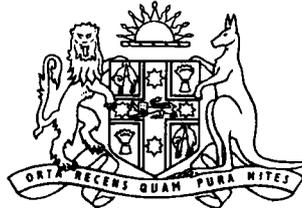


[Act 2001 No 86]



New South Wales

Motor Trade Legislation Amendment Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the *Motor Dealers Act 1974* and the *Motor Vehicle Repairs Act 1980* for the following purposes:

- (a) to enable motor dealers' licences to relate to more than one place of business and to make consequential amendments, including changes to requirements to keep registers,
 - (b) to remove restrictions on the places at which display days may be conducted by motor dealers,
 - (c) to provide for a cooling off period for certain credit purchases of motor vehicles,
 - (d) to clarify amounts that must be paid into trust accounts by motor dealers who sell motor vehicles on consignment,
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- (e) to provide for the costs of administering the Motor Dealers Compensation Fund to be paid from the Fund and to allow certain claims to be made from the Fund,
- (f) to impose obligations and duties on police officers, officers of the Roads and Traffic Authority, holders of licences and other persons with respect to the provision of information and goods that may have been stolen or otherwise unlawfully obtained and to make other amendments relating to law enforcement,
- (g) to abolish the Motor Vehicle Repair Industry Council (the *Council*) and to replace it with the Motor Vehicle Repair Industry Authority (the *Authority*) and the Council of the Authority,
- (h) to remove definitions of repair work categories for the purpose of repairer licence categories and to provide instead for the regulations to prescribe the categories of repair work,
- (i) to make aspects of the licensing scheme for motor vehicle repairers consistent with the licensing scheme for motor dealers,
- (j) to make the disciplinary provisions applicable to motor vehicle repairers consistent with those applicable to motor dealers,
- (k) to bar persons convicted of certain offences relating to stolen motor vehicles or motor vehicle parts from being eligible to hold licences as motor dealers or motor vehicle repairers,
- (l) to provide, in relation to motor vehicle repairers, for a system of undertakings in relation to unjust conduct as well as the making of orders to restrain unjust conduct,
- (m) to raise the total amount that may be paid from the Motor Vehicle Repair Industry Contingency Fund for a claim,
- (n) to enable penalty notices to be issued under the *Motor Vehicle Repairs Act 1980*,
- (o) to increase penalties for certain offences,
- (p) to make other amendments.

The proposed Act also enables penalty notices to be issued under the *Registration of Interests in Goods Act 1986*, makes consequential amendments to other Acts and enacts provisions of a savings and transitional nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

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

Clause 3 is a formal provision giving effect to the amendments to the *Motor Dealers Act 1974* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Motor Vehicle Repairs Act 1980* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to other Acts set out in Schedule 3.

Schedule 1 Amendment of Motor Dealers Act 1974

Amendments relating to licences

Schedule 1 [4], [6], [8], [12], [15]–[19], [24], [28], [29], [31], [33], [36], [38], [50] and [53] remove restrictions that do not permit a licence to relate to more than one place of business, and make consequential amendments to provisions relating to applications for licences and other matters.

Schedule 1 [7] removes the requirement for more than one director of a body corporate to sign a licence application.

Schedule 1 [9] removes the requirement that an applicant for a licence have experience.

Schedule 1 [10] requires the Director-General of the Department of Fair Trading (the *Director-General*) to refuse an application if the applicant has (as an adult), within the preceding 10 years, been found guilty of an offence involving, or relating to, the stealing of a motor vehicle or receiving, or unlawful possession of, a motor vehicle or motor vehicle parts (a *car stealing offence*).

Schedule 1 [11] makes the same requirement in relation to a body corporate applying for a licence, if a director or person concerned in the management of the body corporate has been found guilty of a car stealing offence within the preceding 10 years.

Schedule 1 [13] removes the requirement for a licence to be signed by the Director-General.

Schedule 1 [14] makes it clear that the form of licence may indicate the kind of licence.

Schedule 1 [20] enables the Director-General, rather than the Minister, to approve the form of the annual statement licence holders are required to lodge.

