

MOTOR VEHICLE DEALERS.

No. 49 of 1979.

AN ACT to amend the Motor Vehicle Dealers Act,
1973-1976.

[Assented to 7th November, 1979.]

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

1. (1) This Act may be cited as the *Motor Vehicle Dealers Act Amendment Act, 1979*.

Short title
and
citation.

(2) In this Act the Motor Vehicle Dealers Act, 1973-1976 is referred to as the principal Act.

Approved
for reprint
14th Decem-
ber, 1978.

(3) The principal Act as amended by this Act may be cited as the Motor Vehicle Dealers Act, 1973-1979.

Commence-
ment.

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

Section 5
amended.

3. Section 5 of the principal Act is amended—

(a) as to subsection (1)—

(i) by adding after the interpretation “dealer’s licence” the following interpretation—

“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; ;

(b) as to subsection (1a), by deleting the passage commencing with the passage “vehicle—” in line seven and ending with the passage “time.” in the last line and substituting the passage “demonstration vehicle.” ; and

- (c) as to subsection (2), by adding after the expression “(1)” in line two the passage “, (1a)”.

4. Section 8 of the principal Act is amended— Section 8
amended.

- (a) as to subsection (1), by deleting the passage “Chamber of Automotive Industries of W.A. (Inc).” in lines four and five of paragraph (c) and substituting the passage “Australian Automobile Dealers Association (W.A. Division)”; and
- (b) by adding after subsection (3) the following subsection—

(4) Any person who before the date of the coming into operation of section 4 of the Motor Vehicle Dealers Act Amendment Act, 1979 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.

5. Section 9 of the principal Act is amended— Section 9
amended.

- (a) as to subsection (3), by deleting the article “a” in line three and substituting the words “an eligible”; and
- (b) as to subsection (4), by deleting the article “a” where first occurring in line one and substituting the words “an eligible”.

Section 14
amended.

6. Section 14 of the principal Act is amended by adding immediately after subsection (1) the following subsection—

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

Section 18
amended.

7. Subsection (2) of section 18 of the principal Act is amended by deleting the passage commencing with the word “shall” in line three and ending with the passage “application.” in the last line and substituting the passage—

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 20
amended.

8. Subsection (1) of section 20 of the principal Act is amended—

- (a) by deleting the word “or” where appearing immediately after paragraph (e); and
- (b) by deleting the passage “disqualification,” at the end of paragraph (f) and substituting the passage—

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, .

9. Section 22 of the principal Act is amended— Section 22
amended.

(a) by adding after subsection (1) the following subsection—

(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

(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 thirty days after the decision or order has been given, appeal to the Local Court. ;

(b) as to subsection (2), by deleting the words “the appeal” in line two and substituting the passage “any appeal made pursuant to subsection (1) or subsection (1a) of this section”;

(c) as to subsection (3), by deleting the words “the appellant” in line two and substituting the words “the person affected by the decision or order of the Board”;

(d) as to subsection (4), by deleting the words “the appellant” in line one and substituting the words “the person affected by the decision or order of the Board”; and

(e) as to subsection (6), by deleting the passage “disqualifying a person from holding or obtaining a licence has been lodged, and” in lines three and four and substituting the passage “referred to in subsection (1) or subsection (1a), as the case requires, of this section,”.

Section 25
amended.

10. Section 25 of the principal Act is amended—

- (a) by adding after subsection (1) the following subsection—

(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. ; and

- (b) as to subsection (2)—

(i) by deleting the words “or yard manager” in line one and substituting the passage “, yard manager or financier”; and

(ii) by deleting the words “this section” in line two and substituting the passage “subsection (1) or subsection (1a) of this section, as the case requires”.

Section 29
amended.

11. Subsection (2) of section 29 of the principal Act is amended by deleting the passage “and does so knowing the representation to be false,” in lines five and six.

Section 30
amended.

12. Section 30 of the principal Act is amended—

(a) as to subsection (1), by deleting the word “One” in line one of the penalty provision and substituting the word “Three”;

(b) as to subsection (4), by deleting the word “Two” in line one of the penalty provision and substituting the word “Five”; and

(c) as to subsection (5), by deleting the word “One” in line one of the penalty provision and substituting the word “Five”.

