

# Motor Dealers Act 1974 No 52

[1974-52]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**

- [Licensing and Registration \(Uniform Procedures\) Act 2002 No 28](#), Sch 4.30 (amended by [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2002 No 112](#)) (not commenced)
  - [Transport Legislation Amendment Act 2011 No 41](#) (not commenced)
  - [Business Names \(Commonwealth Powers\) Act 2011 No 44](#) (not commenced)

- **See also**

- [Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2011](#)

### Authorisation

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File last modified 19 October 2011

# Motor Dealers Act 1974 No 52



New South Wales

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# Motor Dealers Act 1974 No 52



New South Wales

An Act to provide for the granting of licences to persons carrying on the business of a motor dealer, an auto-dismantler, a wholesaler, a motor vehicle parts reconstructor, a car market operator or a motor vehicle consultant, or a prescribed business; to require those persons to keep certain records; to impose certain obligations on a motor dealer in relation to motor vehicles offered or displayed for sale or sold by the motor dealer; to provide for the settlement by the Director-General of the Department of Fair Trading of certain disputes arising in connection with the sale of motor vehicles; to establish a Motor Dealers Compensation Fund; for these and other purposes to repeal the [Second-hand Motor Dealers Act 1956](#) (other than sections 18 and 19 thereof); to amend the [Motor Traffic Act 1909](#); and for purposes connected therewith.

## Part 1 Preliminary and interpretation

### 1 Name of Act

This Act may be cited as the [Motor Dealers Act 1974](#).

### 2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Part 2 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.
- (3) Section 59 shall commence on the day that is three months after the day on which Part 2 commences.
- (4) Except as provided in subsections (1), (2) and (3), the several provisions of this Act 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 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:



**accessories** includes car wirelesses, sound reproducing equipment, air conditioning units and spare wheels and tools usually carried on motor vehicles.

**authorised officer** means:

- (a) any member of the police force,
- (b) an investigator appointed under section 18 of the *Fair Trading Act 1987*,
- (c) the Director-General,
- (d) any person authorised in writing by the Director-General, including a person authorised under section 6 (1), or
- (e) any person authorised in writing by the Chief Executive Officer of the Roads and Traffic Authority.

**auto-dismantler** means 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
- (c) buying and selling prescribed kinds of parts or accessories of motor vehicles.

**auto-dismantler's licence** means an auto-dismantler's licence granted under section 12.

**buy** means buy as principal or agent.

**car market operator** means a person who carries on the business of providing a site for a market for the sale by other persons of second-hand motor vehicles, whether or not that site is used for any other purpose.

**car market operator's licence** means a car market operator's licence granted under section 12.

**cash price:**

- (a) in relation to a motor vehicle offered or displayed for sale, means the price at which the vendor is willing to sell the vehicle for cash complete with all accessories then fitted to or supplied with the vehicle, and
- (b) in relation to the sale of a motor vehicle:
  - (i) means the price at which the vehicle is sold,

- (ii) where any part of the consideration that passed, or is to pass, from the purchaser is represented by another vehicle, or other thing, means the price at which the vehicle is sold and the value of the other vehicle or thing as ascribed to it for the purposes of the sale by the parties thereto or, if no agreed value is so ascribed, the market value of the other vehicle or thing at the time of the sale, or
- (iii) where all of the consideration that passed, or is to pass, from the purchaser is represented by another vehicle, or other thing, means the value of the other vehicle or thing as ascribed to it for the purposes of the sale by the parties thereto or, if no agreed value is so ascribed, the market value of the other vehicle or thing at the time of the sale, less any amount paid, or to be paid, by the vendor to the purchaser in connection with the sale.

**commercial vehicle** means a motor vehicle constructed or adapted principally for:

- (a) the carriage of goods,
- (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.

**criminal intelligence** means information classified by the Commissioner of Police as criminal intelligence within the meaning of the [Crimes \(Criminal Organisations Control\) Act 2009](#).

**dealer** means a person who carries on the business of buying, selling or exchanging motor vehicles, but does not include a financier.

**dealer's licence** means a dealer's licence granted under section 12.

**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 tradesperson'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,
- (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 tradesperson'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.

**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
- (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.

**Director-General** means the Director-General of the Department of Fair Trading.

**District Court** means the District Court of New South Wales.

**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.

**financier** means a person whose ordinary business is not that of buying, selling or exchanging motor vehicles but who carries on that business only for one or more of the following purposes, that is to say:

- (a) for the purpose of letting or hiring motor vehicles under hire-purchase agreements,
- (b) for the purpose of selling motor vehicles on instalment terms,
- (c) for the purpose of taking or enforcing securities over motor vehicles,
- (d) for any purpose that may be prescribed, or
- (e) for the purpose of disposing of motor vehicles acquired by the person in connection with any of the purposes referred to in, or prescribed in relation to, this definition,

but does not include such person or class of person as may be prescribed for the purposes of this definition.

**hire-purchase agreement** means, in relation to a motor vehicle, an agreement for the letting of the motor vehicle with an option to purchase 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 class or description of contracts or agreements prescribed to be hire-purchase agreements for the purposes of this definition.

**holder**, in relation to a licence, means the person to whom the licence is granted.

**identification number**, when used in relation to the engine or engine block of a motor vehicle or to any part or accessory of a motor vehicle, means the number and any accompanying letters or symbols stamped on or otherwise affixed to that engine, engine block, part or accessory as a means of identifying that engine, engine block, part or accessory, but does not include any casting number or any number used as a means of identifying a class of engine, engine block, part or accessory.

**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 *Road Transport (Vehicle Registration) Act 1997*, or

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

**licence** means a dealer's licence, an auto-dismantler's licence, a wholesaler's licence, a motor vehicle parts reconstructor's licence, a car market operator's licence, a motor vehicle consultant's licence or a prescribed licence.

**model designation** means, in relation to a motor vehicle of a particular model, any words, figures, letters or symbols applied by the manufacturer of that motor vehicle for the purpose, or apparent purpose, of identifying a motor vehicle of that model.

**motor vehicle** means any motor car, motor carriage, motor cycle, tractor, or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer (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), but does not include any vehicle used on a railway or tramway or any vessel or aircraft.

**motor vehicle consultant** means a person who carries on the business of advising any person (not being the holder of a licence) who wishes to buy a motor vehicle of any description where or from whom the person who wishes to buy a motor vehicle can buy a motor vehicle of that description, whether or not that person also carries on the business of advising such a buyer of the suitability of a motor vehicle for any particular purpose.

**motor vehicle consultant's licence** means a motor vehicle consultant's licence granted under section 12.

**motor vehicle parts reconstructor** means a person who carries on the business of purchasing or otherwise acquiring for the purpose of selling or exchanging, or for the purpose of reconstructing and selling, or for the purpose of reconstructing and exchanging, such parts or accessories of motor vehicles as may be prescribed for the purposes of this definition.

**motor vehicle parts reconstructor's licence** means a motor vehicle parts reconstructor's licence granted under section 12.

**motor vehicle sales person** 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 State, or a Territory, of the Commonwealth.

**owner**, in relation to a motor vehicle, includes any person who is a joint owner, or part owner thereof and any person who has the possession and use thereof under or subject to a hire-purchase agreement, bill of sale or similar contract, but does not include any person in whom the property in the vehicle or any absolute or conditional right or licence to take possession of the motor vehicle is vested under or subject to a hire-purchase agreement, bill of sale or similar contract and who has not for the time being the possession and use thereof.

**prescribed business** means a business belonging to a class of business prescribed under section 7 (a).

**prescribed licence** means a licence prescribed under section 7 (b) and granted under section 12.

**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.

**registered** means registered under the provisions of any Act or law, whether of the State or elsewhere, relating to the registration of motor vehicles.

**regulations** means regulations made under this Act.

**second-hand motor cycle** means a motor cycle that is a second-hand motor vehicle.

**second-hand motor vehicle** includes a motor vehicle that has, at any time before being offered or displayed for sale, or sold, been registered, and includes a demonstrator motor vehicle.

**sell** means to sell as principal or agent.

**Supreme Court** means the Supreme Court of New South Wales.

**the Fund** means the Motor Dealers Compensation Fund established under section 39 (1).

**trade owner** means a dealer, a wholesaler or a financier.

**trading day**, in relation to the holder of a licence, means a day on which the holder trades.

**trailer** includes a caravan.

**Tribunal** means the Consumer, Trader and Tenancy Tribunal established by the [Consumer, Trader and Tenancy Tribunal Act 2001](#).

**wholesaler** means a person who carries on the business of buying motor vehicles from any person and selling those vehicles to, or exchanging those vehicles with,

persons who are financiers or holders of licences (other than car market operators' licences or motor vehicle consultants' licences) and only those persons.

**wholesaler's licence** means a wholesaler's licence granted under section 12.

**year of manufacture** means, in relation to a motor vehicle, the year in which the vehicle was manufactured.

(2) (Repealed)

(3) For the purposes of this Act:

(a) where a dealer sells a motor vehicle to a financier in the expectation that the financier will sell that motor vehicle to a particular third person and the financier does so, the dealer shall be treated as having sold the motor vehicle to that third person, and

(b) where a motor vehicle is made the subject of a hire-purchase agreement, it shall be treated as being sold to the hirer, and the sale shall be treated as made when the hire-purchase agreement is entered into.

(4) A person who carries on the business of manufacturing or assembling motor vehicles is not a dealer or a wholesaler and does not carry on the business of a dealer or a wholesaler, by reason only of selling any such vehicle to a trade owner.

(5) For the purposes of this Act a motor vehicle shall be treated as having been sold notwithstanding that all or part of the consideration that passed from the purchaser in respect of the sale is represented by another vehicle or other thing.

(6) In this Act, a reference to a motor vehicle is a reference to the vehicle complete with all accessories fitted to the vehicle.

(7) For the purposes of this Act a motor vehicle is not a second-hand motor vehicle at the time it is sold by a dealer by reason only that it is registered for the first time in the name of the purchaser prior to the completion of the sale.

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

(9) Notes included in this Act do not form part of this Act.

## **5 Approved forms**

(1) An application under this Act shall be made in or to the effect of a form approved by the Director-General.

(2) The Director-General may approve different forms for the purpose of making different

applications.

- (3) The Minister may exempt any specified person or persons from any requirement under this Act relating to compliance with a form of register, notice or other document prescribed for the purposes of this Act.
- (4) An exemption may be given unconditionally or subject to conditions relating to the use of the form.
- (5) If an exemption is given subject to conditions, the exemption does not have effect while any of the conditions is not being complied with.

## **6 (Repealed)**

## **7 Governor may prescribe a class of business**

The Governor may:

- (a) prescribe any class of business, carried on in relation to used or reconstructed motor vehicles, or such used or reconstructed parts of motor vehicles or accessories as may be prescribed, and
- (b) prescribe a licence in relation to any such class of business and a fee to be paid therefor.

## **8 Variation of application of Act**

- (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,
  - (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.

**Editorial note—**

For orders under this subsection, see the Historical notes at the end of this Act.

