

MOTOR VEHICLE DEALERS.

No. 101 of 1973.¹

[As amended by Acts:

No. 58 of 1974², assented to 3rd December, 1974;
No. 74 of 1975³, assented to 14th November, 1975;
No. 66 of 1976, assented to 22nd September, 1976,

and reprinted, pursuant to the Amendments Incorporation Act,
1938.]

**AN ACT to regulate Dealing in Motor Vehicles, to
repeal the Used Car Dealers Act, 1964, and for
related purposes.**

[Assented to 28th December, 1973.]

BE it enacted—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Motor Vehicle Dealers Act, 1973-1976*.

Short title.
Amended by
No. 66 of
1976, s.1.

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

Commence-
ment.

¹ Sections 1, 2, 3 and 5-13 came into operation 15th February, 1974; see G.G. 15/2/74, p. 375; sections 14-24, 30, 50 and 56 came into operation 5th April, 1974; see G.G. 5/4/74, p. 1180; balance, except s. 40, came into operation 12th August, 1974; see G.G. 9/8/74, p. 2935; section 40 not in operation at date of this reprint.

² Came into operation 29th August, 1975; see G.G. 29/8/75, p. 3085.

³ Came into operation 9th January, 1976; see G.G. 9/1/76, p. 2.

Arrange-
ment.

3. This Act is divided into Parts as follows—

PART I.—PRELIMINARY, ss. 1-6.

PART II.—MOTOR VEHICLE DEALERS LICENSING BOARD, ss. 7-31.

PART III.—DEALINGS IN SECOND-HAND VEHICLES, ss. 32-40.

PART IV.—MISCELLANEOUS, ss. 41-56.

Repeal.

4. The Used Car Dealers Act, 1964 is hereby repealed.

Interpre-
tation.

Amended by
No. 74 of
1975, s.3;
No. 66 of
1976, s.2.

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

“approved” means approved by the Board;

“authorized officer” means a person who is appointed to be an authorized officer under section 6;

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

“Chairman” means Chairman of the Board;

“Commissioner” means the Commissioner for Consumer Affairs appointed under section 15 of the Consumer Affairs Act, 1971;

“dealer” means a person who carries on the business of buying or selling vehicles; and includes a financier and a person who engages in the business of auctioning vehicles;

“dealer’s licence” means a vehicle dealer’s licence granted under section 15;

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

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

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

“licence” means a licence granted under this Act;

“member” means any member of the Board, including the Chairman;

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

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

“salesman’s licence” means a salesman’s licence granted under section 17;

“secretary” means the secretary to the Board;

“section” means section of this Act;

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

“the Board” means the Motor Vehicle Dealers Licensing Board established under section 7;

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

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

“yard manager’s licence” means a yard manager’s licence granted under section 16;

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

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

(1a) For the purposes of this Act, “second-hand vehicle” includes a vehicle that has, at any time before being offered or exposed for sale, been licensed or registered whether under the law of this State or of any other State or Territory of the Commonwealth regulating the use of vehicles but does not include a vehicle—

(a) that is licensed under the provisions of the Road Traffic Act, 1974 in the name of the dealer by whom it is being sold or offered or exposed for sale and has been used by that dealer for the purposes of demonstration; and

(b) in respect of which there remains an obligation on the part of the manufacturer to the purchaser of the vehicle from the dealer greater than the obligation which would be imposed on a dealer by the provisions of subsection (1) of section 34 were that vehicle to be sold by him at the material time.

(2) In sections 26, 28 and 29, and in subsections (1) and (2) of section 27, “vehicle” means—

(a) a motor vehicle within the meaning given thereto by the Road Traffic Act, 1974; and

(b) a trailer, semi-trailer or caravan designed to be attached to a motor vehicle.

(3) In this Act, other than in the provisions specified in subsection (2) of this section, “vehicle” means—

(a) a passenger car;

(b) a passenger car derivative;

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- (c) a motor cycle;
- (d) a camper van; or
- (e) a vehicle of a type or class that is prescribed to be a type or class of vehicle to which this Act applies.

(4) For the purposes of subsection (3) of this section—

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

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

“motor cycle” means a self-propelled vehicle that has two wheels, or, where a side car is attached thereto, has three wheels;

“camper van” means a vehicle specially fitted for camping or touring purposes and which is equipped with sleeping facilities and cooking facilities.

(5) Unless the contrary intention appears, any reference in this Act to the grant or issue of a licence or to an application therefor shall be read as including a reference to the grant or issue of the renewal of a licence or to an application therefor, as the case requires.

(6) For the purposes of the provisions of this Act other than section 39, where a dealer sells a second-hand vehicle to a financier in the expectation that the financier will sell that vehicle to a third person and the financier so sells that vehicle to that third person, the dealer shall be deemed to have sold the vehicle to that third person.

6. (1) Without limiting any of the provisions of sections 19 to 25, both inclusive, of the Consumer Affairs Act, 1971, those sections apply, with such modifications as are necessary, to and in relation to the exercise of the functions, powers, and duties of the Commissioner under this Act and persons and matters affected thereby as if those sections made express provision to that effect. Administra-
tion.

(2) The Minister may appoint persons to be authorized officers for the purposes of this Act.

PART II.—MOTOR VEHICLE DEALERS LICENSING BOARD.

7. (1) For the purposes of this Act there shall be a board to be known as the "Motor Vehicle Dealers Licensing Board". The Board.

(2) The Board—

- (a) shall be a body corporate with perpetual succession and a common seal; and
- (b) shall have the powers, duties, functions and authorities conferred, imposed or prescribed by or under this Act.

(3) Where in any judicial proceedings, whether under this Act or not, a document is produced bearing a seal purporting to be the common seal of the Board, the Court or tribunal before which those proceedings are brought shall in the absence of proof to the contrary presume that—

- (a) the seal is the common seal of the Board; and
- (b) the common seal was duly affixed.

8. (1) Subject to this section, the Board shall consist of five members appointed by the Governor, of whom— Composition
of the
Board.

- (a) one shall be appointed to be a member and Chairman of the Board;

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- (b) one shall be a person nominated for appointment by the Minister from a panel of names submitted by the body known as the Western Australian Automobile Chamber of Commerce (Inc). in accordance with subsection (2) of this section;
- (c) one shall be a person nominated for appointment by the Minister from a panel of names submitted by the body known as Chamber of Automotive Industries of W.A. (Inc). in accordance with subsection (2) of this section;
- (d) one shall be a person nominated for appointment by the Minister from a panel of names submitted by the body known as The Royal Automobile Club of W.A. (Incorporated) in accordance with subsection (2) of this section; and
- (e) one shall be a person nominated for appointment by the Minister to represent the interests of purchasers of vehicles.

