

Passed by both Houses



New South Wales

# Motor Trade Legislation Amendment Bill 2001

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2001*



New South Wales

## **Motor Trade Legislation Amendment Bill 2001**

Act No , 2001

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An Act to amend the *Motor Dealers Act 1974* and the *Motor Vehicle Repairs Act 1980* with respect to licences, law enforcement matters, trust accounts, compensation, cooling off periods for motor vehicle purchases and the restraint of unjust conduct by repairers; to constitute the Motor Vehicle Repair Industry Authority; to amend the *Registration of Interests in Goods Act 1986* with respect to registrable interests and penalty notices; to consequentially amend other Acts; and for other purposes.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Motor Trade Legislation Amendment Act 2001*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Motor Dealers Act 1974 No 52**

The *Motor Dealers Act 1974* is amended as set out in Schedule 1.

**4 Amendment of Motor Vehicle Repairs Act 1980 No 71**

The *Motor Vehicle Repairs Act 1980* is amended as set out in Schedule 2.

**5 Amendment of other Acts**

The Acts specified in Schedule 3 are amended as set out in that Schedule.

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## Schedule 1 Amendment of Motor Dealers Act 1974

(Section 3)

**[1] Section 4 Definitions**

Omit “Commissioner for Motor Transport” from paragraph (e) of the definition of *authorised officer* in section 4 (1).

Insert instead “Chief Executive Officer of the Roads and Traffic Authority”.

**[2] Section 4 (1), definition of “defect notice”**

Omit “tradesman’s” wherever occurring. Insert instead “tradesperson’s”.

**[3] Section 4 (1), definition of “motor vehicle”**

Insert “or any vessel or aircraft” after “tramway”.

**[4] Section 4 (8)**

Omit “the register” and “the place”, respectively.

Insert instead “a register” and “a place”.

**[5] Section 9 Offences**

Omit “500 penalty units” from section 9 (11).

Insert instead “1,000 penalty units”.

**[6] Section 9 (13)**

Omit “the place”. Insert instead “a place”.

**[7] Section 10 Application for licence**

Omit section 10 (2) (b). Insert instead:

- (b) if the application is made by a body corporate—by at least one director of the body corporate.

**[8] Section 10 (4) (d)**

Insert “or places” after “place”.

**[9] Section 12 Grant or refusal of licence**

Omit “or experience (if any)” from section 12 (2) (f).

**[10] Section 12 (2) (i)**

Insert after section 12 (2) (h):

, or

- (i) the applicant has (as an adult), within the preceding 10 years, been found guilty of an offence involving, or relating to:
  - (i) stealing a motor vehicle (within the meaning of section 154AA of the *Crimes Act 1900*), or
  - (ii) receiving, or unlawful possession of, a motor vehicle (within the meaning of section 154AA of the *Crimes Act 1900*) or a motor vehicle part.

**[11] Section 12 (4) (k)**

Insert after section 12 (4) (j):

, or

- (k) a director of, or person concerned in the management of, the body corporate has (as an adult), within the preceding 10 years, been found guilty of an offence involving, or relating to:
  - (i) stealing a motor vehicle (within the meaning of section 154AA of the *Crimes Act 1900*), or
  - (ii) receiving, or unlawful possession of, a motor vehicle (within the meaning of section 154AA of the *Crimes Act 1900*) or a motor vehicle part.

**[12] Section 12 (6)**

Omit the subsection. Insert instead:

- (6) An application for a licence may be refused if:
  - (a) some other licence is in force in respect of a place of business, or any part of a place, to which the application relates, or

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

**[13] Section 16 Form of licence**

Omit “signed and”.

**[14] Section 16 (2)**

Insert at the end of section 16:

- (2) Without limiting subsection (1), the form of licence may indicate, by abbreviations or otherwise, the kind of licence it is.

**[15] Section 17 Change of address of holder of licence**

Omit section 17 (3) and (4). Insert instead:

- (3) The Director-General may, on the application of a holder of a licence:
  - (a) vary or omit a place at which the business to which the licence relates is authorised to be carried on, or
  - (b) add a place as a place at which any such business is authorised to be carried on.
- (4) An application under subsection (3) may be refused if:
  - (a) some other licence is in force in respect of a place of business, or any part of a place, to which the application relates, or
  - (b) the carrying on of the business at that place or part of a place is, for any reason, unlawful.

**[16] Section 17 (5)**

Omit “the place” where firstly and secondly occurring.  
Insert instead “a place”.

**[17] Section 17 (5)**

Insert “or added” after “varied” wherever occurring.

**[18] Section 19 Term of, and authority conferred by, licence**

Insert “or places (including any place varied or added under section 17)” after “place” in section 19 (2).

**[19] Section 19 (5)**

Omit “the place”. Insert instead “a place”.

**[20] Section 20 Annual fee and annual statement**

Omit “Minister” from section 20 (2). Insert instead “Director-General”.

**[21] Section 20 (6)**

Omit “the prescribed late fee”.

Insert instead “any prescribed late fee that the notice requires to be paid”.

**[22] Section 20 (7A) and (7B)**

Insert after section 20 (7):

(7A) The Director-General may reinstate a licence cancelled under this section but only if satisfied that there is a reasonable explanation for the failure to pay the fee or lodge the statement that resulted in the cancellation of the licence.

(7B) The reinstatement of a licence does not take effect until the unpaid fee is paid or the statement is lodged, or both the fee is paid and the statement is lodged, as the case requires.

**[23] Section 20D Notices to show cause**

Insert after section 20D (1) (d):

- (d1) the holder of a licence has (as an adult), within the preceding 10 years or the period of 10 years that last preceded the grant of the licence, been found guilty of:
- (i) an offence involving, or relating to, stealing a motor vehicle (within the meaning of section 154AA of the *Crimes Act 1900*), or
  - (ii) receiving, or being in unlawful possession of, a motor vehicle (within the meaning of section 154AA of the *Crimes Act 1900*) or a motor vehicle part,

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(d2) in the light of evidence acceptable to the Director-General, the holder of the licence is probably receiving or dealing in stolen goods,

**[24] Section 20D (1) (h) and (i)**

Omit “the place” wherever occurring. Insert instead “a place”.

**[25] Section 20D (1A)**

Insert after section 20D (1):

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

**[26] Section 20E Determination of disciplinary measures by the Director-General**

Insert after section 20E (1A):

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

- (a) a matter referred to in section 20D (1) (d1) has been established, or
- (b) in the case of a licence holder that is a body corporate, if the body corporate were not the holder of a licence, the Director-General would be required by section 12 (4) (k) to refuse an application by the body corporate for a licence.

**[27] Section 20F Reviews by the Administrative Decisions Tribunal**

Insert at the end of section 20F:

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

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



- (b) the time that has passed since the offence concerned was committed,
- (c) the subsequent good behaviour of the offender,
- (d) any other ground prescribed by the regulations.

