

Reprinted under the  
*Reprints Act 1984* as  
at 14 November 1996

WESTERN AUSTRALIA

---

**MOTOR VEHICLE DEALERS  
ACT 1973**

---

ARRANGEMENT

---

**PART I — PRELIMINARY**

1.	Short title	2
2.	Commencement	2
4.	Repeal	2
5.	Interpretation	2
6.	Administration	8

**PART II — MOTOR VEHICLE DEALERS LICENSING BOARD**

7.	The Board	9
8.	Composition of the Board	9
9.	Terms of office, etc.	11
10.	Meetings of the Board	12
11.	Validity of acts of Board	13
12.	Remuneration of members	13
13.	Secretary to the Board, etc.	13

*Motor Vehicle Dealers Act 1973*

14.	Powers of Board in dealing with applications, etc.	14
15.	Application for vehicle dealer's licence	15
16.	Application for yard manager's licence	17
17.	Application for salesman's licence	18
17A.	Application for car market operator's licence	18
17B.	Car market operator's licence and other licence under this Act not to be held by same person	20
18.	Matters which may be considered by the Board in refusing the grant or renewal of a licence	20
19.	Period of licence	21
20.	Disqualification	22
21.	Premises at which dealers may carry on business	24
21A.	Dealers premises and advertisements to bear name and number	25
21B.	Premises at which car markets may be conducted	26
21C.	Car market premises and advertisements to bear name and number	27
22.	Appeal	27
22A.	Licence to be returned	29
23.	Particulars to be endorsed on licences and changes therein to be notified	30
24.	Register to be kept	31
25.	Register to be kept by licence holders	32
26.	Transactions in second-hand vehicles to be notified	33
27.	Inspection of second-hand vehicles	34
28.	Vehicles may be declared unfit for sale	36
29.	Restriction on sale of unroadworthy vehicles	37
30.	Unlicensed dealings prohibited	38
31.	Dealers not to carry on business except at registered premises	40
31A.	Prohibition on operation of car markets	40

**PART III — DEALINGS IN SECOND-HAND VEHICLES**

32.	Application of this Part	42
33.	Particulars to be displayed	42
34.	Obligations of dealer	45
35.	Excluded defects	48
36.	Disputes	48
37.	Hearing of dispute by Commissioner	49
37A.	Enforcement of orders of Commissioner	51
37B.	Effect of determination by Commissioner	53

*Motor Vehicle Dealers Act 1973*

38.	Reference of a dispute to the court	54
-----	-------------------------------------	----

**PART IIIA — OBLIGATIONS OF CAR  
MARKET OPERATORS**

40A.	Liability of car market operator for certain losses	55
40B.	Notice as to warranties to be displayed	56

**PART IV — MISCELLANEOUS**

41.	Undesirable practices	58
41A.	Rescission of sale	58
41B.	Obligations in relation to demonstration vehicle	60
42.	Representation by employee of dealer	61
43.	Value of vehicle or thing traded in	61
44.	Tender of documents for signature	62
45.	Misrepresentation	62
46.	Sale of vehicles by description and implied undertakings as to quality or fitness	64
47.	Other rights or remedies	66
48.	No waiver of rights	66
49.	No indemnity for dealer	66
49A.	No indemnity for car market operator	66
50.	Disclosure by member of the Board	67
51.	Annual reports	67
52.	General provisions relating to offences	67
53.	Liability of yard manager for offences by other persons at premises under his supervision	68
54.	Liability of dealer for offences by employees etc.	69
55.	Offences by corporations	69
56.	Regulations	70

<b>NOTES</b>	<b>72</b>
--------------	-----------



Reprinted under the  
*Reprints Act 1984* as  
at 14 November 1996

WESTERN AUSTRALIA

---

---

# MOTOR VEHICLE DEALERS ACT 1973

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

s. 1

**PART I — PRELIMINARY**

**Short title**

1. This Act may be cited as the *Motor Vehicle Dealers Act 1973*<sup>1</sup>.

**Commencement**

2. The provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation<sup>1</sup>.

[3. *Repealed by No. 87 of 1981 s.3.*]

**Repeal**

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

**Interpretation**

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;

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

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

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

**“cash price”** in relation to the sale of a secondhand 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 referred to in 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 person whose business consists of or includes buying vehicles for wrecking, 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;