(2) Prior to the first occasion on which an appointment is to be made to an office of member referred to in paragraph (b), (c) or (d) of subsection (1) of this section, and on each occasion thereafter when such an office becomes vacant by the effluxion of time, the Minister shall, in writing, request the body referred to in the appropriate paragraph to submit to him, in writing, a panel containing the names of not fewer than three persons willing to act as members of the Board.

(3) Where a body has been requested, pursuant to subsection (2) of this section, to submit a panel of not fewer than three names to the Minister, the Minister—

- (a) shall, if such a panel is submitted to him within twenty-one days of the body receiving the request, nominate one of the persons whose names appear on the panel for appointment to the office of member; and
- (b) may, if default is made within that time in submitting such a panel to him, nominate for appointment to the office of member such person as he thinks fit.

9. (1) Subject to the succeeding provisions of this section— Terms of office, etc.

- (a) a person appointed Chairman shall hold office for a term of three years;
- (b) a person appointed a member, other than as Chairman, shall hold office for such period, not exceeding three years, as is specified in the instrument of his appointment.

(2) If a member of the Board—

- (a) is an undischarged bankrupt or person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (b) becomes permanently incapable of performing his duties as a member;
- (c) resigns his office by writing under his hand addressed to the Governor;
- (d) absents himself, except on leave duly granted by the Minister, from three consecutive meetings of the Board,

the office of that member becomes vacant.

(3) Where the office of a member has become vacant otherwise than by effluxion of time, the Governor may appoint a person to the vacant office for the unexpired part of the term of the office which so became vacant.

(4) The Governor may appoint a person to be a deputy of a member and may terminate such an appointment at any time.

(5) A person so appointed is, in the event of the absence from a meeting of the Board of the member of whom he is the deputy, entitled to attend that meeting and, when so attending, has all the powers, functions and duties of a member.

Meetings
of the
Board.
Amended by
No. 66 of
1976, s.3.

10. (1) The Board shall hold meetings at such times and places as are necessary to enable it to discharge its functions and duties under this Act and the Minister may at any time require the Chairman to convene a meeting of the Board.

(2) The Chairman shall preside at all meetings of the Board at which he is present, and his deputy shall preside at all meetings at which he, but not the Chairman, is present, but where neither the Chairman nor his deputy is present at a meeting of the Board, the members present shall appoint one of their number present to act as chairman at the meeting.

(3) At a meeting of the Board, three members constitute a quorum.

(4) Any question arising at a meeting of the Board shall be decided by a majority of the votes of the members present and voting.

(5) At a meeting of the Board at which the Chairman or his deputy presides, the Chairman or his deputy has a deliberative vote, and in the event of an equality of votes being cast on any question, that question shall remain unresolved until a subsequent meeting of the Board.

(6) The Board shall cause accurate minutes to be kept of its proceedings at its meetings.

Validity of
acts of
Board.

11. No act, proceeding or determination of the Board shall be invalid on the ground only of any vacancy in the office of any member of the Board or of any defect in the appointment of any member of the Board or in the appointment of any deputy of a member of the Board.

Remunera-
tion of
members.

12. The members of the Board shall be paid such fees and allowances as may from time to time be fixed by the Governor.

13. (1) There shall be a secretary to the Board who shall be appointed by the Minister on the recommendation of the Public Service Board, but the office of secretary may be held in conjunction with any other office in the Public Service of the State.

Secretary to the Board, etc.

(2) The secretary shall have such powers, duties and functions as are conferred on him by this Act or as are, subject to any direction of the Minister, conferred on him or directed to be performed by him by the Board.

(3) The Commissioner of Police may at the request of the Chairman, cause his officers to make any investigations and reports relevant to any matter before the Board and the Commissioner of Police may cause such reports to be forwarded to the secretary.

(4) With the approval of the Minister and of the Public Service Board, the Board may make use of the services of any person employed in the Public Service of the State.

14. (1) For the purposes of considering or dealing with any matter the Board may—

Powers of Board in dealing with applications, etc.

- (a) by summons under the hand of the Chairman or of the secretary require the attendance of any witness;
- (b) by notice in writing signed by the Chairman or the secretary, require the production of any books, papers or documents relevant to the matter before the Board;
- (c) inspect any books, papers and documents produced before it and make copies of or extracts from matters therein that are relevant to the matter before the Board; and
- (d) examine witnesses on oath or affirmation which may be administered by any member of the Board or by the secretary.

(2) A person into whose conduct the Board is conducting any inquiry is entitled to be represented at the inquiry by counsel or solicitor and the Board shall give such person or his counsel or solicitor an opportunity of making to the Board such representations as, in the opinion of the Board, are relevant to the inquiry.

(3) If any person—

- (a) who has been personally served with a summons referred to in paragraph (a) of subsection (1) of this section to attend before the Board fails, without lawful excuse (proof whereof shall lie on him), to attend in obedience to such summons;
- (b) wilfully interrupts the proceedings of the Board; or
- (c) being called or examined as a witness in any proceeding or inquiry before the Board, refuses to be sworn or to affirm or, without lawful excuse (proof whereof shall lie on him), fails to produce any books, papers or documents mentioned in a notice referred to in paragraph (b) of subsection (1) of this section, and personally served upon him, or knowingly or wilfully makes a false statement to the Board,

he shall be guilty of an offence and liable to a penalty not exceeding four hundred dollars.

Application
for vehicle
dealer's
licence.

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

- (a) that he is of or over the age of eighteen 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 dealers, yard managers and salesmen.

(2) Subject to this Act, two or more persons constituting a firm who apply to the Board in the prescribed form for a vehicle dealer'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 buying or selling vehicles;
- (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 dealers, yard managers and salesmen.

(3) Subject to this Act, a body corporate which applies to the Board in the prescribed form for a vehicle dealer'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 buying or selling vehicles;

- (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 dealers, yard managers and salesmen.

Application
for yard
manager's
licence.
Amended by
No. 74 of
1975, s.4.

16. Subject to this Act, a person who applies to the Board in the approved form for a yard manager's licence and pays to the Board the prescribed fee therefor shall be granted such a licence upon satisfying the Board—

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

Applications
for
salesman's
licence.
Amended by
No. 74 of
1975, s.5.

17. Subject to this Act, a person who applies to the Board in the approved form for a salesman's licence and pays to the Board the prescribed fee therefor shall be granted such a licence upon satisfying the Board—

- (a) that he is of or over the age of eighteen years;
- (b) that he is a person of good character and repute and a fit and proper person to hold such a licence;
- (c) that he understands fully the duties and obligations imposed by this Act on salesmen

and has sufficient knowledge of the duties and obligations so imposed on dealers and yard managers; and

- (d) that he is employed by a dealer who is licensed under this Act or that such a dealer is prepared to employ him as a salesman.

18. (1) Without limiting its power to refuse an application for any other cause, the Board may refuse an application for a licence on any ground upon which the holder of a licence may be disqualified from holding or obtaining such a licence.

