

MOTOR DEALERS (AMENDMENT) BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTES

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to make miscellaneous amendments to the Motor Dealers Act 1974:

- (a) to change the description of “vehicle-wreckers” to “auto-dismantlers” and to include within the persons who carry on such a business persons who buy and sell parts and accessories; and
- (b) to require auto-dismantlers to mark certain vehicle components handled by them; and
- (c) to expand the definition of “financier”; and
- (d) to enable wholesalers to buy from the public as well as trade owners and to prohibit them from receiving for sale or selling motor vehicles on consignment; and
- (e) to enable the Minister to approve variations of the forms of various documents; and
- (f) to enable dealers to carry on business at premises other than those in respect of which their licence is granted in certain limited circumstances and
- (g) to enable the Commissioner for Consumer Affairs to refuse to grant a licence unless an applicant has the qualifications and experience prescribed by the regulations; and
- (h) so that applicants for licences may be required to make initial contributions to the Motor Dealers Compensation Fund and to clarify the circumstances in which compensation may be paid from the Fund; and
- (i) to expand the disciplinary powers of the Commissioner with respect to the holders of licences; and

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- (j) to clarify and simplify the requirements of the Act relating to the keeping of registers; and
 - (k) to clarify the description of the defects in motor vehicles that a dealer is obliged to repair; and
 - (l) to describe the second-hand motor vehicles that a dealer is obliged to repair in terms of age and distance travelled instead of sale price; and
 - (m) to include within the Act certain exemptions relating to the auction or proposed auction of motor vehicles; and
 - (n) to omit provisions relating to advertising; and
 - (o) to make necessary savings and transitional provisions.
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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

Clause 4 is a formal provision that gives effect to the Schedule of savings and transitional provisions.

SCHEDULE 1 - AMENDMENTS

Auto-dismantlers (vehicle-wreckers)

At present, a vehicle-wrecker is defined as a person who carries on the business of:

- (a) demolishing or dismantling motor vehicles or parts or accessories of motor vehicles; or
- (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.

Schedule 1 (2) (a) and (d) omit the definition of "vehicle-wrecker" and substitute a definition of "auto-dismantler". The definition of "auto-dismantler" differs from that of "vehicle-wrecker" in that an auto-dismantler is described so as to include a person who carries on the business of buying and selling prescribed kinds of parts and accessories of motor vehicles. Amendments consequential to this changed description are made throughout the proposed Act (Schedule 1 (1), (2) (c), (4) (a) and (b), (7), (13), (14) (a)-(c), (17) (c), (21) and (24)).

Schedule 1 (14) (d) amends section 26A to require auto-dismantlers to mark certain parts or accessories handled by them in the course of carrying on their business so they may be more readily identified.

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Financiers

Schedule 1 (2) (b) amends the definition of "financier" in section 4 so that it will include persons (such as banks) who provide financial accommodation but who are not covered by the present definition.

Wholesalers

Schedule 1 (2) (e) makes it clear that a wholesaler may buy motor cars from any person but may sell them only to financiers and certain licence holders.

Schedule 1 (15) makes it an offence for a wholesaler to receive for sale, or sell, a motor vehicle on consignment from persons other than financiers and certain licence holders.

Variation of forms

Schedule 1 (3) amends section 5 to enable the Minister to exempt specified persons or classes of persons from the requirement to use a register, notice or other document complying with a prescribed form. The provisions will enable the Minister to permit variations of the forms (necessitated by, for example, computerised recording of dealings) in some cases.

Places at which business may be carried on

Under section 9, it is an offence for a person (unless exempted) to carry on business as a dealer except at the place of business in respect of which the licence is granted. Section 23A makes it an offence to offer or display a motor vehicle for sale except at such a place. Clause 6 of an order published in the Gazette on 24 January 1986 at p. 349 exempts the holders of licences from these requirements in certain circumstances (for example, where new vehicles are displayed at an exhibition and the holder of a licence only advises persons as to the quality, performance and characteristics of the vehicles).

Schedule 1 (4) (c) and (10) enable a dealer to carry on business at a place other than the place of business in respect of which the licence is granted in the circumstances covered by the existing exemption order and also enable a dealer to offer or display a vehicle for sale, or buy or sell the vehicle, at a place other than a place of business by invitation of the person wishing to buy a motor vehicle.

