

## **MOTOR VEHICLE DEALERS AMENDMENT BILL 2001**

### **EXPLANATORY MEMORANDUM**

The purpose of this Bill is to implement amendments to the *Motor Vehicle Dealers Act 1973* (“the Act”) as a result of the National Competition Policy review and general fair trading review of the Act.

The National Competition Policy review was part of the commitment agreed to between the State and Commonwealth under the National Competition Policy Principles Agreement.

The Competition Policy review coincided with a separate general fair trading review of the Act that was undertaken by the Ministry of Fair Trading in February 1996. The Motor Vehicle Sales Industry Reference Group was formed as the consultative body responsible for making recommendations for change to Government.

The Reference Group has recommended changes that incorporate the findings of the National Competition Policy Review. It is intended that the changes will result in a more competitive marketplace where participants compete on a level playing field, trade fairly and are better informed.

At a broad level, the Bill provides for:

- increases to all penalties including a significant increase in penalties for unlicensed (backyard) dealing and fraudulent activities in connection with the sale of motor vehicles;
- the rationalisation of the statutory warranty system for used vehicles which will mean that the warranty which applies to a vehicle will be determined by the age of the vehicle or kilometres it has travelled;
- used passenger four wheel drive vehicles to be covered by the used car statutory warranty;
- a greater emphasis on ensuring that there is consistent and clear disclosure of information to the purchasers of motor vehicles with dealers being required to use contracts that contain prescribed information, terms and conditions;
- a requirement for dealers who sell vehicles by consignment to operate trust accounts for the deposit and disbursement of funds from the sale of a consignment vehicle.
- changes to the range and scope of powers available to the Motor Vehicle Dealers Licensing Board when dealing with disciplinary matters, including the introduction of penalties such as infringement notices for minor offences;
- the retention and strengthening of the licensing regime for motor vehicle dealers, salespersons and yard managers; and

- a shift from the licensing of car market operators to a less intrusive system of registration supported by legislation to be able to impose sanctions or remove unfit persons;

Outlined below is an examination of the contents of the Bill on a clause by clause basis.

## **Part 1 – Preliminary**

This Part contains the title of the Act, the relevant commencement provisions and the title of the Act being amended.

Clause 1: This Act may be cited as *the Motor Vehicle Dealers Amendment Act 2001*.

Clause 2: This clause sets out the commencement provisions.

Subclause (1) provides that the provisions of the proposed Act will come into operation on a day fixed by proclamation.

Subclause (2) provides that different days may be fixed for commencement of the provisions of subclause (1).

Clause 3: This clause identifies that the amendments contained in this Act will amend the *Motor Vehicle Dealers Act 1973*.

## **Part 2 – Amendments relating to licensing**

This Part includes a number of provisions to provide for changes to the licensing regime of the Act, the disciplinary powers of the Motor Vehicle Dealers Licensing Board (“the Board”) and the penalties for persons convicted for operating outside the requirements of the Act. The changes include:

- provision to enable the licensing of dealers by the category and class of business conducted;
- provision for the Board to place conditions on dealer’s licences;
- changes in the Board’s disciplinary powers;
- a shift from licensing to the registration of car market operators; and
- an increase in the penalty for a person convicted of “unlicensed dealing.”

Clause 4: This clause defines and re-defines certain words and expressions used in the Act that are affected by the changes to the licensing regime.

Subclause (1) provides new definitions for a number of terms including:

**“authorisation”** means –

- (a) a dealer’s licence;
- (b) a yard manager’s licence;
- (c) a salesperson’s licence; or
- (d) registration as a car market operator;

**“authorised premises”** –

- (a) in relation to a dealer, means premises -
  - (i) particulars of which are included in the dealer’s licence in accordance with section 20E(5); or
  - (ii) for which a temporary permit is granted under section 20H; and
- (b) in relation to a car market operator, means premises particulars of which are included in the registration of the operator in accordance with section 21A(5).

**“buying or selling”** in relation to vehicles, includes acting as an agent for persons in connection with the buying or selling of vehicles.

**“car hire operator”** means a person who carries on the business of hiring vehicles where the right to purchase the vehicle is not included in that hiring.

**“certificate of registration”** means a certificate of registration under section 17B(4).

**“grant,”** in relation to an authorisation, means –

- (a) the grant of a licence to a person or to persons constituting a firm; or
- (b) the registration of a person, or persons constituting a firm, under section 17B.

**“hold,”** in relation to authorisation means –

- (a) hold a licence; or
- (b) being registered under section 17B.

In this regard these definitions insert terms to assist in the administration of the new licensing and registration regimes.

Subclause (2) deletes the term “car market operator’s licence” as it no longer applies due to the change in regime from licensing to registration of this occupation.

Subclause (3) provides for a new definition of “dealer.”

**“dealer”** means –

- (a) a person who carries on any class or description of business of:
  - (i) buying or selling vehicles; or
  - (ii) acting as an agent for other persons in relation to the buying or selling of vehicles,  
(including a business of selling vehicles by auction) that is prescribed by regulations referred to in section 5A;
- (b) a financier; and
- (c) a car hire operator.