**“demonstration vehicle”** means a vehicle —

- (a) that is licensed under the provisions of the *Road Traffic Act 1974* in the name of the dealer by whom it is being sold or offered or exposed for sale and has been used by that dealer for the purposes of demonstration; and
- (b) in respect of which there remains an obligation on the part of the manufacturer to the purchaser of the vehicle from the dealer greater than the obligation which would be imposed on a dealer by the provisions of subsection (1) of section 34 were that vehicle to be sold by him at the material time;

*Motor Vehicle Dealers Act 1973*

s. 5

**“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;

**“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;

*Motor Vehicle Dealers Act 1973*

s. 5

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

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

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

(2) In sections 25, 26, 28 and 29, and in subsections (1), (1a) 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;
- (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 this Act, where a dealer sells a second-hand vehicle to a financier in the expectation that the financier will sell that vehicle to a third person and the financier so sells that vehicle to that third person, the dealer shall be deemed to have sold the vehicle to that third person.

(7) In this Act a reference to the conduct of a car market at premises pursuant to a car market operator’s licence is a reference to the conduct of a car market at the premises while the premises are being provided under the authority of the licence.

*[Section 5 amended by No. 74 of 1975 s.3; No. 66 of 1976 s.2; No. 49 of 1979 s.3; No. 87 of 1981 s.4; No. 6 of 1982 s.3; No. 1 of 1985 s.25; No. 73 of 1994 s.4.]*

*Motor Vehicle Dealers Act 1973*

s. 6

**Administration**

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.

(2) The Minister or the Permanent Head of the Department within the meaning of the *Consumer Affairs Act 1971* may appoint persons to be authorized officers for the purposes of this Act.

[*Section 6 amended by No. 1 of 1985 s.26.*]

**PART II — MOTOR VEHICLE DEALERS  
LICENSING BOARD**

**The Board**

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

**Composition of the Board**

8. (1) Subject to this section, the Board shall consist of 5 members appointed by the Governor, of whom —

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

*Motor Vehicle Dealers Act 1973*

s. 8

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 Australian Automobile Dealers Association (W.A. Division) 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 3 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 3 names to the Minister, the Minister —

- (a) shall, if such a panel is submitted to him within 21 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.

(4) Any person who before the date of the coming into operation of section 4 of the *Motor Vehicle Dealers Act Amendment Act 1979*<sup>1</sup> purportedly held office as a member pursuant to a nomination by the Australian Automobile Dealers Association (W.A. Division) and appointment by the Governor is hereby declared to have been validly appointed under and subject to this Act and his term in that office shall be deemed to have commenced on the date on which he purportedly commenced to hold office pursuant to that nomination and appointment.

[Section 8 amended by No. 49 of 1979 s.4.]

**Terms of office, etc.**

9. (1) Subject to the succeeding provisions of this section —
- (a) a person appointed Chairman shall hold office for a term of 3 years;
  - (b) a person appointed a member, other than as Chairman, shall hold office for such period, not exceeding 3 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 3 consecutive meetings of the Board,

the office of that member becomes vacant.

*Motor Vehicle Dealers Act 1973*

**s. 10**

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

(4) The Governor may appoint an eligible 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.

*[Section 9 amended by No. 49 of 1979 s.5.]*

**Meetings of the Board**

**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, 3 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.

[Section 10 amended by No. 66 of 1976 s.3.]

### **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.

### **Remuneration 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.

### **Secretary to the Board, etc.**

13. (1) There shall be a secretary to the Board who shall be appointed by the Minister on the recommendation of the employing authority, within the meaning of the *Public Sector Management Act 1994*, of that person, but the office of secretary may be held in conjunction with any other office in the Public Service of the State.

(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.

*Motor Vehicle Dealers Act 1973*

s. 14

(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 employing authority, within the meaning of the *Public Sector Management Act 1994*, of that person, the Board may make use of the services of any person employed in the Public Service of the State.

[Section 13 amended by No. 32 of 1994 s.19.]

**Powers of Board in dealing with applications, etc.**

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

- (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.

(1a) The Commissioner may appear in any proceedings before the Board either personally or by counsel or solicitor.

(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 \$400.

*[Section 14 amended by No. 49 of 1979 s.6.]*

### **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 18 years;

*Motor Vehicle Dealers Act 1973*

s. 15

- (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, 2 or more persons constituting a firm who apply to the Board in the approved 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 able 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 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 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.