**[28] Section 21 Holder of licence to keep register**

Omit “the place” from section 21 (1). Insert instead “a place”.

**[29] Section 21 (2A)**

Insert after section 21 (2):

- (2A) Despite subsections (1) and (2), a register may be kept at only one of the places of business in respect of which a licence is granted if the register is kept in a form that may be accessed at all places of business covered by the licence.

**[30] Section 21A Special requirements for dealers who acquire motor vehicles for sale on consignment**

Insert after section 21A (2):

- (3) A register required to be kept by this section may be kept at only one of the places of business in respect of which a licence is granted if the register is kept in a form that may be accessed at all places of business covered by the licence.

**[31] Section 23 Inspection of registers**

Omit “the place” from section 23 (1). Insert instead “a place”.

**[32] Section 23 (1)**

Insert “or to be able to be accessed” after “kept” where secondly occurring.

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

Omit “the place” wherever occurring in section 23A (1) and (2).  
Insert instead “a place”.

**[34] Section 23A (2) (b)**

Omit “an exhibition, fair, show, display or other function is being conducted and the holder of the licence carries on business at that place”.

Insert instead “the holder of the licence carries on business”.

**[35] Section 23A (3)**

Insert “as” before “referred”.

**[36] Section 23A (4)**

Omit “the place” where firstly occurring. Insert instead “a place”.

**[37] Sections 23C (1) (a), 26A (1) and 46 (3A) (a)**

Omit “Commissioner for Motor Transport” wherever occurring.

Insert instead “Roads and Traffic Authority”.

**[38] Section 24 Dealers’ notices in respect of sale of second-hand motor vehicles, second-hand motor cycles, demonstrators and damaged new motor vehicles**

Omit “the place” from section 24 (4). Insert instead “a place”.

**[39] Sections 29CA–29CD**

Insert after section 29C:

**29CA Cooling off period**

- (1) This section applies to the purchase of a motor vehicle from a dealer where the purchaser obtains credit, for the purpose of financing the whole or part of the purchase, from the dealer or a person who is a linked credit provider (within the meaning of the *Consumer Credit (New South Wales) Code*) of the dealer.
- (2) This section does not apply to the following sales:
  - (a) a sale by a dealer to a trade owner,
  - (b) a sale at an auction,
  - (c) a sale by a dealer of a commercial vehicle,

- (d) a sale where credit is provided by a linked credit provider of the dealer but the provision of credit is not arranged or facilitated by the dealer.
- (3) A purchaser may, by written notice given to a dealer during the cooling off period after entering into a contract for the purchase of a motor vehicle from the dealer, terminate the contract.
- (4) Despite any other law, the purchaser is not entitled to possession of the motor vehicle during the cooling off period, unless the purchaser and the dealer otherwise agree.
- (5) The right to terminate a contract may be exercised even though the purchaser has taken delivery of the motor vehicle concerned.
- (6) A contract for the purchase of a motor vehicle to which this section applies must contain a provision, in the form prescribed by the regulations, setting out the purchaser's rights under this section and the effect of this section.
- (7) A purchaser may waive a right to terminate the contract under this section if:
- (a) the purchaser signs a waiver in the form prescribed by the regulations, and
  - (b) any applicable requirements of the regulations are complied with.
- (8) Regulations may be made for or with respect to requirements for waivers under this section.
- (9) A notice of termination by a purchaser may be signed by the purchaser or the purchaser's solicitor or barrister.
- (10) The cooling off period may be extended by a provision in the contract of sale or by agreement with the dealer.
- (11) In this section:
- cooling off period*** means the period commencing when a purchaser enters into a contract for the purchase of a motor vehicle from a motor dealer and ending:
- (a) at 5pm on the next day that the dealer carries on business with the public, or

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

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

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

Maximum penalty: 200 penalty units.

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

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

**29CC Consequences of termination**

- (1) On termination of a contract under section 29CA, the dealer must:
  - (a) pay to the purchaser all money received by the dealer under the contract, less any amount that the purchaser is liable to pay under this section, and
  - (b) return to the purchaser any motor vehicle given in consideration for the whole or part of the purchase price.
- (2) On termination of a contract under section 29CA, a purchaser who accepted delivery of the motor vehicle before the termination must return the motor vehicle to the dealer and is liable to the dealer for any damage to the motor vehicle while it was in the purchaser's possession, other than fair wear and tear.

- (3) On termination of a contract under section 29CA, a dealer who is in possession of a trade-in must return the motor vehicle to the purchaser and is liable to the purchaser for any damage to the motor vehicle while it was in the dealer's possession, other than fair wear and tear.
- (4) On termination of a contract under section 29CA, the purchaser is liable:
  - (a) to pay the dealer \$250 or 2% of the purchase price, whichever is the lesser, and
  - (b) to repay to the dealer any amount paid by the dealer to the purchaser in respect of a trade-in.
- (5) On termination of a contract under section 29CA, any tied loan contract (within the meaning of the *Consumer Credit (New South Wales) Code*) is terminated and section 125 (2)–(6) of that Code applies to that termination as if it were a termination referred to in that section.
- (6) A purchaser or dealer is not liable to return a motor vehicle as required by this section if the purchaser or dealer is unable to return it because of a defect in the car, not caused by the purchaser or dealer, that has rendered the motor vehicle incapable of being driven or unroadworthy. The purchaser or dealer must, however, permit the collection, or arrange for the collection, of the motor vehicle.
- (7) In this section:  
*trade-in* has the same meaning as it has in section 29CB.

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

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

**[40] Section 29E Dealer's trust account**

Omit section 29E (2). Insert instead:

- (2) If a dealer sells a motor vehicle on consignment, the dealer must pay an amount equal to the value of the consideration received by the dealer for the sale into a trust account not later than the next day on which the bank, building society or credit union at which the account is maintained is open for business after the day on which the dealer received the consideration.

**[41] Section 29F Withdrawals from dealer's trust account**

Omit "money received from the sale of a motor vehicle on consignment and paid into a trust account" from section 29F (1).

Insert instead "an amount paid into a trust account under section 29E".

**[42] Section 29K Suspension, cancellation etc of dealer's licence**

Omit "money" wherever occurring in section 29K (1) (b) and (c).

Insert instead "an amount".

**[43] Section 38N Termination of appointment of administrator**

Omit section 38N (1) (c). Insert instead:

- (c) becomes a mentally incapacitated person,

**[44] Section 39 Motor Dealers Compensation Fund**

Omit section 39 (1). Insert instead:

- (1) The Director-General is to cause to be established and maintained in the accounting records of the Department of Fair Trading a fund, to be called the Motor Dealers Compensation Fund.

