

South Australia

## **Second-hand Vehicle Dealers Act 1995**

An Act to regulate dealing in second-hand motor vehicles; to repeal the *Second-hand Motor Vehicles Act 1983*; and for other purposes.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Second-hand Vehicle Dealers Act 1995*.

### 3—Interpretation

In this Act, unless the contrary intention appears—

***auctioneer*** means a person who carries on the business of conducting auctions for the sale of goods, and includes a dealer who in the course of business conducts an auction for the sale of a second-hand vehicle;

***authorised officer*** means an authorised officer under the *Fair Trading Act 1987*;

***Commissioner*** means the Commissioner for Consumer Affairs;

***credit contract*** means a credit contract within the meaning of the *Consumer Credit (South Australia) Code*;

***credit provider*** means a credit provider within the meaning of the *Consumer Credit (South Australia) Code*;

***dealer*** means a person who carries on the business of selling second-hand vehicles;

***director*** of a body corporate includes—

- (a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act;

***District Court*** means the Administrative and Disciplinary Division of the District Court;

***licence*** means a licence under Part 2 and ***licensed*** and ***licensee*** have corresponding meanings;

**Magistrates Court** means the Civil (Consumer and Business) Division of the Magistrates Court;

**model designation** means the words and symbols (if any) used by the manufacturer of a vehicle to identify the model of the vehicle;

**registered**, in relation to a vehicle, means registered under the *Motor Vehicles Act 1959*, or under a corresponding Act or law of another State or a Territory of the Commonwealth;

**registered premises**, in relation to a dealer, means premises registered in the name of the dealer under Part 2;

**second-hand vehicle** means a vehicle that has been used for a purpose not connected with its manufacture or sale, including a vehicle that has been used for the purpose of demonstration in connection with the sale of another vehicle;

**sell** includes sell on behalf of another person and **sale**, **offer for sale** and **expose for sale** have corresponding meanings;

**vehicle** means a vehicle—

- (a) that is used or capable of being used for transportation on land; and
- (b) that is designed to be wholly or partly propelled by an engine;

**vehicle leasing agreement** means an agreement under which a vehicle is let on hire for a period exceeding four months;

**vehicle leasing business** means a business in which vehicles are let on hire under vehicle leasing agreements;

**year of first registration**, in relation to a vehicle, means the year in which the vehicle was first registered.

#### 4—Application of Act

- (1) Subject to this section, if a dealer sells a second-hand vehicle to a credit provider on the understanding that the vehicle will be sold or let on hire to a third person and it is sold or let on hire to the third person, this Act applies as if the dealer had sold the vehicle to the third person.
- (2) Section 17<sup>1</sup> does not apply to such a sale by a dealer.

**Note—**

- 1 Section 17 sets out the requirements for a contract for the sale of a second-hand vehicle by a dealer.

#### 5—Non-derogation

- (1) The provisions of this Act are in addition to and do not derogate from the provisions of any other Act.
- (2) The provisions of this Act do not limit or derogate from any civil remedy at law or in equity.

#### 6—Commissioner responsible for administration of Act

The Commissioner is responsible, subject to the control and directions of the Minister, for the administration of this Act.

## Part 2—Licensing of dealers

### Division 1—Grant of licences

#### 7—Dealers to be licensed

- (1) A person must not carry on business, or hold himself or herself out, as a dealer unless licensed under this Act.

Maximum penalty: \$20 000.

- (2) This section does not apply to—
- (a) a person whose principal business is that of a credit provider—
    - (i) whose business as a dealer is incidental to the credit business; and
    - (ii) who, in carrying on business as a dealer, observes any requirements imposed by regulation for the purposes of this paragraph; or
  - (b) an auctioneer who sells second-hand vehicles on behalf of other persons—
    - (i) by auction; or
    - (ii) by sales negotiated immediately after conducting auctions for the sale of the vehicles,  
  
and who does not otherwise carry on the business of selling second-hand vehicles; or
  - (c) the Crown.

#### 8—Application for licence

- (1) An application for a licence must—
- (a) be made to the Commissioner in the manner and form approved by the Commissioner; and
  - (b) be accompanied by the fee fixed by regulation.
- (2) An applicant for a licence must provide the Commissioner with such evidence as the Commissioner thinks appropriate as to the identity, age and address of the applicant and any other information required by the Commissioner for the purposes of determining the application.
- (3) If an applicant for a licence has previously failed to pay a fee, penalty or contribution that became payable under this Act, the Commissioner may require the applicant to pay the whole or a specified part of the fee, penalty or contribution (as the case may be).
- (4) The Commissioner may, by notice in writing, require an applicant for a licence, within a time fixed by the notice (which may not be less than 28 days after service of the notice), to comply with any requirement under this section to the Commissioner's satisfaction.
- (5) If the applicant fails to comply with the notice under subsection (4), the Commissioner may, without further notice, refuse the application but keep the fee that accompanied the application.

## 9—Entitlement to be licensed

- (1) A natural person is entitled to be licensed as a dealer if the person—
- (a) is of or above the age of 18 years; and
  - (b) has not—
    - (i) been convicted of an indictable offence of dishonesty; or
    - (ii) during the period of 10 years preceding the application for a licence, been convicted of a summary offence of dishonesty; and
  - (c) is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and
  - (d) is not an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; and
  - (e) has not, during the period of five years preceding the application for the licence, been a director of a body corporate wound up for the benefit of creditors—
    - (i) when the body was being so wound up; or
    - (ii) within the period of six months preceding the commencement of the winding up; and
  - (f) is a fit and proper person to be the holder of a licence.
- (2) A body corporate is entitled to be licensed as a dealer if—
- (a) the body corporate—
    - (i) is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and
    - (ii) is not being wound up and is not under official management or in receivership; and
  - (b) no director of the body—
    - (i) has—
      - (A) been convicted of an indictable offence of dishonesty; or
      - (B) during the period of 10 years preceding the application for a licence, been convicted of a summary offence of dishonesty; or
    - (ii) is suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; or
    - (iii) has, during the period of five years preceding the application for the licence, been a director of a body corporate wound up for the benefit of creditors—

- (A) when the body was being so wound up; or
- (B) within the period of six months preceding the commencement of the winding up; and
- (c) each director of the body is a fit and proper person to be the director of a body that is the holder of a licence.

## 10—Appeals

- (1) An applicant for a licence may appeal to the District Court against a decision of the Commissioner refusing the application.
- (2) Subject to subsection (4), an appeal must be instituted within one month of the making of the decision appealed against.
- (3) The Commissioner must, if so required by the applicant, state in writing the reasons for the Commissioner's decision to refuse the application.
- (4) If the reasons of the Commissioner are not given in writing at the time of making the decision and the applicant (within one month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the applicant receives the written statement of those reasons.

## 11—Duration of licence and annual fee and return

- (1) A licence remains in force (except for any period for which it is suspended) until—
  - (a) the licence is surrendered or cancelled; or
  - (b) the licensed dealer dies or, in the case of a licensed body corporate, is dissolved.
- (2) A licensed dealer must, each year not later than the date fixed by regulation—
  - (a) pay to the Commissioner the fee fixed by regulation; and
  - (b) lodge with the Commissioner a return in the manner and form required by the Commissioner.
- (3) If a licensed dealer fails to pay the annual fee or lodge the annual return in accordance with subsection (2), the Commissioner may, by notice in writing, require the dealer to make good the default and, in addition, to pay to the Commissioner the amount fixed by regulation as a penalty for default.
- (4) If the dealer fails to comply with the notice within 28 days after service of the notice, the dealer's licence is cancelled.
- (5) The Commissioner must notify the dealer in writing of the cancellation of the dealer's licence.
- (6) A licensed dealer may surrender the licence.
- (7) In this section—

*licensed dealer* includes a licensed dealer whose licence has been suspended.

