

MOTOR DEALERS (AMENDMENT) ACT, 1985, No. 104

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

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Act No. 104, 1985.

An Act to amend the Motor Dealers Act, 1974. [Assented to, 21st June, 1985.]

See also Consumer Protection (Motor Dealers) Amendment Act, 1985; Justices (Motor Dealers) Amendment Act, 1985.

Motor Dealers (Amendment) 1985

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

Short title.

1. This Act may be cited as the "Motor Dealers (Amendment) Act, 1985".

Commencement.

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) The several provisions of Schedules 1—11, and section 5 in its application to those provisions, shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) The Minister administering the Principal Act may, by order published in the Gazette before the day appointed and notified by a proclamation under subsection (2), suspend the operation of such provision or provisions of the Principal Act, as amended by this Act, as is or are specified in the order, being a provision or provisions which is or are to be inserted into the Principal Act by a provision of this Act specified in the proclamation.

(4) An order under subsection (3) shall—

- (a) take effect on and from the day appointed and notified by the proclamation under subsection (2) to which the order relates; and
- (b) unless sooner revoked, cease to have effect at the expiration of 12 months after that day.

(5) A provision which is suspended by operation of an order under subsection (3) has no effect while the order is in force in relation to the provision.

Principal Act.

3. The Motor Dealers Act, 1974, is referred to in this Act as the Principal Act.

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Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

SCHEDULE 2.—SUBSTITUTION OF PART II OF THE PRINCIPAL ACT.

SCHEDULE 3.—AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

SCHEDULE 4.—AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

SCHEDULE 5.—INSERTION OF PART IVA INTO THE PRINCIPAL ACT.

SCHEDULE 6.—AMENDMENTS TO PART V OF THE PRINCIPAL ACT.

SCHEDULE 7.—INSERTION OF PART VA INTO THE PRINCIPAL ACT.

SCHEDULE 8.—AMENDMENTS TO PART VI OF THE PRINCIPAL ACT.

SCHEDULE 9.—INSERTION OF PART VIA INTO THE PRINCIPAL ACT.

SCHEDULE 10.—AMENDMENTS TO PART VII OF THE PRINCIPAL ACT.

SCHEDULE 11.—AMENDMENTS TO SCHEDULE 1 TO THE PRINCIPAL ACT.

SCHEDULE 12.—INSERTION OF SCHEDULE 2 INTO THE PRINCIPAL ACT.

SCHEDULE 13.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Amendment of Act No. 52, 1974.

5. The Principal Act is amended in the manner set forth in Schedules 1-12.

Savings, transitional and other provisions.

6. Schedule 13 has effect.

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SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

(1) Section 3—

Omit the section.

(2) (a) Section 4 (1), definitions of “authorised officer”, “buy”—

After the definition of “accessories”, insert:—

“authorised officer” means—

- (a) any member of the police force;
- (b) an inspector appointed under the Consumer Protection Act, 1969;
- (c) the Commissioner;
- (d) any person authorised in writing by the Commissioner, including a person authorised under section 6 (1); or
- (e) any person authorised in writing by the Commissioner for Motor Transport;

“buy” means buy as principal or agent;

(b) Section 4 (1), definition of “Commercial Tribunal”—

After the definition of “cash price”, insert:—

“Commercial Tribunal” means the Commercial Tribunal of New South Wales constituted under the Commercial Tribunal Act, 1984;

(c) Section 4 (1), definition of “commercial vehicle”—

Omit the definition, before the definition of “Commissioner”, insert:—

“commercial vehicle” means a motor vehicle constructed or adapted principally for—

- (a) the carriage of goods;

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SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

(b) the carriage of 10 or more adult persons; or

(c) industrial or agricultural use,

and includes a motor vehicle prescribed to be a commercial vehicle for the purposes of this definition and a motor vehicle of a class or description of motor vehicles prescribed to be commercial vehicles for the purposes of this definition, but does not include—

(d) a motor vehicle of the kind known as a utility, a station waggon or a panel van that is of the same make as a factory-produced motor car and in which such part of the body form as is forward of the windscreen and the greater part of the mechanical equipment are the same, or substantially the same, as in that motor car;

(e) a motor vehicle that is adapted for camping use; or

(f) a motor vehicle prescribed not to be a commercial vehicle for the purposes of this definition or a motor vehicle of a class or description of motor vehicles prescribed not to be commercial vehicles for the purposes of this definition;

(d) Section 4 (1), definition of “defect notice”—

After the definition of “dealer’s licence”, insert:—

“defect notice”, in relation to a motor vehicle, means a notice in or to the effect of the prescribed form given, following an inspection of the motor vehicle, by—

(a) except as provided by paragraph (c), in the case of a motor vehicle (other than a motor cycle)—the holder of a licence, or a tradesman’s certificate, granted under the Motor Vehicle Repairs Act, 1980, in respect of a class of repair work that comprises or includes the work of a motor mechanic;

*Motor Dealers (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

(b) except as provided by paragraph (c), in the case of a motor cycle—

- (i) a person referred to in paragraph (a); or
- (ii) the holder of a licence, or a tradesman's certificate, granted under the Motor Vehicle Repairs Act, 1980, in respect of a class of repair work that comprises or includes the work of a motor cycle mechanic; or

(c) in the case of a prescribed defect or a defect of a prescribed class or description—a prescribed person or a person of a prescribed class or description,

which specifies with reasonable particularity—

(d) each defect (if any) actually found to be present in the vehicle at the time of inspection by the person giving the notice; and

(e) in relation to each such defect, the estimate of the person giving the notice of the fair cost of repairing or making good the defect;

(e) Section 4 (1), definition of "demonstrator motor vehicle"—

Omit the definition, insert instead:—

"demonstrator motor vehicle" means a motor vehicle—

(a) that has not been sold to a person other than a dealer or wholesaler;

(b) that has been registered only in the name of any one or more of the following persons:—

- (i) any dealer or wholesaler or any person on behalf of any dealer or wholesaler;
- (ii) any person in anticipation of the sale of the vehicle to that person; and

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SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

- (c) that has not been used for any purpose, other than—
- (i) a purpose in connection with its manufacture or sale; or
 - (ii) the purpose of demonstrating the motor vehicle to a potential buyer of that motor vehicle or a motor vehicle of the class to which that motor vehicle belongs;
- (f) Section 4 (1), definitions of “exempted motor vehicle”, “exempted person”—
- Omit the definitions, insert instead:—
- “exempted motor vehicle”, when used in relation to any provision of this Act, means a motor vehicle or a motor vehicle belonging to a class of motor vehicles exempted or excluded from the operation of that provision by an order in force under section 8, including an order that is varied under that section;
- “exempted person”, when used in relation to any provision of this Act, means a person or a person belonging to a class of persons exempted or excluded from the operation of that provision by an order in force under section 8, including an order that is varied under that section;
- (g) Section 4 (1), definition of “financier”—
- After “a person”, insert “who is a credit provider within the meaning of the Credit Act, 1984, or a finance broker within the meaning of the Credit (Finance Brokers) Act, 1984, and”.
- (h) Section 4 (1), definition of “hire-purchase agreement”—
- After “purchase”, insert “and includes a contract or an agreement prescribed to be a hire-purchase agreement for the purposes of this definition or a contract or an agreement of a

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SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

class or description of contracts or agreements prescribed to be hire-purchase agreements for the purposes of this definition”.

(i) Section 4 (1), definition of “holder”—

Omit the definition, insert instead:—

“holder”, in relation to a licence, means the person to whom the licence is granted;

(j) Section 4 (1), definition of “inspection report”—

After the definition of “identification number”, insert:—

“inspection report” means—

(a) where no report is prescribed for the purposes of paragraph (b), an inspection report issued in accordance with the regulations made under the Motor Traffic Act, 1909; or

(b) a report prescribed for the purposes of this paragraph;

(k) Section 4 (1), definitions of “joint application”, “joint licence”—

Omit the definitions.

(l) Section 4 (1), definition of “motor vehicle”—

After “trailer”, insert “(other than a trailer for the carriage of goods or animals which has, in the case of an unregistered trailer, a tare weight of 250 kilograms or less or, in the case of a registered trailer, a tare weight as stated in the certificate of registration of 250 kilograms or less)”.

(m) Section 4 (1), definition of “motor vehicle parts reconstructor”—

After “acquiring”, insert “for the purpose of selling or exchanging, or”.

*Motor Dealers (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

- (n) Section 4 (1), definitions of “motor vehicle salesperson”, “number-plate”—
After the definition of “motor vehicle parts reconstructor’s licence”, insert:—
“motor vehicle salesperson” means a person who is engaged by the holder of a licence and who, for fee or reward, sells or exchanges motor vehicles;
“number-plate” means a number-plate or registration plate issued under any law in force in New South Wales or any other State, or a Territory, of the Commonwealth;
- (o) Section 4 (1), definition of “record”—
After the definition of “prescribed licence”, insert:—
“record” includes any book, account, document, paper and other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any manner or by any other means;
- (p) Section 4 (1), definition of “restricted licence”—
Omit the definition.
- (q) Section 4 (1), definitions of “Supreme Court”, “the Fund”—
After the definition of “sell”, insert:—
“Supreme Court” means the Supreme Court of New South Wales;
“the Fund” means the Motor Dealers Compensation Fund established under section 39 (1);
- (r) Section 4 (1), definition of “trading day”—
After the definition of “trade owner”, insert:—
“trading day”, in relation to the holder of a licence, means a day on which the holder trades;
- (s) Section 4 (1), definition of “vehicle-wrecker”—
Omit the definition, insert instead:—
“vehicle-wrecker” means a person who carries on the business of—
(a) demolishing or dismantling motor vehicles or parts or accessories of motor vehicles; or

*Motor Dealers (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

(b) buying motor vehicles and substantially demolished or substantially dismantled motor vehicles and selling substantially demolished or substantially dismantled motor vehicles (whether or not the person also sells parts or accessories of motor vehicles),

or both;

(t) Section 4 (2)—

Omit the subsection.

(u) Section 4 (8)—

After section 4 (7), insert:—

(8) In this Act, a reference to a register, in relation to the holder of a licence, is a reference to the register required by this Act to be kept by the holder at the place of business in respect of which the licence is granted.

(3) Section 8—

Omit the section, insert instead:—

Variation of application of Act.

8. (1) The Governor may, by order published in the Gazette, declare that the provisions of this Act, or such of those provisions as are specified in the order—

- (a) do not have effect in relation to a specified person or to a specified class of persons;
- (b) have effect in relation to a specified person or to a specified class of persons to such extent as is specified;
- (c) do not have effect in relation to a specified motor vehicle or to a specified class of motor vehicles;
- (d) have effect in relation to a specified motor vehicle or to a specified class of motor vehicles to such extent as is specified;
- (e) do not have effect in relation to a specified activity or matter or to a specified class of activities or matters;

*Motor Dealers (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

- (f) have effect in relation to a specified activity or matter or to a specified class of activities or matters to such extent as is specified;
 - (g) do not have effect in relation to a specified activity or to a specified class of activities engaged in by a specified person or specified class of persons or in relation to specified associated matters; or
 - (h) have effect in relation to a specified activity or to a specified class of activities engaged in by a specified person or specified class of persons, or in relation to specified associated matters, to such extent as is specified.
- (2) An order made under subsection (1)—
- (a) may specify the period during which the order shall remain in force; or
 - (b) may provide that its operation is subject to such terms and conditions as are specified in the order.
- (3) The Governor may, by order published in the Gazette, revoke or vary an order made under this section.
- (4) An order in force under this section, including an order that is varied under this section, has effect according to its tenor.
- (5) A person to whom an order under this section applies, including an order that is varied under this section, shall comply with the terms and conditions (if any) to which the operation of the order is subject.

SCHEDULE 2.

(Sec. 5.)

SUBSTITUTION OF PART II OF THE PRINCIPAL ACT.

Part II—

Omit the Part, insert instead:—

*Motor Dealers (Amendment) 1985*SCHEDULE 2—*continued.*SUBSTITUTION OF PART II OF THE PRINCIPAL ACT—*continued.*

PART II.

LICENCES.

DIVISION 1.—*Preliminary.***Offences.**

9. (1) A person (other than an exempted person) shall not—

- (a) carry on, or advertise that the person carries on or is willing to carry on, the business of a dealer unless the person is the holder of a dealer's licence;
- (b) carry on, or advertise that the person carries on or is willing to carry on, the business of a dealer otherwise than in accordance with a dealer's licence held by the person; or
- (c) carry on the business of a dealer at any place of business unless the person is the holder of a dealer's licence granted in respect of that place of business.

(2) A person (other than an exempted person) shall not—

- (a) carry on, or advertise that the person carries on or is willing to carry on, the business of a vehicle-wrecker unless the person is the holder of a dealer's licence or a vehicle-wrecker's licence;
- (b) carry on, or advertise that the person carries on or is willing to carry on, the business of a vehicle-wrecker otherwise than in accordance with a dealer's licence or a vehicle-wrecker's licence held by the person; or
- (c) carry on the business of a vehicle-wrecker at any place of business unless the person is the holder of a dealer's licence or a vehicle-wrecker's licence granted in respect of that place of business.

(3) A person (other than an exempted person) shall not—

- (a) carry on, or advertise that the person carries on or is willing to carry on, the business of a wholesaler unless the person is the holder of a dealer's licence or a wholesaler's licence;
- (b) carry on, or advertise that the person carries on or is willing to carry on, the business of a wholesaler otherwise than in accordance with a dealer's licence or a wholesaler's licence held by the person; or

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SCHEDULE 2—*continued.*

SUBSTITUTION OF PART II OF THE PRINCIPAL ACT—*continued.*

- (c) carry on the business of a wholesaler at any place of business unless the person is the holder of a dealer's licence or a wholesaler's licence granted in respect of that place of business.
- (4) A person (other than an exempted person) shall not—
 - (a) carry on, or advertise that the person carries on or is willing to carry on, the business of a motor vehicle parts reconstructor unless the person is the holder of a dealer's licence or a motor vehicle parts reconstructor's licence;
 - (b) carry on, or advertise that the person carries on or is willing to carry on, the business of a motor vehicle parts reconstructor otherwise than in accordance with a dealer's licence or a motor vehicle parts reconstructor's licence held by the person; or
 - (c) carry on the business of a motor vehicle parts reconstructor at any place of business unless the person is the holder of a dealer's licence or a motor vehicle parts reconstructor's licence granted in respect of that place of business.
- (5) A person (other than an exempted person) shall not—
 - (a) carry on, or advertise that the person carries on or is willing to carry on, the business of a car market operator unless the person is the holder of a car market operator's licence;
 - (b) carry on, or advertise that the person carries on or is willing to carry on, the business of a car market operator otherwise than in accordance with a car market operator's licence held by the person; or
 - (c) carry on the business of a car market operator at any place of business unless the person is the holder of a car market operator's licence granted in respect of that place of business.
- (6) A person (other than an exempted person) shall not—
 - (a) carry on, or advertise that the person carries on or is willing to carry on, the business of a motor vehicle consultant unless the person is the holder of a dealer's licence or a motor vehicle consultant's licence;

*Motor Dealers (Amendment) 1985*SCHEDULE 2—*continued.*SUBSTITUTION OF PART II OF THE PRINCIPAL ACT—*continued.*

- (b) carry on, or advertise that the person carries on or is willing to carry on, the business of a motor vehicle consultant otherwise than in accordance with a dealer's licence or a motor vehicle consultant's licence held by the person; or
 - (c) carry on the business of a motor vehicle consultant at any place of business unless the person is the holder of a dealer's licence or a motor vehicle consultant's licence granted in respect of that place of business.
- (7) A person (other than an exempted person) shall not—
- (a) carry on, or advertise that the person carries on or is willing to carry on, a prescribed business unless the person is the holder of a dealer's licence or the prescribed licence in relation to that business;
 - (b) carry on, or advertise that the person carries on or is willing to carry on, a prescribed business otherwise than in accordance with a dealer's licence or the prescribed licence in relation to that business held by the person; or
 - (c) carry on a prescribed business at any place of business unless the person is the holder of a dealer's licence or the prescribed licence in relation to that business granted in respect of that place of business.
- (8) Notwithstanding subsection (1), the holder of a vehicle-wrecker's licence, a wholesaler's licence or a motor vehicle parts reconstructor's licence who buys, sells or exchanges motor vehicles in the course of carrying on business as a vehicle-wrecker, wholesaler or motor vehicle parts reconstructor, as the case may be, is not required to be the holder of a dealer's licence.
- (9) A person carries on the business of a dealer, vehicle-wrecker, wholesaler, motor vehicle parts reconstructor, car market operator or motor vehicle consultant, or a prescribed business, if the person does so alone, as a member of a partnership or by a servant or agent.
- (10) In this section, a reference to the holder of a licence includes a reference to any person with whom, pursuant to section 19 (2), the holder of the licence carries on, in partnership, the business to which the licence relates.

