

EXPLANATORY MEMORANDUM

Motor Vehicle Repairers Bill 2002

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Overview of Bill

The object of this Bill is to improve consumer protection, improve the general standard of repairs conducted on motor vehicles and enhance consumer confidence in the motor vehicle repair industry. In particular, the Bill:

- provides for the licensing of businesses involved in the carrying out of any prescribed class of motor vehicle repair work;
- provides for certification of individual repairers based on their qualifications or experience;
- provides for the Motor Vehicle Industry Board to be responsible for licensing and certification;
- imposes an obligation on licensees to ensure that repairs to motor vehicles are conducted by, or under the supervision of, certificated repairers;
- provides for the Motor Vehicle Industry Board to conduct conciliations between licensees and owners of vehicles;
- provides for the issuing of infringement notices in respect of offences;
- provides for the disciplining of licensees and repairers by the Motor Vehicle Industry Board;
- establishes a Compensation Fund to compensate owners of vehicles who suffer loss in the event of repairer bankruptcy or insolvency; and
- establishes an Education and Research Fund to fund education or research or any other public purpose in connection with motor vehicle repair work.

The Bill also includes transitional provisions to allow persons engaged in the motor vehicle repair industry, up to 12 months in which to become licensed or obtain certification as repairers, as the case may require, from the time the relevant provisions are proclaimed.

Part 1 - Preliminary

- Clause 1 Sets out the name of the proposed Act.
- Clause 2 Provides for the commencement of the proposed Act on a day or days to be fixed by proclamation.
- Clause 3 Defines certain words and expressions used in the proposed Act.
- Clause 4 Prevents persons being penalised twice for the same offence.
- Clause 5 Provides for classes of motor vehicle repair work to be prescribed by regulation.
- Clause 6 Allows for regulations to be made to exempt any person, or class of person, from the provisions of the proposed Act.
- Clause 7 Allows the Commissioner for Fair Trading to exercise the powers afforded to him or her under the *Consumer Affairs Act 1971*, to perform the functions required of him or her under this Act.
- Clause 8 Allows the Director General to designate authorised officers and requires those officers to produce their certificates of authority in certain circumstances.

Part 2 – Licensing of motor vehicle repair businesses

Division 1 – Repair businesses to be licensed

- Clause 9 Requires any person or firm that carries on business that consists of or includes the carrying out of repair work of a class prescribed, to hold a business licence for that class.
- Clause 10 Limits the application of clause 8 so as not to include:
- persons or firms who only carry out repair work on motor vehicles owned or used by them;
 - licensed motor vehicle dealers who perform only “warranty work” on used motor vehicles sold by them;
 - persons who carry out repair work in the course of their employment with another person.

The clause also allows persons who hold a licence of a particular class, to subcontract repair work of a different class in certain circumstances.

Clause 11 Makes it an offence for a person or firm to advertise or hold out that they carry on repair business that includes a class of repair work for which they do not hold a licence.

Division 2 – Application for and grant of business licence

Clause 12 Defines “sufficient resources” in relation to an application for a business licence.

Clause 13 Sets out the licence application process.

Clause 14 Requires licence applicants to inform the Board of any material change in the information provided in respect of an application for a business licence if any change occurs before the licence is granted or refused.

Clause 15 Allows an individual to make application for a business licence.

Clause 16 Requires the Board to grant a licence to an individual subject to the individual:

- being over the age of 18 years;
- being a person of good character and repute;
- being a fit and proper person;
- having sufficient resources; and
- having such qualifications as may be prescribed.

Provision is also included to allow the Board to refuse a licence in certain circumstances (in accordance with clauses 22 and 23).

Clause 17 Allows licence applications to be made by 2 or more persons who constitute a firm.

