

Western Australia

Motor Vehicle Repairers Act 2003

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Motor Vehicle Repairers Act 2003

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Motor Vehicle Repairers Act 2003

An Act to provide for —

- **the licensing of persons whose business involves the carrying out of any prescribed class of motor vehicle repair work;**
 - **the carrying out of such repair work only by, or under the supervision of, individuals who are certified under this Act;**
 - **the Motor Vehicle Industry Board to be responsible for such licensing and certification and for the conciliation of certain disputes relating to motor vehicle repair work;**
 - **the payment of compensation for certain losses relating to motor vehicle repair work,**
- and for related purposes.**

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Motor Vehicle Repairers Act 2003*.

2. Commencement

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

[3-8. Have not come into operation².]

[Pt. 2-11 and Sch. 1-3 have not come into operation².]

Notes

¹ This is a compilation of the *Motor Vehicle Repairers Act 2003*. The following table contains information about that Act ^{1a}.

Compilation table

Short title	Number and Year	Assent	Commencement
<i>Motor Vehicle Repairers Act 2003</i>	68 of 2003	9 Dec 2003	s. 1-2: 9 Dec 2003

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

Provisions that have not come into operation

Short title	Number and Year	Assent	Commencement
<i>Motor Vehicle Repairers Act 2003</i> s. 3-8, Pt. 2-11 and Sch. 1-3 ²	68 of 2003 (as amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 80; No. 38 of 2005 s. 15; No. 28 of 2006 Pt. 4 Div. 16) ³	9 Dec 2003	To be proclaimed (see s. 2)

² On the date as at which this compilation was prepared, the *Motor Vehicle Repairers Act 2003* s. 3-8, Pt. 2-11 and Sch. 1-3 (as amended by No. 59 of 2004 s. 141, No. 84 of 2004 s. 80, No. 38 of 2005 s. 15 and No. 28 of 2006 Pt. 4 Div. 16 ³) had not come into operation. They read as follows:

“

3. Interpretation

- (1) In this Act, unless the contrary intention appears —
 “**approved**”, in relation to a form, means approved by the Board for the purposes of the provision in which the term appears;

- “authorised officer”** means an officer designated as such under section 8;
- “Board”** means the Motor Vehicle Industry Board established by section 7 of the *Motor Vehicle Dealers Act 1973*;
- “business licence”** means a business licence granted under section 16, 18 or 20;
- “certificate”** means —
- (a) a repairer’s certificate; or
 - (b) a provisional repairer’s certificate;
- “Commissioner”** has the meaning given to that term in section 5(1) of the *Motor Vehicle Dealers Act 1973*;
- “Department”** means the department of the Public Service principally assisting the Minister in the administration of this Act;
- “Director General”** means the chief executive officer of the Department;
- “inquiry”** has the meaning given by subsection (4);
- “licensee”** means the holder of a business licence;
- “motor vehicle”** means a vehicle that is propelled wholly or partly by —
- (a) any volatile spirit, steam, gas, oil or electricity; or
 - (b) any other means apart from human or animal power, and includes a trailer, but does not include —
 - (c) a vehicle that is constructed or adapted —
 - (i) for use on a railway or tramway;
 - (ii) principally for use in primary production; or
 - (iii) otherwise for use in a manner that does not involve the carriage of persons or goods over public roads;
- or
- (d) anything that is excluded from this definition by the regulations;
- “provisional repairer’s certificate”** means a provisional repairer’s certificate granted under section 44;
- “regulations”** means regulations made under section 114;
- “repair work”** means any kind of work that is done on or to motor vehicles and that under section 5(1) is prescribed by the regulations to be repair work but does not include any kind of such work that is prescribed by the regulations not to be repair work;

“repairer’s certificate” means a repairer’s certificate granted under section 42;

“secretary” means the secretary referred to in section 13 of the *Motor Vehicle Dealers Act 1973*.

- (2) References in this Act to repairing or repair work in relation to motor vehicles includes the repairing of any part of, or accessory to, a motor vehicle that has been removed from the vehicle for repair.
- (3) If a business licence is granted to 2 or more persons under section 18, references in this Act to the licensee are to those persons jointly, unless a contrary intention appears.
- (4) The references in sections 23(2)(a), 32(2)(a), 62(3)(a) and 66(a) to an inquiry are to proceedings of the kind authorised by section 14 of the *Motor Vehicle Dealers Act 1973*, and that section applies accordingly.

[Section 3 amended by No. 28 of 2006 s. 111.]

4. Limitation on imposition of penalties for offences

The power of a court to impose a penalty on a person for an offence against this Act is subject to the limitation in Schedule 2 clause 2(1).

5. Repair work, prescription of

- (1) The regulations may prescribe any kind of work that is done on or to motor vehicles to be repair work for the purposes of this Act, including, but not limited to —
 - (a) examining motor vehicles;
 - (b) diagnosing and detecting faults in motor vehicles;
 - (c) adjusting, servicing and maintaining motor vehicles;
 - (d) overhauling motor vehicles;
 - (e) replacing components of motor vehicles;
 - (f) modifying and altering motor vehicles; and
 - (g) painting or treating the surfaces of motor vehicles.
- (2) The regulations may prescribe any kind of work that is done on or to motor vehicles not to be repair work for the purposes of this Act.
- (3) For the purposes of Part 2, the regulations may classify repair work.
- (4) For the purposes of Part 3, the regulations may classify repair work.

- (5) The classification of repair work for the purposes of Part 2 need not be the same as the classification of repair work for the purposes of Part 3.

6. Exemptions

- (1) The regulations may exempt from all or any of the provisions of this Act —
- (a) any person or class of persons;
 - (b) persons carrying on any business or any specified class of business; or
 - (c) any other class of person, act, matter or thing.
- (2) An exemption may be expressed to apply —
- (a) generally; or
 - (b) only in respect of a specified area or specified areas of the State.
- (3) The regulations may provide —
- (a) for circumstances in which, and conditions subject to which, an exemption is to apply; and
 - (b) that an exemption is of no effect at any time when any condition to which it is subject is not being observed.

7. Commissioner's powers

Sections 19, 20, 21, 22, 23, 23A, 24 and 25 of the Consumer Affairs Act 1971 apply, with such modifications as are necessary, to and in relation to the functions of the Commissioner and persons and matters affected by the exercise of those functions as if the sections were part of this Act.

[Section 7 inserted by No. 28 of 2006 s. 112.]

8. Authorised officers

- (1) The Director General may designate any officer of the Department as an authorised officer for the purposes of this Act.
- (2) The Director General is to issue a certificate of authorisation to each person who is designated as an authorised officer under subsection (1).
- (3) An authorised officer is to produce the certificate whenever required to do so by a person in respect of whom he or she has exercised, or is about to exercise, any power under this Act.
- (4) Production of a certificate referred to in subsection (2) in respect of a person is evidence in any court that the person is duly designated under subsection (1).

Part 2 — Licensing of motor vehicle repair businesses

Division 1 — Repair businesses to be licensed

9. Licensing requirement

- (1) A person or firm must not carry on a business that consists of or includes the carrying out of repair work of a class prescribed by the regulations except under and in accordance with a business licence for that class of repair work.

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

- (2) For the purposes of this section a business does not include any part of the business that involves work that is not repair work.

10. Exceptions to section 9

- (1) Section 9 does not apply to —

- (a) a person or firm so far as the person or firm carries out repair work only on motor vehicles owned or used by the person or firm;
- (b) a person or firm so far as the person or firm —
- (i) holds a licence under the *Motor Vehicle Dealers Act 1973*; and
 - (ii) carries out repair work for the purposes of section 34 of that Act, but not otherwise;

or

- (c) a person so far as he or she carries out repair work on motor vehicles only in the course of his or her employment with another person.

- (2) Section 9 does not apply to a person or firm so far as the person or firm —

- (a) in the course of carrying on business under a business licence accepts repair work of a class for which the person or firm does not hold a business licence;
- (b) does not advertise or hold out in any way that the person or firm —
- (i) carries on; or
 - (ii) is willing to carry on,
- business that consists of or includes the carrying out of that class of repair work; and
- (c) by agreement made with a person or firm that holds a business licence for that class of repair work arranges for the repair work to be carried out by that person or firm.

11. Advertising

A person or firm must not advertise, or otherwise hold out in any way, that the person or firm —

- (a) carries on; or
- (b) is willing to carry on,

business that consists of or includes the carrying out of any class of repair work on motor vehicles unless the person or firm holds a business licence for that class of repair work.

Penalty: \$50 000.

