

Passed by both Houses



New South Wales

Road Transport (General) Amendment (Written-off Vehicles) Bill 2007

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2007*



New South Wales

Road Transport (General) Amendment (Written-off Vehicles) Bill 2007

Act No , 2007

An Act to amend the *Road Transport (General) Act 2005* with respect to the notification, registration and management of written-off vehicles.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Road Transport (General) Amendment (Written-off Vehicles) Act 2007*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Road Transport (General) Act 2005 No 11

The *Road Transport (General) Act 2005* is amended as set out in Schedule 1.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 10 Regulations

Omit “object of Division 2 of Part 6.2” from section 10 (2) (a).

Insert instead “objects of Part 6.2”.

[2] Section 10 (2) (a)

Omit “that Division”. Insert instead “that Part”.

[3] Section 230 Certificate evidence

Omit “written off or wrecked” from section 230 (1) (k).

Insert instead “written-off”.

[4] Chapter 6 Miscellaneous

Transfer sections 249 and 250 to Part 6.1 and renumber them as sections 238A and 238B, respectively.

[5] Part 6.2

Omit the Part. Insert instead:

Part 6.2 Written-off vehicles

Division 1 Preliminary

249 Objects of Part (cf former Act, s 54)

The objects of this Part are to provide for the collection of information concerning written-off vehicles, and for the taking of other measures in relation to such vehicles, so as:

- (a) to assist in preventing the registration of stolen vehicles by preventing vehicle identifiers of written-off vehicles being used to register stolen vehicles (in a practice known as “rebirthing”), and
- (b) to assist in detecting vehicle theft, and
- (c) to require the provision of information about written-off vehicles to the Authority, and
- (d) to align the State with the other States and Territories in relation to the principles for the notification, registration and management of written-off vehicles and information about them, and

- (e) to allow Austroads Incorporated to have access to information for the purposes of administering a national database of written-off vehicles and information about them (Austroads Incorporated will, in turn, allow driver licensing and vehicle registration authorities in the other States and Territories to have access to the information in the national database), and
- (f) to make available to prospective purchasers information as to whether a particular vehicle has been written-off, and
- (g) to achieve other objects connected with the administration and execution of this Act.

250 Definitions (cf former Act, s 55)

- (1) In this Part:

Australian Design Rules means the Australian Design Rules under the *Motor Vehicle Standards Act 1989* of the Commonwealth.

auto-dismantler has the same meaning as it has in the *Motor Dealers Act 1974* and includes any other person, or class of persons, declared to be an auto-dismantler by the regulations under this Act.

corresponding category means a specified category of written-off vehicles under a corresponding law to this Part that is declared by the regulations to be a category that corresponds to the category of statutory write-offs or repairable write-offs, as the case may be, under this Part.

dealer has the same meaning as it has in the *Motor Dealers Act 1974* and includes any other person, or class of persons, declared to be a dealer by the regulations under this Act.

insurer means a person who carries on the business of insuring vehicles and includes any other person, or class of persons, declared to be an insurer by the regulations.

interstate written-off vehicles register means a register (however described) kept under a corresponding law to this Part that corresponds to the register of written-off vehicles kept by the Authority under this Part.

late model vehicle means a vehicle that:

- (a) complies (or complied at the time of manufacture) with the requirements of all Australian Design Rules adopted by the regulations applying to it, and is not more than 15 years old (age being determined from the date of manufacture) or, if the regulations prescribe a different age, not more than the age so prescribed, or

(b) is of a class prescribed by the regulations.

market value of a vehicle means the price that the vehicle would bring at open market, as determined (having regard to local market prices and the age and condition of the vehicle) by the person who is required to determine whether or not the vehicle is a total loss.

motor bike has the same meaning as it has in the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*.

old register means the register kept under section 255 before the repeal of that section by the *Road Transport (General) Amendment (Written-off Vehicles) Act 2007*.

register means the register of written-off vehicles kept by the Authority under this Part.

repairable write-off means a written-off vehicle that is not a statutory write-off.