- (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.

## **Part 2 Licences**

### **Division 1 Preliminary**

#### **9 Offences**

- (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 an auto-dismantler unless the person is the holder of a dealer's licence

or an auto-dismantler's licence,

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

- (11) A person who is convicted of an offence under this section is liable to a penalty not exceeding 1,000 penalty units.
- (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 500 penalty units or imprisonment for a term not exceeding 12 months, or both.
- (13) Despite subsection (1) (c), the holder of a dealer's licence who carries on the business of a dealer at a place other than a place in respect of which the licence is granted is not guilty of an offence against this Act if the business is carried on at that place in accordance with section 23A (2).

## Division 2 Issue of licences

### 10 Application to licences of [Licensing and Registration \(Uniform Procedures\) Act 2002](#)

- (1) The Director-General may grant the following licences for the purposes of this Act:
  - (a) dealers' licences,
  - (b) auto-dismantlers' licences,
  - (c) wholesalers' licences,
  - (d) motor vehicle parts reconstructors' licences,
  - (e) car market operators' licences,
  - (f) motor vehicle consultants' licences,
  - (g) prescribed dealers' licences.
- (2) Part 2 of the [Licensing and Registration \(Uniform Procedures\) Act 2002](#) (**the applied Act**) applies to and in respect of a licence, subject to the modifications and limitations prescribed by or under this Act.
- (3) For the purpose of applying Part 2 of the applied Act to a licence:
  - (a) the licence may be amended under that Act, and
  - (b) an application for restoration of a licence under section 10 of that Act may be made only in respect of a licence that is cancelled under section 20 (7) of this Act, and any such application may not be made more than 3 months after the date on which the licence is cancelled.
- (4) Subject to this section, the regulations may make provision for or with respect to such matters concerning a licence as are relevant to the operation of Part 2 of the applied Act.

## 11 Investigation of application

- (1) The Director-General may make such inquiries as the Director-General considers necessary in relation to an application for a licence.
- (2) The Commissioner of Police shall, if the Director-General of the Department of Fair Trading so requests, investigate an application for a licence and, as soon as practicable after completing the investigation, make a report to the Director-General of the Department of Fair Trading on the investigation.

## 12 Grounds on which application to be granted or refused

- (1) Subject to subsections (2), (4), (5), (6) and (8), the Director-General shall grant an application for a licence.
- (2) An application for a licence made by a natural person shall be refused if it appears to the Director-General 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 the prescribed qualifications or does not have sufficient knowledge or expertise to carry on such a business,
  - (f1) the applicant is a controlled member of a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*,

**Note—**

Controlled members are prohibited from applying for licences—see section 27 of the *Crimes (Criminal Organisations Control) Act 2009*.

- (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 Director-General would be required to refuse an application for the licence if that person were the applicant, or
- (i) the applicant has (as an adult), within the preceding 10 years, been found guilty of

an offence involving, or relating to:

(i) stealing a motor vehicle (within the meaning of Division 5A of Part 4 of the *Crimes Act 1900*), or

(ii) receiving, or unlawful possession of, a motor vehicle (within the meaning of Division 5A of Part 4 of the *Crimes Act 1900*) or a motor vehicle part.

(3) Without affecting the generality of subsection (2) (g), the Director-General 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,

(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.

(3A) Without affecting the generality of subsection (2) (g), a person is not a fit and proper person to be the holder of a licence if the Director-General has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person that:

(a) the person is a member of, or regularly associates with one or more members of, a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2009*, and

(b) the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence.

(4) An application for a licence made by a body corporate shall be refused if it appears to the Director-General 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 do not have the prescribed qualifications or do not have sufficient knowledge or expertise to carry on such a business,
  - (e1) (Repealed)
  - (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 Director-General, 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
  - (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 Director-General would be required to refuse an application for the licence if that person were the applicant, or
  - (k) a director of, or person concerned in the management of, the body corporate has (as an adult), within the preceding 10 years, been found guilty of an offence involving, or relating to:
    - (i) stealing a motor vehicle (within the meaning of Division 5A of Part 4 of the [Crimes Act 1900](#)), or
    - (ii) receiving, or unlawful possession of, a motor vehicle (within the meaning of Division 5A of Part 4 of the [Crimes Act 1900](#)) or a motor vehicle part.
- (5) Without affecting the generality of subsection (4) (f), (h), (i) or (j), the Director-General 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 if:

- (a) some other licence is in force in respect of a place of business, or any part of a place, to which the application relates, or
  - (b) the carrying on of the business at that place or part of a place is, for any reason, unlawful.
- (7) Where an application for a licence is refused, the Director-General 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 Director-General shall, as soon as practicable, refund to the applicant that fee.
- (7A) The Director-General is not, under subsection (7), Part 2 of the applied Act (within the meaning of section 10) or any other Act or law, required to give any reasons for refusing an application for a licence because of subsection (3A) to the extent that the giving of those reasons would disclose any criminal intelligence.
- (8) An application for a licence shall not be granted until the applicant has paid to the Director-General the prescribed fee (which may include an initial contribution to the Fund) 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 Director-General shall forthwith, by notice in writing, inform the applicant of the granting of the application.
- (10) Notwithstanding anything in this section, the Director-General may refrain from granting an application for a licence unless:
- (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 Director-General specifies or refers to, has or have appeared personally before the Director-General and satisfied the Director-General as to such relevant matters referred to in this section as the Director-General thinks appropriate.

### **13 Grant of approval for licence**

- (1) Where the Director-General would, but for the inability of the applicant for a licence to satisfy the Director-General as to the address of the place or places of business at which, or the name or names under which, the applicant intends to carry on business, grant the application for the licence, the Director-General may defer consideration of the application and grant the applicant an approval for the licence in such form as may be determined by the Director-General.



- (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 Director-General:
  - (a) as to the matter referred to in subsection (1), and
  - (b) that no change material to the applicant's application for the licence has occurred since the application was last considered by the Director-General,the Director-General shall, subject to section 12 (8), grant the application.

#### **14 Conditions of, and restrictions on, licence**

- (1) The Director-General 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
  - (b) upon application or of the Director-General'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 Director-General 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 Director-General 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.

#### **15 Name under which holder of licence may operate**

- (1) Subject to the *Business Names Act 2002*, 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) (Repealed)

**16 (Repealed)**

**17 Change of address of holder of licence**

(1), (2) (Repealed)

(3) The Director-General may, on the application of a holder of a licence:

(a) vary or omit a place at which the business to which the licence relates is authorised to be carried on, or

(b) add a place as a place at which any such business is authorised to be carried on.

(4) An application under subsection (3) may be refused if:

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

(b) the carrying on of the business at that place or part of a place is, for any reason, unlawful.

(5) The holder of a licence shall, not later than 14 days after ceasing to carry on business at a place of business authorised by the licence, give to the Director-General notice in writing that the holder has ceased to carry on business at that place.

**17A (Repealed)**

**18 Register of holders of licences**

(1) For the purposes of this Act, the Director-General shall keep a register of the holders of licences.

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

(3) The Director-General 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 Director-General may charge such fee, if any, as may be prescribed for the issue of a certificate.

**19 Term of, and authority conferred by, licence**

(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) to carry on business under the name or names specified in the licence and at the place or places (including any place varied or added under section 17) of business so specified, 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 this Act shall, while the suspension continues, be deemed to be a person who does not hold a licence.
- (5) For the purposes of sections 12 and 17, a licence which is suspended shall be deemed to be in force in respect of a place of business to which the licence relates.

## **20 Annual fee and annual statement**

- (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 Director-General 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 Director-General a statement in respect of that year or part that is in a form approved by the Director-General 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 Director-General 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 Director-General 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 any prescribed late fee that the notice requires to be paid, 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 Director-General 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).

(7A), (7B) (Repealed)

(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.

(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, 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 Director-General 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.

## **20A Surrender of licence**

(1) The holder of a licence may (subject to section 20D (2A)), by notice in writing given to the Director-General and accompanied by the licence, surrender the licence.

(2) Despite subsection (1), a licensee whose licence has been lost or destroyed may

surrender the licence by giving to the Director-General a notice in writing and specifying in the notice that the licence has been lost or destroyed, as the case may be.

**20B Dealer's licence and car market operator's licence not to be held by same person**

- (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 Director-General.

**20C (Repealed)**

**Division 3 Disciplinary proceedings**

**20D Notices to show cause**

- (1) Where, at any time, the Director-General 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,
  - (b1) the holder of a licence has been convicted of an offence under section 22 (2) or (4) of the *Road Transport (Vehicle Registration) Act 1997* (Affixing of interstate number-plates on registrable vehicles in New South Wales),
  - (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 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,
  - (d1) the holder of a licence has (as an adult), within the preceding 10 years or the period of 10 years that last preceded the grant of the licence, been found guilty of:
    - (i) an offence involving, or relating to, stealing a motor vehicle (within the meaning of Division 5A of Part 4 of the *Crimes Act 1900*), or

- (ii) receiving, or being in unlawful possession of, a motor vehicle (within the meaning of Division 5A of Part 4 of the *Crimes Act 1900*) or a motor vehicle part,
- (d2) in the light of evidence acceptable to the Director-General, the holder of the licence is probably receiving or dealing in stolen goods,
- (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 Director-General would be required by section 12 (2), (3A) 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 a 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 a 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 Director-General 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 Division.

(1A) By way of example of the operation of subsection (1) (d2), the Director-General may consider that the holder of a licence in whose custody stolen goods are found is probably receiving or dealing in stolen goods.

(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 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.

- (2A) The holder of a licence on whom notice to show cause has been served under this section may not surrender the licence unless the Director-General has made a determination under section 20E in relation to each matter to which the notice relates.
- (3) The Director-General 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 Director-General thinks fit.
- (4) Subsection (1) does not require the Director-General to disclose any criminal intelligence in a notice served on the holder of a licence because of the matter referred to in section 12 (3A).

#### **20E Determination of disciplinary measures by the Director-General**

- (1) If, after compliance with section 20D, the Director-General is satisfied that any matter referred to in section 20D (1) has been established, the Director-General 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 Director-General,
  - (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 Director-General thinks fit,
  - (e) impose a condition or restriction to which the licence shall be subject,
  - (f) cancel the licence.
- (1A) Without limiting the powers conferred by subsection (1), among the requirements that the Director-General may specify under subsection (1) (b) is a requirement that the holder of the licence concerned:
  - (a) make an additional contribution to the Fund of such amount as the Director-General specifies, or

(b) indemnify the Fund to such extent as the Director-General specifies in the event of a particular contingency arising concerning the activities of the holder of the licence.

(1B) Despite subsection (1), the Director-General must cancel the licence concerned if satisfied that:

(a) a matter referred to in section 20D (1) (d1) has been established, or

(b) in the case of a licence holder that is a body corporate, if the body corporate were not the holder of a licence, the Director-General would be required by section 12 (4) (k) to refuse an application by the body corporate for a licence.

(1C) Despite subsection (1), the Director-General must cancel the licence concerned if satisfied that the matter referred to in section 12 (3A) has been established.