- Clause 18 Requires the Board to grant a business licence to a firm if each relevant person:
- is over the age of 18 years;
 - is of good character and repute;
 - is a fit and proper person to be concerned in the management or conduct of the business;
 - has such qualifications as may be prescribed; and
 - the persons who constitute the firm have sufficient resources
- “Relevant person” is defined as an individual who is a member of the firm or who is concerned in the management or conduct of a body corporate that is a member of the firm. Provision is also included to allow the Board to refuse a licence in certain circumstances (in accordance with clauses 22 and 23).
- Clause 19 Allows a body corporate to make application for a business licence.
- Clause 20 Requires the Board to grant a business licence to a body corporate if the applicant has sufficient resources and each relevant person:
- is over the age of 18 years;
 - is of good character and repute;
 - is a fit and proper person to be concerned in the management or conduct of the business;
 - has such qualifications as may be prescribed.
- Provision is also included to allow the Board to refuse a licence in certain circumstances (in accordance with clauses 22 and 23).
- Clause 21 Requires the Board to send a copy of every licence application received, to the Commissioner for Fair Trading and give him or her the opportunity to submit to the Board any matters he or she considers relevant to the application.
- Clause 22 Requires the Board to refuse to grant a business licence where an applicant or relevant person is disqualified under the Act, from holding or obtaining the licence or being concerned in the management or conduct of a body corporate.

- Clause 23 Allows the Board to refuse a business licence if there any grounds upon which a disciplinary order could be made in respect of the applicant, if he or she was (already) a licensee or a person concerned in the management or conduct of the body corporate that was a licensee.
- Clause 24 Provides for the form of licence to be determined by the Board but requires the inclusion of the name of the licensees business and the licence number.
- Clause 25 Allows the Board to issue a duplicate licence where the original is lost or destroyed.
- Clause 26 Prohibits the transfer of licences except in certain circumstances.

Division 3 – Business licence conditions

- Clause 27 Allows the Board to attach, amend or remove conditions or restrictions on a licence, at any time. Requires the Board to give applicants and licensees the opportunity to make submissions prior to a condition or restriction taking effect. Also requires licensees to return their licence to the Board for amendment upon request.
- Clause 28 Allows for regulations to be made that prescribe conditions or restrictions that are to be attached to all licences or all licences for a particular class of repair work.
- Clause 29 Allows for regulations to be made that would require licensees to take out and maintain policies of insurance in respect of their business. Also allows for regulations to specify the requirements of such policies.

Division 4 – Duration and renewal

- Clause 30 Provides for the duration of licences and renewals to be prescribed by regulation. Also sets out the circumstances under which a licence ceases to have effect.
- Clause 31 Sets out the licence renewal process and related requirements. Also gives the Board discretion to accept renewals lodged out of time.

Clause 32 Allows the Board to refuse to renew a licence if there is any ground upon which it could refuse to grant a licence if the renewal was an application for a licence. (ie. to treat the renewal as if it were an application for a licence and apply all relevant criteria to that renewal). Also requires the Board to conduct an inquiry and give the licensee an opportunity to show cause why the renewal should not be refused.

Clause 33 Requires licensees to return their licence to the Board in certain circumstances (such as a failure to renew).

Division 5 – Changes in firm and management of business

Clause 34 Requires licensees to notify the Board of any event where a person ceases to be a member of a firm or ceases to be concerned in the management or conduct of a body corporate, within 14 days of the event occurring.

Clause 35 Sets out the circumstances under which a licence held by a firm may be amended where it is proposed to include a new member in the firm.

Clause 36 Sets out the circumstances under which a licence held by a firm may be amended where there is a proposed inclusion of a person concerned in the management or conduct of a corporate member of the firm.

Clause 37 Sets out the circumstances under which a licence held by a body corporate may be amended where there is a proposed inclusion of a person concerned in the management or conduct of the body corporate.

Clause 38 Provides for the cessation of a licence where the Board has refused to approve changes in the firm or changes in the management of the body corporate.

Clause 39 Makes it an offence for a firm or body corporate to make membership or management changes without applying for the Board's approval.

Part 3 – Certification of individuals performing repair work

Division 1 – Requirement for certification

- Clause 40 Precludes persons or firms carrying on business, and in some circumstances licensed motor vehicle dealers, from personally carrying out repair work or permitting employees to carry out repair work unless they hold a repairer's certificate or are being supervised by a person who holds a certificate.
- Clause 41 Makes it an offence for a person to falsely hold himself or herself out as being the holder of a repairer's certificate.