salvage value of a vehicle means the value of the vehicle if sold for scrap, as determined by the person who is required to determine whether or not the vehicle is a total loss.

self-insurer means any person who, in the course of a business, is the responsible person for 5 or more late model vehicles (or any other number of late model vehicles that may be prescribed by the regulations) in respect of each of which there is no insurance policy with an insurer covering loss or damage.

statutory write-off means (subject to the regulations, which may exclude written-off vehicles from this definition) a written-off vehicle that is one of the following:

- (a) a vehicle (other than a motor bike) that has been:
 - (i) immersed in salt water above the doorsill level for any period, or
 - (ii) immersed in fresh water up to or above the dashboard or steering wheel for more than 48 hours,
- (b) a motor bike that has been:
 - (i) fully immersed in salt water for any period, or
 - (ii) fully immersed in fresh water for more than 48 hours,
- (c) a vehicle that has been burnt to such an extent that it is fit only for wrecking or scrap,
- (d) a vehicle that has been stripped of all, or a combination of most, interior and exterior body parts, panels and components (examples of which are the engine, wheels, bonnet, guards, doors and boot lid),

- (e) a vehicle (other than a motor bike) that has been damaged by at least 3 of the following indicators of impact damage:
 - (i) damage to an area of the roof equal to or exceeding 300 mm by 300 mm,
 - (ii) damage to an area of the cabin floor pan equal to or exceeding 300 mm by 300 mm,
 - (iii) damage to an area of the firewall equal to or exceeding 300 mm by 300 mm,
 - (iv) any damage to the suspension,
 - (v) damage (whether a crack or a break) to any major mechanical component, such as the engine block or transmission casing,
- (f) a motor bike that has impact damage (excluding scratching) to the suspension and at least 2 areas of structural frame damage,
- (g) a vehicle that has such other damage, or is in such other state or condition, as is prescribed by the regulations.

total loss means a vehicle:

- (a) that has been damaged by collision, fire, flood, accident, trespass or any other event, or has been dismantled, to the extent that, or
- (b) that has been demolished, so that,

its salvage value, plus the cost of repairing the vehicle for use on a road, would be more than the market value of the vehicle immediately before the event that caused the damage or before the circumstances that caused the dismantling or demolition.

Note. For example, a vehicle is insured for its market value of \$15,000. It is damaged in a collision and that damage would cost \$12,000 to repair, but it has a salvage value of \$4,500. The vehicle would be determined to be a total loss (salvage value + cost of repair > market value) because $\$4,500 + \$12,000 > \$15,000$. It would be uneconomic for the insurer to repair the vehicle, since the cost to the insurer of repairing the vehicle would be \$12,000 and the cost if the insurer were to pay the insurance claim on the vehicle is the sum insured (\$15,000) minus the salvage costs (\$4,500), that is, a lower cost of \$10,500.

vehicle identifier, in relation to a vehicle, means:

- (a) in the case of a vehicle manufactured before 1 January 1989—the number quoted on the compliance plate that uniquely identifies the vehicle and sets it apart from similar vehicles and that corresponds to the identification number of the vehicle that is permanently recorded elsewhere on the vehicle, or

- (b) in any other case—the unique vehicle identification number (or “VIN”) allocated to the vehicle in accordance with the International Standards Organisation’s vehicle identification system required under an Australian Design Rule adopted by the regulations made under the *Road Transport (Vehicle Registration) Act 1997*.

written-off vehicle means a vehicle:

- (a) that has been determined to be a total loss by an insurer, auto-dismantler or dealer, or
- (b) that has been determined to be a total loss, or disposed of to an auto-dismantler, or both, by a self-insurer.

Note. There are two categories of written-off vehicles: some are statutory write-offs (because they fall within the definition of **statutory write-off** in this section) and all others are repairable write-offs.

written-off warning label means a label attached to a written-off vehicle under and in accordance with Division 5.

- (2) A reference in this Part to a person who carries on a business excludes a person who carries on such a business only as an employee.