*[Section 15 amended by No. 56 of 1995 s.37.]*

### **Application for yard manager's licence**

**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 18 years;
- (b) that he is a person of good character and repute and a fit and proper person to hold such a licence;
- (c) that he understands fully the duties and obligations imposed by this Act on dealers, yard managers and 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.

*[Section 16 amended by No. 74 of 1975 s.4.]*

s. 17

**Application for salesman's licence**

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

*[Section 17 amended by No. 74 of 1975 s.5.]*

**Application for car market operator's licence**

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

- (a) that he is of or over the age of 18 years;
- (b) that he is a person of good character and repute and a fit and proper person to hold such a licence;
- (c) that he has sufficient material and financial resources available to him to enable him to comply with the requirements of this Act; and

- (d) that he understands fully the duties and obligations imposed by this Act on car market operators.

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

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

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

- (a) that all of the persons concerned in the management or conduct of the body corporate are persons of good character and repute and are persons fit to be concerned in the management or control of the business of providing premises for a car market;

*Motor Vehicle Dealers Act 1973*

**s. 17B**

- (b) that it has sufficient material and financial resources available to it to enable it to comply with the requirements of this Act; and
- (c) that at least one of the persons referred to in paragraph (a) of this subsection understands fully the duties and obligations imposed by this Act on car market operators.

*[Section 17A inserted by No. 87 of 1981 s.5; amended by No. 56 of 1995 s.37.]*

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

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

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

*[Section 17B inserted by No. 87 of 1981 s.5.]*

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

**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.

(2) Without limiting the right of the Board to determine applications under sections 15, 16, 17, 17A and 19 in such manner as it thinks fit, the Board shall —

- (a) cause a copy of every such application to be forwarded to the Commissioner as soon as possible after the application is lodged at the office of the Board; and



- (b) afford the Commissioner an opportunity to submit to it any matters he considers relevant to any such application.

[Section 18 amended by No. 49 of 1979 s.7; No. 87 of 1981 s.6.]

### **Period of licence**

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

(2) When the Board grants a licence, other than by way of renewal, the licence may be granted for such period, not exceeding the period prescribed under subsection (1), as the Board thinks fit.

(3) If the holder of a licence applies to the Board for the renewal of that licence, pays the appropriate prescribed fee and, in the case of an expired licence, pays any amount prescribed by way of penalty for a late application —

- (a) not more than 2 months before the date on which the licence expires; and
- (b) not more than 28 days after the date on which the licence expires,

the Board may renew the licence for a further prescribed period.

(3a) The renewal of a licence shall take effect on the day immediately succeeding the day on which the licence would have expired had it not been renewed or shall be taken for all purposes to have taken effect on the day immediately succeeding the day on which the previous licence expired, as the case requires.

*Motor Vehicle Dealers Act 1973*

**s. 20**

(3b) Without limiting the application of section 18 and subsection (5) of this section, the Board shall not renew a licence unless the applicant satisfies the requirements of section 15, 16, 17 or 17A, as the case requires.

(4) Subject to subsection (3a), 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.

*[Section 19 amended by No. 74 of 1975 s.6; No. 87 of 1981 s.7; No. 56 of 1995 s.34.]*

**Disqualification**

**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 or a car market operator'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;
- (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;
- (g) if the person has been found by the Board to have offered for sale a second-hand vehicle without the consent of the owner of the vehicle, and, if the vehicle is subject to a hire-purchase agreement or other security, without the consent of the owner of the vehicle under the hire-purchase agreement or the grantee under the security, as the case requires; or
- (h) if the Board is satisfied that the person has ceased to carry on the business of a dealer,

*Motor Vehicle Dealers Act 1973*

**s. 21**

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.

*[Section 20 amended by No. 74 of 1975 s.7; No. 49 of 1979 s.8; No. 87 of 1981 s.8.]*

**Premises at which dealers may carry on business**

**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 thereof 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) — (7) *repealed*]

(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.

*[Section 21 amended by No. 74 of 1975 s.8; No. 79 of 1995 s.68 (4).]*

### **Dealers premises and advertisements to bear name and number**

**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

*Motor Vehicle Dealers Act 1973*

**s. 21B**

- (b) in every advertisement published by him or on his behalf.