Division 2 — Application for and grant of business licence

12. Interpretation

In this Division —

“**sufficient resources**”, in relation to a business licence applied for, means —

- (a) any tools and equipment that may be prescribed by the regulations in respect of the class of repair work to which the licence applies; and
- (b) sufficient material, manpower and financial resources, apart from tools and equipment so prescribed, to carry on business doing the class of repair work to which the licence applies.

13. Application requirements

- (1) This section applies to all applications under this Part.
- (2) An application may relate to more than one class of repair work.
- (3) An application —
 - (a) must be —
 - (i) made in the form approved; and
 - (ii) accompanied by the fee prescribed, for the class or classes of repair work to which the application relates; and
 - (b) must comply with section 58 or that section as varied by section 60.
- (4) The applicant must provide the Board with any additional information or document that it may ask for.

14. Notification of changes to information provided

- (1) This section applies if —
 - (a) an application has been made for a business licence; and

- (b) a material change occurs in the information provided in the application before it is granted or refused.
- (2) The applicant or applicants must notify particulars of the change in writing to the Board within 14 days after it occurs.
Penalty: \$1 500.

15. Application by individual

An application for a business licence may be made to the Board by an individual.

16. Grant of business licence to individual

- (1) An application made under section 15 may be refused by the Board in accordance with sections 22 and 23.
- (2) Subject to subsection (1), the Board must grant a business licence if the application is duly made and the applicant satisfies it that he or she —
 - (a) has reached the age of 18 years;
 - (b) is a person of good character and repute;
 - (c) is a fit and proper person to hold the licence applied for;
 - (d) has sufficient resources; and
 - (e) has such other qualifications as may be prescribed by the regulations.

17. Application by firm

An application for a business licence may be made jointly to the Board by the 2 or more persons who together constitute a firm.

18. Grant of business licence to firm

- (1) An application made under section 17 may be refused by the Board in accordance with sections 22 and 23.
- (2) Subject to subsection (1), the Board must grant a business licence if the application is duly made and the applicants satisfy it that —
 - (a) each relevant person —
 - (i) has reached the age of 18 years;
 - (ii) is a person of good character and repute;
 - (iii) is a fit and proper person to be concerned in the management or conduct of the business to which the application relates; and
 - (iv) has such qualifications as may be prescribed by the regulations;

and

- (b) the persons who constitute the firm have sufficient resources.
- (3) In subsection (2) —
 - “**relevant person**” means an individual —
 - (a) who is a member of the firm; or
 - (b) who is concerned in the management or conduct of a body corporate that is a member of the firm.

19. Application by body corporate

An application for a business licence may be made to the Board by a body corporate.

20. Grant of business licence to body corporate

- (1) An application made under section 19 may be refused by the Board in accordance with sections 22 and 23.
- (2) Subject to subsection (1), the Board must grant a business licence if the application is duly made and the applicant satisfies it that —
 - (a) each relevant person —
 - (i) has reached the age of 18 years;
 - (ii) is a person of good character and repute;
 - (iii) is a fit and proper person to be concerned in the management or conduct of the business to which the application relates; and
 - (iv) has such qualifications as may be prescribed by the regulations;
 - and
 - (b) the body corporate has sufficient resources.
- (3) In subsection (2) —
 - “**relevant person**” means an individual who is concerned in the management or conduct of the body corporate.

21. Notification to Commissioner

The Board is to —

- (a) cause a copy of every application made under section 15, 17 or 19 to be sent to the Commissioner; and
- (b) give the Commissioner the opportunity to submit to it any matters he or she considers relevant to the application.

22. Board must refuse to grant business licence if applicant or other person disqualified

The Board must refuse to grant a business licence under section 16, 18 or 20 if —

- (a) the applicant, or any applicant, is disqualified from holding or obtaining a business licence by an order of the kind described in Schedule 1 item 1; or
- (b) a relevant person within the meaning of paragraph (b) of the definition of “relevant person” in section 18(3) or of section 20(3) is disqualified by an order of the kind described in Schedule 1 item 2.

23. Grounds for refusing a business licence

- (1) The Board may refuse to grant a business licence under section 16, 18 or 20 if there is any ground on which an order could be made under section 68 in respect of —

- (a) the applicant or any applicant; or
- (b) a person concerned in the management or conduct of a body corporate that is the applicant or one of the applicants,

if he or she were a person to whom Part 6 applies.

- (2) The Board cannot refuse to grant a business licence as mentioned in subsection (1) unless it has —

- (a) conducted an inquiry; and
- (b) given the applicant or each applicant an opportunity to show cause why the grant should not be refused.

24. Form of business licence

- (1) A business licence may be for more than one class of repair work.
- (2) Subject to this section, a business licence for a particular class, or particular classes, of repair work is to be in such form as the Board may determine for a business licence of that kind.
- (3) In determining the form of a business licence the Board must give effect to section 59(2).
- (4) For the purposes of section 108 a business licence must —
 - (a) bear a number; and
 - (b) show the name of the business carried on by the licensee.

25. Duplicate business licence

If the Board is satisfied that a business licence has been lost or destroyed it may issue a duplicate licence on payment of the prescribed fee.

26. Business licence not transferable

A business licence is not transferable except as provided in section 34.

Division 3 — Business licence conditions

27. Conditions may be imposed by Board

- (1) The Board may, when granting a business licence, attach any condition or restriction to the licence.
 - (2) The Board may at any time decide that —
 - (a) a new condition or restriction is to be attached to an existing business licence; or
 - (b) a condition or restriction attached to an existing business licence is to 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) If a decision under subsection (2) has taken effect the licensee must, if required by the Board —
 - (a) produce the licence to the Board for amendment; and
 - (b) do so within the time specified by the Board.
- Penalty: \$1 500.
- (7) The powers conferred by this section are in addition to the powers described in Schedule 1 item 4.

28. Regulations may prescribe conditions and restrictions

The regulations may prescribe conditions and restrictions that are to be taken to be attached to —

- (a) all business licences; or
- (b) all business licences for a particular class of repair work, unless otherwise specified in the licence.

29. Regulations may require licensee to hold insurance policy

- (1) A condition may be prescribed under section 28 requiring that a licensee take out and maintain, in respect of the business of the

licensee, any policy of insurance of a kind specified in the regulations.

- (2) The regulations may set out requirements for any policy referred to in subsection (1).

Division 4 — Duration and renewal

30. Duration of business licence

- (1) A business licence is to be issued or renewed for a period prescribed by the regulations.
- (2) A business licence has effect on and from the day on which it is issued and continues in force until —
- (a) if the licence is not renewed from time to time, the expiry of the period prescribed for the purposes of subsection (1);
 - (b) the licence is surrendered under section 53;
 - (c) the licence is cancelled under section 70;
 - (d) the holder or one of the holders is disqualified by an order of the kind described in Schedule 1 item 1; or
 - (e) the licence ceases to have effect under section 37,
- whichever first occurs.

31. Application for renewal of business licence

- (1) A licensee may apply to the Board for a renewal of the business licence.
- (2) An application for renewal must be made not later than 28 days before the day on which the business licence is due to expire as mentioned in section 30(2)(a).
- (3) The application must be —
- (a) made in the approved form; and
 - (b) accompanied by the prescribed fee.
- (4) The Board may by notice in writing to the licensee shorten the period referred to in subsection (2), and may do so either before or after the application is required to be made under that subsection.

32. Grounds for refusing to renew business licence

- (1) The Board may refuse to renew a business licence if there is any ground on which the Board could refuse to grant the licence under section 16, 18 or 20.
- (2) The Board cannot refuse to renew a business licence as mentioned in subsection (1) unless it has —
- (a) conducted an inquiry; and

- (b) given the licensee an opportunity to show cause why the renewal should not be refused.
- (3) If—
 - (a) an application for renewal of a business licence has been made; and
 - (b) the Board considers that —
 - (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 licence expires for the Board to hold an inquiry as required by subsection (2),

the Board may renew the licence in terms that the renewal does not affect the exercise, after the renewal, of the Board's power under section 68 in respect of that matter.

Division 5 — Changes in firm and management of business

33. Loss of member etc., notice to be given to Board

- (1) This section applies if, because of the death or resignation of the person or otherwise, one of the following events occurs —
 - (a) a person ceases to be a member of a firm that holds a business licence;
 - (b) a person ceases to be a person who is concerned in the management or conduct of a body corporate that is a member of a firm that holds a business licence; or
 - (c) a person ceases to be a person who is concerned in the management or conduct of a body corporate that holds a business licence.
- (2) The licensee concerned must, within 14 days after the event occurs, notify the Board in writing of the event.
Penalty: \$2 000.

