



Western Australia

Motor Vehicle Repairers Act 2003

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Motor Vehicle Repairers Act 2003

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Western Australia

Motor Vehicle Repairers Act 2003

An Act to provide for —

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

[Long title amended: No. 58 of 2010 s. 52.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Motor Vehicle Repairers Act 2003*¹.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation¹.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. Terms used in this Act

- (1) In this Act, unless the contrary intention appears —
 - approved**, in relation to a form, means approved by the Commissioner for the purposes of the provision in which the term appears;
 - authorised officer** means an officer designated as such under section 8;
 - business licence** means a business licence granted under section 16, 18 or 20;
 - certificate** means —
 - (a) a repairer's certificate; or
 - (b) a provisional repairer's certificate;
 - Commissioner** has the meaning given in the *Fair Trading Act 2010* section 6;
 - Department** means the department of the Public Service principally assisting the Minister in the administration of this Act;
 - Director General** means the chief executive officer of the Department;
 - licensee** means the holder of a business licence;

motor vehicle means a vehicle that is propelled wholly or partly by —

- (a) any volatile spirit, steam, gas, oil or electricity; or
- (b) any other means apart from human or animal power,

and includes a trailer, but does not include —

- (c) a vehicle that is constructed or adapted —
 - (i) for use on a railway or tramway;
 - (ii) principally for use in primary production; or
 - (iii) otherwise for use in a manner that does not involve the carriage of persons or goods over public roads;

or

- (d) anything that is excluded from this definition by the regulations;

provisional repairer's certificate means a provisional repairer's certificate granted under section 44;

regulations means regulations made under section 114;

repair work means any kind of work that is done on or to motor vehicles and that under section 5(1) is prescribed by the regulations to be repair work but does not include any kind of such work that is prescribed by the regulations not to be repair work;

repairer's certificate means a repairer's certificate granted under section 42.

- (2) References in this Act to repairing or repair work in relation to motor vehicles includes the repairing of any part of, or accessory to, a motor vehicle that has been removed from the vehicle for repair.
- (3) If a business licence is granted to 2 or more persons under section 18, references in this Act to the licensee are to those persons jointly, unless a contrary intention appears.

[(4) *deleted.*]

s. 4

[Section 3 amended: No. 28 of 2006 s. 111; No. 58 of 2010 s. 53 and 79.]

4. Limitation on imposition of penalties for offences

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

5. Repair work, prescription of

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

[(5) deleted]

[Section 5 amended: No. 23 of 2014 s. 35.]

6. Exemptions

- (1) The regulations may exempt from all or any of the provisions of this Act —

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

7. Powers of investigation

The *Fair Trading Act 2010* section 61 and Part 6 of that Act apply to this Act.

[Section 7 inserted: No. 58 of 2010 s. 54.]

8. Authorised officers

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

Part 2 — Licensing of motor vehicle repair businesses

Division 1 — Repair businesses to be licensed

9. Licensing requirement

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

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

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

[Section 9 amended: No. 23 of 2014 s. 36.]

10. Exceptions to section 9

- (1) Section 9 does not apply to —

(a) a person or firm so far as the person or firm carries out repair work only on motor vehicles owned or used by the person or firm;

(b) a person or firm so far as the person or firm —

(i) holds a licence under the *Motor Vehicle Dealers Act 1973*; and

(ii) carries out repair work for the purposes of section 34 of that Act, but not otherwise;

or

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

[(2) deleted]

[Section 10 amended: No. 23 of 2014 s. 37.]

11. Advertising

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

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

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

Penalty: \$50 000.

[Section 11 amended: No. 23 of 2014 s. 38.]

Division 2 — Application for and grant of business licence

12. Term used: sufficient resources

In this Division —

sufficient resources means sufficient material, manpower and financial resources to carry on business doing repair work.

[Section 12 inserted: No. 23 of 2014 s. 39.]

13. Application requirements

- (1) This section applies to all applications under this Part.
- (2) An application —
 - (a) must be —
 - (i) made in the form approved; and
 - (ii) accompanied by the fee prescribed;
 - and
 - (b) must comply with section 58.

[(3) deleted]

- (4) The applicant must provide the Commissioner with any additional information or document that the Commissioner may ask for.

[Section 13 amended: No. 58 of 2010 s. 79; No. 23 of 2014 s. 40.]

14. Notification of changes to information provided

- (1) This section applies if —
- (a) an application has been made for a business licence; and
 - (b) a material change occurs in the information provided in the application before it is granted or refused.
- (2) The applicant or applicants must notify particulars of the change in writing to the Commissioner within 14 days after it occurs.

Penalty: \$1 500.

[Section 14 amended: No. 58 of 2010 s. 79.]

15. Application by individual

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

[Section 15 amended: No. 58 of 2010 s. 79.]

16. Grant of business licence to individual

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

- (e) has such other qualifications as may be prescribed by the regulations.

[Section 16 amended: No. 58 of 2010 s. 79.]

17. Application by firm

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

[Section 17 amended: No. 58 of 2010 s. 79.]

18. Grant of business licence to firm

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

relevant person means an individual —

 - (a) who is a member of the firm; or
 - (b) who is concerned in the management or conduct of a body corporate that is a member of the firm.

[Section 18 amended: No. 58 of 2010 s. 79.]

19. Application by body corporate

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

[Section 19 amended: No. 58 of 2010 s. 79.]

20. Grant of business licence to body corporate

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

relevant person means an individual who is concerned in the management or conduct of the body corporate.

