

# Motor Vehicle Repairs Act 1980 No 71

[1980-71]



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—

- **Repeal**

The Act was repealed by sec 190 of the [Motor Dealers and Repairers Act 2013 No 107](#) with effect from 1.12.2014.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Motor Vehicle Repairs Act 1980 No 71



New South Wales

An Act to constitute the Motor Vehicle Repair Industry Authority and to confer on it functions with respect to the licensing of repair businesses and the certification of repair tradespeople; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Motor Vehicle Repairs Act 1980*.

### 2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), this Act 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### 3 (Repealed)

### 4 Definitions

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

**Authority** means the Motor Vehicle Repair Industry Authority constituted under section 7.

**certificate** means tradesperson's certificate.

**certification work** means work relating to the issue of a certificate of compliance under Part 4.5 of the *Road Transport Act 2013*.

**Chairperson** means the person appointed and holding office as Chairperson of the Authority.

**commercial vehicle owner** means a person who, for the purposes of any business carried on by the person, uses a motor vehicle for the carriage of passengers or

goods.

**Contingency Fund** means the Motor Vehicle Repair Industry Contingency Fund established under section 60 (1) (b).

**criminal intelligence** means information classified by the Commissioner of Police as criminal intelligence within the meaning of the [Crimes \(Criminal Organisations Control\) Act 2012](#), or declared by the Supreme Court under that Act to be criminal intelligence.

**Director-General** means the Director-General of the Department of Fair Trading holding office as such under Part 2 of the [Public Sector Management Act 1988](#).

**Education and Research Fund** means the Motor Vehicle Repair Industry Education and Research Fund established under section 60 (1) (c).

**exempted person**, when used in or in relation to any provision of this Act, means a person, or a person belonging to a class of person, exempted from the operation of that provision under section 5.

**functions** includes powers, authorities and duties.

**General Fund** means the Motor Vehicle Repair Industry General Fund established under section 60 (1) (a).

**General Manager** means the General Manager of the Authority.

**holder** means:

- (a) in relation to a joint licence, each person to whom the licence is granted, or
- (b) in relation to any other licence or to a certificate, the person to whom the licence or certificate is granted.

**individual** means a person other than a corporation.

**inspector** means:

- (a) a person:
  - (i) who is employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) in the Government Service to enable the Authority to exercise its functions, or
  - (ii) whose services the Authority has arranged to make use of,and who is appointed by the Authority as an inspector for the purposes of this Act, or
- (b) an investigator appointed under section 18 of the [Fair Trading Act 1987](#).

**joint application** means an application made pursuant to section 16 (2) for the grant of a joint licence.

**joint licence** means a licence granted pursuant to section 17B (3).

**licence** means a licence granted under section 17B.

**motor vehicle** means any motor car, motor carriage, motor cycle 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, but does not include:

- (a) a vehicle used on a railway or tramway,
- (b) any vehicle which is constructed or adapted otherwise than for the carriage of passengers or goods over public roads, or
- (c) anything prescribed for the purposes of this definition.

**provisional tradesperson's certificate** means a tradesperson's certificate which is designated as a provisional tradesperson's certificate under section 25.

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

**repair** includes examine, detect faults in, adjust, carry out maintenance on, overhaul, replace, alter and paint.

**repair work** means work of a class or classes prescribed by the regulations for the purposes of this definition.

**repairer** means a person who carries on the business of repairing motor vehicles, but does not include:

- (a) a person who does repair work only on motor vehicles owned or used by the person, or
- (b) a person who does repair work on motor vehicles only in the course of his or her employment with another person.

**tradesperson's certificate** means a tradesperson's certificate granted under section 24, and includes a provisional tradesperson's certificate.

**Tribunal** means the Civil and Administrative Tribunal.

- (2) A reference in this Act to the business of a repairer does not include any part of that business:
  - (a) in which the repairs done do not include any repair work as defined in subsection (1), or
  - (b) which is a business in respect of which a person is required to hold a licence under



the *Motor Dealers Act 1974*.

- (3) A reference in this Act to the performance of a function includes, where the function is a power or authority, the exercise of that power or authority.
- (4) Notes included in this Act do not form part of this Act.

## **5 Exemptions**

- (1) The Governor may, by regulation made under this Act, exempt from the operation of all or any of the provisions of this Act any person or class of person.
- (2) An exemption under subsection (1) may be given unconditionally or subject to such conditions as may be prescribed in respect of the exemption.
- (3) Where an exemption under subsection (1) is given subject to conditions, the exemption does not have effect during any period when the conditions are not complied with.

## **6 Approved forms**

- (1) An application under this Act is to be made in the form approved by the Authority.
- (2) The Authority may approve different forms for the purpose of making different applications.

## **Part 2 The Authority**

### **7 Constitution of Authority**

- (1) There is constituted by this Act a body corporate with the corporate name of the Motor Vehicle Repair Industry Authority.
- (2) The Authority is, for the purposes of any Act, a statutory body representing the Crown.

### **8 Functions of Authority**

- (1) The Authority has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) In particular, the Authority has the following functions:
  - (a) to regulate the motor vehicle repair industry in accordance with this Act and the regulations,
  - (b) to make reports and recommendations to the Minister with respect to the regulation of the motor vehicle repair industry, including the motor vehicle repair industry licensing scheme,
  - (c) to inform the public about the motor vehicle repair industry,

- (d) to keep under review, and promote improvement in the standard of, motor vehicle repair work,
- (e) to promote and undertake research into the motor vehicle repair industry,
- (f) whenever it considers it necessary to do so or it is requested to do so by the Minister, to make reports or recommendations to the Minister with respect to the motor vehicle repair industry.

(3) The Authority is, in the exercise of its functions other than making a report or recommendation to the Minister, subject to the control and direction of the Minister.

(4) The Authority cannot employ any staff.

**Note—**

Staff may be employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) in the Government Service to enable the Authority to exercise its functions.

**9-11 (Repealed)**

**12 Role of General Manager**

- (1) The General Manager is responsible for the day-to-day management of the Authority.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the General Manager is taken to have been done by the Authority.

**13, 14 (Repealed)**

**Part 3 Licences and certificates**

**Division 1 Repairers' licences**

**15 Licences**

- (1) A person (other than an exempted person) must not:
  - (a) carry on or advertise that the person carries on or is willing to carry on the business of a repairer in respect of any repair work unless the person is the holder of a licence in respect of a class of repair work that includes that repair work, or
  - (b) carry on the business of a repairer at any place of business unless the person is the holder of a licence granted in respect of that place of business.

Maximum penalty: 1,000 penalty units.

**Note—**

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 88.

- (2) A person carries on the business of a repairer if the person does so either by himself or herself, as a member of a partnership or by his or her servant or agent.
- (3) The holder of a licence in respect of a class of repair work who carries on the business of a repairer in respect of any other class of repair work does not contravene subsection (1) if:
  - (a) that other class of repair work is done by the holder of a licence in respect of a class of repair work that includes that other class of repair work pursuant to an agreement between the holders of those licences, and
  - (b) he or she does not advertise that he or she carries on or is willing to carry on the business of a repairer in respect of that other class of repair work.
- (4) A person who is convicted of a second or subsequent offence under this section is liable to a penalty not exceeding 1,000 penalty units or imprisonment for a term not exceeding 12 months, or both.

## **16 Application for licence**

- (1) An application for a licence may be made to the Authority:
  - (a) by an individual of or over the age of 18 years, or
  - (b) by a body corporate if all persons concerned in the management of the body corporate are of or over the age of 18 years.
- (2) Two or more persons intending to carry on in partnership the business of a repairer may, but are not required to, apply for the grant of a joint licence.
- (3) An application:
  - (a) is to be accompanied by the fee prescribed by the regulations for the application, and
  - (b) is to be signed by each applicant who is an individual, or, if an applicant is a body corporate, by at least one director of the body corporate.
- (4) An application must specify the following matters:
  - (a) the name and address of the applicant or applicants or, if an applicant is a body corporate, of each director of the body corporate,
  - (b) if the applicant is a body corporate, the date and place of incorporation of the body corporate, its corporate name and the address of its registered office,
  - (c) the class or classes of repair work in respect of which the application is made,
  - (d) the address of any place or places of business at which, and the name or names

under which, the applicant intends to carry on business pursuant to the authority that would be conferred by the licence if it were granted.

- (5) If the particulars specified under subsection (4) in an application change before the application is determined, the applicant or applicants must, not later than 14 days after the change occurs, notify the Authority of the particulars of the change. The notice must be signed by the applicant or applicants or, if the applicant is a body corporate, by a director of the body corporate.

Maximum penalty: 20 penalty units.