Division 2 Register of written-off vehicles

251 Register of written-off vehicles (cf former Act, s 58)

- (1) The Authority is to keep a register of written-off vehicles.
- (2) The register may include:
- (a) information notified to the Authority under this Part (subject to the correction under section 252 of any error or omission or to a refusal to enter information under that section), and
- (b) any other information about written-off vehicles provided to the Authority whether in accordance with an obligation under this Part or otherwise, and
- (c) any other information that the Authority considers appropriate.
- (3) If any person who provides the Authority with information required by this Part in relation to a vehicle specifies in that information that the vehicle is a statutory write-off or a repairable write-off, the register must show the vehicle as such.
- (4) The Authority is entitled to rely on information provided as referred to in subsection (3) and is not required to make any enquiries of its own in relation to the matter before listing the

vehicle on the register as a statutory write-off or a repairable write-off, as the case may be.

- (5) The register may be kept in the form of, or as part of, a computer database or in any other form that the Authority considers appropriate.
- (6) The Authority may authorise any person or class of persons to make entries in the register.

252 Authority may correct register of written-off vehicles or information to be entered onto it

- (1) The Authority may, as the Authority thinks appropriate, correct the register, or information to be entered onto it, by:
 - (a) correcting any error in any entry in the register, including, but not limited to, changing an entry from a statutory write-off to a repairable write-off or vice versa, or
 - (b) inserting any matter omitted from any entry in the register, or
 - (c) removing any entry from the register, or
 - (d) inserting any entry in the register, or
 - (e) correcting any error in, or omission from, any information that was required to be provided to the Authority under this Part before it is entered in the register, or
 - (f) refusing to enter in the register any or all information that was required to be provided to the Authority under this Part.
- (2) The Authority may correct the register, or information to be entered onto it, if:
 - (a) either:
 - (i) the person who originally provided the relevant information has requested in writing that the correction be made and has met any requirements prescribed by the regulations in relation to that request, or
 - (ii) the person who originally provided the relevant information was the insurer of the relevant vehicle, that insurer has refused to pay an insurance claim for loss or damage made in relation to the vehicle by the owner of the vehicle and the owner of the vehicle has requested in writing that the correction be made and has met any requirements prescribed by the regulations in relation to that request, and

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- (b) that request includes a declaration that the vehicle the subject of the information has not been sold in the State or elsewhere as a repairable write-off or as a vehicle in a corresponding category of repairable write-offs, and
 - (c) in relation only to a request to correct a vehicle's categorisation from statutory write-off to repairable write-off:
 - (i) the Authority is satisfied that the relevant vehicle has not been altered or repaired and has not left the possession of the person who made the request, and
 - (ii) the person who made the request has undertaken to meet all costs associated with the correction, and
 - (d) the Authority is satisfied that the correction should be made to maintain the integrity of the information kept on the register, or for any other reason.
- (3) The Authority may request further information to support a request made under this section and may refuse to make a correction requested under this section if the Authority is not provided with that further information within the time specified in the request.
 - (4) The Authority may also correct the register, or information to be entered onto it, on its own initiative if the Authority is satisfied that the correction should be made to maintain the integrity of the information kept on the register, or for any other reason.
 - (5) To avoid doubt, the Authority may, in accordance with this section, correct any error in or omission from, or may remove, any entry that was on the old register.

253 Access to register

- (1) Access to the register is not available to members of the public (except as provided by this section).
- (2) The Authority may, on any conditions that the Authority considers appropriate:
 - (a) allow a government department, a public authority, a local authority or the NSW Police Force to have access to the register, and
 - (b) allow a government department, a public authority, a local authority or the police force of another State, a Territory or the Commonwealth to have access to the register, and

- (c) allow Austroads Incorporated to have access to the register for the purposes only of its national database of written-off vehicles and information about them, and
 - (d) allow an insurer, self-insurer, auto-dismantler or dealer to have access to the register, and
 - (e) allow any other person or body, or class of persons or bodies, prescribed by the regulations to have access to the register.
- (3) The Authority may, on any conditions that the Authority considers appropriate, provide a person or body with information contained in the register.