34. New member in licensed firm

- (1) This section applies if —
 - (a) a business licence is held by a firm; and
 - (b) it is proposed to include a new member in the firm, irrespective of whether an increase in the number of members is involved.
- (2) The licensee may apply to the Board for the licence to be amended by including the proposed new member of the firm as one of the licensees.

- (3) The application must be made not less than 14 days before the change is to occur.
- (4) The Board may refuse to grant an application under subsection (2) only if it is satisfied that, if an application were made under section 17 by the persons who are proposed to be the holders of the licence as amended, a business licence would not be granted to them.
- (5) Subject to subsection (4), the Board must —
 - (a) grant an application that is duly made under subsection (2); and
 - (b) specify a day on which the amendment is to take effect.

35. New person in management of corporate member of licensed firm

- (1) This section applies if —
 - (a) a business licence is held by a firm;
 - (b) one of the licensees is a corporate member of the firm; and
 - (c) it is proposed to include a new person in the persons who are concerned in the management or conduct of that corporate member, irrespective of whether an increase in the number of such persons is involved.
- (2) The Board may, on the application of the licensee, approve any proposed inclusion.
- (3) The application must be made not less than 14 days before the inclusion is to occur.
- (4) The Board may refuse to give its approval under subsection (2) only if it is satisfied that a business licence would not be granted if —
 - (a) an application for a business licence in respect of the class of repair work concerned were made under section 17;
 - (b) the corporate member were one of the applicants; and
 - (c) at the time of the application the persons concerned in the management or conduct of the corporate member were the persons who would be so concerned if the proposed inclusion were approved.

36. New person in management of licensed body corporate

- (1) This section applies if —
 - (a) a business licence is held by a body corporate; and

- (b) it is proposed to include a new person in the persons who are concerned in the management or conduct of the body corporate, irrespective of whether an increase in the number of such persons is involved.
- (2) The Board may, on the application of the licensee, approve any proposed inclusion.
- (3) The application must be made not less than 14 days before the inclusion is to occur.
- (4) The Board may refuse to give its approval under subsection (2) only if it is satisfied that a business licence would not be granted if —
 - (a) an application for a business licence in respect of the class of repair work concerned were made under section 19; and
 - (b) at the time of that application the persons concerned in the management or conduct of the body corporate were the persons who would be so concerned if the proposed inclusion were approved.

37. Business licence ceases if changes not approved

- (1) This section applies if the Board refuses —
 - (a) to grant an application under section 34(2); or
 - (b) to give an approval under section 35(2) or 36(2).
- (2) The business licence ceases to have effect 14 days after the licensee is notified of the refusal unless, within that period —
 - (a) the licensee notifies the Board in writing that the application to which the refusal relates is withdrawn; or
 - (b) the licensee makes a further application under section 34, 35 or 36, as the case may be, that is granted by the Board.
- (3) The Board may by notice in writing to the licensee extend the period referred to in subsection (2).
- (4) As soon as practicable after a business licence ceases to have effect under subsection (2), the person who was the licensee must return to the Board —
 - (a) the licence; and
 - (b) any certificate issued to the licensee under section 63(1).

Penalty: \$1 500.

38. Offence to make management changes without applying for approval

- (1) If a business licence is held by a firm, the licensee commits an offence if—
- (a) a new member is included in the firm without an application being made under section 34; or
 - (b) a new person is included in the persons who are concerned in the management or conduct of a body corporate that is a member of the firm without an application being made under section 35.

Penalty: \$2 000.

- (2) If a business licence is held by a body corporate, the licensee commits an offence if a new person is included in the persons who are concerned in the management or conduct of the body corporate without an application being made under section 36.

Penalty: \$2 000.

Part 3 — Certification of individuals performing repair work

Division 1 — Requirement for certification

39. Individuals carrying out repair work to hold certificate

- (1) This section applies to —
- (a) a person or firm that carries on a business that consists of or includes the carrying out of repair work; and
 - (b) a person or firm that —
 - (i) holds a licence under the *Motor Vehicle Dealers Act 1973*; and
 - (ii) carries out repair work for the purposes of section 34 of that Act, but not otherwise.
- (2) Any —
- (a) individual; or
 - (b) individual member of a firm,

that comes within subsection (1) must not, in connection with the business, personally carry out repair work of a class prescribed by the regulations unless he or she holds a certificate for that class of repair work.

Penalty: \$5 000.

- (3) Any person or firm that comes within subsection (1) must not permit any other person to carry out any repair work of a class prescribed by the regulations unless the other person —
- (a) holds a certificate for that class of repair work; or
 - (b) carries out the repair work under the supervision of a person who holds a repairer's certificate for that class of repair work.

Penalty: \$5 000.

- (4) For the purposes of subsection (3)(b), a person under whose supervision repair work is being carried out is required to exercise effective oversight and control of the carrying out of the work, but need not be continuously present while it is being carried out.

40. Falsely holding out

An individual must not hold himself or herself out as the holder of —

- (a) a certificate; or
- (b) a certificate for a particular class of repair work,

if he or she does not hold a certificate or the relevant certificate.

Penalty: \$5 000.

Division 2 — Certification provisions

41. Application

- (1) An application for a repairer's certificate may be made to the Board by an individual.
- (2) An application must be —
 - (a) made in the approved form; and
 - (b) accompanied by the prescribed fee.
- (3) An application may relate to more than one class of repair work.
- (4) Despite subsection (2)(b), the prescribed fee is not payable on an application relating to a class of repair work if —
 - (a) the applicant held a provisional repairer's certificate for that class of repair work; and
 - (b) the application is made not later than 3 months after the expiry date specified in that certificate under section 45(2)(b).

42. Grant of repairer's certificate

- (1) The Board must grant a repairer's certificate applied for under section 41 if the applicant satisfies it that he or she —
 - (a) is a fit person to hold the certificate; and

- (b) is sufficiently qualified to carry out each class of repair work to which the application relates.
- (2) A person is sufficiently qualified if he or she —
 - (a) either —
 - (i) has the qualifications; or
 - (ii) has passed the examinations, prescribed by the regulations for the class of repair work concerned; or
 - (b) either —
 - (i) has some other qualifications or has passed some other examinations; or
 - (ii) has experience, that the Board determines to be sufficient for the class of repair work concerned.

43. Conditions may be attached

- (1) The Board may, when granting a repairer's certificate, attach any condition or restriction to the certificate.
- (2) The Board may at any time decide that —
 - (a) a new condition or restriction is to be attached to an existing repairer's certificate; or
 - (b) a condition or restriction attached to an existing repairer's certificate is to 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 holder of the certificate of the decision; and
 - (b) given him or her 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) If a decision under subsection (2) has taken effect the holder of the certificate must, if required by the Board —
 - (a) produce the certificate to the Board for amendment; and
 - (b) do so within the time specified by the Board.

Penalty: \$1 500.
- (7) The powers conferred by this section are in addition to the powers described in Schedule 1 item 4.

44. Provisional repairer's certificate

- (1) Subsection (2) applies if —
 - (a) a person has applied under section 41 for a repairer's certificate;
 - (b) the Board is satisfied under section 42(1)(a); and
 - (c) the Board is not satisfied under section 42(1)(b) that the person is sufficiently qualified but is satisfied that the person —
 - (i) has acquired; or
 - (ii) is capable of acquiring,
the skills that will enable him or her to become so qualified.
- (2) The Board may grant the applicant a provisional repairer's certificate for the class of repair work concerned subject to any condition or restriction determined by the Board.
- (3) A provisional repairer's certificate is of no effect at any time when any condition or restriction to which it is subject is not being observed.
- (4) A provisional repairer's certificate may relate to more than one class of repair work.

45. Form of certificate

- (1) Subject to subsection (2), a certificate is to be in a form determined by the Board.
- (2) A provisional repairer's certificate must specify —
 - (a) the conditions and restrictions to which the certificate is subject; and
 - (b) the day on which it expires.

46. Duration of certificate

- (1) A repairer's certificate continues in force until —
 - (a) it is surrendered under section 53; or
 - (b) the holder of the certificate is disqualified by an order of the kind described in Schedule 1 item 1.
- (2) A provisional repairer's certificate continues in force until —
 - (a) it is surrendered under section 53;
 - (b) the holder of the certificate is disqualified by an order of the kind described in Schedule 1 item 1; or
 - (c) the day specified in the certificate under section 45(2)(b),
whichever happens first.

47. Return of expired provisional certificate

If a provisional repairer's certificate has expired, the person who was the holder must, as soon as is practicable after the expiry, return the certificate to the Board.