*Motor Dealers (Amendment) 1985*SCHEDULE 2—*continued.*SUBSTITUTION OF PART II OF THE PRINCIPAL ACT—*continued.*

(11) A person who is convicted of an offence under this section is liable to a penalty not exceeding \$50,000.

(12) A person who is convicted of a second or subsequent offence under subsection (1) (a), (2) (a), (3) (a), (4) (a), (5) (a), (6) (a) or (7) (a) is liable to a penalty not exceeding \$50,000 or imprisonment for a term not exceeding 12 months, or both.

DIVISION 2.—*Issue of licences.***Application for licence.**

10. (1) An application for a licence may be made to the Commissioner—

- (a) by a natural person of or over the age of 18 years; or
- (b) by a body corporate if all persons concerned in the management of the body corporate are of or over the age of 18 years.

(2) An application shall be in writing in a form approved by the Minister, shall be accompanied by the prescribed fee for the application and shall be signed—

- (a) where the application is made by a natural person—by that person; or
- (b) where the application is made—
 - (i) by a body corporate having only 2 directors—by those directors; or
 - (ii) by a body corporate having more than 2 directors—by not fewer than 2 of those directors.

(3) An application may, in addition to the prescribed fee for the application, be accompanied by the prescribed fee for the licence.

(4) An application shall specify—

- (a) the name and address—
 - (i) where the application is made by a natural person—of that person; or

*Motor Dealers (Amendment) 1985*SCHEDULE 2—*continued.*SUBSTITUTION OF PART II OF THE PRINCIPAL ACT—*continued.*

- (ii) where the application is made by a body corporate—
of each director of the body corporate;
- (b) where the application is made by a body corporate—the date and place of incorporation of the body corporate, its corporate name and the address of its registered office;
- (c) the class of licence to which the application relates;
- (d) the address of the place of business at which, and the name or names under which, the applicant intends to carry on business pursuant to the authority that would be conferred by the licence if it were granted;
- (e) where the applicant intends to carry on business in partnership with a natural person, the name and address of each natural person with whom the applicant intends to carry on business in partnership;
- (f) where the applicant intends to carry on business in partnership with a body corporate—
 - (i) the date and place of incorporation;
 - (ii) the corporate name;
 - (iii) the address of the registered office; and
 - (iv) the name and address of each director,
 of each body corporate with whom the applicant intends to carry on business in partnership;
- (g) such matters as may be prescribed relating to the financial standing of applicants; and
- (h) such other matters as may be prescribed.

(5) Where application is made for a licence and, before the application is granted or refused, a change occurs in the particulars specified in the application in accordance with subsection (4), the applicant shall, within 14 days after the occurrence of the change, give to the Commissioner notice (in writing signed by the applicant or, where the applicant is a body corporate, by a director of the body corporate) specifying particulars of the change.

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SCHEDULE 2—*continued.*

SUBSTITUTION OF PART II OF THE PRINCIPAL ACT—*continued.*

(6) An applicant for a licence shall, if required to do so by the Commissioner, provide the Commissioner with such particulars additional to those included in the application, and with such documents in relation to those particulars, as the Commissioner requires.

(7) A person shall not in, or in relation to, an application under this section, a notice under subsection (5) or any particulars provided under subsection (6), make a statement that is false or misleading by reason of the inclusion therein of any false or misleading matter or the omission therefrom of any material matter.

(8) It is a defence to a prosecution of a person for an offence under subsection (7) if the person proves that, when the application was made, the notice given or the particulars provided, the person—

- (a) believed on reasonable grounds that the false matter was true;
- (b) believed on reasonable grounds that the misleading matter was not misleading;
- (c) in the case of an omission—
 - (i) believed on reasonable grounds that no material matter had been omitted; or
 - (ii) did not know that the omitted matter was material.

Investigation of application.

11. (1) The Commissioner may make such inquiries as the Commissioner considers necessary in relation to an application for a licence.

(2) The Commissioner of Police shall, if the Commissioner for Consumer Affairs so requests, investigate an application for a licence and, as soon as practicable after completing the investigation, make a report to the Commissioner for Consumer Affairs on the investigation.

Grant or refusal of licence.

12. (1) Subject to subsections (2), (4), (5), (6) and (8), the Commissioner shall grant an application for a licence.

SCHEDULE 2—*continued.*SUBSTITUTION OF PART II OF THE PRINCIPAL ACT—*continued.*

(2) An application for a licence made by a natural person shall be refused if it appears to the Commissioner that—

- (a) the applicant has not attained the age of 18 years;
- (b) the applicant is disqualified from holding a licence;
- (c) the applicant is an undischarged bankrupt;
- (d) the applicant does not have, or is not likely to continue to have, sufficient financial resources to enable the person to carry on business pursuant to the authority that would be conferred by the licence if it were granted;
- (e) the applicant is not a person likely to carry on such a business honestly and fairly;
- (f) the applicant does not have sufficient expertise to enable the person to carry on such a business;
- (g) the applicant is in any other way not a fit and proper person to be the holder of a licence; or
- (h) any person with whom the applicant intends to carry on, in partnership, business pursuant to the authority that would be conferred by the licence if it were granted is a person in respect of whom the Commissioner would be required to refuse an application for the licence if that person were the applicant.

(3) Without affecting the generality of subsection (2) (g), the Commissioner may, in determining whether an applicant is not a fit and proper person to be the holder of a licence, have regard (if such be the case) to the fact that the applicant—

- (a) has, during the period of 10 years that last preceded the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence in New South Wales or elsewhere involving fraud or dishonesty;
- (b) was, at the time of the making of the application, bound in relation to such an offence by a recognizance;

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SCHEDULE 2—*continued.*

SUBSTITUTION OF PART II OF THE PRINCIPAL ACT—*continued.*

- (c) had, at the time of the making of the application, a charge pending against the applicant in relation to such an offence; or
 - (d) has, at any time, been convicted of an offence against this Act or the regulations or any other enactment administered by the Minister.
- (4) An application for a licence made by a body corporate shall be refused if it appears to the Commissioner that—
- (a) a person concerned in the management of the body corporate has not attained the age of 18 years;
 - (b) the body corporate is disqualified from holding a licence;
 - (c) the body corporate does not have, or is not likely to continue to have, sufficient financial resources to enable it to carry on business pursuant to the authority that would be conferred by the licence if it were granted;
 - (d) the body corporate is not likely to carry on such a business honestly and fairly;
 - (e) the officers of the body corporate are such that it would not have sufficient expertise to enable it to carry on such a business;
 - (f) the reputation of the body corporate is such that it would not be a fit and proper person to be the holder of a licence;
 - (g) an officer of the body corporate is disqualified from being an officer of a body corporate that is the holder of a licence;
 - (h) a director of, or a person concerned in the management of, the body corporate is not of good reputation or character or in any other way would not be a fit and proper person to be the holder of a licence if the director or person were to apply for the licence personally;
 - (i) any person other than an officer of the body corporate who, in the opinion of the Commissioner, appears to have control, or substantial control, of the body corporate is not of good reputation and character or is not likely to exercise that control honestly and fairly; or

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SCHEDULE 2—*continued.*SUBSTITUTION OF PART II OF THE PRINCIPAL ACT—*continued.*

- (j) any person with whom the applicant intends to carry on, in partnership, business pursuant to the authority that would be conferred by the licence if it were granted is a person in respect of whom the Commissioner would be required to refuse an application for the licence if that person were the applicant.
- (5) Without affecting the generality of subsection (4) (f), (h), (i) or (j), the Commissioner may, in determining any matter referred to in those paragraphs, have regard (if such be the case) to the fact that the body corporate or a person referred to in any of those paragraphs has, at any time, been convicted of an offence against this Act or the regulations or any other enactment administered by the Minister.
- (6) An application for a licence may be refused—
 - (a) if the Commissioner is of the opinion that—
 - (i) the place of business to which the application relates consists of 2 or more places; and
 - (ii) one or more of those places should be the subject of a separate licence; or
 - (b) if some other licence is in force in respect of the place of business, or any part thereof, to which the application relates.
- (7) Where an application for a licence is refused, the Commissioner shall forthwith, by notice in writing served on the applicant, inform the applicant of the refusal and of the ground on which the refusal is based and, where the application was accompanied by the prescribed fee for the licence, the Commissioner shall, as soon as practicable, refund to the applicant that fee.
- (8) An application for a licence shall not be granted until the applicant has paid to the Commissioner the prescribed fee for the licence.
- (9) Where an application for a licence is granted—
 - (a) the applicant shall be deemed to be the holder of the licence granted; and
 - (b) the Commissioner shall forthwith, by notice in writing, inform the applicant of the granting of the application.
- (10) Notwithstanding anything in this section, the Commissioner may refrain from granting an application for a licence unless—

*Motor Dealers (Amendment) 1985*SCHEDULE 2—*continued.*SUBSTITUTION OF PART II OF THE PRINCIPAL ACT—*continued.*

- (a) any natural person to whom the application relates; and
- (b) the directors and officers of any body corporate to which the application relates,

or such of them as the Commissioner specifies or refers to, has or have appeared personally before the Commissioner and satisfied the Commissioner as to such relevant matters referred to in this section as the Commissioner thinks appropriate.

Grant of approval for licence.

13. (1) Where the Commissioner would, but for the inability of the applicant for a licence to satisfy the Commissioner as to the matter referred to in section 10 (4) (d), grant the application for the licence, the Commissioner may defer consideration of the application and grant the applicant an approval for the licence in such form as may be determined by the Commissioner.

(2) An approval for a licence does not authorise the person to whom the approval is granted to carry on business pursuant to the authority that would be conferred by the licence applied for by the applicant if that licence were granted.

(3) An approval for a licence shall remain in force for such period as may be prescribed.

(4) Where, during the period prescribed for the purposes of subsection (3), the applicant satisfies the Commissioner—

- (a) as to the matter referred to in section 10 (4) (d); and
- (b) that no change material to the applicant's application for the licence has occurred since the application was last considered by the Commissioner,

the Commissioner shall, subject to section 12 (8), grant the application.

Conditions of, and restrictions on, licence.

14. (1) The Commissioner may—

- (a) upon the granting of an application for a licence and at any other time, impose conditions or restrictions subject to which the licence is to be held; and

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(b) upon application or of the Commissioner's own motion, at any time vary or revoke any of those conditions or restrictions.

(2) A licence is subject to—

(a) any prescribed conditions and restrictions; and

(b) any conditions and restrictions in force under subsection (1).

(3) The Commissioner shall not impose conditions or restrictions to which a licence is to be subject, or vary conditions or restrictions to which a licence is subject, unless the Commissioner has first afforded the applicant for, or, as the case may be, the holder of, the licence an opportunity to make submissions, orally or in writing, and adduce evidence with respect to the conditions or restrictions proposed to be imposed or varied.

Name under which holder of licence may operate.

15. (1) Subject to the Business Names Act, 1962, a licence may authorise the holder to carry on business under a name or names in addition to or in substitution for the name of the holder.

(2) A person shall not carry on, or advertise that the person carries on or is willing to carry on, the business to which a licence relates under a name or names other than the name of the holder of the licence or the name or names under which the holder of the licence is authorised so to do in accordance with subsection (1).

(3) Upon application in accordance with the regulations, the Commissioner may add or amend an endorsement referred to in section 16 (b).

Form of licence.

16. A licence shall be signed and issued by the Commissioner and—

(a) shall be in a form approved by the Minister;

(b) where it authorises the holder to carry on business under a name or names in addition to, or in substitution for, the name of the holder—shall bear an endorsement to that effect; and

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SCHEDULE 2—*continued.*

SUBSTITUTION OF PART II OF THE PRINCIPAL ACT—*continued.*

- (c) where it authorises the holder to carry on business in partnership with any other person—shall bear an endorsement to that effect, specifying the name of each such person.

Change of partners or address of holder of licence.

17. (1) The Commissioner may, on the application of the holder of a licence, add or amend an endorsement referred to in section 16 (b) or (c).

(2) An application under subsection (1) shall be refused if any person with whom the applicant intends to carry on, in partnership, business pursuant to a licence (in addition to, or in substitution for, any other person with whom the applicant carries on business) is a person in respect of whom the Commissioner would be required to refuse an application for the licence if that person were an applicant for the licence.

(3) The Commissioner may, on the application of the holder of a licence, vary the place at which the business to which the licence relates is authorised to be carried on.

(4) An application under subsection (3) may be refused—

(a) if the Commissioner is of the opinion that—

(i) the place of business to which the application relates consists of 2 or more places; and

(ii) one or more of those places should be the subject of a separate licence; or

(b) if some other licence is in force in respect of the place of business, or any part thereof, to which the application relates.

(5) The holder of a licence shall, not later than 14 days after ceasing to carry on business at the place of business specified in accordance with section 10 (4) (d) or, where the place of business has been varied under subsection (3), at the place of business as so varied, give to the Commissioner notice in writing that the holder has ceased to carry on business at that place.

Register of holders of licences.

18. (1) For the purposes of this Act, the Commissioner shall keep a register of the holders of licences.

*Motor Dealers (Amendment) 1985*SCHEDULE 2—*continued.*SUBSTITUTION OF PART II OF THE PRINCIPAL ACT—*continued.*

(2) Subject to this Act and the regulations, the register shall be kept in such form and manner as the Commissioner thinks fit.

(3) The Commissioner may, on the application of a person, issue to the person a certificate stating whether a person specified in the certificate is or was, on a date or during a period specified in the certificate, the holder of a licence.

(4) The Commissioner may charge such fee, if any, as may be prescribed for the issue of a certificate.

Term of, and authority conferred by, licence.

19. (1) Except during any period while it is suspended, a licence continues in force until, pursuant to the provisions of this Act, it is surrendered or cancelled or ceases to have effect.

(2) A licence authorises the holder (together with any person whose name is specified in an endorsement on the licence referred to in section 16 (c)) to carry on business under the name or names specified in the licence and at the place of business specified in accordance with section 10 (4) (d), subject to and in accordance with this Act and the conditions and restrictions to which the licence is subject.

(3) The holder of a licence shall not transfer, attempt to transfer or lend the licence to another person or allow the use of the licence by another person and a person shall not attempt to obtain the transfer of or attempt to borrow or borrow or use a licence of which the person is not the holder.

(4) For the purposes of this Act, sections 20 and 20A excepted, a person whose licence is suspended under section 20E shall, while the suspension continues, be deemed to be a person who does not hold a licence.

(5) For the purposes of sections 12 (5) and 17 (2), a licence which is suspended shall be deemed to be in force in respect of the place of business to which the licence relates.

*Motor Dealers (Amendment) 1985*SCHEDULE 2—*continued.*SUBSTITUTION OF PART II OF THE PRINCIPAL ACT—*continued.***Annual fee and annual statement.**

20. (1) The holder of a licence shall, before the expiration of one month after each anniversary of the date on which the licence was granted, pay to the Commissioner in respect of the year commencing on that anniversary the prescribed fee for the licence.

(2) A person who is or was the holder of a licence during a year, or part of a year, commencing on the date, or on an anniversary of the date, on which the licence was granted to the person, shall lodge with the Commissioner a statement in respect of that year or part that is in a form approved by the Minister and is signed by or on behalf of the holder.

(3) A statement referred to in subsection (2) shall be accompanied by such documents as may be prescribed.