- (6) An applicant for a licence must, if required to do so by the Authority, provide the Authority with any additional particulars, and any additional documents in relation to those particulars, that the Authority requires.

Maximum penalty (subsection (6)): 20 penalty units.

### **17 False or misleading information in applications and notices**

A person must not make a statement that the person knows is false or misleading in, or in relation to, any of the following:

- (a) an application for a licence,
- (b) a notice specifying changed particulars relating to an application for a licence,
- (c) the provision of additional particulars or additional documents required by the Authority in relation to a licence application.

Maximum penalty: 20 penalty units.

### **17A Investigation of application**

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

### **17B Grant of licences**

- (1) The Authority must grant an application for a licence, except in the circumstances set out in section 18.
- (2) The Authority may grant a licence in respect of one or more classes of repair work.
- (3) The Authority may grant a licence in the name of 2 or more persons who make a joint application, in respect of one or more classes of repair work.

- (4) The Authority may grant a licence in respect of one or more classes of repair work that is not granted with respect to a place of business.
- (5) If an application is made for the grant of one licence with respect to 2 or more places of business or classes of repair work, the Authority may, in granting a licence:
  - (a) grant the licence in respect of all of those places or classes of repair work, or
  - (b) grant the licence in respect of one or some only of those places or classes of repair work.

### **18 Refusal of application for licence**

- (1) The Authority must refuse an application made by an individual (whether in his or her own right or as part of a joint application) if it appears to the Authority that:
  - (a) the applicant has not attained the age of 18 years, or
  - (b) the applicant is disqualified from holding a licence, or
  - (c) the applicant is an undischarged bankrupt, or
  - (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, or
  - (e) the applicant is not a person likely to carry on such a business honestly and fairly, or
  - (f) the applicant does not have the qualifications (if any) prescribed by the regulations, or
  - (g) the applicant does not have the material resources and other resources (if any) prescribed by the regulations, or
  - (h) the application does not comply with section 16 or the applicant has not complied with a requirement made under section 16 (6), or
  - (i) the applicant is in any other way not a fit and proper person to hold a licence, or
  - (j) 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, or
  - (k) the applicant is a controlled member of a declared organisation within the

meaning of the *Crimes (Criminal Organisations Control) Act 2012*.

**Note—**

Controlled members are prohibited from applying for licences—see section 27 of the *Crimes (Criminal Organisations Control) Act 2012*.

- (2) Without affecting the generality of subsection (1) (i), the Authority may, in determining whether an applicant is not a fit and proper person to be the holder of a licence, have regard to any of the following:
- (a) whether the applicant 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) whether the applicant was, when the application was made, subject to a good behaviour bond in relation to such an offence,
  - (c) whether there was, when the application was made, a charge pending against the applicant in relation to such an offence,
  - (d) whether the applicant has, at any other time, been convicted of an offence against this Act or the regulations or any other Act or regulation administered by the Minister.
- (2A) Without affecting the generality of subsection (1) (i), an applicant is not a fit and proper person to be the holder of a licence if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the applicant that:
- (a) the applicant 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 2012*, and
  - (b) the nature and circumstances of the applicant'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 applicant is granted a licence.
- (2B) The Authority is not, under this or any other Act or law, required to give any reasons for refusing an application for a licence because of subsection (2A) to the extent that the giving of those reasons would disclose any criminal intelligence.
- (3) The Authority must refuse an application made by a body corporate (whether in its own right or as part of a joint application) if it appears to the Authority that:
- (a) a person concerned in the management of the body corporate has not attained the age of 18 years, or

- (b) the body corporate is disqualified from holding a licence, or
  - (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, or
  - (d) the body corporate is not likely to carry on such a business honestly and fairly, or
  - (e) the officers of the body corporate do not have the qualifications (if any) prescribed by the regulations, or
  - (f) the body corporate does not have the material resources and other resources (if any) prescribed by the regulations, or
  - (g) the application does not comply with section 16 or the applicant has not complied with a requirement made under section 16 (6), or
  - (h) the reputation of the body corporate is such that it would not be a fit and proper person to hold a licence, or
  - (i) 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 hold a licence if the director or person were to apply for the licence personally, or
  - (j) any person other than an officer of the body corporate who, in the opinion of the Authority, 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
  - (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.
- (4) For the purposes of determining an application for a joint licence, or an application by a person who intends to carry on business in partnership with another person, the Authority must, for the purposes of subsections (1) (d) and (g) and (3) (c) and (f), take into account the resources that the joint applicants or proposed partners have together.
- (5) Without affecting the generality of subsection (3) (h), (i) or (j), the Authority may, in determining any matter referred to in those paragraphs, have regard, if applicable, to

the fact that the body corporate or a person referred to in those paragraphs has, at any time, been convicted of an offence against this Act or the regulations or any other Act or regulation administered by the Minister.

- (6) The Authority may refuse an application if:
  - (a) some other licence is in force in respect of a place of business, or any part of that place, to which the application relates, or
  - (b) the carrying on of the business at any such place, or part of a place, is, for any reason, unlawful.
- (7) An application for a licence must not be granted until the applicant has paid the licence fee to the Authority.
- (8) The Authority may require any of the following persons to appear personally before the Authority to satisfy the Authority as to any relevant matters under this section that the Authority may require:
  - (a) any individual to whom the application relates,
  - (b) the directors and officers of the body corporate to which the application relates.
- (9) Despite any other provision of this section, the Authority may refrain from granting an application for a licence until the Authority is satisfied as to any relevant matter under subsection (8).

#### **18A Grant of approval for licence**

- (1) If the Authority would, but for the inability of the applicant or applicants for a licence to satisfy the Authority as to any matter relating to a proposed place of business, grant the licence, the Authority may defer consideration of the application and grant the applicant or applicants approval for the licence in the form determined by the Authority.
- (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 remains in force for such period as is specified in the approval.
- (4) If, during the period an approval is in force, the applicant satisfies the Authority:
  - (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 Authority,



the Authority is to grant the application.

(5) (Repealed)

### **18B Name under which holder of licence may operate**

- (1) 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 must 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 to do so under this section.

Maximum penalty: 20 penalty units.

- (3) This section is subject to the [Business Names Registration Act 2011](#) of the Commonwealth.

### **19 Form of licence**

A licence is to be issued by the Authority in the form approved by the Authority and:

- (a) is to specify the name of the person or, in the case of a joint licence, the name of the persons, to whom the licence is granted, and
- (b) is to specify the class or classes of repair work in respect of which it is granted, and
- (c) is to specify any place or places of business in respect of which it is granted, and
- (d) if it authorises the holder to carry on business under a name or names in addition to, or in substitution for, the name of the holder, is to be endorsed to that effect, and
- (e) if it is subject to a condition or restriction, is to be endorsed to that effect.

### **20 Amendment of licence**

- (1) The applications to which this section relates are applications for the amendment:
  - (a) of a licence by substituting for, or adding to, the reference in the licence to a class of repair work a reference to another class of repair work,
  - (b) of a licence by substituting for the reference in the licence to a place of business a reference to another place of business or by inserting or omitting a reference to a place of business,
  - (c) of a licence by including a reference to an additional place of business in respect of which the licence is granted,
  - (d) of a licence by adding or amending an endorsement authorising the holder to

carry on business under a name or names, or

(e) (Repealed)

(f) of a licence in such other manner as may be prescribed.

- (2) An application referred to in subsection (1) is to be accompanied by the prescribed fee.
- (3) An application is not to be granted if the Authority is satisfied that an application for the licence (as proposed to be amended) would be refused.
- (4) The holder of a licence must, not later than 14 days after ceasing to carry on business at a place of business specified in the licence (as issued or as varied under this section) give to the Authority notice in writing that the holder has ceased to carry on business at that place.

Maximum penalty (subsection (4)): 20 penalty units.

(5)–(7) (Repealed)

(8) Where an application referred to in:

- (a) subsection (1) (a) is granted and the licence is amended by substituting or adding a reference to another class of repair work, that class of repair work is a class of repair work in respect of which the licence is granted,
- (b) subsection (1) (b) is granted and the licence is amended by substituting, inserting or omitting a reference to a place of business, a place of business so substituted, inserted or omitted is, or ceases to be, (as the case requires) a place of business in respect of which the licence is granted,
- (c) subsection (1) (c) is granted and the licence is amended by including a reference to an additional place of business, that place of business is a place of business in respect of which the licence is granted.
- (d) (Repealed)

## **20A Transfer of licence if partners change**

- (1) The Authority may, on the application of the holder of a licence, transfer the licence if it is proposed:
  - (a) to include a partner or an additional partner as the joint holder of the licence, or
  - (b) to exclude a partner from being a joint holder of the licence.
- (2) An application under this section is to be refused if an application for the transferred licence would be refused.