*[Section 21A inserted by No. 74 of 1975 s.9.]*

**Premises at which car markets may be conducted**

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

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

(3) Subject to this section, a car market operator may at any time during the currency of his car market operator's licence apply to the Board in the approved form for the issue of a certificate in respect of any premises that he proposes to provide for a car market under the authority of his licence but in respect of which a certificate was not issued when that licence was granted, and where such an application is duly made, the Board —

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

(4) An application under this section shall be made not less than one month before the date on which the dealer proposes to

commence providing the premises the subject of the application as premises for a car market.

*[Section 21B inserted by No. 87 of 1981 s.9.]*

**Car market premises and advertisements to bear name and number**

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

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

*[Section 21C inserted by No. 87 of 1981 s.9.]*

**Appeal**

**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 21B;  
or
- (d) refusing to approve of any change submitted to it under section 23,

*Motor Vehicle Dealers Act 1973*

**s. 22**

the Board shall give the person affected by its decision or order its reasons for the decision or order, and the person may, within 30 days after the reasons for the decision or order have been so given, appeal to a Local Court.

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

- (a) granting an application by a person for a licence;
- (b) issuing a certificate under section 21 or 21B; or
- (c) approving of any change submitted to it under section 23,

the Board shall give the Commissioner a copy of the decision or order and the Commissioner may, within 30 days after the decision or order has been given, appeal to the Local Court.

(2) The Local Court shall have jurisdiction to hear and determine any appeal made pursuant to subsection (1) or subsection (1a) of this section 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 person affected by the decision or order of the Board, the Board and the Commissioner shall be entitled to appear personally or by counsel or solicitor.

(4) The Local Court may order the person affected by the decision or order of the Board, 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 referred to in subsection (1) or subsection (1a), as the case requires, of this section, 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.

*[Section 22 amended by No. 74 of 1975 s.10; No. 49 of 1979 s.9; No. 87 of 1981 s.10.]*

### **Licence to be returned**

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

- (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 or 21B 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 or car market operator shall thereupon return to the secretary any licence or certificate issued to him relevant to that business.

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

*[Section 22A inserted by No. 74 of 1975 s.11; amended by No. 87 of 1981 s.11.]*

**Particulars to be endorsed on licences and changes therein to be notified**

23. (1) Where a licence is granted under subsection (2) of section 15 or subsection (2) of section 17A —

- (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) 14 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 or subsection (3) of section 17A —

- (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) 14 days before any change occurs in the persons concerned in the management and conduct of the body corporate, full particulars thereof shall be sent to the 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 or car market operator, as the case may be, 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 or car market operator, as the case may be, and any other person affected by the decision of the refusal.

[Section 23 amended by No. 74 of 1975 s.12; No. 87 of 1981 s.12.]

### **Register to be kept**

**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.

(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.

(3) The holder of a salesman's licence or a yard manager's licence shall give written notice to the secretary of any change in the address of the place of residence of the holder of that licence not later than 14 days after that change takes place.

*Motor Vehicle Dealers Act 1973*

s. 25

(4) The secretary shall enter in the register details of any change notified under subsection (3).

*[Section 24 amended by No. 56 of 1995 s.35.]*

**Register to be kept by licence holders**

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.

(1a) Where a financier carries on the business of selling vehicles to persons other than persons who become trade owners the financier shall, at the place at which he carries on that business, keep or cause to be kept a register in the form referred to in subsection (1) of this section and shall record or enter therein such particulars as are required to be recorded or entered pursuant to that subsection.

(2) A dealer, yard manager or financier shall produce the register kept pursuant to subsection (1) or subsection (1a) of this section, as the case requires, for inspection, on demand, by any authorized officer, any member of the Police Force, or by a traffic inspector duly appointed for the district wherein the premises are situated.

(2a) The holder of a car market operator's licence shall keep or cause to be kept a register, in the prescribed form, for any premises in respect of which the licence is granted, and shall record or cause to be recorded in that register the prescribed particulars of —

- (a) every vehicle offered, exposed or displayed for sale at the premises in the course of a car market conducted at the premises pursuant to the licence; and

(b) where he is notified under subsection (2e) of this section of the sale at the premises of a vehicle referred to in paragraph (a) of this subsection, that sale.

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

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

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

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

Penalty: \$200.

(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.

*[Section 25 amended by No. 58 of 1974 s.21; No. 49 of 1979 s.10; No. 87 of 1981 s.13; No. 106 of 1981 s.15; No. 68 of 1982 s.2.]*

### **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

*Motor Vehicle Dealers Act 1973*

s. 27

the State, such particulars 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.

