

1995
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Consumer Affairs)

**Sale of Motor Vehicles (Amendment) Bill
1995**

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FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Consumer Affairs)

**Sale of Motor Vehicles (Amendment) Bill
1995**

_____  _____

A BILL

FOR

An Act to amend the *Sale of Motor Vehicles Act 1977*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

- 5 1. This Act may be cited as the *Sale of Motor Vehicles (Amendment) Act 1995*.

Commencement

2. (1) This Act, other than subsection 24 (2), commences on the day on which it is notified in the *Gazette*.
- 10 (2) Subsection 24 (2) commences on the day on which section 4 of the *Consumer Credit Act 1995* commences.

Principal Act

3. In this Act, "Principal Act" means the *Sale of Motor Vehicles Act 1977*.¹

Interpretation

5 4. Section 3 of the Principal Act is amended—

- (a) by inserting "(including all accessories fitted, carried in or attached to the vehicle at the time of the offer or display)" after "motor vehicle" in paragraph (a) of the definition of "cash price" in subsection (1);
- 10 (b) by omitting "person who holds a licence" from the definition of "licensed dealer" in subsection (1) and substituting "dealer who holds a vehicle sale licence";
- (c) by inserting "or" after paragraph (a) of the definition of "trade owner" in subsection (1);
- 15 (d) by omitting "or" from paragraph (b) of the definition of "trade owner" in subsection (1);
- (e) by omitting paragraph (c) from the definition of "trade owner" in subsection (1);
- 20 (f) by omitting from subsection (1) the definitions of "accessory", "commercial vehicle", "dealer" and "licence" and substituting the following definitions:

" 'accessory', in relation to a motor vehicle, means—

- (a) a car radio, sound reproducing equipment or an air conditioning unit fitted to the vehicle; or
- 25 (b) a spare wheel or any other thing carried in or attached to the vehicle;

'commercial vehicle' means a motor vehicle for use wholly or principally for—

- (a) the carriage of goods;
- 30 (b) the carriage of more than 10 adult persons; or
- (c) industrial or agricultural purposes;

and includes a motor vehicle, or a motor vehicle included in a class of motor vehicles, prescribed for the purposes of this definition but does not include—

- 35 (d) a motor vehicle—

(i) of a kind known as a utility, station wagon or panel van that is the same make as a factory-produced motor car; and

(ii) in which, the front part of the body, and the mechanical equipment, of which are the same, or substantially the same, as in that motor vehicle;

(e) a motor vehicle that is adapted for camping use;

(f) a four-wheel drive motor vehicle with at least 1 forward-facing rear passenger seat (not being a motor vehicle of a kind known as a dual cab or a crew-cab); or

(g) a motor vehicle, or a class of motor vehicles, prescribed not to be a motor vehicle, or a class of motor vehicles, as the case may be, for the purposes of this definition;

'dealer' has the meaning given by section 6A;

'licence' means a vehicle sale licence or a car market operator licence and, if such a licence is varied under section 14E, includes the licence as so varied;"

(g) by omitting from subsection (1) the definitions of "demonstrator vehicle", "exempt trader" and "prescribed fee";

(h) by inserting in subsection (1) the following definitions:

" 'business', in relation to—

(a) a person who is the holder of a licence—means the business carried on under the licence; or

(b) a person who is an applicant for a licence—means the business that the person would be entitled to carry on in the event that the person were granted that licence;

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

'car market operator licence' means a licence issued under section 7B;

'charge' means a charge that has not been dealt with by a court, but does not include a charge that has been withdrawn or otherwise not proceeded with;

5

'Chief Police Officer' means the police officer who is responsible to the Commissioner of Police for the day-to-day administration and control of police services in the Territory;

10

'convicted' includes being discharged under section 556A of the *Crimes Act 1900* or an equivalent provision of a law of the Commonwealth, a State, another Territory or another country, but does not include a reference to a conviction that has been set aside on appeal or review;

15

'demonstrator', in relation to a motor vehicle, means a vehicle—

- (a) that has been sold only to a dealer or wholesaler;
- (b) that has been registered only in the name of any 1 of the following persons:

20

- (i) a dealer or wholesaler or any person on behalf of a dealer or wholesaler;
 - (ii) a person in anticipation of the sale of the vehicle to that person; and

25

- (c) that has not been used for any purpose other than—
 - (i) a purpose in connection with its manufacture or sale; or
 - (ii) the purpose of demonstrating the motor vehicle, or another vehicle of the same type, to a potential buyer of that vehicle;

30

'determined fee' means the fee determined under section 90A for the purposes of the provision in which the expression occurs;

'good fame and character' has the meaning given by section 71;

35

'licensed car market operator' means a person who holds a car market operator licence;

'licensed wholesaler' means a person who holds a vehicle sale licence to carry on business as a wholesaler;

‘new motor vehicle’ means a motor vehicle other than a second-hand motor vehicle;

‘premises’ includes a parcel of vacant land;

‘qualified accountant’ means—

- 5 (a) a member of the Institute of Chartered Accountants in Australia, the National Institute of Accountants or the Australian Society of Certified Practising Accountants; or
- 10 (b) a person registered as a registered company auditor under the Corporations Law;

‘vehicle sale licence’ means a licence issued under section 7 or 7A;

15 ‘wholesaler’ means a person who carries on the business of buying motor vehicles from any person and selling those vehicles to, or exchanging those vehicles with, persons who are financiers or holders of licences (other than car market operators’ licences) and only those persons.”; and

(j) by omitting subsection (3).

Repeal

20 5. Section 4 of the Principal Act is repealed.

Inspectors

6. Section 5B of the Principal Act is amended by adding at the end of subsection (3) the following paragraph:

25 “(e) a member of any other rank of the Police Force who has been nominated in writing by the Chief Police Officer.”.

Heading to Part II

7. The heading to Part II of the Principal Act is amended by omitting “DEALERS” and substituting “A DEALER, WHOLESALER OR CAR MARKET OPERATOR”.

Insertion

30 8. Before section 7 of the Principal Act the following section is inserted in Part II:

Meaning of “dealer”

“6A. (1) A dealer is a person who—

(a) buys, sells or exchanges motor vehicles as a business but does not include—

5 (i) such a person whose business consists exclusively of buying motor vehicles for the purpose of demolishing or dismantling those vehicles;

(ii) a wholesaler;

(iii) a car market operator; or

(iv) a financier; or

10 (b) subject to subsection (2), a person who sells more than 6 vehicles in any period of 12 months.

“(2) Paragraph (b) does not apply to a person who is exempted by the Registrar by notice in writing.

“(3) A person shall not, by reason only of anything contained in paragraph 3 (2) (a), be taken, for the purposes of this Act, to be a dealer.”.

15 Substitution

9. Sections 7, 8 and 9 of the Principal Act are repealed and the following sections substituted:

Interpretation

“6B. In this Part, unless the contrary intention appears—

20 ‘relevant Chief Executive’ means the Chief Executive who has control of the administrative unit to which responsibility for the administration of the *Land (Planning and Environment) Act 1991* has been allocated.

Licensing of dealers

25 “7. A person shall not carry on the business of a dealer or hold himself or herself out as a dealer unless—

(a) the person is the holder of a vehicle sale licence; and

30 (b) the business is carried on at premises specified in the licence as the address at which the person may carry on that business or partly at those premises and partly at premises specified in another vehicle sale licence held by the person.

Penalty:

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

- (b) if the offender is a body corporate—250 penalty units.

Licensing of wholesalers

“7A. A person shall not carry on the business of a wholesaler or hold himself or herself out as a wholesaler unless—

- 5 (a) the person is the holder of a vehicle sale licence; and
 (b) an address has not been specified in that licence under subsection 14 (1A).

Penalty:

- 10 (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
 (b) if the offender is a body corporate—250 penalty units.

Licensing of car market operators

“7B. A person shall not carry on the business of a car market operator or hold himself or herself out as a car market operator unless—

- 15 (a) the person is the holder of a car market operator licence; and
 (b) the business is carried on at premises specified in the licence as the address at which the person may carry on that business or partly at those premises and partly at premises specified in another car market operator licence held by the person.

20 Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
 (b) if the offender is a body corporate—250 penalty units.

Eligibility for the grant of licences to individuals

25 “8. (1) An individual is eligible for the grant of a licence if—

- (a) the individual has attained the age of 18 years;
 (b) the individual is of good fame and character;
 (c) the individual is not a person who is for the time being taking the benefit of any law for the relief of bankrupt or insolvent debtors or a person whose remuneration is, for the time being, assigned for
30 the benefit of his or her creditors;
 (d) having regard to the factors specified in subsection (2), the individual is likely to be able to comply with the obligations applicable to the licence;

- (e) in the case of an applicant for the grant of a vehicle sale licence—
- (i) the individual is not the holder of, or an applicant for, a car market operator licence; and
 - (ii) the individual has sufficient material and financial resources to carry on that business in accordance with subsection (3);
- (f) in the case of an applicant for the grant of a car market operator licence—the individual is not the holder of, or an applicant for, a vehicle sale licence; and
- (g) in the event that the licence is granted—the individual intends to carry on the business during the period of the licence.

“(2) For the purposes of paragraph (1) (d), the question whether an individual is likely to be able to comply with the obligations applicable to the licence is to be determined having regard to his or her—

- (a) apparent understanding of those obligations;
- (b) general business experience (whether or not in the motor trade);
- (c) previous employment (whether or not in the motor trade);
- (d) knowledge of the operation of businesses of the type proposed to be engaged in by the individual;
- (e) level of education; and
- (f) personal capacity.

“(3) For the purposes of paragraph (1) (e), the question whether an individual has sufficient material and financial resources to carry on the proposed business is to be determined having regard to—

- (a) the scope of the individual’s proposed business operations; and
- (b) the liabilities the individual may incur in the course of carrying on that business.

Eligibility for the grant of licences to corporations

“9. A corporation is eligible for the grant of a licence if—

- (a) each of the directors of the corporation is a person of good fame and character;
- (b) in the case of an applicant for the grant of a vehicle sale licence—
 - (i) the corporation is not the holder of, or an applicant for, a car market operator licence; and

- (ii) the corporation has sufficient material and financial resources to carry on business having regard to the scope of its proposed business operations and the liabilities it may incur in the course of carrying on business; and
- 5 (c) in the case of an applicant for the grant of a car market operator licence—the corporation is not the holder of, or an applicant for, a vehicle sale licence.”.