Penalty: \$1 500.

48. Change of address to be notified by certificate holder

- (1) The holder of a certificate who changes his or her place of residence must give to the secretary notice of the address of the new place of residence not later than 14 days after the change occurs.

Penalty: \$1 500.

- (2) The secretary is to enter in the register referred to in section 50(1)(b) particulars of any change notified under subsection (1).

Part 4 — Provisions applicable to business licences and to certificates

49. False or misleading information

- (1) A person must not in relation to an application to which this section applies give information orally or in writing that the person knows to be —

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

Penalty: \$5 000.

- (2) This section applies to —

- (a) an application for a business licence or a repairer's certificate;
- (b) an application for the renewal of a business licence; and
- (c) an application under section 34, 35, 36 or 61.

50. Registers

- (1) The secretary must keep —

- (a) a register for the purposes of Part 2 recording such particulars and matters relating to business licences as are prescribed; and
- (b) a register for the purposes of Part 3 recording such particulars and matters relating to certificates as are prescribed.

- (2) The regulations may provide for the form and manner in which a register is to be kept, including for a register to be in the form of information stored on a computer.
- (3) Subject to the regulations, a register may be kept in a form and manner determined by the Board.

51. Inspection of register

The secretary must allow any person, on payment of the prescribed fee —

- (a) to inspect a register; and
- (b) to take copies of, or extracts from, any part of it.

52. Secretary may certify as to matters in the register

- (1) The secretary may, on the application of a person, issue to the person a written statement certifying any of the following —
 - (a) that a person specified in the statement is or was, or is not or was not —
 - (i) the holder of a business licence or certificate; or
 - (ii) the holder of a business licence or certificate for a particular class of repair work;
 - (b) that premises specified in the statement are or were, or are not or were not, authorised under section 59;
 - (c) the conditions and restrictions that are or were attached to a business licence or certificate;
 - (d) any other matter appearing in the register.
- (2) A statement under subsection (1) may specify the day or days or period on or during which anything referred to in subsection (1) applied.
- (3) In all courts and proceedings a statement under this section is evidence of any matter that appears in it.

53. Surrender of business licence or certificate

- (1) A licensee or the holder of a certificate may surrender the business licence or certificate by —
 - (a) giving the Board notice in writing to that effect; and
 - (b) returning the licence or certificate to it.
- (2) If a business licence is surrendered, the Board is to refund to the former licensee so much (if any) of the fee last paid in respect of the licence as the Board, on application made by the former licensee, determines to be appropriate.

54. Certified copy of business licence or certificate

- (1) The secretary may, on payment of the prescribed fee, issue a certified copy of a business licence or certificate.
- (2) In all courts and proceedings a certified copy so issued is evidence of the contents of the business licence or certificate.
- (3) A document that purports to be a certified copy of a business licence or certificate issued by the secretary is to be taken to be such a copy unless the contrary is proved.

55. Production of business licence or certificate

- (1) An authorised officer may require a licensee or the holder of a certificate to produce his or her business licence or certificate to the officer.
- (2) A request under subsection (1) may only be made —
 - (a) at premises that are authorised under section 59; or
 - (b) in the case of the holder of a certificate, at premises where he or she is engaged in carrying out repair work on a motor vehicle.
- (3) Any —
 - (a) licensee; or
 - (b) holder of a certificate,

to whom a requirement under subsection (1) is addressed must comply with the requirement unless he or she has reasonable excuse for not doing so.

Penalty: \$1 500.

Part 5 — Restrictions on use of premises by licensees

56. Interpretation

In this Part —

“**mobile premises**”, in relation to a business, means any motor vehicle from which the business is carried out;

“**premises**”, in relation to a business, means any place where the business is carried out or any mobile premises.

57. Only authorised premises to be used

A licensee must not carry on any business to which the business licence relates at or from any premises except under and in accordance with an authorisation under section 59.

Penalty: \$5 000.

58. Business licence application to specify premises that comply with planning laws

- (1) An application for a business licence must —
 - (a) specify each of the premises at or from which the applicant proposes to carry on business under the authority of the licence; and
 - (b) except in the case of mobile premises, be accompanied by a planning certificate or, subject to section 60, with a conditional planning certificate, to the satisfaction of the Board in respect of the premises.
- (2) A planning certificate is a certificate —
 - (a) issued by the authority responsible for planning matters in the district in which the premises are situated; and
 - (b) showing that the proposed use of the premises will be permitted under the written laws relating to planning that apply in respect of the premises because the proposed use will either —
 - (i) comply with all relevant requirements of those laws; or
 - (ii) be a non-conforming use under those laws.

[Section 58 amended by No. 38 of 2005 s. 15.]

59. Board to authorise premises

- (1) If, in relation to any premises, an application complies with —
 - (a) section 58; or
 - (b) that section as varied by section 60,the Board, if it grants the application, must authorise the holder of the business licence to carry on business at or out of those premises under the authority of the licence.
- (2) A business licence must include particulars of all premises authorised under subsection (1).

60. Conditional planning certificate may be provided

- (1) An application, instead of complying with section 58(1)(b), may be accompanied by a conditional planning certificate.
- (2) A conditional planning certificate is a certificate —
 - (a) issued by the authority responsible for planning matters in the district in which the premises are situated; and
 - (b) showing that the proposed use of the premises would, if any specified consent were given, either —

- (i) comply with all relevant requirements of written laws relating to planning that apply in respect of the premises; or
 - (ii) be a non-conforming use under those laws.
- (3) If an application is accompanied by a conditional planning certificate, the Board, if it grants the application, may attach a condition to the business 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.

[Section 60 amended by No. 38 of 2005 s. 15.]

61. Changes in authorised premises

- (1) The Board may on —
 - (a) the application of the licensee;
 - (b) except in the case of mobile premises, the production of any planning certificate in terms of section 58(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 59(2).
- (2) An application under subsection (1) may be accompanied by a conditional planning certificate in terms of section 60(2).
- (3) If an application is accompanied by a conditional planning certificate, the Board, if it approves the alteration or addition, may attach a condition to the approval that —
 - (a) it is suspended until the Board is satisfied that all necessary consents have been given; and
 - (b) it lapses if the Board is not so satisfied before the expiry of a period specified by the Board.

62. Revocation of authority to use premises

- (1) The Board may make an order revoking an authorisation of premises under section 59, other than mobile premises, 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.
- (2) The Board may make an order under subsection (1) of its own motion or on the application of the Commissioner.

- (3) The Board cannot make an order under subsection (1) in respect of premises unless it has —
- (a) conducted an inquiry; and
 - (b) given the licensee an opportunity to show cause why the order should not be made.

63. Certificate relating to premises to be displayed

- (1) The Board must issue a certificate to a licensee for each premises that are included in the business licence in accordance with section 59(2).
- (2) The certificate is to state that the licensee is authorised under section 59 to carry on business at or from the premises under the authority of the business licence.
- (3) The licensee 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.

64. Return of certificate

- (1) If the Board makes an order under section 62 in respect of any premises, the Board is to give directions in writing to the licensee as to the return to the Board of the certificate issued under section 63(1) for those premises.
- (2) Subject to any order under section 81, the licensee must comply with a direction given under subsection (1).

Penalty: \$1 500.

Part 6 — Disciplinary powers of Board

65. Interpretation

In this Part —

“person to whom this Part applies” means —

- (a) a licensee or one of the licensees;
- (b) a person concerned in the management or conduct of a body corporate that is a licensee or one of the licensees; and
- (c) the holder of a certificate.

66. Restriction on exercise of powers

The Board cannot make an order under section 68 or 70 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.

67. Board may act itself or on application

The Board may make an order under section 68 or 70 of its own motion or on the application of the Commissioner.

68. Making of disciplinary orders under Schedule 1

- (1) Subject to section 66, the Board may make one or more of the orders set out in Schedule 1 in respect of a person to whom this Part applies 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) a business licence or certificate or a condition or restriction attached to a business licence or certificate;
 - (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 a licensee, or one of the licensees, or the holder of a certificate; or
 - (ii) to be concerned in the management or conduct of a body corporate that is a licensee or one of the licensees;

or

 - (c) in the case of the holder of a certificate, to be not competent to carry out the class of repair work to which the certificate applies.
- (2) Schedule 2 has effect to make further provision in respect of the orders referred to in subsection (1).