[Section 20 amended: No. 58 of 2010 s. 79.]

[21. Deleted: No. 58 of 2010 s. 55.]

22. Business licence not to be granted if applicant or other person disqualified

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

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

[Section 22 amended: No. 58 of 2010 s. 79.]

23. Grounds for refusing a business licence

- (1) The Commissioner may refuse to grant a business licence under section 16, 18 or 20 if there is any ground on which an order could be made under section 68 in respect of —
 - (a) the applicant or any applicant; or
 - (b) a person concerned in the management or conduct of a body corporate that is the applicant or one of the applicants,

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

- (2) The Commissioner cannot refuse to grant a business licence as mentioned in subsection (1) unless the Commissioner has —
 - (a) conducted an inquiry; and
 - (b) given the applicant or each applicant an opportunity to show cause why the grant should not be refused.

[Section 23 amended: No. 58 of 2010 s. 79.]

24. Form of business licence

- (1) A business licence is to be in the form determined by the Commissioner.

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Part 2 Licensing of motor vehicle repair businesses

Division 3 Business licence conditions

s. 25

[(2) deleted]

- (3) In determining the form of a business licence the Commissioner must give effect to section 59(2).
- (4) For the purposes of section 108 a business licence must —
 - (a) bear a number; and
 - (b) show the name of the business carried on by the licensee.

[Section 24 amended: No. 58 of 2010 s. 79; No. 23 of 2014 s. 41.]

25. Duplicate business licence

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

[Section 25 amended: No. 58 of 2010 s. 79.]

26. Business licence not transferable

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

Division 3 — Business licence conditions

27. Conditions may be imposed

- (1) The Commissioner may, when granting a business licence, attach any condition or restriction to the licence.
- (2) The Commissioner may at any time decide that —
 - (a) a new condition or restriction is to be attached to an existing business licence; or
 - (b) a condition or restriction attached to an existing business licence is to be amended or removed.
- (3) A decision under subsection (2) does not take effect until a day determined by the Commissioner.

- (4) The day so determined cannot be before the Commissioner has —
- (a) notified the licensee of the decision; and
 - (b) given the licensee a reasonable opportunity to make submissions on it either orally or in writing.
- (5) The Commissioner may determine that subsection (4) does not apply in the case of a decision to remove a condition or restriction.
- (6) If a decision under subsection (2) has taken effect the licensee must, if required by the Commissioner —
- (a) produce the licence to the Commissioner for amendment; and
 - (b) do so within the time specified by the Commissioner.
- Penalty: \$1 500.
- (7) The powers conferred by this section are in addition to the powers described in Schedule 1 item 4.

[Section 27 amended: No. 58 of 2010 s. 79.]

28. Regulations may prescribe conditions and restrictions

The regulations may prescribe conditions and restrictions that are to be taken to be attached to all business licences, unless otherwise specified in the licence.

[Section 28 inserted: No. 23 of 2014 s. 42.]

29. Regulations may require licensee to hold insurance policy

- (1) A condition may be prescribed under section 28 requiring that a licensee take out and maintain, in respect of the business of the licensee, any policy of insurance of a kind specified in the regulations.
- (2) The regulations may set out requirements for any policy referred to in subsection (1).

Division 4 — Duration and renewal

30. Duration of business licence

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

31. Application for renewal of business licence

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

[Section 31 amended: No. 58 of 2010 s. 79.]

32. Grounds for refusing to renew business licence

- (1) The Commissioner may refuse to renew a business licence if there is any ground on which the Commissioner could refuse to grant the licence under section 16, 18 or 20.
- (2) If the Commissioner is considering refusing to renew a business licence under subsection (1), the Commissioner must give the licensee the opportunity to give additional information in relation to that application for renewal.
- (3) If —
 - (a) an application for renewal of a business licence has been made; and
 - (b) the Commissioner considers that —
 - (i) there is a matter that could constitute a ground for refusing the renewal under subsection (1); but
 - (ii) there is insufficient time before the licence expires for the Commissioner to give proper consideration to that matter,

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

[Section 32 amended: No. 58 of 2010 s. 56 and 79.]

Division 5 — Changes in firm and management of business

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

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

Penalty: \$2 000.

[Section 33 amended: No. 58 of 2010 s. 79.]

34. New member in licensed firm

- (1) This section applies if —
 - (a) a business licence is held by a firm; and
 - (b) it is proposed to include a new member in the firm, irrespective of whether an increase in the number of members is involved.
- (2) The licensee may apply to the Commissioner for the licence to be amended by including the proposed new member of the firm as one of the licensees.
- (3) The application must be made not less than 14 days before the change is to occur.
- (4) The Commissioner may refuse to grant an application under subsection (2) only if the Commissioner is satisfied that, if an application were made under section 17 by the persons who are

proposed to be the holders of the licence as amended, a business licence would not be granted to them.

- (5) Subject to subsection (4), the Commissioner must —
- (a) grant an application that is duly made under subsection (2); and
 - (b) specify a day on which the amendment is to take effect.

[Section 34 amended: No. 58 of 2010 s. 79.]

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

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

[Section 35 amended: No. 58 of 2010 s. 57 and 79; No. 23 of 2014 s. 43.]

36. New person in management of licensed body corporate

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

[Section 36 amended: No. 58 of 2010 s. 58 and 79; No. 23 of 2014 s. 44.]

37. Business licence ceases if changes not approved

- (1) This section applies if the Commissioner refuses —
 - (a) to grant an application under section 34(2); or
 - (b) to give an approval under section 35(2) or 36(2).
- (2) The business licence ceases to have effect 14 days after the licensee is notified of the refusal unless, within that period —

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

Penalty: \$1 500.