The definition for dealer enables the concept of differential licensing to be established by creating categories of dealer licences. The definition is linked to Clause 5 below which inserts the provisions for prescribing classes of business and categories of licence for the purposes of the definition of “dealer.”

Subclause (4) clarifies section 5(5) by deleting the reference to “licences” and replacing it with “authorisations” to accommodate the change from licensing to the registration of car market operator’s.

Subclause (5) clarifies section 5(7) by deleting the reference to “car market operator’s licences” and replacing it with “the registration of car market operator’s” to accommodate the change from licensing to registration.

Subclause (6) inserts a new section 5(8) to clarify that references to the holder of a licence or registration issued to the members of a firm is a reference to those persons jointly unless otherwise stated.

Clause 5: This clause inserts section 5A to give effect to the concept of differential licensing and to enable classes of business and categories of licence to be prescribed under the regulations of the Act. This will allow the Board to issue a dealer's licence based on the type (category) of business conducted and provide for easier identification and prescription of the type of business for which a dealer's licence is required. This provision will enable the Board to keep pace with industry changes as they evolve.

Clause 6: Subclauses (1), (2) and (4) give effect to the concept of differential licensing by amending sections 15(1), 15(2) and 15(3) to identify that persons will be applying for a dealer's licence of a particular category. Subsections (b) and (c) of these sections have been deleted and replaced by a single subsection, which provides for applicants to have sufficient resources and knowledge of the Act in order to obtain a licence. The meaning of sufficient resources and knowledge of the Act have been defined in subclause (5) below.

This is important in ensuring that persons do not attempt to bypass more onerous assessments of resources and knowledge on higher categories of licence (eg. vehicle sales) by obtaining a lower category of licence, such as wrecking vehicles only, and then conducting vehicle sales.

Subclauses (3) and (5) insert provisions into sections 15(2a) and 15(3) that will cause a dealer's licence to cease to have effect 14 days after a dealer is notified by the Board that it has refused to approve the changes to the membership of a body corporate or to the members of a firm (where a member of the firm is a corporate body). In order for a dealer to comply with a refusal, the Board, by notice in writing, will be able to extend the time a dealer has to comply if the refusal has been altered or revoked. Dealers are required to notify the Board of changes in the membership of a firm or body corporate 14 days before a change occurs.

Subclause (6) inserts a new provision that re-defines the meaning of "sufficient resources" and "sufficient knowledge of this Act" for persons applying for a dealer's licence.

Sufficient knowledge means a full understanding of the duties and obligations which apply to dealers, salespersons and yard

managers. Sufficient resources means sufficient material and financial resources to enable a dealer to comply with the Act. The provision also clarifies that when the Board considers an application for a dealer's licence as having sufficient knowledge and resources, it is based on the particular category of dealer's licence that is being applied for.

Clause 7: Inserts provisions to amend section 16:

- to require a person applying for a yard manager's licence to satisfy the Board of their identity; and
- to enable the Secretary, unless the Board otherwise directs, to authorise applicants to act as a yard manager.

This will be in the form of a temporary permit and is likely to apply in situations such as where a person has gained employment as a yard manager but is yet to complete an approved training course.

Clause 8: Inserts provisions to amend section 17:

- to require a person applying for a salesperson's licence to satisfy the Board of their identity; and
- to enable the Secretary, unless the Board otherwise directs, to authorise applicants to act as a salesperson.

This will be in the form of a temporary permit and is likely to apply in situations such as where a person has gained employment as a salesperson but is yet to complete an approved training course.

Clause 9: Inserts a new section 17A to provide for the Board to approve training courses for salespersons, yard managers and dealers and the persons who provide those courses.

Clause 10: Subclause (1) amends existing section "17A" by changing it to "17B."

Subclauses (2), (3) and (4) make changes to sections 17A(1), 17A(2) and 17A(3) to implement the shift from the licensing of car market operators to registration. Sections 17A(1), 17A(2) and 17A(3) are the individual, firm and body corporate sections, respectively, which entities can apply under for registration.

In order to apply for registration applicants will be required to establish their identity and that they are over 18 years of age. They will also need to submit to the Board confirmation that the proposed car market premises has been approved for that type of use by the local authority in which the premises is located.

Subclause (5) requires the Board to give a certificate of registration to a person, firm or body corporate that becomes registered.

Clause 11: Repeals existing section 17B and inserts new section 17C to provide the Board with the power to refuse a person registration or renewal of registration as a car market operator where the Board is aware of past misconduct that may render the person unfit to be registered.

Inserts a new section 17D. The new section has the same effect as the repealed section in that it cancels any other authorisation held by a person (eg. dealer's licence) upon that person being registered as a car market operator. The change is administrative to delete references to the licensing of car market operators and reflect that they are now registered.