Schedule 1 [21] makes it clear that it is not mandatory to charge certain late fees.

Schedule 1 [22] enables the Director-General to reinstate a licence cancelled because of failure to pay an annual fee or lodge an annual statement if satisfied there is a reasonable explanation for the failure.

Schedule 1 [23] and **[25]** enable the Director-General to take action against a licence holder if a licence holder has been convicted of a car stealing offence within the preceding 10 years or the 10 years preceding the grant of the holder's licence or if, in the light of evidence acceptable to the Director-General, the Director-General considers that the licence holder is probably receiving or dealing in stolen goods.

Schedule 1 [26] requires the Director-General to cancel the licence of a person if it is established that the person has been found guilty of a car stealing offence within the preceding 10 years or the 10 years preceding the grant of the holder's licence.

Schedule 1 [29] and **[30]** enable a licence holder who is licensed to carry on business at more than one place to keep registers in one place only, if the registers can be accessed at all places covered by the licence. **Schedule 1 [32]** makes a consequential amendment.

Display days

Schedule 1 [34] removes the restrictions on the kinds of places (other than places to which a licence relates) at which cars may be displayed, but not sold, by a motor dealer. Currently, a dealer may display cars only at a place where an exhibition, fair, show, display or other function is being conducted. **Schedule 1 [35]** makes a consequential amendment.

Cooling off periods

Schedule 1 [39] inserts proposed sections 29CA, 29CB, 29CC and 29CD. Proposed section 29CA enables the purchaser of a motor vehicle who obtains credit for the purchase from the dealer or through a credit provider linked with the dealer to terminate the contract not later than the next business day after entering into the purchase contract. If the dealer closes before 5pm on the next business day, that time extends to close of business on the next business day that the dealer is open

following that day. The right can be waived by the purchaser by signing a waiver in the prescribed form in accordance with any requirements of the regulations. The proposed section will not apply to sales by dealers to trade owners, sales by auction, sales of commercial vehicles or sales where credit is not arranged or facilitated by the dealer.

Proposed section 29CB makes it an offence for a dealer to dispose of a trade-in given in consideration for the sale during the cooling off period and imposes a maximum penalty of 200 penalty units.

Proposed section 29CC sets out the consequences of termination.

Proposed section 29CD provides for a review of the cooling off provisions to be carried out by the Minister as soon as possible after 1 year after the commencement of the proposed section.

Trust accounts

Schedule 1 [40] makes it clear that a dealer who receives vehicles on consignment must deposit in a trust account not only the money received from a sale on consignment but an amount equal to the value of the consideration received by the dealer for the sale. **Schedule 1 [41]** and **[42]** make consequential amendments.

Motor Dealers Compensation Fund

Schedule 1 [44] requires the Director-General to establish the Motor Dealers Compensation Fund in the accounting records of the Department of Fair Trading.

Schedule 1 [45] enables the costs of administering the Motor Dealers Compensation Fund to be paid out of the Fund, in addition to amounts currently payable out of the Fund.

Schedule 1 [46] enables claims for loss arising from certain breaches of contract by a dealer or car market operator to be made against the Motor Dealers Compensation Fund.

Schedule 1 [47] makes it clear that the provisions relating to claims against the Motor Dealers Compensation Fund do not allow claims by auto-dismantlers.

Additional provisions relating to law enforcement

Schedule 1 [5] increases the penalty for unlicensed dealing in motor vehicles from 500 penalty units to 1,000 penalty units.

Schedule 1 [48] imposes a duty on a police officer or an officer of the Roads and Traffic Authority to give the Director-General access to records or information that are reasonably necessary for the proper exercise of any of the Director-General's functions under the Act relating to licensing, disciplinary proceedings, investigations or law enforcement. It also imposes a duty on the Director-General to supply to the Commissioner of Police information relating to licences and other matters that is reasonably necessary for the performance by police officers of their duties under the Principal Act. The Director-General may also supply information received under the proposed section to authorities from this State or other jurisdictions in accordance with an agreement that is approved by the Minister.