*[Section 26 amended by No. 6 of 1982 s.4.]*

**Inspection of second-hand vehicles**

**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 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

*Motor Vehicle Dealers Act 1973*

s. 28

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

*[Section 27 amended by No. 58 of 1974 ss.20 and 21; No. 106 of 1981 s.16; No. 68 of 1982 s.3.]*

**Vehicles may be declared unfit for sale**

**28.** (1) Where, in the opinion of any member of the Police Force, an authorized officer 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, an authorized officer 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.

*[Section 28 amended by No. 58 of 1974 s.21; No. 106 of 1981 s.17; No. 68 of 1982 s.4.]*



### **Restriction on sale of unroadworthy vehicles**

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.

(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, 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 7 days.

[Section 29 amended by No. 49 of 1979 s.11.]

**Unlicensed dealings prohibited**

**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 —

- (a) he so acts in the business of a dealer only in the capacity of a yard manager or salesman for that dealer;
- (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: \$3 000, and in addition a further penalty of \$100 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 this Act; 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: \$500, and in addition a further penalty of \$20 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: \$500, and in addition a further penalty of \$10 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 day<sup>2</sup> 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

*Motor Vehicle Dealers Act 1973*

**s. 31**

remains in force, be deemed to be the holder of a yard manager's licence or a salesman's licence, as the case requires.

*[Section 30 amended by No. 49 of 1979 s.12; No. 73 of 1994 s.4.]*

**Dealers not to carry on business except at registered premises**

**31.** A dealer shall not carry on his business as a dealer —

- (a) except at premises registered in his name under section 21; or
- (b) 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: \$500.

*[Section 31 inserted by No. 6 of 1982 s.5; amended by No. 79 of 1995 s.68 (4).]*

**Prohibition on operation of car markets**

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

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

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

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

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

Penalty: \$500.

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

[*Section 31A inserted by No. 87 of 1981 s.14.*]

**PART III — DEALINGS IN SECOND-HAND VEHICLES**

**Application of this Part**

**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, this Part does 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.

*[Section 32 amended by No. 74 of 1975 s.14; No. 73 of 1994 s.4.]*

**Particulars to be displayed**

**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.

Penalty: \$500.

(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;
- (c) the cash price of the vehicle;

*Motor Vehicle Dealers Act 1973*

s. 33

- (d) the year of first registration of the vehicle and the year of manufacture of the vehicle;
- (e) the licence plate number of the vehicle or, where the vehicle is not then licensed under the *Road Traffic Act 1974*, the word “unlicensed”; and
- [(f) *deleted*]
- (g) such other particulars as are prescribed.

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

Penalty: \$500.

(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 —
- (a) cause not less than 2 copies of the notice attached to the vehicle pursuant to the provisions of this section to be made out and signed by him or a yard manager or salesman acting on his behalf;
  - (b) cause at least 2 of the copies of the notice made out pursuant to paragraph (a) of this subsection to be signed by the purchaser;
  - (c) cause one of the copies of the notice made out pursuant to paragraph (a) of this subsection and signed by the purchaser pursuant to paragraph (b) of this subsection to be given to the purchaser; and
  - (d) retain for a period of not less than 12 months the notice displayed on the vehicle and one copy of the notice made out pursuant to paragraph (a) of this subsection and signed by the purchaser pursuant to paragraph (b) of this subsection.

*[Section 33 amended by No. 74 of 1975 s.15; No. 49 of 1979 s.14.]*

### **Obligations of dealer**

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

- (a) at a cash price of or over \$1 500 or such other amount as is from time to time prescribed and —
  - (i) before that vehicle has been driven for 5 000 kilometres after the sale; or

*Motor Vehicle Dealers Act 1973*

s. 34

- (ii) before the expiration of the period of 3 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

- (b) at a cash price of less than \$1 500 or such other amount as is from time to time prescribed and —

- (i) before that vehicle has been driven for 3 000 kilometres after the sale; or

- (ii) before the expiration of the period of 2 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 \$750 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 3 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.

[Section 34 amended by No. 49 of 1979 s.15.]

