

1995

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**SALE OF MOTOR VEHICLES  
AMENDMENT BILL 1995**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of the  
Minister for Consumer Affairs  
Gary Humphries, MLA**

## EXPLANATORY MEMORANDUM

### Sale of Motor Vehicles Amendment Bill 1995

#### GENERAL OUTLINE

The purpose of this Bill is to address a number of inadequacies in the Sale of Motor Vehicles Act 1977 (the Act). A review was prompted by the Registrar of Motor Vehicle Dealers in early 1993 to overcome difficulties in administering the Act.

A number of provisions were identified through this review, and confirmed by consequent consultation, as requiring change to reflect modern consumer protection policies and current commercial practices.

New classes of licences for wholesalers and car market operators are established and persons who sell more than six motor vehicles in a twelve month period will be deemed to be a dealer for the purposes of the Act.

Changes have been made to the warranty provisions in the Act to mirror the NSW system. This system provides a warranty regime based on the age and mileage of the vehicle. A three day cooling-off period is also established to afford a consumer time to reconsider the purchase of a vehicle.

As there has been no increase in penalties in the principal Act since 1977 all monetary penalties in the principal Act have been increased to reflect a 1995 monetary value.

#### FINANCIAL IMPACT

The enactment of this legislation will be of no cost to the Government over and above that already outlaid for the administration of the *Consumer Affairs Act* 1973.

## NOTES ON CLAUSES

### Clause 1: Short Title

The proposed Act can be referred to as the *Sale of Motor Vehicles (Amendment) Act 1995*.

### Clause 2: Commencement

This Bill commences on the day on which it is notified in the Gazette.

### Clause 3: Principal Act

Where this Bill refers to the Principal Act, it means the *Sale of Motor Vehicles Act 1977*.

### Clause 4: Interpretation

The interpretation section of the Principal Act is amended in the following ways:

The terms 'accessory', 'commercial vehicle', 'car market operator', 'demonstrator' and 'wholesaler' are modelled on those in the *NSW Motor Dealers Act 1974*.

*'Dealer'*

The definition of 'dealer' is set out in proposed section 6A of the Bill.

### Clause 5: Repeal

Section 4 of the Principal Act which deals with partnership is repealed. Because of the nature of partnership, exemplified by the ease with which partners come into and go from a partnership, it is not possible for the Registrar of Motor Vehicle dealers to keep abreast of such changes and carry out any inquiries.

### Clause 6: Inspectors

Section 5B of the Principal Act is amended to allow the Chief Police Officer to nominate a member of any rank to be an inspector for the purposes of the Act. The Principal Act currently deems officers of the AFP of or above the rank of sergeant to be inspectors. However, the majority of AFP officers, particularly in the motor squad, are below this rank and therefore cannot carry out inspections.

Clause 7:                   Heading to Part II

This heading has been amended to reflect the classes of licences which will be required for a person to carry on the business of a 'dealer', 'wholesaler' or 'car market operator'.

Clause 8:                   Insertion

A new provision section 6A is inserted which establishes the meaning of the word 'dealer' for the purposes of the Principal Act.

Clause 9:                   Substitution - Licences

This clause provides for the repeal of sections 7, 8, and 9 of the Principal Act and provides for the insertion of new sections 6B, 7, 7A, 7B, 8 and 9.

*'Licensing of dealers'*

Section 7 establishes that a person shall not carry on the business or hold himself or herself out to be a dealer unless the person is the holder of a vehicle sale licence.

*'Licensing of wholesalers'*

Section 7A establishes that a person shall not carry on the business or hold himself or herself out to be a wholesaler unless the person is the holder of the vehicle sale licence. Wholesalers work closely with the retail trade and increasingly are selling vehicles directly to the public without appropriate licensing.

*'Licensing of car market operators'*

Section 7B establishes that a person shall not carry on the business or hold himself or herself out to be a car market operator unless the person is the holder of a car market operators licence. Car market operators provide a venue for private sellers to sell vehicles. Instances have arisen where Car market operators have been engaged in unlicensed dealing from their premises.