69. Person to notify Board of conviction

- (1) In this section —

“relevant offence” means an offence against any law of this State or another State, the Commonwealth or a Territory for which the maximum penalty on conviction is —

 - (a) a fine of \$8 000 or more; or
 - (b) imprisonment for more than 2 years or for an indeterminate period.
- (2) A person to whom this Part applies must —

- (a) notify the Board within 7 days after he or she becomes aware that he or she has been convicted of a relevant offence; and
- (b) provide the Board with such information about the offence and the conviction as the Board may require.

Penalty: \$1 500.

70. Cancellation of business licence on certain grounds

Subject to section 66, the Board may cancel a business licence if it is satisfied that the licensee —

- (a) does not have sufficient resources, within the meaning in section 12, for each class of repair work to which the licence applies; or
- (b) has ceased to carry on the business to which the licence relates.

71. Return of business licence or certificate

- (1) If the Board makes —

- (a) an order under section 70; or
- (b) an order of the kind described in Schedule 1 item 1,

in respect of a licensee or the holder of a certificate the Board is to give directions in writing to the licensee or holder as to the return to the Board of —

- (c) the business licence or certificate; and
- (d) any certificate issued to the licensee under section 63(1).

- (2) If the Board makes an order of the kind described in Schedule 1 item 4 in respect of a business licence or certificate, the Board may give directions in writing to the licensee or holder of the certificate as to the production to the Board of the licence or certificate for amendment.

- (3) Subject to any order under section 81, the licensee or the holder of the certificate must comply with a direction given under subsection (1) or (2).

Penalty: \$1 500.

72. Certain offences relating to disqualification

- (1) A person who is subject to an order of the kind described in Schedule 1 item 2 must not contravene or fail to comply with the order.

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

- (2) A licensee must not, during the period when a person is disqualified by an order of the kind described in Schedule 1 item 1 or 2 —
- (a) employ the person in any capacity on premises authorised under section 59; or
 - (b) allow the person to frequent such premises,
- without the prior consent of the Board.
Penalty: \$5 000 and a daily penalty of \$100.

Part 7 — Appeals

73. Notice of decision to person affected

- (1) The Board must give notice of a decision or order to which this section applies, and the reasons for it, to —
- (a) the person who made an application for the decision concerned;
 - (b) the licensee;
 - (c) the person in respect of whom an order is made under section 68; or
 - (d) the holder of a certificate,
- as the case may require (the “**affected person**”).
- (2) This section applies to a decision or order of the Board —
- (a) refusing an application for —
 - (i) a business licence or a repairer’s certificate; or
 - (ii) the renewal of a business licence;
 - (b) refusing —
 - (i) to authorise premises under section 59;
 - (ii) to grant an approval under section 61;
 - (iii) to amend a business licence under section 34; or
 - (iv) to approve a proposed change under section 35 or 36;or
 - (c) in exercise of —
 - (i) its powers under section 68 or 70;
 - (ii) its power under section 62 to revoke an authorisation of premises; or
 - (iii) its powers under Part 2 Division 3 or section 43 or 44 in relation to conditions or restrictions.

74. Notice of certain decisions to Commissioner

- (1) The Board must give notice of a decision to which this section applies to the Commissioner.
- (2) This section applies to a decision of the Board —
 - (a) granting an application for —
 - (i) a business licence or a repairer's certificate; or
 - (ii) the renewal of a business licence;
 - (b) amending a business licence under section 34;
 - (c) granting an approval under section 35 or 36;
 - (d) authorising premises under section 59; or
 - (e) granting an approval under section 61.

75. Appeal by affected person

- (1) The affected person under section 73(1) may appeal to the Magistrates Court (the “**Court**”) against a decision or order to which that section applies.
- (2) The appeal must be brought within 30 days after the person received notice under section 73 of the decision or order.

[Section 75 amended by No. 59 of 2004 s. 141.]

76. Appeal by Commissioner

- (1) The Commissioner may appeal to the Magistrates Court (the “**Court**”) against a decision to which section 74 applies.
- (2) The appeal must be brought within 30 days after the Commissioner received notice under section 74 of the decision.

[Section 76 amended by No. 59 of 2004 s. 141.]

77. Appeal procedures

- (1) An appeal under this Part is to be brought and dealt with in accordance with the *Magistrates Court (Civil Proceedings) Act 2004* and rules of court.
- (2) Subject to the rules of court, the affected person, the Board and the Commissioner are entitled to appear or be represented in appeal proceedings under this Part.
- (3) If in relation to any matter of practice or procedure there is no provision applicable under subsection (1), the matter is to be dealt with as the Court directs.

[Section 77 amended by No. 59 of 2004 s. 141.]

78. Material to be considered

- (1) The Court is to determine an appeal —

- (a) on the material that was before the Board; and
 - (b) on such further evidence or information, either oral or by affidavit, as the Court thinks fit to receive.
- (2) For the purposes of subsection (1) the Court may ascertain what material was before the Board on such evidence, statement or record of what occurred before the Board as the Court considers sufficient.

79. Relevant matters and burden of proof

- (1) In determining an appeal the Court may have regard to all matters that it considers relevant, including the public interest.
- (2) It is for the appellant to satisfy the Court that —
 - (a) the decision or order should be varied or reversed; or
 - (b) the Court should exercise its powers under section 80(1)(b) or (c).

80. Disposition of appeal

- (1) The Court may —
 - (a) confirm, vary or reverse the decision or order of the Board;
 - (b) replace the decision or order of the Board with its own decision or order;
 - (c) remit the matter to the Board for reconsideration with any direction or recommendation it thinks fit; and
 - (d) make any consequential or ancillary order (including an order for costs) that it thinks appropriate.
- (2) If the Court —
 - (a) varies a decision or order of the Board; or
 - (b) replaces the decision or order of the Board with its own decision or order,

the decision or order as varied or replaced has effect for the purposes of this Act as if it were the decision or order of the Board.

- (3) The determination of an appeal by the Court is final.

81. Effect of decision or order pending appeal

The operation or effect of a decision or order is not affected by the bringing of an appeal unless the Court, on an application by the appellant, orders that the operation or effect be suspended —

- (a) until the appeal is determined or discontinued; or
- (b) until some other time fixed by the Court.

82. Position pending appeal where renewal has been refused

- (1) This section applies if —
 - (a) the Board has decided to refuse an application for the renewal of a business licence; and
 - (b) under section 81 the Court orders the suspension of that decision.
- (2) The Court may further order that the business licence is to be taken to have effect —
 - (a) until the appeal is determined or discontinued; or
 - (b) until some other time fixed by the Court,as if it had been renewed in accordance with the application.

Part 8 — Conciliation of certain disputes

83. Interpretation

In this Part —

“**licensee**” includes a former licensee;

“**owner**”, in relation to a motor vehicle, includes —

- (a) a hirer or lessee of the motor vehicle; and
- (b) a former owner of the motor vehicle.

84. Disputes to which this Part applies

- (1) This Part applies to a dispute between the owner of a motor vehicle and a licensee about —
 - (a) whether any particular repair work has been carried out on the vehicle by the licensee;
 - (b) whether repair work carried out on the vehicle by the licensee has been competently carried out;
 - (c) the amount charged by the licensee for repair work carried out on the vehicle; or
 - (d) any other matter relating to the carrying out of repair work on the vehicle by the licensee.
- (2) This Part applies to a dispute only if it —
 - (a) has not been decided by the Commissioner acting under section 37 of the *Motor Vehicle Dealers Act 1973* or by a court or tribunal; and
 - (b) is not the subject of any proceedings.
- (3) A dispute is the subject of proceedings as mentioned in subsection (2)(b) if —

- (a) the Commissioner has advised the parties under section 36 of the *Motor Vehicle Dealers Act 1973* that he or she proposes to determine the dispute; or
 - (b) proceedings in respect of the issues in dispute are pending before a court or tribunal.
- (4) This Part does not apply to a dispute relating to —
- (a) repair work carried out; or
 - (b) any other matter that arose,
- before the commencement of this Part.

85. Conciliation by Board at request of owner

- (1) The owner of the vehicle concerned may in writing request the Board to act as a conciliator in a dispute to which this Part applies, and the Board may at its discretion comply with the request.
- (2) A request under subsection (1) may be withdrawn at any time and the Board must then stop dealing with the matter.
- (3) The Board may appoint an authorised officer to assist it in investigating and conciliating the dispute and, for those purposes, may delegate to such an officer —
 - (a) any power in relation to the conciliation; and
 - (b) any power of the Board under section 14 of the *Motor Vehicle Dealers Act 1973*.
- (4) Anything done under this Part by an authorised officer for the purposes of a conciliation is to be taken to be done by the Board.