13. Section 31 of the principal Act is amended by deleting the word "Four" in the last line and substituting the word "Five".

Section 31
amended.

14. Section 33 of the principal Act is amended—

Section 33
amended.

(a) as to subsection (1), by deleting the word "Two" in the last line and substituting the word "Five";

(b) as to subsection (3)—

(i) by deleting the words "who was not a trade owner" in the last line of paragraph (b); and

(ii) by deleting paragraph (d) and substituting the following paragraph—

(d) the year of first registration of the vehicle and the year of manufacture of the vehicle; ;
and

(c) by repealing subsection (7) and substituting the following subsection—

(7) Where a dealer sells a vehicle, he shall—

(a) cause not less than two 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 two 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 twelve 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 34
amended.

15. Section 34 of the principal Act is amended—

(a) as to subsection (1)—

- (i) by deleting the passage “, on or after the commencement of this Act,” in lines two and three;
- (ii) by deleting the words “one thousand dollars” in lines one and two of paragraph (a) and substituting the words “one thousand five hundred dollars”; and
- (iii) by deleting the words “one thousand dollars” in lines one and two of paragraph (b) and substituting the words “one thousand five hundred dollars”; and

- (b) as to subsection (3), by deleting the words “five hundred dollars” in lines three and four of paragraph (e) and substituting the words “seven hundred and fifty dollars”.

Section 36
amended.

16. Section 36 of the principal Act is amended—

- (a) by deleting the word “If” in line one and substituting the passage “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”; and

- (b) by deleting the passage commencing with the word “unless” in line fifteen and ending with the passage “days.” in the last line and substituting the passage “and where he does so he shall request them to make written submissions to him on the matter within fourteen days of the date of the request.” .

17. Section 37 of the principal Act is amended—

Section 37
amended.

- (a) as to subsection (1), by deleting the passage commencing with the word “and” in line three and ending with the word “and” in line six and substituting the passage “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,”;
- (b) by adding after subsection (2) the following subsection—

(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 workman-like manner,

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

(c) as to subsection (4), by deleting the passage “subsection (2) of” in lines one and two; and

(d) as to subsection (5)—

(i) by deleting the words “hearing or determination” in line three and substituting the words “determination or order”; and

(ii) by deleting the word “Two” in the last line and substituting the word “Five”.

Sections 37A
and 37B
added.

18. The principal Act is amended by adding after section 37 the following sections—

Enforcement
of orders of
Commis-
sioner.

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 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.

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.

Effect of
determin-
ation by
Commis-
sioner.

(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 one thousand dollars 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 38
amended.

19. Section 38 of the principal Act is amended—

- (a) as to subsection (1) by deleting the passage commencing with the word "Where" in line one and ending with the passage "section," in line five and substituting the passage "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,"; and

(b) as to subsection (2)—

(i) by adding after the word “of” in line one the passage “an appeal made pursuant to subsection (2) of section 37B and”; and

(ii) by deleting the passage commencing with the word “but” in line eight and ending with the passage “dispute.” and substituting the passage—

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. .

20. Section 39 of the principal Act is repealed.

Section 39
repealed.

21. The principal Act is amended by adding after section 41 the following sections—

Sections 41A
and 41B
added.

41A. (1) Where—

Rescission
of sale.

(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

- (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.

Obligations
in relation to
demonstra-
tion 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 43
amended.

22. Subsection (1) of section 43 of the principal Act is amended by deleting the word “One” in the last line and substituting the word “Five”.

Section 44
amended.

23. Section 44 of the principal Act is amended—

- (a) as to subsection (1), by deleting the word “Four” in the last line and substituting the word “Five”; and

- (b) as to subsection (2), by deleting the expression "39" in line four and substituting the expression "41A".

24. Subsection (1) of section 45 of the principal Act is amended— Section 45
amended.

- (a) by deleting the passage commencing with the passage "not," in line one and ending with the passage "vehicle—" in line three and substituting the passage "not—";
- (b) by deleting the passage "used." in line three of paragraph (e) and substituting the passage—

used,

wilfully and with intent to deceive
another person. ; and

- (c) by deleting the words "Four hundred" in the last line and substituting the words "Two thousand".

25. Subsection (2) of section 52 of the principal Act is amended by deleting the word "two" in line three and substituting the word "five". Section 52
amended.