## **21 Duration of licence and annual licence fee**

- (1) A licence has effect on and from the date of issue of the licence.
- (2) Except while it is suspended, a licence continues in force until it is duly surrendered, cancelled or revoked or ceases to have effect under subsection (5).
- (3) The prescribed fee in respect of a licence is payable annually on or before the anniversary of the date of issue of the licence in the year concerned.
- (3A) A holder of a licence, or a person who held a licence during a year or part of a year preceding a date referred to in subsection (3), must lodge with the Authority a statement in respect of that year or part year.
- (3B) The statement is to be in the form approved by the Authority, must be accompanied by the documents (if any) required by the regulations and must be lodged not later than one month after the end of the year in respect of which it is lodged or such other period as the Authority may permit.
- (4) A person whose licence is suspended continues to be liable to pay the prescribed fee and to supply information under this Act, but is not otherwise taken to be the holder of the licence (except for the purpose of its surrender).
- (5) If a holder of a licence contravenes this section, the Authority must give a written notice to the holder specifying that the licence will be cancelled, unless the holder complies within 14 days after the notice is given.
- (5A) The Authority must cancel the licence of a person who fails to comply within 14 days after the notice is given.
- (5B) A person must not make a statement that the person knows is false or misleading in, or in relation to, a statement or document required to be provided under this section.  
Maximum penalty (subsection (5B)): 20 penalty units.
- (5C) The Authority may reinstate a licence cancelled under this section but only if satisfied that there is a reasonable explanation for the failure to pay the fee or lodge the statement that resulted in the cancellation of the licence.
- (5D) The reinstatement of a licence does not take effect until the unpaid fee is paid or the statement is lodged, or both the fee is paid and the statement is lodged, as the case requires.
- (6) When a licence is cancelled or is suspended, the person who was or is the holder of the licence is to deliver it promptly to the Authority.  
Maximum penalty (subsection (6)): 2 penalty units.

## **21A Transfer or loan of licences**

- (1) The holder of a licence must not:
  - (a) transfer, attempt to transfer or lend the licence to another person, or
  - (b) allow the use of the licence by another person.
- (2) A person must not:
  - (a) attempt to obtain the transfer to the person of a licence, or
  - (b) attempt to borrow or borrow or use a licence of which the person is not the holder.

Maximum penalty: 20 penalty units.

## **Division 2 Tradespeople's certificates**

### **22 Tradesperson's certificate**

- (1) A repairer or commercial vehicle owner (other than an exempted person) must not permit a person employed by him or her to do any repair work unless the person so employed:
  - (a) holds a tradesperson's certificate in respect of a class of repair work that includes that repair work, or
  - (b) is an apprentice and does that repair work in the course of his or her apprenticeship and under the supervision of a person who holds such a certificate.

Maximum penalty: 20 penalty units.

- (2) A repairer (other than an exempted person) must not personally do any repair work in connection with his or her business unless he or she holds a tradesperson's certificate in respect of a class of repair work that includes that repair work.

Maximum penalty: 20 penalty units.

(2A) (Repealed)

- (3) A repairer or commercial vehicle owner (other than an exempted person) must not enter into an agreement for any repair work to be done by any person who does not hold a licence.

Maximum penalty: 20 penalty units.

- (4) An insurer with whom the owner of a motor vehicle has entered into any contract of insurance in respect of damage to that motor vehicle shall not enter into an agreement, or require the owner to enter into an agreement, for any repair work to be done on that motor vehicle by any person who does not hold a licence or specify in

the contract of insurance a repairer who does not hold a licence.

Maximum penalty: 20 penalty units.

**Note—**

An offence against subsection (1), (3) or (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 88.

**23 Application for tradesperson's certificate**

An application for the grant of a tradesperson's certificate shall:

- (a) be lodged with the Authority, and
- (b) specify the class or classes of repair work in respect of which the application is made.

**24 Grant of tradesperson's certificate**

- (1) Subject to subsection (3) and section 25, on payment of the appropriate fee the Authority shall, when an application is made by an individual for the grant of a tradesperson's certificate in respect of any class of repair work, grant to the individual a tradesperson's certificate in respect of that class of repair work.
- (1A) The Authority may grant a tradesperson's certificate in respect of more than 1 class of repair work.
- (2) The appropriate fee is \$25 or, where some other fee is prescribed, that other fee.
- (3) The Authority shall not grant to an individual a tradesperson's certificate in respect of any class of repair work unless it is satisfied that:
  - (a) the individual is a fit person to hold a tradesperson's certificate, and
  - (b) the individual:
    - (i) has such qualifications or has passed such examinations as may be prescribed in relation to the tradesperson's certificate in respect of that class of repair work, or
    - (ii) has such other qualifications or experience or has passed such other examinations as may be determined by the Authority in relation to the tradesperson's certificate in respect of that class of repair work.
- (4) Without affecting the generality of subsection (3) (a), an individual is not a fit person to be the holder of a tradesperson's certificate if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the individual that:
  - (a) the individual 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 2012*, and

(b) the nature and circumstances of the individual'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 individual is granted a certificate.

(5) The Authority is not, under this or any other Act or law, required to give any reasons for not granting a certificate because of subsection (4) to the extent that the giving of those reasons would disclose any criminal intelligence.

## **25 Provisional tradesperson's certificate**

(1) The Authority may grant to an individual a tradesperson's certificate in respect of any class of repair work notwithstanding that the individual has not met the requirement referred to in section 24 (3) (b) if it is satisfied that the individual has acquired or is capable of acquiring the skills that will enable him or her to meet that requirement in respect of that class of repair work.

(2) A tradesperson's certificate referred to in subsection (1) shall be designated by the Authority as a provisional tradesperson's certificate.

(3) A provisional tradesperson's certificate is subject to such conditions and restrictions as may be specified on it by the Authority at the time it grants the certificate.

(4) If the holder of a provisional tradesperson's certificate does repair work in breach of any condition or restriction to which the certificate is subject he or she shall, for the purposes of section 22, be deemed not to be the holder of a tradesperson's certificate when he or she does that work.

(5) Where an individual who holds or has held a provisional tradesperson's certificate applies, not more than 3 months after the expiry date specified on the provisional tradesperson's certificate, for the grant of a tradesperson's certificate, the appropriate fee in respect of that application shall be deemed to have been paid.

## **26 Form of tradesperson's certificate**

A tradesperson's certificate shall be in the form approved by the Authority and, without prejudice to the inclusion in the certificate of any other particulars, shall:

(a) specify the date of issue of the certificate,

(b) specify the name of the individual to whom the certificate is granted,

(c) specify the class or classes of repair work in respect of which the certificate is granted, and

- (d) in the case of a provisional tradesperson's certificate:
  - (i) specify the conditions and restrictions to which the certificate is subject, and
  - (ii) specify the date until and including which the certificate is in force.

## **27 Duration of certificate**

- (1) A tradesperson's certificate has effect from and including its date of issue.
- (2) A tradesperson's certificate continues in force:
  - (a) except as provided in paragraph (b)—until it is revoked or surrendered, or
  - (b) in the case of a provisional tradesperson's certificate—until and including the date determined by the Authority and specified on the certificate, or until it is revoked or surrendered, whichever first occurs,but is not in force during any period of suspension.

## **27A Transfer or loan of tradesperson's certificate**

- (1) The holder of a tradesperson's certificate must not:
  - (a) transfer, attempt to transfer or lend the certificate to another person, or
  - (b) allow the use of the certificate by another person.
- (2) A person must not:
  - (a) attempt to obtain the transfer to the person of a tradesperson's certificate, or
  - (b) attempt to borrow, or borrow or use, a tradesperson's certificate of which the person is not the holder.

Maximum penalty: 20 penalty units.

## **Division 3**

### **28-32 (Repealed)**

## **Division 4 Licences and certificates generally**

### **33 Conditions of, and restrictions on, licences and certificates**

- (1) The Authority may, on granting a licence or certificate or at any other time, impose conditions or restrictions on the licence or certificate.
- (2) The Authority may, on the application of the holder or on the Authority's own motion, vary or revoke a condition or restriction imposed on a licence or certificate.
- (3) A licence or certificate is subject:

- (a) to any conditions or restrictions prescribed by the regulations, and
  - (b) to any conditions or restrictions imposed by the Authority under this section.
- (4) The Authority must not impose or vary a condition of or restriction on a licence or certificate unless the Authority has first given the relevant applicant or holder an opportunity to make submissions, orally or in writing, and adduce evidence, with respect to the proposed condition or restriction or variation.
- (5) Nothing in this section affects the exercise of powers by the Authority under section 26.
- (6) If a condition or restriction is imposed or varied under this section on a current licence or certificate, the holder of the licence or certificate must produce the licence or certificate to the Authority, within the time specified by the Authority, for endorsement of the condition or restriction.