[Section 37 amended: No. 58 of 2010 s. 79.]

38. Offence to make management changes without applying for approval

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

Penalty: \$2 000.

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

Penalty: \$2 000.

Part 3 — Certification of individuals performing repair work

Division 1 — Requirement for certification

39. Individuals carrying out repair work to hold certificate

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

- (2) Any —
- (a) individual; or
 - (b) individual member of a firm,

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

Penalty: \$5 000.

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

Penalty: \$5 000.

- (4) For the purposes of subsection (3)(b), a person under whose supervision repair work is being carried out is required to exercise effective oversight and control of the carrying out of

the work, but need not be continuously present while it is being carried out.

[Section 39 amended: No. 23 of 2014 s. 45.]

40. Falsely holding out

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

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

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

Penalty: \$5 000.

Division 2 — Certification provisions

41. Application

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

[Section 41 amended: No. 58 of 2010 s. 79.]

42. Grant of repairer's certificate

- (1) The Commissioner must grant a repairer's certificate applied for under section 41 if the applicant satisfies the Commissioner that he or she —
 - (a) is a fit person to hold the certificate; and
 - (b) is sufficiently qualified to carry out each class of repair work to which the application relates.
- (2) A person is sufficiently qualified if he or she —
 - (a) either —
 - (i) has the qualifications; or
 - (ii) has passed the examinations, prescribed by the regulations for the class of repair work concerned; or
 - (b) either —
 - (i) has some other qualifications or has passed some other examinations; or
 - (ii) has experience, that the Commissioner determines to be sufficient for the class of repair work concerned.

[Section 42 amended: No. 58 of 2010 s. 79.]

43. Conditions may be attached

- (1) The Commissioner may, when granting a repairer's certificate, attach any condition or restriction to the certificate.
- (2) The Commissioner may at any time decide that —
 - (a) a new condition or restriction is to be attached to an existing repairer's certificate; or
 - (b) a condition or restriction attached to an existing repairer's certificate is to be amended or removed.
- (3) A decision under subsection (2) does not take effect until a day determined by the Commissioner.

- (4) The day so determined cannot be before the Commissioner has —
 - (a) notified the holder of the certificate of the decision; and
 - (b) given him or her a reasonable opportunity to make submissions on it either orally or in writing.
- (5) The Commissioner may determine that subsection (4) does not apply in the case of a decision to remove a condition or restriction.
- (6) If a decision under subsection (2) has taken effect the holder of the certificate must, if required by the Commissioner —
 - (a) produce the certificate to the Commissioner for amendment; and
 - (b) do so within the time specified by the Commissioner.
- (7) The powers conferred by this section are in addition to the powers described in Schedule 1 item 4.

[Section 43 amended: No. 58 of 2010 s. 79.]

44. Provisional repairer's certificate

- (1) Subsection (2) applies if —
 - (a) a person has applied under section 41 for a repairer's certificate;
 - (b) the Commissioner is satisfied under section 42(1)(a); and
 - (c) the Commissioner is not satisfied under section 42(1)(b) that the person is sufficiently qualified but is satisfied that the person —
 - (i) has acquired; or
 - (ii) is capable of acquiring,the skills that will enable him or her to become so qualified.

- (2) The Commissioner may grant the applicant a provisional repairer's certificate for the class of repair work concerned subject to any condition or restriction determined by the Commissioner.
- (3) A provisional repairer's certificate is of no effect at any time when any condition or restriction to which it is subject is not being observed.
- (4) A provisional repairer's certificate may relate to more than one class of repair work.

[Section 44 amended: No. 58 of 2010 s. 79.]

45. Form of certificate

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

[Section 45 amended: No. 58 of 2010 s. 79.]

46. Duration of certificate

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

whichever happens first.

47. Return of expired provisional certificate

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

Penalty: \$1 500.

[Section 47 amended: No. 58 of 2010 s. 79.]

48. Change of address to be notified by certificate holder

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

Penalty: \$1 500.

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

[Section 48 amended: No. 58 of 2010 s. 79.]

Part 4 — Provisions applicable to business licences and to certificates

49. False or misleading information

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

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

Penalty: \$5 000.

(2) This section applies to —

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

50. Registers

(1) The Commissioner must keep —

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

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

(3) Subject to the regulations, a register may be kept in a form and manner determined by the Commissioner.

[Section 50 amended: No. 58 of 2010 s. 79.]

51. Inspection of register

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

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

[Section 51 amended: No. 58 of 2010 s. 79.]

52. Certification of matters in the register

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

[Section 52 amended: No. 58 of 2010 s. 79; No. 23 of 2014 s. 46.]

53. Surrender of business licence or certificate

- (1) A licensee or the holder of a certificate may surrender the business licence or certificate by —

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

[Section 53 amended: No. 58 of 2010 s. 79.]

54. Certified copy of business licence or certificate

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

[Section 54 amended: No. 58 of 2010 s. 79.]

55. Production of business licence or certificate

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

(b) holder of a certificate,

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

Penalty: \$1 500.

Part 5 — Restrictions on use of premises by licensees

56. Terms used in this Part

In this Part —

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

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

57. Only authorised premises to be used

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

Penalty: \$5 000.

58. Business licence applications to specify premises

An application for a business licence must specify each of the premises at or from which the applicant proposes to carry on business under the authority of the licence.

[Section 58 inserted: No. 23 of 2014 s. 47.]