Applications for licences by individuals

10. Section 10 of the Principal Act is amended—

- 10 (a) by omitting paragraph (1) (c) and substituting the following paragraph:
 - “(c) shall state in relation to the applicant—
 - (i) full name;
 - (ii) date and place of birth;
 - 15 (iii) present residential address and any other addresses at which the applicant has resided during the 3 years immediately preceding the date of the application;”;
- 20 (b) by omitting paragraphs (1) (e), (f) and (g) and substituting the following paragraphs:
 - “(e) except in the case of an application for a car market operator licence—shall be accompanied by a statement audited by a qualified accountant containing details of the applicant’s material and financial resources;
 - 25 (f) shall specify the premises at which the applicant proposes to carry on business under the licence;
 - (g) a certificate by the relevant Chief Executive that, in his or her opinion, the carrying on of the proposed business at the premises specified in the application in pursuance of paragraph (f) is not prohibited by the provisions of the lease of the land at which those premises are situated or by the Territory Plan as in effect under the *Land (Planning and Environment) Act 1991*;”;
 - 30
- (c) by omitting paragraph (1) (j);
- 35 (d) by omitting from paragraph (1) (k) “or has been employed by a dealer” and substituting “, wholesaler or car market operator or has been employed in such a business”;

(e) by omitting from paragraph (1) (k) “and”;

(f) by inserting after paragraph (k) the following paragraphs:

“(ka) if the applicant proposes to carry on business under a name other than his or her personal name—shall be accompanied by a certificate of registration of the business name under the *Business Names Act 1963*;

(kb) shall be accompanied by identification of the applicant being identification in accordance with the requirements of section 11A.”; and

(g) by omitting subsection (2) and substituting the following subsection:

“(2) An application under subsection (1) shall be notified in accordance with section 11B.”.

Applications for licences by corporations

11. Section 11 of the Principal Act is amended—

(a) by omitting paragraph (1) (e) and substituting the following paragraph:

“(e) except in the case of an application for a car market operator licence—shall be accompanied by the relevant financial information referred to in subsection (2);”;

(b) by omitting paragraphs (1) (g) and (h) and substituting the following paragraphs:

“(g) shall specify the premises at which the corporation proposes to carry on business under the licence;

(h) a certificate by the relevant Chief Executive that, in his or her opinion, the carrying on of the proposed business at the premises specified in the application in pursuance of paragraph (f) is not prohibited by the provisions of the lease of the land at which those premises are situated or by the Territory Plan as in effect under the *Land (Planning and Environment) Act 1991*;”;

(c) by omitting from paragraph (1) (j) “and”;

(d) by inserting after paragraph (1) (j) the following paragraphs:

“(ja) if the applicant proposes to carry on business under a name other than the name of the corporation—shall be accompanied by a certificate of registration of the business name under the *Business Names Act 1963*;

(jb) shall be accompanied by identification of each of the directors of the corporation being identification in accordance with the requirements of section 11A; and”;
and

5 (e) by omitting subsection (2) and substituting the following subsections:

“(2) For the purposes of paragraph (1) (e), the relevant financial information is—

10 (a) where the corporation has been in existence for more than 1 financial year of that corporation—

(i) a copy of the corporation’s accounts in respect of the financial year of the corporation immediately preceding the application for the grant of the licence; and

15 (ii) a copy of the corporation’s accounts in respect of the period commencing at the end of that financial year and ending no more than 1 month immediately preceding the application for the grant of the licence; or

20 (b) where paragraph (a) does not apply—a copy of the corporation’s accounts in respect of the period commencing at its incorporation and ending no more than 1 month immediately preceding the application for the grant of the licence;

25 being accounts that have been audited by a qualified accountant.

“(3) In subsection (2)—

(a) a reference to accounts shall be read as a reference to accounts within the meaning of the Corporations Law; and

30 (b) a reference to accounts in respect of a period shall be read as including a reference to accounts in respect of each of 2 periods whose total length corresponds to the length of the first-mentioned period.

35 “(4) An application under subsection (1) shall be notified in accordance with section 11B.”.

Substitution

12. Section 12 of the Principal Act is repealed and the following sections are substituted:

Identification of applicant or director

“11A. (1) In this section—

‘relevant person’ means—

- 5 (a) in the case of an application for a licence by an individual—the applicant;
- (b) in the case of an application for a licence by a corporation—a director of the corporation.

10 “(2) Subject to subsection (3), for the purposes of paragraph 10 (1) (kb) or 11 (1) (jb), the identification is 2 of the following items being items in the name currently used by the relevant person:

- (a) a licence issued to the relevant person under a law;
- (b) a credit card or a debit card issued to the relevant person;
- (c) a notice issued by a public utility relating to liability of the relevant person to rates or a service provided by the utility;
- 15 (d) a certificate, diploma or testamur issued to the relevant person by a recognised tertiary institution or government education agency;
- (e) a certificate of birth or marriage issued by a government agency that relates to the relevant person;
- 20 (f) a document equivalent to a document referred to in a preceding paragraph that has been issued in a State, another Territory or a foreign country;
- (g) a passport issued to the relevant person including a passport issued by the government of a foreign country.

25 “(3) The 2 items referred to in subsection (2) must consist of 1 item referred to in 1 paragraph of that subsection and 1 item referred to in another item of that subsection.

30 “(4) Where the Registrar is satisfied that in all the circumstances (including the availability of items referred to in subsection (2)) it is not reasonably practicable to comply with the requirements of that subsection in respect of a relevant person, the Registrar may accept any other identification for the purposes of paragraph 10 (1) (kb) or 11 (1) (jb) which the Registrar considers to be satisfactory evidence of the identity of that person.

Notification of application

35 “11B. (1) In this section—

‘relevant person’ means—

- (a) in the case of an application for a licence by an individual—the applicant;
- (b) in the case of an application for a licence by a corporation—a director of the corporation.

5 “(2) An application under subsection 10 (1) or 11 (1) shall be notified in a daily newspaper circulating in the Territory within 7 days of lodgment.

“ (3) A notice referred to in subsection (2) shall also—

- (a) include the name of the applicant;
- 10 (b) include the full name and present residential address of each relevant person;
- (c) indicate the type of licence applied for;
- (d) indicate the place where the applicant would carry on business in the event that the licence is granted; and
- 15 (e) indicate that any person who objects to the grant of the licence to the applicant should lodge a written objection with the Registrar at the address of the Registrar specified in the notice within 14 days of publication of the notice.

Certificates of convictions

20 “12. (1) Upon receipt of an application for the grant or renewal of a licence, the Registrar shall forward to the Chief Police Officer the name, address and any former name or address of the applicant known to the Registrar.

25 “(2) Within 21 days of the receipt of the copy of the application, the Chief Police Officer shall furnish to the Registrar a certificate stating whether, according to the records held by the Chief Police Officer, it appears that the applicant has been charged with, or convicted of, any offence against a law of the Territory, the Commonwealth, a State, another Territory or another country.

30 “(3) The applicant is entitled to inspect a certificate under subsection (2).”.

Grant or refusal of licence

13. Section 13 of the Principal Act is amended—

- (a) by omitting from subsection (2) “, whether or not an objection to the grant of an application for a licence has been lodged,”; and
- 35 (b) by omitting subsections (3) and (4) and substituting the following subsections:

“(3) The Registrar may exercise his or her powers under subsection (2) whether or not—

- (a) an objection to the grant of an application for a licence has been lodged; or
- (b) the certificate of conviction received by the Registrar indicates that the applicant has been charged with, or convicted of, an offence against a law of the Territory, the Commonwealth, a State, another Territory or another country.

“(4) Where—

- (a) an objection is lodged in response to a notice referred to in section 11B and the Registrar is satisfied that the objection is not frivolous or vexatious;
- (b) a certificate of conviction has been received indicating that the applicant has been charged with, or convicted of, an offence and the Registrar is satisfied that as a consequence of that conviction the applicant is not a person of good fame and character; or
- (c) the Registrar considers that there may be grounds for refusing an application for the grant of a licence;

the Registrar shall hold an inquiry into the matter.”.

Issue of licences

14. Section 14 of the Principal Act is amended—

- (a) by omitting from subsection (1) “Where” and substituting “Subject to subsection (1A), where”;
- (b) by omitting from subsection (1) “prescribed” and substituting “determined”;
- (c) by inserting after subsection (1) the following subsection:

“(1A) Before issuing a licence to a person who proposes to carry on the business of a dealer or a car market operator, the Registrar shall specify in the licence the address of the premises at which the dealer or operator, as the case may be, may carry on that business.”; and

- (d) by omitting from subsection (2) all words after “allows”.

Insertion

15. After section 14 of the Principal Act the following sections are inserted in Part II:

Eligibility for renewal of licences

5 "14A. (1) An individual is eligible for the renewal of the licence held by him or her if—

- (a) the individual is a person of good fame and character;
- (b) the individual is not a person who is for the time being taking the benefit of any law for the relief of bankrupt or insolvent debtors or a person whose remuneration is, for the time being, assigned for the benefit of his or her creditors;
- (c) in the case of the renewal of a vehicle sale licence—the individual has sufficient material and financial resources to carry on that business in accordance with subsection (3); and
- 15 (d) in the event that the licence is granted—the individual intends to carry on the business during the period of the licence.

"(2) A corporation is eligible for the renewal of the licence held by the corporation if—

- 20 (a) each of the directors of the corporation is a person of good fame and character;
- (b) in the case of the renewal of a vehicle sale licence—the corporation has sufficient material and financial resources to carry on that business in accordance with subsection (3); and
- 25 (c) in the event that the licence is granted—the corporation intends to carry on the business during the period of the licence.

"(3) For the purposes of paragraph (1) (c), the question whether an applicant for renewal has sufficient material and financial resources to carry on the business during the period of the renewal is to be determined having regard to—

- 30 (a) the scope of the applicant's business operations; and
- (b) the liabilities the applicant has incurred and may incur in the course of carrying on business."

Applications for renewal of licences

35 "14B. An application by a licensee for the renewal of the licence held by the licensee—

- (a) shall be in writing and signed—

- (i) except where subparagraph (ii) applies—by the licensee; or
- (ii) where the licensee is a corporation—on behalf of the corporation by a director of the corporation;
- 5 (b) shall state the period, being a period not exceeding 12 months, for which renewal of the licence is sought;
- (c) except in the case of an application for renewal of a car market operator licence—shall be accompanied by a statement audited by a qualified accountant containing details of the licensee's working capital;
- 10 (d) shall specify the premises at which the licensee proposes to carry on business under the licence as renewed; and
- (e) a certificate by the relevant Chief Executive that, in his or her opinion, the carrying on of the proposed business at the premises specified in the application in pursuance of paragraph (d) is not prohibited by the provisions of the lease of the land at which those premises are situated or by the Territory Plan as in effect under the
- 15 *Land (Planning and Environment) Act 1991*.

Grant or refusal of renewal of licences

20 “14C. (1) The Registrar shall grant an application for the renewal of a licence unless—

- (a) the applicant or, in the case of an application by a corporation, a director of the corporation, refuses or fails to comply with a requirement of the Registrar under subsection (2);
- 25 (b) the applicant for the renewal of a licence fails to establish that he, she or it is eligible for the renewal of the licence; or
- (c) the application does not comply with the requirements of section 14B that are applicable to the applicant.

30 “(2) The Registrar may, whether or not an objection to the grant of an application for a renewal of a licence has been lodged, require an applicant, or in the case of an application by a corporation, all or any of the directors of the corporation—

- (a) to attend before the Registrar; and
- (b) to furnish to the Registrar, orally or in writing, such further information as the Registrar requires to be furnished.