Matters which may be considered by the Board in refusing the grant or renewal of a licence.

(2) Without limiting the right of the Board to determine applications under sections 15, 16, 17 and 19 in such manner as it thinks fit, the Board shall afford the Commissioner an opportunity to submit to it any matters he considers relevant to any such application.

19. (1) Subject to this Act, a licence shall be valid and effectual for the purposes of this Act for such period not exceeding twelve months as shall be stated therein.

Period of licence.
Amended by No. 74 of 1975, s.6.

(2) When the Board grants a licence, other than by way of renewal, to a person, the licence may be granted for such period being not more than twenty-one months as the Board thinks fit, and in that event—

- (a) there shall, where the licence is granted for a period of less than twelve months, be refunded to the applicant an amount representing one-twelfth of the application fee paid for each complete month by which that period is less than twelve months; or
- (b) there shall, where the licence is granted for a period of more than twelve months, be paid by the applicant within twenty-eight days of the grant of the licence, a further amount representing one-twelfth of the

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application fee paid for each complete month by which that period exceeds twelve months,

as the case requires.

(3) A licence may, upon application being made to the Board and payment of the prescribed fee therefor not more than two months before the date of expiration thereof, be renewed by the Board from time to time and a licence so renewed shall, subject to this Act, in the case of each renewal, be valid and effectual for a further period of twelve months commencing from the time it would have expired had it not been renewed, but, without limiting the application of section 18 and subsection (5) of this section in relation to applications for renewals of licences, the Board shall not renew a licence unless the applicant satisfies the requirements of section 15, 16 or 17, as the case requires.

(4) A licence shall cease to be valid and effectual for the purposes of this Act—

- (a) upon the expiration thereof or, if it has been renewed, upon the expiration of the period for which it has been renewed; and
- (b) during any period in which the holder thereof is disqualified from holding or obtaining such a licence.

(5) A person is not entitled to be granted a licence at any time during which he is disqualified from holding or obtaining such a licence.

Disqualifica-
tion.
Amended by
No. 74 of
1975, s.7.

20. (1) The Board may on its own motion, or on the application of the Commissioner, by order, disqualify any person (whether or not he is the holder of a licence) from holding or obtaining a licence for any period named in the order or until a further order of the Board—

- (a) if the licence or any renewal thereof had been obtained by fraud, dishonesty or misrepresentation;

- (b) if the person is convicted of any offence, the commission of which would in the opinion of the Board render him unfit to be the holder of the licence;
- (c) if the person has been found, by any court or other tribunal, or, after due inquiry, by the Board, to have been guilty of fraudulent conduct or dishonesty in connection with the business of buying or selling vehicles;
- (ca) if the person has been found by the Board to have failed to maintain the premises at which he carries on the business of a dealer to a standard which in the opinion of the Board is required by the public interest and is suitable for the purpose;
- (d) if the person has been found by the Board after due inquiry, to have failed to carry out his obligations under section 34 to the satisfaction of the Board or to have failed to carry out those obligations with due expedition;
- (e) if the person being the holder of a dealer's licence has been found by the Board, after due inquiry, not to have sufficient material and financial resources to enable him to comply with the requirements of this Act;
or
- (f) if the person being the holder of a dealer's licence has, without the prior written consent of the Board employed in the business of buying or selling vehicles any person who has been disqualified from holding or obtaining a licence under this Act, during any period of such disqualification,

and upon the making of an order against a person being the holder of a licence and during the period of disqualification or until a further order of the Board, that person shall cease to be the holder thereof.

(2) Before making an order referred to in subsection (1) of this section the Board shall conduct an inquiry and give the person concerned an opportunity of showing cause why the order should not be made.

(3) Where the Board makes an order under this section disqualifying a person who was at that time the holder of a licence, from holding or obtaining a licence for a period or until further order, that order shall, unless the Board otherwise specifies in its order, also disqualify that person from holding or obtaining any other kind of licence during that period or until further order.

(4) Where the Board makes an order under this section disqualifying a person who was not at that time the holder of any licence, from holding or obtaining a licence for a period or until further order, that order shall, unless the Board otherwise specifies in its order, disqualify the person from holding or obtaining any kind of licence during that period or until further order.

Premises
on which
dealers may
carry on
business.
Amended by
No. 74 of
1975, s.8.

21. (1) An applicant for the grant of a dealer's licence shall specify in his application each of the premises at which he proposes to carry on business under the authority of that licence.

(2) Where the Board grants an application for a dealer'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 carrying on thereat of the business of a dealer 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 dealer may at any time during the currency of his dealer's licence apply to the Board in the approved form for the issue of a certificate in respect of any premises at which he proposes to carry on business 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 carrying on thereat the business of a dealer; 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) Subject to this section, where in respect of a special occasion a dealer proposes to carry on business for a period of limited duration at premises other than premises at which he normally carries on business he shall apply to the Board in writing setting out the relevant details for the issue of a special certificate in respect of those premises and the Board may, if it is satisfied that the provisions of the Factories and Shops Act, 1963 have been and will be complied with, issue a certificate to the dealer in respect of that trading.

(5) A special certificate issued under subsection (4) of this section is subject to such conditions and limitations as the Board may impose in the certificate.

(6) Subject to subsection (7) of this section, the provisions of this Act apply to any premises in relation to which a special certificate is issued under this section as if those premises were the registered premises of the person to whom the special certificate is issued.

(7) Where a special certificate is issued by the Board under this section the secretary is not required to enter the premises to which it relates in the register as the registered premises of the person to whom it is issued but shall retain a copy of the special certificate so issued and the copy so retained is deemed to form part of the register for the purposes of this Act.

(8) An application under this section shall be made not less than one month before the date on which the dealer proposes to commence carrying on business at the premises the subject of the application.

Premises and advertisements to bear name and number. Added by No. 74 of 1975, s.9.

21A. A person who carries on the business of a dealer shall cause the business name stated in his application for a licence and the number of the licence issued to him to appear—

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

Appeal. Amended by No. 74 of 1975, s.10.

22. (1) When the Board makes a decision or an order—

- (a) refusing an application by a person for a licence;
- (b) disqualifying a person from holding or obtaining a licence;
- (c) refusing to issue a certificate under section 21; or
- (d) refusing to approve of any change submitted to it under section 23,

the Board shall give the person affected by its decision or order its reasons for the decision or order, and the person may, within thirty days after the reasons for the decision or order have been so given, appeal to a Local Court.

(2) The Local Court shall have jurisdiction to hear and determine the appeal and may review the decision or order appealed against and the reasons therefor, and may, having regard to all matters which it considers relevant, including the interests of the public, confirm, vary or reverse the decision or order, but it shall lie upon the appellant to satisfy the court that the decision or order should be varied or reversed.