59. Authorisation of premises

- (1) If, in relation to any premises, an application complies with section 58, the Commissioner, if the Commissioner grants the application, must authorise the holder of the business licence to carry on business at or out of those premises under the authority of the licence.
- (2) A business licence must include particulars of all premises authorised under subsection (1).

[Section 59 amended: No. 58 of 2010 s. 79; No. 23 of 2014 s. 48.]

60. Authorisation of premises does not affect planning laws

An authorisation given by the Commissioner under section 59 in respect of any premises does not affect any relevant requirements of written laws relating to planning that apply to those premises.

[Section 60 inserted: No. 23 of 2014 s. 49.]

61. Changes in authorised premises

The Commissioner may at any time approve an alteration or addition to the particulars referred to in section 59(2) on —

- (a) the application of the licensee; and
- (b) payment of the prescribed fee.

[Section 61 inserted: No. 23 of 2014 s. 49.]

62. Revocation of authorisation of premises

- (1) The Commissioner may make an order revoking an authorisation in respect of any premises under section 59, other than an authorisation in respect of mobile premises.
- (2) The Commissioner may make an order under subsection (1) only if —
 - (a) the authority responsible for planning matters in the district in which the premises are situated has given the Commissioner written notice that the premises do not comply with specified requirements of written laws relating to planning that apply to those premises; and
 - (b) the Commissioner has given the licensee an opportunity to show cause why the order should not be made.
- (3) In subsection (2)(a) —
specified means specified in the notice referred to in that provision.

[Section 62 inserted: No. 23 of 2014 s. 49.]

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63. Certificate relating to premises to be displayed

- (1) The Commissioner must issue a certificate to a licensee for each premises that are included in the business licence in accordance with section 59(2).
- (2) The certificate is to state that the licensee is authorised under section 59 to carry on business at or from the premises under the authority of the business licence.
- (3) The licensee shall cause a certificate issued under subsection (1) to be displayed in a conspicuous position on the premises to which the certificate applies.

Penalty: \$1 500.

[Section 63 amended: No. 58 of 2010 s. 79.]

64. Return of certificate

- (1) If the Commissioner makes an order under section 62 in respect of any premises, the Commissioner is to give directions in writing to the licensee as to the return to the Commissioner of the certificate issued under section 63(1) for those premises.
- (2) Subject to any order made by the State Administrative Tribunal on a review under section 75, the licensee must comply with a direction given under subsection (1).

Penalty: \$1 500.

[Section 64 amended: No. 58 of 2010 s. 79; No. 23 of 2014 s. 50.]

Part 6 — Disciplinary powers

[Heading inserted: No. 58 of 2010 s. 60.]

65. Application of Part

- (1) This Part applies to a person if that person is —
 - (a) a licensee or one of the licensees; or
 - (b) a person concerned in the management or conduct of a body corporate that is a licensee or one of the licensees; or
 - (c) the holder of a certificate.
- (2) An order cannot be made under this Part in respect of a person unless —
 - (a) an inquiry has been conducted; and
 - (b) the person has been given an opportunity to show cause why the order should not be made.

[Section 65 inserted: No. 58 of 2010 s. 61.]

66. Commissioner may make allegations to SAT regarding disciplinary orders

The Commissioner may allege to the State Administrative Tribunal that there is proper cause for the Tribunal to make under section 68(1) one or more of the orders set out in Schedule 1 in respect of a person to whom this Part applies.

[Section 66 inserted: No. 23 of 2014 s. 51.]

[67. Deleted: No. 58 of 2010 s. 62.]

68. Making of disciplinary orders under Schedule 1

- (1) Subject to section 65(2), in a proceeding commenced by an allegation under section 66 the State Administrative Tribunal may make one or more of the orders set out in Schedule 1 in respect of a person to whom this Part applies if the person has been found by the State Administrative Tribunal —

- (a) to have contravened or failed to comply with —
 - (i) a provision of this Act; or
 - (ii) a business licence or certificate or a condition or restriction attached to a business licence or certificate;or
 - (b) to have done or omitted to do any thing, or engaged in any conduct, where in the opinion of the State Administrative Tribunal the act, omission or conduct renders the person unfit —
 - (i) to be a licensee, or one of the licensees, or the holder of a certificate; or
 - (ii) to be concerned in the management or conduct of a body corporate that is a licensee or one of the licensees;or
 - (c) in the case of the holder of a certificate, to be not competent to carry out the class of repair work to which the certificate applies.
- (2) Schedule 2 has effect to make further provision in respect of the orders referred to in subsection (1).

[Section 68 amended: No. 58 of 2010 s. 63; No. 23 of 2014 s. 52.]

69. Notification of a person's conviction

- (1) In this section —
- relevant offence*** means an offence against any law of this State or another State, the Commonwealth or a Territory for which the maximum penalty on conviction is —
- (a) a fine of \$8 000 or more; or
 - (b) imprisonment for more than 2 years or for an indeterminate period.

- (2) A person to whom this Part applies must —
- (a) notify the Commissioner within 7 days after he or she becomes aware that he or she has been convicted of a relevant offence; and
 - (b) provide the Commissioner with such information about the offence and the conviction as the Commissioner may require.

Penalty: \$1 500.

[Section 69 amended: No. 58 of 2010 s. 79.]

70. Cancellation of business licence on certain grounds

Subject to section 65(2), the State Administrative Tribunal may cancel a business licence if it is satisfied that the licensee —

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

[Section 70 amended: No. 58 of 2010 s. 64; No. 23 of 2014 s. 53.]