86. Conciliation function

- (1) The function of the Board as conciliator is to encourage the settlement of the dispute by —
 - (a) communicating with the owner and the licensee concerned;
 - (b) arranging discussions between them and assisting in those discussions; and
 - (c) taking any other step that it considers appropriate.
- (2) It is not a function of the Board to conduct an arbitration of a dispute.
- (3) The Board must not perform the function under subsection (1) if, at any time after a request is made under section 85, the dispute becomes subject to proceedings within the meaning in section 84(3).

87. Examination of vehicle

An authorised officer appointed under section 85(3) may at any reasonable time —

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

88. Offences relating to conciliation

- (1) A person must not, in relation to a request under section 85, or any attempt at conciliation by the Board, give information orally or in writing that the person knows to be —
 - (a) false or misleading in a material particular; or
 - (b) likely to deceive in a material way.

Penalty: \$5 000.

- (2) A person must not without reasonable excuse obstruct or hinder an authorised officer in the exercise of his or her powers under section 87.

Penalty: \$5 000.

Part 9 — Claims for losses in connection with repair work

89. Interpretation

In this Part —

“**Compensation Fund**” means the account referred to in section 90(2);

“**insolvent**” means —

- (a) in relation to a natural person, being an insolvent under administration as that expression is defined in the *Corporations Act 2001* of the Commonwealth;
- (b) in relation to a body corporate, being subject to external administration under the *Corporations Act 2001* of the Commonwealth;

“**owner**”, in relation to a motor vehicle, includes —

- (a) a hirer or lessee of the motor vehicle; and
- (b) a former owner of the motor vehicle.

90. Motor Vehicle Repair Industry Compensation Fund

- (1) In this section —

“**prescribed percentage**” means 1% or such other percentage as may be prescribed by the regulations.

- (2) There is to be an account called the Motor Vehicle Repair Industry Compensation Fund.
- (3) The Compensation Fund —
 - (a) is to be administered by the Director General; and
 - (b) is to form part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*.
- (4) There are to be credited to the Compensation Fund —
 - (a) in respect of each year, an amount equal to the prescribed percentage of all fees paid under sections 13, 31 and 41 during that year;
 - (b) moneys recovered by the Board —
 - (i) in the exercise of the rights and remedies referred to in section 95; or
 - (ii) under section 96;
 - (c) moneys borrowed under subsection (6); and
 - (d) any other moneys lawfully payable to the Compensation Fund.
- (5) There are to be paid out of the Compensation Fund —
 - (a) all amounts payable under section 93(5);
 - (b) the costs incurred by the Board in respect of claims under this Part; and
 - (c) interest on, and amounts required to repay, moneys borrowed under subsection (6).
- (6) Moneys may be borrowed from the Treasurer for the purposes of the Compensation Fund —
 - (a) in such amounts as the Treasurer may approve; and
 - (b) on such terms relating to repayment and payment of interest as the Treasurer imposes.

91. Losses to which this Part applies

- (1) If a licensee —
 - (a) carries out repair work on a motor vehicle incompetently; or
 - (b) fails to complete repair work on a motor vehicle by reason of the licensee or one of the licensees becoming insolvent,

and the owner of the motor vehicle incurs a loss by reason of having to have the repair work remedied or completed, this Part applies to the loss.

- (2) This Part does not apply to a loss referred to in subsection (1) that —
 - (a) relates to —
 - (i) repair work carried out; or
 - (ii) a person becoming insolvent, before the commencement of this Part;
 - (b) relates to repair work carried out for the purposes of section 34 of the *Motor Vehicle Dealers Act 1973*; or
 - (c) was incurred by a person in connection with any repair work carried out by an employee of the person.
- (3) This Part does not apply to a loss that consists of loss of profits or income or other losses that arise indirectly from remedying or completing repair work as described in subsection (1).
- (4) This Part does not apply so as to allow an insurer of a motor vehicle to make a claim under section 92 in the name of the owner of the vehicle in relation to a loss in connection with the repair of a motor vehicle.

92. Claims for losses

- (1) The owner of a motor vehicle who —
 - (a) has incurred a loss to which this Part applies in connection with the vehicle; and
 - (b) has taken all reasonable steps to exercise all legal remedies, all rights under insurance policies, and all rights of action, that are available in respect of the loss, may claim from the Compensation Fund —
 - (c) the amount of the loss; or
 - (d) the sum of \$6 000,whichever is the less.
- (2) The losses incurred by the owner of a motor vehicle in the same circumstances in connection with repair work carried out, or not completed, on the vehicle by a licensee cannot be divided for the purpose of more than one claim being made by the owner.
- (3) A claim must be —
 - (a) made in the approved form and verified by statutory declaration; and
 - (b) lodged with the Board.
- (4) A claimant must provide the Board with such information about the claim as the Board may require.

93. How claim to be determined

- (1) For the purposes of this section a claim is duly made if —
 - (a) the claimant meets the requirements of section 92; and
 - (b) the claim has been made in accordance with that section.
- (2) If the Board considers that the claim has been duly made it may at its discretion —
 - (a) determine that the claim should be —
 - (i) allowed in whole or in part; or
 - (ii) disallowed;and
 - (b) make a recommendation to the Director General accordingly.
- (3) On receipt of a recommendation of the Board the Director General may, if he or she considers that the claim has been duly made, at his discretion —
 - (a) accept the recommendation;
 - (b) decline to accept the recommendation; or
 - (c) determine the claim in such manner as he or she thinks fit.
- (4) Where the Director General does not accept the recommendation of the Board he or she must inform the Board of the reasons for his or her determination.
- (5) The amount of any claim that is allowed is to be paid out of the Compensation Fund.

94. No proceedings to be brought

- (1) A person may not bring proceedings against the Board or the Director General for the recovery of compensation in respect of any loss to which this Part applies.
- (2) A determination of the Board or the Director General under section 93 is not liable to be challenged, reviewed or called in question by a court on account of anything that the Board or the Director General has done or failed to do for the purposes of that section.

95. Subrogation where claim allowed

- (1) On payment of an amount to a claimant out of the Compensation Fund (the “**amount paid**”), the Director General is subrogated, to the extent of the amount paid, to all the rights and remedies of the claimant against —
 - (a) the person in relation to whom the claim arose;

- (b) any other person incurring any liability to the claimant in relation to the subject matter of the claim; or
- (c) any person having legal authority in respect of any estate or assets concerned,

and to the extent of the amount paid the claimant is not entitled to enforce those rights and remedies.

- (2) In the enforcement of any rights and remedies referred to in subsection (1) for the purpose of recovering the amount paid, that amount is taken to be a debt due to the Director General and recoverable accordingly.
- (3) No form of conveyance or assignment is required for the purposes of subsection (1).

96. Recovery from directors of body corporate

- (1) This section applies if payment of an amount to a claimant out of the Compensation Fund results from —
 - (a) the act or omission of a body corporate; or
 - (b) a body corporate becoming insolvent.
- (2) The persons who were directors of the body corporate when —
 - (a) the act or omission occurred; or
 - (b) the body corporate became insolvent,are jointly and severally liable to the Director General for the amount paid.
- (3) For the purposes of subsection (2) the amount paid is taken to be a debt due to the Director General and recoverable accordingly.
- (4) In any proceedings under this section for the recovery of an amount paid as a result of an act or omission, judgment is not to be entered against a defendant who proves that the act or omission occurred without his or her express or implied authority or consent.
- (5) Where subsection (2) applies the body corporate is not liable to reimburse a person for any amount that he or she pays to the Director General under this section.
- (6) This section does not affect the operation of section 95.

Part 10 — Miscellaneous

Division 1 — Infringement notices

97. Interpretation

In this Division —

“**authorised officer**” has the meaning given by section 3(1) except that it does not include the secretary if he or she is an authorised officer;

“**prescribed**” means prescribed by the regulations;

“**prescribed offence**” means an offence prescribed under section 98.

98. Prescribed offences

The regulations may prescribe offences against this Act for which an infringement notice may be given under section 100.

99. Modified penalties

- (1) For each prescribed offence the regulations must prescribe —
 - (a) a modified penalty; or
 - (b) a different modified penalty according to the circumstances of the offence.
- (2) The modified penalty for an offence cannot exceed 20% of the maximum penalty that could be imposed for that offence by a court.

100. Giving of notice

- (1) An authorised officer who has reason to believe that a person has committed a prescribed offence may give an infringement notice to the alleged offender.
- (2) The notice must be given within 6 months after the alleged offence is believed to have been committed.