Schedule 1 [51] makes it an offence to fit to a motor vehicle a device capable of rendering an odometer inoperative or inaccurate.

Schedule 1 [52] requires holders of licences and their employees to inform an authorised officer if they suspect that a motor vehicle, motor vehicle parts or accessories or any other things in their custody in the course of business have been unlawfully obtained. Authorised officers are also empowered, by notice issued to a holder of a licence, to prohibit the holder from altering or disposing of things that the officers have reasonable grounds to suspect have been unlawfully obtained for a period of up to 14 days. A Local Court may extend the effect of the notice for further periods of up to 28 days.

Schedule 1 [54] increases the maximum penalty that a Local Court may impose for an offence from 50 penalty units to 100 penalty units.

Schedule 1 [55] extends the time for prosecuting offences relating to unlicensed dealing and odometers from 2 years to 3 years.

Other amendments

Schedule 1 [1], [2], [37] and [43] correct outdated references.

Schedule 1 [3] makes it clear that vessels and aircraft are not motor vehicles under the Principal Act.

Schedule 1 [27] enables the Administrative Decisions Tribunal to ignore the fact that an applicant for review of a licensing decision has been convicted of certain offences in certain circumstances (for example, if the acts or omissions giving rise to the offence are trivial).

Schedule 1 [49] enables regulations to be made to change the period within which an inspection report is required to be obtained for the purposes of the sale of a motor vehicle by a dealer or car market operator.

Schedule 1 [56] enacts a presumption that any person who has sold more than 4 vehicles within a 12 month period to any other person or persons (other than a dealer) is presumed, in the absence of proof to the contrary, to have been carrying on business as a dealer during that period.

Schedule 1 [57] and **[58]** make provision of a savings and transitional nature.

Schedule 2 Amendment of Motor Vehicle Repairs Act 1980

Constitution of Motor Vehicle Repair Industry Authority

Schedule 2 [17] repeals provisions establishing the Council and replaces them with proposed Part 2 which constitutes the Authority. The functions of the Authority include regulating the motor vehicle repair industry in accordance with the Principal Act and regulations, making reports and recommendations to the Minister with respect to regulation of the industry and the industry generally, reviewing and promoting the improvement of motor vehicle repair work and promoting and undertaking research into the motor vehicle repair industry. The Authority is to be subject to the control and direction of the Minister for Fair Trading and is to have a Council and a General Manager.

The Council is to consist of 13 part-time members appointed by the Minister, including a Chairperson and persons representing consumers and industry groups. The functions of the Council include furnishing advice to the General Manager about the strategic planning and implementation of the policies of the Authority and requesting the General Manager to make reports to the Minister. The General Manager and the staff are to be public servants. The General Manager is to be responsible for the day-to-day management of the Authority. The Council is to have power to establish committees.

Schedule 2 [1] and **[2]** make consequential amendments to the long title to the Principal Act.

Schedule 2 [4] inserts a definition of *Authority*.

Schedule 2 [7] substitutes a definition of *Council*.

Schedule 2 [8] inserts a definition of *General Manager*.

Schedule 2 [12] inserts a definition of *member*.

Schedule 2 [77] inserts provisions relating to the constitution and membership of the Council of the Authority and its procedure.

Schedule 2 [3], [6], [9], [49], [55]–[57] and [65]–[69] make consequential amendments.

Repair work categories

Schedule 2 [13] substitutes the definition of *repair work*. Currently, the Principal Act lists the categories of repair work for which a motor vehicle repairer must hold a licence and defines the kinds of work each comprises. The new definition provides for the regulations to prescribe the categories of repair work for which a licence will be required.

Schedule 2 [5] omits the definitions of the kinds of repair work and other definitions no longer required.

Schedule 2 [14], [18] and [34]–[37] make consequential amendments.

Amendments relating to licences and tradesperson's certificates

Schedule 2 [15], [16] and [38] provide that applications are to be made in the form approved by the Authority, rather than in the form approved by the Minister.