Maximum penalty (subsection (6)): 20 penalty units.

#### **34 Notice of refusal**

- (1) Where the Authority refuses to grant a licence or certificate or to grant an application for the amendment or transfer of a licence, it shall cause a notice of refusal to be served on the applicant for the licence or certificate, or on the applicant for the amendment or transfer, as the case may require.
- (2) In the case of a joint application for the grant or amendment or transfer of a licence it is a sufficient compliance with subsection (1) if the notice of refusal is served on any 1 of the applicants.
- (3) A notice of refusal shall state the reasons for the refusal.
- (4) For the purposes of this Act, the Authority shall be deemed to have refused to grant a licence or certificate or to grant an application for the amendment or transfer of a licence if it does not give a decision on an application:
- (a) duly made with respect to that grant, and
  - (b) accompanied by the fee (if any) appropriate to that application,
- within 3 months after the application is lodged with the Authority.
- (5), (6) (Repealed)

#### **35 Surrender of certificate**

- (1) A holder of a licence or certificate may surrender it by delivering it to the Authority with a notification in writing that the licence or certificate, as the case requires, is surrendered.



- (2) However, the holder of a licence or certificate on whom notice to show cause has been served under section 45 (1) or (4) (whether before, on or after the commencement of this subsection) may not surrender the licence or certificate concerned unless the Authority has made a determination under section 48 in relation to each matter to which the notice relates.

**36 (Repealed)**

**37 Duplicate licence or certificate**

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

**38 Registers of licences and certificates**

- (1) For the purposes of this Act:
- (a) a register of licences is to be kept which includes particulars of licences and other prescribed particulars, and
  - (b) a register of certificates is to be kept which includes particulars of certificates and other prescribed particulars.
- (2) The registers are to be kept by the Authority in the form determined by the Authority.
- (2A) (Repealed)
- (3) A register may, at all reasonable hours, be inspected, and copies of all or any part of any entry in the register taken:
- (a) without payment by:
    - (i) any member of the NSW Police Force in his or her capacity as such a member,
    - (ii) any public servant in his or her capacity as such a servant, and
    - (iii) any person authorised by the Authority, or
  - (b) on payment of the prescribed fee, by any other person.
- (4) A register shall be received in proceedings before the Authority, the Director-General or any court or tribunal as evidence of the matters required by or under this Act to be recorded in it, and any document purporting to be certified by the Authority to be a true copy of an entry in the register shall be received in proceedings before the Authority, the Director-General or any court or tribunal as evidence of any such matters contained in the entry.
- (5) The Authority 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 or certificate.

### **39 False or misleading statements in certificate applications**

A person must not, in an application for a certificate, make any statement that the person knows to be false or misleading in a material particular.

Maximum penalty: 20 penalty units.

### **40 Holding out as holder of certificate**

A person shall not hold himself or herself out as:

- (a) a holder of a certificate if he or she does not hold a certificate, or
- (b) a holder of a particular certificate or a certificate of a particular kind if he or she does not hold that or such a certificate.

Maximum penalty: 20 penalty units.

## **Part 4 Disciplinary proceedings**

### **41 Show cause notices**

- (1) The Authority may issue a show cause notice to the holder of a licence or certificate if the Authority is of the opinion that there are reasonable grounds for believing that a ground exists on which the holder may be dealt with under this Part.
- (2) A show cause notice is to be given in writing and is to call on the holder to show cause, within a period specified in the notice (being not less than 14 days), why the holder should not, for the reasons specified in the notice, be dealt with in accordance with this Part.
- (2A) Subsection (2) does not require the Authority to disclose any criminal intelligence in a notice served on the holder of a licence or certificate because of the matter referred to in section 42 (1) (na) or 43 (fa).
- (3) The following persons may, within the period specified in a show cause notice, make submissions, orally or in writing, and adduce evidence, with respect to the matters to which the notice relates:
  - (a) the holder of a licence or certificate on whom the notice has been served,
  - (b) if the holder of a licence is a body corporate, a director or officer of the body corporate.
- (4) The Authority may, if the Authority thinks fit, conduct an inquiry or make an investigation in relation to the matters to which the notice relates, the submissions made, if any, and the evidence adduced, if any, by or on behalf of the holder of the

licence or certificate in relation to those matters.

- (5) Any such inquiry or investigation may be conducted in the manner determined by the Authority.

#### **42 Grounds on which a licence holder may be dealt with under this Part**

- (1) The following are the grounds on which a holder of a licence may be dealt with under this Part:
- (a) that the holder has carried on the business of a repairer in such a manner that the repair work done in connection with that business has been below usual trade standards,
  - (b) that the licence may have been improperly obtained or, when the licence was granted, there may have been grounds for refusing to grant it,
  - (c) that the holder has been convicted of an offence against this Act or the regulations or any other Act or regulation administered by the Minister,
  - (d) that the holder 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,
  - (d1) that the holder has been convicted of an offence under, or may have failed to comply with, section 98 of the *Road Transport Act 2013* or statutory rules made for the purposes of Part 4.5 of that Act,
  - (e) that the holder 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,
  - (f) 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,
  - (g) that the Authority considers, in the light of evidence acceptable to the Authority, that the holder is probably receiving or dealing in stolen goods,
  - (h) that the business to which the licence relates is being carried on in a dishonest or unfair manner,
  - (i) in the case of a holder of a licence (other than a joint licence) in respect of any

class of repair work—that the material, financial and other resources of the holder of the licence, together with those of the persons with whom the holder carries on the business of a repairer in partnership, are not sufficient to enable the holder to carry on the business of a repairer in respect of that class of repair work,

- (j) in the case of a holder of a joint licence in respect of any class of repair work—the holders of the licence together do not have sufficient material, financial and other resources to carry on the business of a repairer in respect of that class of repair work,
  - (k) that, if the person were not the holder of a licence, the Authority would be required by this Act to refuse an application by the person for a licence,
  - (l) that, in the case of a body corporate, the body corporate:
    - (i) is in the course of being wound up, or
    - (ii) is a body corporate in respect of which a receiver or other controller has been appointed, or
    - (iii) 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,
  - (m) that the holder has, for a period of one month or more, ceased to carry on the business to which the licence relates at a place of business to which the licence relates,
  - (n) that the holder 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,
  - (na) that the holder is not a fit and proper person to continue to hold a licence for the same reason as that set out in section 18 (2A) in relation to the grant of a licence,
  - (o) that the holder is, for any other reason, not a fit and proper person to continue to hold a licence.
- (2) By way of example of the operation of subsection (1) (g), the Authority may consider that the holder of a licence in whose custody stolen goods are found is probably receiving or dealing in stolen goods.

#### **43 Grounds on which a certificate holder may be dealt with under this Part**

The following grounds are the grounds on which a holder of a certificate may be dealt with under this Part:

- (a) that the holder is not competent to do repair work of the class to which the certificate

relates,

- (b) that the certificate may have been improperly obtained, or when the certificate was granted, there may have been grounds for refusing to grant it,
- (c) that the holder has failed to comply with any condition or restriction to which the certificate is subject,
- (d) that the holder has been convicted of an offence against this Act or the regulations or any other Act or regulation administered by the Minister,
- (e) that the holder may have failed to comply with this Act or the regulations, a condition or restriction to which the certificate is subject or an order of the Tribunal applicable to the holder,
- (f) that, if the person were not the holder of a certificate, the Authority would be required by this Act to refuse an application by the person for a certificate,
- (fa) that the holder is not a fit person to continue to hold a certificate for the same reason as that set out in section 24 (4) in relation to the grant of a certificate,
- (g) that the holder is, for any other reason, not a fit and proper person to continue to hold a certificate.

#### **44 Determination of disciplinary measures by Authority**

- (1) The Authority may, after complying with section 41, take any of the following actions if satisfied that a ground exists on which the holder of a licence or certificate may be dealt with under this Part:
  - (a) reprimand the holder,
  - (b) require the holder to comply within a specified time with a requirement specified by the Authority, being a requirement relating to the conduct of the business or other activity to which the licence or certificate relates or to any other thing regulated by or under this Act,
  - (c) suspend the licence or certificate for a period not exceeding 12 months,
  - (d) in the case of the holder of a licence, disqualify the holder 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 Authority thinks fit,
  - (e) impose a condition or restriction on the licence or certificate,
  - (f) cancel the licence or certificate.