Clause 12: This clause repeals existing section 18(1) and replaces it with a new section 18(1). The new section has the same effect as the repealed section in that it enables the Board to refuse a new application, or an application for the renewal of a licence (or registration as a car market operator), on any ground under which the Board can make an order under new section 20A.

This includes contravening or failing to comply with any provision of the Act, any conditions or restrictions, or engaging in conduct that renders a person unfit. The Board is required to conduct an inquiry that provides the opportunity for a person to show cause why the application should not be refused before an order is made. Where a renewal application is made, and there are grounds for refusal, but there is insufficient time to conduct an inquiry before a licence expires, the Board may renew the licence on condition that an inquiry will be held at a later date without affecting its disciplinary powers under section 20.

Section 18(2) is amended by changing "17A" to "17B."

Clause 13: This clause inserts a new section 18A to provide the Board with the power to attach, amend or remove conditions or restrictions to new and existing licences. The provision requires the Board to provide a licence holder written advice regarding any decision and a reasonable opportunity to comply with it. However, the Board can determine that this does not apply when a condition is being removed.

These powers are in addition to those the Board has in being able to attach conditions following disciplinary action under section 20A(5).

- Clause 14: Makes administrative amendments to section 19 deleting references to “licence” and replacing it with “authorisation” to accommodate the change from licensing to registration of car market operators. Section 19(3b) is amended to refer to new section 17B and section 19(4)(b) is amended to clarify that the disqualification of a dealer’s licence applies to the joint holders of the licence.
- Clause 15: Makes an administrative amendment to sections 19A(1) and 19A(2) to reflect the change from licensing to registration of car market operator’s by deleting references to “licence” and replacing it with “authorisation.”
- Clause 16: This clause repeals existing sections 20 and 21 and replaces them with new sections 20, 20A, 20B, 20C, 20D, 20E, 20F, 20G and 20H.

New section 20 provides for the Board to be able to make orders under section 20A where a person has been found by the Board:

- to have contravened or failed to comply with any provision of the Act or a condition of their licence or registration;
- to have engaged in any conduct that renders the person unfit;
- in the case of dealers and car market operators, to not have sufficient material or financial resources to comply with the Act, or, to no longer have premises that comply with planning requirements in respect of the premises; or
- to have ceased carrying on the business of a dealer or car market operator.

The Board is able to make an order of its own motion or on application by the Commissioner for Fair Trading. An order can not be made unless an inquiry has been held and the person has been given the opportunity to show why the order should not be made.

Section 20A provides for the orders that the Board can make in relation to section 20. These being:

- an order disqualifying a person from, whether solely or jointly, holding or obtaining any licence or from holding or obtaining registration as a car market operator whether or not the person is the current holder of a licence or registration;
- an order disqualifying a person from being concerned in the management or conduct of a body corporate that is the



holder, or jointly holds, a dealer's licence or car market registration;

- an order that the person pay to the Board a penalty not exceeding \$1500 in the case of a person who is, or was registered as a yard manager or salesperson, or \$5000 in the case of a person who is, or was the holder of a dealer's licence or registered as a car market operator;
- an order attaching conditions or restrictions to the licence or registration held by the person or amending existing conditions or restrictions; or
- an order reprimanding or cautioning the person.

Disqualification orders will be able to be made for a period named in the order or until further order of the Board.

Section 20B provides that a court penalty, and the power of the Board to make an order for a penalty for an offence, can not both be exercised where the conduct or act being dealt with is substantially the same. The Board cannot impose a monetary penalty that exceeds the maximum amounts prescribed (\$1,500 and \$5,000).

Section 20C provides that orders by the Board for payment of a penalty will be able to be recovered by the Commissioner for Fair Trading in a court of competent jurisdiction in the event it is not paid. Non-payment of fines within a specified time will also constitute grounds for disqualification by the Board.

Section 20D creates an offence for a person who contravenes an order made under section 20A(3) and creates an offence for a dealer or car market operator to employ a disqualified person in any capacity on premises or to allow a disqualified person to frequent premises without the prior consent of the Board. A penalty of \$5 000 applies and a daily penalty of \$100.

Section 20E requires that a person have suitable premises in order to obtain a dealer's licence. For a premises to be deemed suitable to conduct a particular activity under a dealer's licence, the Board need only be satisfied that the appropriate local government authority planning approval in the district in which the premises is located has been obtained. The approval confirms that the premises will comply, or would comply (if consent were given), with all relevant written planning laws.

The Board is able to determine the level to which it must be satisfied that the appropriate approval/s has/have been obtained before accepting a premises for authorisation. The Board is able

to grant an application for a licence on condition that the operation of the licence is suspended until all necessary consents regarding premises have been satisfied and that the grant will lapse if the condition is not satisfied in a specified period.

Section 20F provides that a dealer can make application for an alteration or addition in relation to premises registered as part of their licence at anytime and are subject to the same requirements as outlined above.

Section 20G requires the Board to issue a certificate for each authorised premises of a dealer and requires the dealer to display the certificate at the respective premises. It is an offence to not display the certificate for which a \$1 500 penalty applies.