101. Contents of notice

- (1) An infringement notice is to be in the prescribed form.
- (2) An infringement notice is to —
 - (a) contain a description of the alleged offence;
 - (b) specify the amount of the modified penalty for the offence; and
 - (c) advise the alleged offender that, if he or she does not wish to be prosecuted for the alleged offence in a court, that amount may be paid to the secretary within 28 days after the giving of the notice.
- (3) The amount referred to in subsection (2)(b) is to be the amount that was the prescribed modified penalty at the time when the alleged offence is believed to have been committed.

[Section 101 amended by No. 84 of 2004 s. 80.]

102. Extension of time

- (1) The Board or the secretary may, in a particular case, extend the period of 28 days within which the modified penalty may be paid.
- (2) An extension may be granted under subsection (1) either before or after the period of 28 days has elapsed.

103. Withdrawal of notice

- (1) The Board or the secretary may withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (2) Subsection (1) applies even if the modified penalty has been paid.
- (3) If an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

104. Benefit of paying modified penalty

- (1) This section applies if —
 - (a) the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed; and
 - (b) the notice has not been withdrawn.
- (2) The payment prevents —
 - (a) the bringing of proceedings; and
 - (b) 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.

105. No admission implied by payment

Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

106. Application of penalties collected

An amount paid as a modified penalty is to be dealt with as if it were imposed by a court as a penalty for an offence, unless section 103(3) requires that the amount be refunded.

Division 2 — General

107. Motor Vehicle Repair Industry Education and Research Fund

- (1) In this section —
“**Fund**” means the Motor Vehicle Repair Industry Education and Research Fund established by subsection (2);

“**prescribed percentage**” means 1% or such other percentage as may be prescribed by the regulations;

“**purposes of the Fund**” means —

- (a) education or research in respect of; or
 - (b) any public purpose connected with, repair work.
- (2) There is to be an account called the Motor Vehicle Repair Industry Education and Research Fund.
 - (3) The Fund —
 - (a) is to be administered by the Director General; and
 - (b) is to form part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*.
 - (4) There are to be credited to the Fund —
 - (a) in respect of each year, an amount equal to the prescribed percentage of all fees paid under sections 13, 31 and 41 during that year; and
 - (b) any moneys borrowed under subsection (8).
 - (5) The Board may recommend to the Director General that moneys standing to the credit of the Fund be applied for or towards the purposes of the Fund.
 - (6) The Director General must give due weight to, but is not bound to follow, a recommendation under subsection (5).
 - (7) Subject to subsections (5) and (6), the Director General may apply moneys standing to the credit of the Fund for or towards the purposes of the Fund.
 - (8) Moneys may be borrowed from the Treasurer for the purposes of the Fund —
 - (a) in such amounts as the Treasurer may approve; and
 - (b) on such terms relating to repayment and payment of interest as the Treasurer imposes.
 - (9) The Fund is charged with —
 - (a) interest on; and
 - (b) amounts required to repay, moneys borrowed under subsection (8).

108. Licensee to publicise licensing information

A licensee must cause the business name shown in the business licence and the number of the licence to appear —

- (a) in a conspicuous position on the outside of every premises authorised under section 59 in respect of the licence;
- (b) on every quote, invoice, statement of account, business letter, official notice, publication, order for goods, or receipt, issued by the licensee in the course of business; and
- (c) in every advertisement published by or on behalf of the licensee.

Penalty: \$1 500.

109. Prohibition of doing business with unlicensed repairers

- (1) In this section —
“unlicensed repairer” means a person or firm that is required to, but does not, hold a business licence for the class of repair work concerned.
- (2) A person or firm that carries on a business that consists of or includes the carrying out of any class of repair work on a motor vehicle must not —
 - (a) enter into an agreement for any repair work to be carried out by a person or firm that is an unlicensed repairer; or
 - (b) do any act which assists, or is intended to assist, a person or firm that is an unlicensed repairer to carry on a business that consists of or includes the carrying out of any class of repair work on a motor vehicle.

Penalty: \$5 000.

- (3) An insurer of a motor vehicle —
 - (a) must not —
 - (i) enter into an agreement; or
 - (ii) require the owner of the motor vehicle to enter into an agreement,for any repair work to be carried out on the vehicle by a person or firm that is an unlicensed repairer;
 - (b) must not specify in a contract of insurance that any repair work be carried out by a particular person or firm if that person or firm is an unlicensed repairer; or
 - (c) must not do any act which assists, or is intended to assist, a person or firm that is an unlicensed repairer to carry on a business that consists of or includes the carrying out of any class of repair work on a motor vehicle.

Penalty: \$5 000.

110. Liability of directors and officers of body corporate

- (1) If—
- (a) a body corporate at any time contravenes a provision of this Act; and
 - (b) a person who was at that time —
 - (i) a director of the body corporate; or
 - (ii) an officer concerned in its management, authorised or permitted the contravention,
- that person is taken to have contravened the same provision.
- (2) A person referred to in subsection (1) may be proceeded against and convicted under a provision whether or not the body corporate has been proceeded against or convicted under that provision.
- (3) A person referred to in subsection (1) may be convicted in the proceedings in which the body corporate is convicted if—
- (a) the prosecutor so requests; and
 - (b) the court is satisfied that the person had reasonable notice that the prosecutor intended to make the request.

[Section 110 amended by No. 84 of 2004 s. 80.]

111. Authorised officers may require information

- (1) The powers in this section may be exercised by an authorised officer for the purpose of ascertaining whether a person is contravening, or has contravened, a provision of this Act.
- (2) If under section 85(3) an authorised officer has been appointed to assist in investigating and conciliating a dispute, the powers in this section may be exercised by the officer for the purpose of investigating the dispute while the Board is acting as conciliator in the dispute.
- (3) An authorised officer may require any person —
- (a) to give the officer such information as the officer requires;
 - (b) to answer any question put by the officer.
- (4) A person is not excused from answering a question on the ground that the answer to the question might tend to incriminate the person, but except in the case of a body corporate —
- (a) the answer to the question; or
 - (b) any information, record or thing obtained as a direct consequence of the answer to the question,

is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence against subsection (5).

- (5) A person who, having been required under subsection (3) to give information or to answer a question, without reasonable excuse —
- (a) fails to give the information or answer the question; or
 - (b) gives any information or answer that is false in any particular,

commits an offence.

Penalty: \$1 000.

112. Powers of entry

- (1) An authorised officer may at any reasonable time enter any place which the officer reasonably believes to be a place at which a person is carrying on a business that consists of or includes the carrying out of any class of repair work on motor vehicles.
- (2) An entry under subsection (1) may only be made for the purpose of ascertaining whether a person is contravening, or has contravened, a provision of this Act.
- (3) An authorised officer who enters a place under subsection (1) may, for a purpose mentioned in subsection (2) —
 - (a) inspect the place and any motor vehicle or other relevant thing situated in the place;
 - (b) require a person to produce any record or document under his or her control that is required to be kept under this Act;
 - (c) examine, copy or take extracts from a record or document so produced;
 - (d) require a person to provide a copy of a record or document referred to in paragraph (b) if it is reasonably practicable for the person to do so; and
 - (e) require a person to give any relevant information, including by way of answers to questions.
- (4) An authorised officer who enters a place under subsection (1) may be accompanied and assisted by other persons.

113. Offences relating to powers of entry

- (1) A person must not without reasonable excuse —
 - (a) obstruct or hinder an authorised officer in the exercise of his or her powers under section 112 or a person accompanying such an officer; or

- (b) fail to comply with a requirement made under section 112(3).

Penalty: \$5 000.

- (2) A person must not give information in response to a requirement made under section 112(3)(e) that he or she knows to be —
 - (a) false or misleading in a material particular; or
 - (b) likely to deceive in a material way.

Penalty: \$5 000.

- (3) It is not a reasonable excuse as mentioned in subsection (1) for a person to refuse to give information, answer a question or produce a document or record on the grounds that the information, answer, document or record might tend to incriminate the person or make him or her liable to a penalty.
- (4) Despite subsection (3), an answer given or a statement made for the purposes of section 112(3)(e) is not, except in proceedings under this section, admissible in evidence in any civil or criminal proceedings against the person who gave the answer or made the statement.

114. Regulations

- (1) The Governor may make regulations prescribing all matters that —
 - (a) are required or permitted to be prescribed; or
 - (b) are necessary or convenient to be prescribed,for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or in relation to —
 - (a) the manner and form in which licensees are to quote for repair work;
 - (b) the manner and form in which repair work is to be authorised by the owner of a motor vehicle;
 - (c) advertising by licensees;
 - (d) the records and documents that are to be kept by licensees;
 - (e) the display of business licences and certificates; and
 - (f) the conduct of licensees and their employees and agents in respect of the business to which the business licence applies.
- (3) Without limiting subsection (1), the regulations may —
 - (a) create offences; and

- (b) provide for a penalty not exceeding \$2 000 for the commission of an offence.