35 “(3) Where an objection is lodged under section 12 or the Registrar considers that there may be grounds for refusing an application for the grant of a renewal of a licence, the Registrar shall hold an inquiry into the matter.

“(4) Where the Registrar refuses an application for the grant of a renewal of a licence to an applicant, the Registrar shall record the reasons for his or her decision and cause to be served on the applicant notice of the decision.

5 “(5) Where the Registrar, within the period of 3 months after the lodging with him or her of an application for the renewal of a licence, fails to convey to the applicant a decision in respect of the application, the Registrar shall be taken to have refused to grant the application.

Renewal of licences

10 “14D. (1) Where the Registrar grants an application for the renewal of a licence, the Registrar shall, on payment by the applicant of the determined fee and the contribution referred to in section 59, issue to the applicant a renewal of the licence to carry on business subject to any conditions imposed by the Registrar.

15 “(2) A licence shall be renewed for a period of 12 months or for such shorter period as is specified in the application or the Registrar allows, but may, upon payment of the determined fee and the contribution referred to in section 59, be renewed for successive periods of 12 months.

20 “(3) The Registrar may grant an application for the renewal of a licence subject to conditions.

 “(4) A person shall not carry on business under a licence that has been renewed subject to a condition unless the person complies with the condition.

Penalty:

- 25 (a) if the offender is a natural person—50 penalty units;
 (b) if the offender is a body corporate—250 penalty units.

30 “(5) Without limiting the scope of the conditions that may be imposed under subsection (3), where the Registrar considers that the financial position of the applicant requires it, the Registrar may impose a condition relating to the size of the business that the applicant may operate under the licence as renewed.

Variation of licences

 “14E. (1) The Registrar, on application in writing by a licensee, may vary a licence.

35 “(2) An application shall specify the reason for the proposed change and be accompanied by the copy of the licence held by the applicant.

 “(3) Where the Registrar varies a licence, the Registrar shall endorse the terms of the variation on the copy of the licence lodged with the application and return the copy to the applicant.

“(4) Subject to subsection (5), where a licence is varied, the licence has effect on and after the variation as if the licence had been issued or renewed, as the case may be, in the terms as varied.

5 “(5) Subsection (4) does not affect any rights or liabilities which had accrued in relation to a licence and were in existence immediately before the variation of the licence.

“(6) Where the Registrar refuses an application for the grant of a variation of a licence to an applicant, the Registrar shall—

- (a) record the reasons for his or her decision;
- 10 (b) cause to be served on the applicant notice of the decision; and
- (c) return to the applicant the copy of the licence lodged with the application.

15 “(7) Where the Registrar, within the period of 3 months after the lodging with him or her of an application for the variation of a licence, fails to convey to the applicant a decision in respect of the application, the Registrar shall be taken to have refused to grant the application.

Substitution

16. Section 15 of the Principal Act is repealed and the following section substituted:

20 Licensees to maintain Dealings Register

“15. (1) At each place at which a licensee carries on business, the licensee shall maintain a Dealings Register in accordance with this section.

Penalty:

- (a) if the offender is a natural person—20 penalty units;
- 25 (b) if the offender is a body corporate—100 penalty units.

“(2) A Dealings Register shall consist of—

- (a) a bound book each page of which is numbered consecutively and bears the name of the licensee and the address at which it is kept; or
- 30 (b) a computer system approved by the Registrar under subsection (4).

“(3) Where a licensee maintains a Dealings Register in the form of a bound book, entries in the book shall be made in ink and shall not be erased or made illegible.

“(4) The Registrar shall not approve a computer system for the purpose of maintaining a Dealings Register unless the Registrar is satisfied that the computer system as maintained by the licensee would—

- 5 (a) provide for the immediate retrieval of information required by this Act to be recorded in the Dealings Register and made available for inspection; and
- (b) contain a duplicate version of the information referred to in paragraph (a) and provide for the back-up or duplication of any alteration in that information.

10 “(5) The information referred to in paragraph (4) (a) shall be in the English language and be readable on sight.”.

Information to be recorded in Dealings Register

17. Section 16 of the Principal Act is amended—

- 15 (a) by omitting from subsection (1) “licensed dealer” and substituting “licensee”;
- (b) by omitting the penalty provision at the foot of subsection (1) and substituting the following penalty provision:

“Penalty:

- 20 (a) if the offender is a natural person—20 penalty units;
- (b) if the offender is a body corporate—100 penalty units.”;
- (c) by inserting in subsection (2) “or licensed wholesaler” after “licensed dealer”;
- (d) by omitting the penalty provision at the foot of subsection (2) and substituting the following penalty provision:

25 “Penalty:

- (a) if the offender is a natural person—20 penalty units;
- (b) if the offender is a body corporate—100 penalty units.”;
- (e) by inserting in subsection (3) “or licensed wholesaler” after “licensed dealer”;
- 30 (f) by omitting the penalty provision at the foot of subsection (3) and substituting the following penalty provision:

“Penalty:

- (a) if the offender is a natural person—20 penalty units;

(b) if the offender is a body corporate—100 penalty units.”; and

(g) by omitting subsection (4) and substituting the following subsections:

5 “(4) Subject to subsection (5), a licensed car market operator shall not permit a second-hand motor vehicle to be displayed for sale at the premises to which the licence of the operator relates (in this subsection and subsection (5) called ‘the market’) unless, in
10 respect of the motor vehicle, the operator enters or causes to be entered in the Dealings Register—

(a) the make, model designation and type, year of manufacture (where known), registered number (if any), engine number and body number of the vehicle;

15 (b) where the motor vehicle is fitted with an odometer, the distance travelled by the vehicle as recorded on the odometer immediately before the vehicle was displayed for sale; and

(c) the name of the most recent owner of the motor vehicle who was not a trade owner.

20 Penalty:

(a) if the offender is a natural person—20 penalty units;

(b) if the offender is a body corporate—100 penalty units.

“(5) Where—

25 (a) a licensed car market operator enters or causes to be entered in the Dealings Register the particulars referred to in subsection (1) in respect of a vehicle (in this subsection called ‘the relevant full particulars entry’); and

30 (b) the vehicle is displayed for sale at the market from time to time within a period not exceeding 2 months after the relevant full particulars entry was made;

the operator shall be taken to sufficiently comply with subsection (4) if the operator enters or causes to be entered in the Dealings Register an entry which—

35 (c) identifies the location of the relevant full particulars entry in the Dealings Register; and

(d) specifies any particulars required by paragraph (4) (b).

“(6) In this section—

‘Dealings Register’ means—

(a) in relation to a dealing in a motor vehicle by a licensee who carries on business at more than 1 place—

(i) the Dealings Register maintained at the place of business at which the dealing takes place; or

(ii) if the dealing takes place off the premises of such a place—the Dealings Register at the place of business that is closest to the place where the dealing takes place; or

(b) in relation to a dealing in a motor vehicle by any other licensee—the Dealings Register maintained at the place at which the licensee carries on business.”.

Furnishing of incorrect information to licensee

18. Section 17 of the Principal Act is amended—

(a) by omitting “licensed dealer” (wherever occurring) and substituting “licensee”; and

(b) by omitting the penalty provision and substituting the following penalty provision:

“Penalty:

(a) if the offender is a natural person—5 penalty units;

(b) if the offender is a body corporate—25 penalty units.”.

Aquainting persons with requirements of Act

19. Section 18 of the Principal Act is amended by omitting “licensed dealer” (wherever occurring) and substituting “licensee”.

Dealings with persons under 18 years

20. Section 19 of the Principal Act is amended—

(a) by omitting the penalty provision; and

(b) by adding the following subsection and penalty provision:

“(2) A licensed wholesaler shall not, in respect of a person who is apparently under the age of 18 years, purchase or

otherwise acquire from that person a second-hand motor vehicle without the consent in writing of that person's parent or guardian.

Penalty:

- (a) if the offender is a natural person—20 penalty units;
- 5 (b) if the offender is a body corporate—100 penalty units.”.

Dealer to attach notice to second-hand vehicle

21. Section 20 of the Principal Act is amended—

- (a) by omitting the penalty provision at the foot of subsection (1) and substituting the following penalty provision:

10 “Penalty:

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.”;

- (b) by omitting the penalty provision at the foot of subsection (4) and substituting the following penalty provision:

15 “Penalty:

- (a) if the offender is a natural person—30 penalty units;
- (b) if the offender is a body corporate—150 penalty units.”;

- (c) by omitting the penalty provision at the foot of subsection (5) and substituting the following penalty provision:

20 “Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.”;

- (d) by omitting the penalty provision at the foot of subsection (6) and substituting the following penalty provision:

25 “Penalty:

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.”;
- and

- (e) by omitting subsection (7) and substituting the following subsection:
- 30

“(7) This section does not apply where a dealer offers or displays a vehicle for sale only to a trade owner or gives possession of a vehicle to a purchaser who is a trade owner.”.

Action by dealer on sale of second-hand motor vehicle

5 **22. Section 21 of the Principal Act is amended—**

- (a) by omitting from subparagraph (1) (a) (iv) “(other than a motor cycle of the kind referred to in paragraph 23 (1) (d))” and substituting “that is not a demonstrator motor cycle”;
- 10 (b) by omitting the penalty provision at the foot of subsection (1) and substituting the following penalty provision:

“Penalty:

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.”;
- and

15 (c) by omitting paragraph (2) (a).

Sale of vehicle where odometer replaced or distance altered

23. Section 22 of the Principal Act is amended by omitting the penalty provision and substituting the following penalty provision:

“Penalty:

- 20 (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.”.

Substitution

24. (1) Sections 23, 24 and 25 of the Principal Act are repealed and the following sections substituted:

25 Obligations of dealer to repair defects in motor vehicles

“23. (1) Except as provided in this section and sections 24 and 25, where a motor vehicle described in Column 2 of Schedule 1 is sold by a dealer and before—

- 30 (a) the vehicle has been driven for the number of kilometres after being manufactured or sold, as the case may be, specified opposite the description of the vehicle in Column 3 of Schedule 1; or
- (b) the expiration of the period, specified opposite the description of the vehicle in Column 4 of Schedule 1, after the vehicle is so sold;

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

“(2) The dealer's obligation under subsection (1) shall be taken to be a term of the contract of sale relating to the vehicle.

“(3) For the purposes of subsection (1), a defect which occurs in a vehicle includes a defect—

- 10 (a) which existed in the vehicle at any time before the occurrence of an event referred to in paragraph (1) (a) or (b); and
- (b) which first became apparent after the event occurred;

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

15 “(4) For the purposes of calculating the period referred to in paragraph (1) (b), no regard shall be paid to any period during which the dealer has the motor vehicle in his or her possession for the purpose or purported purpose of ascertaining or carrying out his or her obligations under subsection (1).

20 “(5) The obligation of a dealer under subsection (1) in relation to a new motor vehicle sold by the dealer is extinguished if, subsequent to that sale, the dealer or another dealer acquires ownership of the vehicle, or the vehicle is repossessed by a financier.