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

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

(4) Where the Director-General 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 Director-General and notified, by notice in writing, to the holder of the licence.

(5) Where the Director-General:

(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 Director-General within a period specified by the Director-General 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.

## **20F Reviews by the Administrative Decisions Tribunal**

(1) If the Director-General:

(a) refuses to grant an application for, or suspends or (under any provision of this Act)



cancels, a licence, or

(b) imposes a condition or restriction under section 14, or

(c) imposes a disqualification referred to in section 20E (1) (d),

the applicant for the licence, the person who held the licence or the person disqualified (as the case may be) may apply to the Administrative Decisions Tribunal for a review of the decisions of the Director-General.

(2) On an application for a review of a decision of the Director-General to refuse to grant a licence to a person because of a fact referred to in section 12 (3) or (5), the Administrative Decisions Tribunal may determine that the fact should be ignored on one or more of the following grounds:

(a) the triviality of the acts or omissions giving rise to the offence concerned,

(b) the time that has passed since the offence concerned was committed,

(c) the subsequent good behaviour of the offender,

(d) any other ground prescribed by the regulations.

(3) In determining an application for a review of any decision to refuse to grant a licence because of section 12 (3A) or to cancel a licence because of section 20E (1C), the Administrative Decisions Tribunal (and any Appeal Panel in determining any appeal against such a review under the *Administrative Decisions Tribunal Act 1997*):

(a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose any criminal intelligence, and

(b) in order to prevent the disclosure of any criminal intelligence, is to receive evidence and hear argument in the absence of the public, the applicant for review and the applicant's representative and any other interested party,

unless the Commissioner of Police approves otherwise.

## **Division 4 Licences generally**

### **20G Death of holder of licence**

(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 Director-General allows, apply to the Director-General 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 Director-General may grant or refuse an application and, where the Director-

General grants the application, may impose such conditions as the Director-General 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 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.

#### **20H Endorsement of condition etc of licence**

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 Director-General so to do within a specified time, produce the licence to the Director-General within that time for endorsement of the condition or restriction.

### **Division 5 Unjust conduct by dealers**

#### **20I Interpretation**

- (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 Tribunal applicable to the holder.
- (2) In this Division, a reference to a dealer includes a reference to:
- (a) an auto-dismantler,
  - (b) a wholesaler,
  - (c) a motor vehicle parts reconstructor,
  - (d) a car market operator,
  - (e) a motor vehicle consultant, and
  - (f) a person who carries on a prescribed business.

## **20J Undertakings by dealer**

- (1) Where it appears to the Director-General that a dealer has, in the course of business, repeatedly engaged in unjust conduct, the Director-General may, with the consent of the Minister:
  - (a) request the dealer to execute a deed in terms approved by the Director-General 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 Tribunal for an order under section 20L (1).
- (2) Where the Director-General makes a request or application under subsection (1), it shall be presumed, unless the contrary is proved, that the Director-General 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 Director-General may not apply for an order under section 20L (1),  
by reason of any conduct to which the undertakings relate.

## **20K Register of Undertakings**

- (1) Where a dealer executes a deed containing undertakings as referred to in section 20J (1) (a), the Director-General shall:
  - (a) lodge a copy of the deed with the Registrar of the Tribunal, and
  - (b) give a copy of the deed to the dealer who executed it.
- (2) The Director-General shall retain all deeds and shall register the deeds in a Register of Undertakings kept by the Director-General 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 Director-General with the leave of the Tribunal given when making an order in accordance with section 20L (2).

## **20L Restraint of unjust conduct**

- (1) Where, on the application of the Director-General, the Tribunal is satisfied after inquiry that a dealer has repeatedly engaged in unjust conduct, the 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 Director-General, the 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 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 Tribunal when making the order.
- (3) Where the Director-General applies for an order under subsection (1) or (2) against a dealer that is a body corporate and the 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 Tribunal may, in addition to any other order it may make under this section, make an order prohibiting the person from consenting to, or 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 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.

## **20M Variation etc of restraining order**

The Tribunal may, on the application of the Director-General, vary or discharge an order made under section 20L.

## **Part 3 Dealers' and other records**

### **21 Holder of licence to keep register**

- (1) The holder of a licence must keep at a place of business in respect of which the licence is granted a register in the prescribed form.

- (2) If a person who holds a dealer's licence also carries on under the authority of that licence the business of an auto-dismantler, a wholesaler, a motor vehicle parts reconstructor or a motor vehicle consultant or a prescribed business, the person must keep a register in respect of that business as well as a register in respect of the person's business (if any) as a dealer.
- (2A) Despite subsections (1) and (2), a register may be kept at only one of the places of business in respect of which a licence is granted if the register is kept in a form that may be accessed at all places of business covered by the licence.
- (3) The holder of a dealer's licence must enter in the register kept in respect of the business carried on under the authority of that licence:
  - (a) the prescribed particulars of every second-hand motor vehicle acquired in the course of carrying on that business, and
  - (b) the prescribed particulars of the disposal of each such vehicle, and
  - (c) where a vehicle referred to in paragraph (b) is disposed of by sale at an auction—the prescribed particulars of the purchaser of the vehicle.
- (4) The holder of an auto-dismantler's licence must enter in the register kept in respect of the business carried on under the authority of that licence:
  - (a) the prescribed particulars of every motor vehicle and every prescribed part or accessory of a motor vehicle acquired in the course of carrying on that business, and
  - (b) the prescribed particulars of the disposal of each such vehicle and of each such part or accessory.
- (5) The holder of a wholesaler's licence must enter in the register kept in respect of the business carried on under the authority of that licence:
  - (a) the prescribed particulars of each second-hand motor vehicle acquired in the course of carrying on that business, and
  - (b) the prescribed particulars of the disposal of each such vehicle.
- (6) The holder of a motor vehicle parts reconstructor's licence must enter in the register kept in respect of the business carried on under the authority of that licence:
  - (a) the prescribed particulars of every prescribed part or accessory of a motor vehicle acquired in the course of carrying on that business, and
  - (b) the prescribed particulars of the disposal of each such part or accessory.
- (7) Where the regulations so provide, the holder of a motor vehicle consultant's licence must enter in the register kept in respect of the business carried on under the

authority of that licence the prescribed particulars of every prescribed transaction entered into in the course of carrying on that business.

- (8) The holder of a prescribed licence must enter in the register kept in respect of the business carried on under the authority of that licence the prescribed particulars of every prescribed transaction entered into in the course of carrying on that business.
- (9) The holder of a licence must make an entry required by this section within 1 trading day after the transaction to which the entry relates is completed.

**21A Special requirements for dealers who acquire motor vehicles for sale on consignment**

- (1) A dealer who acquires motor vehicles for sale on consignment must:
  - (a) keep in respect of those vehicles a separate dealer's register, and
  - (b) enter in that register the prescribed particulars referred to in section 21 (3) relating to those vehicles,and must not enter those prescribed particulars in the register required to be kept by the dealer under section 21.
- (2) The dealer must make an entry required by this section within 1 trading day after the transaction to which the entry relates is completed.
- (3) A register required to be kept by this section may be kept at only one of the places of business in respect of which a licence is granted if the register is kept in a form that may be accessed at all places of business covered by the licence.

**21B Special requirements to be complied with by dealers who demolish or dismantle motor vehicles**

If a person who is the holder of a dealer's licence demolishes or dismantles:

- (a) a motor vehicle the particulars of which are required to be entered in the register kept under section 21 in relation to the person's business as a dealer, or
- (b) parts or accessories of such a vehicle,

the person must immediately transfer the prescribed particulars from that register to the register kept in respect of the person's business as an auto-dismantler.

**21C Certain provisions not to apply in respect of exempted persons etc**

Sections 21-21B, or such of those sections as may be specified in the relevant order, do not apply:

- (a) to an exempted person, or
- (b) in relation to an exempted motor vehicle, or

- (c) in relation to a part or accessory of a motor vehicle other than a part or accessory of a kind prescribed by the regulations.

## **22-22E (Repealed)**

### **22EA Separate registers for each licence etc**

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.

### **22F Agent, partner or employee of licence holder may make entry in register on behalf of licence holder**

- (1) When the holder of a licence is required by a provision of this Part to make an entry in a register required to be kept under this Act, it is sufficient compliance with that requirement if an agent or partner of that holder, or a person employed by that holder in the business to which the licence relates, makes the entry.
- (2) If an agent, partner or employee of a holder of a licence makes an entry in such a register, the entry is, until the contrary is proved, to be presumed for the purposes of any legal proceedings to have been made by the holder.

## **22G, 22H (Repealed)**

### **23 Inspection of registers**

- (1) A register required to be kept pursuant to this Part may, at any time during which a place of business at which the register is required to be kept or to be able to be accessed 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).
- (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.

## **Part 4 Dealings in motor vehicles**

### **23A Premises at which the holder of a licence may lawfully offer or display motor vehicles for sale**

- (1) The holder of a licence must not offer or display a motor vehicle for sale except at a place of business in respect of which the licence is granted.
- (2) Despite subsection (1), the holder of a licence who offers or displays a motor vehicle for sale, or buys or sells a motor vehicle, at a place other than a place of business in respect of which the licence is granted is not guilty of an offence against this Act if:
  - (a) a person has, without being solicited to do so, invited the holder of the licence to display the vehicle to the person, or carry out all or part of the transactions relating to the sale or purchase of the vehicle, at that other place, or
  - (b) that other place is a place at which the holder of the licence carries on business in accordance with subsection (3).
- (3) The holder of a licence may carry on business at a place as referred to in subsection (2) (b) only if:
  - (a) the holder of the licence does not offer or display for sale at that place second-hand motor vehicles (other than second-hand tractors or second-hand self-propelled agricultural machinery), and
  - (b) the business carried on by the holder of the licence at that place is limited to advising persons with respect to the quality, performance and characteristics of motor vehicles and making offers to, or receiving offers from, persons to enter agreements for the sale of motor vehicles (not being second-hand motor vehicles other than second-hand tractors or second-hand self-propelled agricultural



machinery).

- (4) In subsection (2), the reference to a place other than a place of business in respect of which the licence is granted does not include a reference to a carriageway or footpath that is in the immediate vicinity of the place of business.

**23B Sale by auction of vehicles to which number-plates are attached**

- (1) A person must 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 attached to the vehicle, in the prescribed manner, an inspection report, issued in respect of the vehicle not more than 1 month before the date of the auction or proposed auction, to the effect that the vehicle was found to be roadworthy at the time of the issue of the report.
- (2) Subsection (1) does not have effect in relation to a motor vehicle offered or displayed for sale, or sold, at an auction or in relation to a proposed auction if:
- (a) at the times when the vehicle is offered or displayed for sale there is attached to the vehicle or displayed at the place where the vehicle is offered or displayed for sale, in the prescribed manner, a notice in the prescribed form, and
  - (b) the terms of the notice are complied with, and
  - (c) the purchase price of the vehicle is not altered from that which was bid at the auction or which was subsequently negotiated, and
  - (d) the purchaser is not required to meet any part of the cost of repairs to the vehicle required before it is possible to comply with the terms of the notice.
- (3) This section does not have effect in relation to:
- (a) a motor vehicle offered or displayed for sale, or sold, at an auction or proposed auction if, at any time within 1 month before the auction or proposed auction, the vehicle was registered for the first time (or the registration of the vehicle was renewed) under the *Road Transport (Vehicle Registration) Act 1997*, or
  - (b) the offer or display to a trade owner of a motor vehicle for sale at an auction or proposed auction, or
  - (c) the sale of a motor vehicle to a trade owner by the acceptance of an offer referred to in paragraph (b).