**[45] Section 39 (4)**

Omit the subsection. Insert instead:

- (4) Subject to section 42, there is to be paid out of the Fund:
  - (a) the amount of any loss that is certified by the Director-General under section 40, and

- (b) the amount of the costs of administering the Fund, as certified by the Director-General, and
- (c) any other amount that is authorised to be paid out of the Fund by this Act or the regulations.

**[46] Section 40 Claims against Fund**

Insert after section 40 (2) (c):

- , or
- (d) because of a breach by a dealer or car market operator of a contract made by the person with the dealer or car market operator (being a breach of a kind prescribed by the regulations),

**[47] Section 40 (8)**

Insert in alphabetical order:

*trade owner* includes an auto-dismantler.

**[48] Section 45A**

Insert after section 45:

**45A Provision of information**

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

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- (4) The Director-General may, in accordance with an agreement approved by the Minister for the purposes of this subsection and entered into with an authority of this State or another State or Territory or the Commonwealth, supply to that authority a record or information provided to the Director-General under this section.
- (5) The Minister may approve an agreement for the purposes of subsection (4) only if it relates to one or more of the following:
- (a) offences, or the regulation of conduct, relating to motor vehicles or motor vehicle dealing,
  - (b) law enforcement by an authority of another State or Territory or of the Commonwealth.
- (6) This section does not apply to the supply of a record or information to which the *Criminal Records Act 1991* applies.
- (7) In this section:
- relevant authority** means:
- (a) the Police Service, or
  - (b) the Roads and Traffic Authority, or
  - (c) any other authority prescribed by the regulations for the purposes of this definition.

**[49] Section 46 Certificate of inspection**

Insert “(or such other period as may be prescribed by the regulations)” after “1 month” wherever occurring in section 46 (2) and (2A).

**[50] Section 46 (2A)**

Omit “the place”. Insert instead “a place”.

**[51] Section 47A Odometer offences**

Insert after section 47A (1):

- (1A) A person must not fit to a motor vehicle a device capable of rendering the odometer of the motor vehicle inoperative or inaccurate.

Maximum penalty: 100 penalty units.



**[52] Sections 49 and 50**

Insert after section 48:

**49 Duty to report suspicious goods**

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

Maximum penalty: 50 penalty units.

**50 Retention of suspicious goods**

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

Maximum penalty: 500 penalty units.

**[53] Section 53D Service of notices and documents**

Omit "the place" wherever occurring in section 53D (1) (a) and (b).

Insert instead "a place".

**[54] Section 55 Proceedings**

Omit “50 penalty units” from section 55 (1B).  
Insert instead “100 penalty units”.

**[55] Section 55 (5)**

Omit “47A (1), at any time within 2 years”.  
Insert instead “47A (1) or (1A), at any time within 3 years”.

**[56] Section 56D**

Insert after section 56C:

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

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

**[57] Section 60**

Insert after section 59:

**60 Savings and transitional provisions**

Schedule 2 has effect.

**[58] Schedule 2**

Insert after Schedule 1:

**Schedule 2 Savings and transitional provisions**

(Section 60)

**1 Regulations**

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

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

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**2 Definition**

In this Schedule:

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

**3 Cooling off period**

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

**4 Motor Dealers Compensation Fund**

- (1) There is to be paid into the Motor Dealers Compensation Fund any amounts held in the Fund constituted under section 39 immediately before the commencement of section 39 (1), as substituted by the 2001 amending Act.
- (2) There may be paid out of the Motor Dealers Compensation Fund amounts in respect of costs that arose before the commencement of section 39 (4), as substituted by the 2001 amending Act, if those amounts are amounts of the kind referred to in that subsection.

**5 Car stealing offences**

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

## **Schedule 2    Amendment of Motor Vehicle Repairs Act 1980**

(Section 4)

**[1]    Long title**

Omit “to constitute the Motor Vehicle Repair Industry Council”.  
Insert instead “to constitute the Motor Vehicle Repair Industry Authority”.

**[2]    Long title**

Omit “; to constitute the Motor Vehicle Repair Disputes Committee”.

**[3]    Whole Act (except references elsewhere repealed or replaced, or inserted, and in Schedule 5)**

Omit “Council” wherever occurring. Insert instead “Authority”.

**[4]    Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

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

**[5]    Section 4 (1)**

Omit the definitions of *automotive electrician, body maker, brake mechanic, exhaust repairer, front end specialist, liquefied petroleum gas, liquefied petroleum gas equipment, liquefied petroleum gas mechanic, loss assessor’s work, motor cycle mechanic, motor mechanic, natural gas, natural gas equipment, natural gas mechanic, painter tradesperson, panelbeater, prescribed tradesperson, radiator repairer, relevant day* and *transmission specialist*.

**[6]    Section 4 (1), definition of “committee”**

Omit “section 14”. Insert instead “section 13”.

**[7] Section 4 (1), definition of “Council”**

Omit the definition. Insert instead:

*Council* means the Council of the Authority constituted under section 9.

**[8] Section 4 (1), definition of “General Manager”**

Insert in alphabetical order:

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

**[9] Section 4 (1), definition of “inspector”**

Omit the definition. Insert instead:

*inspector* means:

- (a) a member of staff of the Authority appointed as an inspector of the Authority under section 11, or
- (b) a person of whose services the Authority makes use under section 11 who is appointed by the Authority as an inspector.

**[10] Section 4 (1), definition of “joint licence”**

Omit “section 17 (2) (b)”. Insert instead “section 17B (3)”.

**[11] Section 4 (1), definition of “licence”**

Omit the definition. Insert instead:

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

**[12] Section 4 (1), definition of “member”**

Omit the definition. Insert instead:

*member* means a member of the Council of the Authority.

**[13] Section 4 (1), definition of “repair work”**

Omit the definition. Insert instead:

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

**[14] Section 4 (4)**

Omit the subsection.

**[15] Section 6 Approved forms**

Omit section 6 (1). Insert instead:

- (1) An application under this Act is to be made in the form approved by the Authority.

**[16] Section 6 (2)**

Omit “Minister”. Insert instead “Authority”.

**[17] Part 2**

Omit the Part. Insert instead:

## **Part 2 The Authority**

### **7 Constitution of Authority**

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

### **8 Functions of Authority**

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

- (d) to keep under review, and promote improvement in the standard of, motor vehicle repair work,
  - (e) to promote and undertake research into the motor vehicle repair industry,
  - (f) whenever it considers it necessary to do so or it is requested to do so by the Minister, to make reports or recommendations to the Minister with respect to the motor vehicle repair industry.
- (3) The Authority is, in the exercise of its functions other than making a report or recommendation to the Minister, subject to the control and direction of the Minister.