25 “(6) Subject to subsection (5), the obligation of a dealer under subsection (1) in relation to a new motor vehicle sold by the dealer subsists for the benefit of the owner, from time to time, of the vehicle and, for this purpose, the owner from time to time shall be taken to have entered into a contract of sale with the dealer in respect of the vehicle.

30 “(7) The obligation of a dealer under subsection (1) in relation to a second-hand motor vehicle sold by the dealer is an obligation only to the person who purchased the vehicle from the dealer.

“(8) The fact that a dealer's licence has been revoked, or that a dealer is not the holder of a dealer's licence or has ceased to be a dealer, does not affect the dealer's obligation under subsection (1).

35 “(9) Where the holder of a dealer's licence sells a motor vehicle on behalf of another dealer, this section does not apply to the other dealer.

Excluded defects

“24. (1) In this section—

'attach' includes cause to be attached;

'defect notice' means a notice in accordance with Form 1 in Schedule 2, being a notice that complies with the requirements of subsection (6).

5 “(2) Where a dealer offers or displays for sale a second-hand motor vehicle, the dealer may attach to the vehicle a defect notice.

 “(3) If—

10 (a) a defect notice has been attached to a second-hand motor vehicle at all material times when the vehicle is offered or displayed for sale by the dealer; and

 (b) at or before the time of sale of the vehicle, the notice, or a copy of the notice, has been signed by the dealer and the purchaser and has been delivered to the purchaser for retention by the purchaser;

15 subsection 23 (1) does not apply in relation to the defects set out in the notice.

 “(4) If, at or before the time of sale of a demonstrator motor vehicle, a defect notice has been signed by the dealer and the purchaser and has been delivered to the purchaser for retention by the purchaser, subsection 23 (1) does not apply in relation to any defect specified in the notice.

20 “(5) Where the reasonable cost of repairing a defect specified in a defect notice is greater than the amount specified in that notice, the purchaser may recover the difference between those amounts from the licensed dealer.

 “(6) A defect notice—

25 (a) shall consist of legible writing on white material or on material of such colour as is approved by the Registrar;

 (b) shall be written in letters and figures at least 2 millimetres in height; and

 (c) shall be attached to the vehicle in such a place as to be clearly visible and readily legible from outside the vehicle.

30 **Exceptions**

 “25. (1) In this section—

 ‘relevant sale’ means a sale referred to in subsection 23 (1).

 “(2) Subsection 23 (1) does not apply in relation to a defect—

 (a) occurring in—

35 (i) a tyre or battery; or

(ii) an accessory fitted to a motor vehicle;

(b) arising from or incidental to any accidental damage to a motor vehicle that occurred after the relevant sale when the vehicle was not in the possession of the dealer;

5 (c) arising from misuse or negligence on the part of a driver of a motor vehicle, or arising from the use of a motor vehicle for motor racing or motor rallying, that occurred after the relevant sale of the vehicle; or

10 (d) appearing or occurring in an accessory that was not fitted to or supplied with a motor vehicle at the time of the relevant sale of the vehicle.

15 “(3) In the case of a second-hand motor vehicle, subsection 23 (1) does not apply in relation to any superficial damage to the paint-work or upholstery of the vehicle which would have been apparent on a reasonable inspection of the vehicle carried out at the time of the relevant sale of the vehicle.

“(4) Subsection 23 (1) does not apply in relation to the sale of—

20 (a) a second-hand motor vehicle where the purchaser has been in possession of the vehicle for a period of not less than 3 months immediately preceding the day of the relevant sale;

(b) a commercial vehicle; or

(c) a substantially demolished or substantially dismantled motor vehicle.

25 “(5) Where the proposed purchaser (in this subsection called ‘the buyer’) of a new motor vehicle is in possession of the vehicle for a period immediately preceding the day on which the buyer purchases the vehicle from a dealer then, for the purposes of subsection 23 (1), the buyer shall be taken to have purchased the vehicle on the day when the buyer first acquired that possession.

30 “(6) Subsection 23 (1) does not apply in relation to a motor vehicle where—

35 (a) the motor vehicle or a class of motor vehicles which include the motor vehicle has been declared by the Minister, by notice published in the *Gazette*, to be a motor vehicle or a class of motor vehicles in relation to which subsection 23 (1) does not apply; and

(b) a copy of the notice is attached to the vehicle at all material times when the vehicle is offered or displayed for sale by the dealer.

- 5 “(7) Where, by reason of a declaration by the Minister under subsection (6), a dealer would not be liable under subsection 23 (1) in respect of a defect in a motor vehicle if the dealer were to sell that vehicle, a licensed dealer shall not offer or display that vehicle for sale unless a notice in accordance with Form 2 in Schedule 2 that complies with the requirements of subsection (8) is attached to the motor vehicle.

Penalty:

- (a) if the offender is a natural person—10 penalty units;
(b) if the offender is a body corporate—50 penalty units.
- 10 “(8) The notice shall contain letters at least 5 millimetres in height and shall in all other respects comply with the requirements of subsection 24 (7) as if it were a notice attached to a motor vehicle in accordance with subsection 24 (2).

- 15 “(9) Where a licensed dealer sells a motor vehicle referred to in subsection (7), the dealer shall—

- (a) sign 2 copies of the notice referred to in that subsection;
(b) retain 1 copy of the notice for a period of 3 years from the date of the sale; and
(c) furnish the purchaser with the other copy of the notice.

20 Penalty:

- (a) if the offender is a natural person—5 penalty units;
(b) if the offender is a body corporate—25 penalty units.

- 25 “(10) For the purposes of subsection (9), where the motor vehicle has been sold to the purchaser by the employee or agent of the dealer, compliance by the employee or agent with a requirement of that subsection shall be taken to be compliance by the dealer with that requirement.

Obligations of dealer to repair defects in motor cycles

“25A. (1) Subject to this section, where—

- 30 (a) a dealer sells to a person a new motor cycle or a demonstrator motor cycle; and
(b) before—
(i) the motor cycle has been ridden for 10,000 kilometres after the sale; or
(ii) the expiration of the period of 6 months next following the
35 date of the sale;

whichever is the earlier;

5 a defect in the motor cycle occurs or becomes apparent to the purchaser the dealer shall, at the dealer's own expense, repair or make good, or cause to be repaired or made good, the defect so as to place the motor cycle in a reasonable condition having regard to its age.

“(2) Subsection (1) applies to a defect whether or not that defect existed at the time of the sale.

“(3) The dealer's obligation under subsection (1) shall be taken to be a term of the contract of sale relating to the motor cycle.

10 “(4) A dealer is not liable under this section in respect of a defect in a motor cycle where the defect—

(a) arises from, or is incidental to, accidental damage suffered by the motor cycle after the purchaser took delivery of the motor cycle from the dealer;

15 (b) arises from misuse of the motor cycle or negligence by a rider of the motor cycle, or from the use of the motor cycle for motor cycle racing or motor cycle rallying, after the purchaser took delivery of the motor cycle from the dealer;

20 (c) consists of damage to, or wear of, tyres or any accessory of the motor cycle; or

25 (d) consists of superficial damage to the paintwork or upholstery of the vehicle that would have been apparent on a reasonable inspection of the motor cycle carried out at the time of delivery of the motor cycle from the dealer or of the sale, whichever is the earlier.

“(5) A dealer is not liable under this section in respect of a defect in a motor cycle sold by the dealer where the motor cycle is—

30 (a) a motor cycle that has been in the possession, or under the control, of the purchaser continuously for a period of not less than 3 months immediately preceding the date of the sale;

(b) a motor cycle that is sold by auction at a sale referred to in subsection 4 (2) of the *Auctioneers Act 1959*;

35 (c) a motor cycle or a motor cycle included in a class of motor cycles that has been declared by the Minister, by notice published in the *Gazette*, to be a motor cycle or a class of motor cycle in relation to which this section does not apply; or

(d) a motor cycle that is sold to a person who is a trade owner.

“(6) This section does not apply to a sale to the Territory.

Cooling-off period

5 “25B. (1) A purchaser (not being a dealer or a corporation) under an agreement for the sale of a motor vehicle may, at any time before the expiration of 3 clear business days after the purchaser signs the agreement, terminate the agreement by giving to or serving on the dealer or an agent of the dealer notice in writing to the effect that the purchaser terminates the agreement.

10 “(2) Subsection (1) ceases to apply if the purchaser immediately before accepting delivery signs an instrument in accordance with Form 3 in Schedule 2 acknowledging that the right to terminate the agreement no longer applies.

15 “(3) A dealer shall not sell, give in exchange or otherwise dispose of a motor vehicle given or agreed to be given by a purchaser under an agreement for the sale of another motor vehicle in satisfaction of part of the purchase price during the period during which the purchaser may terminate the agreement under this section.

“(4) If an agreement for the sale of a motor vehicle has been terminated in accordance with this section—

(a) the vendor under the agreement—

20 (i) shall pay to the purchaser all money received by the vendor under the agreement less the sum of \$100 or 1 per centum of the purchase price under the agreement (whichever is the greater); and

25 (ii) shall return to the purchaser any motor vehicle given in satisfaction of any part of the purchase price;

(b) any collateral credit agreement is discharged to the extent that it was entered into for the purposes of the payment for the motor vehicle supplied or to be supplied under the agreement;

30 (c) any security interest in the motor vehicle arising under the collateral credit agreement is extinguished to the extent that it secures the payment of a debt or other pecuniary obligation or performance of any other obligation under the collateral credit agreement; and

35 (d) a purchaser who has accepted delivery of the motor vehicle before the agreement was terminated—

(i) is liable to the dealer for any damage (other than fair wear and tear) occurring to the motor vehicle while it was in the purchaser's possession; and

- (ii) subject to subsection (5), shall return the motor vehicle to the dealer.

5 “(5) A purchaser is not liable under paragraph (4) (d) to return the motor vehicle to the dealer if, before the agreement was terminated, a defect appeared in the motor vehicle for reasons beyond the control of the purchaser making the motor vehicle—

- (a) incapable of being driven; or
(b) unroadworthy;

10 but shall permit the dealer to collect, or arrange for the collection of, the motor vehicle.

“(6) Sections 25 and 26 of the *Credit Act 1985* do not apply to the termination of agreements under this section.

“(7) This section does not apply to an agreement for the sale of a commercial vehicle or a motor vehicle purchased at a public auction.”.

15 (2) Section 25B of the Principal Act as amended by this Act is amended by omitting from subsection (6) “Sections 25 and 26 of the *Credit Act 1985* do” and substituting “Section 125 of the Consumer Credit (Australian Capital Territory) Code does”.

Sales between dealers and wholesalers

20 25. Section 26 of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting the following subsections:

“(1) In this section—

25 ‘trade vendor’ means a licensed dealer or a licensed wholesaler.

30 “(1A) Where a trade vendor (in this subsection called ‘the seller’) sells a second-hand motor vehicle to another trade vendor (in this subsection called ‘the buyer’), the seller shall, at the time of the sale or of giving possession of the vehicle to the buyer, whichever is the earlier, give the buyer or cause to be given to the buyer a notice containing the required particulars.