(4) The holder of a licence or other person required under subsection (2) to lodge a statement shall lodge the statement (together with any documents required to accompany the statement pursuant to subsection (3)) within one month after the end of the year in respect of which, or part of which, the statement is lodged.

(5) The Commissioner may, on the application of a person required to comply with subsection (1), or subsections (2) and (4), extend or further extend the time for compliance with the applicable subsection or subsections.

(6) Where the holder of a licence has failed to pay a fee, or lodge a statement, or pay a fee and lodge a statement, in accordance with this section, the Commissioner shall give notice in writing to the holder that, unless the fee is paid or the statement lodged, or the fee is paid and the statement lodged, in accordance with this section, together with the prescribed late fee, before a day specified in the notice, being a day that is not earlier than 14 days after the giving of the notice, the licence will be cancelled.

(7) The Commissioner shall cancel the licence held by a person who fails to pay a fee or lodge a statement, or pay a fee and lodge a statement, as referred to in a notice given under subsection (6).

(8) Subject to subsection (5), a person (not being the holder of a licence) to whom subsections (2) and (4) apply shall comply with those subsections.

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(9) If, while a licence is in force, there occurs—

- (a) between the time the application for the licence was granted and the time the first statement is lodged under subsection (2)—a change in the particulars specified in, or in connection with, the application in accordance with section 10 (4), (5) and (6); or
- (b) between the lodging of successive annual statements under subsection (2)—a change in the particulars specified in the earlier of those statements,

the holder of the licence shall, within 14 days after the occurrence of the change, give to the Commissioner notice in writing specifying particulars of the change.

(10) A person shall not, in or in relation to a statement required to be lodged under subsection (2) or a notice required to be given under subsection (9), make a statement that is false or misleading by reason of the inclusion therein of any false or misleading matter or the omission therefrom of any material matter.

(11) It is a defence to a prosecution of a person for an offence under subsection (10) if the person proves that, when the statement was lodged or the notice given, the person—

- (a) believed on reasonable grounds that the false matter was true;
- (b) believed on reasonable grounds that the misleading matter was not misleading;
- (c) in the case of an omission—believed on reasonable grounds that no material matter had been omitted; or
- (d) in the case of an omission—did not know that the omitted matter was material.

Surrender of licence.

20A. The holder of a licence may, by notice in writing given to the Commissioner and accompanied by the licence, surrender the licence.

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SCHEDULE 2—*continued.*

SUBSTITUTION OF PART II OF THE PRINCIPAL ACT—*continued.*

Dealer's licence and car market operator's licence not to be held by same person.

20B. (1) A dealer's licence ceases to have effect if the holder of the licence is granted a car market operator's licence.

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

(3) When a dealer's licence or a car market operator's licence ceases to have effect under subsection (1) or (2), as the case may be, the person who was the holder of the licence shall forthwith deliver it to the Commissioner.

Duplicate licence.

20C. If the Commissioner is satisfied that a licence has been lost or destroyed, the Commissioner may, on payment of the prescribed fee, issue a duplicate licence which shall be of the same force as the original licence.

DIVISION 3.—Disciplinary proceedings.

Notices to show cause.

20D. (1) Where, at any time, the Commissioner is of the opinion that there are reasonable grounds for believing that—

- (a) a licence may have been improperly obtained or, at the time a licence was granted, there may have been grounds for refusing to grant it;
- (b) the holder of a licence has been convicted of an offence against this Act or the regulations or any other enactment administered by the Minister;
- (c) the holder of a licence may have failed to comply with this Act or the regulations, a condition or restriction to which the licence is subject or an order of the Commercial Tribunal applicable to the holder;
- (d) the holder of a licence has, within the period of 10 years that last preceded the grant of the licence, been found guilty of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more;

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- (e) the business to which a licence relates is being carried on in a dishonest or unfair manner;
- (f) if a person were not the holder of a licence, the Commissioner would be required by section 12 (2) or (4) to refuse an application by the person for a licence;
- (g) in the case of a holder of a dealer's licence (being a body corporate), the holder—
 - (i) is in the course of being wound up;
 - (ii) is under official management;
 - (iii) is a body corporate in respect of which a receiver or manager has been appointed; or
 - (iv) has entered into a compromise or scheme of arrangement with its creditors,
 or may, for any other reason, be unable, or is likely to become unable, to meet the holder's liabilities;
- (h) the holder of the licence has, for a period of 1 month or more, ceased to carry on the business to which the licence relates at the place of business to which the licence relates;
- (i) the holder of the licence is contravening another Act or an instrument made under another Act by carrying on the business to which the licence relates at the place of business to which the licence relates; or
- (j) the holder of a licence is, for any other reason, not a fit and proper person to continue to hold a licence,

the Commissioner may, by notice in writing served on the holder of the licence, call upon the holder to show cause, within such period, being not less than 14 days, as is specified in the notice, why the holder should not, for the reasons specified in the notice, be dealt with in accordance with this section.

(2) The holder of a licence on whom a notice to show cause has been served, a person with whom, pursuant to section 19 (2), the holder of the licence carries on, in partnership, the business to which

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SCHEDULE 2—*continued.*SUBSTITUTION OF PART II OF THE PRINCIPAL ACT—*continued.*

the licence relates or, where the holder is a body corporate, a director or officer of the body corporate may, within the period specified in the notice, make submissions, orally or in writing, and adduce evidence with respect to the matters to which the notice relates.

(3) The Commissioner may conduct such inquiry or make such investigation in relation to the matters to which the notice relates and the submissions made, if any, and the evidence adduced, if any, by or on behalf of the holder of the licence in relation to those matters as the Commissioner thinks fit.

Determination of disciplinary measures by the Commissioner.

20E. (1) If, after compliance with section 20D, the Commissioner is satisfied that any matter referred to in section 20D (1) has been established, the Commissioner may do any one or more of the following:—

- (a) reprimand the holder of the licence;
- (b) require the holder of the licence to comply within a specified time with a requirement specified by the Commissioner;
- (c) suspend the licence for a period not exceeding 12 months;
- (d) disqualify the holder of the licence or any person concerned in the direction, management or conduct of the business to which the licence relates from holding a licence or from being concerned in the direction, management or conduct of a business for the carrying on of which a licence is required, either permanently or for such period as the Commissioner thinks fit;
- (e) impose a condition or restriction to which the licence shall be subject;
- (f) cancel the licence.

(2) Where, under subsection (1), the Commissioner requires the holder of a licence to comply with a requirement specified by the Commissioner, the holder of the licence shall comply with the requirement within the time specified by the Commissioner under that subsection.

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(3) Where the Commissioner disqualifies the holder of a licence under subsection (1) (d), the Commissioner shall cancel the licence.

(4) Where the Commissioner suspends or cancels a licence under this section, the suspension or cancellation shall take effect on and from such day as is determined by the Commissioner and notified, by notice in writing, to the holder of the licence.

(5) Where the Commissioner—

(a) suspends a licence—the holder of the licence; or

(b) cancels a licence—the former holder of the licence,

shall return the licence to the Commissioner within a period specified by the Commissioner when suspending or cancelling the licence.

(6) A person disqualified under subsection (1) (d) shall not, while disqualified—

(a) hold a licence; or

(b) be concerned in the direction, management or conduct of a business for which this Act requires a licence to be held.

Appeals.

20F. (1) Where the Commissioner refuses to grant an application for, or suspends or cancels, a licence or imposes a condition or restriction under section 13, or imposes a disqualification referred to in section 20E (1) (d), the applicant for the licence or the person who held the licence or the person disqualified, as the case may be, may appeal to the Commercial Tribunal in accordance with rules of the Commercial Tribunal.

(2) Subject to the rules of the Commercial Tribunal, an appellant under subsection (1) shall, within 7 days after lodging the appeal, give notice in writing of the appeal, together with the grounds of the appeal, to the Commissioner.

(3) An appeal under subsection (1) does not operate to stay the cancellation, suspension, disqualification or imposition of a condition or restriction unless the Commercial Tribunal otherwise orders and any conditions imposed by the Commercial Tribunal when ordering the stay are complied with.

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SCHEDULE 2—*continued.*

SUBSTITUTION OF PART II OF THE PRINCIPAL ACT—*continued.*

(4) After hearing an appeal, the Commercial Tribunal may do any thing which could be done by the Commissioner under section 20E in relation to the matter the subject of the appeal and may, in addition, impose a fine not exceeding \$1,000.

(5) Subject to subsections (6) and (7), the decision of the Commercial Tribunal in respect of an appeal under subsection (1) shall be deemed to be the decision of the Commissioner and shall be given effect to accordingly.

(6) A party to an appeal under subsection (1) may, in accordance with rules of court, appeal to the Supreme Court against an order or decision of the Commercial Tribunal on a question of law.

(7) On the hearing of an appeal under subsection (6), the Supreme Court shall—

(a) remit the matter to the Commercial Tribunal for determination by the Commercial Tribunal in accordance with the decision of the Supreme Court; or

(b) make such other order in relation to the appeal as seems fit.

DIVISION 4.—*Licences generally.*

Death of holder of licence.

20G. (1) Where the holder of a licence dies, a person who is, or who is named as, or who intends to apply to become, a legal personal representative of the deceased holder may, within 28 days after the death or such longer period as the Commissioner allows, apply to the Commissioner for authority to carry on, until the expiration of the period of 6 months that next succeeds the death, the business of the deceased holder to which the licence relates.

(2) The Commissioner may grant or refuse an application and, where the Commissioner grants the application, may impose such conditions as the Commissioner thinks fit, being conditions subject to which the business to which the application relates may be carried on.

(3) An applicant whose application is granted under this section shall, subject to this Act, the regulations and any conditions imposed under subsection (2), be deemed, until not later than the expiration

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of the period of 6 months that next succeeds the death of the deceased holder, to be the holder of the licence of the deceased holder.

Endorsement of condition, etc., of licence.

20H. Where the holder of a licence is required to carry on the business to which the licence relates subject to conditions or restrictions imposed under section 14 or 20G (2), the holder of the licence shall, upon being required by the Commissioner so to do within a specified time, produce the licence to the Commissioner within that time for endorsement of the condition or restriction.

DIVISION 5.—*Unjust conduct by dealers.***Interpretation.**

20I. (1) For the purposes of this Division, conduct of a dealer (whether or not the dealer is the holder of a licence or is an exempted person) is unjust if it is conduct—

- (a) that is dishonest or unfair;
- (b) that consists of anything done, or omitted to be done, in breach of contract, whether or not proceedings in respect of the breach have been brought;
- (c) that consists of the contravention of this Act or the regulations or any other enactment administered by the Minister; or
- (d) that consists of the failure to comply with a condition or restriction to which the licence is subject or an order of the Commercial Tribunal applicable to the holder.

(2) In this Division, a reference to a dealer includes a reference to—

- (a) a vehicle-wrecker;
- (b) a wholesaler;
- (c) a motor vehicle parts reconstructor;
- (d) a car market operator;

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- (e) a motor vehicle consultant; and
- (f) a person who carries on a prescribed business.

Undertakings by dealer.

20J. (1) Where it appears to the Commissioner that a dealer has, in the course of business, repeatedly engaged in unjust conduct, the Commissioner may, with the consent of the Minister—

- (a) request the dealer to execute a deed in terms approved by the Commissioner whereby the dealer gives undertakings as to—

- (i) the discontinuance of the unjust conduct;
- (ii) the dealer's future conduct; and
- (iii) the action the dealer will take to rectify the consequences of the dealer's unjust conduct; or

- (b) apply to the Commercial Tribunal for an order under section 20L (1).

(2) Where the Commissioner makes a request or application under subsection (1), it shall be presumed, unless the contrary is proved, that the Commissioner does so with the consent of the Minister.

(3) Where a dealer executes a deed under subsection (1) (a) and observes the undertakings given in the deed—

- (a) a notice may not be served under section 20D or any thing done under section 20E; and
- (b) the Commissioner may not apply for an order under section 20L (1),

by reason of any conduct to which the undertakings relate.

Register of Undertakings.

20K. (1) Where a dealer executes a deed containing undertakings as referred to in section 20J (1) (a), the Commissioner shall—

- (a) lodge a copy of the deed with the Registrar of the Commercial Tribunal; and
- (b) give a copy of the deed to the dealer who executed it.

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(2) The Commissioner shall retain all deeds and shall register the deeds in a Register of Undertakings kept by the Commissioner and containing the prescribed particulars.

(3) The Register of Undertakings may, at any reasonable time, be inspected by any person free of charge.

(4) A dealer shall observe undertakings given by the dealer in a deed executed under section 20J (1) (a).

(5) A prosecution for an offence under subsection (4) shall not be instituted except by the Commissioner with the leave of the Commercial Tribunal given when making an order in accordance with section 20L (2).

Restraint of unjust conduct.

20L. (1) Where, on the application of the Commissioner, the Commercial Tribunal is satisfied after inquiry that a dealer has repeatedly engaged in unjust conduct, the Commercial Tribunal may order the dealer to refrain from engaging in unjust conduct in the course of carrying on business and the dealer shall comply with the order.

(2) Where, on the application of the Commissioner, the Commercial Tribunal is satisfied that a dealer has failed to observe an undertaking given by the dealer in a deed executed under section 20J (1) (a), the Commercial Tribunal may make an order under subsection (1) against the dealer and, in the case of an undertaking referred to in section 20J (1) (a) (iii), an order to observe that undertaking within a time specified by the Commercial Tribunal when making the order.

(3) Where the Commissioner applies for an order under subsection (1) or (2) against a dealer that is a body corporate and the Commercial Tribunal is satisfied that the unjust conduct or breach of undertaking to which the application relates was engaged in with the consent or connivance of a person who, at the time of the conduct or breach, was a director of, or a person concerned in the management of, the body corporate, the Commercial Tribunal may, in addition to any other order it may make under this section, make an order prohibiting the person from consenting to, or

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conniving at, engagement in unjust conduct, or a breach of an undertaking under section 20J (1) (a), by the body corporate or any other body corporate of which the person is a director or in the management of which the person is concerned and the person to whom the order relates shall comply with the order.

(4) An order under this section may be made subject to such conditions (whether as to the duration of the order or otherwise) as the Commercial Tribunal thinks fit, including conditions as to the future conduct of the dealer and conditions specifying the action to be taken by the dealer to rectify the consequences of the dealer's unjust conduct.

Variation, etc., of restraining order.

20M. The Commercial Tribunal may, on the application of the Commissioner, vary or discharge an order made under section 20L.

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

- (1) Sections 21 (2), (3), 22 (2), (3), 22A (2), (3), 22B (2), (3), 22C (2), (3), 22D (1), (2), 22E (1), (2)—

Omit "Penalty: \$500." wherever occurring.

- (2) (a) Section 21 (3)—

Omit "register kept by him pursuant to subsection (2) at the place of business in respect of which the licence is granted", insert instead "dealer's register".

- (b) Section 21 (3) (a)—

Omit "that place", insert instead "the place of business in respect of which the licence is granted".

- (c) Section 21 (3)—

Omit ", and sign his name to the entry".

*Motor Dealers (Amendment) 1985*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(d) Section 21 (3A)—

After section 21 (3), insert:—

(3A) The holder of a dealer's licence shall sign his or her name to each entry in the dealer's register.

(e) Section 21 (4)—

Omit "subsection (3)", insert instead "subsections (3) and (3A)".

(f) Section 21 (4)—

Omit "immediately" wherever occurring, insert instead "within 1 trading day".

(g) Section 21 (5), (6)—

After section 21 (4), insert:—

(5) Notwithstanding the other provisions of this section, a dealer who acquires motor vehicles for sale on consignment—

- (a) shall keep, in accordance with this section, a dealer's register in respect of those vehicles;
- (b) shall enter in the dealer's register required to be kept pursuant to paragraph (a) the prescribed particulars referred to in subsection (3) relating only to those vehicles; and
- (c) shall not enter in the dealer's register required to be kept pursuant to subsection (2) the prescribed particulars referred to in subsection (3) relating to those vehicles.

(6) Where a person who is the holder of a dealer's licence, in relation to a motor vehicle the prescribed particulars of which are required to be entered in the dealer's register, demolishes or dismantles the vehicle, or parts or accessories of the vehicle, the person shall thereupon transfer the prescribed particulars from the dealer's register to the vehicle-wrecker's register and shall, thereafter, comply with the provisions of section 22 in relation to the vehicle, parts or accessories.