**s. 35**

**Excluded defects**

**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.

(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.** Unless proceedings with respect to the dispute have commenced in a court of competent jurisdiction or a Small Claims Tribunal established under the *Small Claims Tribunals Act 1974*, where a dispute arises between a purchaser and dealer as to —

- (a) the extent of the obligations of the dealer under section 34;

- (b) the manner of the carrying out by the dealer of those obligations;
- (c) the amount of the fair cost of repairing or making good any defect referred to in 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 and where he does so he shall request them to make written submissions to him on the matter within 14 days of the date of the request.

*[Section 36 amended by No. 49 of 1979 s.16.]*

### **Hearing of dispute by Commissioner**

**37.** (1) Where the Commissioner has advised the parties to a dispute that he proposes to determine the dispute under this section the Commissioner may, after the time referred to in section 36, and whether or not either party to the dispute has made any written submissions to him relating to the dispute, determine the dispute or the Commissioner may appoint some person to hear and determine the dispute.

(2) Without limiting the generality of the powers conferred on the Commissioner or person pursuant to subsection (1) 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

*Motor Vehicle Dealers Act 1973*

s. 37

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

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

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

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

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

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

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

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

Penalty: \$500.

*[Section 37 amended by No. 49 of 1979 s.17.]*

### **Enforcement of orders of Commissioner**

**37A.** (1) An order made pursuant to section 37 may be made to take effect within such time as is fixed by the Commissioner or person appointed pursuant to subsection (1) of that section.

(2) The Commissioner or person appointed pursuant to subsection (1) of section 37 shall cause a copy of an order made pursuant to that section to be given to the dealer against whom the order is made as soon as is practicable after its making.

(3) An order made pursuant to section 37 may be enforced by filing, free of charge, in the office of the Local Court nearest to the premises of the dealer at which the vehicle the subject of the dispute was purchased or nearest to the place of business of the

*Motor Vehicle Dealers Act 1973*

**s. 37A**

person applying to have the order enforced or the place where the person applying to have the order enforced resides —

- (a) a copy of the order certified by the Commissioner or person appointed pursuant to subsection (1) of section 37 to be a true copy; and
- (b) the affidavit of the person enforcing the order, taken by a justice, as to the amount not paid under the order,

whereupon the order shall be deemed to be a judgment that requires payment of money duly made by a Local Court pursuant to the *Local Courts Act 1904*, and may be enforced accordingly.

(4) It shall be competent for a person to file a copy pursuant to subsection (3) of this section once only, and a second or subsequent filing purportedly pursuant to the subsection shall be ineffectual.

(5) If objection is taken that the office of the Local Court wherein the copy order and the affidavit are filed is not the appropriate one in terms of subsection (3) of this section, the Commissioner or the person appointed pursuant to subsection (1) of section 37 shall determine the question having regard to the relevant principles set out in section 154 of the *Local Courts Act 1904*, and the determination of the Commissioner or the person so appointed, as the case requires, is final and conclusive.

(6) The *Limitation Act 1935* applies in respect of an order made under this section and in respect of any order made by the Commissioner or the person appointed pursuant to subsection (1) of section 37 as it applies in respect of any judgment.

[Section 37A inserted by No. 49 of 1979 s.18.]



**Effect of determination by Commissioner**

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

(2) Where a determination or order made pursuant to section 37 —

- (a) requires the payment of money;
- (b) requires the performance of work; or
- (c) purports to grant relief from the payment of money,

in an amount or to a value, as the case may be, exceeding the sum of \$1 000 or such sum as is prescribed, any person who is aggrieved by the determination or order of the Commissioner or person appointed pursuant to subsection (1) of section 37 may, within the time and manner prescribed by Rules of Court, appeal to a Local Court on the ground that the determination or order is erroneous in law but on no other ground.

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

[Section 37B inserted by No. 49 of 1979 s.18.]

**Reference of a dispute to the court**

**38.** (1) Unless the Commissioner has, pursuant to section 36, advised the dealer and the purchaser that he proposes to determine the dispute, where a dispute arises as to any matter or thing referred to in that section, either party may apply to 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 an appeal made pursuant to subsection (2) of section 37B and 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 —

- (a) this section does not authorize or empower the Local Court to appoint some other person to hear and determine the dispute; and
- (b) the provisions of section 37A and section 37B do not apply to or in relation to any proceeding or appeal in the Local Court under this Act.

[Section 38 amended by No. 49 of 1979 s.19.]

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

**Certificates of roadworthiness**

[40. Not yet in operation<sup>1a</sup>.]