Penalty:

- (a) if the offender is a natural person—5 penalty units;
(b) if the offender is a body corporate—25 penalty units.”;

(b) by omitting from subsection (2) "licensed dealer" and substituting "trade vendor"; and

(c) by omitting the penalty provision at the foot of subsection (2) and substituting the following penalty provision:

5

"Penalty:

(a) if the offender is a natural person—5 penalty units;

(b) if the offender is a body corporate—25 penalty units."

Authority to dealer to sell as agent

26. Section 31 of the Principal Act is amended—

10

(a) by omitting the penalty provision at the foot of subsection (1) and substituting the following penalty provision:

"Penalty:

(a) if the offender is a natural person—10 penalty units;

15

(b) if the offender is a body corporate—50 penalty units."; and

(b) by omitting the penalty provision at the foot of subsection (3) and substituting the following penalty provision:

"Penalty:

20

(a) if the offender is a natural person—5 penalty units;

(b) if the offender is a body corporate—25 penalty units."

Offences by vendors

27. Section 32 of the Principal Act is amended by omitting the penalty provision at the foot of subsection (1) and substituting the following penalty provision:

25

"Penalty:

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units."

Payment of moneys into trust account

28. Section 33 of the Principal Act is amended—

30

(a) by inserting at the foot of subsection (2) the following penalty provision:

“Penalty:

- (a) if the offender is a natural person—10 penalty units;
 - (b) if the offender is a body corporate—50 penalty units.”;
- and

- 5 (b) by omitting from subsection (3) all words after “the licensed dealer”.

Procedure where part of consideration is not money

29. Section 34 of the Principal Act is amended by adding at the foot of the section the following penalty provision:

10 “Penalty:

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.”.

Procedure where part of consideration is not money

15 30. Section 35 of the Principal Act is amended by adding at the foot of the section the following penalty provision:

“Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.”.

20 **Accounting records**

31. Section 38 of the Principal Act is amended—

- (a) by inserting at the foot of subsection (1) the following penalty provision:

“Penalty:

- 25 (a) if the offender is a natural person—20 penalty units;
- (b) if the offender is a body corporate—100 penalty units.”;
- and

- (b) by inserting at the foot of subsection (2) the following penalty provision:

30 “Penalty:

- (a) if the offender is a natural person—20 penalty units;
- (b) if the offender is a body corporate—100 penalty units.”.

Receipts for trust moneys

32. Section 39 of the Principal Act is amended by adding at the foot of the section the following penalty provision:

“Penalty:

- 5 (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.”.

Audit of trust accounts

33. Section 40 of the Principal Act is amended by adding at the foot of the section the following penalty provision:

10 “Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.”.

Auditor’s report

15 34. Section 41 of the Principal Act is amended—

- (a) by omitting subsection (2); and
- (b) by omitting from paragraph (3) (a) “or dealers have” and substituting “has”.

Qualification of auditors

20 35. Section 42 of the Principal Act is amended—

- (a) by omitting from paragraph (a) “*Companies Act 1981* of the Commonwealth” and substituting “Corporations Law”; and
- (b) by omitting from paragraph (b) “is a partner of,”.

Withdrawals—deficiency suspected

25 36. Section 43 of the Principal Act is amended by adding at the foot of subsection (2) the following penalty provision:

“Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.”.

30 **Revocation of licences**

37. Section 45 of the Principal Act is amended—

- (a) by omitting "granted to a dealer";
- (b) by omitting from paragraph (c) "dealer" and substituting "licensee"; and
- (c) by omitting paragraphs (d), (e), (f) and (g) and substituting the following paragraphs:
 - "(d) in the case of a licensed dealer or a licensed wholesaler—the material and financial resources of the licensee are such that, having regard to the scope of the licensee's business operations and the liabilities the licensee may incur in the course of carrying on business, it would not be in the public interest for the licensee to continue to carry on business;
 - (e) the licensee has failed to comply with subsection 45A (1) or 46 (1); or
 - (f) in a case in which a corporation is a licensee, a person who becomes, or intends to become, a director of the corporation is not a person of good fame and character."

Insertion

38. After section 45 of the Principal Act the following section is inserted:

Intended change of directors—notification and objection

"45A. (1) In this section—

'corporation' means a corporation that holds a licence.

"(2) Where a person (in this section called 'the prospective director') intends becoming a director of a corporation, the prospective director shall, by notice published in a daily newspaper circulating in the Territory, notify that intention.

"(3) A notice referred to in subsection (2) shall also—

- (a) include the full name and present residential address of the prospective director;
- (b) include the name of the corporation; and
- (c) indicate that any person who would object to the continuation of the corporation's licence in the event that the prospective director became a director should notify the Registrar in writing within 14 days at the address of the Registrar specified in the notice.

“(4) The prospective director shall, as soon as practicable after submitting the notice for publication, forward a copy of the notice to the Chief Police Officer.

“(5) Where the Registrar—

- 5 (a) receives an objection to the continuation of the corporation’s licence in the event that the prospective director became a director; and
- (b) is satisfied that the objection is not frivolous or vexatious;
- 10 the Registrar shall hold an inquiry to determine whether the prospective director is or is not a person of good fame and character.”.

Change of directors—objection by Chief Police Officer

39. Section 46 of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting the following subsection:
- 15 “(1) Where a person becomes a director of a corporation that holds a licence, the corporation shall, within 21 days after the date on which the person becomes a director of the corporation, give to the Registrar a notice that complies with the requirements of subsection (2).”; and
- 20 (b) by omitting from subsections (3) and (4) “Commissioner of Police” and substituting “Chief Police Officer”.

Inquiry by Registrar

40. Section 47 of the Principal Act is amended—

- 25 (a) by omitting from subsection (1) “The” and substituting “Subject to subsection (1A), the”; and
- (b) by inserting after subsection (1) the following subsection:
- “(1A) Where—
- 30 (a) the Registrar holds an inquiry for the purposes of subsection 45A (5) and is satisfied in relation to a corporation that holds a licence that a person intending to become a director of the corporation is not a person of good fame and character; and
- (b) has reason to believe that the person has since become a director of the corporation;
- 35 the Registrar shall forthwith and without further inquiry revoke the licence of the corporation.”.

Inquiries

41. Section 49 of the Principal Act is amended—

- 5 (a) by omitting from paragraph (2) (a) “to a dealer”; and
(b) by omitting from paragraphs (2) (b) and (c) “licensed dealer”
(wherever occurring) and substituting “licensee”.

Failure to attend or to produce documents

42. Section 51 of the Principal Act is amended by omitting the penalty provision at the foot of subsection (1) and substituting the following penalty provision:

10 “Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
(b) if the offender is a body corporate—250 penalty units.”.

Refusal to be sworn or give evidence

15 43. Section 52 of the Principal Act is amended by omitting the penalty provision at the foot of subsection (1) and substituting the following penalty provision:

“Penalty:

- 20 (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
(b) if the offender is a body corporate—250 penalty units.”.

Fees and expenses to witnesses

44. Section 55 of the Principal Act is amended—

- 25 (a) by omitting from subsection (1) “the scale in the Second Schedule to the Public Works Committee Regulations, as in force from time to time under the *Public Works Committee Act 1969* of the Commonwealth,” and substituting “the AAT determination”; and
(b) by adding at the end the following subsection:

“(5) In subsection (1)—

30 ‘AAT determination’ means the determination, of fees and expenses payable to witnesses appearing before the Administrative Appeals Tribunal, in force from time to time for the purposes of subsection 59 (1) of the *Administrative Appeals Tribunal Act 1989*.”.

Substitution

45. Section 57 of the Principal Act is repealed and the following section substituted:

Review by Administrative Appeals Tribunal

5 “57. (1) Application may be made to the Administrative Appeals Tribunal for a review of a decision of the Registrar—

- (a) under subsection 6A (2) to refuse an application for an exemption;
- (b) under subsection 13 (1) to refuse an application for the grant of a licence;
- 10 (c) under subsection 14 (1A) specifying the address of premises;
- (d) under subsection 14C (1) to refuse an application for the renewal of a licence;
- (e) under subsection 14D (1) to impose a condition on the grant of a renewal of a licence;
- 15 (f) under subsection 14D (2) to renew a licence for a shorter period than specified in that subsection or than specified in the application in accordance with that subsection;
- (g) under section 14E to refuse an application for the variation of a licence;
- 20 (h) under subsection 15 (4) to refuse to approve a computer system;
- (j) under section 45 to revoke a licence granted to a licensee;
- (k) under subsection 47 (1A) that a person intending to become a director of a corporation is not a person of good fame and character;
- 25 (m) under subsection 48 (2) to specify a period for the purposes of that subsection;
- (n) under subsection 71 (2) failing to consider the circumstances set out in that subsection;
- (p) under subsection 89A (3) to refuse an application for the grant of an authorisation; or
- 30 (q) under subsection 89A (5) to grant an authorisation for a shorter period than specified in that subsection or than specified in the application in accordance with that subsection.

35 “(2) Application may be made to the Administrative Appeals Tribunal for a review of a decision of the relevant Chief Executive under paragraph 10 (1) (g), 11 (1) (h) or 14B (e) to refuse to issue a certificate.

“(3) A notice under subsection 13 (5), 14C (4), 14E (6), 48 (1) or 89A (6) shall be in accordance with the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.”.

The Compensation Fund

- 5 **46.** Section 58 of the Principal Act is amended by omitting “the Australian Capital Territory Motor Vehicle Dealers Compensation Fund established under section 62A of the *Audit Act 1901* of the Commonwealth” and substituting “the Trust Account known as the Australian Capital Territory Motor Vehicle Dealers Compensation Fund as affected by section
10 15 of the *A.C.T. Self-Government (Consequential Provisions) Act 1988* of the Commonwealth”.

Contributions to the Compensation Fund by dealers

47. Section 59 of the Principal Act is amended by omitting “or renew a licence” and substituting “to a dealer or renew a licence held by a dealer”.

15 Payment of compensation

48. Section 64 of the Principal Act is amended by omitting from subsections (1) and (2) “the Commonwealth” and substituting “the Territory”.

Subrogation

- 20 **49.** Section 65 of the Principal Act is amended by omitting “the Commonwealth” (wherever occurring) and substituting “the Territory”.

Substitution

50. Part X of the Principal Act is repealed and the following Part substituted:

25 “PART X—ENFORCEMENT”

Interpretation

- “66. In this Part, unless the contrary intention appears—
- ‘determined fee’ means the fee determined for the purposes of subparagraph 70A (2) (g) (ii);
- 30 ‘final infringement notice’ means a notice under section 70A;
- ‘infringement notice’ means a notice under section 70;
- ‘inspector’ does not include a police officer;

'notified person', in relation to an infringement notice or a final infringement notice, means the person on whom the notice has been served;

5 'on-the-spot fine', in relation to a Schedule 3 offence, means the fine for that offence ascertained by reference to Schedule 3;

'relevant amount' means—

(a) in relation to an infringement notice—the on-the-spot fine for the alleged Schedule 3 offence to which the notice relates; or

10 (b) in relation to a final infringement notice—the on-the-spot fine for the alleged Schedule 3 offence to which the notice relates, in addition to the determined fee;

'relevant period for payment' means—

15 (a) in relation to an infringement notice—28 days after the date of the notice;

(b) in relation to a final infringement notice—14 days after the date of the notice; or

(c) such extended period as the Registrar allows under paragraph 70D (4) (b);

20 'Schedule 3 offence' means an offence against a provision of this Act specified in column 1 of Schedule 3.