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SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

- (3) (a) Section 22 (3)—
Omit “register kept by him pursuant to subsection (2) at the place of business in respect of which the licence is granted”, insert instead “vehicle-wrecker’s register”.
- (b) Section 22 (3) (a)—
Omit “that place”, insert instead “the place of business in respect of which the licence is granted”.
- (c) Section 22 (3)—
Omit “, and sign his name to the entry”.
- (d) Section 22 (3A)—
After section 22 (3), insert:—
(3A) The holder of a vehicle-wrecker’s licence shall sign his or her name to each entry in the vehicle-wrecker’s register.
- (e) Section 22 (4)—
Omit “subsection (3)”, insert instead “subsections (3) and (3A)”.
- (f) Section 22 (4)—
Omit “immediately” wherever occurring, insert instead “within 1 trading day”.
- (4) (a) Section 22A (3)—
Omit “register kept by him pursuant to subsection (2) at the place of business in respect of which the licence is granted”, insert instead “wholesaler’s register”.
- (b) Section 22A (3) (a)—
Omit “that place”, insert instead “the place of business in respect of which the licence is granted”.
- (c) Section 22A (3)—
Omit “, and sign his name to the entry”.

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- (d) Section 22A (3A)—
After section 22A (3), insert:—
(3A) The holder of a wholesaler's licence shall sign his or her name to each entry in the wholesaler's register.
- (e) Section 22A (4)—
Omit "subsection (3)", insert instead "subsections (3) and (3A)".
- (f) Section 22A (4)—
Omit "immediately" wherever occurring, insert instead "within 1 trading day".
- (5) (a) Section 22B (3)—
Omit "register kept by him pursuant to subsection (2) at the place of business in respect of which the licence is granted", insert instead "motor vehicle parts reconstructor's register".
- (b) Section 22B (3) (a)—
Omit "that place", insert instead "the place of business in respect of which the licence is granted".
- (c) Section 22B (3)—
Omit ", and sign his name to the entry".
- (d) Section 22B (3A)—
After section 22B (3), insert:—
(3A) The holder of a motor vehicle parts reconstructor's licence shall sign his or her name to each entry in the motor vehicle parts reconstructor's register.
- (e) Section 22B (4)—
Omit "subsection (3)", insert instead "subsections (3) and (3A)".
- (f) Section 22B (4)—
Omit "immediately" wherever occurring, insert instead "within 1 trading day".

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SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

- (6) (a) Section 22C (3)—
Omit “register kept by him pursuant to subsection (2) at the place of business in respect of which the licence is granted”, insert instead “car market operator’s register”.
- (b) Section 22C (3) (a)—
Omit “that place”, insert instead “the place of business in respect of which the licence is granted”.
- (c) Section 22C (3)—
Omit “, and sign his name to the entry”.
- (d) Section 22C (3A)—
After section 22C (3), insert:—
(3A) The holder of a car market operator’s licence shall sign his or her name to each entry in the car market operator’s register.
- (e) Section 22C (4)—
Omit “subsection (3)”, insert instead “subsections (3) and (3A)”.
- (f) Section 22C (4)—
Omit “immediately”, insert instead “within 1 trading day”.
- (g) Section 22C (5)—
Omit “Penalty: \$200.”.
- (7) (a) Section 22D (2)—
Omit “register kept by him pursuant to subsection (1) at the place of business in respect of which the licence is granted”, insert instead “motor vehicle consultant’s register”.
- (b) Section 22D (2)—
Omit “that place”, insert instead “the place of business in respect of which the licence is granted”.

Motor Dealers (Amendment) 1985

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(c) Section 22D (2)—

Omit “, and sign his name to the entry”.

(d) Section 22D (2A)—

After section 22D (2), insert:—

(2A) The holder of a motor vehicle consultant’s licence shall sign his or her name to each entry in the motor vehicle consultant’s register.

(e) Section 22D (3)—

Omit “subsection (2)”, insert instead “subsections (2) and (2A)”.

(8) (a) Section 22E (2)—

Omit “kept by him”, insert instead “required to be kept”.

(b) Section 22E (2)—

Omit “at the place of business in respect of which the licence is granted”.

(c) Section 22E (2)—

Omit “that place”, insert instead “the place of business in respect of which the licence is granted”.

(d) Section 22E (2)—

Omit “, and sign his name to the entry”.

(e) Section 22E (2A)—

After section 22E (2), insert:—

(2A) The holder of a prescribed licence shall sign his or her name to each entry in the register required to be kept pursuant to subsection (1).

(f) Section 22E (3)—

Omit “subsection (2)”, insert instead “subsections (2) and (2A)”.

Motor Dealers (Amendment) 1985

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(9) Section 22EA—

After section 22E, insert:—

Separate registers for each licence.

22EA. Without affecting any other provision of this Part, where a person is the holder of more than one licence or where more than one licence relates to the same place of business, a separate register shall be kept in respect of the business which is carried on pursuant to the authority conferred by each licence.

(10) (a) Section 22F—

After “his” wherever occurring, insert “or her”.

(b) Section 22F—

After “that holder” where firstly occurring, insert “, a partner of that holder”.

(11) Sections 22G, 22H—

Omit the sections.

(12) Section 23—

Omit the section, insert instead:—

Inspection of registers.

23. (1) A register required to be kept pursuant to this Part may, at any time during which the place of business at which the register is required to be kept is open for business, be inspected, and copies of all or any part of any entry in the register taken, by an authorised officer.

(2) An authorised officer may, for the purposes of inspecting and of taking copies of all or any part of any entry in a register required to be kept pursuant to this Part, take and retain possession of the register if the authorised officer supplies the person who is required to keep the register with a blank duplicate register.

(3) Until a register taken by an authorised officer is returned, an entry required to be made in the register under this Part shall not be required to be so made, but shall be made in the duplicate register supplied by the authorised officer under subsection (2).

*Motor Dealers (Amendment) 1985*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(4) Forthwith after a register, taken under subsection (2), is returned to the person who is required to keep the register, that person shall—

- (a) transfer each entry made in the duplicate register to the register so returned, and sign his or her name to each entry so transferred; and
- (b) return the duplicate register to an authorised officer.

(5) Subject to subsection (6)—

- (a) the holder of a licence who, on demand made in accordance with subsection (1), refuses or neglects to produce a register required to be kept by the holder pursuant to this Part to an authorised officer; or
- (b) a person who wilfully obstructs an authorised officer while acting in the exercise of any powers conferred on the authorised officer under that subsection or subsection (2),

is guilty of an offence.

(6) The holder of a licence is not required under this section to produce a register, required to be kept by the holder pursuant to this Part, to an authorised officer unless the authorised officer produces evidence of his or her appointment or authority, if requested to do so.

SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

(1) Sections 23A–23C—

Before section 24, insert:—

Premises on which motor vehicles to be displayed, etc.

23A. The holder of a licence shall not offer or display for sale a motor vehicle unless the vehicle is located within the place of business in respect of which the licence is granted.

*Motor Dealers (Amendment) 1985*SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.***Sale by auction of vehicles to which number-plates are attached.**

23B. A person shall not, by auction or in relation to a proposed auction, offer or display for sale, or sell, a motor vehicle to which any number-plate is attached unless there is displayed with the vehicle an inspection report issued in respect of the vehicle not more than 1 month before the date of the auction or proposed auction which states that the vehicle has been found to be roadworthy.

Sale by auction of vehicles to which no number-plates are attached.

23C. A person shall not, by auction or in relation to a proposed auction, offer or display for sale, or sell, a motor vehicle to which no number-plate is attached unless there is displayed with the vehicle—

- (a) a certificate or receipt as to the surrender of the number-plates issued by the Commissioner for Motor Transport or by a person authorised under a law in force in any other State, or a Territory, of the Commonwealth to issue any such certificate or receipt; or
- (b) a declaration by the owner of the vehicle in or to the effect of the prescribed form.

(2) (a) Section 24 (1) (a)—

Omit “or” where lastly occurring.

(b) Section 24 (1) (b), (c)—

At the end of section 24 (1) (b), insert:—

; or

- (c) the offering or displaying for sale, or sale, of a substantially demolished or substantially dismantled motor vehicle by a vehicle-wrecker.

(c) Section 24 (11)—

Omit “, and liable to a penalty not exceeding \$500”.

(3) (a) Section 25 (5)—

Omit “, and liable to a penalty not exceeding \$500”.

Motor Dealers (Amendment) 1985

SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

(b) Section 25 (6)—

Omit "Penalty: \$500."

(4) Section 26A—

After section 26, insert:—

Sale of certain motor vehicles by vehicle-wreckers.

26A. (1) A vehicle-wrecker shall, as soon as practicable after the purchase or other acquisition by the vehicle-wrecker of—

- (a) a motor vehicle proposed to be demolished or dismantled by the vehicle-wrecker; or
- (b) a substantially demolished or substantially dismantled motor vehicle,

to which any number-plate is attached, surrender the number-plate to the Commissioner for Motor Transport.

(2) A vehicle-wrecker shall not offer or display for sale, or sell, a motor vehicle referred to in subsection (1) (a) or (b) if a number-plate is attached to the vehicle.

(3) A vehicle-wrecker shall not offer or display for sale, or sell, a motor vehicle other than—

- (a) a motor vehicle which has been demolished or dismantled by the vehicle-wrecker;
- (b) a substantially demolished or substantially dismantled motor vehicle;
- (c) a motor vehicle which was acquired for the personal use of the vehicle-wrecker or a person employed by the vehicle-wrecker and which has been used bona fide by the vehicle-wrecker or person for his or her personal use; or
- (d) a commercial vehicle which has been used bona fide by the vehicle-wrecker for the purpose of conducting the vehicle-wrecker's business.

*Motor Dealers (Amendment) 1985*SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

(5) (a) Section 27 (8)—

Omit the subsection, insert instead:—

(8) The Governor may, by regulation—

(a) amend or vary the provisions of Schedule 1; or

(b) omit Schedule 1 and insert instead a Schedule containing descriptions of motor vehicles, numbers of kilometres for which those vehicles have been driven after being manufactured and sold and periods determined from the date on which those vehicles were sold.

(b) Section 27 (9)—

After “amended” wherever occurring, insert “or substituted”.

(6) (a) Section 28 (3) (f)—

Omit “\$20,000 or such greater”, insert instead “\$30,000 or such other”.

(b) Section 28 (3) (g)—

Omit “or” where lastly occurring.

(c) Section 28 (3) (h), (i)—

At the end of section 28 (3) (h), insert:—

; or

(i) a substantially demolished or substantially dismantled motor vehicle by a vehicle-wrecker.

(d) Section 28 (5) (a)—

Omit “\$1,500 or such greater”, insert instead “\$2,500 or such other”.

*Motor Dealers (Amendment) 1985*SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

(e) Section 28 (6) (a)—

Omit “\$500 or such greater”, insert instead “\$1,500 or such other”.

(7) (a) Section 29 (1)—

Omit “setting out with reasonable particularity any defect that he believes to exist in the vehicle together with, in relation to each such defect, his estimate of the fair cost of repairing or making good the defect.”, insert instead:—

which includes or, as may be required by the regulations, to which is attached a defect notice and shall, where any such notice is attached, or caused to be attached, to the vehicle, attach, or cause to be attached to the vehicle an inspection report issued in respect of the vehicle, being an inspection report issued—

(a) in any case where the offer or display for sale is in relation to an auction or proposed auction, not more than 1 month before the date of the auction or proposed auction; or

(b) in any other case, not more than 1 month before the date on which the dealer first offered or first displayed the vehicle for sale,

which states that the vehicle has been found to be roadworthy.

(b) Section 29 (2) (a)—

Omit “has”, insert instead “and an inspection report so referred to have”.

(c) Section 29 (3)—

Omit the subsection, insert instead:—

(3) If, at or before the time of sale of a motor vehicle (being a second-hand motor-cycle or a demonstrator motor vehicle)—

(a) a notice in or to the effect of the prescribed form which includes or, as may be required by the regulations, to

Motor Dealers (Amendment) 1985

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

which is attached a defect notice has been signed by the dealer and the purchaser and has been delivered to the purchaser for retention by the purchaser; and

- (b) an inspection report issued in respect of the vehicle, being an inspection report issued—
- (i) in any case where the sale is in relation to an auction or proposed auction, not more than 1 month before the date of the auction or proposed auction; or
 - (ii) in any other case, not more than 1 month before the date of the sale,

which states that the vehicle has been found to be roadworthy has been delivered to the purchaser for retention by the purchaser,

then section 27 (1) does not apply to or in relation to any defect specified in the defect notice.

- (d) Section 29 (4)—

Omit “by the dealer”.

- (e) Section 29 (5)—

After section 29 (4), insert:—

(5) Nothing in this section prevents the application of section 27 (1) in respect of a defect set out in a notice to which this section applies if the defect has not been specified in an inspection report referred to in subsection (1) or (3), as the case may require.

- (8) Section 29B—

Omit “Penalty: \$500.”.

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SCHEDULE 5.

(Sec. 5.)

INSERTION OF PART IVA INTO THE PRINCIPAL ACT.

Part IVA—

After Part IV, insert:—

PART IVA.

SALES ON CONSIGNMENT.

Interpretation.

29D. In this Part—

“consignor”, in relation to a dealer, means a person from whom the dealer receives motor vehicles for sale on consignment;

“trust account”, in relation to a dealer, means a trust account required by section 29E (1) to be maintained by the dealer.

Dealer’s trust account.

29E. (1) A dealer who receives motor vehicles for sale on consignment from a consignor shall open at and maintain with a bank or banks in New South Wales one or more current or deposit accounts designated as a trust account or, as the case may require, as trust accounts.

(2) Where money is received by a dealer from the sale on consignment of a motor vehicle, the dealer shall pay the money into a trust account not later than the next day on which the bank at which the account is maintained is open for business after the day on which the dealer received the money.

(3) A dealer who fails to comply with subsection (1) or (2) is guilty of an offence.

Withdrawal of money from dealer’s trust account.

29F. (1) A dealer shall not, without the prior written approval of the Commissioner, withdraw money received from the sale of a motor vehicle on consignment and paid into a trust account, except for the purpose of—

- (a) paying an amount properly payable to the consignor in respect of the motor vehicle;
- (b) satisfying a debt properly due to the dealer from the consignor in respect of commission or other charges; or

Motor Dealers (Amendment) 1985

SCHEDULE 5—*continued.*INSERTION OF PART IVA INTO THE PRINCIPAL ACT—*continued.*

(c) paying an amount that is otherwise authorised by the regulations to be paid.

(2) Subsection (1) does not prohibit a dealer from withdrawing from a trust account money to which the dealer is entitled, being money which was paid into that account but which was not required to be so paid.

(3) Except as otherwise provided by this Part or the regulations, money held in a trust account is not available for payment of the debts of a dealer or liable to be taken in execution under the order or process of a court.

(4) Nothing in this Part takes away or affects a lawful claim or lien that a person has against or on any money received from the sale of a motor vehicle on consignment.

Protection of banks from liability.

29G. (1) A bank does not incur liability or obligation to any person by reason only that it has failed to secure that any provision of this Part, or of the regulations, with respect to the keeping of trust accounts and the withdrawal of money from any such account has been complied with.

(2) A bank at which a dealer maintains a trust account shall not, in respect of any liability of the dealer to the bank (not being a liability in connection with that account) have any recourse or right, whether by way of set-off, counterclaim, charge or otherwise, against money standing to the credit of that account.

Period for accounting to consignor.

29H. A dealer shall account to a consignor in respect of the proceeds of sale on consignment of a motor vehicle within 14 days or such other period as may be prescribed after the date of sale of the vehicle.

Audit of dealer's trust account.

29I. (1) A dealer shall ensure that each trust account of the dealer is audited annually.

*Motor Dealers (Amendment) 1985*SCHEDULE 5—*continued.*INSERTION OF PART IVA INTO THE PRINCIPAL ACT—*continued.*

(2) The regulations may make provision for or with respect to the auditing of dealers' trust accounts, including the information and matters to be contained in any auditor's report.