**23C Sale by auction of vehicles to which no number-plates are attached**

- (1) 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 Roads and Traffic Authority 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) This section does not have effect in relation to:

- (a) the offer or display to a trade owner of a motor vehicle for sale at an auction or proposed auction, or
- (b) the sale of a motor vehicle to a trade owner by the acceptance of an offer referred to in paragraph (a).

#### **24 Dealers' notices in respect of sale of second-hand motor vehicles, second-hand motor cycles and damaged new motor vehicles**

(1) This section does not apply to or in relation to:

- (a) the offering or displaying for sale, or sale, of an exempted motor vehicle,
- (b) the offering or displaying for sale, or sale, of a motor vehicle:
  - (i) by bona fide auction,
  - (ii) to an exempted person, or
  - (iii) to a trade owner, or

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

- (2) Where a dealer offers or displays for sale a second-hand motor vehicle (not being a second-hand motor cycle or demonstrator motor vehicle), the dealer shall attach, or cause to be attached, to the vehicle, in the prescribed manner, a notice, in the prescribed form, containing the prescribed particulars in relation to the vehicle.
- (3) A dealer shall not sell a second-hand motor vehicle (not being a second-hand motor cycle or demonstrator motor vehicle) unless, at or before the time of sale, the dealer and the purchaser sign the notice attached to the vehicle pursuant to subsection (2), or a copy of that notice, and the dealer delivers the notice or the copy, as the case may be, to the purchaser for retention by the purchaser.
- (4) In any proceedings against a dealer for failing to comply with the requirements of subsection (2), it shall be presumed, in the absence of proof to the contrary, that a second-hand motor vehicle (not being a second-hand motor cycle or demonstrator motor vehicle) found at a place of business in respect of which a dealer's licence is granted is offered or displayed for sale unless:

- (a) the vehicle has attached to it, in the prescribed manner, a notice, in the prescribed form, specifying that the vehicle is not for sale, and
  - (b) the vehicle does not have any other notice attached to it, or any marking on it, that purports to be the price of the vehicle or that suggests that the vehicle is being offered or displayed for sale.
- (5) A dealer shall not sell a second-hand motor cycle unless, at or before the time of sale, the dealer and the purchaser sign a notice, in the prescribed form, containing the prescribed particulars in relation to the motor cycle and the dealer delivers the notice to the purchaser for retention by the purchaser.
- (6) A dealer shall not sell a demonstrator motor vehicle unless, at or before the time of sale, the dealer and the purchaser sign a notice, in the prescribed form, containing the prescribed particulars in relation to the vehicle and the dealer delivers the notice to the purchaser for retention by the purchaser.
- (7) Where any prescribed damage is done to a motor vehicle (not being a second-hand motor vehicle) and a dealer is aware, or on a reasonable inspection of the vehicle would have been aware, of the damage, the dealer shall not sell the vehicle, whether or not the damage has been repaired, unless, at or before the time of sale, the dealer and the purchaser sign a notice, in the prescribed form, containing the prescribed particulars in relation to the damage to the vehicle and the dealer delivers the notice to the purchaser for retention by the purchaser.
- (8) A notice shall not be treated for the purposes of subsection (2), (5), (6), or (7) as containing the prescribed particulars if any of the prescribed particulars contained in the notice is false or misleading in a material particular.
- (9) Where the sale of a motor vehicle is effected by a person acting as the agent or employee of a dealer, compliance by that agent or employee with the requirements imposed on the dealer by subsection (3), (5), (6) or (7), as the case may require, shall be treated as compliance by the dealer with those requirements.
- (10) Where the holder of a dealer's licence offers or displays for sale, or sells, a motor vehicle on behalf of another dealer, this section does not apply to the other dealer.
- (11) Where:
  - (a) a person carrying on (whether in partnership or otherwise) the business of a dealer does not comply with any requirement imposed on the person by subsection (2), (3), (5), (6) or (7), the person is guilty of an offence, or
  - (b) a person carrying on in partnership (whether under a joint licence or otherwise) the business of a dealer does not comply with any requirement imposed on the person by subsection (2), (3), (5), (6) or (7), each of the person's partners is guilty of an offence.

- (12) In proceedings for an offence under subsection (11), it is a defence if the accused person proves that the motor vehicle concerned was offered or displayed for sale, or sold, as the case may be, to an auto-dismantler or motor vehicle parts reconstructor for the purpose of being demolished or dismantled.

## **25 (Repealed)**

## **26 Defences**

In proceedings for an offence under section 24 it is a defence if:

- (a) in the case of the omission of any prescribed particular from a notice referred to in that section, the accused person proves that the motor vehicle concerned was brought into New South Wales for the purpose of resale and that the prescribed particular omitted was unknown to the person and could not, with reasonable diligence, be ascertained by the person, or
- (b) in the case of the inclusion in any such notice of a prescribed particular that is false or misleading in a material particular, the accused person proves that the accused person took all reasonable steps to ascertain the true particulars and that those included were, to the best of the person's knowledge and belief, true.

## **26A Sale of certain motor vehicles by auto-dismantlers**

- (1) An auto-dismantler shall, as soon as practicable after the purchase or other acquisition by the auto-dismantler of:
- (a) a motor vehicle proposed to be demolished or dismantled by the auto-dismantler, or
- (b) a substantially demolished or substantially dismantled motor vehicle,
- to which any number-plate is attached, surrender the number-plate to the Roads and Traffic Authority.
- (2) An auto-dismantler 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) An auto-dismantler 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 auto-dismantler,
- (b) a substantially demolished or substantially dismantled motor vehicle,
- (c) a motor vehicle which was acquired for the personal use of the auto-dismantler or a person employed by the auto-dismantler and which has been used bona fide by the auto-dismantler or person for his or her personal use, or

(d) a commercial vehicle which has been used bona fide by the auto-dismantler for the purpose of conducting the auto-dismantler's business.

- (4) An auto-dismantler must, as soon as practicable after demolishing or dismantling a motor vehicle in the course of carrying on the business of an auto-dismantler, mark in the prescribed manner each prescribed part or accessory derived from the demolished or dismantled vehicle.
- (5) An auto-dismantler must, as soon as practicable after purchasing or otherwise acquiring a prescribed part or accessory of a motor vehicle in the course of carrying on the business of an auto-dismantler, mark the part or accessory in the prescribed manner.

## **26B Wholesalers not to sell certain motor vehicles on consignment**

The holder of a wholesaler's licence must not:

- (a) receive for sale on consignment a motor vehicle from a person other than a financier or the holder of a dealer's licence, an auto-dismantler's licence or a motor vehicle parts reconstructor's licence or of another wholesaler's licence, or
- (b) sell any such motor vehicle.

## **27 Obligations of dealer to repair defects**

- (1) Except as provided in this section and sections 28 and 29, where a motor vehicle of a description specified in Column 1 of Schedule 1 is sold by a dealer and before:
- (a) the vehicle has been driven for the number of kilometres after being manufactured or so sold, as the case may be, specified opposite the description of the vehicle in Column 2 of Schedule 1, or
- (b) the expiration of the period, specified opposite the description of the vehicle in Column 3 of Schedule 1, after the vehicle is so sold,

whichever first occurs, a defect appears or occurs in the vehicle, the dealer shall, whether or not the defect existed at the time of the sale, at the dealer's own expense, repair or make good, or cause to be repaired or made good the defect so as to place the vehicle in a reasonable condition having regard to its age and the dealer's obligation to do so shall be deemed to be a term of the contract of sale relating to the vehicle.

- (1A) For the purposes of subsection (1), a defect which occurs in a vehicle includes a defect:
- (a) which existed in the vehicle at any time before the occurrence of an event referred to in paragraph (a) or (b) of that subsection, and

(b) which first became apparent after the event occurred,

but only if the defect is reported to the dealer within a reasonable period after it becomes apparent.

- (2) For the purposes of calculating the period referred to in subsection (1) (b), no regard shall be paid to any period during which the dealer has the motor vehicle in the dealer's possession for the purpose or purported purpose of ascertaining or carrying out the dealer's obligations under subsection (1).
- (3) The obligation of a dealer under subsection (1) in relation to a motor vehicle (not being a second-hand motor vehicle) sold by the dealer is extinguished if, subsequent to that sale, the dealer or another dealer acquires ownership of the vehicle, or the vehicle is repossessed by a financier.
- (4) Subject to subsection (3), the obligation of a dealer under subsection (1) in relation to a motor vehicle (not being a second-hand motor vehicle) sold by the dealer subsists for the benefit of the owner, from time to time, of the vehicle and, for this purpose, the owner from time to time shall be deemed to have entered into a contract of sale with the dealer in respect of the vehicle.
- (5) The obligation of a dealer under subsection (1) in relation to a second-hand motor vehicle sold by the dealer is an obligation only to the person who purchased the vehicle from the dealer.
- (6) The fact that a dealer's licence has been revoked under section 18 or has ceased to have effect under section 17 (5) or 17A (1), or that a dealer is not the holder of a dealer's licence, or that a person who was once a dealer has ceased to be a dealer, does not affect any obligation under subsection (1).
- (7) Where the holder of a dealer's licence sells a motor vehicle on behalf of another dealer, this section does not apply to the other dealer.
- (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.
- (9) Where Schedule 1 is amended or substituted by a regulation made pursuant to subsection (8), that Schedule as so amended or substituted applies to and in relation to the sale of a motor vehicle by a dealer on or after the date on which the regulation takes effect.