Obstruction etc. of Registrar or inspector

25 "67. A person shall not obstruct, threaten or intimidate the Registrar, the Deputy Registrar or an inspector in the exercise of a power or function or the discharge of a duty conferred or imposed upon the Registrar, Deputy Registrar or inspector under this Act.

Penalty:

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

30 (b) if the offender is a body corporate—250 penalty units.

Offence by employee—liability of employer

35 "68. (1) If an employee contravenes any provision of this Act, the employer shall be deemed to have contravened the same provision (whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions).

“(2) It is a defence in proceedings against an employer for such a contravention if it is established that the employer—

- (a) had no knowledge of the contravention; and
- (b) could not, by the exercise of due diligence, have prevented the contravention.

“(3) An employer may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the employee has been proceeded against or convicted under that provision.

Institution of proceedings

- “69. A prosecution for an offence against this Act may be commenced within 3 years after the commission of the offence.

Infringement notices

- “70. (1) An inspector may serve an infringement notice on a person if the officer believes on reasonable grounds that the person has committed a Schedule 3 offence.

“(2) An infringement notice shall be in a form approved by the Registrar, and shall—

- (a) identify the inspector who issues the notice;
- (b) state the full name, or surname and initials, and address of the notified person;
- (c) specify the nature of the alleged offence and the amount of the on-the-spot fine;
- (d) specify the day, time and place of the alleged commission of the offence;
- (e) include a statement to the effect that—
 - (i) if the notified person wishes to dispute liability for the alleged offence, the person should, within 28 days after the date of the notice, apply to the Registrar for the withdrawal of the infringement notice;
 - (ii) if the notified person does not wish to dispute liability and would prefer that the matter not be dealt with in court, the person may pay the on-the-spot fine to the Registrar within 28 days after the date of the notice; and
 - (iii) if the notified person does not within that period dispute liability, or pay the on-the-spot fine, in accordance with the notice, the alleged offence may be dealt with by a court;

- (f) specify the place at which, and the manner in which, the fine may be paid;
- (g) include a statement about the procedures for the withdrawal of the notice under this Part; and
- 5 (h) be dated and signed by the inspector who serves the notice.

Final infringement notices

“70A. (1) Where a person has been served with an infringement notice and the person does not—

- 10 (a) pay the on-the-spot fine in accordance with the infringement notice; or
- (b) apply for the withdrawal of the infringement notice under section 70C in accordance with the infringement notice;

an inspector may serve a final infringement notice on the person.

15 “(2) A final infringement notice shall be in a form approved by the Registrar, and shall—

- (a) identify the inspector who serves the notice;
- (b) state the full name, or surname and initials, and address of the notified person;
- (c) specify the nature of the alleged offence;
- 20 (d) specify the amount of the on-the-spot fine and the determined fee;
- (e) specify the day, time and place of the alleged commission of the offence;
- 25 (f) specify the date of the relevant infringement notice, and include a statement to the effect that the person has not paid the on-the-spot fine for the alleged offence to which the notice relates;
- (g) include a statement to the effect that—
 - 30 (i) if the notified person wishes to dispute liability for the alleged offence, the person should, within 14 days after the date of the notice, apply to the Registrar for the withdrawal of the final infringement notice;
 - (ii) if the notified person does not wish to dispute liability and would prefer that the alleged offence not be dealt with in court, the person may pay the on-the-spot fine and the determined fee to the Registrar within 14 days after the date of the notice; and
- 35

(iii) if the notified person does not within that period dispute liability, or pay the on-the-spot fine, in accordance with the notice, the alleged offence may be dealt with by a court;

(h) specify the place at which, and the manner in which, the fine and the fee may be paid;

(j) include a statement about the procedures for the withdrawal of the notice under this Part; and

(k) be dated and signed by the inspector who serves the notice.

Discharge of liability for Schedule 3 offences

10 “70B. (1) This section applies where an infringement notice or a final infringement notice has been served on a person in respect of a Schedule 3 offence and—

(a) the relevant amount is paid in accordance with the notice; or

15 (b) the relevant notice is withdrawn pursuant to an application under section 70C.

“(2) Where this section applies—

(a) any liability of the person in respect of the offence is discharged;

(b) no further proceedings shall be taken in respect of the offence; and

20 (c) the person shall not be regarded as having been convicted of the offence.

“(3) For the purposes of this section, where a cheque is tendered in payment of the relevant amount, such payment shall not be taken to have been made unless and until the cheque is honoured on presentation.

Application for withdrawal of infringement notices

25 “70C. (1) A notified person may, by notice in writing to the Registrar within the relevant period for payment, apply for the withdrawal of the notice.

“(2) A person shall not make more than 1 application under this section in relation to any particular alleged commission of a Schedule 3 offence.

Withdrawal of infringement notices

30 “70D. (1) On receipt of an application under section 70C, the Registrar may withdraw the relevant infringement notice or final infringement notice if satisfied on reasonable grounds that any of the following grounds is made out:

35 (a) the applicant did not commit the offence;

- (b) the applicant had a reasonable excuse for committing the act constituting the offence;
- (c) it would be unreasonable in the circumstances to prosecute the applicant for the commission of the offence.

5 “(2) If the Registrar withdraws an infringement notice or final infringement notice, he or she shall give the notified person written notice of the decision.

 “(3) A notice under subsection (2) shall—

10 (a) specify the infringement notice or final infringement notice that is withdrawn; and

 (b) include a statement of the effect of subsections 70B (1) and (2).

 “(4) If the Registrar does not withdraw an infringement notice or final infringement notice under subsection (1), the Registrar shall—

 (a) give the notified person written notice of the decision; and

15 (b) extend the period within which the relevant amount is to be paid, by a period of—

 (i) in the case of a decision not to withdraw an infringement notice—28 days commencing on the date of the notice under paragraph (a); or

20 (ii) in the case of a decision not to withdraw a final infringement notice—14 days commencing on the date of the notice under paragraph (a).

25 “(5) If the Registrar does not give notice to a person under subsection (2) or (4) within 60 days after the receipt of an application for withdrawal of an infringement notice or a final infringement notice under section 70C, the notice is to be taken to have been withdrawn.

 “(6) Subject to subsection (7), the Registrar, on his or her own initiative, may—

 (a) within 90 days after service of an infringement notice; or

30 (b) within 60 days after service of a final infringement notice;

withdraw the notice by notice in writing served on the notified person.

 “(7) The Registrar shall not withdraw a notice under subsection (6) where the notified person pays the relevant amount in accordance with the notice.

“(8) Where an infringement notice or final infringement notice is withdrawn under this section, the Registrar shall refund any amount paid under section 70 or 70A in payment of the relevant on-the-spot fine.

Prosecution of Schedule 3 offences

5 “70E. (1) A prosecution shall not be instituted for a Schedule 3 offence against a notified person—

- (a) until the expiration of the period of 14 days after the date of service of a final infringement notice in relation to that offence; or
- 10 (b) if the person applies for the withdrawal of the final infringement notice under section 70C—unless and until the application is rejected and the extended period granted under paragraph 70D (4) (b) has expired.

“(2) Nothing in section 70 or 70A shall be construed as—

- 15 (a) affecting the liability of a person to be prosecuted for a Schedule 3 offence in relation to which an infringement notice has not been served;
- (b) subject to subsection (1), prejudicing or affecting the institution or prosecution of proceedings for a Schedule 3 offence; or
- 20 (c) limiting the amount of the fine that may be imposed by the Court in respect of a Schedule 3 offence.

Non-antecedent value of infringement notice offences

“70F. (1) For the purposes of section 429A of the *Crimes Act 1900*, in sentencing an accused for any offence, a court shall not have regard to—

- (a) the alleged commission of any infringement notice offence;
- 25 (b) the circumstances surrounding any infringement notice offence; or
- (c) the investigation of any infringement notice offence, or any related action under this Part.

“(2) In subsection (1)—

30 ‘infringement notice offence’, in relation to an accused, means an alleged offence—

- (a) in relation to which an infringement notice has been served on the accused; and
- (b) which has not been found proved by a court.

Service of notices

“70G. (1) For the purposes of this Part, a notice may be served on the person to whom it is directed—

(a) in the case of a natural person—

(i) by delivering it to the person personally;

(ii) by leaving it at the address of the place of residence or business of the person last known to the person serving the document with some other person who is apparently—

(A) over the age of 16 years; and

(B) an occupant of the place, or employed at that place;
or

(iii) by sending it by pre-paid post to that address; or

(b) in the case of a body corporate—

(i) by leaving it at the head office, a registered office or a principal office of the body corporate with a person who is apparently—

(A) over the age of 16 years; and

(B) an occupant of the place, or employed at that place;
or

(ii) by sending it by pre-paid post to that address.

“(2) Nothing in this section prevents the service on a person of more than 1 infringement notice or final infringement notice in respect of the same alleged offence, but it is sufficient for the application of section 70B to such a person for the person to pay the relevant amount in accordance with any of the notices so served.

“(3) Where an infringement notice is served on a child and the person serving the notice believes, on reasonable grounds, that the child is residing with a person who stands *in loco parentis* to that child, the person serving the notice shall serve a copy of the notice on that person.

Evidence

“70H. (1) For the purposes of this Part, a document that purports to have been signed by the Registrar shall be taken to have been so signed unless the contrary is proved.

“(2) In a prosecution for a Schedule 3 offence, a certificate signed by the Registrar stating any of the following matters is evidence of the matters so stated:

- (a) that a notice was served under this Part on a specified person on a specified date;
- (b) where an infringement notice or a final infringement notice has been served on a person under this Part, that—
 - (i) further time for payment was, or was not, allowed under paragraph 70D (4) (b);
 - (ii) the notice was not withdrawn; or
 - (iii) the relevant amount was not paid in accordance with the notice within the relevant period for payment.”.

10 Insertion

51. Before section 72 of the Principal Act the following section is inserted in Part XI:

Determination of good fame and character

“71. (1) Subject to subsection (2), a person is not of good fame and character for the purposes of this Act if and only if the person has, within the last 10 years, been convicted of an offence involving dishonesty or has been convicted of an offence against—

- (a) this Act;
- (b) the *Trade Practices Act 1974* of the Commonwealth; or
- (c) the *Fair Trading Act 1992* or an equivalent Act of a State or Territory.