**PART IIIA — OBLIGATIONS OF CAR  
MARKET OPERATORS**

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

**Liability of car market operator for certain losses**

**40A.** (1) Subject to subsections (4) and (5) of this section where, after the coming into operation of section 15 of the *Motor Vehicle Dealers Amendment Act 1981*<sup>1</sup>, a second-hand vehicle is sold —

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

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

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

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

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

(3) The fact that a person —

- (a) has since the material time ceased to be the holder of a car market operator's licence;

*Motor Vehicle Dealers Act 1973*

**s. 40B**

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

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

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

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

*[Section 40A inserted by No. 87 of 1981 s.15.]*

**Notice as to warranties to be displayed**

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

- (a) to the effect that the title to the vehicle is either —
    - (i) guaranteed by the car market operator; or
    - (ii) not guaranteed by the car market operator;
- and

- (b) to the effect that the sale of the vehicle does not create any obligation under section 34.

Penalty: \$500.

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

- (a) except as provided in paragraph (b) of this subsection, be placed inside the vehicle where it can be clearly read through the windscreen; and
- (b) where the vehicle is a motor cycle or is a vehicle not equipped with a windscreen, be attached to the vehicle in such a way and place as to cause the particulars contained in the notice to be clearly visible to a person standing near the vehicle.

*[Section 40B inserted by No. 87 of 1981 s.15.]*

s. 41

**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: \$500.

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

**Rescission of sale**

41A. (1) Where —

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

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

the Commissioner may apply to a 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 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

*Motor Vehicle Dealers Act 1973*

**s. 41B**

- (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 vehicle where that contract or agreement was arranged or procured by that dealer.

[Section 41A inserted by No. 49 of 1979 s.21.]

**Obligations in relation to demonstration vehicle**

**41B.** For the purposes of ascertaining the extent of an obligation by reference to time, and the extent of an obligation by reference to distance to be travelled, that remains in relation to a



demonstration vehicle on the part of the manufacturer thereof the following provisions apply —

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

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

### **Representation 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: \$500.

**s. 44**

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

*[Section 43 amended by No. 49 of 1979 s.22.]*

**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: \$500.

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

*[Section 44 amended by No. 49 of 1979 s.23.]*

**Misrepresentation**

45. (1) A person shall not —

- (a) alter or cause to be altered or connive in the alteration of the reading of an odometer on the vehicle;
- (b) state or represent as the year of manufacture of the vehicle a year other than the actual year of manufacture of the vehicle;
- (c) state or represent as the year of first registration of the vehicle a year other than the actual year of first registration of the vehicle;

- (d) state or represent as the model designation of the vehicle a model designation other than the actual model designation of the vehicle; or
- (e) state or represent in any way that a vehicle which has been used as a taxi-car has not been so used,

wilfully and with intent to deceive another person.

Penalty: \$2 000.

(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;

*Motor Vehicle Dealers Act 1973*

s. 46

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

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

(4) In subsection (3) 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.

*[Section 45 amended by No. 49 of 1979 s.24.]*

**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.

s. 47

**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 or of an authorized officer be competent to waive any rights conferred on him by this Act.

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

**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.

**No indemnity for car market operator**

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

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

### **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: \$500.

### **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 30th day of June last preceding.

(2) The Minister shall cause the report to be laid on the Table of each House of Parliament within 14 days of its receipt, or if at that time Parliament is not in session, then within 14 days of the commencement of the next session of Parliament.

### **General provisions relating to offences**

**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.

(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 \$500.

(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

s. 53

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 12 months after the commission of the alleged offence.

*[Section 52 amended by No. 74 of 1975 s.16; No. 49 of 1979 s.25.]*

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

**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 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.

**Offences by corporations**

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.

(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.

### **Regulations**

**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.

(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;
- (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, \$200, for a contravention of or failure to comply with any provision of the regulations.

(3) Subsections (1) and (2) of section 45 of the *Interpretation Act 1984* apply in respect of fees prescribed under this Act despite sections 3 (3) and 45 (3) of that Act.

[Section 56 amended by No. 56 of 1995 s.36.]



## *Motor Vehicle Dealers Act 1973*

### NOTES

<sup>1</sup> This reprint is a compilation as at 14 November 1996 of the *Motor Vehicle Dealers Act 1973* and includes the amendments effected by the other Acts referred to in the following Table<sup>1a</sup>.