*'Eligibility for the grant of licences to individuals and corporations'*

Section 8 sets out the amended eligibility requirements for individuals who wish to be granted a vehicle sale licence or a car market operators licence. Section 9 sets out the amended eligibility requirements for corporations which wish to be granted a vehicle sale or a car market operators licence.

**Clause 10 and 11: Applications for licences**

Section 10 of the Principal Act is amended to require an individual making an application for a licence to provide information relating to his or her material and financial resources. The information will be in the form of a audited statement from an accountant. This additional information will assist the Registrar of Motor Vehicle Dealers in being able to assess whether applicants are in a viable position to carry on the business of a dealer.

Section 11 of the Principal Act is amended to require a corporation making an application for a licence to supply information relating to the corporation's accounts in respect of the financial year preceding the application for the grant of a licence. The reference to a corporation's accounts is to be read with reference to the Corporations Law.

**Clause 12: Substitution**

Section 12 of the Principal Act is repealed and is substituted with the following sections, 11A, 11B and 12.

*'Identification of applicant or director*

A new section 11A is inserted into the Principal Act setting out the means by which an applicant for a licence may satisfy the Registrar of Motor Vehicle Dealers as to the identity of the applicant.

*'Notification of application'*

A new section 11B is inserted into the Principal Act which will require individuals or directors of a corporation to notify in a newspaper circulating in the Territory of their application for a licence.

*'Certificates of convictions'*

Section 12 of the Principal Act requires the Registrar of Motor Vehicle Dealers to forward on to the Chief Police Officer of the Territory the name and address of the applicant. The Chief Police Officer may provide to the Registrar a certificate that based on records held, it appears that the applicant has been charged with, or convicted of an offence against a law of the Territory, the Commonwealth, State or another Territory.

**Clause 13: Grant or refusal of licence**

Section 13 of the Principal Act sets out the circumstances in which the Registrar

satisfied that an objection received is not frivolous or vexatious or considers that there may be grounds for refusing an application then an inquiry will be held.

Clause 14: Issue of licences

Subsection 14 (2) of the principal Act is amended by omitting the reference to payments to section 59. The reference has been omitted as it is superfluous.

The Registrar will also be required to specify the address of the premises at which the dealer may carry on business.

Clause 15: Insertion

A series of provisions are inserted after section 14 of the principal Act to allow the Registrar to review, grant, refuse or vary each dealers right to retain a licence. These provisions establish new procedures for dealers and the Registrar in relation to the licensing process.

Clause 16: Substitution

Section 15 of the principal Act is repealed and has been replaced with a new section 15 which will require all entries into the dealings register to be made in ink. Dealers will also be able to use computer systems to record details if the Registrar is satisfied that the system would provide for the immediate retrieval of information and the system would provide for the back-up or duplication of any alteration in that information.

Clause 17: Information to be recorded in Dealings Register

Section 16 of the principal Act is amended to require wholesalers and car market operators to keep dealings registers.

Clause 18: Furnishing of incorrect information to licensee

This clause provides that references to "licensed dealer" be omitted from section 17 and substituted with references to "licensee" for consistent use of terminology.

Clause 19: Acquainting persons with requirements of Act

This clause provides that references to "licensed dealer" be omitted from section 18 of the Act and substituted with references to "licensee" for consistent use of terminology.

Clause 20: Dealings with persons under 18 years

vehicle from a person under the age of 18 years without the consent in writing of that person's parent or guardian.

**Clause 21: Dealer to attach notice to second-hand vehicle**

Section 20 of the principal Act is amended by increasing the penalties where dealers fail to attach notices to vehicles, do not provide prescribed details on notices attached to vehicles offered for sale, or if requested by a prospective purchaser fail to provide information relating to the past or present owner of the vehicle. In particular, the penalty for a dealer including misleading information on a notice attached to a vehicle offered for sale has increased from \$500 to \$5000 for a natural person or \$25000 for a body corporate.