- (2) Without limiting the powers conferred by subsection (1), among the requirements that the Authority may specify under subsection (1) (b) is a requirement that the holder of the licence concerned:
- (a) make a contribution to the Contingency Fund of such amount as the Authority specifies, or
  - (b) indemnify the Fund to such extent as the Authority specifies in the event of a particular contingency arising concerning the activities of the holder of the licence.
- (3) Despite subsection (1), the Authority must cancel the licence concerned if satisfied that:
- (a) a matter referred to in section 42 (1) (f) 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 Authority would be required by section 18 (3) (k) to refuse an application by the body corporate for a licence.
- (3A) Despite subsection (1), the Authority must cancel the licence or certificate concerned if satisfied that the matter referred to in section 42 (1) (na) or 43 (fa), respectively, has been established.
- (4) A holder of a licence or certificate must comply with a requirement of the Authority specified under subsection (1) (b) within the time specified by the Authority.
- Maximum penalty: 20 penalty units.
- (5) If the Authority disqualifies the holder of a licence, the Authority must cancel the licence.
- (6) A cancellation or suspension of a licence or certificate under this section takes effect on and from the day determined by the Authority and notified in writing to the holder of the licence or certificate.
- (7) The holder of a licence or certificate that is suspended or the former holder of a licence or certificate that is cancelled must return the licence or certificate to the Authority within the period specified by the Authority when suspending or cancelling the licence.
- Maximum penalty: 20 penalty units.
- (8) A person disqualified under this section must 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.

Maximum penalty (subsection (8)): 20 penalty units.

#### **45 Administrative reviews by Civil and Administrative Tribunal**

(1) If the Authority:

- (a) refuses to grant an application for, or suspends or cancels, a licence or certificate, or
- (b) refuses to grant an application for the amendment of a licence, or
- (c) imposes or varies a condition or restriction on a licence or certificate, or
- (d) makes a requirement under section 44 (1) (b), or
- (e) imposes a disqualification referred to in section 44 (1) (d),

the applicant, the person who holds or held the licence or certificate or the person disqualified may apply to the Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the decision of the Authority.

(1A) In determining an application for administrative review of any decision to refuse to grant a licence or certificate on the grounds referred to in section 18 (2A) or 24 (4) or cancel such a licence or certificate under section 44, the Tribunal (and any Appeal Panel of the Tribunal in determining any internal appeal against such a review under the [Civil and Administrative Tribunal Act 2013](#)):

- (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 the administrative review and the applicant's representative and any other interested party,

unless the Commissioner of Police approves otherwise.

(2) On an application for an administrative review of a decision of the Authority to refuse to grant a licence to a person because of a fact referred to in section 18 (3) or (5), the 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.

## **Part 5 Unjust conduct by repairers**

### **46 Meaning of “unjust” conduct**

For the purposes of this Part, conduct of a repairer (whether or not the repairer is the holder of a licence or is an exempted person) is **unjust** if it is conduct:

- (a) that is dishonest or unfair, or
- (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, or
- (c) that consists of the contravention of this Act or the regulations or any other Act or regulation administered by the Minister, or
- (d) that consists of a failure to comply with a condition or restriction to which the licence is subject or an order of the Tribunal applicable to the holder.

### **47 Undertakings by repairer**

- (1) If it appears to the Authority that a repairer has, in the course of business, repeatedly engaged in unjust conduct, the Authority may, with the consent of the Minister:
  - (a) request the repairer to execute a deed in terms approved by the Authority under which the repairer gives undertakings as to:
    - (i) the discontinuance of the unjust conduct, and
    - (ii) the repairer’s future conduct, and
    - (iii) the action the repairer will take to rectify the consequences of the repairer’s unjust conduct, or
  - (b) apply to the Tribunal under section 49.
- (2) If the Authority makes a request or application under this section, it is presumed, unless the contrary is proved, that the Authority does so with the consent of the Minister.
- (3) The following action may not be taken against a repairer, in respect of conduct the subject of undertakings in a deed approved under this section, if the repairer observes the undertakings:
  - (a) action under Part 4,
  - (b) an application for an order under section 49.
- (4) A repairer who executes a deed under this Part must observe the undertakings given by the repairer in the deed.



Maximum penalty: 20 penalty units.

- (5) A prosecution for an offence under subsection (4) may be instituted only by the Authority with the leave of the Tribunal given when making an order under section 49 (2).

#### **48 Register of Undertakings**

- (1) The Authority must lodge a copy of any deed executed under this Part with the principal registrar of the Tribunal and give a copy of the deed to the repairer who executed it.
- (2) The Authority must:
  - (a) retain all deeds executed under this Part, and
  - (b) register the deeds in a Register of Undertakings kept by the Authority.
- (3) The Register of Undertakings is to contain the particulars prescribed by the regulations.

#### **49 Restraint of unjust conduct**

- (1) If, on the application of the Authority, the Tribunal is satisfied after inquiry that a repairer has repeatedly engaged in unjust conduct, the Tribunal may order the repairer to refrain from engaging in unjust conduct in the course of carrying on the business.
- (2) If, on the application of the Authority, the Tribunal is satisfied that a repairer has failed to observe an undertaking given by the repairer in a deed executed under this Part, the Tribunal may:
  - (a) order the repairer to refrain from engaging in unjust conduct in the course of carrying on the business, and
  - (b) in the case of an undertaking relating to action to rectify the consequences of the repairer's unjust conduct, order the repairer to observe the undertaking within the time specified by the Tribunal in the order.
- (3) In the case of an application relating to a repairer that is a body corporate, the Tribunal may make an order prohibiting a person from consenting to, or conniving at, engagement in unjust conduct, or a breach of an undertaking under this Part by the body corporate or any other body corporate if it is satisfied that:
  - (a) the person was, when the relevant unjust conduct or breach of undertaking occurred, a director or a person concerned in the direction, management or conduct of the body corporate, and
  - (b) the relevant conduct or breach was engaged in with the consent or connivance of the person.

- (4) An order under this section may be subject to such conditions as the Tribunal thinks fit.
- (5) Without limiting subsection (4), the Tribunal may impose conditions of the following kinds:
  - (a) conditions as to the duration of the order,
  - (b) conditions as to the future conduct of the person subject to the order,
  - (c) conditions specifying the action to be taken by the repairer to rectify the consequences of the repairer's unjust conduct.
- (6) A person must not contravene an order made under this section.

Maximum penalty: 20 penalty units.

## 50 Variation or discharge of restraining order

The Tribunal may, on the application of the Authority, vary or discharge an order made under this Part.

## Part 6 Disputes

### 51 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 52 (1) to the Authority, but does not include an application that has been withdrawn.

**dispute** means a disagreement which is the subject of an application.

**owner** in relation to a motor vehicle includes any hirer, lessee or insurer of the motor vehicle.

- (2) A reference in this Part to a repairer includes a reference to a person who was a repairer when the person repaired a motor vehicle that is the subject of such a disagreement as is referred to in section 52 (1) or of a dispute, notwithstanding that the person has ceased to be a repairer since the vehicle was repaired.

### 52 Disputes

- (1) Where, in relation to a motor vehicle, a disagreement exists between the owner of the vehicle and a repairer concerning any 1 or more of the following matters, namely:
  - (a) the manner in which any repair work has been done,

- (b) the fair cost owed by the owner to the repairer for the carrying out of any repair work, or
- (c) any other matter or thing, whether or not of the same kind as a matter referred to in paragraph (a) or (b), arising out of the application of this Act,

the owner may apply in writing to the Authority to investigate the disagreement.

(2) The powers conferred by this Part shall not be exercised in connection with any matter in issue in a dispute:

- (a) if the repair work which is the subject of the dispute was done before the day appointed and notified under section 2 (2),
- (b) if that matter is, at the time when the application relating to the dispute is received by the Authority, the subject of an application under Part 5 of the *Motor Dealers Act 1974*, and that application has not been withdrawn,
- (c) (Repealed)
- (d) if proceedings in respect of that matter are pending before a court or a tribunal at that time, unless those proceedings are discontinued before judgment is given by the court or a determination is made by the tribunal, or
- (e) if, at that time, that matter has been decided by a court or a tribunal, or a court or a tribunal decides that matter pursuant to proceedings which are pending at that time.

(3) (Repealed)

(4) An application may be withdrawn at any time.

### **53 Settlement of disputes**

- (1) On receipt of an application under section 52 (1), the Authority is to use its best endeavours by communication with the applicant and the repairer, or otherwise, to settle the dispute.
- (2) The Authority may appoint any inspector to assist it in the exercise of its functions under this section.
- (3) An inspector appointed under subsection (2) to assist the Authority may enter at any reasonable time any place occupied by a repairer at which the inspector has reasonable grounds for believing that a motor vehicle which is the subject of a dispute is situated and there examine that motor vehicle.

### **54 Investigation by Authority**

- (1) If the Authority is unable under section 53 to settle a dispute, the Authority may

investigate the dispute.