(3) Subject to the rules of court at the hearing of any appeal under this Act, the appellant, the Board and the Commissioner shall be entitled to appear personally or by counsel or solicitor.

(4) The Local Court may order the appellant, the Board or the Commissioner to pay costs in connection with any appeal.

(5) Where the Local Court by its determination of an appeal varies or reverses a decision or an order of the Board, the Board shall, as soon as practicable after receiving notice of the determination, give effect to that determination as if it were a decision or an order of the Board.

(6) The Local Court may, at any time after an appeal against a decision or order of the Board disqualifying a person from holding or obtaining a licence has been lodged, and on the application of the appellant, make an order postponing the effect of the decision or order appealed against until the appeal is determined by it or until such other time as may be fixed by it and the order shall have effect according to the tenor thereof.

22A. (1) A person who has been issued with a licence and who pursuant to an order under section 20—

Licence to be returned. Added by No. 74 of 1975, s.11.

- (a) has been refused an application for the renewal thereof; or
- (b) has been disqualified from holding a licence,

shall, as soon as may be after being notified of the Board's order, return the licence together with any certificates issued to him under section 21 to the secretary unless the Local Court otherwise orders pursuant to section 22.

(2) A person who ceases to carry on business as a dealer shall thereupon return to the secretary any licence or certificate issued to him relevant to that business.

Particulars
to be
endorsed
on licences
and changes
therein to be
notified.
Amended by
No. 74 of
1975, s.12.

23. (1) Where a licence is granted under subsection (2) of section 15—

(a) the licence shall be endorsed with the full name, address and description of every person who is a member of the firm and, in addition in the case of a corporate member, with the full name, address and description of all persons concerned in the management and conduct of the corporate member; and

(b) fourteen days before any change occurs in—

(i) the membership of the firm; or

(ii) the person or persons concerned in the management and conduct of any corporate member of the firm,

full particulars thereof shall be sent to the secretary.

(2) Where a licence is granted under subsection (3) of section 15—

(a) the licence shall be endorsed with the full name, address and description of every person who is concerned in the management and conduct of the body corporate; and

(b) fourteen days before any change occurs in the persons concerned in the management and conduct of the body corporate, full particulars thereof shall be sent to the secretary.

(3) Upon receipt of the particulars of a change of the kind referred to in paragraph (b) of subsection (1) of this section or paragraph (b) of subsection (2) of this section, the secretary shall submit those particulars to the Board and the Board may approve of or, if it is satisfied that there are reasons to do so, refuse to approve of, all or any of the changes referred to in the particulars so submitted.

(4) If the Board approves of the changes submitted to it pursuant to subsection (3) of this section the secretary shall require the dealer to forward his licence to the Board and shall cause such alterations to be made in the endorsements on the licence as the case requires.

(5) Where the Board refuses to approve of the changes submitted to it pursuant to subsection (3) of this section the secretary shall notify the dealer and any other person affected by the decision of the refusal.

24. (1) The secretary shall cause a register to be kept, and there shall be set out in the register all such particulars, matters and things, relating to the licences, licence holders and registered premises and any changes thereof, as may be prescribed.

Register to be kept.

(2) Any entry in the register is *prima facie* evidence of the facts thereby recorded and, where the name of a person is not recorded in the register, as a holder of a licence of any particular kind, there is a presumption that the person is not the holder of a valid licence of that kind.

25. (1) Every dealer, not being a financier, shall keep or cause to be kept a register, in the prescribed form, at any registered premises in respect of which the licence is issued; and shall record or cause to be recorded in that register the prescribed particulars of every transaction entered into, in the course of dealing at those premises.

Register to be kept by licence holders.
Amended by No. 58 of 1974, s.21.

(2) A dealer or yard manager shall produce the register kept pursuant to 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, or by a traffic inspector duly appointed for the district wherein the premises are situated.

(3) Every person who knowingly makes a false entry, or who causes a false entry to be made, in any register kept pursuant to this section commits an offence.

Transactions
in second-
hand
vehicles
to be
notified.

26. (1) Every dealer, not being a financier, acquiring a second-hand vehicle or selling a second-hand vehicle other than to a financier shall, forthwith after the acquisition or sale, send to the authority that licensed or registered the vehicle, if within the State, such particulars of the transaction as may be prescribed; and, where that authority is not within the State, shall forthwith deliver the number plates (if any) attached to the vehicle to the nearest licensing or registering authority.

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

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

Inspection of
second-hand
vehicles.
Amended by
No. 58 of 1974,
ss. 20 and 21.

27. (1) Every dealer and every yard manager and salesman acting for a dealer shall permit any member of the Police Force, any authorized officer of the Road Traffic Authority or any traffic inspector, at all reasonable hours to enter upon any registered premises of the dealer, with such persons as he may require to assist him, and there to examine any second-hand vehicle; and where in the opinion of that member, authorized officer or traffic

inspector, it is necessary to road-test any such vehicle, the dealer, yard manager or salesman shall permit him, or such other person as that member, authorized officer or traffic inspector may nominate, to remove the vehicle from the premises and drive it, for that purpose, but nothing in this subsection authorizes any such member, authorized officer, traffic inspector, or person so nominated, to remove or drive any agricultural implement for that purpose.

(1a) In subsection (1) of this section "dealer" includes any person carrying on the business of a wrecker of motor vehicles or of buying and selling vehicles for which a dealer's licence is not required under this Act, and in relation to such a person—

- (a) the terms "yard manager" and "salesman" mean an employee of the person; and
- (b) the term "registered premises" means the premises at which that person carries on business.

(2) Notwithstanding the provisions of any other Act, an unlicensed vehicle may be driven on a road by a person acting under the authority of subsection (1) of this section.

(3) Subject to subsection (4) of this section a dealer, or a yard manager or salesman acting on behalf of a dealer, shall not, during any hours when the dealer is lawfully able to keep his registered premises open to the public, cause or permit a second-hand vehicle of which the dealer is the trade owner to be kept or parked elsewhere than at the registered premises of the dealer.

(4) In any proceedings for an offence against subsection (3) of this section it is a defence to prove—

- (a) that the vehicle was kept or parked at or adjacent to the residence or place of business or employment of a particular prospective purchaser for the purpose of displaying it to that prospective purchaser; or

(b) that during the period for which the vehicle was kept or parked elsewhere than at the registered premises—

- (i) it was not so kept or parked for the purpose of causing the vehicle to be offered or displayed for sale except as described in paragraph (a) of this subsection; and
- (ii) it was not so kept or parked for the purpose of avoiding the provisions of this section or of any other section of this Act.

Vehicles
may be
declared
unfit for
sale.
Amended by
No. 58 of
1974, s.21.