Schedule 2 [21] inserts proposed sections 16, 17, 17A, 17B and 18. The proposed sections bring provisions for licence applications, offences relating to false or misleading information in licence applications and notices, the granting of licences by the Authority and for the refusal of licences into line with those contained in the *Motor Dealers Act 1974*. In particular, provisions relating to the granting of licences to bodies corporate and authorising licence holders to carry on businesses in partnership with specified persons and at more than one place are being made consistent with that Act. Additional provisions include a provision permitting the Authority to investigate applications for licences or to request the Commissioner of Police to do so. Proposed section 18 requires the Authority to refuse an application if the applicant has, within the preceding 10 years, been found guilty of a car stealing offence. The same requirement applies in relation to a body corporate applying for a licence, if a director or person concerned in the management of the body corporate has been found guilty of any such offence within the preceding 10 years. **Schedule 2 [10], [11] and [22]** make consequential amendments.

Schedule 2 [23] inserts proposed section 18B. The proposed section enables a licence to authorise a motor vehicle repairer to carry on business under names that are in addition to, or in substitution for, the name of the holder. It will be an offence for a person to carry on, or advertise that the person is willing to carry on, the licensed business under names not authorised by the licence.

Schedule 2 [24] inserts proposed section 19. The proposed section provides that a licence is to be in the form approved by the Authority and to specify the class or classes of repair work to which it relates, the place or places of business to which it relates and, if it authorises the holder to carry on business in partnership with any other person or to carry on business under other names, or is subject to conditions or restrictions, endorsements to that effect.

Schedule 2 [25], [26] and [29] make amendments consequential on the removal of limitations on granting licences that authorise the carrying on of business in more than one place.

Schedule 2 [27] revises provisions as to the matters in respect of which amendments to licences may be sought. As directors of corporations will no longer be listed in licences, provision for changing this is to be omitted. A provision about amending endorsements relating to the names under which a business may be carried on and the persons in partnership with the licence holder is also being inserted.

Schedule 2 [28] omits provisions that relate to specifying the names of directors of a licence holder that is a corporation on a licence and related offences. Currently, the Council must approve the directors of any such corporation and, if an application to amend a licence by specifying the name of a director is refused, the director concerned must give up the directorship. Under the disciplinary provisions to be inserted by the proposed Act, action may be taken against the licence of a body corporate if the Authority determines that a director, or person concerned in the management of the body corporate, is not a fit and proper person to hold a licence. The amendment also requires a licence holder to notify the Authority within 14 days of a change in a place of business at which repair work is carried out under a licence.

Schedule 2 [30] requires a licence holder to provide an annual statement.

Schedule 2 [31] makes it an offence to knowingly give false or misleading information in, or in relation to, an annual statement or accompanying documents. The Authority is given power to cancel a licence if an annual fee or annual statement is not paid or lodged within the required time. **Schedule 2 [32]** makes a consequential amendment.

Schedule 2 [33] makes it an offence to transfer, attempt to transfer or lend a licence to another person, or allow another person to use a licence, and also makes it an offence for a person to attempt to obtain the transfer to the person of a licence or to attempt to borrow or borrow or use a licence.

Schedule 2 [39] inserts proposed section 33 which enables conditions and restrictions to be placed by the Authority on licences, and also on tradespersons' certificates, and gives the Authority power to vary or revoke conditions and restrictions.

Schedule 2 [40] omits a provision enabling fees to be refunded.

Schedule 2 [41] provides for registers of licences and certificates to be kept by the Authority in a form determined by the Authority.

Schedule 2 [42] enables the Authority, on the application of a person, to issue a certificate stating whether the person is, or was, during a period specified in the certificate the holder of a licence or tradesperson's certificate.

Disciplinary provisions

Schedule 2 [45] substitutes the disciplinary provisions relating to the holders of licences and tradespersons' certificates. Currently, complaints may be made to the Council which may then issue a notice to show cause to a holder and hold an inquiry for the holder to show cause. Procedures for the inquiry are formal and involve personal appearances, representations and the hearing of evidence. The proposed Part 4 provides for disciplinary action to be initiated by the Authority on becoming aware that a ground for taking action against a holder exists (proposed section 41).