## 28 Exceptions

- (1) Section 27 (1) does not apply to or in relation to any defect:
  - (a) occurring in:
    - (i) a tyre or battery,
    - (ii) a chain or sprocket on a motor cycle, or
    - (iii) a prescribed accessory fitted to a motor vehicle,
  - (b) arising from or incidental to any accidental damage to a motor vehicle that occurred after the sale, referred to in section 27 (1), of the vehicle, and when the vehicle was not in the possession of the dealer,
  - (c) arising from misuse or negligence on the part of a driver of a motor vehicle, or arising from the use of a motor vehicle for motor racing or motor rallying, that occurred after the sale, referred to in section 27 (1), of the vehicle, or
  - (d) appearing or occurring in an accessory that was not fitted to or supplied with a motor vehicle at the time of the sale, referred to in section 27 (1), of the vehicle.
- (2) In the case of a second-hand motor vehicle, section 27 (1) does not apply to or in relation to any superficial damage to the paint-work or upholstery of the vehicle which would have been apparent on a reasonable inspection of the vehicle carried out at the time of the sale, referred to in section 27 (1), of the vehicle.
- (3) Section 27 (1) does not apply to or in relation to the sale of:
  - (a) a motor vehicle to a trade owner,
  - (b) a second-hand motor vehicle where the purchaser has been in possession of the vehicle for a period of not less than 3 months immediately preceding the day of that sale,
  - (c) a motor vehicle to an exempted person,
  - (d) a commercial vehicle,
  - (e) a trailer,
  - (f) a motor vehicle the cash price of which exceeds the amount prescribed for the purposes of this paragraph,
  - (g) (Repealed)
  - (h) a motor vehicle (not being a motor cycle) or a second-hand motor cycle that is of such design as to be incapable of being registered in New South Wales, or

- (i) a substantially demolished or substantially dismantled motor vehicle by the holder of an auto-dismantler's licence.
- (4) Where the proposed purchaser of a motor vehicle (not being a second-hand motor vehicle) is in possession of the vehicle for a period immediately preceding the day on which the proposed purchaser purchases the vehicle from a dealer then, for the purposes of section 27 (1), the proposed purchaser shall be deemed to have purchased the vehicle on the day when the proposed purchaser first acquired that possession.
- (5) Section 27 (1) does not apply to or in relation to the sale of an exempted motor vehicle (not being a motor cycle), but only if, at all material times when the vehicle is offered or displayed for sale, there is attached to the vehicle, in the prescribed manner, a notice in the prescribed form to the effect that section 27 (1) does not apply to or in relation to the sale of the vehicle.
- (6) Section 27 (1) does not apply to or in relation to the sale of an exempted second-hand motor cycle, but only if a notice in the prescribed form is delivered to the purchaser at or before the time of sale to the effect that section 27 (1) does not apply to or in relation to the sale of the motor cycle.
- (7) Section 27 (1) does not apply to or in relation to the sale of a motor vehicle by bona fide auction if, but only if, at the time of the auction there is attached to the vehicle, in the prescribed manner, a notice, in the prescribed form, to the effect that section 27 (1) does not apply to or in relation to the sale of the vehicle.

## **29 Excluded defects**

- (1) Where a dealer offers or displays for sale a second-hand motor vehicle (not being a second-hand motor cycle) the dealer may attach, or cause to be attached, to the vehicle, in the prescribed manner, a notice, in the prescribed form, 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.
- (2) If:



- (a) a notice referred to in subsection (1) and an inspection report so referred to have been attached to a second-hand motor vehicle (not being a second-hand motor cycle) at all material times when the vehicle is offered or displayed for sale by the dealer, and
- (b) at or before the time of sale of the vehicle, the notice, or a copy of the notice, has been signed by the dealer and the purchaser and has been delivered to the purchaser for retention by the purchaser,

then section 27 (1) does not apply to or in relation to the defects set out in the notice.

(3) If, at or before the time of sale of a second-hand motor cycle:

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

- (4) If in any notice referred to in subsection (1) or (3) the amount estimated as the fair cost of repairing or making good any defect set out in the notice is less than the amount of the fair cost of then repairing or making good that defect, the purchaser may sue for and recover the difference between those fair costs as a debt due to the purchaser from the dealer.
- (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.

**29A Car market operator liable for loss incurred by purchaser of encumbered vehicle in certain circumstances**

- (1) Except as provided in subsection (4), if a person has incurred a loss in connection with the sale, made after the commencement of this section, of a motor vehicle at a place at which a car market operator was, at the time of the sale, carrying on business as a

car market operator by reason of the fact that the vendor has not passed an unencumbered title to the vehicle, the person may sue for and recover the amount of the loss as a debt due to the person from the car market operator.

- (2) For the purposes of subsection (1), a motor vehicle is sold at a place at which a car market operator is, at the time of the sale, carrying on business as a car market operator, if the vehicle is offered to the purchaser at that place and at that time, but the sale is completed elsewhere.
- (3) The fact that a car market operator's licence has been revoked under section 18 or has ceased to have effect under section 17 (5) or 17A (2), or that a car market operator is not the holder of a car market operator's licence, or that a person who was once a car market operator has ceased to be a car market operator, does not affect any liability under subsection (1).
- (4) A car market operator is not liable for any loss under subsection (1) in connection with the sale of a motor vehicle if the operator satisfies the court that the notice referred to in section 29B to the effect that the title to the vehicle is not guaranteed by the car market operator was attached to the vehicle in the manner, and at the times, required by that section.

### **29B Notices to be displayed on vehicles at car markets**

A car market operator contravenes this section if a motor vehicle is offered or displayed for sale at the place at which the operator is carrying on the business of a car market operator and there is not attached to the vehicle, in the prescribed manner, a notice, in the prescribed form:

- (a) to the effect that the title to the vehicle is either:
  - (i) guaranteed by the car market operator, or
  - (ii) not guaranteed by the car market operator, and
- (b) to the effect that the vehicle is sold without statutory warranty.

### **29C Combination of notices under this Part**

- (1) A notice permitted to be attached at any time to a motor vehicle under section 29 (1) shall be combined with any notice required to be attached to the vehicle at that time under section 24 (2).
- (2) A notice required to be delivered at any time to a purchaser under section 28 (6) in order to exclude the operation of section 27 (1) or permitted to be delivered at any time to a purchaser under section 29 (3) shall be combined with any notice required to be delivered to the purchaser at that time under section 24 (5), (6) or (7).
- (3) A notice required to be combined with another notice pursuant to subsection (1) or (2)

is not in the prescribed form for the purposes of this Part if it is not so combined.

### **29CA Cooling off period**

- (1) This section applies to the purchase of a motor vehicle from a dealer where the purchaser obtains credit, for the purpose of financing the whole or part of the purchase, from the dealer or a person who is a linked credit provider (within the meaning of the *National Credit Code* as set out in Schedule 1 to the *National Consumer Credit Protection Act 2009* of the Commonwealth) of the dealer.
- (2) This section does not apply to the following sales:
  - (a) a sale by a dealer to a trade owner,
  - (b) a sale at an auction,
  - (c) a sale by a dealer of a commercial vehicle,
  - (d) a sale where credit is provided by a linked credit provider of the dealer but the provision of credit is not arranged or facilitated by the dealer.
- (3) A purchaser may, by written notice given to a dealer during the cooling off period after entering into a contract for the purchase of a motor vehicle from the dealer, terminate the contract.
- (4) Despite any other law, the purchaser is not entitled to possession of the motor vehicle during the cooling off period, unless the purchaser and the dealer otherwise agree.
- (5) The right to terminate a contract may be exercised even though the purchaser has taken delivery of the motor vehicle concerned.
- (6) A contract for the purchase of a motor vehicle to which this section applies must contain a provision, in the form prescribed by the regulations, setting out the purchaser's rights under this section and the effect of this section.
- (7) A purchaser may waive a right to terminate the contract under this section if:
  - (a) the purchaser signs a waiver in the form prescribed by the regulations, and
  - (b) any applicable requirements of the regulations are complied with.
- (8) Regulations may be made for or with respect to requirements for waivers under this section.
- (9) A notice of termination by a purchaser may be signed by the purchaser or the purchaser's Australian legal practitioner.
- (10) The cooling off period may be extended by a provision in the contract of sale or by agreement with the dealer.

(11) In this section:

**cooling off period** means the period commencing when a purchaser enters into a contract for the purchase of a motor vehicle from a motor dealer and ending:

- (a) at 5pm on the next day that the dealer carries on business with the public, or
- (b) if the dealer closes for business before 5pm on that day, at the close of business on the next day the dealer is open for business following that day.

**29CB Dealer may not dispose of trade-in during cooling off period**

(1) A dealer must not sell, give in exchange or otherwise dispose of a trade-in, or any interest in or related to a trade-in, given or agreed to be given by a purchaser under a contract during the cooling off period in which the purchaser may terminate the contract under section 29CA.

Maximum penalty: 200 penalty units.

(2) Nothing in this section renders a sale or other transaction referred to in subsection (1) unenforceable.

(3) In this section:

**trade-in** means a motor vehicle given or agreed to be given by a purchaser under a contract for the purchase of another motor vehicle in consideration for the whole or part of the purchase price.

**29CC Consequences of termination**

(1) On termination of a contract under section 29CA, the dealer must:

- (a) pay to the purchaser all money received by the dealer under the contract, less any amount that the purchaser is liable to pay under this section, and
- (b) return to the purchaser any motor vehicle given in consideration for the whole or part of the purchase price.

(2) On termination of a contract under section 29CA, a purchaser who accepted delivery of the motor vehicle before the termination must return the motor vehicle to the dealer and is liable to the dealer for any damage to the motor vehicle while it was in the purchaser's possession, other than fair wear and tear.

(3) On termination of a contract under section 29CA, a dealer who is in possession of a trade-in must return the motor vehicle to the purchaser and is liable to the purchaser for any damage to the motor vehicle while it was in the dealer's possession, other than fair wear and tear.

(4) On termination of a contract under section 29CA, the purchaser is liable:

- (a) to pay the dealer \$250 or 2% of the purchase price, whichever is the lesser, and
  - (b) to repay to the dealer any amount paid by the dealer to the purchaser in respect of a trade-in.
- (5) On termination of a contract under section 29CA, any tied loan contract (within the meaning of the *National Credit Code* as set out in Schedule 1 to the *National Consumer Credit Protection Act 2009* of the Commonwealth) is terminated. The regulations may make provision for or with respect to the termination of the tied loan contract.
- (6) A purchaser or dealer is not liable to return a motor vehicle as required by this section if the purchaser or dealer is unable to return it because of a defect in the car, not caused by the purchaser or dealer, that has rendered the motor vehicle incapable of being driven or unroadworthy. The purchaser or dealer must, however, permit the collection, or arrange for the collection, of the motor vehicle.
- (7) In this section:
- trade-in** has the same meaning as it has in section 29CB.

#### **29CD Review of cooling-off provisions**

The Minister is to review the operation of sections 29CA–29CC as soon as possible after the period of 1 year after the date of commencement of this section.

### **Part 4A Sales on consignment**

#### **29D Definitions**

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.

#### **29E Dealer's trust account**

- (1) A dealer who receives motor vehicles for sale on consignment from a consignor shall open at and maintain with one or more banks, building societies or credit unions 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) If a dealer sells a motor vehicle on consignment, the dealer must pay an amount equal to the value of the consideration received by the dealer for the sale into a trust account not later than the next day on which the bank, building society or credit union at which the account is maintained is open for business after the day on which the

dealer received the consideration.

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

**29F Withdrawal of money from dealer's trust account**

- (1) A dealer shall not, without the prior written approval of the Director-General, withdraw an amount paid into a trust account under section 29E, 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
  - (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.

**29G Protection of banks, building societies and credit unions from liability**

- (1) A bank, building society or credit union 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, building society or credit union at which a dealer maintains a trust account shall not, in respect of any liability of the dealer to the bank, building society or credit union (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.