## **12—Requirements for insurance**

- (1) A person must, at all times when carrying on business as a dealer, be insured in accordance with the regulations.
- (2) A dealer's licence is suspended for any period for which the dealer is not insured as required under subsection (1).

## **13—Incorporated dealer's business to be properly managed and supervised**

A licensed dealer that is a body corporate must ensure that the dealer's business is properly managed and supervised by a licensed dealer who is a natural person.

Maximum penalty: \$20 000.

## **Division 2—Registration of premises**

### **14—Registration of dealer's business premises**

- (1) Subject to this section, a licensed dealer must not carry on business as a dealer except at premises registered in the licensee's name under this section.  
Maximum penalty: \$2 500.  
Expiation fee: \$105.
- (2) The Commissioner may—
  - (a) on an application for a licence; or
  - (b) on a separate application and payment of the prescribed fee,register premises in the name of the applicant if satisfied that the premises are suitable for the purpose of carrying on business as a dealer.
- (3) A separate application for registration under this section must be in writing in a form approved by the Commissioner.
- (4) The Commissioner may, on the application of a licensee, permit the licensee on a day, or over a period, specified by the Commissioner to carry on business as a dealer at a place (other than the registered premises of the licensee) specified by the Commissioner.
- (5) A licensee must, within 14 days after ceasing to carry on business at registered premises, notify the Commissioner in writing of that fact.  
Maximum penalty: \$2 500.  
Expiation fee: \$105.
- (6) If the Commissioner—
  - (a) is notified by a licensee of the cessation of business at registered premises; or
  - (b) is otherwise satisfied that a licensee has ceased to carry on business at registered premises,the Commissioner may cancel the registration of the premises.



## Part 3—Dealing in second-hand vehicles

### Division 1—Sales other than by auction

#### 15—Application of Division

- (1) This Division does not apply to—
  - (a) the sale of a second-hand vehicle by auction; or
  - (b) the sale, or offering for sale, of a second-hand vehicle to a dealer.
- (2) Except as provided in section 17, this Division does not apply to the sale of a second-hand vehicle negotiated by an auctioneer immediately after the conduct of an auction for the sale of the vehicle.

#### 16—Notices to be displayed

- (1) A dealer must not offer or expose a second-hand vehicle for sale unless a notice in the prescribed form containing the required particulars and statements relating to the vehicle is attached to the vehicle.  
Maximum penalty: \$2 500.  
Expiation fee: \$105.
- (2) For the purposes of subsection (1), a vehicle owned by a dealer and located in a part of the dealer's premises in which other vehicles are exposed for sale will be regarded as being exposed for sale by the dealer unless a notice is attached to the vehicle in a prominent position advising that the vehicle is not for sale.
- (3) For the purposes of subsection (1), the required particulars and statements relating to a vehicle are—
  - (a) the name in which the dealer is licensed and business address of the dealer; and
  - (b) unless the dealer is offering or exposing the vehicle for sale on behalf of another dealer, a statement—
    - (i) that the dealer will be liable to discharge the duty to repair under Part 4; or
    - (ii) if there is no duty to repair under Part 4—that there is no duty to repair the vehicle; and
  - (c) if the dealer is offering or exposing the vehicle for sale on behalf of another dealer—
    - (i) the name in which the other dealer is licensed and business address of the other dealer; and
    - (ii) a statement—
      - (A) that the other dealer will be liable to discharge the duty to repair under Part 4; or
      - (B) if there is no duty to repair under Part 4—that there is no duty to repair the vehicle; and

- (d) —
    - (i) the name and address of the last owner of the vehicle who was not a dealer; or
    - (ii) if the last owner who was not a dealer has instructed the dealer in writing not to disclose his or her name and address on the notice—a statement that the last owner's name and address are available on request from the dealer; and
  - (e) if the owner referred to in paragraph (d) carried on a vehicle leasing business and let the vehicle on hire to another person under a vehicle leasing agreement—
    - (i) the name and address of that other person; or
    - (ii) if that other person has instructed the dealer in writing not to disclose his or her name and address on the notice—a statement that the other person's name and address are available on request from the dealer; and
  - (f) the price at which the vehicle (in the condition in which it is offered or exposed for sale) may be purchased for cash, including any fees and charges payable to the dealer (except prescribed fees and charges); and
  - (g) the vehicle's year of manufacture (as determined by the regulations); and
  - (h) the vehicle's year of first registration; and
  - (i) the vehicle's manufacturer and model designation; and
  - (j) if the vehicle is registered—the vehicle's registration number; and
  - (k) if the vehicle is not registered—the vehicle's engine number; and
  - (l) if the vehicle is equipped with an odometer—
    - (i) the reading of the odometer at the time the vehicle was acquired from the last owner of the vehicle who was not a dealer; and
    - (ii) —
      - (A) if it is more likely than not that the reading of the odometer is a reasonably accurate measure of the distance travelled by the vehicle—a statement that the odometer reading may be regarded as reasonably accurate; or
      - (B) if that is not the case—the statement required by the regulations; and
  - (m) such other particulars and statements as are prescribed.
- (4) In proceedings for an offence relating to a failure to include in a notice all the particulars and statements required under this section or the inclusion of any incorrect particulars or statement, it is a defence to prove that the defendant, having made reasonable inquiries and a proper examination of the vehicle, complied with the requirements of the subsection to the best of the defendant's knowledge, information and belief.

- (5) If a notice attached to a vehicle under this section states that the name and address of the last owner (or lessee) of the vehicle are available on request from the dealer, the dealer must, on request by a potential purchaser, disclose the name and address to the potential purchaser before a contract is made for the purchase of the vehicle.

Maximum penalty: \$2 500.

- (6) A dealer must not, in an advertisement published in connection with the sale of a second-hand vehicle, refer directly or indirectly to the odometer reading of the vehicle or the distance travelled by the vehicle unless a notice is attached to the vehicle under this section and the notice contains a statement by the dealer that the odometer reading of the vehicle may be regarded as reasonably accurate.

Maximum penalty: \$2 500.

- (7) A person from whom a dealer acquires ownership of a second-hand vehicle or on whose behalf a dealer is selling a second-hand vehicle must not give the dealer any information as to any of the matters referred to in subsection (3) that is, to that person's knowledge, false or misleading in a material particular.

Maximum penalty: \$1 250.

## 17—Form of contract

- (1) A contract for the sale of a second-hand vehicle by a dealer must—

- (a) be in writing; and
- (b) be comprised in one document; and
- (c) be signed by the parties to the sale; and
- (d) contain the following information set out in the prescribed manner:
  - (i) the name in which the dealer is licensed and the business address of the dealer; and
  - (ii) a brief description or identification of the vehicle; and
  - (iii) if the vehicle is registered—the vehicle's registration number; and
  - (iv) if the vehicle is not registered—the vehicle's engine number; and
  - (v) the price for which the vehicle is being sold and the amount of any other fees and charges payable by the purchaser (being fees or charges payable to the dealer or of a kind prescribed by regulation) together with a description of each such fee or charge; and
  - (vi) if all or part of the consideration passing from the purchaser is represented by a vehicle or other thing—the monetary value ascribed to that vehicle or thing; and
  - (vii) if a place has been agreed on as the place at which the vehicle may be delivered for the purpose of repair under Part 4—the address of the agreed place; and
  - (viii) if a place has not been agreed on as the place at which the vehicle may be delivered for the purpose of repair under Part 4—a statement that the vehicle may be delivered to any registered premises of the dealer for that purpose; and

- (ix) such other particulars as are prescribed; and
  - (e) contain a statement to the effect that a purported exclusion, limitation, modification or waiver of the rights conferred by this Act is void unless expressly provided for by this Act.
- (2) If a contract for the sale of a second-hand vehicle by a dealer is not in writing signed by the parties, the contract is not enforceable against the purchaser.
- (3) If a contract for the sale of second-hand vehicle by a dealer does not comply with subsection (1), the dealer is guilty of an offence.  
Maximum penalty: \$2 500.  
Expiation fee: \$105.
- (4) The dealer must ensure that the document intended to constitute the contract is not submitted to the purchaser for signature unless—
- (a) it contains all the material terms of the contract including the particulars required under this section; and
  - (b) if the document is not to be signed by the parties in each other's presence—a copy of the document is at the same time given to the purchaser for retention.
- Maximum penalty: \$2 500.
- (5) If the parties sign the contract document in each other's presence, the dealer must ensure that a copy of the signed document is immediately given to the purchaser for retention.  
Maximum penalty: \$2 500.
- (6) If a party signs the contract document when not in the presence of the purchaser, the dealer must ensure that a copy of the signed document is, within seven days, given or sent to the purchaser for retention.  
Maximum penalty: \$2 500.
- (7) This section does not apply to the sale of a second-hand vehicle negotiated by an auctioneer immediately after the conduct of an auction for the sale of the vehicle unless the sale is made on the auctioneer's own behalf or on behalf of another person who is a dealer.