254 Unauthorised access to or interference with register (cf former Act, s 64)

A person must not, except as authorised by the Authority or other lawful authority:

- (a) obtain access to the register or information contained in the register, or
- (b) make, alter or delete an entry in the register, or
- (c) interfere with the register in any other way.

Maximum penalty: 20 penalty units.

Division 3 Requirements to provide Authority with information about written-off, demolished or dismantled vehicles

255 Application of Division

This Division applies only in respect of a late model vehicle (located anywhere in Australia):

- (a) that is registered in the State, or
- (b) that was last registered in the State, or
- (c) that has never been registered in Australia, but where one or more of the incidents that caused the vehicle to be determined to be a total loss occurred in the State.

256 Insurers to provide written-off vehicle information to Authority (cf former Act, s 59)

- (1) An insurer must provide to the Authority the information prescribed by the regulations concerning each late model vehicle that is determined to be a total loss (anywhere in Australia) in the course of the business carried on by the insurer.

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- (2) An insurer, in determining that a vehicle is a total loss, must determine that the vehicle is either a statutory write-off or a repairable write-off.
 - (3) The information required to be provided under this section must be provided:
 - (a) subject to paragraph (b), within 7 days after the vehicle is determined to be a statutory write-off or repairable write-off (as required by subsection (2)) in the course of that business and before the vehicle is sold or otherwise disposed of in the course of that business or otherwise, or
 - (b) within the time prescribed by the regulations.Maximum penalty: 20 penalty units.

257 Self-insurers to provide written-off vehicle information to Authority

- (1) A self-insurer must provide to the Authority the information prescribed by the regulations concerning each late model vehicle:
 - (a) that is determined to be a total loss (anywhere in Australia) in the course of the business carried on by the self-insurer, or
 - (b) that is disposed of by the self-insurer (anywhere in Australia) to an auto-dismantler.
- (2) A self-insurer, in determining that a vehicle is a total loss, or in disposing of a vehicle to an auto-dismantler, must determine that the vehicle is either a statutory write-off or a repairable write-off.
- (3) The information required to be provided under this section must be provided:
 - (a) in the case of a vehicle that is determined to be a total loss and that is not disposed of to an auto-dismantler (and subject to paragraph (c))—within 7 days after the vehicle is determined to be a statutory write-off or repairable write-off (as required by subsection (2)) and before the vehicle is sold or otherwise disposed of, or
 - (b) in the case of a vehicle that is disposed of to an auto-dismantler (and subject to paragraph (c))—within 7 days after the vehicle is disposed of, or
 - (c) within the time prescribed by the regulations.
- (4) A person is not guilty of an offence against this section in respect of a failure to provide information concerning a vehicle if the person satisfies the court that the person believed, on reasonable grounds, that the required information concerning the vehicle had

already been provided to the Authority by another person under this Division.

Maximum penalty: 20 penalty units.

258 Auto-dismantlers to provide written-off vehicle information to Authority (cf former Act, s 60)

- (1) An auto-dismantler must provide to the Authority the information prescribed by the regulations concerning each late model vehicle that is demolished or dismantled (anywhere in Australia) in the course of the business carried on by the auto-dismantler.
 - (2) The information required to be provided under this section must be provided:
 - (a) subject to paragraph (b), within 7 days after work is commenced in the course of that business for the purpose of demolishing or dismantling the vehicle and before the part of the vehicle to which the vehicle identifier is attached is sold or otherwise disposed of in the course of that business, or
 - (b) within the time prescribed by the regulations.
 - (3) An auto-dismantler is not guilty of an offence against this section in respect of a failure to provide information concerning a vehicle if the auto-dismantler satisfies the court that the auto-dismantler believed, on reasonable grounds, that the required information concerning the vehicle had already been provided to the Authority under this Division by an insurer, self-insurer or dealer.
- Maximum penalty: 20 penalty units.