28. (1) Where, in the opinion of any member of the Police Force, authorized officer of the Road Traffic Authority or traffic inspector examining or testing a second-hand vehicle, under the provisions of section 27, the vehicle requires any repair, adjustment or re-conditioning, or the supply, fitting or removal of any equipment or any other attention, in order to make it comply with any law relating to the equipment, serviceability or roadworthiness of vehicles, he may attach to the vehicle a notice, in the prescribed form, prohibiting the sale of that vehicle, except for the purpose of being broken up, until—

- (a) the repair, adjustment or re-conditioning, or the supply, fitting or removal of the equipment or the other attention has been effected, made or given; and
- (b) the vehicle has again been inspected, and the notice has, subsequent to that inspection, been removed, by a member of the Police Force, authorized officer of the Road Traffic Authority or a traffic inspector.

(2) A person who wilfully removes, damages or obliterates a notice affixed to a vehicle, pursuant to the provisions of subsection (1) of this section, or who permits or suffers any of those things to be done, commits an offence.

29. (1) Except where he has reasonable grounds for believing that the vehicle is being acquired for the purpose of being broken up (the proof whereof shall lie upon him), a dealer shall not sell, and a yard manager or salesman shall not assist in the sale of, a second-hand vehicle of which the sale has been prohibited by a notice affixed to the vehicle under the provisions of section 28, until the notice has been removed, as provided in subsection (1) of that section.

Restriction
on sale of
unroad-
worthy
vehicles.

(2) Where, by a representation that it is being acquired for the purpose of being broken up, a person induces another to sell a second-hand vehicle of which the sale would, but for that representation, be unlawful under this Act, and does so knowing the representation to be false, the person making the representation commits an offence.

(3) A dealer selling a second-hand vehicle that he is led to believe is being acquired for the purpose of being broken up shall, before yielding up possession of it, remove from the vehicle any number plates attached to it and shall, forthwith, return them to the nearest licensing or registering authority, with the advice that the vehicle in respect of which they were issued is to be broken up.

(4) The provisions of subsection (3) of this section apply, *mutatis mutandis*, to a dealer acquiring a second-hand vehicle, from a person who is not a dealer, for the purpose of breaking it up.

(5) A dealer shall not break up a motor vehicle, or cause it to be broken up, unless and until it has been in his possession for seven days.

30. (1) On and after the appointed day a person who is not the holder of a valid dealer's licence and who carries on or acts in the business of a dealer commits an offence unless—

Unlicensed
dealings
prohibited.

(a) he so acts in the business of a dealer only in the capacity of a yard manager or salesman for that dealer;

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- (b) he so carries on or acts in the business of a dealer only in the capacity of a financier and he has been exempted from compliance with the provisions of this Act by the Board under subsection (2) of this section; or
- (c) he so carries on or acts in the business of a dealer only in the capacity of an auctioneer and he has been exempted from compliance with the provisions of this Act by the Board under subsection (2) of this section.

Penalty: One thousand dollars, and in addition a further penalty of one hundred dollars a day for each day on which the offence continues.

(2) Where, after having made application in the approved form and paid the prescribed fee therefor—

- (a) a financier satisfies the Board that he ordinarily disposes of vehicles which he has repossessed, directly to dealers; or
- (b) an auctioneer satisfies the Board that the auctioning of vehicles does not comprise any significant part of his business as an auctioneer,

the Board may, in writing, exempt him from compliance with the provisions of this Act.

(3) Any exemption granted under subsection (2) of this section—

- (a) may be granted subject to such conditions, if any, as the Board thinks fit;
- (b) operates so as to exempt the financier or auctioneer to whom it is granted and any employee or agent of the financier or auctioneer acting in his capacity as such from complying with any of the provisions of this Act other than section 39; and
- (c) may be revoked at any time by the Board.

(4) On and after the appointed day a person shall not act in the capacity of a yard manager (other than for or on behalf of a financier) unless he is the holder of a valid yard manager's licence.

Penalty: Two hundred dollars, and in addition a further penalty of twenty dollars a day for each day on which the offence continues.

(5) On and after the appointed day a person shall not act in the capacity of a salesman (other than for or on behalf of a financier) unless he is the holder of a valid salesman's licence.

Penalty: One hundred dollars, and in addition a further penalty of ten dollars a day for each day on which the offence continues.

(6) 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 day¹ for the purposes of this section.

(7) Notwithstanding any other provision of this Act, where an application for a yard manager's licence or a salesman's licence is received by the Board, the secretary may, unless the Chairman otherwise directs, issue to the applicant a permit authorizing the applicant to act as a yard manager or salesman, as the case requires, until the application has been determined by the Board or for such lesser period as is specified in the permit.

(8) Where a permit has been issued to an applicant for a yard manager's licence or salesman's licence under subsection (7) of this section the person to whom the permit has been granted shall, for all of the purposes of this Act and so long as the permit remains in force, be deemed to be the holder of a yard manager's licence or a salesman's licence, as the case requires.

¹ Appointed day fixed as 12/8/74, see G.G. 9/8/74, p. 2991.

Dealers
not to
carry on
business
except at
registered
premises.
Amended by
No. 74 of
1975, s.13.

31. A dealer shall not carry on his business as such except at premises registered in his name under section 21 or to which a certificate under section 21 issued in his name relates, or otherwise than in premises maintained in a condition which in the opinion of the Board is required in the public interest and is suitable for the purpose.

Penalty: Four hundred dollars.

PART III.—DEALINGS IN SECOND-HAND VEHICLES.

Application
of this
Part.
Amended by
No. 74 of
1975, s.14.

32. (1) The provisions of this Part do not apply to or in relation to the sale of a vehicle—

(a) to a dealer; or

(b) by auction, unless that vehicle is owned by a trade owner.

(1a) the provisions of paragraph (c) of subsection (3) of section 33 do not apply where a vehicle owned by a trade owner is sold by auction.

(2) Where a vehicle is sold by a financier, the provisions of this Part, other than section 39, do not apply to the financier or to any of his employees or agents, but the provisions of this subsection do not affect the duties or obligations under this Part of or attaching to a dealer who is not a financier, or to any yard manager or salesman of such a dealer, in relation to any transaction or transactions by or under which the dealer is, pursuant to subsection (6) of section 5, deemed to have sold a vehicle to a person.

(3) Where in relation to the sale of a second-hand vehicle, the vehicle was delivered prior to the time at which the offer to purchase the vehicle was accepted, the time at which the vehicle was sold shall, for the purposes of sections 33, 34 and 35, be deemed to be the time at which the vehicle was so delivered.

33. (1) A dealer, yard manager or salesman who offers or displays for sale or causes, suffers or permits to be so offered or displayed, a second-hand vehicle commits an offence unless there is attached to that vehicle in the manner specified in subsection (6) of this section a notice in the prescribed form containing the required particulars.

Particulars
to be
displayed.
Amended by
No. 74 of
1975, s.15.

Penalty: Two hundred dollars.