## **9 Council of Authority**

- (1) There is to be a Council of the Authority.
- (2) The Council is to consist of 13 part-time members appointed by the Minister.
- (3) Of the members:
  - (a) 1 is to be appointed as Chairperson of the Council by the Minister,
  - (b) 1 is to be a person chosen by the Minister from a panel of 3 persons nominated by the Council of NRMA Limited,
  - (c) 1 is to be a person chosen by the Minister from a panel of 3 persons nominated by the Council of the Motor Traders' Association of New South Wales,
  - (d) 1 is to be a person chosen by the Minister from a panel of 3 persons nominated by Service Station Association Ltd,
  - (e) 1 is to be a person chosen by the Minister from a panel of 3 persons nominated by the Australian Industry Group,
  - (f) 2 are to be persons chosen by the Minister from a panel of 6 persons nominated by the Labor Council of New South Wales,
  - (g) 1 is to be a person who, in the opinion of the Minister, represent insurers,



- (h) 1 is to be a person chosen by the Minister from a panel of 3 persons nominated by the National Council of the Institute of Automotive Mechanical Engineers,
  - (i) 1 is to be a person nominated by the Minister for Police,
  - (j) 3 are to be persons chosen by the Minister who have, in the opinion of the Minister, expertise appropriate to the functions of the Council.
- (4) Schedule 1 has effect with respect to the constitution and procedure of the Council.

#### **10 Functions of Council**

- (1) The Council has the following functions:
- (a) to furnish advice to the General Manager about the strategic planning of the Authority and the implementation of the policies of the Authority,
  - (b) to request the General Manager to prepare reports about specified matters on behalf of the Authority for presentation to the Minister,
  - (c) such other functions as may be conferred or imposed on it by or under this or any other Act.
- (2) The Council is, in the exercise of its functions other than making a report or recommendation to the Minister, subject to the control and direction of the Minister.

#### **11 Staff of Authority**

- (1) The staff of the Authority (including the General Manager) is to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Authority may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a Government department, public authority or local authority. Any such person of whose services the Authority makes use is, for the purposes of this Act, an officer of the Authority.
- (3) The Authority may engage consultants.
- (4) The Authority must issue a person appointed as an inspector by the Authority with a certificate of identification as an inspector.

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

**12 Role of General Manager**

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

**13 Committees of Council**

- (1) The Council must establish such committees as the Minister requires, and may establish other committees, to advise the Authority or the Council on the matters related to the Authority's functions that are referred to them by the Council or the Minister.
- (2) A committee is to consist of such members as the Council thinks fit (whether or not those members are members of the Council).
- (3) The Council may determine a quorum for a meeting of a committee.
- (4) The procedure for the calling of, and for the conduct of business at, meetings of a committee are to be in accordance with any directions given by the Council or, in the absence of any such directions, as may be determined by the committee.

**[18] Section 15 Licences**

Omit "On or after the relevant day, no person (other than an exempted person) shall".

Insert instead "A person (other than an exempted person) must not".

**[19] Section 15 (1)**

Omit "20 penalty units". Insert instead "1,000 penalty units".

**[20] Section 15 (4)**

Insert after section 15 (3):

- (4) A person who is convicted of a second or subsequent offence under this section is liable to a penalty not exceeding 1,000 penalty units or imprisonment for a term not exceeding 12 months, or both.

**[21] Sections 16–18**

Omit the sections. Insert instead:

**16 Application for licence**

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

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(d) the address of any place or places of business at which, and the name or names under which, the applicant intends to carry on business pursuant to the authority that would be conferred by the licence if it were granted.

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

Maximum penalty: 20 penalty units.

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

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

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

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

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

Maximum penalty: 20 penalty units.

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

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

**17B Grant of licences**

- (1) The Authority must grant an application for a licence, except in the circumstances set out in section 18.
- (2) The Authority may grant a licence in respect of one or more classes of repair work.
- (3) The Authority may grant a licence in the name of 2 or more persons who make a joint application, in respect of one or more classes of repair work.
- (4) The Authority may grant a licence in respect of one or more classes of repair work that is not granted with respect to a place of business.
- (5) If an application is made for the grant of one licence with respect to 2 or more places of business or classes of repair work, the Authority may, in granting a licence:
  - (a) grant the licence in respect of all of those places or classes of repair work, or
  - (b) grant the licence in respect of one or some only of those places or classes of repair work.

**18 Refusal of application for licence**

- (1) The Authority must refuse an application made by an individual (whether in his or her own right or as part of a joint application) if it appears to the Authority that:
  - (a) the applicant has not attained the age of 18 years, or
  - (b) the applicant is disqualified from holding a licence, or
  - (c) the applicant is an undischarged bankrupt, or
  - (d) the applicant does not have, or is not likely to continue to have, sufficient financial resources to enable the person to carry on business pursuant to the authority that would be conferred by the licence if it were granted, or
  - (e) the applicant is not a person likely to carry on such a business honestly and fairly, or
  - (f) the applicant does not have the qualifications (if any) prescribed by the regulations, or

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- (g) the applicant does not have the material resources and other resources (if any) prescribed by the regulations, or
  - (h) the application does not comply with section 16 or the applicant has not complied with a requirement made under section 16 (6), or
  - (i) the applicant is in any other way not a fit and proper person to hold a licence, or
  - (j) the applicant has (as an adult), within the preceding 10 years, been found guilty of an offence involving, or relating to:
    - (i) stealing a motor vehicle (within the meaning of section 154AA of the *Crimes Act 1900*), or
    - (ii) receiving, or unlawful possession of, a motor vehicle (within the meaning of section 154AA of the *Crimes Act 1900*) or a motor vehicle part.
- (2) Without affecting the generality of subsection (1) (i), the Authority may, in determining whether an applicant is not a fit and proper person to be the holder of a licence, have regard to any of the following:
- (a) whether the applicant has, during the period of 10 years that last preceded the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence in New South Wales or elsewhere involving fraud or dishonesty,
  - (b) whether the applicant was, when the application was made, subject to a good behaviour bond in relation to such an offence,
  - (c) whether there was, when the application was made, a charge pending against the applicant in relation to such an offence,
  - (d) whether the applicant has, at any other time, been convicted of an offence against this Act or the regulations or any other Act or regulation administered by the Minister.