**29H Period for accounting to consignor**

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.

### **29I Audit of dealer's trust account**

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

### **29J Special audit of dealer's trust account**

Where, at any time, the Director-General is of the opinion that the circumstances of a dealer's business so warrant it, the Director-General may require the dealer, within such period as the Director-General may specify:

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

### **29K Suspension, cancellation etc of dealer's licence**

- (1) Where it appears to the Director-General:
  - (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 an amount into a trust account as required by section 29E (2),
  - (c) that a dealer has withdrawn an amount 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 Director-General may do any one or more of the following:

- (f) suspend the dealer's licence,
- (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 Director-General may suspend or cancel the dealer's licence, as the case may be.

## Part 5 Disputes and rescissions

### 30 Definitions

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

**applicant** means a person who makes an application.

**application** means an application under section 31 (1) to the Director-General, but does not include an application that has been withdrawn.

**dispute** means a disagreement under section 31 (1) which is the subject of an application.

(2) A reference in this Part to a dealer includes a reference to a person who was a dealer when the person sold a motor vehicle that is the subject of such a disagreement as is referred to in section 31 (1) or of a dispute, notwithstanding that the person has ceased to be a dealer since that vehicle was sold.

(3) For the purposes of this Part, an obligation of a dealer to repair or make good any defect in a motor vehicle does not cease to exist by reason only that the defect has been repaired or made good by some other person.

### 31 Disputes

(1) Where, in relation to a motor vehicle, a disagreement exists between a purchaser or an owner of the vehicle, and a dealer concerning any one or more of the following, namely:

(a) the existence or extent of any obligation under section 27 on the part of the dealer to the purchaser or the owner,

(b) the manner of carrying out any such obligation,

(c) the amount of the fair cost of repairing or making good any defect referred to in section 29, or

(d) any other matter or thing, whether or not of the same kind as a matter referred to in paragraph (a), (b) or (c), arising out of the application of this Act,



the purchaser or the owner, as the case may be, may apply in writing to the Director-General to investigate the disagreement.

(2)-(4) (Repealed)

### **32 Settlement of disputes**

(1) The Director-General shall use the Director-General's best endeavours by communication with the applicant and the dealer, or otherwise, to settle a dispute.

(2)-(5) (Repealed)

### **33 Investigation by Director-General**

(1) Where the Director-General is unable under section 32 to settle a dispute the Director-General shall, subject to subsection (3), investigate the dispute.

(2) The Director-General may determine the Director-General's own procedure for the purpose of investigating a dispute.

(3), (4) (Repealed)

### **34-36 (Repealed)**

### **37 False or misleading statements**

A person shall not wilfully make any false or misleading statement in or in relation to an investigation, or any attempt to facilitate a settlement of a dispute, undertaken by the Director-General under this Part.

### **38 Rescission of sale**

(1) In this section, a reference to a court of competent jurisdiction is, in relation to an order for rescission of the sale of a motor vehicle, a reference to:

- (a) the Local Court in its exercise of jurisdiction under Part 3 of the *Local Court Act 2007* if the cash price for which the motor vehicle was sold does not exceed the jurisdictional limit of the Local Court when sitting in its General Division within the meaning of the *Local Court Act 2007*, and
- (b) the District Court if the cash price for which the motor vehicle was sold does not exceed the amount for the time being specified in section 44 (1) (a) of the *District Court Act 1973*, and
- (c) the Supreme Court.

(2) Upon application being made by the Director-General, a court of competent jurisdiction may, if:

- (a) an inspection report required under section 23B, a certificate, receipt or

declaration required under section 23C or a notice required under section 24 to be attached to a motor vehicle was not attached at all material times when the vehicle was offered or displayed for sale by a dealer,

- (b) a notice required under section 24 to be delivered by a dealer to the purchaser of a motor vehicle was not delivered at or before the time of sale of the vehicle,
- (c) the prescribed particulars contained in a notice attached to a motor vehicle, or delivered to the purchaser of a motor vehicle, by a dealer under section 24 were, in the opinion of the court, false or misleading in a material particular, or
- (d) the body of, or mechanical equipment in, a motor vehicle sold by a dealer was, at the time it was sold by the dealer, in such a condition that, in the opinion of the court, it is not practicable to repair or make good the defects in the vehicle so as to place the vehicle in a reasonable condition having regard to its age,

order that the sale be rescinded, the vehicle returned to the dealer and, subject to any order the court thinks fit to make by way of financial adjustment between the dealer and the purchaser, any consideration passed by the purchaser or the value of any such consideration assessed under subsection (5) returned to the purchaser, and make such further or consequential orders, including an order as to the payment of the costs of the application, as to the court seem necessary or desirable.

- (3) A court of competent jurisdiction shall not make an order under subsection (2) until the court has afforded the Director-General or a representative of the Director-General, and any other person likely to be affected by the order, an opportunity of being heard.
- (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 the Local Court as if it were exercising jurisdiction under Part 3 of the *Local Court Act 2007*, and
  - (b) by the District Court as if it were exercising jurisdiction under the *District Court Act 1973*.
- (4) Subject to subsection (8), where a dealer is convicted of an offence under section 23B, 23C or 24 in respect of a motor vehicle sold by the dealer, the court may, in addition to any penalty imposed, order that the sale be rescinded, the vehicle returned to the dealer and any consideration passed by the purchaser or the value of

any such consideration assessed under subsection (5) returned to the purchaser, and may make such further or consequential orders as to the court seem necessary or desirable.

- (5) Where in respect of any sale referred to in subsection (2) or subsection (4) all or part of the consideration that passed from the purchaser is represented by a motor vehicle or other thing, the court may for the purposes of this section assess the value of that motor vehicle or other thing.
- (6) Where there is a collateral credit agreement associated with a sale of a motor vehicle that has been rescinded under this section the obligations and rights of the purchaser under that agreement shall, by force of this section, be transferred from the purchaser to the dealer and subject to this section may be enforced by or against the dealer in all respects as if the dealer were the purchaser.
- (7) Notwithstanding any Act or law to the contrary, upon the making of an order rescinding a sale of a motor vehicle the rights and obligations of the parties under any contract or agreement relating to the sale or under any collateral credit agreement associated with the sale of the motor vehicle shall be as provided for in that order or in any order ancillary to or consequential upon that order.
- (8) A court shall not make an order under subsection (4) if the total amount of any consideration passed by the purchaser or the value of any such consideration assessed under subsection (5) exceeds the jurisdictional limit of the Local Court when sitting in its General Division within the meaning of the *Local Court Act 2007*.
- (9) For the purposes of this section a collateral credit agreement associated with the sale of a motor vehicle is a contract or agreement, arranged or procured by the dealer selling the vehicle, for the provision of credit by a person (other than that dealer) for the purposes of the sale of the vehicle.
- (10) The regulations may provide for the enforcement of any order made under this section.

## **Part 5A Administration**

### **38A Definitions**

- (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.

**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 the holder's or other person's 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 the holder's or other person's 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 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.

### **38B Power of Supreme Court to appoint an administrator in certain cases**

- (1) Without affecting the operation of any other provision of this Act, the Supreme Court may, on the application of the Director-General, 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 Director-General 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.

### **38C Hearing of application for appointment of administrator**

Where the Director-General 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:

- (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 an Australian legal practitioner.

### **38D Copy of order appointing administrator to be served on holder of licence etc**

As soon as practicable after the Supreme Court has made an order appointing an administrator, the Director-General 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.

### **38E Duty of administrator to administer the affairs and property of holder of licence etc**

- (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

- (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.
- (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 Director-General 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 contract or any other cause of action, which could have been taken or defended by that holder or person,
  - (c) employ an Australian legal practitioner 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.

**38F Power of administrator to prohibit withdrawal of money from bank, building society or credit union**

- (1) Where an administrator has reasonable grounds for believing that there is in any account with a bank, building society or credit union 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, building society or credit union 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, or the person apparently in charge of, the branch of the bank, building society or credit union at which an account referred to in that subsection is kept.
- (3) The bank, building society or credit union 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, building society or credit union 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, building society or credit union 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.

**38G Power of administrator to invest money**

- (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.

**38H Power of administrator to require information to be given**

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

**38I Obstruction etc of administrator**

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.

**38J Improper withdrawal of money etc**

- (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 20 penalty units 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 20 penalty units or to imprisonment

for a term not exceeding 12 months, or both.

**38K Application to Supreme Court for directions**

- (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.

**38L Claims against property administered by administrator**

- (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.

**38M Power of Supreme Court to order person to attend before Court for examination**

- (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.

### **38N Termination of appointment of administrator**

- (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 mentally incapacitated person,
  - (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 Director-General, 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 Director-General 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 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 Director-General.
- (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 an Australian legal practitioner.

- (10) Where an application is made under subsection (6) or (7), the Director-General is entitled:
- (a) to be served with a copy of the originating process, and
  - (b) to appear and be heard at the hearing of the application, either by a person acting with the authority of the Director-General as referred to in section 55A or by an Australian legal practitioner.

### **380 Expenses of administrator**

- (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 Director-General 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 Director-General 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 Director-General.
- (3) The Director-General 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 Director-General 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 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 Director-General 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 Director-General to the administrator, direct that excess amount to be refunded by the administrator.

**38P Claim or charge against administrator may be paid from Fund**

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 Director-General 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.

**38Q Power of Supreme Court to make certain orders**

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.

**38R Reports etc by administrator**

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 Director-General 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.

**Part 6 Compensation Fund**

**39 Motor Dealers Compensation Fund**

- (1) The Director-General is to cause to be established and maintained in the accounting records of the Department of Fair Trading a fund, to be called the Motor Dealers Compensation Fund.
- (2) There shall be paid into the Fund:
  - (a) such proportion of the fees paid under this Act or the regulations by holders of

dealers' licences and holders of car market operators' licences and by applicants for those licences as is determined in accordance with subsection (3), and

- (aa) any money paid or recovered under section 20E (1A), and
  - (b) any money recovered by the Director-General in the exercise of any rights, or the pursuit of any remedies, to which the Director-General is subrogated under section 41 or which the Director-General may take under section 41A.
- (3) All fees paid under this Act or the regulations by holders of dealers' licences and holders of car market operators' licences and by applicants for those licences shall be distributed between the Fund and the Consolidated Fund in the prescribed proportions.
- (4) Subject to section 42, there is to be paid out of the Fund:
- (a) the amount of any loss that is certified by the Director-General under section 40, and
  - (b) the amount of the costs of administering the Fund, as certified by the Director-General, and
  - (c) any other amount that is authorised to be paid out of the Fund by this Act or the regulations.

#### **40 Claims against Fund**

- (1) Any person wishing to make a claim against the Fund shall submit the person's claim in writing, verified by statutory declaration, to the Director-General.
- (2) Subject to this section, if the Director-General 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) because of the failure of a dealer or car market operator to comply with any requirement under this Act or the regulations or of the failure of a dealer or car market operator to account, or
  - (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, or
  - (d) because of a breach by a dealer or car market operator of a contract made by the person with the dealer or car market operator (being a breach of a kind prescribed by the regulations),

the Director-General may certify the amount of the loss.