(2) Where the Commissioner is satisfied that—

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

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

(3) For the purposes of this section the following are the required particulars—

- (a) the name and business address of the dealer by whom the vehicle is offered or exposed for sale;
- (b) where the vehicle is equipped with an odometer, the reading on the odometer of the vehicle at the time the vehicle was acquired from the last owner of the vehicle who was not a trade owner;
- (c) the cash price of the vehicle;
- (d) the year of first registration of the vehicle, and, where the vehicle is fitted with a compliance plate or other identification plate from which the year of manufacture of the vehicle may be ascertained, the year of manufacture of the vehicle;

- (e) the licence plate number of the vehicle or, where the vehicle is not then licensed under the Road Traffic Act, 1974, the word "unlicensed";
- (f) [*Deleted by No. 74 of 1975, S. 15*] and
- (g) such other particulars as are prescribed.

(4) A person shall not insert, or suffer or permit to be inserted, in any notice referred to in subsection (1) of this section any statement or representation that is false or misleading in a material particular.

Penalty: Five hundred dollars.

(5) In any proceedings for an offence that is a contravention of subsection (4) of this section where the contravention consists of a false or misleading statement as to the year of first registration of the vehicle it shall be a defence for the defendant to prove that—

- (a) he took reasonable steps to ascertain the year of first registration of the vehicle; and
- (b) to the best of his knowledge and belief the statement made as to the year of first registration was a true and accurate one.

(6) For the purposes of subsection (1) 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.

(7) Where a dealer sells a vehicle, he shall cause a copy of the notice attached to the vehicle pursuant to the provisions of this section to be made out and signed by him or a yard manager or salesman acting on his behalf and shall—

- (a) retain for a period of not less than six months the notice which was displayed on the vehicle; and
- (b) forthwith cause a copy of the notice so made out to be given to the purchaser.

34. (1) Except as provided in this section, where any second-hand vehicle is, on or after the commencement of this Act, sold by a dealer to any person who does not by reason of that sale become a trade owner of that vehicle—

Obligations
of dealer.

- (a) at a cash price of or over one thousand dollars or such other amount as is from time to time prescribed and—
 - (i) before that vehicle has been driven for five thousand kilometres after the sale; or
 - (ii) before the expiration of the period of three months next following the day of the sale,

whichever event first occurs, a defect which renders or is likely to render the vehicle unroadworthy or unserviceable appears in that vehicle, whether or not that defect existed at the time of the sale, the dealer who sold that vehicle shall, at his own expense, repair or make good, or cause to be repaired or made good, that defect so as to make the vehicle roadworthy and to place that vehicle in a reasonable condition having regard to its age; or

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- (b) at a cash price of less than one thousand dollars or such other amount as is from time to time prescribed and—
 - (i) before that vehicle has been driven for three thousand kilometres after the sale; or
 - (ii) before the expiration of the period of two months next following the day of the sale,

whichever event first occurs, a defect which renders or is likely to render the vehicle unroadworthy or unserviceable appears in that vehicle, whether or not that defect existed at the time of the sale, the dealer who sold that vehicle shall, at his own expense, repair or make good, or cause to be repaired or made good, that defect so as to make the vehicle roadworthy and to place that vehicle in a reasonable condition having regard to its age.

(2) For the purposes of calculating the period referred to in subparagraph (ii) of paragraph (a) or subparagraph (ii) of paragraph (b) of subsection (1) of this section, no regard shall be paid to any period during which the dealer has the vehicle in his possession for the purpose or purported purpose of ascertaining or carrying out his obligations under this section.

(3) Subsection (1) of this section does not apply to or in relation to any defect—

- (a) that is a defect to which, pursuant to section 35, that subsection does not apply;
- (b) arising from or incidental to any accidental damage to the vehicle that occurred after the sale referred to in that subsection;
- (c) arising from misuse or negligence on the part of a driver of the vehicle that occurred after the sale referred to in that subsection;
- (d) occurring in the tyres, battery or any prescribed accessory to the vehicle;

- (e) occurring in any vehicle the cash price of which at the time of the sale referred to in that subsection did not exceed five hundred dollars or such other amount as is, from time to time prescribed; or
- (f) occurring in a vehicle that has, for the time being, been exempted from the provisions of subsection (1) of this section by notice under subsection (5) of this section.

(4) This section does not apply to or in relation to the sale of a vehicle where the proposed purchaser has been in possession of that vehicle for a period of not less than three months immediately preceding the day of that sale.

(5) The Minister may, by notice published in the *Gazette*, exempt a vehicle or a vehicle of a class from the provisions of subsection (1) of this section and may by notice published in a like manner revoke or amend any such exemption.

35. (1) A dealer may affix or attach to any second-hand vehicle offered or displayed for sale a notice, in the prescribed form, setting out with reasonable particularity any defect that he believes to exist in that vehicle together with, in relation to each such defect his estimate of the fair cost of repairing or making good that defect. Excluded defects.

(2) If—

- (a) a notice referred to in subsection (1) of this section has, at all material times, been attached to a second-hand vehicle in the same manner as is specified under subsection (6) of section 33; and
- (b) at or before the time of sale a copy of that notice has been signed by the purchaser and upon the sale a true copy of that notice as so signed has been delivered to the purchaser for retention by him,

then subsection (1) of section 34 shall not apply to and in relation to that defect.

(3) If in any notice referred to in subsection (1) of this section the amount estimated by the dealer as the fair cost of repairing or making good any defect is less than the amount of the fair cost of repairing or making good that defect the purchaser may sue for and recover the difference between those fair costs as a debt due to the purchaser from the dealer.

Disputes.

36. If a dispute arises between a purchaser and dealer as to—

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

the Commissioner may advise in writing both the dealer and the purchaser that he proposes to determine the dispute under section 37 unless either or both of them object in writing to his so doing, within fourteen days.

Hearing of
dispute by
Commis-
sioner.

37. (1) Where the Commissioner has advised the parties to a dispute that he proposes to determine the dispute under this section and neither party has, within the time limited by section 36 objected to his so doing, the Commissioner may hear and determine the dispute or the Commissioner may appoint some person to hear and determine the dispute.

(2) Without limiting the generality of the powers conferred on the Commissioner or person pursuant to subsection (1) of this section, where the Commissioner or person is satisfied—

- (a) that an obligation lies on the dealer under section 34; and
- (b) that the dealer has unreasonably—
 - (i) refused or failed to carry out that obligation; or
 - (ii) delayed or prevaricated in the carrying out of that obligation,

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

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

(3) Where an order is made pursuant to subsection (2) of this section and the purchaser has pursuant to an order under that subsection contracted to have the defect repaired or made good by a person other than the dealer, the dealer against whom that order was made shall be liable to indemnify the purchaser against all costs or expenses payable by the purchaser pursuant to that contract and the amount of such indemnity may be sued for and recovered by the purchaser as a debt due from the dealer to the purchaser.