Special audit, etc., of dealer's trust account.

29J. Where, at any time, the Commissioner is of the opinion that the circumstances of a dealer's business so warrant it, the Commissioner may require the dealer, within such period as the Commissioner may specify—

- (a) to obtain and to furnish to the Commissioner a report of an auditor relating to a trust account of the dealer containing such information and matters as the Commissioner may specify; or
- (b) to lodge with the Commissioner a bank guarantee in favour of the Commissioner in a form approved by the Commissioner or such other security as may be specified by the Commissioner in respect of the sale on consignment of motor vehicles by the dealer.

Suspension, cancellation, etc., of dealer's licence.

29K. (1) Where it appears to the Commissioner—

- (a) that there are reasonable grounds for believing that there is a deficiency in a trust account of a dealer;
- (b) that a dealer has not paid money into a trust account as required by section 29E (2);
- (c) that a dealer has withdrawn money from a trust account otherwise than in accordance with section 29F;
- (d) that there has been undue delay, or unreasonable refusal, on the part of a dealer in paying, applying or accounting for trust money as required by this Part; or
- (e) that a dealer has otherwise failed to comply with a provision of this Part, a provision of a regulation made for the purposes of this Part or a requirement made under this Part or any such regulation,

the Commissioner may do any one or more of the following:—

- (f) suspend the dealer's licence;

*Motor Dealers (Amendment) 1985*SCHEDULE 5—*continued.*INSERTION OF PART IVA INTO THE PRINCIPAL ACT—*continued.*

- (g) by notice in writing served on the dealer, call upon the dealer to show cause, within 14 days after the date of service of the notice, why the dealer's licence should not be suspended or cancelled;
 - (h) apply to the Supreme Court for the appointment under section 38B of an administrator in respect of the business which is carried on by the dealer pursuant to the authority conferred by the dealer's licence.
- (2) Where a dealer fails to show cause as referred to in subsection (1), the Commissioner may suspend or cancel the dealer's licence, as the case may be.

SCHEDULE 6.

(Sec. 5.)

AMENDMENTS TO PART V OF THE PRINCIPAL ACT.

- (1) (a) Section 36 (1) (b)—
After "unreasonably", insert ", unjustly or unfairly".
- (b) Section 36 (1) (c)—
Omit "(being a person other than the dealer) named in the order", insert instead "(being the dealer or any other person) named in the order and, where the person named in the order is the dealer, within such period as may be specified in the order".
- (2) Section 37—
Omit "Penalty: \$200.".
- (3) (a) Section 38 (1) (a)—
Omit "court of petty sessions exercising jurisdiction under the Courts of Petty Sessions (Civil Claims) Act, 1970", insert instead "Local Court exercising jurisdiction under the Local Courts (Civil Claims) Act, 1970".

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SCHEDULE 6—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(b) Section 38 (1) (c)—

Omit “of New South Wales”.

(c) Section 38 (2) (a)—

Before “a notice”, insert “an inspection report required under section 23B, a certificate, receipt or declaration required under section 23C or”.

(d) Section 38 (2)—

Before “any consideration”, insert “, subject to any order the court thinks fit to make by way of financial adjustment between the dealer and the purchaser,”.

(e) Section 38 (3A), (3B)—

Omit section 38 (3A), insert instead:—

(3A) Notwithstanding any Act or law to the contrary, it shall not be a bar to the making of an order under subsection (2) that such a period of time has elapsed since the date of sale of the motor vehicle or that such circumstances have occurred since that date that the parties under any contract or agreement relating to the sale or under any collateral credit agreement associated with the sale cannot be restored to the positions that existed prior to the sale.

(3B) An appeal lies to the Supreme Court against an order made under subsection (2)—

(a) by a Local Court as if it were exercising jurisdiction under the Local Courts (Civil Claims) Act, 1970; and

(b) by the District Court as if it were exercising jurisdiction under the District Court Act, 1973.

(f) Section 38 (4)—

Omit “section 24”, insert instead “section 23B, 23C or 24”.

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SCHEDULE 6—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(g) Section 38 (7)—

Omit “, and without limiting the generality of the foregoing it shall not be a bar to the making of an order rescinding a sale that the parties cannot be restored to the positions that existed prior to the sale”.

(h) Section 38 (8)—

Omit “Courts of Petty Sessions”, insert instead “Local Courts”.

(i) Section 38 (10)—

Omit the subsection, insert instead:—

(10) The regulations may provide for the enforcement of any order made under this section.

SCHEDULE 7.

(Sec. 5.)

INSERTION OF PART VA INTO THE PRINCIPAL ACT.

Part VA—

After Part V, insert:—

PART VA.

ADMINISTRATION.

Interpretation.

38A. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“administrator” means an administrator appointed and holding office under this Part;

“affairs”, in relation to the holder of a licence or a person whose licence is cancelled or suspended, means the affairs relating to the carrying on by the holder or person of the business authorised to be carried on pursuant to the licence;

*Motor Dealers (Amendment) 1985*SCHEDULE 7—*continued.*INSERTION OF PART VA INTO THE PRINCIPAL ACT—*continued.*

“failure to account” means a failure by the holder of a licence to account for money or other valuable property entrusted to the holder, or to any employee or agent of the holder, in the course of the business authorised to be carried on pursuant to the licence, which arises from any act or omission of the holder or any employee or agent of the holder, being an act or omission which occurred after the commencement of this Part;

“property”, in relation to the holder of a licence or a person whose licence is cancelled or suspended, means—

- (a) money or other property which was, in the course of or in connection with the business authorised to be carried on pursuant to the licence, held by that holder or person or by any employee or agent of that holder or person, whether on his or her own behalf or on behalf of any other person;
- (b) money or other property which would, but for the appointment of an administrator of the affairs and property of that holder or person, be receivable by that holder or person, whether on his or her own behalf or on behalf of any other person, after that appointment;
- (c) money received by an administrator of the affairs and property of that holder or person, being interest, dividends or other income arising from any property held by the administrator under this Part; and
- (d) any records kept by or on behalf of that holder or person in connection with the business authorised to be carried on pursuant to the licence,

but does not include such property, or property of such class or description of property, as may be prescribed to be property to which this definition does not apply.

(2) A reference in this Part to the holder of a licence in respect of whom an administrator is or was appointed includes, where the context so requires, a reference to a person who was, at the time of

*Motor Dealers (Amendment) 1985*SCHEDULE 7—*continued.*INSERTION OF PART VA INTO THE PRINCIPAL ACT—*continued.*

the appointment of that administrator, the holder of a licence but who has for any reason subsequently ceased to be the holder of that licence.

Power of Supreme Court to appoint an administrator in certain cases.

38B. (1) Without affecting the operation of any other provision of this Act, the Supreme Court may, on the application of the Commissioner, make an order appointing an administrator of the affairs and property of the holder of a licence where the Court is satisfied that—

- (a) any ground exists in relation to the holder on which the holder's licence may be suspended or cancelled under this Act;
- (b) the holder has repeatedly engaged in unjust conduct within the meaning of section 20i; or
- (c) it is desirable in the public interest, having regard to the circumstances of the holder of the licence, to do so.

(2) Where the licence of any person has been suspended or cancelled under this Act, the Supreme Court may, on the application of the Commissioner made not later than 12 months after the date on which the suspension or cancellation took effect and, in the case of a suspension, before the removal of, or the expiry of the period of, the suspension, make an order appointing an administrator of the affairs and property of that person on being satisfied that the appointment is necessary or desirable in order to protect the interests of persons with whom that person has had dealings.

(3) The Supreme Court may suspend or cancel the licence of any person in respect of whose affairs and property an administrator is appointed by an order under subsection (1) if, at the time at which the order is made, the licence has not been suspended or cancelled.

Hearing of application for appointment of administrator.

38c. Where the Commissioner makes an application under section 38B for the appointment of an administrator of the affairs and property of the holder of a licence or a person whose licence has been cancelled or suspended, that holder or person is—

Motor Dealers (Amendment) 1985

SCHEDULE 7—*continued.*INSERTION OF PART VA INTO THE PRINCIPAL ACT—*continued.*

- (a) unless the Supreme Court dispenses with service, entitled to be served with a copy of the originating process; and
- (b) entitled to appear and be heard at the hearing of the application, either personally or by counsel or solicitor.

Copy of order appointing administrator to be served on holder of licence, etc.

38D. As soon as practicable after the Supreme Court has made an order appointing an administrator, the Commissioner shall, unless the holder of the licence or person in respect of whom that administrator is appointed or the representative of that holder or person appeared in the proceedings in the course of which that order was made or the Court dispenses with service, serve a copy of the order on that holder or person and shall serve a copy of the order on any other person to whom the Court directs notice of the appointment to be given.

Duty of administrator to administer the affairs and property of holder of licence, etc.

38E. (1) On the appointment of an administrator taking effect, the administrator shall—

- (a) subject to and in accordance with any directions given to the administrator by the Supreme Court, administer the affairs of the holder of the licence or person in respect of whom the administrator was appointed until the appointment is terminated; and
- (b) subject to this Part, acquire or take into possession and administer all property to which that holder or person is or appears to be entitled.

(2) If—

- (a) the holder of a licence or person in respect of whom the administrator was appointed, on being required by the administrator to transfer or deliver to the administrator, or to permit the administrator to acquire or take possession of, any such property that is in the possession or at the disposal or under the control of the holder or person, does not comply with the requirement; or

Motor Dealers (Amendment) 1985

SCHEDULE 7—*continued.*

INSERTION OF PART VA INTO THE PRINCIPAL ACT—*continued.*

- (b) it appears to the administrator that that holder or person, on being so required, has not fully complied with the requirement,

the administrator may, in his or her own name or in the name of that holder or person, make an application to the Supreme Court for an order for the transfer or delivery to the administrator of that property, and, on the hearing of any such application, the Court may, subject to such conditions (if any) as it thinks fit to impose, make the order applied for.

(3) If it appears to an administrator that an order made by the Supreme Court under subsection (2) is not complied with, the Court may, on the application of that administrator, by further order authorise a member of the police force, or that administrator or some other person and a member of the police force—

- (a) to enter any premises or other place specified in the order;
- (b) to search for any property which the administrator is entitled to acquire or take into possession; and
- (c) to seize any such property and remove it to such place as the administrator thinks fit.

(4) Any person who, without reasonable excuse (the burden of proof of which is on the person), obstructs, hinders or delays any member of the police force, the administrator or other person in the exercise of a power conferred by an order made under subsection (3) is guilty of contempt of the Supreme Court and may be punished accordingly.

(5) Subject to subsection (6), an administrator—

- (a) may deal with any property which the administrator has acquired or of which the administrator has taken possession under this section in any manner in which the holder of the licence or person in respect of whom the administrator is appointed might lawfully have dealt with that property; and
- (b) shall, as soon as practicable after acquiring or taking possession of that property, deliver that property to such persons as appear to the administrator to be lawfully entitled to it.

*Motor Dealers (Amendment) 1985*SCHEDULE 7—*continued.*INSERTION OF PART VA INTO THE PRINCIPAL ACT—*continued.*

(6) An administrator shall apply the property acquired and held by the administrator, or in the possession of the administrator in his or her capacity as administrator, in the following order for the following purposes:—

- (a) firstly, in reimbursing the Commissioner in respect of all amounts paid out of the Fund in settlement in whole or in part of claims made against the Fund in respect of a failure or default of the holder of the licence or person in respect of whom the administrator is appointed;
- (b) secondly, in satisfying or partially satisfying the amounts of claims against that holder or person with respect to the business authorised to be carried on pursuant to the licence to the extent that those claims have not otherwise been fully satisfied;
- (c) thirdly, in paying the amounts incurred by the administrator as expenses of the administration,

and, if after that application, any such property remains, the administrator shall hold that property in trust for that holder or person.

(7) Amounts referred to in a paragraph of subsection (6) shall rank equally between themselves and shall be paid in full unless the property referred to in that subsection is insufficient for those amounts to be paid, in which case they shall abate in equal proportions between themselves.

(8) Without restricting any power conferred on an administrator by this section, the administrator may, in his or her own name or in the name of the holder of the licence or person in respect of whom the administrator is appointed—

- (a) prove, grant, claim and draw a dividend in respect of any debt due to that holder or person in connection with the business authorised to be carried on pursuant to the licence;
- (b) take or defend proceedings relating to any matter concerning that business before any court for the recovery of damages or for any other remedy, whether for a tort, a breach of

Motor Dealers (Amendment) 1985

SCHEDULE 7—*continued.*

INSERTION OF PART VA INTO THE PRINCIPAL ACT—*continued.*

contract or any other cause of action, which could have been taken or defended by that holder or person;

- (c) employ a barrister or solicitor or other agent to give advice or take or defend proceedings with respect to any matter concerning that business or otherwise to act for the administrator in relation to the administration of the affairs and property of that holder or person;
- (d) for the purpose of providing sufficient money to make any reimbursement, or to satisfy or pay any amount, referred to in subsection (6), sell, lease or hire any property that the administrator has acquired or of which the administrator has taken possession under this section; and
- (e) give receipts for money received by the administrator in the course of and in connection with the administration of the affairs and property of that holder or person.

(9) A receipt given under subsection (8) (e) shall effectively discharge the person paying the money from all responsibility with respect to the application of that money.

(10) Property held by or in the possession of an administrator in his or her capacity as such shall not be levied upon or taken or attached under any judgment.

Power of administrator to prohibit withdrawal of money from bank.

38F. (1) Where an administrator has reasonable grounds for believing that there is in any bank account money received for or on behalf of any person by the holder of a licence or person in respect of whom the administrator is appointed, the administrator may serve on the bank a notice in writing, accompanied by a copy of the order appointing the administrator, prohibiting, otherwise than with the authority of the administrator, the withdrawal of money from, or any dealing (including the completion of any dealing commenced before the service of the notice) with, that account.

(2) Without preventing any other mode of service, service of a notice under subsection (1) may be effected by leaving the notice and the copy of the order accompanying the notice with the manager of,

*Motor Dealers (Amendment) 1985*SCHEDULE 7—*continued.*INSERTION OF PART VA INTO THE PRINCIPAL ACT—*continued.*

or the person apparently in charge of, the branch of the bank at which an account referred to in that subsection is kept.

(3) The bank on which a notice under subsection (1) is served shall not permit the withdrawal of money from, or any dealing (including the completion of any dealing commenced before the service of the notice) with, any account to which the notice relates except with the authority of the administrator.

(4) Any bank that contravenes subsection (3) is liable to the administrator in respect of any loss sustained by reason of that contravention and the amount of that loss may be recovered by the administrator in proceedings taken against the bank in a court of competent jurisdiction.

(5) The administrator may withdraw from an account referred to in subsection (1) all or any of the money held in that account and pay that money into a special account or special accounts in his or her own name and may operate, and otherwise deal with, that account or those accounts according to law.

Power of administrator to invest money.

38G. (1) An administrator may invest any money acquired by the administrator or of which the administrator has taken possession under section 38F in any manner in which a trustee is authorised by law to invest funds in respect of which the trustee is trustee.

(2) Any income accruing from the investment of any money by an administrator under subsection (1) and any profit resulting from the sale of any such investment shall be added to, and shall form part of, the property held by the administrator or in the possession of the administrator in his or her capacity as administrator.

Power of administrator to require information to be given.

38H. (1) An administrator may require any person who is in possession of information concerning property in respect of which he or she has been appointed administrator to provide the administrator with that information.

(2) A person of whom a requirement has been made under subsection (1) and who, without reasonable excuse (the burden of

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SCHEDULE 7—*continued.*

INSERTION OF PART VA INTO THE PRINCIPAL ACT—*continued.*

proof of which is on the person), refuses or fails to comply with that requirement is guilty of an offence against this Act.

Obstruction, etc., of administrator.

38i. Any person who, without reasonable excuse (the burden of proof of which is on the person), obstructs, hinders or delays an administrator in the exercise of any power conferred, or the performance of any duty imposed, on the administrator by this Part is guilty of an offence against this Act.

Improper withdrawal of money, etc.