## **18—Notices to be provided to purchasers of second-hand vehicles**

On the sale of a second-hand vehicle by a dealer, the dealer must ensure that—

- (a) a copy of the notice that was required to be attached to the vehicle under section 16; and
- (b) a notice in the prescribed form,

are given to the purchaser for retention before the purchaser takes possession of the vehicle.

Maximum penalty: \$2 500.

## Division 2—Sales by auction

### 19—Interpretation

In this Division—

*trade auction* means an auction for the sale of a second-hand vehicle at which bids are accepted only from dealers.

### 20—Notices to be displayed in case of auction

- (1) An auctioneer must not conduct an auction for the sale of a second-hand vehicle (other than a trade auction) unless a notice in the prescribed form containing the required particulars and statements relating to the vehicle is attached to the vehicle and has been attached to the vehicle at all times when the vehicle has been available for inspection by prospective bidders.

Maximum penalty: \$2 500.

- (2) For the purposes of subsection (1), the required particulars and statements are—
- (a) the name and business address of the auctioneer; and
  - (b) if the auctioneer is conducting the auction—
    - (i) on the auctioneer's own behalf, a statement—
      - (A) that the auctioneer will be liable to discharge the duty to repair under Part 4; or
      - (B) if there is no duty to repair under Part 4—that there is no duty to repair the vehicle; or
    - (ii) on behalf of a dealer—
      - (A) the name in which the dealer is licensed and business address of the dealer; and
      - (B) a statement—
        - that the dealer will be liable to discharge the duty to repair under Part 4; or
        - if there is no duty to repair under Part 4 that there is no duty to repair the vehicle; or
    - (iii) on behalf of another person (not being a dealer)—a statement that no duty to repair will apply under Part 4; and
  - (c) —
    - (i) the name and address of the last owner of the vehicle who was not a dealer; or
    - (ii) if the last owner who was not a dealer has instructed the auctioneer in writing not to disclose his or her name and address on the notice—a statement that the last owner's name and address are available on request from the auctioneer; and

- (d) if the owner referred to in paragraph (c) carried on a vehicle leasing business and let the vehicle on hire to another person under a vehicle leasing agreement—
    - (i) the name and address of that other person; or
    - (ii) if that other person has instructed the auctioneer in writing not to disclose his or her name and address on the notice—a statement that the other person's name and address are available on request from the auctioneer; and
  - (e) the vehicle's year of manufacture (as determined by the regulations); and
  - (f) the vehicle's year of first registration; and
  - (g) the vehicle's manufacturer and model designation; and
  - (h) if the vehicle is registered—the vehicle's registration number; and
  - (i) if the vehicle is not registered—the vehicle's engine number; and
  - (j) if the vehicle is equipped with an odometer—the reading of the odometer at the time the vehicle was acquired from the last owner of the vehicle who was not a dealer; and
  - (k) if the vehicle is equipped with an odometer and the auctioneer is conducting the auction on the auctioneer's own behalf or on behalf of a dealer—
    - (i) if it is more likely than not that the reading of the odometer is a reasonably accurate measure of the distance travelled by the vehicle—a statement that the odometer reading may be regarded as reasonably accurate; or
    - (ii) if that is not the case—the statement required by the regulations; and
  - (l) such other particulars and statements as are prescribed.
- (3) If a notice attached to a vehicle under this section states that the name and address of the last owner (or lessee) of the vehicle are available on request from the auctioneer, the auctioneer must, on request by a potential purchaser, disclose the name and address to the potential purchaser before a contract is made for the purchase of the vehicle.

Maximum penalty: \$2 500.

- (4) In proceedings for an offence relating to a failure to include in a notice all the particulars and statements required under this section or the inclusion of any incorrect particulars or statement, it is a defence to prove that the defendant, having made reasonable inquiries and a proper examination of the vehicle, complied with the requirements of the subsection to the best of the defendant's knowledge, information and belief.

- (5) An auctioneer must not, in an advertisement published in connection with an auction for the sale of a second-hand vehicle (being an auction that the auctioneer is conducting on the auctioneer's own behalf or on behalf of a dealer), refer directly or indirectly to the odometer reading of the vehicle or the distance travelled by the vehicle unless a notice is attached to the vehicle under this section and the notice contains a statement by the auctioneer that the odometer reading of the vehicle may be regarded as reasonably accurate.

Maximum penalty: \$2 500.

Expiation fee: \$105.

- (6) A person from whom an auctioneer acquires ownership of a second-hand vehicle or on whose behalf a second-hand vehicle is to be auctioned must not give the auctioneer any information as to any of the matters referred to in subsection (2) that is to that person's knowledge false or misleading in a material particular.

Maximum penalty: \$1 250.

## **21—Notices to be provided to purchasers of second-hand vehicles**

On the sale of a second-hand vehicle to a person other than a dealer—

- (a) by auction; or
- (b) by a sale negotiated by an auctioneer immediately after the conduct of an auction for the sale of the vehicle,

the auctioneer must ensure that—

- (c) a copy of the notice that was required to be attached to the vehicle under section 20; and
- (d) a notice in the prescribed form,

are given to the purchaser for retention before the purchaser takes possession of the vehicle.

Maximum penalty: \$2 500.

Expiation fee: \$105.

## **22—Trade auctions**

- (1) An auctioneer must not conduct a trade auction unless a notice in the prescribed form is attached to the vehicle and has been attached to the vehicle at all times when the vehicle has been available for inspection by prospective bidders.

Maximum penalty: \$2 500.

Expiation fee: \$105.

- (2) A person who advertises a trade auction must include in the advertisement a statement in the prescribed form.

Maximum penalty: \$2 500.

Expiation fee: \$105.

## Part 4—Dealer's duty to repair second-hand vehicles

### 23—Duty to repair

- (1) Subject to this Act, on the sale of a second-hand vehicle by a dealer, the dealer is under a duty to repair any defect that is present in the vehicle or that appears in the vehicle after the sale.
- (2) A dealer must, in order to discharge the duty imposed under this section, carry out the repairs in a manner that conforms to accepted trade standards.
- (3) This section does not apply to—
  - (a) the sale of a vehicle to a dealer; or
  - (b) the sale of a vehicle on behalf of a person who is not a dealer, if the sale—
    - (i) is by auction; or
    - (ii) is negotiated by the auctioneer immediately after the conduct of an auction for the sale of the vehicle; or
  - (d) the sale of a motorcycle.
- (4) This section does not apply to a defect that appears—
  - (a) in the case of a vehicle sold at a price that is within the prescribed range—
    - (i) if the vehicle has been driven 3 000 kilometres or more after the sale; or
    - (ii) if more than two months have elapsed from the date of the sale, whichever occurs first;
  - (b) in the case of a vehicle sold at a price that is above the prescribed range—
    - (i) if the vehicle has been driven 5 000 kilometres or more after the sale; or
    - (ii) if three months or more have elapsed from the date of the sale, whichever occurs first.
- (5) If a vehicle has a defect that a dealer is under a duty to repair under this section, the reference in subsection (4)(a)(ii) or (4)(b)(ii) (as the case may be) to a period after the sale will, in relation to the sale of that vehicle, be read as a reference to that period extended—
  - (a) if the vehicle is delivered to the dealer under this Act and the dealer carries out the duty to repair the defect—by a period equal to that elapsing between the time the vehicle was delivered to the dealer and the time the dealer completed the repairs and made the vehicle available for recovery by the purchaser; or
  - (b) in any other case—by a period determined by the Commissioner, on the application of the purchaser, as representing the period for which the purchaser did not have the use of the vehicle because of the defect (as distinct from any period for which the purchaser did not have the use of the vehicle because of the purchaser's own failure to act expeditiously).