71. Return of business licence or certificate

- (1) If the State Administrative Tribunal makes —
- (a) an order under section 70; or
 - (b) an order of the kind described in Schedule 1 item 1,
- in respect of a licensee or the holder of a certificate the State Administrative Tribunal is to give directions in writing to the licensee or holder as to the return to the Commissioner of —
- (c) the business licence or certificate; and
 - (d) any certificate issued to the licensee under section 63(1).
- (2) If the State Administrative Tribunal makes an order of the kind described in Schedule 1 item 4 in respect of a business licence or certificate, the State Administrative Tribunal may give directions in writing to the licensee or holder of the certificate as

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to the production to the Commissioner of the licence or certificate for amendment.

- (3) Subject to any order made by the court on an appeal under the *State Administrative Tribunal Act 2004* Part 5, the licensee or the holder of the certificate must comply with a direction given under subsection (1) or (2).

Penalty: \$1 500.

[Section 71 amended: No. 58 of 2010 s. 65 and 79; No. 23 of 2014 s. 54.]

72. Certain offences relating to disqualification

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

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

- (2) A licensee must not, during the period when a person is disqualified by an order of the kind described in Schedule 1 item 1 or 2 —

- (a) employ the person in any capacity on premises authorised under section 59; or
(b) allow the person to frequent such premises,

without the prior consent of the Commissioner.

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

[Section 72 amended: No. 58 of 2010 s. 79.]

Part 7 — Reviews

[Heading inserted: No. 23 of 2014 s. 55.]

73. Notice of decision to person affected

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

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[(3) deleted]

[Section 73 amended: No. 58 of 2010 s. 66 and 79; No. 23 of 2014 s. 56.]

[74. Deleted: No. 58 of 2010 s. 67.]

**75. Reviews by State Administrative Tribunal of
 Commissioner's decisions and orders**

The affected person under section 73(1) may apply to the State Administrative Tribunal for a review of a decision or order to which section 73 applies.

[Section 75 inserted: No. 23 of 2014 s. 57.]

76. Transitional

(1) In this section —

former provisions means this Act as in force immediately before the commencement of the *Consumer Protection Legislation Amendment Act 2014* section 57;

section 75 means section 75 of the former provisions.

(2) The former provisions continue to have effect for the purposes of an appeal under section 75 that was commenced, but not completed, before the commencement of the *Consumer Protection Legislation Amendment Act 2014* section 57.

[Section 76 inserted: No. 23 of 2014 s. 57.]

[77-82. Deleted: No. 23 of 2014 s. 58.]

Part 8 — Conciliation of certain disputes

83. Terms used in this Part

In this Part —

licensee includes a former licensee;

owner, in relation to a motor vehicle, includes —

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

84. Disputes to which this Part applies

- (1) This Part applies to a dispute between the owner of a motor vehicle and a licensee about —
 - (a) whether any particular repair work has been carried out on the vehicle by the licensee;
 - (b) whether repair work carried out on the vehicle by the licensee has been competently carried out;
 - (c) the amount charged by the licensee for repair work carried out on the vehicle; or
 - (d) any other matter relating to the carrying out of repair work on the vehicle by the licensee.
- (2) This Part applies to a dispute only if it —
 - (a) has not been decided by the Commissioner acting under section 37 of the *Motor Vehicle Dealers Act 1973* or by a court or tribunal; and
 - (b) is not the subject of any proceedings.
- (3) A dispute is the subject of proceedings as mentioned in subsection (2)(b) if —
 - (a) the Commissioner has advised the parties under section 36 of the *Motor Vehicle Dealers Act 1973* that he or she proposes to determine the dispute; or
 - (b) proceedings in respect of the issues in dispute are pending before a court or tribunal.

- (4) This Part does not apply to a dispute relating to —
- (a) repair work carried out; or
 - (b) any other matter that arose,
- before the commencement of this Part.

85. Conciliation at request of owner

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

[Section 85 amended: No. 58 of 2010 s. 72 and 79.]

86. Conciliation function

- (1) The function of the Commissioner as conciliator is to encourage the settlement of the dispute by —
- (a) communicating with the owner and the licensee concerned;
 - (b) arranging discussions between them and assisting in those discussions; and
 - (c) taking any other step that the Commissioner considers appropriate.

- (2) It is not a function of the Commissioner to conduct an arbitration of a dispute.
- (3) The Commissioner must not perform the function under subsection (1) if, at any time after a request is made under section 85, the dispute becomes subject to proceedings within the meaning in section 84(3).

[Section 86 amended: No. 58 of 2010 s. 79.]

87. Examination of vehicle

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

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

88. Offences relating to conciliation

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

Penalty: \$5 000.

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

Penalty: \$5 000.

[Section 88 amended: No. 58 of 2010 s. 79.]

Part 9 — Claims for losses in connection with repair work

89. Terms used in this Part

In this Part —

Compensation Account means the account referred to in section 90(2);

insolvent means —

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

owner, in relation to a motor vehicle, includes —

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

[Section 89 amended: No. 77 of 2006 s. 17.]

90. Motor Vehicle Repair Industry Compensation Account

- (1) In this section —

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

- (2) An agency special purpose account called the Motor Vehicle Repair Industry Compensation Account is established under section 16 of the *Financial Management Act 2006*.
- (3) The Compensation Account is to be administered by the Director General.