Division 2 – Certification provisions

- Clause 42 Sets out the process for applying for a repairer's certificate. Also exempts holders of provisional repairer's certificates from paying the prescribed fee in certain circumstances.
- Clause 43 Requires the Board to grant a repairer's certificate to any applicant who is "fit" and "sufficiently qualified". Defines "sufficiently qualified" by reference to prescribed qualifications or examinations. Allows the Board to also consider an applicant's experience and qualifications or examinations passed, that are not prescribed.
- Clause 44 Allows the Board to attach, amend or remove conditions or restrictions on a repairer's certificate, at any time. Requires the Board to give applicants and certificate holders the opportunity to make submissions prior to a condition or restriction taking effect. Also requires certificate holders to return their certificate to the Board for amendment if required.
- Clause 45 Provides for the granting of provisional repairer's certificates in certain circumstances.
- Clause 46 Provides for the Board to determine the form of repairer's certificates and the inclusion of certain particulars in those certificates.
- Clause 47 Provides for repairer's certificates to remain in force continuously except in certain circumstances.

- Clause 48 Requires holders of provisional repairer's certificates to return expired certificates to the Board as soon as practicable.
- Clause 49 Requires holders of certificates to advise the Board of any change in address.

Part 4 – Provisions applicable to business licences and to certificates

- Clause 50 Makes it an offence to provide false or misleading information in relation to an application or renewal of a licence or repairer's certificate.
- Clause 51 Provides for the establishment and maintenance of registers for the recording of particulars and matters relating to licences and repairer's certificates.
- Clause 52 Provides for the inspection and copying of the register (of licensees or repairers) by any person, subject to payment of a prescribed fee.
- Clause 53 Provides for the secretary of the Board to issue certified statements in relation to information appearing in the register.
- Clause 54 Provides for the surrender of licences and repairer certificates and refunds of fees paid.
- Clause 55 Provides for the secretary to issue certified copies of licences or certificates. Also makes it clear that certified copies to be accepted as evidence in court proceedings.
- Clause 56 Empowers authorised officers to require licensees and certificate holders to produce their licences or certificates in certain circumstances.

Part 5 – Restrictions on use of premises by licensees

- Clause 57 Defines "premises" and "mobile premises" for the purposes of Part 5 of the Bill.
- Clause 58 Prohibits licensees from carrying on repair business at places other than authorised premises.

- Clause 59 Requires applicants for a licence to specify in their application, the places at which business is to be conducted and to provide a planning certificate from the relevant local authority in respect of the premises, evidencing compliance with local planning laws (except in the case of mobile premises).
- Clause 60 Requires the Board to authorise use of premises specified by the licensee in their application in certain circumstances.
- Clause 61 Provides for applications to be lodged with conditional planning certificates in respect of premises. Also empowers the Board to grant such applications but suspend the operation of the licence until the necessary consents have been obtained from the planning authority.
- Clause 62 Allows the Board to approve applications for new premises at which repair work is to be conducted, if accompanied by a planning certificate or conditional planning certificate in respect of those premises.
- Clause 63 Allows the Board to revoke an authorisation in respect of premises (other than mobile premises) if it is no longer satisfied that the premises comply with all relevant planning laws. Orders may be made by the Board of its own motion or on the application of the Commissioner for Fair Trading. However, the Board must first conduct an inquiry and give the licensee an opportunity to show cause why the order should not be made.
- Clause 64 Requires the Board to issue a certificate for each authorised premises. Also requires the licensee to display the certificate on the premises to which the certificate applies.
- Clause 65 Allows the Board to seek the return of a certificate in respect of authorised premises.

Part 6 – Disciplinary powers of Board

- Clause 66 Defines persons to whom Part 4 of the Bill applies (licensees, persons concerned in the management or conduct of a body corporate that is a licensee and certificate holders)

- Clause 67 Prevents the Board from making a disciplinary order against a person without first conducting an inquiry and giving the person an opportunity to show cause why the order should not be made.
- Clause 68 Allows the Board to make an order of its own motion or on the application of the Commissioner for Fair Trading.
- Clause 69 Specifies the circumstances under which the Board may make an order pursuant to Schedule 1 of the Bill.
- Clause 70 Requires persons to whom Part 6 applies, to notify the Board of any conviction of an offence anywhere in Australia where the maximum penalty is \$8000 or imprisonment for more than 2 years or for an indeterminate period.
- Clause 71 Sets out the circumstances under which the Board may cancel a licence
- Clause 72 Allows the Board to seek the return of a licence or certificate in certain circumstances. Also makes it an offence for a licensee or certificate holder not to comply.
- Clause 73 Makes it an offence for a person disqualified by the Board, not to comply with an order. Also makes it an offence for a licensee to employ a disqualified person in any capacity without the Board's prior consent.