- (3) The Authority must refuse an application made by a body corporate (whether in its own right or as part of a joint application) if it appears to the Authority that:
- (a) a person concerned in the management of the body corporate has not attained the age of 18 years, or
  - (b) the body corporate is disqualified from holding a licence, or
  - (c) the body corporate does not have, or is not likely to continue to have, sufficient financial resources to enable it to carry on business pursuant to the authority that would be conferred by the licence if it were granted, or
  - (d) the body corporate is not likely to carry on such a business honestly and fairly, or
  - (e) the officers of the body corporate do not have the qualifications (if any) prescribed by the regulations, or
  - (f) the body corporate does not have the material resources and other resources (if any) prescribed by the regulations, or
  - (g) the application does not comply with section 16 or the applicant has not complied with a requirement made under section 16 (6), or
  - (h) the reputation of the body corporate is such that it would not be a fit and proper person to hold a licence, or
  - (i) a director of, or a person concerned in the management of, the body corporate is not of good reputation or character or in any other way would not be a fit and proper person to hold a licence if the director or person were to apply for the licence personally, or
  - (j) any person other than an officer of the body corporate who, in the opinion of the Authority, appears to have control, or substantial control, of the body corporate is not of good reputation and character or is not likely to exercise that control honestly and fairly, or
  - (k) a director of, or person concerned in the management of, the body corporate has (as an adult), within the preceding 10 years, been found guilty of an offence involving, or relating to:

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- (i) stealing a motor vehicle (within the meaning of section 154AA of the *Crimes Act 1900*), or
    - (ii) receiving, or unlawful possession of, a motor vehicle (within the meaning of section 154AA of the *Crimes Act 1900*) or a motor vehicle part.
  - (4) For the purposes of determining an application for a joint licence, or an application by a person who intends to carry on business in partnership with another person, the Authority must, for the purposes of subsections (1) (d) and (g) and (3) (c) and (f), take into account the resources that the joint applicants or proposed partners have together.
  - (5) Without affecting the generality of subsection (3) (h), (i) or (j), the Authority may, in determining any matter referred to in those paragraphs, have regard, if applicable, to the fact that the body corporate or a person referred to in those paragraphs has, at any time, been convicted of an offence against this Act or the regulations or any other Act or regulation administered by the Minister.
  - (6) The Authority may refuse an application if:
    - (a) some other licence is in force in respect of a place of business, or any part of that place, to which the application relates, or
    - (b) the carrying on of the business at any such place, or part of a place, is, for any reason, unlawful.
  - (7) An application for a licence must not be granted until the applicant has paid the licence fee to the Authority.
  - (8) The Authority may require any of the following persons to appear personally before the Authority to satisfy the Authority as to any relevant matters under this section that the Authority may require:
    - (a) any individual to whom the application relates,
    - (b) the directors and officers of the body corporate to which the application relates.
  - (9) Despite any other provision of this section, the Authority may refrain from granting an application for a licence until the Authority is satisfied as to any relevant matter under subsection (8).
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**[22] Section 18A Grant of approval for licence**

Omit section 18A (1). Insert instead:

- (1) If the Authority would, but for the inability of the applicant or applicants for a licence to satisfy the Authority as to any matter relating to a proposed place of business, grant the licence, the Authority may defer consideration of the application and grant the applicant or applicants approval for the licence in the form determined by the Authority.

**[23] Section 18B**

Insert after section 18A:

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

- (1) A licence may authorise the holder to carry on business under a name or names in addition to or in substitution for the name of the holder.
- (2) A person must not carry on, or advertise that the person carries on or is willing to carry on, the business to which a licence relates under a name or names other than the name of the holder of the licence or the name or names under which the holder of the licence is authorised to do so under this section.  
Maximum penalty: 20 penalty units.
- (3) This section is subject to the *Business Names Act 1962*.

**[24] Section 19**

Omit section 19. Insert instead:

**19 Form of licence**

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

- (a) is to specify the name of the person or, in the case of a joint licence, the name of the persons, to whom the licence is granted, and
- (b) is to specify the class or classes of repair work in respect of which it is granted, and

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- (c) is to specify any place or places of business in respect of which it is granted, and
  - (d) if it authorises the holder to carry on business under a name or names in addition to, or in substitution for, the name of the holder, is to be endorsed to that effect, and
  - (e) if it is subject to a condition or restriction, is to be endorsed to that effect.

**[25] Section 20 Amendment of licence**

Insert “or by inserting or omitting a reference to a place of business” after “business” where secondly occurring in section 20 (1) (b).

**[26] Section 20 (1) (c)**

Omit “if it is in close proximity to the existing place of business in respect of which the licence is granted”.

**[27] Section 20 (1) (d) and (e)**

Omit section 20 (1) (e). Insert instead:

- (d) of a licence by adding or amending an endorsement authorising the holder to carry on business under a name or names, or

**[28] Section 20 (4)**

Omit section 20 (4)–(7). Insert instead:

- (4) The holder of a licence must, not later than 14 days after ceasing to carry on business at a place of business specified in the licence (as issued or as varied under this section) give to the Authority notice in writing that the holder has ceased to carry on business at that place.

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

**[29] Section 20 (8) (b)**

Omit the paragraph. Insert instead:

- (b) subsection (1) (b) is granted and the licence is amended by substituting, inserting or omitting a reference to a place of business, a place of business so substituted, inserted or omitted is, or ceases to be, (as the case requires) a place of business in respect of which the licence is granted,

**[30] Section 21 Duration of licence fee and annual licence fee**

Insert after section 21 (3):

- (3A) A holder of a licence, or a person who held a licence during a year or part of a year preceding a date referred to in subsection (3), must lodge with the Authority a statement in respect of that year or part year.
- (3B) The statement is to be in the form approved by the Authority, must be accompanied by the documents (if any) required by the regulations and must be lodged not later than one month after the end of the year in respect of which it is lodged or such other period as the Authority may permit.

**[31] Section 21 (5)**

Omit the subsection. Insert instead:

- (5) If a holder of a licence contravenes this section, the Authority must give a written notice to the holder specifying that the licence will be cancelled, unless the holder complies within 14 days after the notice is given.
- (5A) The Authority must cancel the licence of a person who fails to comply within 14 days after the notice is given.
- (5B) A person must not make a statement that the person knows is false or misleading in, or in relation to, a statement or document required to be provided under this section.

Maximum penalty (subsection (5B)): 20 penalty units.

(5C) The Authority may reinstate a licence cancelled under this section but only if satisfied that there is a reasonable explanation for the failure to pay the fee or lodge the statement that resulted in the cancellation of the licence.

(5D) The reinstatement of a licence does not take effect until the unpaid fee is paid or the statement is lodged, or both the fee is paid and the statement is lodged, as the case requires.

**[32] Section 21 (6)**

Omit “ceases to have effect under subsection (5)”.

Insert instead “is cancelled”.

**[33] Section 21A**

Insert after section 21:

**21A Transfer or loan of licences**

(1) The holder of a licence must not:

- (a) transfer, attempt to transfer or lend the licence to another person, or
- (b) allow the use of the licence by another person.

(2) A person must not:

- (a) attempt to obtain the transfer to the person of a licence, or
- (b) attempt to borrow or borrow or use a licence of which the person is not the holder.

Maximum penalty: 20 penalty units.

**[34] Section 22 Tradesperson’s certificate**

Omit “On or after the relevant day, no” wherever occurring.

Insert instead “A”.

**[35] Section 22 (1), (2) and (3)**

Omit “shall” wherever occurring. Insert instead “must not”.

**[36] Section 22 (2A)**

Omit the subsection.