“(2) Where a person has, within the last 10 years, been convicted of an offence referred to in subsection (1) but the Registrar is satisfied that in all the circumstances, including—

- (a) the circumstances of the offence;
- (b) whether the person co-operated in the investigation of the offence;
- (c) the extent to which the person provided restitution to any persons who suffered loss as a result of the offence;
- (d) the conduct of the person before and after the offence;
- (e) the period which has elapsed since the commission of the offence; and
- (f) whether the offence was an isolated occurrence;

it would be reasonable to regard the person as a person of good fame and character, the person shall be taken to be of good fame and character for the purposes of this Act.”.

Issue of copy of licence

52. Section 72 of the Principal Act is amended by omitting "prescribed" and substituting "determined".

Substitution

5 53. Sections 73, 74 and 75 of the Principal Act are repealed and the following sections substituted:

Display of licence and notice

"73. (1) In this section—

'licensee' means a licensed dealer or a licensed car market operator.

10 "(2) Subject to subsection (3), a licensee shall cause the licence issued to the licensee at all times to be exhibited in a conspicuous position at the premises specified in the licence as the place where business is to be carried on under the licence.

Penalty:

15 (a) if the offender is a natural person—5 penalty units;

(b) if the offender is a body corporate—25 penalty units.

20 "(3) Where a licensee lodges an application under section 14E, the licensee shall be taken to sufficiently comply with subsection (2) during the period while the application is being dealt with if the licensee causes a copy of the licence lodged with the application to be exhibited in accordance with that subsection.

25 "(4) A licensee shall exhibit and keep exhibited in a conspicuous position at the premises specified in the licence as the place where business is to be carried on under the licence a notice consisting of letters not less than 7 centimetres in height containing—

(a) the name of the licensee and the words—

(i) if the licensee holds a vehicle sale licence to carry on business as a dealer—'LICENSED MOTOR VEHICLE DEALER'; or

30 (ii) if the licensee holds a car market operator licence—'LICENSED CAR MARKET OPERATOR'; and

(b) if the licensee carries on business under a name other than the licensee's personal name or corporation name, as the case may be—the name or style under which the licensee carries on
35 business.

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

5 “(5) In addition to the notice required by subsection (4), a licensed car market operator shall exhibit and keep exhibited in a conspicuous position at the premises specified in the licence as the place where business is to be carried on under the licence a notice consisting of letters not less than 7 centimetres in height in or to the following effect:

WARNING

- 10 1. THE TITLE OF A VEHICLE SOLD AT THESE PREMISES IS NOT GUARANTEED. PERSONS CONSIDERING THE PURCHASE OF A VEHICLE SHOULD CONTACT REVS ON [Here insert the telephone number prescribed for the purposes of this subsection].
- 15 2. A VEHICLE SOLD AT THESE PREMISES IS NOT SUBJECT TO THE STATUTORY WARRANTIES PROVIDED FOR UNDER THE SALE OF MOTOR VEHICLES ACT 1977. A PURCHASER MAY HAVE A REMEDY, HOWEVER, UNDER THE GENERAL LAW.

“(6) If—

- 20 (a) the telephone number prescribed for the purposes of subsection (5) ceases to be so prescribed and another telephone number is so prescribed; and
- 25 (b) a licensed car market operator exhibits a notice in accordance with subsection (5) which specifies a telephone number other than the number currently prescribed for the purposes of that subsection;

the licensed car market operator shall cause the notice to be altered so as to display the telephone number currently prescribed.

30 “(7) A licensed car market operator shall not fail to cause a notice to be altered in accordance with subsection (6) within 3 days of receiving a notice in writing from the Registrar advising that the telephone number prescribed for the purposes of subsection (5) has changed.

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

35 “(8) For the purposes of subsections (2), (4) and (5), a notice referred to in that subsection shall be taken to be in a conspicuous position in premises if it is easily visible to a person entering those premises.

Notification of commencement or cessation of business at a place

5 “74. (1) Where a licensee commences to carry on business at any place the licensee shall notify the Registrar in writing accordingly of that commencement.

“(2) Where a licensee ceases to carry on business at any place the licensee shall notify the Registrar in writing accordingly within 7 days of that cessation.

Penalty in respect of an offence against subsection (2):

- 10 (a) if the offender is a natural person—10 penalty units;
(b) if the offender is a body corporate—50 penalty units.”.

Substitution

54. Section 76 of the Principal Act is repealed and the following section substituted:

15 Inspection

“76. (1) In this section—

‘document’ means a book, paper, account or other document.

“(2) An inspector may, at any reasonable time, enter the premises of a licensee and inspect—

- 20 (a) all documents relating to the business of the licensee; and
(b) all motor vehicles or parts of any motor vehicles that are offered or displayed for sale by the licensee.

“(3) An inspector may, for the purpose of inspection—

- 25 (a) require the licensee or any other person who has the custody or control of documents to produce those documents and hand them over to the inspector; and
(b) require the licensee or any other person in whose custody or control the motor vehicles or parts of motor vehicles are to produce them.

- 30 “(4) A person to whom a requirement under subsection (3) is made shall not refuse or fail to comply with the requirement.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
(b) if the offender is a body corporate—250 penalty units.

“(5) An inspector may make notes or take extracts from, or make copies of, any documents produced to the inspector under this section.

5 “(6) An inspector may retain, for such reasonable period as the inspector or the Registrar considers necessary, any document referred to in subsection (2) and may make copies of any such document.”.

Production of identity cards

55. Section 77 of the Principal Act is amended by omitting from subsection (2) the definition of “relevant person” and substituting the following definition:

10 “ ‘relevant person’, in relation to the performance of a function by an inspector under section 76 at the premises of a licensee, means the licensee or another person referred to in subsection 76 (3) or (4).”.

Inspection of register

15 56. Section 78 of the Principal Act is amended by omitting “prescribed” and substituting “determined”.

Substitution

57. Sections 79 and 80 of the Principal Act are repealed and the following sections substituted:

Advertisements by licensed dealers

20 “79. (1) A licensed dealer shall not cause or permit to be published an advertisement relating to, or in connection with, the business carried on under that licence unless the dealer specifies in the advertisement—

- (a) that the dealer is a licensed dealer; and
- 25 (b) the address of the place or 1 of the places at which the dealer carries on business.

Penalty:

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.

30 “(2) A licensed dealer shall not, in an advertisement that the dealer causes or permits to be published in relation to, or in connection with, the business of the dealer, make any statement that is false or misleading.

Penalty:

- (a) if the offender is a natural person—30 penalty units;
- (b) if the offender is a body corporate—150 penalty units.

“(3) A licensed dealer shall not in an advertisement that the dealer causes or permits to be published in relation to, or in connection with, the sale of second-hand vehicles—

- 5 (a) convey any information in respect of a motor vehicle that the dealer offers for sale that is inconsistent with information relating to that vehicle contained in the dealer’s Dealings Register or in the notice attached to the vehicle under section 20;
- 10 (b) refer to or describe a motor vehicle unless the vehicle is identified by its registered number or, where the vehicle has no registered number, by its engine number; or
- (c) specify the deposit payable on, or periodical payments payable in respect of, a motor vehicle unless the cash price in respect of the vehicle is also specified.

Penalty:

- 15 (a) if the offender is a natural person—30 penalty units;
- (b) if the offender is a body corporate—150 penalty units.

“(4) A licensed dealer shall include in each advertisement that the dealer causes or permits to be published in relation to, or in connection with, the business of the dealer the number of the licence or licences held by the dealer.

Penalty:

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.

Advertisements by licensed car market operators

25 “79A. A licensed car market operator shall not cause or permit to be published an advertisement relating to, or in connection with, the business carried on under that licence unless the operator specifies in the advertisement—

- (a) that the licensee is a licensed car market operator; and
- 30 (b) the address of the place or 1 of the places at which the operator carries on business.

Penalty:

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.

Publication of list of licensed dealers

- 5 “80. The Registrar shall, as soon as practicable after the thirtieth day of June each year, cause to be published in the *Gazette* a list in alphabetical order of persons who are licensees as at that date and the place or places of business, as the case may be, of each of those persons.”.

Submission of documents for signature

58. Section 81 of the Principal Act is amended by omitting the penalty provision and substituting the following penalty provision:

“Penalty:

- 10 (a) if the offender is a natural person—10 penalty units;
(b) if the offender is a body corporate—50 penalty units.”.

Contracting out

59. Section 83 of the Principal Act is amended by omitting “licensed dealer” and substituting “licensee”.

15 **Repeal**

60. Sections 85 and 86 of the Principal Act are repealed.

Service upon licensees and applicants for licences

61. Section 87 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- 20 “(1) A document required by this Act to be given to, or served upon, a licensee may be given or served by leaving it at a place specified in the licence of that person as the place at which the licensee carries on business or by sending it by post to the licensee at that place.”.

Insertion

- 25 62. After section 89 of the Principal Act the following section is inserted:

Temporary revival of licence following death of licensee

- 30 “89A. (1) A person who is, who is named as, or who is otherwise entitled to become, a legal personal representative of a deceased licensee (in this section called ‘the applicant’) is eligible for the grant of an authorisation to carry on the business of the deceased temporarily.

“(2) An application for the grant of an authorisation—

- (a) shall be in writing and signed by the applicant;

(b) shall be lodged with the Registrar within 28 days after the death or such longer period as the Registrar allows;

(c) in the case of an application by an individual who is not the legal personal representative of the deceased—shall state in relation to the applicant—

(i) full name;

(ii) date and place of birth; and

(iii) present residential address and any other addresses at which the applicant has resided during the 3 years immediately preceding the date of the application;

(d) shall be accompanied by—

(i) in the case of an applicant who is the legal personal representative of the deceased—evidence of the applicant's appointment as legal personal representative;

(ii) in the case of an applicant who is named as the legal personal representative of the deceased—evidence of that fact and proof of identity of the applicant; or

(iii) in the case of any other applicant—evidence of the applicant's entitlement to appointment as legal personal representative and proof of identity of the applicant; and

(e) shall state the period, being a period to expire no more than 6 months after the date of death of the deceased, for which the authorisation is sought.

“(3) The Registrar shall grant an authorisation unless—

(a) the applicant or, in the case of an application by a corporation, a director of the corporation, refuses or fails to comply with a requirement of the Registrar under subsection (4);

(b) the applicant fails to establish that the applicant is eligible for the grant of the licence; or

(c) the application does not comply with the requirements of subsection (2).

“(4) The Registrar may require an applicant, or in the case of an application by a corporation, all or any of the directors of the corporation, to attend before the Registrar and may require the applicant or such director to furnish to him, orally or in writing, such further information as the Registrar requires to be furnished.

“(5) An authorisation shall be granted for a period to expire no more than 6 months after the date of death of the deceased or for such shorter period as is specified in the application or as the Registrar allows.

5 “(6) Where the Registrar refuses an application for the grant of an authorisation, the Registrar shall record the reasons for his or her decision and cause to be served on the applicant notice of the decision.

10 “(7) Where the Registrar, within the period of 3 months after the lodging with the Registrar of an application for an authorisation, fails to convey to the applicant a decision in respect of the application, the Registrar shall be taken to have refused to grant the application.

