) shall consider whether the premises are suitable for the purpose of the conduct thereof of a car market; and
- (b) shall, if it considers the premises to be suitable for that purpose, issue a certificate of registration in the approved form in respect of the premises.

(4) An application under this section shall be made not less than one month before the date on which the dealer proposes to commence providing the premises the subject of the application as premises for a car market.

Premises and advertisements to bear name and number.

21C. The holder of a car market operator's licence shall cause the business name stated in his application for a licence and the number of the licence to appear—

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

Section 22 amended.

10. Section 22 of the principal Act is amended in paragraph (c) of subsection (1) and paragraph (b) of subsection (1a) by inserting after “section 21” the following—

“ or 21B ” .

11. Section 22A of the principal Act is amended— Section 22A amended.

(a) in subsection (1) by inserting after “section 21” the following—

“ or 21B ” ;

(b) in subsection (2) by inserting after “dealer” the following—

“ or car market operator ” ; and

(c) by inserting after subsection (2) the following subsection—

“ (3) Where, pursuant to section 17B, a licence ceases to have effect the person who was the holder of the licence shall return the licence together with any certificates issued to him under section 21 or 21B to the secretary. ” .

12. Section 23 of the principal Act is amended— Section 23 amended.

(a) in subsection (1) by inserting after “section 15” the following—

“ or subsection (2) of section 17A ” ;

(b) in subsection (2) by inserting after “section 15” the following—

“ or subsection (3) of section 17A ” ;
and

(c) in subsections (4) and (5) by inserting after “dealer” the following—

“ or car market operator, as the case may be, ” .

13. Section 25 of the principal Act is amended by inserting after subsection (2) the following subsections— Section 25 amended.

“ (2a) The holder of a car market operator’s licence shall keep or cause to be kept a register, in the prescribed form, for any premises in

respect of which the licence is granted, and shall record or cause to be recorded in that register the prescribed particulars of—

- (a) every vehicle offered, exposed or displayed for sale at the premises in the course of a car market conducted at the premises pursuant to the licence; and
- (b) where he is notified under subsection (2e) of this section of the sale at the premises of a vehicle referred to in paragraph (a) of this subsection, that sale.

(2b) A car market operator shall produce the register kept pursuant to subsection (2a) of this section for inspection, on demand, by any authorized officer, any member of the Police Force or any authorized officer of the Road Traffic Authority.

(2c) Paragraph (a) of subsection (2a) of this section shall be complied with in relation to a vehicle before the vehicle is offered, exposed or displayed for sale.

(2d) Paragraph (b) of subsection (2a) of this section shall be complied with in relation to a vehicle forthwith after notification of the sale of the vehicle is given under subsection (2e) of this section.

(2e) Where a car market is being conducted at premises pursuant to a car market operator's licence a person who sells a vehicle at the premises shall, forthwith after he sells the vehicle, notify the car market operator of the sale.

Penalty: \$200. " .

14. After section 31 of the principal Act the following section is inserted—

Section 31A
inserted.

“ 31A. (1) On and after the appointed day a person who is not the holder of a valid car market operator’s licence and who carries on or acts in or advertises that he carries on or acts in or is willing to carry on or act in, the business of a car market operator commits an offence.

Prohibition
on operation
of car
markets.

Penalty: \$3 000, and in addition a further penalty of \$100 a day for each day on which the offence continues.

(2) On and after the appointed day a car market operator shall not provide premises for a car market other than premises—

(a) which are registered in his name under section 21B or to which a certificate under section 21B issued in his name relates; and

(b) which are maintained in a condition which in the opinion of the Board is required in the public interest and is suitable for the purpose.

Penalty: \$500.

(3) In this section “appointed day” means such day as is fixed by the Minister by notice published in the *Government Gazette* to be the appointed day for the purposes of this section. ” .

15. Before Part IV of the principal Act the following Part is inserted—

Part IIIA
inserted.

“ PART IIIA—OBLIGATIONS OF CAR
MARKET OPERATORS.

40A. (1) Subject to subsections (4) and (5) of this section where, after the coming into operation of section 15 of the Motor

Liability of
car market
operator for
certain
losses.

Vehicle Dealers Amendment Act 1981, a second-hand vehicle is sold—

- (a) at premises provided by a car market operator; and
- (b) at the time of the conduct of a car market at those premises,

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

(2) Without limiting the generality of subsection (1) of this section, a vehicle shall be deemed to be sold—

- (a) at premises provided by a car market operator; and
- (b) at the time of the conduct of a car market at those premises,

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

(3) The fact that a person—

- (a) has since the material time ceased to be the holder of a car market operator's licence;
- (b) was not, at the material time, the holder of a car market operator's licence; or
- (c) has, since the material time, ceased to be a car market operator,

does not affect his liability under subsection (1) of this section.

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

(5) Subsection (1) of this section does not apply to or in relation to the sale of a vehicle to a dealer.

40B. (1) A car market operator contravenes this section if a second-hand vehicle is offered, exposed or displayed for sale in the course of a car market conducted at premises provided by him unless there is attached to the vehicle in the manner specified in subsection (2) of this section a notice in the prescribed form containing statements—

Notice as to warranties to be displayed.

- (a) to the effect that the title to the vehicle is either—
 - (i) guaranteed by the car market operator; or
 - (ii) not guaranteed by the car market operator; and
- (b) to the effect that the sale of the vehicle does not create any obligation under section 34.

Penalty: \$500.

(2) For the purposes of subsection (1) of this section, the notice shall—

- (a) except as provided in paragraph (b) of this subsection, be placed inside the vehicle where it can be clearly read through the windscreen; and

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

Section 49A
inserted.

16. After section 49 of the principal Act the following section is inserted—

No indemnity
for car
market
operator.

“ 49A. Where a person who is or has been a car market operator incurs any costs or expenses by virtue of the operation of this Act in relation to the sale of a second-hand vehicle, the person shall not be entitled to be indemnified in respect of those costs or expenses by the vendor or any antecedent owner of that vehicle and any purported contract or agreement of such indemnity shall, by force of this section, be void and of no effect. ” .