(4) Where an order is made pursuant to subsection (2) of this section, notwithstanding any Act or law to the contrary the dealer shall not have a lien over the vehicle to which the order relates in relation to any work done or purported to have been done in repairing or making good any defect to which the order relates.

(5) A person shall not wilfully make any false or misleading statement or claim in or in relation to any hearing or determination under this section.

Penalty: Two hundred dollars.

Reference
of a
dispute to
the court.

38. (1) Where a dispute arises as to any matter or thing referred to in section 36 and the dealer or the purchaser has objected to the determination of the dispute by the Commissioner pursuant to that section, either party may apply to a Local Court for the dispute to be heard and determined as a proceeding in that court and upon such an application being made the court shall hear and determine the matter as expeditiously as possible.

(2) For the purposes of a proceeding referred to in subsection (1) of this section and subject to this subsection the Local Court shall have and may exercise all the powers and functions conferred on the Commissioner under section 37 and that section shall apply and have effect as if in that section there were substituted for each reference to the Commissioner a reference to the Local Court, but nothing in this section shall authorize or empower the Local Court to appoint some other person to hear and determine the dispute.

Rescission
of sale.

39. (1) Where—

- (a) a second-hand vehicle has been sold by a dealer, not being a financier, to a purchaser; or

- (b) a second-hand vehicle has been sold by a financier to a purchaser and a dealer, not being a financier, arranged or procured the sale of the vehicle,

and the Commissioner is of opinion that the vehicle as so sold was substantially different from the vehicle as represented in a notice under section 33 or where no such notice was displayed in relation to the vehicle, that the vehicle as so sold was substantially different from the vehicle as represented by the dealer, the Commissioner may apply to the Local Court for an order for rescission of the sale of the vehicle.

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

(3) After hearing the Commissioner or a representative of the Commissioner and affording any other person likely to be affected by any order made under this section an opportunity of being heard, the Local Court may—

- (a) order that the sale be rescinded; and
- (b) make such further or consequential orders (including an order as to the payment of the costs of the application) as to it seem necessary or desirable.

(4) The power to make further or consequential orders conferred on the Local Court by subsection (3) of this section shall extend to the making of orders concerning any collateral credit agreement associated with the sale.

(5) In making any orders under subsection (3) of this section, the Local Court shall so far as is possible apply the following principles in the following order:—

- (a) That there should be returned to the purchaser—
 - (i) any moneys or other consideration paid or provided by him under any agreement for the sale (not being

Motor Vehicle Dealers.

moneys or other consideration obtained by him under a collateral credit agreement associated with the sale for the purpose of being so paid or provided); and

- (ii) any moneys or other consideration paid or provided by him under any collateral credit agreement associated with the sale.

(b) That—

- (i) where the vehicle was sold by a financier, that financier; and
- (ii) any person who has provided finance under any collateral credit agreement associated with the sale,

should be indemnified by the dealer referred to in subsection (1) of this section against any loss suffered by the financier or person in consequence of any order made by the Local Court.

- (c) That the vehicle should be returned to the dealer or the financier.

(6) Notwithstanding any Act or law to the contrary, upon an order rescinding a sale being made, the rights and obligations of the parties under any contract or agreement relating to the sale or under any contract or agreement relating to a collateral credit agreement connected with the sale and, where applicable, of any dealer referred to in subsection (1) of this section who is not such a party, shall be as provided for in that order or in any order ancillary to or consequential upon that order and without limiting the generality of the foregoing it shall not be a bar, to the making of an order rescinding a sale, that one or more of those persons cannot be restored to the position or positions that existed prior to the sale.

(7) In this section "collateral credit agreement" means a contract or agreement for the provision of credit by a person other than the dealer referred to in subsection (1) of this section for the purposes of the sale of a second-hand vehicle where that contract or agreement was arranged or procured by that dealer.

40¹ (1) Where—

Certificates
of road-
worthiness.

- (a) a dealer sells, or causes or permits the sale of, a second-hand vehicle to a purchaser; and
- (b) by reason of the operation of section 20B of the Traffic Act, 1919², the licence issued under that Act for the vehicle could not be transferred to the purchaser unless a certificate of roadworthiness has been obtained and is presented with the application for the transfer,

the dealer commits an offence unless, at the time the sale is effected—

- (c) there is in force such a certificate of roadworthiness for the vehicle which is valid for not less than seven days after that time; and
- (d) that certificate is given to the purchaser.

Penalty: One hundred dollars.

(2) Without affecting the liability of a person to be proceeded against under subsection (1) of this section, where in relation to the sale of a vehicle a dealer fails to comply with that subsection—

- (a) the transaction shall not by reason thereof only be void or voidable; and
- (b) the dealer is liable to pay the purchaser the amount of any costs reasonably incurred by the purchaser in obtaining such a certificate, including any costs reasonably incurred in making the vehicle conform to the standards necessary to enable such a certificate of roadworthiness to be obtained.

¹ Section 40 not in operation at date of this reprint.

² Repealed by Road Traffic Act, 1974.

PART IV.—MISCELLANEOUS.

Undesirable
practices.

41. (1) A person shall not, in relation to the business of buying or selling vehicles, carry out or give effect to any undesirable practice.

Penalty: Five hundred dollars.

(2) In this section an undesirable practice means a practice prescribed to be an undesirable practice by regulation under this Act.

Representa-
tion by
employee of
dealer.

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

Value of
vehicle or
thing
traded in.

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

Penalty: One hundred dollars.

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

Tender of
documents
for
signature.

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

Penalty: Four hundred dollars.

(2) This section applies to any document evidencing or recording any contract or agreement for the sale of a vehicle or evidencing or recording any collateral credit agreement as defined in section 39 connected with such a sale.

45. (1) A person shall not, wilfully and with intent to enhance the value of a second-hand vehicle— Misrepresentation.

- (a) alter or cause to be altered or connive in the alteration of the reading of an odometer on the vehicle;
- (b) state or represent as the year of manufacture of the vehicle a year other than the actual year of manufacture of the vehicle;
- (c) state or represent as the year of first registration of the vehicle a year other than the actual year of first registration of the vehicle;
- (d) state or represent as the model designation of the vehicle a model designation other than the actual model designation of the vehicle; or
- (e) state or represent in any way that a vehicle which has been used as a taxi-car has not been so used.

Penalty: Four hundred dollars.