Section 20H provides for the Board to be able to issue a temporary permit to dealers seeking to carry on business at premises at special occasions (eg. Auto Expo, Royal Show).

Clause 17: Section 21A is amended by changing “21A” to “21.”

Clause 18: This clause repeals existing section 21B and replaces it with section 21A, 21B and 21C.

Section 21A requires that a person have suitable premises in order to obtain car market operator’s registration. For a premises to be deemed suitable to conduct a car market, the Board need only be satisfied that the appropriate local government authority planning approval in the district in which the premises is located has been obtained. The approval confirms that the premises will comply, or would comply (if consent were given), with all relevant written planning laws.

The Board is able to determine the level to which it must be satisfied that the appropriate approval/s has/have been obtained before accepting a premises for authorisation.

The Board is able to grant an application for car market registration on condition that the operation of the car market is suspended until all necessary consents regarding premises have been satisfied and that the grant will lapse if the condition is not satisfied in a specified period.

Section 21B provides that a car market operator can make application for an alteration or addition in relation to premises registered as part of their registration at anytime and are subject to the same requirements as outlined above.

Section 21C requires the Board to issue a certificate for each authorised premises of a car market operator and requires the operator to display the certificate at the respective premises. It is an offence to not display the certificate for which a \$1 500 penalty applies.

Clause 19: Changes section “21C” to “21D” and makes administrative amendments to reflect the change from licensing to the registration of car market operators. The provisions require that the premises, and any advertisements published by a car market operator, contain the registration number.

Clause 20: The provisions of this clause amend section 22 to allow a person to appeal to the Local Court where the Board makes a decision or an order:

- to refuse a new or renewal application for a dealer’s, salesperson or yard manager’s licence or car market operator’s registration;
- to refuse the authorisation of a dealer’s, or car market operator’s, premises or to refuse a change to registered premises;
- to refuse to grant or to revoke a temporary premises permit for special occasions;
- exercising its disciplinary powers under section 20(1), (2) or (3);
- attaching or removing conditions or restrictions to licences;
- to disqualify a dealer or car market operator for having insufficient material and financial resources or for no longer having a premises that complies with planning requirements; or
- to refuse an application to change the members of a firm or body corporate of a dealer’s licence or car market operator’s registration.

A person is entitled to lodge an appeal within 30 days after receiving the Board’s reasons for its decision.

Clause 21: The provisions of this clause make administrative amendments to section 22A to reflect the change from licensing to registration for car market operators. A salesperson, yard manager, dealer or car market operator must return a licence or registration after it is cancelled or ceases to have effect, or, in the case of a dealer or car market operator – they cease to carry on business. A penalty of \$1500 applies for non-compliance.

- Clause 22: The provisions of this clause make administrative amendments to section 23 to reflect the change from licensing to the registration of car market operators. The provision continues to require that dealers or car market operators submit particulars of any changes in the persons of the entity which holds a dealer's licence or a car market operator's registration 14 days before any change occurs.
- Clause 23: The provisions of this clause make several administrative amendments to section 24 that require the Secretary of the Board to keep a register of particulars of licensed and registered persons. The changes reflect the shift from licensing to registration for car market operators by deleting reference to "licence" and replacing it with "authorisation." Provision has also been included in relation to persons being able to obtain information from the register.
- Clause 24: Subsections (1), (2) and (3) of this clause makes several administrative amendments to include car hire operators as persons to which the provisions of section 25 apply in terms of keeping a register of vehicles when selling second-hand vehicles to members of the public.
- Subsection (4) of this clause makes several administrative amendments to section 25 to reflect the change from licensing to the registration of car market operators and their premises for the purposes of keeping a register of transactions in the prescribed form.
- A penalty of \$5000 applies to a person convicted of knowingly making false register entries or causing them to be made.
- A \$1000 applies to a person who fails to notify a car market operator of the sale of their vehicle.
- Clause 25: This clause makes an administrative amendment to include car hire operators as persons to which the provisions of section 26 apply in terms of notification of transactions in second-hand vehicles.
- Clause 26: This clause repeals the existing sections 30, 31 and 31A and replaces them with new sections 30, 31, 31A, 31B, 31C and 31D.
- Subsection (1) of section 30 creates an offence and penalty of \$50,000 for a person convicted of unlicensed dealing. A further penalty of \$1,000 a day applies for each day on which the offence continues.

Subsection (2) provides for a penalty of \$5000 if a dealer carries on business at a place other than premises registered as part of the licence or under a temporary permit granted by the Board.

Subsection (3) describes the circumstances in which a person carries on unlicensed dealing such as acting in a prescribed class or description of business without holding a licence or non-compliance with any conditions on a licence. Subsection (4) clarifies that a person does not engage in unlicensed dealing if they act only in the capacity of a yard manager or salesperson, or as a financier, car hire operator or auctioneer who has been specifically exempted from compliance with the Act.