- (6) This section does not apply to—
- (a) a defect resulting from damage deliberately caused to the vehicle after the sale; or
  - (b) a defect arising from misuse of the vehicle after the sale; or
  - (c) a defect arising from any collision, impact or accident that occurs after the sale; or
  - (d) a defect in the paintwork or upholstery of a vehicle that was reasonably apparent at the time of sale; or
  - (e) a vehicle that had been in the purchaser's possession for a period of three months or more before the date of the sale.
- (7) This section does not apply to—
- (a) a defect in a vehicle sold at a price that is below the prescribed amount; or
  - (ab) a defect in a vehicle sold—
    - (i) if the year of first registration of the vehicle was more than 15 years before the year in which the sale was made; or
    - (ii) if the vehicle had been driven more than 200 000 kilometres before the sale; or
  - (b) a defect in the tyres or battery of a vehicle,
- unless—
- (c) the defect is present at the time the purchaser takes possession of the vehicle; and
  - (d) because of the defect—
    - (i) the vehicle does not comply with the *Road Traffic Act 1961*; or
    - (ii) the vehicle cannot be driven safely or cannot be driven at all.
- (8) Except as provided by the regulations, this section does not apply to a defect to which this section is declared by the regulations not to apply.
- (9) If a second-hand vehicle is sold by a dealer on behalf of another dealer, the duty imposed by this section must be discharged by that other dealer.
- (10) In this section—
- defect** in relation to a second-hand vehicle means a defect in the vehicle—
- (a) because of which the vehicle does not comply with the *Road Traffic Act 1961*; or
  - (b) because of which the vehicle cannot be driven safely or cannot be driven at all; or
  - (c) because of which the part of the vehicle affected by the defect is not in proper working condition; or
  - (d) that would not reasonably be expected to be present in the vehicle having regard to—
    - (i) the apparent condition of the vehicle at the time of its sale; and

- (ii) a representation by the dealer prior to the sale as to the condition of the vehicle;

***prescribed amount*** means—

- (a) \$3 000; or
- (b) if a different amount is prescribed for the purposes of this definition—the amount so prescribed;

***prescribed range*** means—

- (a) from and including \$3 001 up to and including \$6 000; or
- (b) if a different range is prescribed for the purposes of this definition—the range so prescribed.

## **24—Enforcement of duty to repair**

- (1) If a dealer is under a duty under this Part to repair a defect in a second-hand vehicle, the purchaser must, if he or she requires the dealer to discharge the duty, deliver the vehicle to the dealer for that purpose during ordinary business hours—
  - (a) at a place agreed on by the dealer and the purchaser; or
  - (b) if no place has been so agreed on—any registered premises of the dealer,and afford the dealer a reasonable opportunity to repair the defect.
- (2) If—
  - (a) the purchaser delivers the vehicle to the dealer as required under this section, but the dealer refuses to discharge the duty to repair or fails to discharge the duty to repair the defect expeditiously; or
  - (b) the purchaser makes reasonable efforts to deliver the vehicle as required under this section, but is unable to do so by reason of the dealer's refusal to accept delivery of the vehicle or the absence of the dealer or a person acting on behalf of the dealer,

the purchaser may apply to the Commissioner for a conference to be convened under this section for the purpose of attempting to resolve the matter by conciliation.

- (3) On an application to the Commissioner, the Commissioner must, unless satisfied that in the circumstances of the case it is not appropriate to convene a conference, require the purchaser and the dealer to attend a conference to be presided over by the Commissioner at a time and place fixed by the Commissioner by notice in writing.
- (4) If agreement is reached at a conference under this section, the agreement must be recorded in a written instrument signed by the parties to the agreement and the Commissioner and a copy of the instrument given to each of the parties.
- (5) If, on application by the purchaser—
  - (a) the Commissioner determines that it is not appropriate to convene a conference; or
  - (b) a conference is convened but—
    - (i) the dealer fails to attend the conference; or
    - (ii) the matter in issue is not resolved by agreement; or

- (iii) the dealer fails to carry out the dealer's obligations under an agreement reached at the conference,

the purchaser may apply to the Magistrates Court for one or more of the following orders:

- (c) an order that the dealer (or another person at the expense of the dealer) repair the defect;
  - (d) an order that the dealer pay to the purchaser the reasonable costs of repairing or completing the repairs of the defect;
  - (e) an order that the dealer compensate the purchaser for any loss or damage suffered by the purchaser as a result of the dealer's conduct;
  - (f) an order enforcing the terms of an agreement reached at the conference.
- (6) The purchaser is under a duty to mitigate any loss or damage suffered as a result of the dealer's conduct.
- (7) If the Magistrates Court makes an order for the repair of the defect and the dealer fails to comply with the terms of the order, the Court may, on the further application of the purchaser, make an order that the dealer pay to the purchaser the reasonable costs of repairing or completing the repairs of the defect or an order for compensation or both.
- (8) If repairs that a dealer is under a duty to carry out under this Part are carried out by another person on behalf of the dealer and the purchaser of the vehicle pays the costs of the repair or an amount towards those costs, the Magistrates Court may, on the application of the purchaser, order the dealer to reimburse the purchaser in respect of the amount paid by the purchaser.
- (9) Despite subsection (1), if—
- (a) a dealer is under a duty to repair a defect in a second-hand vehicle under this Part; and
  - (b) because of the defect the vehicle—
    - (i) cannot be driven; or
    - (ii) cannot be driven safely; or
    - (iii) cannot be driven without risk of damage to the vehicle; and
  - (c) it is unreasonable in the circumstances having regard to the nature of the defect and the distance that the vehicle would have to be transported that the purchaser be required to deliver the vehicle to the dealer at the place referred to in subsection (1); and
  - (d) the purchaser has given the dealer proper notice (written or oral) of the defect and afforded the dealer a reasonable opportunity to nominate a place other than that referred to in subsection (1) at which the dealer is prepared to repair the defect; and
  - (e) the dealer fails to nominate another place or it is unreasonable in the circumstances having regard to the matters referred to in paragraph (c) that the purchaser be required to take the vehicle to the place nominated by the dealer,

then—

- (f) the purchaser may cause the vehicle to be repaired by a person other than the dealer; and
  - (g) the Magistrates Court may, on the application of the purchaser, order the dealer to pay to the purchaser the reasonable costs of repairing the defect.
- (10) Despite the other provisions of this section, if a dealer who is under a duty to repair a defect in a vehicle under this Part is not licensed under this Act—
- (a) the purchaser may cause the vehicle to be repaired by a person other than the dealer; and
  - (b) the Magistrates Court may, on the application of the purchaser, order the dealer to pay to the purchaser the reasonable costs of repairing the defect.
- (11) The Magistrates Court may, on an application under this section, make an order under this section on any terms and conditions it considers just.

## **25—Participation of assessors in proceedings**

In any proceedings under this Part, the Magistrates Court will, if a magistrate so determines, sit with assessors selected in accordance with Schedule 1.