259 Dealers to provide vehicle information to Authority (cf former Act, s 61)

- (1) A dealer must provide to the Authority the information prescribed by the regulations concerning each late model vehicle that is in the care, custody or control of the dealer (anywhere in Australia) and that has been determined to be a total loss by the dealer in the course of the business carried on by the dealer.
- (2) A dealer, in determining that a vehicle is a total loss, must determine that the vehicle is either a statutory write-off or a repairable write-off.
- (3) The information required to be provided under this section must be provided:
 - (a) subject to paragraph (b), within 7 days after the vehicle is determined to be a statutory write-off or repairable

write-off (as required by subsection (2)) by the dealer and before the vehicle is sold or otherwise disposed of in the course of the business carried on by the dealer, or

(b) within the time prescribed by the regulations.

- (4) A dealer is not guilty of an offence against this section in respect of a failure to provide information concerning a vehicle if the dealer satisfies the court that the dealer believed, on reasonable grounds, that the required information concerning the vehicle had already been provided to the Authority under this Division by an insurer, self-insurer or auto-dismantler.

Maximum penalty: 20 penalty units.

260 Regulations may extend obligation to provide information under this Division to others (cf former Act, s 62)

The regulations may require any person who carries on a type of business specified in the regulations to provide to the Authority the information prescribed by the regulations concerning any late model vehicle that is determined to be a total loss while in the care, custody or control of the person (anywhere in Australia).

Note. It is an offence under section 307B of the *Crimes Act 1900* to give false or misleading information to a person exercising a power, authority or duty under, or in connection with, a law of the State.

261 Agents may meet requirement to provide information

- (1) A person required to provide the Authority with information under section 256, 257, 258, 259 or 260 is taken to have complied with the relevant section if:
- (a) the person authorises an agent of the person to provide that information to the Authority, and
 - (b) the agent does so as and when the relevant section requires.
- (2) However, if the Authority is not provided with information as and when required by the relevant section, the person and not the agent is guilty of an offence against the relevant section.

Division 4 Restrictions on registration of certain vehicles

262 Vehicles that have the same identifier as a statutory write-off cannot be registered (cf former Act, s 67)

- (1) The Authority must not register, or renew or transfer the registration of, any vehicle under the *Road Transport (Vehicle Registration) Act 1997* if its vehicle identifier is the same as the vehicle identifier of a vehicle:

- (a) that is listed on the register as being a statutory write-off, or
 - (b) that the Authority is aware is listed on an interstate written-off vehicles register as being in a corresponding category of statutory write-offs.
- (2) The Authority must cancel the registration of a vehicle under the *Road Transport (Vehicle Registration) Act 1997* if the Authority becomes aware that its vehicle identifier is the same as the vehicle identifier of a vehicle:
- (a) that is listed on the register as being a statutory write-off, or
 - (b) that is listed on an interstate written-off vehicles register as being in a corresponding category of statutory write-offs.
- (3) However, the Authority must not take the action required by subsection (2) unless it has first given the registered operator of the vehicle at least 14 days' notice of the proposed cancellation.
- (4) Subsections (1) and (2) do not apply in any circumstances prescribed by the regulations.
- (5) This section does not limit the power of the Authority to refuse to register, or to renew or transfer the registration of or to suspend or cancel the registration of, a vehicle under any provision of the *Road Transport (Vehicle Registration) Act 1997*.

Division 5 Attaching written-off warning labels to statutory write-offs

263 Application

This Division applies only in relation to statutory write-offs.

264 Duty to attach written-off warning label to written-off or dismantled vehicles

- (1) A person who is required to provide information to the Authority about a vehicle under section 256, 257, 258, 259 or 260 must (unless the vehicle has been demolished) also attach a written-off warning label, in accordance with the regulations:
- (a) to the part of the vehicle to which the vehicle identifier is attached (in the case of a dismantled vehicle), or
 - (b) to the vehicle (in any other case).