- (4) There are to be credited to the Compensation Account —
- (a) in respect of each year, an amount equal to the prescribed percentage of all fees paid under sections 13, 31 and 41 during that year;
 - (b) moneys recovered by the Commissioner —
 - (i) in the exercise of the rights and remedies referred to in section 95; or
 - (ii) under section 96;
 - (c) moneys borrowed under subsection (6); and
 - (d) any other moneys lawfully payable to the Compensation Account.
- (5) There are to be paid out of the Compensation Account —
- (a) all amounts payable under section 93(5);
 - (b) the costs incurred by the Commissioner in respect of claims under this Part; and
 - (c) interest on, and amounts required to repay, moneys borrowed under subsection (6).
- (6) Moneys may be borrowed from the Treasurer for the purposes of the Compensation Account —
- (a) in such amounts as the Treasurer may approve; and
 - (b) on such terms relating to repayment and payment of interest as the Treasurer imposes.

[Section 90 amended: No. 77 of 2006 s. 17; No. 58 of 2010 s. 79.]

91. Losses to which this Part applies

- (1) If a licensee —
- (a) carries out repair work on a motor vehicle incompetently; or

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- (b) fails to complete repair work on a motor vehicle by reason of the licensee or one of the licensees becoming insolvent,

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

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

92. Claims for losses

- (1) The owner of a motor vehicle who —
 - (a) has incurred a loss to which this Part applies in connection with the vehicle; and
 - (b) has taken all reasonable steps to exercise all legal remedies, all rights under insurance policies, and all rights of action, that are available in respect of the loss,

may claim from the Compensation Account —

- (c) the amount of the loss; or
- (d) the sum of \$6 000,

whichever is the less.

- (2) The losses incurred by the owner of a motor vehicle in the same circumstances in connection with repair work carried out, or not completed, on the vehicle by a licensee cannot be divided for the purpose of more than one claim being made by the owner.
- (3) A claim must be —
 - (a) made in the approved form and verified by statutory declaration; and
 - (b) lodged with the Commissioner.
- (4) A claimant must provide the Commissioner with such information about the claim as the Commissioner may require.

[Section 92 amended: No. 77 of 2006 s. 17; No. 58 of 2010 s. 79.]

93. How claim to be determined

- (1) For the purposes of this section a claim is duly made if —
 - (a) the claimant meets the requirements of section 92; and
 - (b) the claim has been made in accordance with that section.
- (2) If the Commissioner considers that the claim has been duly made the Commissioner may at the Commissioner's discretion —
 - (a) determine that the claim should be —
 - (i) allowed in whole or in part; or
 - (ii) disallowed;and
 - (b) make a recommendation to the Director General accordingly.

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- (3) On receipt of a recommendation of the Commissioner the Director General may, if he or she considers that the claim has been duly made, at his discretion —
 - (a) accept the recommendation;
 - (b) decline to accept the recommendation; or
 - (c) determine the claim in such manner as he or she thinks fit.
- (4) Where the Director General does not accept the recommendation of the Commissioner he or she must inform the Commissioner of the reasons for his or her determination.
- (5) The amount of any claim that is allowed is to be paid out of the Compensation Account.

[Section 93 amended: No. 77 of 2006 s. 17; No. 58 of 2010 s. 79.]

94. No proceedings to be brought

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

[Section 94 amended: No. 58 of 2010 s. 79.]

95. Subrogation where claim allowed

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

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

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

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

[Section 95 amended: No. 77 of 2006 s. 17.]

96. Recovery from directors of body corporate

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

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- (5) Where subsection (2) applies the body corporate is not liable to reimburse a person for any amount that he or she pays to the Director General under this section.
- (6) This section does not affect the operation of section 95.

[Section 96 amended: No. 77 of 2006 s. 17.]

Part 10 — Miscellaneous

Division 1 — Infringement notices

97. Terms used in this Division

In this Division —

authorised officer has the meaning given by section 3(1);

prescribed means prescribed by the regulations;

prescribed offence means an offence prescribed under section 98.

[Section 97 amended: No. 58 of 2010 s. 73.]

98. Prescribed offences

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

99. Modified penalties

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

100. Giving of notice

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

101. Contents of notice

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

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

102. Extension of time

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

[Section 102 amended: No. 58 of 2010 s. 79.]

103. Withdrawal of notice

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

[Section 103 amended: No. 58 of 2010 s. 79.]

104. Benefit of paying modified penalty

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

to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

105. No admission implied by payment

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

106. Application of penalties collected

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

Division 2 — General

107. Motor Vehicle Repair Industry Education and Research Account

- (1) In this section —
- Account* means the Motor Vehicle Repair Industry Education and Research Account established by subsection (2);
- prescribed percentage* means 1% or such other percentage as may be prescribed by the regulations;

purposes of the Account means —

- (a) education or research in respect of; or
 - (b) any public purpose connected with, repair work.
- (2) An agency special purpose account called the Motor Vehicle Repair Industry Education and Research Account is established under section 16 of the *Financial Management Act 2006*.
 - (3) The Account is to be administered by the Director General.
 - (4) There are to be credited to the Account —
 - (a) in respect of each year, an amount equal to the prescribed percentage of all fees paid under sections 13, 31 and 41 during that year; and
 - (b) any moneys borrowed under subsection (8).
 - (5) The Commissioner may recommend to the Director General that moneys standing to the credit of the Account be applied for or towards the purposes of the Account.
 - (6) The Director General must give due weight to, but is not bound to follow, a recommendation under subsection (5).
 - (7) Subject to subsections (5) and (6), the Director General may apply moneys standing to the credit of the Account for or towards the purposes of the Account.
 - (8) Moneys may be borrowed from the Treasurer for the purposes of the Account —
 - (a) in such amounts as the Treasurer may approve; and
 - (b) on such terms relating to repayment and payment of interest as the Treasurer imposes.
 - (9) The Account is charged with —
 - (a) interest on; and

(b) amounts required to repay,

moneys borrowed under subsection (8).