“(8) Where—

(a) the Registrar grants an authorisation in respect of the business of a deceased licensee; and

(b) the applicant pays the prescribed fee;

15 the licence held by the deceased immediately before his or her death shall be taken to revive in favour of the applicant as if the licence had been issued to the applicant under section 14 for the period determined in accordance with subsection (5).

20 “(9) A licence taken to have revived under subsection (8) may not be renewed.”.

Repeal

63. Section 91 of the Principal Act is repealed.

Insertion of Schedule

25 64. The Principal Act is amended by inserting after section 92 the Schedule set out in Schedule 1 to this Act.

Schedule

65. The Schedule at the end of the Principal Act is amended—

(a) by omitting the heading “SCHEDULE” and substituting “SCHEDULE 2”;

30 (b) by omitting from Form 1 “Section 24” and substituting “Subsection 24 (1)”;

(c) by omitting from Form 2 “Section 25” and substituting “Subsection 25 (7)”; and

(d) by adding at the end the following form:

FORM 3

Subsection 25B (2)

AUSTRALIAN CAPITAL TERRITORY

Sale of Motor Vehicles Act 1977

LOSS OF RIGHT TO TERMINATE

Make and model of vehicle:

Registration No. (or engine No. if unregistered):

Dealer:

1. I have agreed to buy this vehicle and am about to accept delivery of it.
2. I know that the *Sale of Motor Vehicles Act 1977* gives me the right to decide within 3 clear business days not to go ahead with the purchase and to cancel the agreement.
3. I know that when I sign this form I WILL LOSE MY RIGHT TO CANCEL THE AGREEMENT.

Date:

Purchaser's signature

Addition of Schedule

66. The Principal Act is amended by adding at the end the Schedule set out in Schedule 2 to this Act.

Further amendments

- 5 67. The Principal Act is further amended as set out in Schedule 3.

Saving and transitional provisions

68. (1) Notwithstanding the amendments effected by this Act, where immediately before the commencement of section 5, 2 or more persons carried on the business of a dealer in partnership, those persons—

- 10 (a) may, subject to subsection (2), continue on and after that commencement to carry on the business on that basis until the expiration of the licence; and

(b) are not eligible for the renewal of the licence on that basis.

- 15 (2) The business shall be carried on subject to the following provisions (in subsection (3) called "the applicable provisions"):

(a) sections 33, 41, 42 and 86 of the Principal Act;

(b) the Principal Act as amended by this Act (other than sections 33, 41, 42 and 86 of the Principal Act as so amended).

(3) The applicable provisions apply to and in relation to each partner as if—

- (a) the business were carried on by the partner alone; and
- (b) anything done or omitted to be done by 1 of the partners in connection with that business had been done or omitted to be done by each of the partners.

(4) Nothing in subsection (3) renders a partner guilty of an offence as a result of the doing of an act by another partner.

(5) For the purposes of the Principal Act as amended by this Act, where immediately before the commencement of section 9 a person held a licence under the Principal Act—

- (a) the licence shall, in respect of the unexpired portion of its term after the commencement of this Act be taken to be a vehicle sale licence; and
- (b) an address shall be taken to have been specified in that licence under subsection 14 (1A).

(6) Subsection (5) does not affect the identity of a licence or any rights or liabilities that had accrued immediately before the commencement of this Act.

(7) Where after the commencement of this Act—

- (a) the Registrar approves an application for the renewal of a licence referred to in subsection (5); and
- (b) the licence specifies a principal place at which the business is to be carried on and 1 or more other places at which the business is to be carried on;

the Registrar shall grant a renewal of the licence in respect of the principal place of business in accordance with subsection 14D (1) of the Principal Act as amended by this Act and issue additional vehicle sale licences in respect of each of the other places at which the business is to be carried on in accordance with subsection 14 (1) of the Principal Act as amended by this Act as if the licence holder had lodged an application for those licences.

(8) Notwithstanding the repeal of section 23 of the Principal Act, that section continues to apply in relation to a motor vehicle sold before the commencement of section 24 as if this Act had not been passed.

SCHEDULE 1

Section 64

SCHEDULE 1

Subsection 23 (1)

OBLIGATION OF DEALER TO REPAIR DEFECTS

Column 1 Item	Column 2 Description of motor vehicle	Column 3 Kilometres	Column 4 Period
1	New motor vehicle (not being a motor cycle) that has been driven for less than 15,000 km at the time it is sold by dealer	20,000 (after manufacture)	12 months less 1 month for each 2,000 km that the vehicle has been driven before sold by dealer
2	New motor vehicle (not being a motor cycle) that has been driven for 15,000 km or more at the time it is sold by dealer	5,000 (after sale)	3 months
3	Second-hand motor vehicle (not being a motor cycle) that has been driven for not more than 160,000 km and was manufactured not more than 10 years before the time it is sold by dealer	5,000 (after sale)	3 months

SCHEDULE 2

Section 66

SCHEDULE 3

Section 66

ON-THE-SPOT FINES

Column 1 Offence provision	Column 2 On-the-spot fine
Subsection 15 (1).....	\$500
Subsection 16 (1).....	\$500
Subsection 16 (2).....	\$500
Subsection 16 (3).....	\$500
Subsection 20 (1).....	\$250
Subsection 20 (4).....	\$750
Subsection 21 (1).....	\$250
Subsection 26 (2).....	\$125
Subsection 73 (2).....	\$125
Subsection 73 (4).....	\$125

SCHEDULE 3

Section 67

FURTHER AMENDMENTS**Subparagraph 3 (2) (a) (ii)—**

- 5 Omit “a motor vehicle other than a second-hand motor vehicle”,
substitute “a new motor vehicle”.

Subparagraph 3 (2) (c) (i)—

Omit “a motor vehicle other than a second-hand motor vehicle”,
substitute “a new motor vehicle”.

Paragraph 11 (1) (d)—

- 10 Omit “he”, substitute “the director”.

Paragraph 13 (1) (b)—

Omit “he or it”, substitute “the applicant”.

Subsection 13 (6)—

- (a) Omit “him”, substitute “the Registrar”.
15 (b) Omit “he”, substitute “the Registrar”.

Subsection 13 (7)—

Omit the subsection.

Subsection 16 (1)—

Omit “he is authorized”, substitute “the licensee is authorised”.

- 20 **Paragraphs 16 (1) (c), (e) and (f)—**

Omit “he”, substitute “the licensee”.

Subsection 26 (2)—

Omit “he”, substitute “the trade vendor”.

Paragraph 27 (1) (c)—

- 25 Omit “him” (wherever occurring), substitute “the Registrar”.

Subsection 27 (4)—

Omit “he”, substitute “the Registrar”.

Subsection 27 (5)—

Omit “he”, substitute “the Registrar”.

SCHEDULE 3—continued

Subsection 31 (5)—

Omit “him”, substitute “the dealer”.

Subsection 32 (1)—

5 (a) Insert “(in this section called ‘the vendor’)” after “person” (first occurring).

(b) Omit “he” (wherever occurring), substitute “the vendor”.

Paragraph 32 (1) (b)—

10 Omit “in the case of a person who is not a dealer—where an odometer is fitted to the vehicle,”, substitute “where the vendor is not a dealer and an odometer is fitted to the vehicle—”.

Subsection 33 (1)—

Omit “him”, substitute “the dealer”.

Paragraph 33 (4) (a)—

Omit the paragraph, substitute the following paragraph—

15 “(a) the name of the dealer or, if the dealer carries on business under a registered business name, that name; and”.

Section 34—

(a) Omit “he”, substitute “the dealer”.

(b) Omit “him”, substitute “the dealer”.

20 **Subsection 38 (1)—**

Omit “him”, substitute “the dealer”.

Subparagraph 38 (2) (a) (i)—

Omit “he”, substitute “the dealer”.

Subparagraph 38 (2) (a) (ii)—

25 (a) Omit “he”, substitute “the dealer”.

(b) Omit “his”, substitute “the dealer’s”.

Subsection 39 (1)—

Omit “he”, substitute “the dealer”.

Section 40—

30 Omit “him”, substitute “the dealer”.

SCHEDULE 3—continued**Subsection 41 (3)—**

Omit “auditor shall state in his report whether, in his”, substitute “auditor’s report shall include a statement indicating whether in the auditor’s”.

5 Section 42—

Omit “as his auditor, or permit the audit of his accounting and other records relating to trust moneys to be made by,”, substitute “a person as auditor or permit his or her accounting and other records relating to trust moneys to be audited by”.

10 Paragraph 42 (e)—

Omit “himself”, substitute “also”.

Subsection 47 (1)—

Omit “he”, substitute “the Registrar”.

Subsection 47 (2)—

15 (a) Omit “, where he holds an inquiry,”.

(b) Insert “or she” after “he” (last occurring).

Subsection 48 (3)—

Omit the subsection.

Subsection 49 (1)—

20 Omit “he”, substitute “the Registrar”.

Subsection 49 (9)—

Omit “in such manner as he”, substitute “or herself in such manner as the Registrar”.

Subsection 50 (1)—

25 (a) Omit “under his hand”, substitute “signed by the Registrar”.

(b) Omit “his custody or control as he”, substitute “the custody or control of the person as he or she”.

Subsection 51 (1)—

30 Omit “his custody or control that he”, substitute “the custody or control of the person that he or she”.

Subsection 52 (1)—

Omit “him”, substitute “the person”.

SCHEDULE 3—continued

Subsection 52 (2)—

Omit “him”, substitute “the witness”.

Section 56—

(a) Omit “before him”, substitute “held by the Registrar”.

5 (b) Omit “he”, substitute “the Registrar”.

Subsection 61 (2)—

(a) Omit “he” (first occurring), substitute “the Registrar”.

(b) Omit “he” (second and last occurring), substitute “the applicant”.

Section 72—

10 Omit “that has been issued and is in force in pursuance of this Act has been lost or destroyed, he”, substitute “issued and in force under this Act has been lost or destroyed, the Registrar”.

Section 81—

Omit “his”, substitute “the person’s”.

15 **Subsection 87 (2)—**

Omit “his last known place of residence”, substitute “the last-known place of residence of the applicant”.

Further amendments—

20 1. The following provisions are amended by inserting “or she” after “he”:

Paragraphs 16 (2) (a) and (b) and subsections 16 (3), 20 (4), 31 (1) and 62 (2).

2. The following provisions are amended by inserting “or her” after “his”:

25 Paragraph 16 (1) (b), subsections 16 (2) and (3), paragraphs 27 (1) (b) and (d), subsection 27 (5), section 40 and paragraphs 42 (d) and 50 (2) (b).

NOTES

Principal Act

1. Reprinted as at 30 June 1991. See also Act No. 44, 1993; Nos. 60 and 97, 1994; No. 25, 1995.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

Section headings

On the day on which the *Sale of Motor Vehicles Act 1977* is amended by this Act, in addition to any alteration of section headings indicated in the text of this Act, the heading to section 48 of that Act is omitted and the following heading substituted: **Action by Registrar following revocation of licence**

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