## **Part 4A—Suspension of licence in urgent circumstances**

### **25A—Suspension of licence in urgent circumstances**

- (1) If the Commissioner is of the opinion that—
- (a) there are reasonable grounds to believe that a licensed dealer has engaged or is engaging in conduct that constitutes grounds for disciplinary action under Part 5; and
  - (b) it is likely that the dealer will continue to engage in that conduct; and
  - (c) there is a danger that a person or persons may suffer significant harm, or significant loss or damage, as a result of the dealer's conduct unless action is taken urgently,

the Commissioner may, by notice served on the dealer—

- (d) suspend the dealer's licence for a specified period (which may not exceed 6 months); and
  - (e) direct the dealer, within 7 days of service of the notice, to surrender the suspended licence to the Commissioner.
- (2) A licensed dealer who, without reasonable excuse, fails to surrender his or her licence in accordance with a direction under subsection (1)(e) is guilty of an offence.  
Maximum penalty: \$1 250.
- (3) If, during the suspension of a licence under this section, the Commissioner is satisfied that the facts and circumstances that gave rise to the suspension have so altered that the suspension should be terminated, the Commissioner must, by further notice specifying the date of termination, terminate the suspension without delay and restore the licence to the person.
- (4) A person whose licence has been suspended under this section may appeal to the District Court against the decision of the Commissioner to suspend the licence.

- (5) Subject to subsection (7), an appeal must be instituted within 1 month of the making of the decision appealed against.
- (6) The Commissioner must, if so required by the person whose licence has been suspended, state in writing the reasons for the Commissioner's decision to suspend the licence.
- (7) If the reasons of the Commissioner are not given in writing at the time of making the decision and the person (within 1 month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the person receives the written statement of those reasons.
- (8) The District Court must hear and determine an appeal under this section as expeditiously as possible.
- (9) This section applies in relation to conduct occurring before or after the commencement of this section.

## Part 5—Discipline

### 26—Interpretation of this Part

In this Part—

*dealer* means—

- (a) a dealer or former dealer required to be licensed under this Act or a corresponding previous enactment (whether or not currently or previously licensed); or
- (b) a licensee (whether or not carrying on business as a dealer);

*director* of a body corporate includes a former director of a body corporate.

### 27—Cause for disciplinary action

- (1) There is proper cause for disciplinary action against a dealer if—
  - (a) licensing of the dealer was improperly obtained; or
  - (b) the dealer has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*; or
  - (c) the dealer or another person has acted contrary to this Act or otherwise unlawfully, or improperly, negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, the business of the dealer; or
  - (d) in the case of a dealer who has been employed or engaged to manage and supervise an incorporated dealer's business—the dealer or another person has acted unlawfully, improperly, negligently or unfairly in the course of managing or supervising, or being employed or otherwise engaged in, that business; or
  - (e) the dealer has failed to attend a conference convened under Part 4, or has not conducted himself or herself reasonably at such a conference, or has failed to carry out his or her obligations under an agreement reached at such a conference; or

- (f) the dealer has failed to comply with an order made by the Magistrates Court under Part 4; or
  - (g) the registered premises of the dealer have become unsuitable for the purpose of carrying on business as a dealer; or
  - (h) events have occurred such that the dealer would not be entitled to be licensed as a dealer if he or she were to apply for a licence.
- (2) Disciplinary action may be taken against each director of a body corporate that is a dealer if there is proper cause for disciplinary action against the body corporate.
  - (3) Disciplinary action may not be taken against a person in relation to the act or default of another if that person could not reasonably be expected to have prevented the act or default.
  - (4) This section applies in relation to conduct occurring before or after the commencement of this Act.

## **28—Complaints**

The Commissioner or any other person may lodge with the District Court a complaint setting out matters that are alleged to constitute grounds for disciplinary action under this Part.

## **29—Hearing by Court**

- (1) On the lodging of a complaint, the District Court must conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action under this Part.
- (2) Without limiting the usual powers of the Court, the Court may during the hearing—
  - (a) allow an adjournment to enable the Commissioner to investigate or further investigate matters to which the complaint relates; and
  - (b) allow the modification of the complaint or additional allegations to be included in the complaint subject to any conditions as to adjournment and notice to parties and other conditions that the Court may think fit to impose.

## **30—Participation of assessors in disciplinary proceedings**

In any proceedings under this Part, the District Court will, if a Judge of the Court so determines, sit with assessors selected in accordance with Schedule 2.

## **31—Disciplinary action**

- (1) On the hearing of a complaint, the District Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following:
  - (a) reprimand the person;
  - (b) impose a fine not exceeding \$20 000 on the person;
  - (c) in the case of a person who is licensed as a dealer—
    - (i) suspend the licence for a specified period or until the fulfilment of stipulated conditions or until further order; or

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- (ii) cancel the licence; or
  - (iii) suspend the registration of premises registered in the name of the dealer until the fulfilment of stipulated conditions or until further order; or
  - (iv) cancel the registration of premises registered in the name of the dealer;
  - (d) impose conditions as to the conduct of the person or the person's business as a dealer;
  - (e) disqualify the person from being licensed under this Act;
  - (f) prohibit the person from being employed or otherwise engaged in the business of a dealer;
  - (g) prohibit the person from being a director or having an interest in a body corporate that is a dealer.
- (2) The Court may—
- (a) stipulate that a disqualification or prohibition is to apply—
    - (i) permanently; or
    - (ii) for a specified period; or
    - (iii) until the fulfilment of stipulated conditions; or
    - (iv) until further order;
  - (b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.
- (3) If—
- (a) a person has been found guilty of an offence; and
  - (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

### **32—Contravention of orders**

- (1) If a person contravenes or fails to comply with a condition imposed by the District Court as to the conduct of the person or the person's business, the person is guilty of an offence.

Maximum penalty: \$35 000 or imprisonment for 6 months.

- (2) If a person—

- (a) is employed or otherwise engages in the business of a dealer; or
- (b) becomes a director of a body corporate that is a dealer,

in contravention of an order of the District Court, that person and the dealer are each guilty of an offence.

Maximum penalty: \$35 000 or imprisonment for 6 months.

## Part 6—Miscellaneous

### 33—No waiver of rights

- (1) Subject to this section, a purported exclusion, limitation, modification or waiver of the rights conferred by this Act is void.
- (2) A person of or above the age of 18 years who proposes to purchase a second-hand vehicle may, in accordance with the regulations, waive a right conferred by this Act in relation to the proposed purchase of the vehicle.
- (3) If a dealer purports to exclude, limit or modify any of the rights conferred by this Act otherwise than as authorised by this section, the dealer is guilty of an offence.  
Maximum penalty: \$10 000.
- (4) A person who enters into an agreement or arrangement with intent either directly or indirectly to defeat, evade or prevent the operation of this Act is guilty of an offence.  
Maximum penalty: \$10 000.
- (5) A dealer must not exhibit or otherwise publish a statement, notice or advertisement in connection with a second-hand vehicle—
  - (a) to the effect that sale of the vehicle is conditional on the purchaser waiving a right conferred by this Act; or
  - (b) in such manner as to induce a prospective purchaser of the vehicle to waive such a right.Maximum penalty: \$10 000.
- (6) A contract for the sale of a second-hand vehicle conditional on the purchaser taking steps in accordance with the regulations to waive a right conferred by this Act is void.

### 34—Interference with odometers prohibited

- (1) A person must not interfere with the odometer on a second-hand vehicle.  
Maximum penalty: \$5 000.
- (2) For the purposes of subsection (1), a person interferes with an odometer if he or she—
  - (a) alters the reading on the odometer; or
  - (b) removes or replaces the odometer; or
  - (c) renders the odometer inoperative or inaccurate.
- (3) A person may, with the written approval of the Commissioner, alter the reading on an odometer, or replace an odometer, under the terms of that approval.
- (4) If in proceedings for an offence against subsection (1) it is proved that the defendant had possession of the vehicle and that, while it was in the defendant's possession, or shortly after it ceased to be in the defendant's possession, the odometer reading was less than the odometer reading at the time the defendant acquired possession of the vehicle, it will be presumed, in the absence of proof to the contrary, that the defendant interfered with the odometer of the vehicle.