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

**55, 56 (Repealed)**

**57 False or misleading statements**

A person shall not make any statement which the person knows to be false or misleading in any application or in or in relation to any proceeding for the investigation of a dispute or in relation to any attempt to facilitate a settlement of a dispute undertaken by the Authority under this Part.

Maximum penalty: 20 penalty units.

**Part 7 Finance**

**58 (Repealed)**

**59 Grants to Authority**

The Treasurer may advance such money to the Authority on such terms as to repayment and interest as the Treasurer and the Authority may agree on.

**60 Establishment of funds**

- (1) The Authority shall establish the following funds in its books:
  - (a) the Motor Vehicle Repair Industry General Fund,
  - (b) the Motor Vehicle Repair Industry Contingency Fund, and
  - (c) the Motor Vehicle Repair Industry Education and Research Fund.
- (2) The funds mentioned in subsection (1) shall be separate and distinct.

**61 General Fund**

- (1) The General Fund shall consist of:
  - (a) all money received by or due to the Authority as charges or fees under this Act or the *Business Licences Act 1990* before the repeal of that Act by the *Business Licences Repeal and Miscellaneous Amendments Act 2001*,
  - (b) all money received by the Authority under section 59 and allocated by the Authority to the General Fund, and
  - (c) all investments made by the Authority out of money in the General Fund and the proceeds of any such investments.

- (2) The General Fund may be applied in:
- (a) meeting the expenses incurred in or in connection with the performance of the functions of the Authority,
  - (b) making payments to the Treasurer in accordance with subsection (3) and section 69 (6),
  - (c) making payments to the Contingency Fund in accordance with any direction of the Treasurer referred to in section 62 (1) (a),
  - (d) making payments to the Education and Research Fund in accordance with any direction of the Treasurer referred to in section 66 (1) (a), and
  - (e) any lawful purpose under this Act in respect of which expenditure is not chargeable to the Contingency Fund or the Education and Research Fund.
- (3) The Authority shall, as required by notices in writing from time to time given to the Authority by the Treasurer, pay to the Treasurer for payment into the Consolidated Revenue Fund the amount specified in any such notice and certified by the Treasurer to be the amount chargeable against the Authority in respect of the General Manager and in respect of officers and temporary employees of the Public Service appointed for the purpose of carrying out the provisions of this Act.

## **62 Contingency Fund**

- (1) The Contingency Fund shall consist of:
- (a) such money as the Treasurer may from time to time direct to be allocated to that fund from the General Fund,
  - (b) all money received by the Authority under section 59 and allocated by the Authority to the Contingency Fund,
  - (c) all investments made by the Authority out of money in the Contingency Fund and the proceeds of any such investments, and
  - (d) any money recovered by the Authority in the exercise of any rights, or the pursuit of any remedies, to which it is subrogated under section 64.
- (2) Subject to section 65, there shall be paid out of the Contingency Fund the amount of any loss which is certified by the Authority pursuant to section 63.

## **63 Claims against Contingency Fund**

- (1) Any person wishing to make a claim against the Contingency Fund shall submit his or her claim in writing, verified by statutory declaration, to the Authority.
- (2) Subject to this section, if the Authority is satisfied that a person who submits a claim

has incurred a loss in connection with the repair of a motor vehicle by reason of the fact that the repair work was not competently done, the Authority may certify the amount of the loss or \$30,000, whichever is the lesser amount.

- (3) No loss shall be certified by the Authority under subsection (2):
- (a) if the loss was incurred in connection with repair work done before the day appointed and notified under section 2 (2),
  - (b) if the loss was incurred by the claimant (including any statutory body representing the Crown) in connection with any repair work done by an employee of the claimant,
  - (c) if the loss consists of damage to a motor vehicle or other object, or injury to any person, arising out of a motor vehicle accident,
  - (d) if the loss consists of damage done to a motor vehicle of a prescribed class,
  - (e) if the loss is or has been the subject of a claim under Part 6 of the *Motor Dealers Act 1974*, unless the claim has been withdrawn or dismissed, or
  - (f) if the Authority is not satisfied that the claimant has taken all reasonable steps to exercise such legal remedies and other rights of action as are available in respect of the loss incurred by the claimant.
- (4) The insurer of a motor vehicle may not make a claim under this section in relation to a loss in connection with the repair of the motor vehicle.

#### **64 Subrogation where claim allowed**

- (1) On payment out of the Contingency Fund of any amount certified by the Authority under section 63, the Authority 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 Authority is subrogated under subsection (1) for the purpose of recovering an amount paid out of the Contingency Fund, the amount is taken to be a debt due to the Authority and may be recovered accordingly.

#### **64A Recovery of money from directors**

- (1) If the payment of an amount out of the Contingency Fund has been made as a consequence of the act or omission of a person that is a body corporate, the Authority

may, without affecting the operation of section 64, recover, jointly or severally, from any person who was a director or persons who were directors of the body corporate when 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 this section, judgment is not to be entered against a defendant who proves that the act or omission occurred without the defendant's express or implied authority or consent.

#### **65 Deferred payments out of Contingency Fund**

Where the amount standing to the credit of the Contingency Fund is insufficient to pay all the amounts certified by the Authority under section 63 in any financial year, any amount so certified, so far as it remains unpaid, shall be charged against future receipts of the Contingency Fund and shall be paid out of the Contingency Fund when sufficient money is available therein.

#### **66 Education and Research Fund**

- (1) The Education and Research Fund shall consist of:
- (a) such money as the Treasury may from time to time direct to be allocated to that fund from the General Fund,
  - (b) all money received by the Authority under section 59 and allocated by the Authority to the Education and Research Fund, and
  - (c) all investments made by the Authority out of money in the Education and Research Fund and the proceeds of any such investments.
- (2) The Authority may, with the approval of the Treasurer, from time to time appropriate any part of the money in the Education and Research Fund towards:
- (a) the encouragement of apprenticeship, by way of subsidy or otherwise, in any trade associated with the motor vehicle repair industry, or
  - (b) the assistance of education or research in, or any public purpose connected with, repair work.

#### **67 (Repealed)**

#### **68 Financial year**

(1)-(7) (Repealed)

- (8) The financial year of the Authority shall be the year ending on 30 June.

#### **69 (Repealed)**

## **Part 8 General**

### **70 Delegation**

The Authority may delegate the exercise of any function of the Authority under this or any other Act (other than this power of delegation) to any person employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Authority to exercise its functions.

### **71 Other rights and remedies not affected**

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.

### **72 Contracting out void**

The provisions of this Act have effect notwithstanding any stipulation to the contrary and no contract or agreement made or entered into before, on or after the day appointed and notified under section 2 (2) operates to annul, vary or exclude any of the provisions of this Act.

### **73 Authority may require information**

- (1) The Authority may, by notice in writing, require any person to furnish to it, within such period as may be specified in the notice, such information in connection with any repair work or certification work as may be so specified and as is within the person's knowledge or in the person's custody or under the person's control.
- (2) A person shall not neglect or fail to comply with a requirement made under subsection (1).

Maximum penalty: 20 penalty units.

- (3) Any information furnished pursuant to a requirement made under subsection (1) shall not, if the person furnishing the information objected, at the time of furnishing it, to doing so on the ground that it may tend to incriminate the person or might be used in any proceedings against the person under Part 4, or section 98 of the *Road Transport Act 2013*, be admissible in evidence in any prosecution against that person for any offence, not being the offence of neglecting or failing to comply with any requirement made under that subsection, or be admissible in any such proceedings.

### **74 Production of licences and certificates**

- (1) Except where he or she has reasonable excuse for not doing so, the holder of a licence shall on demand, at the place of business in respect of which the licence is granted, produce that licence to an inspector.



(2) Except where he or she has reasonable excuse for not doing so, the holder of a tradesperson's certificate shall on demand, at any place of business in respect of which a licence is granted and where he or she does repair work, produce the certificate to an inspector.

(3) (Repealed)

Maximum penalty: 10 penalty units.

#### **74A Inspectors must have identification**

(1) The Authority must issue a person appointed as an inspector with a certificate of identification as an inspector.

(2) An inspector who exercises a function under this Act must produce his or her certificate of identification if requested to do so by a person apparently in charge of any premises on which the function is carried out.

#### **75 Power of entry and examination**

(1) An inspector may, for the purpose of ascertaining whether a person is contravening or has contravened this Act or the regulations, enter, at any reasonable time, any place which the inspector has reasonable grounds for believing is a place at which the person carries on business.