[Section 107 amended: No. 77 of 2006 s. 17; No. 58 of 2010 s. 79.]

108. Licensee to publicise licensing information

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

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

Penalty: \$1 500.

109. Prohibition of doing business with unlicensed repairers

(1) In this section —

unlicensed repairer means a person or firm that is required to hold, but does not hold, a business licence.

(2) A person or firm that carries on a business that consists of or includes the carrying out of repair work on a motor vehicle must not —

- (a) enter into an agreement for any repair work to be carried out by a person or firm that is an unlicensed repairer; or
- (b) do any act which assists, or is intended to assist, a person or firm that is an unlicensed repairer to carry on a business that consists of or includes the carrying out of repair work on a motor vehicle.

Penalty: \$5 000.

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

Penalty: \$5 000.

[Section 109 amended: No. 23 of 2014 s. 59.]

110. Liability of directors and officers of body corporate

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

- (3) A person referred to in subsection (1) may be convicted in the proceedings in which the body corporate is convicted if —
- (a) the prosecutor so requests; and
 - (b) the court is satisfied that the person had reasonable notice that the prosecutor intended to make the request.

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

111. Confidentiality of information officially obtained

The *Fair Trading Act 2010* section 112 applies to information obtained for the purposes of this Act.

[Section 111 inserted: No. 58 of 2010 s. 74.]

[112, 113. Deleted: No. 58 of 2010 s. 75.]

114. Regulations

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

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Division 2 General

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- (f) the conduct of licensees and their employees and agents in respect of the business to which the business licence applies.
- (3) Without limiting subsection (1), the regulations may —
 - (a) create offences; and
 - (b) provide for a penalty not exceeding \$2 000 for the commission of an offence.

[115. Deleted: No. 23 of 2014 s. 60.]

[116. Deleted: No. 58 of 2010 s. 76.]

[Part 11 (s. 117) deleted: No. 58 of 2010 s. 77.]

Part 11 — Transitional provisions

[Heading inserted: No. 58 of 2010 s. 77.]

120. Terms used

In this Part —

commencement day means the day on which the *Acts Amendment (Fair Trading) Act 2010* Part 5 comes into operation;

the former Board means the Motor Vehicle Industry Board established by the *Motor Vehicle Dealers Act 1973* section 7 prior to the commencement day.

[Section 120 inserted: No. 58 of 2010 s. 77.]

121. Unfinished proceedings by the former Board

- (1) Proceedings before the former Board that are not complete at the commencement day —
 - (a) are taken to have been commenced by the Commissioner for the purposes of the Act; and
 - (b) are to continue under the direction and control of the Commissioner.
- (2) Proceedings before the State Administrative Tribunal or another court commenced by allegation against a licensed motor vehicle dealer or repairer brought by the former Board that are not complete at the commencement day —
 - (a) are taken to have been commenced by an allegation by the Commissioner for the purposes of the Act; and
 - (b) are to continue under the direction and control of the Commissioner.

[Section 121 inserted: No. 58 of 2010 s. 77.]

122. Powers in relation to transitional matters

- (1) The Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to transitional matters consequential upon the enactment of the *Acts Amendment (Fair Trading) Act 2010* Part 5.
- (2) In subsection (1) —
transitional matter means a matter that needs to be dealt with for the purpose of effecting the transition from this Act as enacted immediately before the commencement day to this Act as amended by the *Acts Amendment (Fair Trading) Act 2010*.
- (3) Regulations made under subsection (1) may provide that specific provisions of a written law —
 - (a) do not apply; or
 - (b) apply with specific modifications,to or in relation to any matter.
- (4) Regulations made under subsection (1) must be made within 12 months after the commencement day.
- (5) If regulations made under subsection (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.
- (6) In subsection (5) —
specified means specified or described in the regulations.
- (7) If regulations contain a provision referred to in subsection (5), the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State), the right of that person existing before the day of publication of those regulations; or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

[Section 122 inserted: No. 58 of 2010 s. 77.]

Schedule 1 — Disciplinary orders

[s. 68]

1. An order disqualifying a person from holding or obtaining, whether solely or jointly —
 - (a) a business licence or certificate; or
 - (b) a certificate for any particular class of repair work,whether or not at the time when the order is made the person is the holder of a business licence or certificate.
2. An order disqualifying a person from being concerned in the management or conduct of a body corporate that is the holder, or a joint holder, of a business licence, whether or not at the time when the order is made the person is so concerned.
3. Subject to Schedule 2 clause 2, an order that a person pay a penalty not exceeding —
 - (a) \$1 500 in the case of a person who is or was the holder of a certificate; or
 - (b) \$5 000 in the case of a person who is or was a licensee or one of joint licensees.
4. An order —
 - (a) attaching conditions or restrictions to a business licence or certificate; or
 - (b) amending a condition or restriction attached to a business licence or certificate.
5. An order reprimanding or cautioning a person.

[Schedule 1 amended: No. 23 of 2014 s. 61.]

Schedule 2 — Further provisions in respect of disciplinary orders

[s. 68]

1. Duration of orders

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

- (a) for a period specified in the order; or
- (b) until a further order is made by the State Administrative Tribunal or a court.