Section 31 provides the exemption provisions of the Act. Financiers, car hire operators or auctioneers can apply to the Board for exemption from compliance with the Act, on specific grounds under which the applications can be made.

These being, in the case of a financier; that they ordinarily dispose of repossessed vehicles directly to licensed dealers; in the case of car hire operators, that the buying or selling of vehicles does not comprise a significant part of the business as a car hire operator and that vehicles bought in the course of business are disposed of directly to licensed dealers; and in the case of auctioneers, that the auctioning of vehicles does not comprise a significant part of their auctioning business.

Section 31A creates an offence for a person who acts in the capacity of a yard manager before they are licensed or if they act outside of any of the conditions that may apply to the licence. The penalty being \$5 000 and a daily penalty of \$100.

Section 31B creates an offence for a person who acts in the capacity of a salesperson before they are licensed or if they act outside of any of the conditions that may apply to the licence. The penalty being \$5 000 and a daily penalty of \$100.

Section 31C creates an offence for a dealer who causes a person to act in contravention of sections 31A and 31B. The penalty being \$5 000 and a daily penalty of \$100.

Subsection (1) of section 31D creates an offence and penalty of \$50,000 for a person convicted of carrying on, or advertising that they carry on, the business of a car market operator without having been registered. A further penalty of \$1,000 a day applies for each day on which the offence continues.

Subsection (2) creates an offence and penalty of \$5 000 for a person convicted of operating a car market from unauthorised premises.

- Clause 27: This clause makes several administrative amendments to include car hire operators as persons to which the provisions of section 32 apply in terms of the application of Part III of the Act. This means second-hand vehicles disposed of on behalf of a car hire operator by a dealer will be subject to the statutory warranty provisions of the Act.
- Clause 28: The provisions of this clause make two administrative amendments to section 40A to reflect the change from licensing to the registration of car market operators.
- Clause 29: This clause makes several administrative amendments to include car hire operators as persons to which the provisions of section 41A apply in terms of the Commissioner for Fair Trading being able to apply to the Local Court for the rescission of a contract of sale where the vehicle sold was substantially different from the vehicle represented to the purchaser or the appropriate notice was not displayed on the vehicle at the time of sale.
- Clause 30: This clause makes an administrative amendment to section 53 to reflect the change of section 30(5) to section 31B.
- Clause 31: This clause amends various sections of the Act by deleting the term “salesman” and replacing it with the current industry term of “salesperson.”
- Clause 32: This clause amends various sections of the Act to change “registered” to “authorised” when referring to premises.

### **Part 3 – Amendments relating to offences and penalties**

This Part includes provisions that provide for changes to the offences and penalties that apply under the Act. The changes include:

- the implementation of infringement notice offences for simple acts or omissions;
- prescribing a penalty for each specific offence under the Act; and
- updating penalty amounts that apply to all offences.

- Clause 33: This clause amends section 14(3) by making grammatical changes and inserting a penalty of \$5 000 if a person is convicted of failing to attend, interrupting, failing to produce books or giving false evidence to a Board inquiry.
- Clause 34: This clause amends section 21A by inserting a penalty of \$1 500 if a person is convicted of failing to display on a sign or advertisement the business name of the dealership and licence number.
- Clause 35: This clause amends section 21C by inserting a penalty of \$1 500 if a person is convicted of failing to display on a sign or advertisement the business name of a car market and registration number.
- Clause 36: This clause amends section 22A by inserting a penalty of \$1 500 where a person fails to return a licence or registration certificate that has been cancelled.
- Clause 37: This clause inserts a penalty of \$2 000 if a person, who is a member of a firm, is convicted under section 23(1) for failing to notify the Board secretary 14 days before a change occurs in the membership of the firm.
- This clause inserts a penalty of \$2 000 if a person, who is a member of a body corporate, is convicted under section 23(2) for failing to notify the Board secretary 14 days before a change occurs in the membership of the body corporate.
- Clause 38: This clause inserts a penalty of \$1 500 if a salesperson or yard manager is convicted under section 24(3) for failing to notify the Board secretary within 14 days after a change of residential address.
- Clause 39: This clause amends the penalty amount to \$1 000 for a person convicted under section 25(2e) of failing to notify a car market operator of the sale of a vehicle. It also inserts a penalty amount of \$5 000 for a car market operator convicted of making false register entries under sections 25(1), (1a), (2), (2a), (2b) and (3).
- Clause 40: This clause inserts a penalty of \$2 000 if a person is convicted under section 26(1) of failing to advise the licensing authority of the acquisition or sale of a vehicle.
- The clause inserts a penalty of \$2 000 for a person convicted under section 26(2) of failing to return any number plates for a vehicle where the registration has expired or been cancelled.