**Table of Acts**

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Motor Vehicle Dealers Act 1973</i> <sup>1a</sup>	101 of 1973	28 December 1973	Sections 1, 2, 3 and 5-13: 15 February 1974 (see <i>Gazette</i> 15 February 1974 p.375); sections 14-24, 30, 50 and 56: 5 April 1974 (see <i>Gazette</i> 5 April 1974 p.1180); balance except s.40: 12 August 1974 (see <i>Gazette</i> 9 August 1974 p.2935)	
<i>Acts Amendment (Road Traffic) Act 1974</i> , Part III	58 of 1974	3 December 1974	29 August 1975 (see <i>Gazette</i> 29 August 1975 p.3085)	
<i>Motor Vehicle Dealers Amendment Act 1975</i>	74 of 1975	14 November 1975	9 January 1976 (see <i>Gazette</i> 9 January 1976 p.2)	
<i>Motor Vehicle Dealers Amendment Act 1976</i>	66 of 1976	22 September 1976	22 September 1976	

## *Motor Vehicle Dealers Act 1973*

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Motor Vehicle Dealers Amendment Act 1979</i>	49 of 1979	7 November 1979	1 January 1980 (see <i>Gazette</i> 21 December 1979 p.3909)	
<i>Motor Vehicle Dealers Amendment Act 1981</i>	87 of 1981	26 November 1981	Sections 15 and 16: 1 February 1982 (see <i>Gazette</i> 31 December 1981 p.5364); balance on assent	
<i>Acts Amendment (Traffic Board) Act 1981, Part III</i>	106 of 1981	4 December 1981	2 February 1982 (see <i>Gazette</i> 16 July 1982 p.2713)	
<i>Motor Vehicle Dealers Amendment Act 1982</i>	6 of 1982	6 May 1982	1 August 1982 (see <i>Gazette</i> 2 February 1982 p.393)	
<i>Motor Vehicle Dealers Amendment Act (No. 2) 1982</i>	68 of 1982	6 October 1982	6 October 1982	
<i>Acts Amendment (Consumer Affairs Act 1985, Part V)</i>	1 of 1985	8 March 1985	Sections 24 and 25: 6 April 1983; sections 26 and 27: 8 March 1985	
<i>Acts Amendment (Public Sector Management) Act 1994, Part 4</i>	32 of 1994	29 June 1994	1 October 1994 (see <i>Gazette</i> 30 September 1994 p.4948)	

## *Motor Vehicle Dealers Act 1973*

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Statutes (Repeals and Minor Amendments) Act 1994, section 4</i>	73 of 1994	9 December 1994	9 December 1994	
<i>Business Licensing Amendment Act 1995, Part 7</i>	56 of 1995	20 December 1995	1 January 1996 (see section 2 (3))	Section 38 transitional <sup>4</sup>
<i>Industrial Relations Legislation Amendment and Repeal Act 1995, section 68 (4)</i>	79 of 1995	16 January 1996	18 May 1996 (see section 3 (2) and <i>Gazette</i> 14 May 1996 p.2019	

<sup>1a</sup> As at the date of this reprint section 40 of the *Motor Vehicle Dealers Act 1973* (Act No. 101 of 1973) was not in operation. That section reads as follows —

“ **Certificates of roadworthiness**

40. (1) Where —

- (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 1919*<sup>3</sup>, 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,

## *Motor Vehicle Dealers Act 1973*

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 7 days after that time; and
- (d) that certificate is given to the purchaser.

Penalty: \$100.

(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. ”.

<sup>2</sup> Appointed day fixed as 12 August 1974 see *Gazette* 9 August 1974 p.2991.

<sup>3</sup> Repealed by *Road Traffic Act 1974*.

<sup>4</sup> Section 38 of the *Business Licensing Amendment Act (No. 2) 1995* (Act No. 56 of 1995) reads as follows —

“ **Transitional**

**38.** Despite section 19 of the principal Act as amended by this Act, a licence granted or renewed under the principal Act during 1995 will, subject to the principal Act, upon expiry 1996 be renewed —

- (a) in the case of a licence granted between 1 January and 30 April in any year, for a period of 3 years;

*Motor Vehicle Dealers Act 1973*

- (b) in the case of a licence granted between 1 May and 31 August in any year, for a period of 2 years; and
- (c) in the case of a licence granted between 1 September and 31 December in any year, for a period of one year.

”.