(2) For the purpose of or in connection with an inspection under subsection (1), an inspector may:

(a) require any person employed or engaged at any place entered pursuant to that subsection to produce to the inspector such records, or other documents, as are required to be kept under this Act or the regulations and are in the custody or under the control of the person so employed or engaged,

(b) examine with respect to matters under this Act or the regulations any person employed or engaged at any place so entered, and

(c) make such examination and inquiries as the inspector thinks necessary to ascertain whether the requirements of this Act or the regulations are being or have been contravened.

(3) 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 NSW Police Force may:

(a) enter any place at which 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) require any person employed or engaged at that place to produce such records or other documents as are required to be kept under this Act or the regulations and as are in or under his or her custody or control, and
  - (c) search for and examine any motor vehicles and parts and accessories of motor vehicles at that place.
- (4) The power of a member of the NSW Police Force under subsection (3) 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 NSW Police Force is acting pursuant to a search warrant under section 75A.
- (5) In this section:
- stolen** means stolen or otherwise unlawfully obtained.
- (6) A reference in this section to this Act or the regulations includes a reference to Part 4.5 of the *Road Transport Act 2013* and statutory rules made for the purposes of that Part.

#### **75A 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 NSW Police Force may apply to an authorised officer for a search warrant if the member of the NSW 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 NSW Police Force named in the warrant to exercise, in relation to those premises, any powers of a member of the NSW Police Force under section 75 (3) 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.

#### **75B Production of records**

- (1) For the purpose of ascertaining whether a person is contravening or has contravened this Act or the regulations, or Part 4.5 of the *Road Transport Act 2013* or the statutory

rules made for the purposes of that Part, an inspector 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 inspector at a specified time or within a specified period.

- (2) If an inspector requires production under this section 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 is taken to be a requirement to produce, in addition to the record if it is in writing, or instead of a 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) An inspector may inspect and take notes, copies and extracts of or from any record or statement produced under this section.
- (4) For the purpose of searching for, or obtaining information concerning, stolen motor vehicles and stolen motor vehicle parts or accessories, a police officer has the powers of an inspector under this section.
- (5) A person must not refuse or fail to produce any record or statement in accordance with a requirement made under this section.

Maximum penalty: 20 penalty units.

- (6) Nothing in this section limits the operation of section 75.

## **76 Offence to obstruct inspector, police**

A person shall not:

- (a) refuse or intentionally delay the admission to any place of an inspector or member of the NSW Police Force in the exercise by him or her of any of his or her powers under this Act or the regulations,
- (b) intentionally obstruct an inspector or member of the NSW Police Force in the exercise by him or her of any such power,
- (c) fail to comply with a request or requirement of an inspector or member of the NSW Police Force made under this Act for the production of any record or other document,
- (d) conceal any person from an inspector or member of the NSW Police Force or prevent any person from appearing before or being examined by an inspector or member of the NSW Police Force or attempt so to conceal or prevent any person, or
- (e) conceal or attempt to conceal any motor vehicle or part or accessory of a motor vehicle that a member of the NSW Police Force is entitled to search for and examine under this Act.

Maximum penalty: 20 penalty units.

## **77 Disclosure of information**

A person shall not disclose any information obtained by the person in connection with the administration or execution of this Act, unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the administration or execution of this Act,
  - (b1) to Roads and Maritime Services in connection with certification work,
- (c) subject to section 73 (3), for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
- (d) for the purpose of an inquiry held under Part 4 or an investigation made under Part 6.

Maximum penalty: 20 penalty units.

## **77A 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 Authority is reasonably necessary for the proper exercise of any function of the Authority under this Act relating to licensing, disciplinary proceedings, investigations or law enforcement, to supply that record or information to the Authority 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 Authority to supply to the Commissioner of Police, or any police officer or member of the NSW Police Force 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 Authority 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 Authority 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 repairs,
  - (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 NSW Police Force, or
- (b) Roads and Maritime Services, or
- (c) any other authority prescribed by the regulations for the purposes of this definition.

### **77B Duty to report suspicious goods**

The holder of a licence, or any employee of the holder, who suspects for any reason that a motor vehicle, motor vehicle parts or accessories or any other things in the custody of the holder or employee in the course of the holder's business, or that are offered to the licensee or employee for sale, may have been stolen or otherwise unlawfully obtained must without delay inform an inspector or a police officer of that suspicion.

Maximum penalty: 50 penalty units.

### **77C Retention of suspicious goods**

- (1) An inspector or a police officer who has reasonable grounds to suspect that a motor vehicle, motor vehicle parts or accessories or any other things in the possession of the holder of a licence have been stolen or otherwise unlawfully obtained may, by a notice specifying the things, prohibit the licence holder, or any employee of the licence holder, from altering the form of the things or disposing of them in any other way, or selling them or otherwise parting with possession of them, for a period of 14 days after service of the notice.
- (2) The Local Court may, on application by an inspector or police 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 (subsection (4)): 500 penalty units.

### **78 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 licence

in respect of any class of repair work or a tradesperson's certificate in respect of any class of repair work, it shall be presumed, in the absence of proof to the contrary, that the person was carrying on business as a repairer in respect of that class of repair work or was doing repair work of that class, as the case may be, on that day or during that period, as the case may be.

- (2) A certificate purporting to be under the hand of a prescribed officer certifying that a person was or was not, on a date specified in the certificate, a holder of a licence in respect of any class of repair work so specified or a tradesperson's certificate in respect of any class of repair work so specified, as the case may be, is admissible in evidence in any proceedings and is prima facie evidence of the matters stated therein.

## **79 (Repealed)**

## **80 Service of notice etc**

- (1) Where by or under this Act 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 him or her personally,
  - (ii) by leaving it at his or her place of residence last known to the Authority with someone who apparently resides there or at his or her place of business or employment last known to the Authority with someone who is apparently employed there, being in either case a person who has or who apparently has attained the age of 16 years, or
  - (iii) by posting it by certified mail in an envelope duly stamped and addressed to him or her at the place of his or her residence, business or employment last known to the Authority, or
- (b) a corporation:
- (i) by delivering it to a person who is or who is apparently concerned in the management of the corporation,
  - (ii) by leaving it at the only or principal place of business, or the registered office, of the corporation with a person apparently employed there, being a person who has or who apparently has attained the age of 16 years, or
  - (iii) by posting it by certified mail in an envelope duly stamped and addressed to the corporation at the only or principal place of business of the corporation last known to the Authority.
- (2) A notice or document that is delivered, left or posted 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 posted, 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.

### **81 Service of notice etc on the Authority**

- (1) A notice, summons, writ or other proceeding required to be served on the Authority may be served:
  - (a) by being left with some person apparently employed in the administration of this Act at the office of the Authority, or
  - (b) in the case of a notice, by posting it by certified mail in an envelope duly stamped and addressed to the Authority at its office.
- (2) Any document referred to in subsection (1) shall:
  - (a) be deemed to have been served upon its being so left, or
  - (b) in the case of a notice served by so posting it, be prima facie deemed to have been served when it would have been delivered in the ordinary course of post.

### **82 Seal of Authority**

The seal of the Authority is to be kept by the General Manager, or by a member of the staff of the Authority authorised in that behalf by the General Manager, and may be fixed to a document only:

- (a) in the presence of the General Manager or that member of the staff, and
- (b) with an attestation by the signature of the General Manager or that member of staff of the fact of the fixing of the seal.

### **83 (Repealed)**

### **84 Protection from liability**

- (1) Any thing done or omitted by:
  - (a) the Authority, or
  - (b), (c) (Repealed)
  - (d) the General Manager, or
  - (e) any inspector, or
  - (f) any other person acting under the direction of the Authority,

does not, if the thing was done or omitted to be done in good faith for the purposes of executing this or any other Act, subject the General Manager, inspector or person so

acting personally to any action, liability, claim or demand.

(2) (Repealed)

(3) Nothing in subsection (1) shall exempt a person from liability to be surcharged with the amount of any payment which is disallowed by the Auditor-General in the accounts of, or relating to, the Authority and which the person authorised or joined in authorising.

#### **85 Recovery of charges**

(1) Any charge, fee, remuneration or money due to the Authority under the provisions of this Act or the regulations may be recovered by the Authority as a debt in a court of competent jurisdiction.

(2) Proceedings for the recovery of any charge, fee, remuneration or money so due to the Authority shall be deemed to be for the recovery of a debt or liquidated demand.

#### **86 (Repealed)**

#### **87 Proceedings**

(1) Proceedings for an offence against this Act or the regulations may:

(a) be taken and prosecuted by any person acting with the authority of the Minister or a prescribed officer, and

(b) be disposed of summarily before the Local Court or before the Supreme Court in its summary jurisdiction.

(2) In a prosecution for any offence against this Act or the regulations, 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) The maximum monetary penalty that the Local Court may impose in proceedings for an offence under this Act or the regulations is the maximum penalty specified for that offence or 100 penalty units, whichever is the lesser.