**[37] Section 22 (4)**

Omit “On or after the relevant day, an”. Insert instead “An”.

**[38] Section 26 Form of tradesperson’s certificate**

Omit “Minister”. Insert instead “Authority”.

**[39] Section 33**

Insert before section 34:

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

- (1) The Authority may, on granting a licence or certificate or at any other time, impose conditions or restrictions on the licence or certificate.
- (2) The Authority may, on the application of the holder or on the Authority’s own motion, vary or revoke a condition or restriction imposed on a licence or certificate.
- (3) A licence or certificate is subject:
  - (a) to any conditions or restrictions prescribed by the regulations, and
  - (b) to any conditions or restrictions imposed by the Authority under this section.
- (4) The Authority must not impose or vary a condition of or restriction on a licence or certificate unless the Authority has first given the relevant applicant or holder an opportunity to make submissions, orally or in writing, and adduce evidence, with respect to the proposed condition or restriction or variation.
- (5) Nothing in this section affects the exercise of powers by the Authority under section 26.

- (6) If a condition or restriction is imposed or varied under this section on a current licence or certificate, the holder of the licence or certificate must produce the licence or certificate to the Authority, within the time specified by the Authority, for endorsement of the condition or restriction.

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

**[40] Section 36 Refund of fees**

Omit the section.

**[41] Section 38 Registers of licences and certificates**

Omit section 38 (2) and (2A). Insert instead:

- (2) The registers are to be kept by the Authority in the form determined by the Authority.

**[42] Section 38 (5)**

Insert after section 38 (4):

- (5) The Authority may, on the application of a person, issue to the person a certificate stating whether a person specified in the certificate is or was, on a date or during a period specified in the certificate, the holder of a licence or certificate.

**[43] Section 39**

Omit the section. Insert instead:

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

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

Maximum penalty: 20 penalty units.

**[44] Section 40 Holding out as holder of certificate**

Omit “2 penalty units”. Insert instead “20 penalty units”.

**[45] Parts 4 and 5**

Omit the Parts. Insert instead:

**Part 4 Disciplinary proceedings**

**41 Show cause notices**

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

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

- (1) The following are the grounds on which a holder of a licence may be dealt with under this Part:
- (a) that the holder has carried on the business of a repairer in such a manner that the repair work done in connection with that business has been below usual trade standards,
  - (b) that the licence may have been improperly obtained or, when the licence was granted, there may have been grounds for refusing to grant it,
  - (c) that the holder has been convicted of an offence against this Act or the regulations or any other Act or regulation administered by the Minister,
  - (d) that the holder may have failed to comply with this Act or the regulations, a condition or restriction to which the licence is subject or an order of the Tribunal applicable to the holder,
  - (e) that the holder has, within the period of 10 years that last preceded the grant of the licence, been found guilty of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more,
  - (f) the holder of a licence has (as an adult), within the preceding 10 years or the period of 10 years that last preceded the grant of the licence, been found guilty of:
    - (i) an offence involving, or relating to, stealing a motor vehicle (within the meaning of section 154AA of the *Crimes Act 1900*), or
    - (ii) receiving, or being in unlawful possession of, a motor vehicle (within the meaning of section 154AA of the *Crimes Act 1900*) or a motor vehicle part,
  - (g) that the Authority considers, in the light of evidence acceptable to the Authority, that the holder is probably receiving or dealing in stolen goods,
  - (h) that the business to which the licence relates is being carried on in a dishonest or unfair manner,



- (i) in the case of a holder of a licence (other than a joint licence) in respect of any class of repair work—that the material, financial and other resources of the holder of the licence, together with those of the persons with whom the holder carries on the business of a repairer in partnership, are not sufficient to enable the holder to carry on the business of a repairer in respect of that class of repair work,
  - (j) in the case of a holder of a joint licence in respect of any class of repair work—the holders of the licence together do not have sufficient material, financial and other resources to carry on the business of a repairer in respect of that class of repair work,
  - (k) that, if the person were not the holder of a licence, the Authority would be required by this Act to refuse an application by the person for a licence,
  - (l) that, in the case of a body corporate, the body corporate:
    - (i) is in the course of being wound up, or
    - (ii) is a body corporate in respect of which a receiver or other controller has been appointed, or
    - (iii) has entered into a compromise or scheme of arrangement with its creditors,or may, for any other reason, be unable, or is likely to become unable, to meet the holder's liabilities,
  - (m) that the holder has, for a period of one month or more, ceased to carry on the business to which the licence relates at a place of business to which the licence relates,
  - (n) that the holder is contravening another Act or an instrument made under another Act by carrying on the business to which the licence relates at a place of business to which the licence relates,
  - (o) that the holder is, for any other reason, not a fit and proper person to continue to hold a licence.
- (2) By way of example of the operation of subsection (1) (g), the Authority may consider that the holder of a licence in whose custody stolen goods are found is probably receiving or dealing in stolen goods.

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

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

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

**44 Determination of disciplinary measures by Authority**

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

- (d) in the case of the holder of a licence, disqualify the holder or any person concerned in the direction, management or conduct of the business to which the licence relates from holding a licence or from being concerned in the direction, management or conduct of a business for the carrying on of which a licence is required, either permanently or for such period as the Authority thinks fit,
  - (e) impose a condition or restriction on the licence or certificate,
  - (f) cancel the licence or certificate.
- (2) Without limiting the powers conferred by subsection (1), among the requirements that the Authority may specify under subsection (1) (b) is a requirement that the holder of the licence concerned:
- (a) make an additional contribution to the Contingency Fund of such amount as the Authority specifies, or
  - (b) indemnify the Fund to such extent as the Authority specifies in the event of a particular contingency arising concerning the activities of the holder of the licence.
- (3) Despite subsection (1), the Authority must cancel the licence concerned if satisfied that:
- (a) a matter referred to in section 42 (1) (f) has been established, or
  - (b) in the case of a licence holder that is a body corporate, if the body corporate were not the holder of a licence, the Director-General would be required by section 18 (3) (k) to refuse an application by the body corporate for a licence.
- (4) A holder of a licence or certificate must comply with a requirement of the Authority specified under subsection (1) (b) within the time specified by the Authority.
- Maximum penalty: 20 penalty units.
- (5) If the Authority disqualifies the holder of a licence, the Authority must cancel the licence.

(6) A cancellation or suspension of a licence or certificate under this section takes effect on and from the day determined by the Authority and notified in writing to the holder of the licence or certificate.

(7) The holder of a licence or certificate that is suspended or the former holder of a licence or certificate that is cancelled must return the licence or certificate to the Authority within the period specified by the Authority when suspending or cancelling the licence.

Maximum penalty: 20 penalty units.

(8) A person disqualified under this section must not, while disqualified:

- (a) hold a licence, or
- (b) be concerned in the direction, management or conduct of a business for which this Act requires a licence to be held.