- Clause 41: This clause inserts a penalty of \$5 000 for a person convicted under section 27(1) of failing to allow an authorised officer to enter a premises at any reasonable hour to examine any second-hand vehicle for its roadworthiness.  
The clause inserts a penalty of \$5 000 for a person convicted under section 27(3) of keeping a second-hand vehicle away from a registered premises to avoid the provisions of any of the sections of the Act (eg. roadworthy inspection of the vehicle).
- Clause 42: This clause inserts a penalty of \$5 000 for a person convicted under section 29(1), (2), (3) or (5) of selling a vehicle which has been declared unfit for sale, unless, it sold for the purposes of being broken up or has been de-licensed.
- Clause 43: This clause amends the penalty amount to \$2 000 for a person convicted under section 33(1) of failing to display the appropriate prescribed notice on a vehicle that is displayed for sale.  
  
This clause amends the penalty amount to \$5 000 for a person convicted under section 33(4) of making a statement or representation on a prescribed notice that is false or misleading.  
  
This clause inserts a penalty of \$1 000 for a person convicted under section 33(7) of failing to cause 2 copies of the prescribed notice to be signed at the time of sale by the purchaser and salesperson.
- Clause 44: This clause amends the penalty amount to \$5 000 for a person convicted under section 37(5) of making a false or misleading statement or claim in a dispute determined by the Commissioner for Fair Trading.
- Clause 45: This clause amends the penalty amount to \$2 000 for a person convicted under section 40B(1) of failing to display the appropriate prescribed notice on a vehicle that is displayed for sale at a car market.
- Clause 46: This clause amends the penalty amount to \$2 000 for a person convicted under section 41(1) for carrying out or giving effect to an undesirable practice.
- Clause 47: This clause amends the penalty amount to \$1 000 for a person convicted under section 43(1) for failing to record in writing the monetary value ascribed to a trade-in.
- Clause 48: This clause amends the penalty amount to \$5 000 for a person convicted under section 44(1) for failing to submit a document for signature with all the material particulars completed.



Clause 49: This clause amends the penalty amount to \$50 000 for a person convicted under section 45(1) for wilfully altering the odometer of vehicle. It includes an offence for a person who states or represents an odometer reading at the time of sale other than the reading allowing for kilometres travelled since the vehicle was acquired from the last owner. A penalty amount of \$5 000 will apply to a person convicted for misrepresenting the odometer reading, the year of manufacture, model or first year of registration of a vehicle.

Clause 50: This clause amends the penalty amount to \$5 000 for a Board member convicted under section 50 for divulging information as a member otherwise than in the course of their duties.

Clause 51: This clause replaces sections 52(1) and 52(2) to correct the current situation which has the unintended consequence of creating inappropriate offences.

Section 52(4) provides for the period for which proceedings for an offence can be bought. It has been amended from 12 months to 2 years after the commission of the alleged offence.

Clause 52: This clause inserts section 55A to provide for Infringement Notice penalties to be included in the Act. It provides for a person appointed by the Commissioner for Fair Trading to be able to issue an infringement notice for a prescribed offence under the Act.

The alleged offender can choose to pay the modified penalty as prescribed or have the alleged offence heard and determined by a court.

The infringement notice and the modified penalty are required to be prescribed. The modified penalty amount cannot exceed 20% of the maximum penalty that a court could impose for the offence. A person will have 28 days to pay the modified penalty.

A designated official appointed by the Commissioner of Fair Trading will be able to extend the time by which a modified penalty can be paid or withdraw and infringement notice. Should a notice be withdrawn after payment is made, the money is required to be refunded.

The payment of a modified penalty will not be regarded as an admission for the purposes of any criminal or civil proceedings. Once paid, proceedings and penalties cannot be imposed 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.

Clause 53: This clause amends section 56 by inserting provisions for infringement notice offences and penalties to be able to be prescribed by regulation and by amending the maximum penalty amount able to be prescribed for regulation offences to \$2 000.

#### **Part 4 – Amendments relating to dealer’s obligations on sale of second-hand vehicles**

This part makes amendments to the statutory warranty obligations that a dealer has upon the sale of a second-hand vehicle. The amendments include:

- the rationalisation of the statutory warranty system for used vehicles so that the warranty which applies to a second-hand vehicle is determined by the age of the vehicle or kilometres it has travelled at the time of sale;
- provision for second-hand passenger four-wheel drive vehicles to be covered by statutory warranty;
- the inclusion of provisions for dealers to operate and maintain a trust account in the event that they sell a second-hand vehicle by way of consignment; and
- provisions to require that consignment contracts and contracts for the sale of a new or second-hand vehicles to be in writing and contain certain prescribed particulars.

Clause 54: This clause makes an administrative amendment under the definition of “demonstration vehicle” in section 5(1) to reflect that new section 34 now provides for the dealer’s obligations to repair a second-hand vehicle.

Clause 55: Inserts the heading “Division 1 – Preliminary” after the heading to Part III of the Act.

Clause 56: This clause amends section 32 to reflect that the provisions regarding selling a vehicle by consignment (ie. using trust accounts and contracts with prescribed particulars) apply if a member of the public consigns a vehicle for sale at auction by a person licensed as a motor vehicle dealer.