- (5) In any proceedings for an offence against subsection (1) it is a defence for the defendant to prove—
  - (a) that the action was not taken with the intent of enhancing the apparent value of the vehicle for the purpose of sale; and
  - (b) that the action was not taken for any other fraudulent purpose.
- (6) If a dealer is convicted of an offence of interfering with an odometer on a second-hand vehicle that the dealer has sold to a purchaser, the court may (in addition to imposing a penalty), on the application of the purchaser, order that the dealer compensate the purchaser for any disadvantage suffered by the purchaser as a result of the purchase of the vehicle.
- (7) Rules of Court may be made under the *Magistrates Court Act 1991* regulating procedures with respect to applications for compensation under subsection (6).

### **35—Certain agreements to indemnify dealer void**

An agreement between a dealer and a person (other than a dealer) from whom the dealer purchases a second-hand vehicle that indemnifies the dealer in respect of any costs arising under this Act in relation to that vehicle is void.

### **36—Delegations**

- (1) The Commissioner may delegate any of the Commissioner's functions or powers under this Act—
  - (a) to a person employed in the Public Service; or
  - (b) to the person for the time being holding a specified position in the Public Service; or
  - (c) to any other person under an agreement under this Act between the Commissioner and an organisation representing the interests of persons affected by this Act.
- (2) The Minister may delegate any of the Minister's functions or powers under this Act (except the power to direct the Commissioner).
- (3) A delegation under this section—
  - (a) must be in writing; and
  - (b) may be conditional or unconditional; and
  - (c) is revocable at will; and
  - (d) does not prevent the delegator from acting in any matter.

### **37—Agreement with professional organisation**

- (1) The Commissioner may, with the approval of the Minister, make an agreement with an organisation representing the interests of persons affected by this Act under which the organisation undertakes a specified role in the administration or enforcement of this Act.
- (2) The agreement—
  - (a) must be in writing and executed by the Commissioner and the organisation; and

- (b) may contain delegations by the Commissioner of functions or powers under this Act or the *Fair Trading Act 1987*; and
  - (c) must set out any conditions governing the performance or exercise of functions or powers conferred on the organisation; and
  - (d) must make provision for the variation and termination of the agreement by the Commissioner with the approval of the Minister or the organisation.
- (3) The Commissioner may not delegate any of the following for the purposes of the agreement:
- (a) functions or powers under Part 2;
  - (b) power to request the Commissioner of Police to investigate and report on matters under this Part;
  - (c) power to commence a prosecution for an offence against this Act.
- (4) A delegation by the Commissioner for the purposes of the agreement—
- (a) has effect subject to the conditions specified in the agreement; and
  - (b) may be varied or revoked by the Commissioner in accordance with the terms of the agreement; and
  - (c) does not prevent the Commissioner from acting in any matter.
- (5) The Minister must, within six sitting days after the making of an agreement, cause a copy of the agreement to be laid before both Houses of Parliament.

### **38—Exemptions**

- (1) The Minister may, on application by a person, exempt the person from compliance with a specified provision of this Act.
- (2) An exemption is subject to the conditions (if any) imposed by the Minister.
- (3) The Minister may, at his or her discretion, vary or revoke an exemption.
- (4) The grant or a variation or revocation of an exemption must be notified in the Gazette.

### **39—Register of dealers and premises**

- (1) The Commissioner must keep a register—
  - (a) of persons licensed as dealers under this Act; and
  - (b) of premises registered in the name of a licensed dealer.
- (2) The Commissioner must record on the register—
  - (a) disciplinary action taken against a person under this Act; and
  - (b) a note of an assurance accepted by the Commissioner under the *Fair Trading Act 1987* in relation to a licensed dealer.
- (2a) If any of the following events occur in relation to a person who is licensed as a dealer, or is a director of a body corporate that is licensed as a dealer, the Commissioner may record a note of the event on the register:
  - (a) the person is convicted of an offence of dishonesty;

- (b) the person is suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth;
  - (c) the person becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth;
  - (d) a body corporate is wound up for the benefit of creditors and the person was a director of the body corporate—
    - (i) when the body corporate was being so wound up; or
    - (ii) within the period of 6 months preceding the commencement of the winding up;
  - (e) the person, being a body corporate, is being wound up or is under official management or in receivership.
- (3) A person may inspect the register on payment of the fee fixed by regulation.

#### **40—Commissioner and proceedings before Court**

- (1) The Commissioner is entitled to be joined as a party to any proceedings of the District Court under this Act.
- (2) The Commissioner may appear personally in any such proceedings or may be represented at the proceedings by counsel or a person employed in the Public Service.

#### **41—False or misleading information**

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this Act.

Maximum penalty:

- (a) If the person made the statement knowing that it was false or misleading—\$10 000.
- (b) In any other case—\$2 500.

#### **42—Name in which dealer may carry on business**

A licensed dealer must not carry on business as a dealer except in the name in which the dealer is licensed.

Maximum penalty: \$2 500.

Expiation fee: \$105.

#### **43—Statutory declaration**

If a person is required to provide information to the Commissioner, the Commissioner may require the information to be verified by statutory declaration and, in that event, the person will not be taken to have provided the information as required unless it has been verified in accordance with the requirements of the Commissioner.

#### **44—Investigations**

The Commissioner of Police must, at the request of the Commissioner, investigate and report on any matter relevant to—

- (a) the determination of an application under this Act; or
- (b) a matter that might constitute proper cause for disciplinary action under this Act.

#### **45—General defence**

It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

#### **46—Liability for act or default of officer, employee or agent**

For the purposes of this Act, an act or default of an officer, employee or agent of a person carrying on a business will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

#### **47—Offences by bodies corporate**

If a body corporate is guilty of an offence against this Act, each director of the body corporate is, subject to the general defence under this Part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

#### **48—Continuing offence**

- (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—
  - (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
  - (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.
- (2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

#### **49—Prosecutions**

- (1) Proceedings for an offence against this Act must be commenced—
  - (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
  - (b) in any other case—within 2 years of the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within 5 years of that date.

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- (2) A prosecution for an offence against this Act cannot be commenced except by—
    - (a) the Commissioner; or
    - (b) an authorised officer; or
    - (c) a person who has the consent of the Minister to commence the prosecution.
  - (3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorisation of, or consent to, a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

## 50—Evidence

- (1) For the purposes of this Act, a person who has sold, or offered or exposed for sale, four or more second-hand vehicles during a period of 12 months, will, in the absence of proof to the contrary, be presumed to have been a dealer during that period.
- (2) In any proceedings, an apparently genuine document purporting to be a certificate of the Commissioner certifying—
  - (a) that a person was or was not licensed as a dealer on a specified date; or
  - (b) that premises were or were not registered in the name of a specified dealer on a specified date,

constitutes proof of the matters so certified in the absence of proof to the contrary.

## 51—Service of documents

- (1) Subject to this Act, a notice or document required or authorised by this Act to be given to or served on a person may—
  - (a) be served on the person personally; or
  - (b) be posted in an envelope addressed to the person—
    - (i) at the person's last known address; or
    - (ii) if the person is a licensed dealer—at the dealer's address for service; or
  - (c) if the person is a licensed dealer—be left for the person at the dealer's address for service with someone apparently over the age of 16 years; or
  - (d) be transmitted by facsimile transmission to a facsimile number provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) The address for service of a licensed dealer is the address of which the Commissioner has been last notified in writing by the dealer as the dealer's address for service.