Part 7 - Appeals

- Clause 74 Requires the Board to give notice of a decision or order, including reasons, to persons affected by the decision or order.
- Clause 75 Requires the Board to give notice of a decision to the Commissioner for Fair Trading in certain circumstances.
- Clause 76 Gives persons affected by a decision or order of the Board, the right of appeal to a Local Court.
- Clause 77 Gives the Commissioner for Fair Trading the right of appeal against a decision of the Board, in certain circumstances.

- Clause 78 Provides for appeals to be conducted in accordance with *Local Courts Act* and rules of the Court. Also provides for the Commissioner for Fair Trading to appear or be represented in appeal proceedings.
- Clause 79 Allows the Court to determine appeals based on material before the Board and any other evidence or information it thinks fit.
- Clause 80 Allows the Court to have regard to all matters it considers relevant. Also makes it clear that the burden rests on the applicant to satisfy the Court that an order should be varied or reversed or that the Court should otherwise exercise its powers.
- Clause 81 Sets out the range of options open to the Court in respect of appeals and makes it clear that the decision of the Court is final.
- Clause 82 Makes it clear that the bringing of an appeal does not affect a decision of the Board until the appeal is determined.
- Clause 83 Allows the Court to suspend a decision of the Board to refuse a renewal pending an appeal against that decision.

Part 8 – Conciliation of certain disputes

- Clause 84 Defines “licensee” and “owner” for the purposes of Part 6.
- Clause 85 Sets out the types of disputes to which Part 6 applies and makes it clear that it does not apply to disputes that have already been decided by a court or tribunal or “warranty” disputes determined by the Commissioner for Fair Trading pursuant to section 37 of the *Motor Vehicle Dealers Act* or to disputes that are subject to any proceedings.
- Clause 86 Allows an owner of a vehicle to request the Board to act as conciliator in a dispute and gives the Board discretion to comply with such request. Also allows the Board to appoint authorised officers to assist in a conciliation.

- Clause 87 Defines the conciliation function. Makes it clear that it is not a function of the Board to conduct an arbitration of a dispute. Also makes it clear that the Board cannot perform a conciliation if the owners request to conciliate is withdrawn at any time or if the dispute becomes subject to any proceedings.
- Clause 88 Empowers authorised officers to enter the premises of licensees to inspect vehicles for the purposes of conducting conciliations.
- Clause 89 Makes it an offence to provide information that is false or misleading in relation to a conciliation. Also makes it an offence to obstruct or hinder authorised officers.

Part 9 – Compensation for losses in connection with repair work

- Clause 90 Defines “Compensation Fund”, “insolvent” and “owner” for the purposes of Part 9.
- Clause 91 Provides for the establishment of a Motor Vehicle Repair Industry Compensation Fund and how the Fund is to be funded.
- Clause 92 Sets out the types of losses to which Part 9 applies.
- Clause 93 Provides for claims to be made against the Compensation Fund up to a maximum value of \$6000. Prevents multiple claims in respect of the same repair. Also sets out the process for lodging a claim.
- Clause 94 Sets out the process that is to be followed by the Board and the Director General in determining claims.
- Clause 95 Precludes persons from taking legal proceedings against the Board or Director General for the recovery of compensation.
- Clause 96 Provides for the rights of claimants to be subrogated to the Director General for the purposes of recovering any compensation paid from the Fund.

Clause 97 Makes directors of a body corporate jointly and severally liable for any compensation paid to a claimant where payment results from the act or omission or insolvency of the body corporate. Provides directors with a defence against action where an act or omission occurred without authority or consent.

Part 10 - Miscellaneous

Division 1 – Infringement notices

Clause 98 Defines “authorised officer”, “prescribed” and “prescribed offence” for the purposes of Division 1.

Clause 99 Provides for the making of regulations that prescribe offences for which infringement notices may be issued.

Clause 100 Requires regulations to specify modified penalties for prescribed offences and limits penalties to a maximum of 20% of the maximum penalty that could be imposed by a court.