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

#### **45 Reviews by Administrative Decisions Tribunal**

(1) If the Authority:

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

the applicant, the person who holds or held the licence or certificate or the person disqualified may apply to the Administrative Decisions Tribunal for a review of the decision of the Authority.

- (2) On an application for a review of a decision of the Authority to refuse to grant a licence to a person because of a fact referred to in section 18 (3) or (5), the Administrative Decisions Tribunal may determine that the fact should be ignored on one or more of the following grounds:
- (a) the triviality of the acts or omissions giving rise to the offence concerned,
  - (b) the time that has passed since the offence concerned was committed,
  - (c) the subsequent good behaviour of the offender,
  - (d) any other ground prescribed by the regulations.

## Part 5 Unjust conduct by repairers

### 46 Meaning of “unjust” conduct

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

- (a) that is dishonest or unfair, or
- (b) that consists of anything done, or omitted to be done, in breach of contract, whether or not proceedings in respect of the breach have been brought, or
- (c) that consists of the contravention of this Act or the regulations or any other Act or regulation administered by the Minister, or
- (d) that consists of a failure to comply with a condition or restriction to which the licence is subject or an order of the Tribunal applicable to the holder.

### 47 Undertakings by repairer

- (1) If it appears to the Authority that a repairer has, in the course of business, repeatedly engaged in unjust conduct, the Authority may, with the consent of the Minister:
- (a) request the repairer to execute a deed in terms approved by the Authority under which the repairer gives undertakings as to:
    - (i) the discontinuance of the unjust conduct, and

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

Maximum penalty: 20 penalty units.
- (5) A prosecution for an offence under subsection (4) may be instituted only by the Authority with the leave of the Tribunal given when making an order under section 49 (2).

#### **48 Register of undertakings**

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

**49 Restraint of unjust conduct**

- (1) If, on the application of the Authority, the Tribunal is satisfied after inquiry that a repairer has repeatedly engaged in unjust conduct, the Tribunal may order the repairer to refrain from engaging in unjust conduct in the course of carrying on the business.
- (2) If, on the application of the Authority, the Tribunal is satisfied that a repairer has failed to observe an undertaking given by the repairer in a deed executed under this Part, the Tribunal may:
  - (a) order the repairer to refrain from engaging in unjust conduct in the course of carrying on the business, and
  - (b) in the case of an undertaking relating to action to rectify the consequences of the repairer's unjust conduct, order the repairer to observe the undertaking within the time specified by the Tribunal in the order.
- (3) In the case of an application relating to a repairer that is a body corporate, the Tribunal may make an order prohibiting a person from consenting to, or conniving at, engagement in unjust conduct, or a breach of an undertaking under this Part by the body corporate or any other body corporate if it is satisfied that:
  - (a) the person was, when the relevant unjust conduct or breach of undertaking occurred, a director or a person concerned in the direction, management or conduct of the body corporate, and
  - (b) the relevant conduct or breach was engaged in with the consent or connivance of the person.
- (4) An order under this section may be subject to such conditions as the Tribunal thinks fit.
- (5) Without limiting subsection (4), the Tribunal may impose conditions of the following kinds:
  - (a) conditions as to the duration of the order,
  - (b) conditions as to the future conduct of the person subject to the order,
  - (c) conditions specifying the action to be taken by the repairer to rectify the consequences of the repairer's unjust conduct.

- (6) A person must not contravene an order made under this section.

Maximum penalty: 20 penalty units.

**50 Variation or discharge of restraining order**

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

**[46] Section 54**

Insert after section 53:

**54 Investigation by Authority**

- (1) If the Authority is unable under section 53 to settle a dispute, the Authority may investigate the dispute.
- (2) The Authority may determine the Authority's own procedure for the purpose of investigating a dispute.

**[47] Section 57 False or misleading statements**

Insert "or in relation to any attempt to facilitate a settlement of a dispute undertaken by the Authority under this Part" after "dispute".

**[48] Section 57**

Omit "5 penalty units". Insert instead "20 penalty units".

**[49] Section 61 General Fund**

Omit "Chairperson" from section 61 (3). Insert instead "General Manager".

**[50] Section 63 Claims against Contingency Fund**

Omit "\$3,000" from section 63 (2). Insert instead "\$30,000".

**[51] Section 63 (4)**

Insert at the end of section 63:

- (4) The insurer of a motor vehicle may not make a claim under this section in relation to a loss in connection with the repair of the motor vehicle.



**[52] Section 64 Subrogation where claim allowed**

Insert “, without the necessity for the execution of any form of conveyance or assignment,” before “be subrogated”.

**[53] Section 64 (2)**

Insert at the end of section 64:

- (2) In the enforcement of any rights or remedies to which the Authority is subrogated under subsection (1) for the purpose of recovering an amount paid out of the Contingency Fund, the amount is taken to be a debt due to the Authority and may be recovered accordingly.

**[54] Section 64A**

Insert after section 64:

**64A Recovery of money from directors**

- (1) If the payment of an amount out of the Contingency Fund has been made as a consequence of the act or omission of a person that is a body corporate, the Authority may, without affecting the operation of section 64, recover, jointly or severally, from any person who was a director or persons who were directors of the body corporate when the act or omission occurred, the amount of that payment as a debt in any court of competent jurisdiction.
- (2) In any proceedings for the recovery of an amount under this section, judgment is not to be entered against a defendant who proves that the act or omission occurred without the defendant’s express or implied authority or consent.

**[55] Section 67 Investment**

Omit the section.

**[56] Section 70 Delegation**

Omit “section 14” from section 70 (1) (b). Insert instead “section 13”.

**[57] Section 70 (1) (c)**

Omit “or temporary employee appointed under section 12” from section 70 (1) (c).

Insert instead “appointed under section 11”.

**[58] Section 73 Authority may require information**

Omit “or loss assessor’s work” from section 73 (1).

**[59] Section 73 (2)**

Omit “10 penalty units”. Insert instead “20 penalty units”.

**[60] Section 74 Production of licences and certificates**

Omit “1 penalty unit”. Insert instead “10 penalty units”.

**[61] Section 75B**

Insert after section 75A:

**75B Production of records**

- (1) For the purpose of ascertaining whether a person is contravening or has contravened this Act or the regulations, an inspector may, orally or by instrument in writing, require the person to produce specified records, or records of a specified class or description, to a specified inspector at a specified time or within a specified period.
- (2) If an inspector requires production under this section of a record that is not in writing, or is not written in the English language, or is not decipherable on sight, the requirement to produce the record is taken to be a requirement to produce, in addition to the record if it is in writing, or instead of a record if it is not in writing, a statement written in the English language and decipherable on sight, containing the whole of the information in the record.
- (3) An inspector may inspect and take notes, copies and extracts of or from any record or statement produced under this section.