- (3) No loss shall be certified by the Director-General under subsection (2) if the loss was incurred in connection with a motor vehicle sold before 1 May 1975.
- (3A) Subject to this section, if the Director-General is satisfied that a person submitting a claim has incurred a loss for which a car market operator is liable under section 29A (1), the Director-General may certify the amount of the loss.
- (3B) The Director-General must not give a certificate under subsection (2) or (3A) unless satisfied:
- (a) that the dealer or a car market operator with whom the person submitting the claim was dealing at the relevant time was the holder of the appropriate licence, or
  - (b) that the person submitting the claim believed on reasonable grounds that, at the relevant time, the dealer or car market operator with whom that person was dealing was the holder of such a licence.
- (4) No loss shall be certified by the Director-General under subsection (3A) unless the Director-General is satisfied that the claimant has taken all reasonable steps to exercise such legal remedies and other rights of action available in respect of the loss incurred by the claimant.
- (5) The Director-General shall not certify a loss incurred by a trade owner or by a person who was a trade owner when the person purchased the motor vehicle in connection with which the loss is incurred.
- (6) The Director-General shall not certify a loss if it is or has been the subject of a claim under section 63 of the *Motor Vehicle Repairs Act 1980* unless the claim has been withdrawn or dismissed.
- (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.
- (8) In this section:
- failure to account** means a failure by a dealer or car market operator to account for money or other valuable property entrusted to the dealer or operator (or to any employee or agent of the dealer or operator) in the course of the business carried on by the dealer or operator and which arises from any act or omission of the dealer or operator (or the employee or agent).



**trade owner** includes an auto-dismantler.

#### **41 Subrogation where claim allowed**

- (1) On payment out of the Fund of any amount certified by the Director-General, the Director-General shall, without the necessity for the execution of any form of conveyance or assignment, be subrogated to the extent of such payment to all the rights and remedies of the claimant against the person in relation to whom the claim arose or any other person incurring any liability to the claimant in relation to the subject-matter of the claim or the legal personal representatives or other persons having authority to administer any estate concerned, and the claimant shall not, to the extent of such payment be entitled to enforce those rights or remedies.
- (2) In the enforcement of any rights or remedies to which the Director-General 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.

#### **41A Recovery of money from directors**

- (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 5A of the affairs and property of the body corporate, the Director-General 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.

#### **42 Deferred payments out of Fund**

Where the amount standing to the credit of the Fund is insufficient to pay all the amounts certified by the Director-General under section 40 in any financial year, any such amount,

so far as it remains unpaid, shall be charged against future receipts of the Fund and shall be paid out of the Fund when sufficient moneys are available therein.

## **Part 6A**

### **42A, 42B (Repealed)**

## **Part 7 General**

### **43 Saving of rights and remedies**

Except as is expressly provided in this Act, nothing in this Act shall have the effect of limiting, restricting or otherwise affecting any right or remedy which a person would have if this Act had not been enacted.

### **44 No waiver of rights**

A person shall not, without the prior consent in writing of the Director-General, be competent to waive any rights conferred on the person by this Act and the purported waiver of any such rights without that consent is of no effect.

### **45 No indemnity for dealer**

- (1) Subject to subsection (2), where a dealer incurs any costs or expenses by virtue of the operation of this Act in relation to the sale of a motor vehicle, the dealer is not entitled to be indemnified in respect of those costs or expenses by any antecedent owner and any contract or agreement providing, directly or indirectly, for the dealer to be so indemnified is, to the extent that it does so, void.
- (2) Subsection (1) does not apply to a contract or agreement providing for a dealer to be indemnified, as provided in that subsection, by an antecedent owner of a motor vehicle who is a trade owner or a person who carries on the business of manufacturing or assembling motor vehicles.

### **45A Provision of information**

- (1) It is the duty of an officer of a relevant authority in charge of any record or information, access to which by the Director-General is reasonably necessary for the proper exercise of any function of the Director-General under this Act relating to licensing, disciplinary proceedings, investigations or law enforcement, to supply that record or information to the Director-General on request.
- (2) An officer of a relevant authority is authorised by this section to supply that record or information.
- (3) It is the duty of the Director-General to supply to the Commissioner of Police, or any police officer or member of the Police Service who is authorised by the Commissioner for the purposes of this section, the information relating to licences and other matters

that is reasonably necessary for the performance by police officers of their law enforcement duties.

- (4) The Director-General may, in accordance with an agreement approved by the Minister for the purposes of this subsection and entered into with an authority of this State or another State or Territory or the Commonwealth, supply to that authority a record or information provided to the Director-General under this section.
- (5) The Minister may approve an agreement for the purposes of subsection (4) only if it relates to one or more of the following:
  - (a) offences, or the regulation of conduct, relating to motor vehicles or motor vehicle dealing,
  - (b) law enforcement by an authority of another State or Territory or of the Commonwealth.
- (6) This section does not apply to the supply of a record or information to which the [Criminal Records Act 1991](#) applies.

(7) In this section:

**relevant authority** means:

- (a) the Police Service, or
- (b) the Roads and Traffic Authority, or
- (c) any other authority prescribed by the regulations for the purposes of this definition.

#### **46 Certificate of inspection**

- (1) This section does not apply to or in respect of the sale of:
  - (a) a motor vehicle to a trade owner,
  - (a1) a substantially demolished or substantially dismantled motor vehicle by an auto-dismantler,
  - (b) a motor vehicle by bona fide auction, or
  - (c) a motor vehicle if, at any time within 1 month preceding the sale, the vehicle was registered for the first time under and in accordance with the regulations or the registration of the vehicle was renewed under and in accordance with the regulations.
- (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 (or such other period as may be prescribed by the regulations) 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.

- (2A) Subject to subsection (3), a car market operator shall not permit a motor vehicle to which any number-plate is attached to be offered or displayed for sale at a place at which the operator, at the time of the offer or display, carries on the business of a car market operator, unless an inspection report issued in respect of the motor vehicle not more than 1 month (or such other period as may be prescribed by the regulations) 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.
- (3) In proceedings for an offence under subsection (2) or (2A) it is a defence if the accused person proves that the motor vehicle concerned was sold to an auto-dismantler or motor vehicle parts reconstructor for the purpose of being demolished or dismantled.
- (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 Roads and Traffic Authority 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.
- (4), (5) (Repealed)

#### **46A Loss of or damage to vehicle being repaired under warranty**

- (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 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.

#### **47 Certain misdescriptions prohibited**

- (1) A person shall not:
  - (a) (Repealed)
  - (b) state or represent as the year of manufacture of a motor vehicle a year other than the actual year of manufacture of the vehicle,
  - (c) state or represent as the year of first registration of a motor vehicle a year other than the actual year of first registration of the vehicle, or
  - (d) state or represent as the model designation of a motor vehicle a model designation other than the actual model designation of the vehicle.
- (2) (Repealed)
- (3) For the purposes of this section **year of first registration** in relation to a motor vehicle means the year in which the vehicle is first registered.
- (4) Nothing in this section affects the operation of Part 5 of the *Fair Trading Act 1987* (as in force before its repeal by the *Fair Trading Amendment (Australian Consumer Law) Act 2010*), or Part 4-1 of the *Australian Consumer Law (NSW)*, but a person shall not be prosecuted in respect of the same matter for an offence under this section and that Part.

#### **47A Odometer offences**

- (1) A person shall not interfere with the odometer of a motor vehicle.  
Maximum penalty: 100 penalty units.
- (1A) A person must not fit to a motor vehicle a device capable of rendering the odometer of the motor vehicle inoperative or inaccurate.  
Maximum penalty: 100 penalty units.
- (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.
- (3) A person may, with the written approval of the Director-General 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.

#### **47B Recovery of portion of sale price**

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.

#### **48 Failure to disclose fact of being a dealer**

- (1) A dealer who sells any motor vehicle to any person (not being a trade owner) and fails to disclose to that person the fact that the dealer is a dealer is guilty of an offence.
- (2) A person who, in the capacity of servant or agent of a dealer, negotiates any sale of a motor vehicle to any person (not being a trade owner) and fails to disclose to that person:
  - (a) the fact that the sale is being made by a dealer, or
  - (b) the name and address of the dealer,is guilty of an offence.
- (3) This section does not apply to or in connection with an exempted motor vehicle.

#### **49 Duty to report suspicious goods**

The holder of a licence, and any employee of the holder, who suspects for any reason that a motor vehicle, motor vehicle part or accessory or any other thing in the custody of the holder or employee in the course of the holder's business, or that is offered to the licence holder or employee for sale in the course of the holder's business, may have been stolen or otherwise unlawfully obtained must without delay inform an authorised officer of that suspicion.

Maximum penalty: 50 penalty units.

#### **50 Retention of suspicious goods**

- (1) An authorised officer who has reasonable grounds to suspect that a motor vehicle, motor vehicle part or accessory or any other thing in the possession of the holder of a licence has been stolen or otherwise unlawfully obtained may, by a notice specifying the thing, prohibit the licence holder, or any employee of the licence holder, from altering the form of the thing or disposing of it in any other way, or selling it or otherwise parting with possession of it, for a period of 14 days after service of the notice.
- (2) The Local Court may, on application by an authorised officer, order that the effect of a notice given under this section be extended for a further period of up to 28 days.
- (3) More than one application may be made under subsection (2).
- (4) A licence holder, or any employee of a licence holder, must not contravene a notice given under this section.

Maximum penalty: 500 penalty units.

#### **51 Representation by employee of dealer**

For the purposes of this Act any statement or representation made by an agent of a dealer or an employee of a dealer in the dealer's business as a dealer, in relation to a motor vehicle offered or displayed for sale by that dealer shall be deemed to be such a representation or statement of the dealer.

#### **52 Tender of documents for signature**

- (1) A person shall not submit or tender or cause or permit to be submitted or tendered a document, to which this section applies, to any person for that person's signature unless at the time of the submission or tendering of the document all material particulars in the document have been completed.
- (2) This section applies to any document evidencing or recording a contract for:
  - (a) the sale of a motor vehicle, or

(b) the provision of credit for the purposes of such a sale.

### **52A Falsification of documents**

- (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.

### **53 Bribery**

Any person who, without lawful authority, offers, makes or gives to any person authorised by the Director-General under section 6 or appointed by the Minister under that section, any payment, gratuity or present in consideration that that person will do or omit to do some act or thing pertaining to that person's authority or appointment is guilty of an offence.