Clause 57: Inserts the heading “Division 2 – Sales on consignment” and the provisions for dealers to operate and maintain a trust account in the event that they sell a vehicle by way of consignment.

The provisions will require dealers to only accept consignment sales in writing. The contract will be required to contain minimum prescribed particulars. Dealers will be required to keep accurate

records of transactions and to have the trust account audited every twelve months. Where a dealer receives a trade-in vehicle as part consideration for the sale of a consignment vehicle, the dealer will also be required to deposit in the trust account an amount equal to the value ascribed to the trade-in. In the event no amount is ascribed to the trade-in, the market value of the trade-in at the time of sale will be required to be deposited.

In the event the a trade-in value is greater than the consideration owed to a consumer for the sale of a consignment vehicle, the dealer will be able to deduct the money owed to the consumer, from the value ascribed to the trade-in vehicle, for deposit into the trust account.

The Board will be able to order a special audit at any time. The Board will also be able to apply to the District Court to restrain the use of a trust account, in situations such as where there is reasonable grounds to believe that there is a deficiency in a trust account or a dealer has refused or unreasonably delayed the payment of money to a consumer, or where the dealer is deceased.

A dealer, or the personal representative of a deceased dealer, or the Treasurer can apply to the District Court to vary or discharge orders made in relation to the trust account of a dealer. The Board, the Treasurer, the dealer or the representative of a deceased dealer can apply to the District Court for an Order regarding the distribution of money by the Treasurer from a restrained trust account. Claims for payment in this situation must be made within 6 months after the Treasurer receives the money. Once the Treasurer prepares a scheme for the distribution of money, the District Court must approve the scheme and can give such directions as it thinks fit in respect of the distribution of funds. The person who applies for the Order is required to provide a copy, or cause a copy of the Order to be provided to the respective parties to which the order applies.

Provision is included for Regulations to be made with respect to the keeping and management of trust accounts, the duties of financial institutions and the auditing of trust accounts.

Penalties of \$5 000 apply to breaches of provisions of this division.

This clause also inserts the heading "Division 3 – Obligation to display particulars of vehicle" after section 32K.

Clause 59: Repeals existing section 34 and replaces it with a new section 34 and new sections 34A, 34B, 34C, 34D, 34E, 34F, and 34G.

Section 34 defines that a dealer's obligation to repair defects under statutory warranty will be at the dealer's expense and has to make the vehicle roadworthy and in reasonable condition for its age.

Subsection (1) of section 34A defines the circumstances when the statutory warranty applies to a second-hand vehicle and motorcycle that is sold, such as, the minimum amount of money that is required to be paid; the age of the vehicle or the kilometres it has travelled being within the age and kilometre limits; that it has not been specifically exempted; and that it has not been purchased by another dealer.

Subsection (2) of section 34A sets the age and kilometre limits for vehicles to be covered by statutory warranty. This being, in the case of a motorcycle, that it is not more than eight years old or has not travelled more than 80 000 kilometres at the time of sale. In the case of a motor vehicle, that it is not more than 12 years old or has not been driven for more than 180 000 kilometres at the time of sale.

Subsection (3) of section 34A provides that a statutory warranty will not apply to a vehicle if the purchaser has been in possession of it for three months or more immediately preceding the day of the sale.

Section 34B defines that a dealer is responsible under warranty for repairing any defect that renders or is likely to render a vehicle unroadworthy or unserviceable.

A dealer is not responsible for repairing any defects that have been specifically excluded by notice to the purchaser before the sale; arising from or incidental to any accidental damage after sale; arising from driver misuse or negligence after sale; or occurring in a prescribed exempted item (eg. radio).

Section 34C prescribes the periods for which a dealer will be responsible to cover a vehicle for warranty. Warranty will apply for 3 months or 5 000km if a vehicle is less than 10 years old or has travelled less than 150 000km at the time of sale and warranty will apply for 1 month or 1 500km if a vehicle is more than 10 years old but less than 12 years, or has travelled more than 150 000km but less than 180 000km at the time of sale.

Section 34D prescribes the periods for which a dealer will be responsible to cover a motorcycle for warranty. Warranty will

apply for 3 months or 5 000km if the motorcycle is less than 8 years old or has travelled less than 80 000km at the time of sale.

Section 34E provides that the warranty period shall be extended by the length of time a dealer has a vehicle to ascertain or carry out warranty repairs.

Section 34F provides that the age of a vehicle will be calculated for the purposes of the statutory warranty from the date of manufacture of the vehicle shown on the compliance plate attached to it.

Where there is a dispute about the date of manufacture, the matter will be able to be determined by the Commissioner for Fair Trading.

Section 34G provides for the Minister for Consumer and Employment Protection to be able to exempt by order a vehicle or any class or description of vehicles from the warranty provisions of the Act.

Clause 60: Makes an administrative amendment to subsection (2) of section 35 to reflect that new section 34 will not apply for defects excluded by notice by the dealer.

Clause 61: Inserts the heading “Division 5 – Disputes”.