38j. (1) Any person who, with the intention of defeating the purposes of this Part—

- (a) withdraws money from, or makes any payment out of, any account kept by or on behalf of a holder of a licence or a person whose licence is cancelled or suspended; or
- (b) destroys or conceals, or removes from one place to another, or delivers into the possession or control of any other person, any property in relation to which an administrator is subsequently appointed,

is guilty of an offence against this Act and is liable on conviction to a penalty not exceeding \$2,000 or to imprisonment for a period not exceeding 12 months, or both.

(2) Any person who, after being notified or becoming aware of the appointment of an administrator—

- (a) withdraws money from, or makes any payment out of, any account kept by or on behalf of a holder of a licence or person in respect of whom the administrator is appointed; or
- (b) destroys or conceals, or removes from one place to another, or delivers into the possession or control of any other person, any property in relation to which the administrator has been appointed,

without the authority of the administrator, is guilty of an offence against this Act and is liable on conviction to a penalty not exceeding

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SCHEDULE 7—*continued.*INSERTION OF PART VA INTO THE PRINCIPAL ACT—*continued.*

\$2,000 or to imprisonment for a term not exceeding 12 months, or both.

Application to Supreme Court for directions.

38K. (1) Where an administrator has been appointed and has not vacated his or her office—

- (a) the administrator;
- (b) the holder of the licence or person in respect of whom the administrator is appointed; or
- (c) any person who has submitted a claim to the administrator in relation to any property being administered by the administrator,

may make an application to the Supreme Court for directions as to the manner in which the administrator is required to exercise the powers conferred, or to perform the duties imposed, on the administrator by this Part, either generally or with respect to any particular matter specified in the application.

(2) On the hearing of an application made under subsection (1), the Supreme Court may, by order, give such directions as it considers to be appropriate in the circumstances of the case.

Claims against property administered by administrator.

38L. (1) An administrator may serve on any person (including the holder of the licence or person in respect of whom the administrator is appointed) a notice to the effect that, if that person has any claim in respect of any property held by or in the possession of the administrator in his or her capacity as such, that claim will not be entertained unless full particulars of the property claimed and the grounds of the claim are submitted to the administrator within such period, being not less than 30 days from the service of the notice, as is specified in the notice.

(2) Where a notice under subsection (1) has been served on a person, the administrator may disregard any claim made by that person otherwise than in compliance with the terms of the notice.

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SCHEDULE 7—*continued.*INSERTION OF PART VA INTO THE PRINCIPAL ACT—*continued.***Power of Supreme Court to order person to attend before Court for examination.**

38M. (1) On the application of an administrator, the Supreme Court may order any person (including the holder of the licence or person in respect of whom the administrator is appointed) to appear before the Court to be examined on oath with respect to any property that is being administered by the administrator or that the administrator is entitled to administer.

(2) On such examination before the Supreme Court, the Court may put or allow to be put to the person being examined such questions as it thinks fit.

(3) A person examined pursuant to an order made under this section is not excused from answering a question put to the person on the ground that the answer might incriminate the person, but, where the person claims, before answering the question, that the answer might incriminate the person, neither the question nor the answer is admissible in evidence against the person in criminal proceedings other than proceedings in relation to the making of a false statement on oath in respect of the answer.

(4) A person attending for examination under this section is entitled to be paid such expenses (if any) as the Supreme Court may allow.

(5) Expenses allowed under subsection (4) shall be paid by the administrator and shall form part of the expenses of the administration.

Termination of appointment of administrator.

38N. (1) For the purposes of this section, an administrator vacates office as such if the administrator—

- (a) dies;
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration as administrator for their benefit;
- (c) becomes a temporary patient, a continued treatment patient,

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SCHEDULE 7—*continued.*INSERTION OF PART VA INTO THE PRINCIPAL ACT—*continued.*

a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;

- (d) is convicted in New South Wales of an offence punishable by imprisonment for a term of 3 months or more, or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable;
- (e) has his or her appointment revoked by an order of the Supreme Court under subsection (2); or
- (f) has his or her appointment revoked by an order of the Supreme Court under subsection (6).

(2) The Supreme Court may, on the application of an administrator or on the application of the Commissioner, make an order revoking the appointment of the administrator.

(3) Where, on making an order under subsection (2), the Supreme Court is of the opinion that the purpose for which the administrator was appointed has been fulfilled, the Court may, on its own motion or on the application of the applicant for that order, make a further order vesting in or transferring to the holder of the licence or person in respect of whom that administrator was appointed any property which that administrator holds in trust for that holder or person by virtue of section 38E (6).

(4) Where an administrator has vacated office as referred to in subsection (1) (paragraph (f) excepted), the Supreme Court may, on the application of the Commissioner and on being satisfied that the purpose for which that administrator was appointed has not yet been fulfilled, make an order appointing another person as administrator of the affairs and property of the holder of the licence or person in respect of whom the firstmentioned administrator was appointed.

(5) An order made under subsection (4) shall provide for the vesting in or transfer to the person appointed by that order of all property held by or in the possession of the administrator who has vacated office as referred to in that subsection.

(6) The Supreme Court may, on the application of a holder of a licence or person in respect of whom an administrator was

*Motor Dealers (Amendment) 1985*SCHEDULE 7—*continued.*INSERTION OF PART VA INTO THE PRINCIPAL ACT—*continued.*

appointed, make an order revoking the appointment of the administrator if on the hearing of the application it is satisfied that the purpose for which that administrator was appointed has been fulfilled.

(7) Where—

- (a) an administrator has vacated office as referred to in subsection (1) (paragraph (f) excepted), no order under subsection (3) has been made in relation to property held by the administrator as referred to in that subsection and that vacancy is not filled within 14 days after it has occurred; or
- (b) the appointment of an administrator is revoked by an order made under subsection (6),

the Supreme Court may, on the application of the holder of the licence or person in respect of whom the administrator was appointed, make an order vesting in or transferring to that holder or person any property which the administrator holds in trust for that holder or person by virtue of section 38E (6).

(8) Except where the holder of a licence or person in whose favour an order under subsection (3) or (7) is made has previously paid the amounts incurred by the administrator as expenses of the administration, the order shall provide for that holder or person to pay those amounts to the administrator or, if those amounts have been paid to the administrator out of the Fund as provided in section 38o (1), to the Commissioner.

(9) Where an application is made under subsection (2) or (4), the holder of the licence or other person in respect of whose affairs and property an administrator was appointed is—

- (a) unless the Supreme Court dispenses with service, entitled to be served with a copy of the originating process; and
- (b) entitled to appear and be heard at the hearing of the application, either personally or by counsel or solicitor.

(10) Where an application is made under subsection (6) or (7), the Commissioner is entitled—

- (a) to be served with a copy of the originating process; and

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SCHEDULE 7—*continued.*INSERTION OF PART VA INTO THE PRINCIPAL ACT—*continued.*

- (b) to appear and be heard at the hearing of the application, either by a person acting with the authority of the Commissioner as referred to in section 55A or by counsel or solicitor.

Expenses of administrator.

38o. (1) All amounts incurred by an administrator in the course of administration (including money payable to the administrator as remuneration for his or her services and the costs of bringing or defending or otherwise participating in legal proceedings in the course of and in connection with the administration) shall, to the extent that they have not otherwise been paid to the administrator or met under this Part, be paid to the administrator by the Commissioner out of the Fund.

(2) Any amounts paid or payable to an administrator out of the Fund as expenses of the administration (including any reimbursement made pursuant to section 38p) shall be recoverable in the Supreme Court by the Commissioner from the holder of the licence or person in respect of whom the administrator was appointed as a debt due from that holder or person to the Commissioner.

(3) The Commissioner and an administrator may enter into an agreement as to the amount to be paid to the administrator as his or her remuneration, and in default of any such agreement, the Supreme Court may, on the application of the Commissioner or of the administrator, determine the amount of remuneration to be paid to the administrator.

(4) The Supreme Court may, on the application of a holder of a licence or person in respect of whom an administrator has been appointed made within the prescribed period, re-open any agreement entered into under subsection (3) with respect to the remuneration paid or to be paid to that administrator and determine the amount of remuneration that, in the opinion of the Court, ought, in fairness to that holder or person, to have been agreed to, and, where the amount of remuneration agreed to has been paid to that

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SCHEDULE 7—*continued.*INSERTION OF PART VA INTO THE PRINCIPAL ACT—*continued.*

administrator and that amount exceeds the amount determined by the Court, order the excess to be refunded to that holder or person.

(5) Where, in the course of proceedings under subsection (2) taken against a holder of a licence or person in respect of whom an administrator has been appointed, it appears to the Supreme Court that the amounts sought to be recovered from that holder or person in respect of the expenses of administration are excessive, the Court may—

- (a) by order, direct that an account be taken between the Commissioner and the administrator; and
- (b) by further order or orders, relieve that holder or person from payment of any amount in excess of the amount which is adjudged by the Court as being fairly payable by that holder or person in respect of those expenses, and, if any such excess amount has been paid to or allowed in account by the Commissioner to the administrator, direct that excess amount to be refunded by the administrator.

Claim or charge against administrator may be paid from Fund.

38P. If any claim or charge is made by any person against an administrator for any act or omission committed in good faith by the administrator, or by any employee or agent of the administrator, and in execution or purported execution of the powers conferred, or the duties imposed, on the administrator by or under this Part, the Commissioner shall reimburse the administrator out of the Fund in respect of any costs, charges, expenses or damages which the administrator has reasonably incurred in relation to the claim or charge.

Power of Supreme Court to make certain orders.

38Q. For the purpose of enabling an administrator to administer the affairs and property of the holder of the licence or person in respect of whom the administrator is appointed, the Supreme Court may, on the application of the administrator and without derogating from any other provision of this Part, make orders authorising the administrator to do such things as the Court thinks fit.

*Motor Dealers (Amendment) 1985*SCHEDULE 7—*continued.*INSERTION OF PART VA INTO THE PRINCIPAL ACT—*continued.***Reports, etc., by administrator.**

38R. Subject to any orders made or directions given by the Supreme Court under this Part, an administrator shall, at such times as the Court determines, provide the Court and the Commissioner with a report of the administration containing such information as the Court requires, and on the conclusion of that administration, the administrator shall forthwith lodge with the Court, in addition to the final report, all records in his or her possession or under his or her control relating to that administration, and subject to any order of the Court directing the destruction or other disposal of those records, those records shall be kept in the custody of the Court for such period as the Court may determine.

SCHEDULE 8.

(Sec. 5.)

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT.

(1) (a) Section 39 (1)—

Omit “(hereinafter in this Part referred to as “the Fund”)”.

(b) Section 39 (2) (b)—

Omit “he is subrogated under section 41”, insert instead “the Commissioner is subrogated under section 41 or which the Commissioner may take under section 41A”.

(c) Section 39 (3)—

Omit “Revenue”.

(d) Section 39 (4)—

After “section 40”, insert “or any other amount which is authorised to be paid out of the Fund by this Act or the regulations”.

*Motor Dealers (Amendment) 1985*SCHEDULE 8—*continued.*AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—*continued.*

(2) (a) Section 40 (2)—

Omit the subsection, insert instead:—

(2) Subject to this section, if the Commissioner is satisfied that a person submitting a claim has incurred a loss in connection with a motor vehicle (not being an exempted motor vehicle)—

- (a) by reason of the failure of another person to comply with any requirement of or under this Act or the regulations, including a failure to account within the meaning of section 38A (1);
- (b) without limiting the generality of paragraph (a), by reason of the fact that a dealer has not passed an unencumbered title to the vehicle; or
- (c) without limiting the generality of paragraph (a), by reason of the failure of the dealer to repay or return to the person any money or thing applied by way of deposit on, or part-payment of the price of, the vehicle,

the Commissioner may certify the amount of the loss.

(b) Section 40 (7)—

After section 40 (6), insert:—

(7) In this section, a reference to a loss incurred in connection with a motor vehicle purchased from a dealer does not include a reference to—

- (a) any loss consisting of or arising from death or a bodily injury;
- (b) any loss of or damage to any property other than the vehicle; or
- (c) any loss of or damage to any improvements made to the vehicle after the date on which it was purchased from the dealer.

(3) (a) Section 41—

After “the Commissioner shall”, insert “, without the necessity for the execution of any form of conveyance or assignment,”.

Motor Dealers (Amendment) 1985

SCHEDULE 8—*continued.*AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—*continued.*

(b) Section 41 (2)—

At the end of section 41, insert:—

(2) In the enforcement of any rights or remedies to which the Commissioner is subrogated under subsection (1) for the purpose of recovering an amount paid out of the Fund, the amount shall be deemed to be a debt due to the Crown and may be recovered accordingly.

(4) Section 41A—

After section 41, insert:—

Recovery of money from directors.

41A. (1) Where the payment of an amount out of the Fund has been made as a consequence of the act or omission of a person who is a body corporate, including the payment of any amount to an administrator appointed under Part VA of the affairs and property of the body corporate, the Commissioner may, without affecting the operation of section 41, recover, jointly or severally, from any person who was a director or persons who were directors of the body corporate at the time at which the act or omission occurred, the amount of that payment as a debt in any court of competent jurisdiction.

(2) In any proceedings for the recovery of an amount under subsection (1), judgment shall not be entered against a defendant who proves that the act or omission occurred without the defendant's express or implied authority or consent.

(3) Proceedings may be brought for the recovery of an amount under subsection (1) whether or not the person against whom the proceedings are brought, or any other person, has been convicted of an offence in respect of the act or omission as a consequence of which the amount was paid.

(4) Where subsection (1) renders a person or persons liable to pay an amount as a consequence of the act or omission of a body corporate, the payment by the person or either or any of those persons of the whole or any part of the amount does not render the body corporate liable to the person concerned in respect of the amount so paid.

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SCHEDULE 9.

(Sec. 5.)

INSERTION OF PART VIA INTO THE PRINCIPAL ACT.

Part VIA—

After Part VI, insert:—

PART VIA.

THE MOTOR DEALERS COUNCIL.

Constitution of the Council.

42A. (1) There is hereby constituted a council, to be known as the "Motor Dealers Council", which shall consist of 9 members appointed by the Minister.

(2) Of the members—

- (a) 4 shall be appointed to represent the businesses regulated by or under this Act;
- (b) 4 shall be appointed to represent persons who have dealings with the businesses referred to in paragraph (a); and
- (c) 1 shall be the Commissioner or a person nominated by the Commissioner.

(3) Schedule 2 has effect in relation to the constitution and procedure of the Council.

Functions of the Council.

42B. (1) The powers, authorities, duties and functions of the Council are—

- (a) to furnish advice to the Commissioner in respect of the grant or refusal of a licence in any case referred to it for that purpose by the Commissioner;
- (b) to furnish advice to the Commissioner as to whether disciplinary action should be taken against a person licensed, registered or regulated under this Act in any case referred to it for that purpose by the Commissioner;
- (c) to furnish advice to the Minister as to the operation of this Act and the regulations; and

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SCHEDULE 9—*continued.*

INSERTION OF PART VIA INTO THE PRINCIPAL ACT—*continued.*

(d) to furnish advice to the Minister with respect to any matter relating to the business of persons licensed, registered or regulated under this Act.

(2) The Council may exercise and perform such other powers, authorities, duties and functions as are conferred or imposed on it by or under this or any other Act.

(3) The Council may do all such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise of its powers, authorities, duties and functions.

SCHEDULE 10.

(Sec. 5.)

AMENDMENTS TO PART VII OF THE PRINCIPAL ACT.

(1) (a) Section 46 (1) (a1)—

After section 46 (1) (a), insert:—

(a1) a substantially demolished or substantially dismantled motor vehicle by a vehicle-wrecker;

(b) Section 46 (2)—

Omit the subsection, insert instead:—

(2) Subject to subsection (3), a dealer shall not sell a motor vehicle to which any number-plate is attached unless, at or before the time of the sale, an inspection report issued in respect of the vehicle not more than 1 month before the sale of the vehicle which states that the vehicle has been found to be roadworthy is delivered to the purchaser for retention by the purchaser.

(c) Section 46 (2A)—

Omit “that is registered under and in accordance with the regulations”, insert instead “to which any number-plate is attached”.