Licences

At present, the Commissioner may refuse to grant a licence if the applicant does not have sufficient expertise to carry on the business concerned.

Schedule 1 (5) (a) and (b) expand section 12 to enable the Commissioner to refuse to grant a licence if the applicant does not have the prescribed qualifications or experience or has failed to supply certain information regarding the application.

Motor Dealers Compensation Fund

At present, any person may make a claim against the Fund in respect of loss incurred in connection with a motor vehicle because of the action of another person

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(for example, the failure to account or the failure of a dealer to pass an unencumbered title to the vehicle). The Fund is made up of a proportion of the fees paid under the Act by holders of dealers' and car market operators' licences and by applicants for those licences and of certain money recovered by the Commissioner.

Schedule 1 (5) (c), (19) (proposed section 39 (2) (aa)) and (25) enable an initial contribution to the Fund to be included in the fees payable by applicants for licences.

Schedule 1 (20) clarifies the circumstances in which a claim may be allowed against the Fund. In general, claims may be allowed only if a licensed dealer or car market operator has failed to comply with the Act or failed to account. However, a claim may also be allowed if the dealer or operator was unlicensed if there were reasonable grounds for the person who suffered the loss to believe that the dealer or operator was licensed.

A consequential amendment is made by Schedule 1 (18).

Disciplinary powers

Schedule 1 (6) amends section 20E to enable the Commissioner, as a disciplinary measure, to require the holder of a licence to make an additional contribution to the Fund or to indemnify the Fund against claims that may be made arising out of his or her activities as a licence holder.

A consequential amendment to insert proposed section 39 (2) (aa) is made by Schedule 1 (19).

Registers

Schedule 1 (8) repeals and re-enacts with modifications provisions requiring the holders of various licences to keep registers. A licence holder will be required to keep separate registers for each business for which the holder is registered. The licence holder will no longer be required to sign each entry in the register and it will be presumed in the absence of evidence to the contrary that an entry was made by, or with the authority of, the holder of the licence (Schedule 1 (9)).

Auctions

Section 23B makes it an offence, by auction or in relation to a proposed auction, to offer or display for sale, or sell, a motor vehicle to which a number-plate is attached without an inspection report stating that the vehicle is roadworthy. Section 23C makes it an offence to so offer or display for sale, or sell, a motor vehicle without a number-plate without certain documentation.

Exemption orders published in the Gazette on 24 January 1986 at p. 347 and on 28 February 1986 at p. 926 exempt persons from these requirements in certain circumstances (for example, if the vehicle was first registered within 1 month before the auction or if a specified notice is displayed on the vehicle and its terms are complied with). Schedule 1 (11) and (12) substitute and amend sections 23B and 23C, respectively, to include within the sections the terms of those exemption orders. Proposed section 23B (2) (a) also provides an exemption when a notice in the prescribed form is displayed at the auction premises.

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Obligations of dealer to repair defects

Under section 27, a dealer is obliged to repair defects occurring in certain motor vehicles described in Schedule 1 within specified time and distance limits.

Schedule 1 (16) makes it clear that, provided the defect is reported within a reasonable period after it is discovered, the obligation to repair a defect includes any defect which existed in the vehicle until those limits are reached even if the defect did not become apparent until after the relevant period of time had passed or the distance had been driven.

Schedule 1 (26) alters the description in Schedule 1 of the second-hand motor vehicles (not being motor cycles) in respect of which the obligation to repair arises. At present, the obligation arises in respect of vehicles sold at a cash price of or over \$2,500. Under the proposed amendment it will arise in respect of motor vehicles that are not more than 10 years old and that have been driven for not more than 160,000 km.

Schedule 1 (17) (a) makes a consequential amendment to allow for motor vehicles exceeding a prescribed cash price to be exempted. Schedule 1 (17) (b) and (d) make consequential amendments relating to exemptions from section 27 (1).

Advertising

Schedule 1 (22) and (23) omit provisions relating to advertising. Provision relating to advertising will instead be made by regulations under section 57 (2) (1).

SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS

Clause 1 is a savings provision relating to the changed description of “vehicle-wrecker”.

Clause 2 provides for the existing provisions of Schedule 1 to the Principal Act relating to the description of the second-hand motor vehicles in respect of which the obligation of a dealer to repair defects arises to continue to apply to vehicles sold before the commencement of Schedule 1 (26).