**Clause 22: Action by dealer on sale of second-hand motor vehicle**

Section 21 of the principal Act is amended for consequential reference to the new provision dealing with motor cycles.

**Clause 23: Sale of vehicle where odometer replaced or distance altered**

Section 22 of the principal Act is amended by increasing the penalty in circumstances where a dealer replaces a vehicles odometer or alter's the distance recorded by a vehicle's odometer and fails to obtain written consent for the changes from the Registrar of Motor Vehicle Dealers. The penalty has increased from \$500 to \$5000 for a natural person or \$25000 for a body corporate.

**Clause 24: Substitution - Warranty and Cooing-Off Period**

Sections 23, 24 and 25 of the principal Act are repealed and new sections 23, 24, 25, 25A and 25B are substituted.

A self-adjusting warranty system is established by section 23. This system is based on the age of a vehicle and the distance it has travelled. Section 23 will not require dealers to warrant a used motor vehicle that is more than 10 years old and which has travelled more than 160,000 kilometres at the time of sale.

A 20,000 kilometre/12 month warranty will apply to motor vehicles which have travelled less than 15,000 kilometres at the time of sale and a 5000 kilometre/ 3 months warranty will apply to demonstrator and used vehicles which have travelled more than 15,000 kilometres.

Section 24 establishes circumstances in which warranty may not apply. In particular warranty will not apply to tyres or a prescribed accessory fitted to a

signs a defect notice and accepts delivery of a vehicle the dealer is relieved from any responsibility for rectifying any defect listed in the notice.

Section 25A provides that new motorcycles and demonstrator motorcycles sold by dealers will have a 6 month or 10,000 kilometres warranty. Used motorcycles will not be warrantable.

***'Cooling-off period'***

Section 25B provides consumers with the right to cancel a contract for the purchase of a motor vehicle. This cooling-off period will apply for 3 clear business days. If an agreement is cancelled within the cooling-off period the trader is obligated to pay to the purchaser all valuable consideration received under the agreement less \$100 or 1% of the purchase price whichever is the greater. A purchaser may elect to waive his/her rights to the cooling-off period if he/she signs a prescribed form acknowledging that the cooling-off period does not apply.

**Clause 26 to Clause 33, Clause 36, Clause 42, Clause 43 - Penalties**

Penalties for dealers who fail to properly keep trust accounts, who engage unqualified auditors to audit accounts and offences by vendors who fail to disclose information about odometer alterations or make any other statement about the condition of the vehicle that he or she knows to be false have been increased. The penalties have increased as there has been no general increase in penalties since the inception of the Act in 1977. All revised or new penalties reflect a 1995 monetary value.

**Clause 34: Auditor's report**

Subsection 41(2) has been repealed as it will have no effect in light of the repeal of section 4. Additionally the word "has" replaces the words "or dealers have" for plain English purposes.

**Clause 35: Qualification of Auditors**

The appropriate reference has been inserted in section 42 to reflect that auditors are now recognised under the "Corporations Law".

**Clause 37: Revocation of licences**

This clause amends section 45 to provide that wholesalers, a new class of licensee, will fall within the scope of the Registrar's powers to revoke such a licence if necessary.



Clause 38: Insertion

New section 45A will require that any person seeking to become a director of a corporation that holds a licence under the Act advertise of this intention in a newspaper circulating in the Territory.

Clause 39: Change of directors- objection by Chief Police Officer

The wording of subsection 46(1) has been simplified but its effect has not changed.

Clause 40: Inquiry by Registrar

The insertion of new subsection 47(1A) provides that the Registrar will hold an inquiry if he/she is satisfied that a valid objection has been lodged in relation to a director or prospective director of a corporation licensed as a dealer.

Clause 41: Inquiries

The wording of paragraphs 49(2)(b) and (c) has been changed as a consequence of the new definition of vehicle sale licence.