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SCHEDULE 10—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(d) Section 46 (2A)—

Omit “a certificate in relation to the vehicle is in force”, insert instead “an inspection report issued in respect of the motor vehicle not more than 1 month before the date on which the car market operator first permitted the vehicle to be offered or displayed for sale which states that the vehicle has been found to be roadworthy is in the possession of the person offering or displaying the vehicle for sale”.

(e) Section 46 (2A)—

Omit “Penalty: \$500.”.

(f) Section 46 (3A)—

After section 46 (3), insert:—

(3A) A dealer shall not offer or display for sale or sell a motor vehicle to which no number-plate is attached unless there is displayed with the vehicle—

(a) a certificate or receipt as to the surrender of the number-plates issued by the Commissioner for Motor Transport or by a person authorised under a law in force in any other State, or a Territory, of the Commonwealth to issue any such certificate or receipt; or

(b) a declaration by the dealer in or to the effect of the prescribed form.

(g) Section 46 (4), (5)—

Omit the subsections.

(2) Section 46A—

After section 46, insert:—

Loss of or damage to vehicle being repaired under warranty.

46A. (1) Where a motor vehicle is delivered by a person to a dealer for the purpose of enabling the dealer to carry out any obligation under section 27 on the part of the dealer with respect to the vehicle or to investigate and assess the nature and extent of any

*Motor Dealers (Amendment) 1985*SCHEDULE 10—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

such obligation, the dealer shall, except as provided by subsection (2), be liable for any loss of or damage to the vehicle occurring between the time of delivery by the person of the vehicle to the dealer and the time of delivery by the dealer of the vehicle to the person, whether or not, at the time at which the loss or damage occurred, the vehicle was in the possession of the dealer or any other person employed by, associated with or engaged by the dealer.

(2) A dealer shall not be liable under subsection (1) if the dealer proves that he or she took all such measures as were reasonably practicable to prevent the loss of or damage to the vehicle.

(3) (a) Section 47 (1)—

Omit “, with intent to deceive any person”.

(b) Section 47 (1) (a)—

Omit the paragraph.

(c) Section 47 (1)—

Omit “Penalty: \$500.”.

(d) Section 47 (2)—

Omit the subsection.

(4) Sections 47A, 47B—

After section 47, insert:—

Interference with odometers prohibited.

47A. (1) A person shall not interfere with the odometer of a motor vehicle.

Penalty: \$10,000.

(2) For the purposes of subsection (1), a person interferes with an odometer if the person—

- (a) alters the reading on the odometer;
- (b) removes or replaces the odometer; or
- (c) renders the odometer inoperative or inaccurate by any means whatsoever.

*Motor Dealers (Amendment) 1985*SCHEDULE 10—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(3) A person may, with the written approval of the Commissioner or of a prescribed person or a person of a prescribed class or description, alter the reading on an odometer, or replace an odometer, in accordance with the terms of that approval.

(4) If in proceedings for an offence under subsection (1) it is proved that the defendant had possession of the motor vehicle and that, during the time it was in the possession of the defendant, or shortly after the time it ceased to be in the possession of the defendant, the odometer reading was less than the odometer reading at the time the defendant acquired possession of the vehicle, it shall be presumed, in the absence of proof to the contrary, that the defendant interfered with the odometer of the vehicle.

(5) In any proceedings for an offence under subsection (1) it shall be a defence for the defendant to prove—

- (a) that the action was not taken by the defendant with the intent of enhancing the apparent value of the motor vehicle for the purpose of sale; and
- (b) that the action was not taken by the defendant for any other fraudulent purpose.

Recovery of portion of sale price.

47B. Where a person is convicted of an offence under section 47 (1) or 47A (1), a purchaser who purchased the motor vehicle in respect of which the offence was committed relying on—

- (a) the statement or representation as to the year of manufacture or the year of first registration (within the meaning of section 47 (3)) or the model of the vehicle; or

(b) the reading on the odometer of the vehicle as interfered with, as the case may be, may sue for and recover from the person so convicted as a debt due to the purchaser, the amount (if any) determined by the Magistrate before whom the conviction is had as being the difference between the sale price of the vehicle and its fair value at the time of the sale.

(5) Section 48 (1), (2)—

Omit “and liable to a penalty not exceeding \$500” wherever occurring.

*Motor Dealers (Amendment) 1985*SCHEDULE 10—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(6) (a) Section 49 (1)—

After “dealer’s licence”, insert “or a vehicle-wrecker’s licence”.

(b) Section 49 (1)—

After “advertisement” where firstly occurring, insert “(other than a radio or television advertisement)”.

(c) Section 49 (1) (a)—

After “dealer”, insert “or a vehicle-wrecker, as the case may be,”.

(d) Section 49 (1) (b)—

Omit “and”.

(e) Section 49 (1) (d)—

At the end of section 49 (1) (c), insert:—

; and

(d) such other matters, if any, as may be prescribed.

(f) Section 49 (1)—

Omit “Penalty: \$500.”.

(7) Section 50—

Omit “Penalty: \$200.”.

(8) Section 51—

Omit “the quality, description or history of”.

(9) Section 52 (1)—

Omit “Penalty: \$500.”.

*Motor Dealers (Amendment) 1985*SCHEDULE 10—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(10) Section 52A—

After section 52, insert:—

Falsification of documents.

52A. (1) A person shall not, in respect of any particulars or information required under this Act to be entered in a register or in any notice or other document the form of which is prescribed under this Act, make an entry in the register, notice or document knowing that it is false or misleading in a material particular.

(2) In any proceedings under this section against any person for making an entry in a register, notice or document, if it is proved that the entry was false or misleading in a material particular, the person who made the entry shall be deemed to have made it with knowledge of its falsity or misleading character, as the case may be, unless the person proves that, having taken all reasonable precautions against committing an offence under this section, he or she had reasonable grounds to believe and did believe that the entry was true and had no reason to suspect that the entry was false or misleading.

(11) Section 53—

Omit “and liable to a penalty not exceeding \$500”.

(12) Sections 53A–53E—

After section 53, insert:—

Power of entry.

53A. (1) For the purpose of ascertaining whether the provisions of this Act or the regulations are being or have been complied with by any person, an authorised officer may—

- (a) enter premises where the person carries on business;
- (b) require the production of records;
- (c) inspect and require explanations of any record; and
- (d) take notes, copies and extracts of or from any record or statement produced pursuant to this section.

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SCHEDULE 10—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(2) Where an authorised officer requires production under subsection (1) of a record that is not in writing, or is not written in the English language, or is not decipherable on sight, the requirement to produce the record shall be deemed to be a requirement to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the record.

(3) A person shall not—

- (a) wilfully delay or obstruct an authorised officer in the exercise of powers under this section;
- (b) refuse or fail to produce, or conceal or attempt to conceal, any record or statement the person is required under subsection (1) or (2) to produce;
- (c) refuse or fail to answer a question or give an explanation relating to any such record or statement put to or required of him or her by a person entitled to require production of the record or statement who first informs him or her that he or she is required and obliged by this section to answer the question or give the explanation; or
- (d) give to a question relating to any record or statement an answer that he or she knows is false or misleading or give an explanation of any record or statement that he or she knows is a false or misleading explanation.

(4) Nothing in this section limits the operation of section 23 or 53B and nothing in section 23 or 53B limits the operation of this section.

Production of records.

53B. (1) For the purpose of ascertaining whether the provisions of this Act or the regulations are being or have been complied with by any person, an authorised officer may, orally or by instrument in writing, require the person to produce specified records, or records of a specified class or description, to a specified authorised person at a specified place at a specified time or within a specified period.

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SCHEDULE 10—*continued.*

AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(2) Where an authorised officer requires production under subsection (1) of a record that is not in writing, or is not written in the English language, or is not decipherable on sight, the requirement to produce the record shall be deemed to be a requirement to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the record.

(3) A person shall not refuse or fail to produce any record or statement in accordance with a requirement made of the person under subsection (1).

(4) An authorised officer may inspect and take notes, copies and extracts of or from any record or statement produced pursuant to this section.

(5) Nothing in this section limits the operation of section 23 or 53A and nothing in section 23 or 53A (1) limits the operation of this section.

Extensions of time.

53C. Where, under this Act or the regulations, the Commissioner or a tribunal may extend a period, the Commissioner or tribunal, as the case may be, may extend the period notwithstanding that the period has elapsed.

Service of notices, etc.

53D. (1) Where by or under this Act or the regulations a notice or other document is required to be, or may be, given or served, that notice or other document may be given to or served on—

(a) an individual—

- (i) by delivering it to the individual personally;
- (ii) by leaving it at the individual's place of residence last known to the person who issued the notice or other document with a person who apparently resides there, being a person who has or apparently has attained the age of 16 years;

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SCHEDULE 10—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

- (iii) without limiting the other provisions of this paragraph, where the individual is the holder of a licence, by leaving it at the place at which the holder is authorised to carry on the business to which the licence relates with a person apparently employed at that place, being a person who has or apparently has attained the age of 16 years; or
 - (iv) by sending it by prepaid post addressed to the individual at that place of residence or, where the individual is the holder of a licence, the place at which the holder is authorised to carry on the business to which the licence relates;
- (b) a corporation—
- (i) by delivering it to a person who is or apparently is concerned in the management of the corporation;
 - (ii) by leaving it at the registered office of the corporation with a person apparently employed at that office, being a person who has or apparently has attained the age of 16 years;
 - (iii) without limiting the other provisions of this paragraph, where the corporation is the holder of a licence, by leaving it at the place at which the holder is authorised to carry on the business to which the licence relates with a person apparently employed at that place, being a person who has or apparently has attained the age of 16 years; or
 - (iv) by sending it by prepaid post addressed to the corporation at that registered office or, where the corporation is the holder of a licence, the place at which the holder is authorised to carry on the business to which the licence relates.
- (2) A notice or other document that is delivered, left or sent by post in accordance with subsection (1) shall be deemed to have been given or served on its being so delivered or left or, if it is sent by

*Motor Dealers (Amendment) 1985*SCHEDULE 10—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

post, shall, in the absence of evidence to the contrary, be prima facie deemed to have been given or served when it would have been delivered in the ordinary course of post.

Penalty notices for certain offences.

53E. (1) Where it appears to an authorised officer that any person has committed an offence prescribed for the purposes of this section, the authorised officer may serve a notice on that person to the effect that if that person does not desire to have the matter determined by a court, that person may pay to the Commissioner within the time specified in the notice an amount of penalty prescribed for that offence if dealt with under this section.

(2) Any notice under subsection (1) may be served personally or by post.

(3) Any person alleged to have committed an offence to which subsection (1) applies has the right to decline to be dealt with under this section.

(4) Any person who fails to pay the penalty within the time specified in the notice given to the person under subsection (1) or within such further time as may in any particular case be allowed shall be deemed to have declined to be dealt with under this section.

(5) Where the amount of any prescribed penalty for an alleged offence is paid pursuant to this section, no person is liable to any further proceedings for the alleged offence.

(6) Payment of a penalty pursuant to this section shall not be regarded as an admission of liability for the purpose of nor in any way affect or prejudice any civil claim, action or proceeding arising out of the same occurrence.

(7) The regulations may—

(a) prescribe the offences which shall be prescribed offences for the purposes of this section by setting out the offences or by a reference to the provision of this Act or the regulations creating the offence;

(b) prescribe the amount of penalty payable under this section for any prescribed offence; and

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(c) for the purposes of this section, prescribe different amounts of penalties for different offences or classes of offences or for offences or classes of offences having regard to the circumstances thereof.

(8) No penalty prescribed under this section for any offence shall exceed any maximum amount of penalty which could be imposed for the offence by a court.

(9) The provisions of this section shall be construed as supplementing, and not as derogating from, any other provision of this Act or the regulations or any other Act or regulation, by-law or ordinance under any other Act in relation to proceedings which may be taken in respect of offences.

(13) Sections 54, 54A—

Omit section 54, insert instead:—

Contravention of Act, etc., by corporations.

54. (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person, being a director of the corporation or a person concerned in the management of the corporation, shall be deemed to have contravened the same provision and to be liable to the same extent as the corporation in respect of the contravention unless the person satisfies the court or the Commercial Tribunal that---

- (a) the corporation contravened the provision without the person's knowledge;
- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

(2) A person may be proceeded against and an order or conviction may be made in respect of the person pursuant to subsection (1) whether or not the corporation has been proceeded against or an order or conviction has been made in respect of the corporation.

*Motor Dealers (Amendment) 1985*SCHEDULE 10—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which a contravention to which that subsection applies is actually committed.

Penalties.

54A. A person who contravenes, whether by act or omission, any provision of this Act is guilty of an offence against this Act and shall, for every such offence, be liable to the penalty expressly imposed or if no such penalty is so imposed to a penalty not exceeding \$2,000.

(14) (a) Section 55 (1)—(1c)—

Omit section 55 (1), insert instead:—

(1) Proceedings for an offence against this Act or the regulations or in respect of a threatened or an apprehended contravention of, or a threatened or an apprehended failure to comply with, this Act or the regulations—

(a) may be taken and prosecuted by any person acting with the authority of—

(i) the Minister; or

(ii) a prescribed officer; and

(b) in the case of proceedings for an offence against this Act or the regulations, shall be disposed of summarily—

(i) before a Local Court constituted by a Magistrate sitting alone; or

(ii) before the Supreme Court in its summary jurisdiction.

(1A) A person referred to in subsection (1) (a) may bring proceedings to remedy or restrain a threatened or an apprehended contravention of, or a threatened or an apprehended failure to comply with, this Act or the regulations, whether or not any right of that person has been or may be infringed by or as a consequence of the contravention or failure.

*Motor Dealers (Amendment) 1985*SCHEDULE 10—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(1B) If proceedings for an offence against this Act or the regulations are brought before a Local Court constituted by a Magistrate sitting alone, the maximum penalty that the Local Court may impose in respect of the offence is, notwithstanding any other provision of this Act, \$5,000 or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

(1C) If proceedings for an offence against this Act or the regulations are brought before the Supreme Court in its summary jurisdiction, that Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

(b) Section 55 (5)—

Omit “twelve”, insert instead “12”.

(c) Section 55 (5)—

After “committed”, insert “or, in the case of an offence under section 9 (1) (a), (2) (a), (3) (a), (4) (a), (5) (a), (6) (a) or (7) (a) or 47A (1), at any time within 2 years after the time when the offence is alleged to have been committed”.

(15) Sections 55A–55D—

After section 55, insert:—

Proceedings to which the Commissioner is a party.

55A. (1) In any proceedings under this Act or the regulations before a court or tribunal to which the Commissioner is a party, the Commissioner may be represented by a person acting with the authority of the Commissioner.

(2) In any such proceedings, an authority to act for the Commissioner, purporting to have been signed by the Commissioner, shall be evidence of the authority without proof of the signature of the Commissioner.

Other orders on conviction of person.

55B. (1) In this section, a reference to the conviction of a person includes a reference to the making of an order in respect of a person under section 556A of the Crimes Act, 1900.

*Motor Dealers (Amendment) 1985*SCHEDULE 10—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(2) Where a person is convicted of an offence under this Act or the regulations, the court before which the person was convicted may, in addition to any penalty it may impose, make any order, finding or determination relating to anything done or omitted to be done by the person convicted, including—

- (a) an order, finding or determination which could be made by the Commissioner under section 35 or 36;
- (b) an order that could be made by a court under section 38;
- (c) an order for the payment of compensation;
- (d) an order for the carrying out of any work; and
- (e) an order, finding or determination ancillary to an order, finding or determination referred to elsewhere in this subsection.

(3) An order, finding or determination may be made under subsection (2) notwithstanding that an application under section 31 or 38 relating to the person in respect of whom the order, finding or determination is made or is proposed to be made is pending at the time at which the order, finding or determination is made or is proposed to be made.

(4) An order made under subsection (2) by a Local Court, being an order of a kind which could be made under section 38 (2) shall, for the purposes of any appeal in respect of the order, be deemed to be an order made under section 38 (2).

Forfeiture of motor vehicles and proceeds.