Proposed section 41 enables the Authority to issue a show cause notice to a holder and gives the relevant holder and a partner of the holder or a director or officer of a corporate holder the right to make submissions and adduce evidence. The Authority may conduct such inquiry and make such investigations as the Authority thinks fit.

Proposed section 42 sets out the grounds on which a licence holder may be dealt with. These include work being done below usual trade standards and that the business has been carried on in a dishonest or unfair manner as well as other grounds. A licence holder may also be dealt with if the Authority, in the light of evidence acceptable to the Authority, considers that the holder is probably receiving or dealing in stolen goods or if the licence holder is convicted of certain offences, including car stealing offences.

Proposed section 43 sets out the grounds on which the holder of a tradesperson's certificate may be dealt with.

Under proposed section 44 the Authority may reprimand a holder, require a holder to comply with a requirement, disqualify a person from holding a licence or being concerned in the direction, management or conduct of a licensed business, impose conditions on a licence or certificate, impose a requirement on a holder or suspend or cancel a licence. It will be an offence for a person not to comply with a requirement, not to return a suspended or cancelled licence or certificate to the Authority within the specified time and to hold a licence or be concerned in the direction, management or conduct of a business while disqualified. The proposed section requires the Authority to cancel the licence of a person if it is established that the person has been found guilty of a car stealing offence within the preceding 10 years or the 10 years preceding the grant of the holder's licence.

Proposed section 45 gives an applicant a right to appeal to the Administrative Decisions Tribunal against a decision by the Authority to refuse an application for a licence or certificate or the amendment of a licence, to cancel or suspend a licence or certificate, to impose or vary a condition or restriction on a licence or certificate or to impose a requirement or disqualification.

Unjust conduct

Schedule 2 [45] inserts proposed Part 5 (Unjust conduct by repairers). The proposed Part will contain remedies similar to those available under the *Motor Dealers Act 1974* in relation to unjust conduct.

Proposed section 46 defines unjust conduct. It includes dishonest or unfair conduct, conduct in breach of a contract, contraventions of the Principal Act or other Acts and failure to comply with a condition or restriction of a licence.

Proposed section 47 enables the Authority, with the consent of the Minister, to request a motor vehicle repairer to execute a deed containing undertakings if it appears to the Authority that the repairer has, in the course of business, engaged in unjust conduct. Disciplinary action or an application to the Fair Trading Tribunal (the *Tribunal*) may not be taken if a repairer complies with the undertakings.

Proposed section 48 requires copies of undertakings to be given to the repairer and the Tribunal and also requires a register of undertakings to be kept.

Proposed section 49 empowers the Tribunal, on application by the Authority, to order a repairer to refrain from engaging in unjust conduct. An order may also be made prohibiting a person who is a director of a body corporate or concerned in the management of a body corporate from consenting to, or conniving at, engagement in unjust conduct, or a breach of an undertaking, by a body corporate. It will be an offence to contravene an order of the Tribunal.

Proposed section 50 enables the Tribunal, on the application of the Authority, to vary or discharge an order.

Disputes

Schedule 2 [46] enables the Authority to investigate disputes between owners of motor vehicles and repairers if unable to settle them.

Schedule 2 [47] makes it an offence for a person to make a statement that the person knows to be false or misleading in relation to any attempt to facilitate a settlement of a dispute undertaken by the Authority.

Motor Vehicle Repair Industry Contingency Fund

Schedule 2 [50] raises the current upper limit of \$3,000 on claims against the Motor Vehicle Repair Industry Contingency Fund (the *Contingency Fund*) for losses in connection with motor vehicle repair work to \$30,000.

Schedule 2 [51] prohibits an insurer of a motor vehicle from making a claim against the Contingency Fund.

Schedule 2 [52] makes it clear that no conveyance or assignment is necessary for the Authority to be subrogated to the rights of a claimant from the Contingency Fund.

Schedule 2 [53] and **[54]** enable the Authority to recover, as a debt in a court of competent jurisdiction, from the directors of a body corporate money paid from the Contingency Fund as a consequence of the acts or omission of the body corporate.