Clause 62: Repeals section 40.

Clause 63: Inserts new section 42A to require that a contract for the sale of a new or second-hand vehicle between a dealer and purchaser be in writing and contain minimum prescribed particulars.

The prescribed particulars will relate to items such as the terms and conditions about the formation of the contract, the purchase price, delivery of the vehicle, trade-in details and termination and notice requirements.

Contracts can be varied by incorporating other terms and conditions provided they are not inconsistent, and do not limit or diminish, the prescribed particulars.

A penalty of \$5 000 applies to breaches of provisions of this section.

Clause 64: Makes an administrative amendment to section 56(2)(e) to refer to new “Division 3 of Part III” as the part of the Act to which this section applies.

## **Part 5 – Miscellaneous amendments**

This part makes miscellaneous administrative amendments to sections of the Act.

- Clause 65: This clause amends section 6(1) to reflect the sections of the *Consumer Affairs Act* that apply to and in relation to the functions, powers and duties of the Commissioner for Consumer Protection under the *Motor Vehicle Dealers Act*.
- Clause 66: This clause amends section 8(1)(b) to update “Western Australian Automobile Chamber of Commerce (Inc)” to its current name the “Motor Trade Association of Western Australia Incorporated.”
- Clause 67: Makes an administrative amendment to wording of section 27(1a) to refer to the “buying or selling” of vehicles.
- Clause 68: This clause inserts a new section 28 and 28A that provides for a specified date by which repairs are required to be completed to be included in a notice issued under section 28 (Form 9) declaring a vehicle unfit for sale and that repairs be effected by a specified date. A person can choose to repair the vehicle by the date specified or return the registration plates to the Department of Transport to de-licence the vehicle. A penalty of \$2000 applies if a dealer fails to comply with the notice or if a person deliberately removes or obliterates a notice.
- Clause 69: This clause amends section 29 to clarify that an order issued under section 28 prohibits the sale of the vehicle unless the vehicle is being sold for the purpose of being broken-up or it has been de-licensed and that a penalty of \$5000 applies to a person convicted for breaching this section.

## **Part 6 – Consequential amendments**

This part makes administrative amendments to sections of the *Chattel Securities Act 1987* and the *Pawnbrokers and Second-hand Dealers Act 1994* effected by changes to the licensing regime of the *Motor Vehicle Dealers Act 1973*.

- Clause 70: This clause amends section 7(2) of the *Chattel Securities Act 1987* to reflect the change that car market operators are registered and not licensed.
- Clause 71: This clause amends section 4(1)(c) of the *Pawnbrokers and Second-hand Dealers Act 1994* to reflect the change in the licensing regime.

Clause 72: This clause amend the Road Traffic Act 1974 to give effect to the cancellation of a licence when the number plates are returned under Section 28 and 28A.

## **Part 7 – Transitional provisions**

This part makes transitional provisions to provide for an effective and efficient transition to the requirements of the new legislation.

Clause 73: This clause defines that for the purposes of this part the term “**the principal Act**” means the *Motor Vehicle Dealers Act 1973*.

Clause 74: This clause defines:

- that applications for dealer’s, salesperson’s or yard manager’s licences made, but not determined, before commencement of the new provisions shall be determined as if Part 2 of the amendment Bill had not been enacted; and
- that where new or renewal application has been received for a car market operator’s licence before the commencement of the new provisions, but has not been determined, it is to be taken as an application under the new provisions (ie. for registration).

Clause 75: This clause defines that where an existing dealer’s licence is held before the commencement of the new provisions, it will be taken to be a dealer’s licence of a particular class or category as will apply after commencement of new section 5A until such time as the licence expires.

Clause 76: This clause defines that where an existing car market operator’s licence is held before commencement of the new provisions, it will be taken to comply with the new provisions relating to car market operators until such time as the licence expires.

Clause 77: This clause defines that where an existing premises is registered under a dealer’s licence or car market operator’s licence before commencement of the new provisions, it will be taken to comply with the new provisions relating premises in relation to that dealer or car market operator.

Clause 78: This clause defines that the Board can exercise provisions under its new disciplinary powers as provided under section 20(1) in relation to conduct prior to the commencement of the new provisions.

- Clause 79: This clause defines that the change to enable proceedings to be bought within 2 years after an offence is committed do not apply in relation to offences committed prior to the commencement of the new provisions.
- Clause 80: This clause defines that a dealer does not have to comply with the requirements in relation to trust accounts for a vehicle consigned for sale before commencement of the new provisions.
- Clause 81: This clause defines that the new warranty provisions do not apply in relation to a second-hand vehicle sold prior to the commencement of the new provisions.
- Clause 82: This clause defines that the new requirements in relation to contracts do not apply in relation to a vehicle sold prior to the commencement of the new provisions.
- Clause 83: This clause provides for regulations to be able to be made that amend or supplement the transitional provisions, or make further transitional provisions in order to provide for an effective and efficient transition to the requirements of the new legislation.