(4) In proceedings for an offence against this Act or the regulations the informant may conduct his or her case himself or herself, or by an Australian legal practitioner, by an agent authorised by him or her in writing, or by a public servant or an inspector.

(5) Any proceedings for an offence against this Act or the regulations shall be commenced by information laid at any time within 1 year after the time when the offence is alleged to have been committed.

(6) Despite subsection (5), proceedings for an offence under section 15 may be commenced at any time within 3 years after the time when the offence is alleged to



have been committed.

### **87A Penalty notices for certain offences**

- (1) An inspector or police officer may serve a penalty notice on a person if it appears to the inspector or officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

### **88 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an **executive liability offence** is an offence against any of the following provisions of this Act that is committed by a corporation:
  - (a) section 15 (1),
  - (b) section 22 (1), (3) or (4).

- (2) A person commits an offence against this section if:
- (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:

**director** has the same meaning it has in the [Corporations Act 2001](#) of the Commonwealth.

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
  - (i) assessing the corporation's compliance with the provision creating the

executive liability offence, and

- (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes,relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**88A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 88.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or

(iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## **89 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:
  - (a) applications and fees for licences and certificates,
  - (b) advertising by repairers,
  - (c) the records to be kept by repairers,
  - (d) the display of signs by repairers,
  - (e) the powers of inspectors,
  - (f) investigations made under Part 6,
  - (g) the charging and payment of a fee for any inspection made or information supplied by the Authority,
  - (h) the furnishing by the holders of licences of any information (including particulars of any persons apprenticed to them or to any of their employees),
  - (i) the display of licences and certificates,
  - (j) the conduct of examinations for the purposes of this Act,

- (k) the manner of doing any repair work (including the techniques and materials to be used), and
  - (l) 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.
- (2) 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 from time to time determined, applied or regulated by any specified person, body or committee,
- or may do any combination of those things.
- (3) Without affecting the generality of subsection (1) or (2), the regulations may prescribe different fees in respect of licences or tradespeople's certificates which are granted in respect of different classes of repair work.
- (4) The regulations may impose a penalty not exceeding 20 penalty units for an offence against the regulations.

## **90 Savings and transitional provisions**

Schedule 5 has effect.

## **91 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 2 years from the date of assent to the *Motor Trade Legislation Amendment Act 2001*.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.

## **Schedules 1-4 (Repealed)**

## **Schedule 5 Savings and transitional provisions**

(Section 90)

### **Part 1 General**

#### **1 Regulations**

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

*Regulatory Reduction Act 1996*, but only in relation to amendments made to this Act or the regulations

*Motor Vehicle Repairs Amendment Act 1998*

*Business Licences Repeal and Miscellaneous Amendments Act 2001*

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

*Fair Trading Amendment Act 2006* (but only to the extent that it amends this Act)

- (2) Any such provision may, if the regulations so provide, take effect as 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 its date of 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.

### **Part 2 Provision consequent on 1998 amendments**

#### **2 Provision consequent on enactment of *Motor Vehicle Repairs Amendment Act 1998***

- (1) Any person holding office immediately before the commencement of this clause as a member of the Council under section 8 (1) (h) ceases to hold that office on the commencement and is not entitled to any remuneration or compensation because of losing that office.
- (2) Any such person is eligible to be appointed to the Council if otherwise qualified.

- (3) Any person holding office immediately before the commencement of this clause as a member of the Council under section 8 (1) (f) or (g) continues to hold that office, for the remainder of the existing term, as representative of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch, and The Australian Workers' Union, New South Wales, respectively.
- (4) Nothing in the amendments made by the *Motor Vehicle Repairs Amendment Act 1998* to Schedule 3 (constitution and membership of the Disputes Committee) affects any person holding office as a member of that Committee immediately before the commencement of this clause.

### **Part 3 Provision consequent on 1999 amendments**

#### **3 Provision consequent on enactment of *Statute Law (Miscellaneous Provisions) Act 1999***

Any act, matter or thing done:

- (a) on or after 30 June 1987 in respect of the work of an exhaust repairer, or
- (b) on or after 1 April 1992 in respect of the work of a radiator repairer,

that would have been valid if the amendments made by the *Statute Law (Miscellaneous Provisions) Act 1999* to section 4 had been in force at the time that the act, matter or thing was done is validated.

### **Part 4 Provisions consequent on 2001 amendments**

#### **4 Definitions**

In this Part:

**former Council** means the Motor Vehicle Repair Industry Council as constituted under Part 2 immediately before the repeal of that Part by the 2001 amending Act.

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

#### **5 Continuation of corporate entity**

The Authority is a continuation of, and the same legal entity as, the former Council.

#### **6 Members of former Council**

- (1) A person who, immediately before the repeal of Part 2 of this Act by the 2001 amending Act, held office as a member of the former Council ceases to hold office on that repeal.
- (2) A member who ceases to hold office because of this clause is not entitled to any remuneration or compensation because of so ceasing to hold office.

## **7 References to former Council**

A reference in any Act (other than this Act) or in any instrument made under any Act to the former Council is to be read as a reference to or including the Authority, except as provided by this Act.

## **8 Existing licences**

- (1) A licence in force immediately before the repeal of Part 2 of this Act by the 2001 amending Act is taken to be:
  - (a) a licence issued by the Authority, and
  - (b) a licence authorising the holder to carry on the activities authorised by the licence immediately before that repeal.
- (2) The licence may be made subject to conditions and otherwise dealt with in the same way as a licence issued by the Authority under this Act.
- (3) However, if at any time after that repeal a licence is no longer required under this Act to carry out a class of repair work authorised by the licence, the licence is taken to be cancelled to the extent that it purports to authorise the carrying out of that class of repair work.

## **9 Existing certificates**

- (1) A certificate in force immediately before the repeal of Part 2 of this Act by the 2001 amending Act is taken to be:
  - (a) a certificate issued by the Authority, and
  - (b) a certificate authorising the holder to carry out the class of repairs authorised by the certificate immediately before that repeal.
- (2) The certificate may be made subject to conditions and otherwise dealt with in the same way as a certificate issued by the Authority under this Act.
- (3) However, if at any time after that repeal a certificate is no longer required under this Act to carry out a class of repair work authorised by the certificate, the certificate is taken to be cancelled to the extent that it purports to authorise the carrying out of that class of repair work.

## **10 Existing complaints and proceedings**

- (1) A complaint made to the former Council before the repeal of section 44 by the 2001 amending Act and not dealt with by the Council immediately before that repeal is to be considered by the Authority.
- (2) The Authority may take such action, if any, in relation to the subject-matter of the



complaint under Part 4, as amended by the 2001 amending Act, as the Authority thinks fit.

- (3) An inquiry commenced by the former Council and not completed immediately before the repeal of section 46 by the 2001 amending Act is to be dealt with by the Authority under section 44 as inserted by that Act.

### **11 Existing disputes**

A dispute that was being investigated or dealt with by the former Council immediately before the repeal of Part 2 by the 2001 amending Act is to be dealt with by the Authority under Part 6 as amended by that Act.

### **12 Existing applications**

An application for a licence or certificate made, but not determined, before the substitution of section 16 by the 2001 amending Act is to be dealt with by the Authority under this Act as amended by that Act.

### **13 Car stealing offences**

Sections 18 (1) (j) and (3) (k), 42 (1) (f) and 44 (3), 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.

## **Part 5 Provision consequent on enactment of [Fair Trading Amendment Act 2006](#)**

### **14 Provision consequent on [Fair Trading Amendment Act 2006](#)**

- (1) In this clause, **former Council** means the Council of the Motor Vehicle Repair Industry Authority as constituted under section 9 immediately before the repeal of that section by the [Fair Trading Amendment Act 2006](#).
- (2) A person who, immediately before the repeal of section 9 of this Act by the [Fair Trading Amendment Act 2006](#), held office as a member of the former Council ceases to hold office on that repeal.
- (3) A person who ceases to hold office because of this clause is not entitled to any remuneration or compensation because of so ceasing to hold office.
- (4) Subject to the regulations, a reference in any Act (other than this Act) or in any instrument made under any Act to the former Council is to be read as a reference to the Motor Vehicle Industry Advisory Council established under the [Fair Trading Act 1987](#).

## **Part 6 Provisions consequent on enactment of [Criminal Organisations](#)**

## Legislation Amendment Act 2009

### 15 Grant and cancellation of licences and certificates

(1) In this clause:

**amending Act** means the *Criminal Organisations Legislation Amendment Act 2009*.

(2) An application for a licence or certificate 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 42, 43 and 44, as amended by the amending Act, extend to a licence or certificate in force immediately before the commencement of this clause.