### **53A Powers of entry etc**

- (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.
- (1A) For the purpose of searching for, or obtaining information concerning, stolen motor vehicles and stolen parts and accessories of motor vehicles, a member of the police force may:
  - (a) enter premises where a person carries on a business for which the person holds a licence or is reasonably suspected of carrying on a business for which the person is required to hold a licence,



- (b) search for and examine any motor vehicles and parts and accessories of motor vehicles on those premises,
  - (c) require the production of records,
  - (d) inspect and require explanations of any record, and
  - (e) take notes, copies and extracts of or from any record or statement produced pursuant to this section.
- (1B) The power of a member of the police force under subsection (1A) to enter premises does not permit entry to any part of premises used for residential purposes unless:
- (a) a person holds a licence granted in respect of the premises, or
  - (b) the member of the police force is acting pursuant to a search warrant under section 53AA.
- (2) If under this section production is required 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 a person exercising 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 this section 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,
  - (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, or
  - (e) conceal or attempt to conceal any motor vehicle or part or accessory of a motor vehicle that a member of the police force is entitled to search for and examine under this section.
- (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.

(5) In this section:

**stolen** means stolen or otherwise unlawfully obtained.

### **53AA Search warrants—entry of unlicensed premises**

(1) In this section:

**authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

- (2) A member of the police force may apply to an authorised officer for a search warrant if the member of the police force has reasonable grounds for believing that premises are being used for the carrying on of a business for which a person is required to hold a licence.
- (3) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for the belief referred to in subsection (2), issue a search warrant authorising a member of the police force named in the warrant to exercise, in relation to those premises, any powers of a member of the police force under section 53A (1A) for any purpose specified in that subsection.
- (4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

### **53B Production of records**

- (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.
- (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.

### **53C Extensions of time**

Where, under this Act or the regulations, the Director-General or a tribunal may extend a period, the Director-General or tribunal, as the case may be, may extend the period notwithstanding that the period has elapsed.

### **53D Service of notices and documents**

- (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,
    - (iii) without limiting the other provisions of this paragraph, where the individual is the holder of a licence, by leaving it at a 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, a 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 a 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, a 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 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.

### **53E Penalty notices for certain offences**

#### **Editorial note—**

See also Part 3 of the *Fines Act 1996*.

- (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 Director-General 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), (4) (Repealed)
- (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
  - (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.

#### **54 Contravention of Act etc by corporations**

- (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 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.
- (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.

#### **54A Penalties**

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 20 penalty units.

#### **55 Proceedings**

- (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 the Local Court, 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.

(1B) If proceedings for an offence against this Act or the regulations are brought before the Local Court, the maximum monetary penalty that the Local Court may impose in respect of the offence is, notwithstanding any other provision of this Act, 100 penalty units or the maximum monetary 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.

(2) In a prosecution for any such offence, an authority to prosecute, purporting to have been signed by the Minister or a prescribed officer, shall be evidence of such authority without proof of the signature of the Minister or the prescribed officer, as the case may be.

(3) (Repealed)

(4) In proceedings for an offence against this Act the informant may conduct the informant's case personally, or by the informant's Australian legal practitioner, or by an agent authorised by the informant in writing, or by an officer in the public service.

(5) Any such proceedings shall be commenced within 12 months after the time when the offence is alleged to have been committed 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) or (1A), at any time within 3 years after the time when the offence is alleged to have been committed.

#### **55A Proceedings to which the Director-General is a party**

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

(2) In any such proceedings, an authority to act for the Director-General, purporting to have been signed by the Director-General, shall be evidence of the authority without

proof of the signature of the Director-General.

### **55B Other orders on conviction of person**

- (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 10 of the *Crimes (Sentencing Procedure) Act 1999*.
- (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) (Repealed)
  - (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 the 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).

### **55C Forfeiture of motor vehicles and proceeds**

- (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 the Crown,
  - (b) an order that the person pay to the Crown 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.
- (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.

#### **55D Temporary restraint on disposition of property**

- (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.

(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 20 penalty units or to imprisonment for a term not exceeding 6 months, or both.

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

## **56 Evidence**

- (1) Where in any proceedings (whether for an offence against this Act or otherwise) it is proved that on a certain day or during any period a person was the holder of a dealer's licence, auto-dismantler's licence, wholesaler's licence, motor vehicle parts reconstructor's licence, car market operator's licence, motor vehicle consultant's licence or prescribed licence it shall be presumed, in the absence of proof to the contrary, that the person was a dealer, auto-dismantler, wholesaler, motor vehicle parts reconstructor, car market operator, motor vehicle consultant or person carrying on a prescribed business, as the case may be, on that day or during that period, as the case may be.
- (2) A document purporting to be certified by the Director-General and stating that a person is not, or was not, on a date specified in the document the holder of a licence shall be received in proceedings before any court or tribunal as evidence of that fact.

### **56A Evidence as to certain matters relating to licences**

A certificate of the Director-General 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.

### **56B Evidence as to publication**

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,
- (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.

#### **56C Evidence as to entries in registers**

A register required to be kept pursuant to Part 3, 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.

#### **56D Evidence of carrying on business as dealer**

- (1) If in any proceedings for an offence under this Act or the regulations it is proved that a person sold, or offered or displayed for sale, more than 4 motor vehicles within a 12 month period to any other person or persons (other than a dealer), it is presumed in the absence of proof to the contrary that the person was carrying on business as a dealer during that period.
- (2) Nothing in subsection (1) precludes a person who sells, or offers or displays for sale, 4 or less motor vehicles within a 12 month period to any other person or persons from being found to be a dealer.

#### **57 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, prescribing any matter which by this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without prejudice to the generality of subsection (1), the Governor may make regulations for or with respect to:
  - (a) regulating the conduct of any person who is required to hold a licence, or the

person's servants or agents, in carrying on the business to which the licence relates, 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,

- (a1) 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,
- (b) prohibiting or regulating the employment by any person who is required to hold a licence of persons convicted of offences under this Act or of offences involving fraud or dishonesty or other prescribed offences, or persons whose application for a licence has been refused or whose licence has been revoked,
- (c) requiring any person who is required to hold a licence, or the person's servants or agents, to make reports to prescribed persons with respect to offences involving motor vehicles or such parts of motor vehicles as may be prescribed and to forward such copies of records kept by the person, at such intervals, as may be prescribed, to persons specified in the regulations,
- (d) (Repealed)
- (e) providing for the remission of any fees, or part of any fees, paid in respect of a licence, in prescribed circumstances,
- (f) (Repealed)
- (g) prohibiting the commission by any person who is required to hold a licence of any prescribed practices,
- (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,
- (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,
- (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,
- (p1) requiring an initial contribution to be made to the Fund in respect of a licence,
- (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.

(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.

(3) The regulations may impose a penalty not exceeding 20 penalty units for an offence arising under the regulations.

(4) A provision of a regulation may:

(a) apply generally or be limited in its application by reference to specified exceptions or factors,

(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.

(5) (Repealed)

(6) A person or class of person may be prescribed for the purposes of the definition of **financier** in section 4 (1) notwithstanding that that person or class of person carries on the business of buying, selling or exchanging motor vehicles only for one or more of the purposes referred to in paragraph (a), (b), (c) or (e) of that definition.

## 58 Savings

(1) The holder of a licence under this Act is not required to hold a licence under the [Second-hand Motor Dealers Act 1956](#) and any licence under that Act shall cease to have effect upon the issue to the holder thereof of a licence under this Act.

(2) Where a licence under the [Second-hand Motor Dealers Act 1956](#) ceases to have effect (as provided in subsection (1)) the Commissioner for Motor Transport shall refund to the person who held the licence the appropriate amount in respect of that licence.

(3) For the purposes of subsection (2) the appropriate amount in respect of a licence is the amount that equals one-twelfth of the fee paid for the licence in respect of each whole month of the remainder of the period for which the licence would have remained in force if it had not ceased to have effect.

## 59 Repeal of Act No 5, 1956

The *Second-hand Motor Dealers Act 1956* (other than sections 18 and 19 thereof) is repealed.

## 60 Savings and transitional provisions

Schedule 2 has effect.

## Schedule 1 Obligation of dealer to repair defects

(Section 27 (1))

Column 1	Column 2	Column 3
Description of motor vehicle	Kilometres	Period
<b>1</b> Motor vehicle (not being a motor cycle or a second-hand motor vehicle) that has been driven for less than 15,000 km at the time it is sold by dealer	20,000 (after manufacture)	12 months less 1 month for each 2,000 km that the vehicle has been driven before sold by dealer
<b>2</b> Motor vehicle (not being a motor cycle or a second-hand motor vehicle) that has been driven for 15,000 km or more at the time it is sold by dealer	5,000 (after sale)	3 months
<b>3</b> Second-hand motor vehicle (not being a motor cycle) that has been driven for not more than 160,000 km and was manufactured not more than 10 years before the time it is sold by dealer	5,000 (after sale)	3 months
<b>4 (Repealed)</b>		
<b>5</b> Motor cycle (not being a motor cycle that is of such design as to be incapable of being registered in New South Wales, or a second-hand motor cycle) that has been driven for less than 7,000 km at the time it is sold by dealer	10,000 (after manufacture)	6 months less 1 month for each 2,000 km that the motor cycle has been driven before sold by dealer
<b>6</b> Motor cycle (not being a motor cycle that is of such design as to be incapable of being registered in New South Wales, or a second-hand motor cycle) that has been driven for 7,000 km or more at the time it is sold by dealer	3,000 (after sale)	3 months
<b>7</b> Motor cycle (not being a second-hand motor cycle) that is of such design as to be incapable of being registered in New South Wales	5,000 (after sale)	3 months

**8**

Second-hand motor cycle (not being a motor cycle of such design as to be incapable of being registered in New South Wales) that has been driven for not more than 30,000 km and was manufactured not more than 5 years before the time it is sold by dealer

3,000 (after sale)      3 months

**9, 10 (Repealed)**

## Schedule 2 Savings and transitional provisions

(Section 60)

### 1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Motor Trade Legislation Amendment Act 2001* (but only to the extent to which it amends this Act)

*Motor Dealers Amendment Act 2007*

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision 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, 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.

### 2 Definition

In this Schedule:

**2001 amending Act** means the *Motor Trade Legislation Amendment Act 2001*.

### 3 Cooling off period

Sections 29CA–29CC, as inserted by the 2001 amending Act, apply only to contracts for sale entered into after the commencement of section 29CA.

### 4 Motor Dealers Compensation Fund

(1) There is to be paid into the Motor Dealers Compensation Fund any amounts held in



the Fund constituted under section 39 immediately before the commencement of section 39 (1), as substituted by the 2001 amending Act.

- (2) There may be paid out of the Motor Dealers Compensation Fund amounts in respect of costs that arose before the commencement of section 39 (4), as substituted by the 2001 amending Act, if those amounts are amounts of the kind referred to in that subsection.

## **5 Car stealing offences**

Sections 12 (2) (i) and (4) (k), 20D (1) (d1) and 20E (1B), as inserted by the 2001 amending Act, do not apply to or in respect of an act or omission giving rise to proceedings for an offence if the act or omission occurred before the commencement of this clause.

## **6 Grant and cancellation of licences**

- (1) In this clause:

**amending Act** means the [Criminal Organisations Legislation Amendment Act 2009](#).

- (2) An application for a licence made, but not determined, before the commencement of this clause is to be dealt with under this Act as amended by the amending Act.
- (3) Sections 20D and 20E, as amended by the amending Act, extend to a licence in force immediately before the commencement of this clause.