Clause 44: Fees and Expenses to Witnesses

Section 55 of the Act currently makes reference to the Public Works Committee Act 1969 (Commonwealth). This reference is inappropriate due to the establishment of the Territory as a body politic under the Australian Capital Territory (Self-Government) Act 1988 (Commonwealth). The Territory legislation now applicable to witness expenses substitutes the Commonwealth reference.

Clause 45: Review by Administrative Appeals Tribunal

As a result of the broader decision making powers provided to the Registrar in relation to the granting, renewal, variation of licenses and the test applying to persons seeking to become directors of a corporation, additional grounds of review have been added.

Clause 46: The Compensation Fund

The compensation fund was established pursuant to the Audit Act 1901 (Commonwealth). However, section 15 of the A.C.T. Self-Government (Consequential Provisions) Act 1988 (Commonwealth) provided that an Audit Act account in existence before Self-Government shall, on Self-Government day, be taken to be established under Territory audit law. Accordingly, the

Clause 47: Contributions to the Compensation Fund by dealers

Section 59 of the Act has been revised in order to exempt car market operators from contributing to the fund.

Clause 48: Payment of compensation

Section 64 of the Act provided that the "Commonwealth" shall pay to a person seeking compensation the amount so determined. On Self-Government day the responsibility of payment of compensation sort under this Act was transferred to the Territory. Accordingly, the reference to the "Commonwealth" in this section is incorrect and has been replaced by "Territory".

Clause 49: Subrogation

Reference to the "Commonwealth" wherever occurring is replaced by "Territory". This minor amendment to section 65 is a result of the transfer of responsibility for audit matters from the Commonwealth to the Territory on Self-Government day.

Clause 50: Substitution

Part X of the Act was enacted in 1977 but not commenced. The provisions are now out of date and have no effect and, therefore, are repealed.

The new Part X deals with enforcement and infringement notices issued by inspectors to dealers who have been found to be in breach of a provision.

*'Obstruction etc of Registrar or inspector'*

Section 67 has been moved from Part XI of the principal Act as Part X now exclusively deals with enforcement.

*'Offence by employees-liability of employer'*

Section 68 provides that employers will be held liable for the omissions or actions of their employees. An employer may have a defence against prosecution action if he/she can establish that he/she had no knowledge of a contravention or could not by the exercise of due diligence have prevented a contravention.

*'Institution of proceedings'*

New section 69 provides prosecutions for a breach of the Act cannot be commenced more than three years after the breach occurred.

*'Infringement notices'*

New section 70 provides for the issuing of infringement notices by inspectors. A number of provisions in the Act are amenable to a infringement notice being issued to a dealer who has been found to be in breach of a provision, rather than pursuing the matter through the courts. The offences are of a less serious kind, where although the commission of an offence would cause consumer detriment, the detection of the offence would not require detailed investigation and could be considered self-evident. If a infringement notice is issued and a dealer disputes the facts of the matter then it is still open to the dealer to seek to have the Registrar withdraw the notice or elect to defend the matter in court.

Clause 51:                    Insertion*'Determination of good fame and character '*

The history of applicants seeking a licence to trade in motor vehicles is an important consideration in determining whether an applicant should be granted a licence. Therefore new section 71 will allow the Registrar to consider whether a person seeking the grant of a licence has a been convicted of an offence involving dishonesty or against the Trade Practices Act or the Fair Trading Act of a State or Territory.

Clause 52:                    Issue of copy of licence

Section 72 is amended by omitting the word "prescribed" and replacing it with the word "determined" as this properly describes the manner in which fees are set under the Act.

Clause 53:                    Substitution - Display of Licences

This clause provides that sections 73, 74 and 75 of the principal Act are repealed and are replaced with new sections 73 and 74.

The new section 73 establishes that dealers and car market operators must display a copy of their licence in a position where it may be readily observed. Car market operators will also be required to display a notice informing consumers that title is not guaranteed on vehicles sold within the premises, that no vehicle sold on the premises is subject to the statutory warranty under the principal Act and of details on how a consumer can check the title of vehicles offered for sale.