55C. (1) Without limiting the generality of section 55B, where a person is convicted of an offence under section 9 (1) (a), (2) (a), (3) (a), (4) (a), (5) (a), (6) (a) or (7) (a), the court before which the person was convicted may, in addition to any penalty it may impose, make either or both of the following orders:—

- (a) an order that any specified motor vehicle to which the offence relates be forfeited to Her Majesty;

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SCHEDULE 10—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

- (b) an order that the person pay to Her Majesty an amount, as assessed by the court, equal to the proceeds derived by the person from the commission of the offence or any other offence to which this section applies and which the court has taken into account in imposing any such penalty.
- (2) Before making an order under this section, the court may require notice to be given to, and may hear, such persons as the court thinks fit.
- (3) For the purpose of making an order against a person under subsection (1) (b), the court may—
 - (a) take into account such matters as the court thinks fit;
 - (b) to the extent specified by the court—treat any interest in real or personal property acquired by the person by means of proceeds derived by the person from the commission of an offence as proceeds derived by the person from the commission of the offence; and
 - (c) treat the equivalent, in money terms, of any interest in real or personal property derived by the person from the commission of an offence as proceeds derived by that person from the commission of the offence.
- (4) Without affecting any other right of appeal, an order under subsection (1) (a) in relation to any motor vehicle is appellable by any person who has an interest in the vehicle—
 - (a) in the case of a person convicted of the offence—in the same manner as if the order were, or were part of, an order imposing a penalty in respect of the offence; or
 - (b) in any other case—in the same manner as if the person had been convicted of an offence to which this section applies and the order were, or were part of, an order imposing a penalty in respect of the offence.
- (5) Without affecting any other right of appeal, an order under subsection (1) (b) is appellable in the same manner as if it were, or were part of, an order imposing a penalty in respect of the offence.

*Motor Dealers (Amendment) 1985*SCHEDULE 10—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(6) The court to which an appeal is made in respect of an order under subsection (1) (a) may, pending the hearing and determination of the appeal, make such orders as it thinks fit for the custody of the motor vehicle the subject of the order.

(7) On appeal, an order under this section may be confirmed, revoked or varied.

(8) An order under subsection (1) (b) may, by leave of the court by which it was made, be enforced, irrespective of the amount ordered to be paid, as if it were a judgment in a civil matter given by that court.

(9) An amount ordered to be paid under subsection (1) (b) shall be paid into the Fund.

Temporary restraint on disposition of property.

55D. (1) Where—

- (a) proceedings are being taken against a person for an offence under section 9 (1) (a), (2) (a), (3) (a), (4) (a), (5) (a), (6) (a) or (7) (a); or
- (b) an order has been made under section 55C (1) (b) against a person,

the court before which those proceedings are being taken or by which the order has been made may, by order, prohibit—

- (c) the person from disposing of or otherwise dealing with any interest in specified property; and
- (d) any other specified person from disposing of or otherwise dealing with any interest in specified property—
 - (i) which belongs to the person referred to in paragraph (c) and in respect of which the specified person has a power of attorney from that person or any other power of disposition; or
 - (ii) which the specified person holds for or on behalf of the person referred to in paragraph (c),

otherwise than in such manner as may be specified in the order.

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SCHEDULE 10—*continued.*

AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(2) Without affecting any power conferred on it by subsection (1), the Supreme Court may at any time make an order of the kind referred to in that subsection against a person—

(a) in respect of whom any other court may make such an order;
or

(b) whom any other court has committed for trial or for sentence.

(3) Before making an order under this section, a court may require notice to be given to, and may hear, such persons as it thinks fit.

(4) An order under this section may be given or served in such manner as the court directs or as may be prescribed by rules of court.

(5) Any person who holds an interest in property the subject of an order under this section may apply for the revocation or variation of the order.

(6) An order under this section may be revoked or varied by the Supreme Court (subject to rules of that Court restricting the making of applications thereto) or—

(a) where proceedings in respect of the offence are being taken—
by the court before which those proceedings are being taken;
or

(b) in any other case—by the court before which proceedings in respect of the offence were last taken.

(7) Any person to or upon whom an order made under subsection (1) or (2) is given or served in accordance with this section and who, while it is in force, acts in contravention of or fails to comply with the order shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months, or both.

(8) In this section, “property” includes real and personal property and money.

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SCHEDULE 10—*continued.*

AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(16) Sections 56A–56C—

After section 56, insert:—

Evidence as to holders of licences, etc.

56A. A certificate purporting to be under the hand of the Commissioner certifying that, on a date or during a period specified in the certificate—

- (a) a person specified therein was or was not the holder of a licence;
- (b) a place specified therein was or was not a place at which the holder of a licence was authorised to carry on the business to which the licence relates;
- (c) a person specified therein was or was not an exempted person;
- (d) a motor vehicle specified therein was or was not an exempted motor vehicle; or
- (e) a person specified therein was or was not a registered motor vehicle salesperson,

is admissible in evidence in proceedings before any court or tribunal and is prima facie evidence of the matters stated therein.

Evidence as to publication.

56B. In any proceedings under this Act—

- (a) where a name, business name, address, telephone number or post office box number specified in a statement is that of a person, or of the agent of a person, who—
 - (i) is the owner or supplier of any motor vehicle, substantially demolished or substantially dismantled motor vehicle or parts or accessories of motor vehicles;

*Motor Dealers (Amendment) 1985*SCHEDULE 10—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

- (ii) is the supplier of any services relating to motor vehicles, parts or accessories referred to in subparagraph (i); or
- (iii) has, otherwise than as an owner, an interest in any motor vehicles, parts or accessories referred to in subparagraph (i) or the supply of any services referred to in subparagraph (ii),

being motor vehicles, parts or accessories the supply, use or disposal of which the statement is intended or apparently intended to promote, that person or agent, as the case may be, shall be deemed, in the absence of proof to the contrary, to have caused the statement to be published; and

- (b) a person who causes a statement to be published shall be deemed to have done so on any day on which the statement was published.

Evidence as to entries in registers.

56C. A register required to be kept pursuant to Part III, whether or not the register has been kept in or to the effect of the prescribed form, shall be received in proceedings before any court or tribunal as evidence of the matters required by or under this Act to be recorded in it and an entry in any such register shall be received in any such proceedings as prima facie evidence of any such matters contained in the entry.

(17) (a) Section 57 (2) (a)—

After “relates”, insert “, including the prescribing and the adoption or incorporation, pursuant to subsection (2A), of codes, rules or standards of conduct, practice or behaviour to be observed by any such person, servant or agent in carrying on that business”.

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SCHEDULE 10—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(b) Section 57 (2) (al)—

After section 57 (2) (a), insert:—

- (al) the making of applications for licences, including the means of determining and the matters to be taken into consideration in assessing the financial standing or financial resources of applicants and the determination and payment of fees in connection with applications for licences and licences;

(c) Section 57 (2) (f)—

Omit the paragraph.

(d) Section 57 (2) (h)–(r)—

After section 57 (2) (g), insert:—

- (h) providing for the registration and the renewal, cancellation and suspension of registration of motor vehicle salespersons, the issuing of certificates of registration of motor vehicle salespersons, the payment of registration fees and the keeping and inspection of records in respect of registration;
- (i) regulating the conduct of motor vehicle salespersons, including the prescribing or the adoption or incorporation, pursuant to subsection (2A), of codes, rules or standards of conduct, practice or behaviour to be observed by motor vehicle salespersons;
- (j) providing for the form and content of advertisements by holders of licences, including—
 - (i) requiring the inclusion of specified information in advertisements or the use of specified statements in advertisements; and
 - (ii) prohibiting the inclusion of specified information in advertisements or the use of specified statements in advertisements;

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SCHEDULE 10—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

- (k) providing for the control and regulation of the sale of motor vehicles on consignment;
- (l) prescribing the form and contents of contracts and other documents relating to the sale of motor vehicles, substantially demolished or substantially dismantled motor vehicles and parts and accessories of motor vehicles and other dealings in those vehicles, parts and accessories and prescribing the persons by whom and the circumstances in which those contracts and other documents may or shall be used;
- (m) providing for the keeping and management of trust accounts by the holders of licences;
- (n) requiring the keeping of records;
- (o) providing for—
 - (i) the form in which records required to be kept by or under this Act may or shall be kept, whether by use of a bound or looseleaf book, by the recording and storage of appropriate information by means of a mechanical, electronic or other device, or otherwise;
 - (ii) the inspection, reproduction and retrieval of those records or that information and the making and provision of copies;
 - (iii) the taking of precautions for guarding against damage to, destruction of or falsification of or in those records or that information and the taking of measures for the discovery of falsification of or in those records or that information;
 - (iv) the circumstances in which records required to be kept by or under this Act may be destroyed; and
 - (v) any other associated matters;

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SCHEDULE 10—*continued.*

AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

- (p) providing for the qualifications and appointment of auditors of accounts of holders of licences, the form and content of auditors reports and the times at which and the persons to whom auditors reports shall be furnished;
 - (q) providing for the making of claims against the Fund, including the form and manner in which claims may be made, the time within which claims shall be made, the persons who may make claims, the matters in respect of which claims may be made, the determination and payment of claims and the recovery of amounts paid in respect of claims; and
 - (r) requiring the holder of a licence to furnish specified information or prohibiting the holder of a licence from furnishing specified information relating to a motor vehicle to a person with whom, in respect of the vehicle, the holder has any dealing.
- (e) Section 57 (2A)—
- After section 57 (2), insert:—
- (2A) A regulation may adopt or incorporate by reference, wholly or in part, with or without modification, any standards, rules, codes, specifications or methods prescribed or published by any authority or body, whether as in force at the time of adoption or incorporation or as amended and published from time to time by that authority or body.
- (f) Section 57 (3)—
- Omit “\$500”, insert instead “\$2,000”.
- (g) Section 57 (4), (5)—
- Omit the subsections, insert instead:—
- (4) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;

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SCHEDULE 10—*continued.*

AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be determined, applied or regulated from time to time by any specified person or body,

or may do any combination of those things.

SCHEDULE 11.

(Sec. 5.)

AMENDMENTS TO SCHEDULE 1 TO THE PRINCIPAL ACT.

- (1) Schedule 1, paragraph 3—

Omit “\$3,000”, insert instead “\$2,500”.

- (2) Schedule 1, paragraphs 4, 9 and 10—

Omit the matter in Columns 1, 2 and 3 relating to these paragraphs.

SCHEDULE 12.

(Sec. 5.)

INSERTION OF SCHEDULE 2 INTO THE PRINCIPAL ACT.

Schedule 2—

After Schedule 1, insert:—

*Motor Dealers (Amendment) 1985*SCHEDULE 12—*continued.*INSERTION OF SCHEDULE 2 INTO THE PRINCIPAL ACT—*continued.*

SCHEDULE 2.

(Sec. 42A (3).)

CONSTITUTION AND PROCEDURE OF THE MOTOR DEALERS COUNCIL.

Interpretation.

1. In this Schedule—

“Chairperson” means the Chairperson of the Council;

“Council” means the Motor Dealers Council constituted under section 42A (1);

“member” means a member of the Council.

Chairperson of the Council.

2. (1) Of the members, one shall, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Minister, be appointed as Chairperson.

(2) The Minister may at any time remove a member from the office of Chairperson.

(3) A person who is a member and Chairperson shall be deemed to have vacated office as Chairperson if the person—

- (a) is removed from that office by the Minister under subclause (2);
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

Alternate members.

3. (1) A member may nominate in writing to the Minister a person to act in the place of the member in the event of the absence or illness of the member.

(2) The Minister may, at any time, appoint a person nominated under subclause (1) to be an alternate member.

(3) An alternate member, while acting in the place of a member, shall have and may exercise and perform the powers, authorities, duties and functions of the member for whom he or she acts.

Term of office.

4. Subject to this Schedule, a member shall hold office for such period not exceeding 3 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

SCHEDULE 12—*continued.*INSERTION OF SCHEDULE 2 INTO THE PRINCIPAL ACT—*continued.***Remuneration.**

5. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Filling of vacancy in office of member.

6. In the event of the office of any member becoming vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Casual vacancies.

7. (1) A member shall be deemed to have vacated office if the member—

- (a) dies;
- (b) absents himself or herself from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister (which leave the Minister is hereby authorised to grant) or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (e) is convicted in New South Wales of an offence punishable by imprisonment for a term of 3 months or more, or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable;
- (f) resigns the office by instrument in writing addressed to the Minister; or
- (g) is removed from office by the Minister under subclause (2).

(2) The Minister may remove a member from office.

General procedure at meetings of Council.

8. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Council.

Quorum.

9. Five members shall form a quorum and any duly convened meeting of the Council at which a quorum is present shall be competent to transact any business of the Council and shall have and may exercise and perform all the powers, authorities, duties and functions of the Council.

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SCHEDULE 12—*continued.*INSERTION OF SCHEDULE 2 INTO THE PRINCIPAL ACT—*continued.***Presiding member.**

10. (1) The Chairperson or, in the absence of the Chairperson, another member elected as chairperson for the meeting by the members present shall preside at a meeting of the Council.

(2) The person acting as chairperson at any meeting of the Council shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

Voting.

11. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present shall be the decision of the Council.

Minutes.

12. The Council shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Council.

First meeting of Council.

13. The Minister shall call the first meeting of the Council in such manner as the Minister thinks fit.

SCHEDULE 13.

(Sec. 6.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.**Licences.**

1. (1) Subject to subclause (2), a licence of a particular kind in force under the Principal Act immediately before the commencement of Schedule 2 shall, on and from that commencement, be deemed to be a licence of the corresponding kind granted under the Principal Act, as amended by this Act.

(2) A licence to which subclause (1) applies shall, subject to the Principal Act, as amended by this Act, expire on the anniversary of the last date before the commencement of Schedule 2 on which the fee in respect of the licence was payable under the Principal Act, as then in force, and shall not be renewed or extended.

*Motor Dealers (Amendment) 1985*SCHEDULE 13—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

- (3) Nothing in subclause (1) prevents the continuation, subject to subclause (2), of—
- (a) a joint licence;
 - (b) a licence which has been granted in respect of more than one place of business;
or
 - (c) a licence granted in respect of a place of business, being a place of business in respect of which another licence has or other licences have been granted.

Applications for licences.

2. (1) An application for a licence under the Principal Act which had not been determined by the Commissioner before the commencement of Schedule 2 shall, on that commencement, lapse.

(2) Any fee paid in respect of an application to which subclause (1) applies shall be repaid to the applicant.

Appeals.

3. An appeal made under section 19 of the Principal Act which had not, before the commencement of Schedule 2, been determined may continue and be determined and shall have effect as if this Act had not been enacted.

Exemptions.

4. (1) A motor vehicle which, immediately before the commencement of Schedule 1 (2) (f), was an exempted motor vehicle within the meaning of the Principal Act, as then in force, in relation to a provision of the Principal Act shall, on and from that commencement, subject to the Principal Act, as amended by this Act, be an exempted motor vehicle within the meaning of the Principal Act, as amended by this Act, in relation to that provision.

(2) A person who, immediately before the commencement of Schedule 1 (2) (f), was an exempted person within the meaning of the Principal Act, as then in force, in relation to a provision of the Principal Act shall, on and from that commencement, subject to the Principal Act, as amended by this Act, be an exempted person within the meaning of the Principal Act, as amended by this Act, in relation to that provision.

(3) An exemption or exclusion under section 8 (1) of the Principal Act in force immediately before the commencement of Schedule 1 (3)—

- (a) shall, on and from that commencement—
 - (i) subject to the Principal Act, as amended by this Act, have full force and effect according to its tenor; and
 - (ii) be deemed to have been made by order under section 8 of the Principal Act, as so amended; and
- (b) may be revoked or varied by an order made under section 8 of the Principal Act, as so amended.

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SCHEDULE 13—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

Commencement of proceedings for certain offences.

5. Section 55 (5) of the Principal Act, as amended by this Act, does not apply to or in respect of an offence which was committed, or which is alleged to have been committed, more than 12 months before the commencement of Schedule 10 (14) (c).

Application of s. 8 of Interpretation Act, 1897.

6. Nothing in this Schedule affects the operation of section 8 of the Interpretation Act, 1897.

Regulations.

7. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from the date of assent to this Act or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding any of the foregoing provisions of this Schedule.