115. Transitional provisions

Schedule 3 has effect to make transitional provisions.

116. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement.
- (2) In the course of that review the Minister is to consider and have regard to —
 - (a) the effectiveness of the operations of the Board for the purposes of this Act;
 - (b) the need for the continuation of the functions of the Board for the purposes of this Act; and
 - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

Part 11 — Consequential amendment

117. *Travel Agents Act 1985* amended

- (1) The amendment in this section is to the *Travel Agents Act 1985*.
- (2) The Schedule is amended by inserting after item 10 the following item —

“ 10A. *Motor Vehicle Repairers Act 2003*. ”.

Schedule 1 — Disciplinary orders

[s. 68]

- 1. An order disqualifying a person from holding or obtaining, whether solely or jointly —
 - (a) a business licence or certificate; or
 - (b) a business licence or certificate for any particular class of repair work,whether or not at the time when the order is made the person is the holder of a business licence or certificate.
- 2. An order disqualifying a person from being concerned in the management or conduct of a body corporate that is the holder, or a

- joint holder, of a business licence, whether or not at the time when the order is made the person is so concerned.
3. Subject to Schedule 2 clause 2, an order that a person pay a penalty not exceeding —
 - (a) \$1 500 in the case of a person who is or was the holder of a certificate; or
 - (b) \$5 000 in the case of a person who is or was a licensee or one of joint licensees.
 4. An order —
 - (a) attaching conditions or restrictions to a business licence or certificate; or
 - (b) amending a condition or restriction attached to a business licence or certificate.
 5. An order reprimanding or cautioning a person.

Schedule 2 — Further provisions in respect of disciplinary orders

[s. 68]

1. **Duration of orders**

An order under Schedule 1 item 1 or 2 may be made to have effect —

 - (a) for a period specified in the order; or
 - (b) until a further order is made by the Board.
2. **Limitation on monetary penalty**
 - (1) The powers described in Schedule 1 item 3 and the powers of a court to impose a penalty for an offence against this Act must 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 Schedule 1 item 3.
 - (3) In subclause (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.
3. **Recovery of penalties**
 - (1) An amount payable by a person under an order referred to in Schedule 1 item 3 may be recovered by the Director General 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 subclause (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 68(1)(b) applies; and
 - (b) make an order described in Schedule 1 item 1 or 2 against the person in respect of that omission.

Schedule 3 — Transitional provisions

[s. 115]

1. Existing repair businesses

- (1) This clause applies to a person or firm if —
 - (a) immediately before the commencement of section 9 the person or firm was carrying on a business that consisted of, or included, the carrying out of any class of repair work on motor vehicles; and
 - (b) after that commencement that class of repair work is prescribed by the regulations under section 5(3) for the purposes of Part 2.
- (2) A person or firm that —
 - (a) comes within subclause (1); and
 - (b) carries on business after the commencement of section 9 that involves any class of repair work referred to in subclause (1)(b),

is to be treated, during the transition period, as if he, she or they were the holder or holders of a business licence for that class of repair work.

- (3) The transition period for a person or firm, in relation to any class of repair work, is from the commencement of section 9 —
 - (a) until the expiry of 12 months after that commencement;
 - (b) until a business licence is granted to the person or firm for that class of repair work; or
 - (c) until the grant of a business licence to the person or firm for that class of repair work has been refused and either —
 - (i) the time for appeal against the refusal under section 75 has expired without an appeal being brought; or

- (ii) an appeal has been brought but has been unsuccessful,

whichever happens first.

- (4) For the purposes of subclause (3)(c) an appeal against a refusal is unsuccessful if —
 - (a) it results in the refusal being confirmed; or
 - (b) it is withdrawn, discontinued or dismissed for want of prosecution.

2. Existing repairers

- (1) Despite section 39 but subject to subclauses (2) and (3), a person or any member of a firm referred to in section 39(1) may, until the expiry of 12 months after the commencement of section 39 —
 - (a) personally carry out any class of repair work on a motor vehicle in connection with the business without holding a certificate for that class of repair work; or
 - (b) permit another person to carry out any class of repair work on a motor vehicle without the other person holding a certificate for that class of repair work.
- (2) A person is not authorised by subclause (1)(a) to carry out any repair work if —
 - (a) he or she has been refused a repairer's certificate, and is not granted a provisional repairer's certificate, for that class of repair work; and
 - (b) either —
 - (i) the time for appeal against the refusal under section 75 has expired without an appeal being brought; or
 - (ii) an appeal has been brought but has been unsuccessful.
- (3) Another person cannot be permitted to carry out any repair work as mentioned in subclause (1)(b) if —
 - (a) the person has been refused a repairer's certificate, and is not granted a provisional repairer's certificate, for that class of repair work; and
 - (b) either —
 - (i) the time for appeal against the refusal under section 75 has expired without an appeal being brought; or
 - (ii) an appeal has been brought but has been unsuccessful.

- (4) For the purposes of subclauses (2)(b) and (3)(b) an appeal against a refusal is unsuccessful if —
 - (a) it results in the refusal being confirmed; or
 - (b) it is withdrawn, discontinued or dismissed for want of prosecution.

3. Regulations for transitional matters

- (1) The regulations may make provision for any transitional matter for which there is no sufficient provision in this Schedule.
- (2) If in the opinion of the Minister an anomaly arises in the carrying out of any provision of this Schedule, the regulations may —
 - (a) modify that provision to remove the anomaly; and
 - (b) make such provision as is necessary or expedient to carry out the intention of that provision.
- (3) Regulations may be made for the purposes of this clause to have effect from the commencement of this Act.
- (4) To the extent that a provision of any such regulation has effect on a day that is earlier than the day of its publication in the *Gazette*, the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of publication; or
 - (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of publication.
- (5) In subclause (1) —
“**transitional matter**” means a matter or thing necessary or convenient to provide for the change from the written law, as in force before the commencement of this Act, to the written law as in force after that commencement.

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³ The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 4 Div. 23 reads as follows:

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Division 23 — Transitional provisions

151. Commissioner for Fair Trading

- (1) On commencement, the person holding the office of Commissioner for Fair Trading immediately before commencement is to be taken to have been designated as the

Commissioner or Registrar (as the case requires) for the purposes of each of the following enactments —

- (a) the Associations Incorporation Act 1987;
 - (b) the *Business Names Act 1962*;
 - (c) the *Chattel Securities Act 1987*;
 - (d) the *Companies (Co-operative) Act 1943*;
 - (e) Part 8 of the *Competition Policy Reform (Western Australia) Act 1996*;
 - (f) the *Consumer Affairs Act 1971*;
 - (g) the *Co-operative and Provident Societies Act 1903*;
 - (h) the *Credit Act 1984*;
 - (i) the *Credit (Administration) Act 1984*;
 - (j) the *Employment Agents Act 1976*;
 - (k) the *Hire-Purchase Act 1959*;
 - (l) the *Limited Partnerships Act 1909*;
 - (m) the *Motor Vehicle Dealers Act 1973*;
 - (n) the *Petroleum Products Pricing Act 1983*;
 - (o) the *Petroleum Retailers Rights and Liabilities Act 1982*;
 - (p) the *Residential Tenancies Act 1987*;
 - (q) the *Retirement Villages Act 1992*;
 - (r) the *Travel Agents Act 1985*.
- (2) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under a provision of the *Consumer Affairs Act 1971* for the purposes of another enactment listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted —
- (a) by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that other enactment as in force after commencement; and
 - (b) where relevant, under the corresponding provision of that other enactment as in force after commencement.
- (3) To the extent that a thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under, or for the purposes of, an enactment listed in subsection (1) is not covered by subsection (2), it has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in

relation to, the Commissioner or Registrar (as the case requires) as defined in that enactment as in force after commencement.

- (4) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading before commencement under, or for the purposes of, an enactment not listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.
- (5) A reference in an enactment to the Commissioner for Fair Trading is to have effect after commencement as if it had been amended to be a reference to —
 - (a) in the case of an enactment listed in subsection (1) or subsidiary legislation made under such an enactment — the Commissioner or Registrar (as the case requires) as defined in the enactment as in force after commencement; or
 - (b) in the case of any other enactment or subsidiary legislation — the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.

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

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

153. Consumer Affairs Act 1971

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

154. *Petroleum Products Pricing Act 1983*

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

155. Interpretation

In this Division —

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

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

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

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