## 52—Annual report

- (1) The Commissioner must, on or before 31 October in each year, submit to the Minister a report on the administration of this Act during the period of 12 months ending on the preceding 30 June.
- (2) The Minister must, within six sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

### **53—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) require licensed dealers to comply with a code of conduct;
  - (b) require dealers to lodge with the Commissioner certificates evidencing the dealers' insurance coverage as required under Part 2;
  - (c) fix fees to be paid in respect of any matter under this Act and regulate the recovery, refund, waiver or reduction of such fees;
  - (d) provide for the exclusion, limitation, modification or waiver of rights conferred by this Act;
  - (e) exempt (conditionally or unconditionally) classes of persons or activities from the application of this Act or specified provisions of this Act;
  - (f) impose a penalty (not exceeding \$2 500) for contravention of, or non-compliance with, a regulation;
  - (g) fix expiation fees, not exceeding \$210, for alleged offences against the regulations.
- (3) Regulations under this Act—
  - (a) may be of general application or limited application;
  - (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
  - (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Commissioner or the Minister.
- (4) The regulations may operate by reference to a specified code as in force at a specified time or as in force from time to time.
- (5) If a code is referred to in the regulations—
  - (a) a copy of the code must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and
  - (b) evidence of the contents of the code may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code.

### **Schedule 1—Appointment and selection of assessors for Magistrates Court**

- (1) The Minister must establish the following panels of persons who may sit with the Magistrates Court as assessors in proceedings under Part 4:
  - (a) a panel consisting of persons representative of dealers;

- (b) a panel consisting of persons representative of members of the public who deal with dealers.
- (2) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.
- (3) A member of a panel is, on the expiration of a term of office, eligible for reappointment.
- (4) Subject to subclause (5), if assessors are to sit with the Magistrates Court in proceedings under Part 4, a magistrate must select one member from each of the panels to sit with the Court in the proceedings.
- (5) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the Magistrates Court is disqualified from participating in the hearing of the matter.
- (6) If an assessor dies or is for any reason unable to continue with any proceedings, the Magistrates Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

## **Schedule 2—Appointment and selection of assessors for District Court**

- (1) The Minister must establish the following panels of persons who may sit with the District Court as assessors in proceedings under Part 5:
  - (a) a panel consisting of persons representative of dealers;
  - (b) a panel consisting of persons representative of members of the public who deal with dealers.
- (2) A member of a panel is to be appointed by the minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.
- (3) A member of a panel is, on the expiration of a term of office, eligible for reappointment.
- (4) Subject to subclause (5), if assessors are to sit with the District Court in proceedings under Part 5, a Judge of the Court must select one member from each of the panels to sit with the Court in the proceedings.
- (5) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the District Court is disqualified from participating in the hearing of the matter.
- (6) If an assessor dies or is for any reason unable to continue with any proceedings, the District Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

## Schedule 3—Second-hand Vehicles Compensation Fund

### 1—Second-hand Vehicles Compensation Fund continues

The *Second-hand Vehicles Compensation Fund* continues and will continue to be administered by the Commissioner.

### 2—Claim against Fund

- (1) Subject to subclause (2), if the Magistrates Court, on the application of a person not being a dealer who has—
- (a) purchased a second-hand vehicle from a dealer; or
  - (b) sold a second-hand vehicle to a dealer; or
  - (c) left a second-hand vehicle in a dealer's possession to be offered for sale by the dealer on behalf of the person,
- is satisfied that—
- (d) the person has a valid unsatisfied claim against the dealer arising out of or in connection with the transaction; and
  - (e) the person has no reasonable prospect of recovering the amount of the claim (except under this Schedule),
- the Court may authorise payment of compensation to that person out of the Fund.
- (2) This clause—
- (a) applies to a claim referred to in subclause (1) whether the transaction to which it relates occurred before or after the commencement of this Act;
  - (b) applies to a claim relating to a transaction that occurs on or after the commencement of this paragraph only if the dealer was licensed, or the person making the claim reasonably believed the dealer to have been licensed, at the time of the transaction;
  - (c) does not apply to a claim arising out of or in connection with—
    - (i) the sale of a second-hand vehicle by auction; or
    - (ii) the sale of a second-hand vehicle negotiated immediately after an auction for the sale of the vehicle was conducted,if—
    - (iii) the sale was made after the commencement of the *Second-hand Vehicle Dealers (Compensation Fund) Amendment Act 1997*; and
    - (iv) the auctioneer who conducted the auction or negotiated such a sale (as the case may be) was acting as an agent only and was selling the vehicle on behalf of another person who was not a licensed dealer;
  - (d) does not apply to a claim prescribed by regulation.



### **3—Management of Fund**

- (1) The following amounts will be paid into the Fund—
  - (a) contributions required to be paid under clause 4; and
  - (b) amounts recovered by the Commissioner under clause 5; and
  - (c) amounts paid from the Consolidated Account under subclause (3); and
  - (d) amounts derived from investment under subclause (5).
- (2) The following amounts will be paid out of the Fund—
  - (a) an amount authorised by the Court under clause 2; and
  - (b) any expenses incurred in administering the Fund (including expenses incurred in insuring the Fund against possible claims); and
  - (c) any amount required to be paid into the Consolidated Account under subclause (4).
- (3) Where the Fund is insufficient to meet an amount that may be authorised to be paid under clause 2, the Minister may, with the approval of the Treasurer, authorise the payment of an amount specified by the Minister out of the Consolidated Account which is appropriated by this clause to the necessary extent.
- (4) The Minister may authorise payment from the Fund into the Consolidated Account of an amount paid into the Fund from the Consolidated Account if the Minister is satisfied that the balance remaining in the Fund will be sufficient to meet any amounts that may be authorised to be paid under clause 2.
- (5) Any amounts standing to the credit of the Fund that are not immediately required for the purposes of this Act may be invested in a manner approved by the Minister.

### **4—Licensed dealers may be required to contribute to Fund**

- (1) Each licensed dealer must pay to the Commissioner for payment into the Fund such contribution as the licensee is required to pay under the regulations.
- (2) If a licensee fails to pay a contribution within the time allowed for payment by the regulations, the licence is suspended until the contribution is paid.

### **5—Right of Commissioner where claim allowed**

- (1) On payment out of the Fund of an amount authorised by the Magistrates Court, the Commissioner is subrogated to the extent of the payment to the rights of the person to whom the payment was made in respect of the order or claim in relation to which the payment was made.
- (2) If the Commissioner is subrogated to rights arising from an act or omission of a body corporate occurring on or after the commencement of this subclause, the persons who were directors of the body corporate at the time of the act or omission will be jointly and severally liable together with the body corporate for any amount recoverable by the Commissioner from the body corporate in pursuance of those rights.
- (3) A director of a body corporate will not have a liability under subclause (2) in respect of an act or omission of the body corporate if the director proves, on the balance of probabilities, that the act or omission occurred without the director's express or implied authority or consent.

## 6—Accounts and audit

- (1) The Commissioner must cause proper accounts of receipts and payments to be kept in relation to the Fund.
- (2) The Auditor-General may at any time, and must at least once in every year, audit the accounts of the Fund.

## 7—Expiry of Schedule

- (1) This Schedule will expire on a day fixed by regulation for that purpose.
- (2) The regulations may provide for the payment or distribution of money remaining in the Fund on the expiry of this Schedule and make any other provision that the Governor considers necessary or appropriate in consequence of the expiry of this Schedule.

# Schedule 4—Repeal and transitional provisions

## 1—Repeal

The *Second-hand Motor Vehicles Act 1983* (the *repealed Act*) is repealed.

## 2—Licensing

A person who held a licence as a dealer under the repealed Act immediately before the commencement of this Act will be taken to have been licensed as a dealer under this Act.

## 3—Registered premises

Premises registered in the name of a dealer under the repealed Act immediately before the commencement of this Act will be taken to have been registered in the dealer's name under this Act.

## 4—Duty to repair

A duty to repair that arose under Part 4 of the repealed Act continues as if it were a duty to repair under this Act.

## 5—Disciplinary matters

Where an order or decision of the Commercial Tribunal is in force or continues to have effect under Division 3 of Part 2 of the repealed Act immediately before the commencement of this Act, the order or decision has effect as if it were an order of the District Court under Part 5 of this Act.