Clause 101 Provides for the issue of infringement notices for prescribed offences for up to 6 months following the commission of the offence.

Clause 102 Requires infringement notices to be in a prescribed form and specifies the information that must be included in the notice.

Clause 103 Allows the Board or secretary to extend the period of time within which to pay a modified penalty.

Clause 104 Allows the Board or secretary to withdraw an infringement notice.

Clause 105 Precludes the bringing of proceedings against an alleged offender after a modified penalty has been paid.

Clause 106 Precludes payment of a modified penalty from being regarded as an admission of an offence for the purposes of any civil or criminal proceedings.

Clause 107 Provides for penalties collected from infringement notices to be dealt with as if they were imposed by a court (to be paid to the Consolidated Fund)

Division 2 – General

- Clause 108 Provides for the establishment of a Motor Vehicle Repair Industry Education and Research Fund, the purpose of the Fund and how it will be funded.
- Clause 109 Requires licensees to include their name and licence number on premises, advertisements and stationery.
- Clause 110 Makes it an offence for motor vehicle repair businesses and insurers to enter into agreements for repair work to be conducted by unlicensed repair businesses or to otherwise assist those businesses to carry on business whilst unlicensed. Also makes it an offence for insurers to require owners of motor vehicles to enter into such agreements.
- Clause 111 Deems directors and officers concerned in the management of a body corporate, responsible for contraventions of the Act by the body corporate.
- Clause 112 Empowers authorised officers to seek information and request documents for the purposes of carrying out investigations or conciliating disputes.
- Clause 113 Empowers authorised officers to enter, at any reasonable time, any place at which a person is believed to be carrying on business of repair work for the purpose of ascertaining whether a person is contravening or has contravened the Act. Also specifies the circumstances under which entry is permitted and the scope of the officer's powers following entry.
- Clause 114 Makes it an offence to provide information that is false or misleading or to obstruct or otherwise hinder authorised officers in the exercise of their powers. Also precludes information supplied by a person from being used in proceedings against them in some circumstances.
- Clause 115 Provides for the making of regulations that give effect to the purposes of the Act.
- Clause 116 Refers to Schedule 3 of the Act as having effect to make transitional provisions (see Schedule 3)
- Clause 117 Requires the Minister to carry out a review of the proposed Act after 5 years.

Part 11 – Consequential amendment

Clause 118 Makes a consequential amendment to the *Travel Agents Act 1985*.

Schedule 1 Disciplinary orders [s.69]

Clause 1 Provides for the disqualification of any person from holding or obtaining a licence or certificate.

Clause 2 Provides for the disqualification of any person from being concerned in the management or conduct of a body corporate that is the holder or joint holder of a licence.

Clause 3 Provides for the imposition of monetary penalties with a maximum penalty of \$1500 for certificate holders and \$5000 for licensees.

Clause 4 Provides for orders to attach or amend conditions or restrictions to licences and certificates.

Clause 5 Provides for orders reprimanding or cautioning a person.

Schedule 2 - Further provisions in respect of orders

Clause 1 Provides for orders to be made for A specified period or until further order of the Board.

Clause 2 Precludes the imposition of a fine for conduct where a court has already imposed a fine in respect of that conduct. Also precludes the Board from imposing a fine greater than the maximum fine a court could impose.

Clause 3 Provides for the recovery of penalties by the Director General. Also provides for the Board to treat the non-payment of a penalty as grounds for disqualification.

Schedule 3 – Transitional provisions [s.116]

- Clause 1 Provides for persons or firms carrying on repair business immediately before the requirement to be licensed comes into effect, to be treated as being the holder of a business licence for a period of 12 months or until a licence has been applied for and refused, whichever is the earlier (the period extends if an appeal is brought).
- Clause 2 Allows persons and members of firms to personally carry out repair work, or allow employees to carry out repair work, without them being certificated as repairers, for a period of 12 months after the requirement for certification comes into effect, or until the person or employee has applied for a certificate and been refused, whichever is the earlier (the period extends if an appeal is brought).
- Clause 3 Provides for the making of regulations for any transitional matter not otherwise provided for. Also allows for the making of regulations to modify an existing transitional provision to remove any anomalies.