[Clause 1 amended: No. 58 of 2010 s. 78.]

2. Limitation on monetary penalty

- (1) The powers described in Schedule 1 item 3 and the powers of a court to impose a penalty for an offence against this Act must not both be exercised in respect of an act, omission or conduct of a person that is substantially the same.
- (2) A penalty that exceeds the relevant maximum fine cannot be imposed under the powers described in Schedule 1 item 3.
- (3) In subclause (2) —
relevant maximum fine means, if the penalty is to be imposed in respect of an act, omission or conduct that constitutes an offence against this Act, the maximum fine that could be imposed by a court for that offence.

3. Recovery of penalties

- (1) An amount payable by a person under an order referred to in Schedule 1 item 3 may be recovered by the Director General as a debt in a court of competent jurisdiction to the extent that it remains unpaid after any time specified by the State Administrative Tribunal for payment.
- (2) If an amount referred to in subclause (1) has not been paid by a person after any time specified by the State Administrative Tribunal for payment, the State Administrative Tribunal may —

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- (a) treat the non-payment as an omission to which section 68(1)(b) applies; and
- (b) make an order described in Schedule 1 item 1 or 2 against the person in respect of that omission.

[Clause 3 amended: No. 58 of 2010 s. 78.]

[Schedule 3 deleted: No. 23 of 2014 s. 62.]

Notes

- ¹ This is a compilation of the *Motor Vehicle Repairers Act 2003* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Motor Vehicle Repairers Act 2003</i>	68 of 2003	9 Dec 2003	s. 1-2: 9 Dec 2003; Pt. 1 (other than s. 1, 2, 3(4) and 4), Pt. 3, Pt. 4, s. 65 and 69, Pt. 7, s. 89 and 90, Pt. 10 (other than s. 108 and 109), Pt. 11 and Sch. 3 cl. 2 and 3: 19 Mar 2007 (see s. 2 and <i>Gazette</i> 9 Feb 2007 p. 451); s. 4, Pt. 2 and 5, Pt. 6 (other than s. 65 and 69), Pt. 8 (other than s. 85(3)(b)), Pt 9 (other than s. 89 and 90), s. 108 and 109, Sch. 1 and 2 and Sch. 3 cl. 1: 1 Jul 2008 (see s. 2 and <i>Gazette</i> 24 Jun 2008 p. 2885)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 4 Div. 16 ³	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)

Short title	Number and year	Assent	Commencement
Reprint 1: The Motor Vehicle Repairers Act 2003 as at 8 Feb 2008 (includes amendments listed above except those in the <i>Motor Vehicle Repairers Act 2003</i> s. 4, Pt. 2 and 5, Pt. 6 (other than s. 65 and 69), Pt. 8, Pt. 9 (other than s. 89 and 90), s. 108 and 109, Sch. 1 and 2 and Sch. 3 cl. 1)			
Reprint 2: The Motor Vehicle Repairers Act 2003 as at 3 Oct 2008 (includes amendments listed above except the <i>Motor Vehicle Repairers Act 2003</i> s. 3(4) and 85(3)(b))			
<i>Acts Amendment (Fair Trading) Act 2010</i> Pt. 5 ⁵	58 of 2010	8 Dec 2010	s. 54: 1 Jan 2011 (see s. 2(c) and <i>Gazette</i> 24 Dec 2010 p. 6805); Pt. 5 (other than s. 54): 1 Jul 2011 (see s. 2(c) and <i>Gazette</i> 7 Jun 2011 p. 2057)
<i>Consumer Protection Legislation Amendment Act 2014</i> Pt. 8	23 of 2014	9 Oct 2014	19 Nov 2014 (see s. 2(b) and <i>Gazette</i> 18 Nov 2014 p. 4315)

³ The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 4 Div. 23 (other than s. 151) (as amended by *Acts Amendment (Fair Trading) Act 2010* s. 184) reads as follows:

“

Division 23 — Transitional provisions

[151. Deleted: No. 58 of 2010 s. 184.]

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

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

153. Consumer Affairs Act 1971

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

154. Petroleum Products Pricing Act 1983

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

155. Interpretation

In this Division —

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

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

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

”.

⁴ Sections 3(4) & 85(3)(b) of this Act had not come into operation when it was deleted by the *Acts Amendment (Fair Trading) Act 2010* s. 53(4) and 72(b).

⁵ The amendment in the *Acts Amendment (Fair Trading) Act 2010* s. 178 will not come into operation (see s. 2(b)(i)).

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
Account.....	107(1)
affected person.....	73(1)
amount paid	95(1)
approved	3(1)
authorised officer	3(1), 97
business licence.....	3(1)
certificate	3(1)
commencement day	120
Commissioner	3(1)
Compensation Account.....	89
Department	3(1)
Director General	3(1)
former provisions.....	76(1)
insolvent.....	89
licensee	3(1), 83
mobile premises	56
motor vehicle	3(1)
owner	83, 89
premises	56
prescribed.....	97
prescribed offence.....	97
prescribed percentage	90(1), 107(1)
provisional repairer's certificate	3(1)
purposes of the Account.....	107(1)
regulations.....	3(1)
relevant maximum fine	Sch. 2 cl. 2(3)
relevant offence.....	69(1)
relevant person.....	18(3), 20(3)
repair work.....	3(1)
repairer's certificate	3(1)
section 75	76(1)
specified	62(3), 122(6)
sufficient resources	12
the former Board.....	120
transitional matter	122(2)
unlicensed repairer.....	109(1)