Additional matters relating to law enforcement

Schedule 2 [19] increases the penalty for carrying on the business of a repairer without a licence or at an unlicensed place to a maximum penalty of 1,000 penalty units.

Schedule 2 [20] imposes a penalty for a second or subsequent licensing offence of a maximum of 1,000 penalty units, or 12 months imprisonment, or both.

Schedule 2 [43] increases the penalty for making a false or misleading statement in an application to a maximum penalty of 20 penalty units and makes a consequential amendment.

Schedule 2 [44] increases the penalty for falsely holding yourself out to be the holder of a tradesperson's certificate to a maximum penalty of 20 penalty units.

Schedule 2 [48] increases the penalty for making a false or misleading statement in any application in or in relation to any proceeding for the investigation of a dispute to a maximum penalty of 20 penalty units.

Schedule 2 [59] increases the penalty for neglecting or failing to comply with a requirement of the Authority to furnish information in connection with specified repair work to a maximum penalty of 20 penalty units.

Schedule 2 [60] increases the penalty for failing to produce a licence or certificate to a maximum penalty of 10 penalty units.

Schedule 2 [61] enables inspectors and police officers to require records to be produced at a specified time or within a specified period and makes it an offence to refuse or fail to comply with a requirement.

Schedule 2 [62] increases the penalty for obstructing an inspector to a maximum penalty of 20 penalty units.

Schedule 2 [63] increases the penalty for disclosing certain information to a maximum penalty of 20 penalty units.

Schedule 2 [64] imposes a duty on a police officer or an officer of the Roads and Traffic Authority to give the Authority access to records or information that is reasonably necessary for the proper exercise of any of the Authority's functions under the Act relating to licensing, disciplinary proceedings, investigations or law enforcement. It also imposes a duty on the Authority to supply to the Commissioner of Police information relating to licences and other matters that is reasonably necessary for the performance by police officers of their law enforcement duties. The Authority may also supply information received under the proposed section to authorities of this State or other jurisdictions in accordance with an agreement that is approved by the Minister.

Schedule 2 [64] also requires holders of licences and their employees to inform an inspector if they suspect that a motor vehicle, motor vehicle parts or accessories or any other things in their custody in the course of business have been unlawfully obtained. Inspectors and police officers are also empowered, by notice issued to a holder of a licence, to prohibit the holder from altering or disposing of things that the officers have reasonable grounds to suspect have been unlawfully obtained for a period of up to 14 days. A Local Court may extend the effect of the notice for further periods of up to 28 days.

Schedule 2 [70] enables proceedings for offences to be taken before the Supreme Court in its summary jurisdiction.

Schedule 2 [71] limits the monetary penalty that may be imposed by a Local Court for an offence to the lesser of 100 penalty units or the maximum penalty for the offence.

Schedule 2 [72] extends the limitation period for commencing proceedings for offences relating to unlicensed motor vehicle repairs from 1 year to 3 years.

Schedule 2 [73] enables penalty notices to be issued for offences under the Principal Act that are prescribed for that purpose by the regulations.

Schedule 2 [75] increases the maximum penalty that may be imposed by the regulations for an offence to 20 penalty units.

Other amendments

Schedule 2 [58] omits an obsolete reference to loss assessor's work.

Schedule 2 [74] enables regulations to be made with respect to investigations relating to disputes.

Schedule 2 [76] requires the Minister to review the Principal Act not later than 2 years after the proposed Act is assented to.

Schedule 2 [78]–[82] make provision of a savings and transitional nature consequential on the enactment of the proposed Act.

Schedule 3 Amendment of other Acts

Schedule 3.1 makes a consequential amendment to the *Fines Act 1996*.

Schedule 3.2 and **3.4** remove references to the Council from the *Public Finance and Audit Act 1983* and the *Statutory and Other Offices Remuneration Act 1975*.

Schedule 3.3 [1] and **[2]** insert a provision relating to the cessation of registrable interests and a provision enabling penalty notices to be issued for offences under the *Registration of Interests in Goods Act 1986*.