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- (2) The written-off warning label must be attached within the period in which the information must be provided under the relevant section.
- (3) Subsection (1) does not require a person to attach a written-off warning label if there is attached:
- (a) to the part of the vehicle to which the vehicle identifier is attached (in the case of a dismantled vehicle), or
 - (b) to the vehicle (in any other case),
- an appropriate written-off warning label that was attached by another person.
- Maximum penalty: 20 penalty units.

265 Regulations concerning written-off warning labels

The regulations may make provision for or with respect to the following:

- (a) the content and form of written-off warning labels,
- (b) the positioning of written-off warning labels on vehicles,
- (c) the re-attachment of written-off warning labels,
- (d) the alteration, damage, destruction, removal of, or other interference with, written-off warning labels.

266 Agents may meet statutory requirements to attach written-off warning label

- (1) A person required to attach a written-off warning label by this Division is taken to have complied with that requirement if:
- (a) the person authorises an agent of the person to attach a written-off warning label required by this Division, and
 - (b) the agent does so as and when this Division requires.
- (2) However, if the written-off warning label is not attached as and when required by this Division, the person and not the agent is guilty of an offence against section 264.

Division 6 General

267 Removal of vehicle identifiers (cf former Act, s 66)

- (1) An insurer, self-insurer, auto-dismantler, dealer or other person required to provide information to the Authority under this Part may be required to take any reasonable steps, or to ensure that such steps are taken, to remove, deface, obliterate or destroy the

vehicle identifier on any part of a vehicle that has been determined to be a total loss.

- (2) The requirement may be made:
 - (a) by the regulations, or
 - (b) by notice in writing served on the person by the Authority.
 - (3) A notice under this section may be served personally or by post.
 - (4) A person must comply with a requirement made under this section.
- Maximum penalty: 20 penalty units.

268 Unauthorised disclosure of information (cf former Act, s 65)

A person must not disclose any information obtained in connection with the administration or execution of this Part, except:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act or the regulations, or
- (c) for the purposes of Austroads Incorporated administering a national database of written-off vehicles and information about them and allowing driver licensing and vehicle registration authorities in the other States and Territories to have access to the information in the national database, or
- (d) for the purposes of any legal proceedings arising out of this Act or the regulations or of any report of such proceedings, or
- (e) with other reasonable excuse.

Maximum penalty: 20 penalty units.

269 Variations to Part (cf former Act, s 68)

The regulations may provide that this Part or any specified provision of this Part:

- (a) does not apply to or in respect of:
 - (i) any specified vehicle or class of vehicles, or
 - (ii) any specified person or class of persons, or
- (b) applies only to or in respect of:
 - (i) any specified vehicle or class of vehicles, or
 - (ii) any specified person or class of persons.

270 Exemptions (cf former Act, s 69)

- (1) The Authority may, by instrument in writing, exempt any person from the operation of all or specified provisions of this Part.
- (2) An exemption:
 - (a) may be absolute or subject to conditions, and
 - (b) if subject to conditions, has effect only while the conditions are observed.

[6] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Road Transport (General) Amendment (Written-off Vehicles) Act 2007

[7] Schedule 1, clause 7

Omit “section 255”. Insert instead “Part 6.2”.

[8] Schedule 1, Part 4

Insert after clause 10:

Part 4 Provisions consequent on enactment of Road Transport (General) Amendment (Written-off Vehicles) Act 2007

11 Keeping of register

- (1) The old register is taken to be the register of written-off vehicles required to be kept under section 251 (as inserted by the amending Act).
- (2) As soon as practicable after the commencement of section 251 (as inserted by the amending Act), the Authority:
 - (a) must record on the register as a statutory write-off all vehicles that, immediately before that time, were recorded as having the status of being wrecked, and
 - (b) must remove all references to wrecked vehicles from the register, and
 - (c) must record on the register as repairable write-offs all vehicles that, immediately before that time, were recorded as having the status of written-off rather than wrecked.

- (3) In this clause:
amending Act means the *Road Transport (General) Amendment (Written-off Vehicles) Act 2007*.
old register has the same meaning as in Part 6.2.