(2) If in any proceedings for an offence that is a contravention of subsection (1) of this section it is proved that—

- (a) a second-hand vehicle, being a vehicle to which Part III of this Act applies, was offered or displayed for sale by a dealer; and
- (b) the distance travelled by the vehicle as ascertained by reference to the reading of the odometer of the vehicle is less than that distance as ascertained by reference to the reading of the odometer of the vehicle set out in the notice displayed pursuant to section 33 in relation to that vehicle,

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

(3) Where a dealer or a person concerned in management or conduct of the business of a dealer, including but not necessarily being a yard manager or dealer, is convicted of an offence that is a contravention of subsection (1) of this section a purchaser who purchased the second-hand vehicle in respect of which that offence was committed from that dealer relying on—

- (a) the reading of the odometer of the vehicle as altered;
- (b) the statement or representation as to the year of manufacture of the vehicle; or
- (c) the statement or representation as to the year of first registration of the vehicle or as to the model designation of the vehicle,

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

(4) In subsection (3) of this section “the prescribed amount” means the amount determined by the court hearing the matter as being the difference between the sale price of the vehicle and its fair value at the time of the sale.

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

46. (1) Subject to subsection (3) of this section—

- (a) where there is a contract for the sale by a dealer of a vehicle to a person by description, there is an implied condition that the vehicle will correspond with the description, and the sale of a vehicle is not

prevented from being a sale by description for the purposes of this paragraph by reason only that, being exposed for sale, the vehicle is selected by the purchaser;

(b) where a dealer sells a new vehicle to a person, there is an implied condition that the vehicle is of merchantable quality, except that there is no such condition by virtue only of this section—

(i) as regards defects specifically drawn to that person's attention before the contract is made; or

(ii) if the person examines the vehicle before the contract is made, as regards defects which that examination ought to reveal.

(2) Any term of a contract or agreement for the sale or supply of a vehicle to a person by a dealer (including a term that is not set out in the contract or agreement, but is incorporated therein by another term thereof) that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying—

(a) the application to that contract or agreement of all or any of the provisions of subsection (1) of this section;

(b) the exercise of a right conferred by such a provision; or

(c) any liability of the dealer for breach of a condition or warranty implied by such a provision,

is void.

(3) The provisions of subsection (1) of this section do not extend to or in relation to—

(a) any contract or agreement for the sale, or for the hire and sale, of a vehicle which is in the form of a hire-purchase agreement to which the Hire-Purchase Act, 1959 applies; or

(b) any contract or agreement for the sale of a vehicle which—

(i) is not a vehicle to which Part III of this Act applies; or

(ii) is acquired by that person for the purposes of re-sale.

Other rights or remedies.

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

No waiver of rights.

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

No indemnity for dealer.

49. Where a dealer incurs any costs or expenses by virtue of the operation of this Act in relation to the sale of a second-hand vehicle, the dealer shall not be entitled to be indemnified in respect of those costs or expenses by any antecedent owner, other than a trade owner, of that vehicle and any purported contract or agreement of such indemnity shall, by force of this section, be void and of no effect.

Disclosure by member of the Board.

50. A member of the Board shall not otherwise than in the exercise of his powers, duties or functions as such a member, disclose any information that has come to his knowledge in his capacity as such a member.

Penalty: Five hundred dollars.

Annual reports.

51. (1) The Chairman shall, on behalf of the Board and of the Commissioner, as soon as practicable after the first day of July in each year, submit to the Minister a report on the activities under this Act of the Board and of the Commissioner for the year ending on the thirtieth day of June last preceding.

(2) The Minister shall cause the report to be laid on the Table of each House of Parliament within fourteen days of its receipt, or if at that time Parliament is not in session, then within fourteen days of the commencement of the next session of Parliament.

52. (1) Where any person contravenes or fails to comply with a provision of this Act, that person is guilty of an offence against this Act.

General provisions relating to offences. Amended by No. 74 of 1975, s.16.

(2) A person who is guilty of an offence against this Act for which no specific penalty is provided elsewhere in this Act is liable to a penalty of two hundred dollars.

(3) Except as provided in subsection (3) of section 45, where a person, being a dealer (in this subsection referred to as "the defendant"), is convicted of an offence against this Act and the court by which he is convicted is of opinion that some other person was defrauded or suffered pecuniary loss by reason of the commission of the offence, the court may, in addition to imposing a penalty for the offence, order the defendant to pay to that other person by way of recoupment of his loss, such sum as the court thinks fit and specifies in its order.

(4) Notwithstanding anything in any Act proceedings for an offence against this Act may be brought within the period of twelve months after the commission of the alleged offence.

53. (1) Notwithstanding any other law or rule of law, where an offence against section 28 or subsection (5) of section 30 is committed at any registered premises or in relation to the sale of a vehicle which was offered or exposed for sale at any registered premises by a person (in this section referred to as "the other person") other than the person acting in the capacity of dealer or yard manager for those premises, the yard manager is guilty of an offence against this Act in like manner

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

as that person and may be proceeded against and convicted accordingly unless he proves that he had no knowledge of the commission of the offence and could not, by the exercise of due diligence, have prevented the commission of the offence.

(2) The yard manager may be proceeded against and convicted pursuant to subsection (1) of this section notwithstanding that the other person has not been proceeded against or has not been convicted under this Act.

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

Liability
of dealer for
offences by
employees,
etc.

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

(2) The dealer may be proceeded against and convicted pursuant to subsection (1) of this section notwithstanding that the yard manager, salesman or employee has not been proceeded against or has not been convicted under this Act.

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

55. (1) Where a corporation is convicted of an offence against this Act, every person who at the time of the commission of the offence was a director or member of the governing authority of the corporation or an officer concerned in the management of the corporation and who authorized or permitted the commission of the offence is guilty of the like offence. Offences by corporations.

(2) A person referred to in subsection (1) of this section may, on the request of the complainant, be convicted on the proceedings on which the corporation is convicted if the court is satisfied that the person had reasonable notice that the complainant intended to make that request.

56. (1) The Governor may make such regulations as are necessary or expedient for the purposes of giving effect to the provisions or objects of this Act. Regulations.

(2) Without limiting the generality of the provisions of subsection (1) of this section, the regulations may—

- (a) prescribe any practice relating to the business of buying or selling second-hand vehicles that in the opinion of the Governor is an undesirable practice;
- (b) prescribe the information and particulars that shall be included in any advertising material relating to second-hand vehicles and the form and manner in which that information or those particulars shall be set out in that advertising material;
- (c) prescribe fees to be payable and provide for and prescribe the forms to be used for the purposes of this Act;
- (d) prescribe the manner in which any notice under this Act shall be attached or affixed to a vehicle;

Motor Vehicle Dealers.

- (e) provide for the form of a notice that shall be affixed to a vehicle indicating that the vehicle has been exempted from the provisions of subsection (1) of section 34;
- (f) provide for and prescribe the method of evidencing and the documents required to effectuate sales of second-hand vehicles between trade owners;
- (g) require yard managers and salesmen to give notice of changes of employment or places of employment; and
- (h) provide for and prescribe penalties not exceeding, in each case, two hundred dollars, for a contravention of or failure to comply with any provision of the regulations.