## 5A—Effect of disqualification

- (1) If a person—
  - (a) who was disqualified from holding a licence as a dealer under the repealed Act immediately before the commencement of this Act; and
  - (b) who remains disqualified at the commencement of this clause,

is employed or otherwise engaged in the business of a dealer during the period of that disqualification, both that person and the dealer are guilty of an offence.

Maximum penalty: \$5 000.

- (2) Subclause (1) applies after the commencement of this clause, whether the contract of employment or other engagement was entered into before or after the commencement of this clause.

## **6—Application of Second-hand Vehicles Compensation Fund at end of claims**

When the Minister is satisfied that no more valid claims can be made which may require payment out of the Second-hand Vehicles Compensation Fund, any amount remaining to the credit of the Fund may—

- (a) be paid to an organisation representing the interests of dealers; or
- (b) be otherwise dealt with,

as the Minister thinks fit.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation amended by principal Act

The *Second-hand Vehicle Dealers Act 1995* amended the following:

*Magistrates Court Act 1991*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1995	9	<i>Second-hand Vehicle Dealers Act 1995</i>	16.3.1995	Sch 5—30.6.1995 ( <i>Gazette</i> 29.6.1995 p2977); remainder of Act—30.11.1995 ( <i>Gazette</i> 2.11.1995 p1232)
1996	34	<i>Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996</i>	2.5.1996	Sch (cl 31)—3.2.1997 ( <i>Gazette</i> 19.12.1996 p1923)
1996	67	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1996</i>	15.8.1996	s 26—17.10.1996 ( <i>Gazette</i> 17.10.1996 p1361)
1997	58	<i>Second-hand Vehicle Dealers (Compensation Fund) Amendment Act 1997</i>	31.7.1997	31.7.1997
1998	21	<i>Statutes Amendment (Consumer Affairs) Act 1998</i> as amended by 22/1998	2.4.1998	Pt 11 (ss 28—32) & Sch—28.5.1998 ( <i>Gazette</i> 28.5.1998 p2292)
1998	22	<i>Statutes Amendment (Consumer Affairs) Amendment Act 1998</i>	2.4.1998	2.4.1998
1999	21	<i>Second-hand Vehicle Dealers (Compensation Fund) Amendment Act 1999</i>	1.4.1999	1.5.1999 ( <i>Gazette</i> 22.4.1999 p2170)
2000	4	<i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i>	20.4.2000	Sch 1 (cl 36)—1.6.2000 ( <i>Gazette</i> 18.5.2000 p2554)
2001	47	<i>Statutes Amendment (Consumer Affairs) Act 2001</i>	11.10.2001	Pt 6 (ss 18—21)—1.11.2001 ( <i>Gazette</i> 25.10.2001 p4686)
<b>2009</b>	<b>39</b>	<b><i>Statutes Amendment and Repeal (Fair Trading) Act 2009</i></b>	<b>23.7.2009</b>	<b>Pt 8 (ss 52—54)—3.9.2009 (<i>Gazette</i> 3.9.2009 p4367)</b>

2009	62	<i>Second-hand Vehicle Dealers (Cooling-off Rights) Amendment Act 2009</i>	26.11.2009	Pt 2 (ss 4—31)—uncommenced
2010	3	<i>Credit (Transitional Arrangements) Act 2010</i>	24.6.2010	Sch 1 (cl 4)—uncommenced

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
credit contract	amended by 47/2001 s 18(a)	1.11.2001
credit provider	amended by 47/2001 s 18(b)	1.11.2001
Pt 2		
s 7		
s 7(1)	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
s 7(2)	amended by 47/2001 s 19	1.11.2001
s 8		
s 8(2)	amended by 47/2001 s 20(a)	1.11.2001
s 8(3)—(5)	inserted by 47/2001 s 20(b)	1.11.2001
s 9		
s 9(1)	amended by 47/2001 s 21(a) <b>amended by 39/2009 s 52</b>	1.11.2001 <b>3.9.2009</b>
s 9(2)	amended by 47/2001 s 21(b)	1.11.2001
s 10		
s 10(2)	amended by 4/2000 s 9(1) (Sch 1 cl 36(a))	1.6.2000
<i>s 10(5)</i>	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 36(b))</i>	<i>1.6.2000</i>
<i>s 10(6)</i>	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 36(c))</i>	<i>1.6.2000</i>
s 13	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
s 14		
s 14(1) and (5)	amended by 34/1996 s 4 (Sch cl 31) amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	3.2.1997 28.5.1998
Pt 3		
s 16		
s 16(1)	amended by 34/1996 s 4 (Sch cl 31)	3.2.1997

**Second-hand Vehicle Dealers Act 1995—3.9.2009 to 30.6.2010**

## Legislative history

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	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
s 16(5)—(7)	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
s 17		
s 17(3)	amended by 34/1996 s 4 (Sch cl 31)	3.2.1997
	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
s 17(4)—(6)	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
s 18	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
s 20		
s 20(1) and (3)	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
s 20(5)	amended by 34/1996 s 4 (Sch cl 31)	3.2.1997
	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
s 20(6)	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
s 21	amended by 34/1996 s 4 (Sch cl 31)	3.2.1997
	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
s 22		
s 22(1) and (2)	amended by 34/1996 s 4 (Sch cl 31)	3.2.1997
	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
Pt 4		
s 23		
s 23(3)	(c) deleted by 21/1998 s 28(a)	28.5.1998
s 23(7)	amended by 21/1998 s 28(b)	28.5.1998
s 25	amended by 21/1998 s 29	28.5.1998
<b>Pt 4A</b>	<b>inserted by 39/2009 s 53</b>	<b>3.9.2009</b>
Pt 5		
s 30	amended by 21/1998 s 30	28.5.1998
s 31		
s 31(1)	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
s 32		
s 32(1) and (2)	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
Pt 6		
s 33		
s 33(3)—(5)	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
s 34		

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s 34(1)	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
<b>s 39</b>		
<b>s 39(2a)</b>	<b>inserted by 39/2009 s 54</b>	<b>3.9.2009</b>
s 41	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
s 42	amended by 34/1996 s 4 (Sch cl 31)	3.2.1997
	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
s 49		
s 49(1)	substituted by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
s 53		
s 53(2)	amended by 34/1996 s 4 (Sch cl 31)	3.2.1997
	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
Sch 1		
scl (4)	amended by 21/1998 s 31	28.5.1998
Sch 2		
scl (4)	amended by 21/1998 s 32	28.5.1998
Sch 3	will expire by regulation: cl 7	
cl 2	amended by 58/1997 s 2	31.7.1997
	substituted by 21/1999 s 3(a)	1.5.1999
cl 3		
cl 3(2)	amended by 21/1999 s 3(b)	1.5.1999
cl 5		
cl 5(1)	cl 5 amended and redesignated as cl 5(1) by 21/1999 s 3(c), (d)	1.5.1999
cl 5(2) and (3)	inserted by 21/1999 s 3(d)	1.5.1999
cl 7		
cl 7(1)	cl 7 redesignated as cl 7(1) by 21/1999 s 3(e)	1.5.1999
cl 7(2)	inserted by 21/1999 s 3(e)	1.5.1999
Sch 4		
cl 5A	inserted by 67/1996 s 26	17.10.1996
cl 5A(1)	amended by 21/1998 Sch cl 8 as substituted by 22/1998 s 3	28.5.1998
Sch 5	<i>omitted under Legislation Revision and Publication Act 2002</i>	

## **Transitional etc provisions associated with Act or amendments**

### *Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996*

#### **5—Transitional provision**

An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

#### **Historical versions**

Reprint No 1—17.10.1996

Reprint No 2—3.2.1997

Reprint No 3—31.7.1997

Reprint No 4—28.5.1998

Reprint No 5—1.5.1999

Reprint No 6—1.6.2000

Reprint No 7—1.11.2001