The new section 74 establishes a time period of not more than 7 days for a dealer to notify the Registrar of the cessation of a business.

**Clause 54: Substitution - Inspection**

This clause provides that section 76 of the principal Act is repealed and replaced with a new section 76. This new provision has been redrafted to reflect modern drafting style. The new provision does not change inspectors powers.

**Clause 55: Production of identity cards**

This clause amends section 77 as a consequence of the drafting changes made to section 76 of the Principal Act.

**Clause 56: Inspection of register**

Section 78 is amended by omitting the word "prescribed" and replacing it with the word "determined" as this properly describes the manner in which fees are set under the Act.

**Clause 57: Substitution - Advertisements**

This clause provides that sections 79 and 80 of the principal Act are repealed and replaced with a new section 79, 79A and 80.

The new provisions have been redrafted to reflect modern drafting practices. New subsection 79(3) clarifies that the provision only applies to second-hand motor vehicles, whilst subsection 79(4) requires dealers to include in advertisements the licence number issued by the Registrar. Car market operators who advertise will also be required to state in advertisements that they are licensed to carry on that business.

The requirement that the Registrar publish in a newspaper circulating in the Territory a list of persons who are licensed dealers has been removed. As soon as is practical, the Registrar will publish a list of all persons who are licensees as at that date in the Gazette.

**Clause 58: Submission of documents for signature**

This clause amends section 81 to establish a revised penalty for a breach of the law. The penalty has increased as there has been no general increase in penalties since the inception of the Act in 1977. All monetary penalties reflect a 1995 monetary value.

**Clause 59: Contracting out**

The words "licensed dealer" are omitted and replaced with the word "licensee" for consistent use of terminology.

Clause 60: Repeal

This clause provides that sections 85 and 86 of the principal Act are repealed. An equivalent provision to section 85, which deals with obstructing an authorised officer, has been inserted into Part X. Section 86 which deals with notice of dissolution of partnership is repealed as a consequence of the repeal of section 4.

Clause 61: Service upon licensees and applicants for licences

This clause amends section 87 to reflect modern drafting style and consistent use of terminology.

Clause 62: Insertion

*'Temporary revival of licence following death of licensee'*

New section 89A has been adapted from section 20G of the New South Wales Motor Dealers Act 1974. It provides that a representative of a deceased licensee may be granted a temporary licence for a period of up to six months to carry on the business.

Clause 63: Repeal

This clause provides for the repeal of section 91 of the principal Act which dealt with the transitional requirements when the Act commenced in 1977.

Clause 64: Insertion of schedule

This clause provides that the principal Act is amended by inserting after section 92 the Schedule set out in Schedule 1 to this Act. Schedule 1 establishes the regime whereby dealers will be obligated to repair defects in motor vehicles.

Clause 65: Schedule

This clause provides that the schedule at the end of the principal Act be amended by omitting the heading "Schedule" and substituting "Schedule 2" and adding form 3 -LOSS OF RIGHT TO TERMINATE.

Clause 66: Addition of Schedule

This clause provides for the addition of Schedule 2. Schedule 2 lists the provisions which are amenable to the issuing of an infringement notice and the monetary penalty for a breach of the law.

**Clause 67: Further amendments**

This clause provides for the amendment of a number of provisions in the principal Act which reflect modern drafting practices and the use of gender neutral references.

**Clause 68: Saving and transitional**

This clause provides that where before the commencement of section 5 of this Act, persons carried on the business of a dealer in partnership the applicable provisions will apply until the expiration of the licence. Where before the commencement of section 9 of this Act a person is the holder of a licence under the principal Act, the unexpired portion of its term shall be taken to be a vehicle sale licence.

Section 23 of the Principal Act will continue to apply in relation to a motor vehicle sold before the commencement of section 24 of this Act.