- (4) For the purpose of searching for, or obtaining information concerning, stolen motor vehicles and stolen motor vehicle parts or accessories, a police officer has the powers of an inspector under this section.
- (5) A person must not refuse or fail to produce any record or statement in accordance with a requirement made under this section.

Maximum penalty: 20 penalty units.

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

**[62] Section 76 Offence to obstruct inspector, police**

Omit “5 penalty units”. Insert instead “20 penalty units”.

**[63] Section 77 Disclosure of information**

Omit “10 penalty units”. Insert instead “20 penalty units”.

**[64] Sections 77A, 77B and 77C**

Insert after section 77:

**77A Provision of information**

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

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- (4) The Authority may, in accordance with an agreement approved by the Minister for the purposes of this subsection and entered into with an authority of this State or another State or Territory or the Commonwealth, supply to that authority a record or information provided to the Authority under this section.
- (5) The Minister may approve an agreement for the purposes of subsection (4) only if it relates to one or more of the following:
- (a) offences, or the regulation of conduct, relating to motor vehicles or motor vehicle repairs,
  - (b) law enforcement by an authority of another State or Territory or of the Commonwealth.
- (6) This section does not apply to the supply of a record or information to which the *Criminal Records Act 1991* applies.
- (7) In this section:
- relevant authority*** means:
- (a) the Police Service, or
  - (b) the Roads and Traffic Authority, or
  - (c) any other authority prescribed by the regulations for the purposes of this definition.

**77B Duty to report suspicious goods**

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

Maximum penalty: 50 penalty units.

**77C Retention of suspicious goods**

- (1) An inspector or a police officer who has reasonable grounds to suspect that a motor vehicle, motor vehicle parts or accessories or any other things in the possession of the holder of a licence have been stolen or otherwise unlawfully obtained may, by a notice specifying the things, prohibit the licence holder, or any employee of the licence holder, from altering the form of the

things or disposing of them in any other way, or selling them or otherwise parting with possession of them, for a period of 14 days after service of the notice.

- (2) A Local Court may, on application by an inspector or police officer, order that the effect of a notice given under this section be extended for a further period of up to 28 days.
- (3) More than one application may be made under subsection (2).
- (4) A licence holder, or any employee of a licence holder, must not contravene a notice given under this section.

Maximum penalty (subsection (4)): 500 penalty units.

**[65] Section 79 Proof of certain matters not required**

Omit the section.

**[66] Section 82**

Omit the section. Insert instead:

**82 Seal of Authority**

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

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

**[67] Section 83 Authentication of documents**

Omit the section.

**[68] Section 84 Protection from liability**

Omit section 84 (1). Insert instead:

- (1) Any thing done or omitted by:
  - (a) the Authority, or

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- (b) the Council, or
  - (c) any member of the Council, or
  - (d) the General Manager, or
  - (e) any inspector, or
  - (f) any other person acting under the direction of the Authority,

does not, if the thing was done or omitted to be done in good faith for the purposes of executing this or any other Act, subject the member, General Manager, inspector or person so acting personally to any action, liability, claim or demand.

**[69] Section 86 Annual report**

Omit the section.

**[70] Section 87 Proceedings**

Omit section 87 (1) (b). Insert instead:

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

**[71] Section 87 (3)**

Insert after section 87 (2):

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

**[72] Section 87 (6)**

Insert after section 87 (5):

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

**[73] Section 87A**

Insert after section 87:

**87A Penalty notices for certain offences**

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

**[74] Section 89 Regulations**

Omit section 89 (1) (f). Insert instead:

- (f) investigations made under Part 6,

**[75] Section 89 (4)**

Omit “5 penalty units”. Insert instead “20 penalty units”.

**[76] Section 91**

Insert after section 90:

**91 Review of Act**

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

**[77] Schedules 1 and 2**

Omit the Schedules. Insert instead:

**Schedule 1 Members and procedure of Council**

(Section 9 (4))

**Part 1 General**

**1 Definitions**

In this Schedule:

*Chairperson* means the Chairperson of the Council.



## **Part 2 Constitution**

### **2 Terms of office of members**

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **3 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **4 Deputies**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person:
  - (a) has all the functions of the member and is taken to be a member, and
  - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

### **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or

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- (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may at any time remove a member from office.

#### **6 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **7 Chairperson and Deputy Chairperson**

- (1) In the absence of the Chairperson, the Deputy Chairperson may, if available, act in the place of the Chairperson.
- (2) While acting in the place of the Chairperson, the Deputy Chairperson has all the functions of the Chairperson and is taken to be the Chairperson.
- (3) The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if the person:
  - (a) is removed from office by the Minister under this clause, or
  - (b) ceases to be a member.

- (4) The Minister may at any time remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson.

## **8 Disclosure of pecuniary interests**

- (1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Council, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

- (2) A disclosure by a member at a meeting of the Council that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Council.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Council otherwise determines:
- (a) be present during any deliberation of the Council with respect to the matter, or

- (b) take part in any decision of the Council with respect to the matter.
- (5) For the purposes of the making of a determination by the Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Council for the purpose of making the determination, or
  - (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Council.

#### **9 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

### **Part 3 Procedure**

#### **10 General procedure**

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

**11 Quorum**

The quorum for a meeting of the Council is a majority of its members, of whom one must be the Chairperson or Deputy Chairperson.

**12 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson) is to preside at a meeting of the Council.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**13 Voting**

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

**14 Transaction of business outside meetings or by telephone**

- (1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Council.
- (2) The Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Council.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Council.

- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**15 First meeting**

The Minister may call the first meeting of the Council in such manner as the Minister thinks fit.

**[78] Schedule 5 Savings and transitional provisions**

Insert before clause 1:

**Part 1 General**

**[79] Schedule 5**

Insert at the end of clause 1 (1):

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

**[80] Schedule 5**

Insert before clause 2:

**Part 2 Provision consequent on 1998 amendments**

**[81] Schedule 5**

Insert before clause 3:

**Part 3 Provision consequent on 1999 amendments**

**[82] Schedule 5**

Insert after clause 3:

**Part 4 Provisions consequent on 2001 amendments**

**4 Definitions**

In this Part:

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

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

**5 Continuation of corporate entity**

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

**6 Members of former Council**

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

**7 References to former Council**

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

**8 Existing licences**

- (1) A licence in force immediately before the repeal of Part 2 of this Act by the 2001 amending Act is taken to be:
  - (a) a licence issued by the Authority, and

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

#### **9 Existing certificates**

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

#### **10 Existing complaints and proceedings**

- (1) A complaint made to the former Council before the repeal of section 44 by the 2001 amending Act and not dealt with by the Council immediately before that repeal is to be considered by the Authority.
- (2) The Authority may take such action, if any, in relation to the subject-matter of the complaint under Part 4, as amended by the 2001 amending Act, as the Authority thinks fit.



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

**11 Existing disputes**

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

**12 Existing applications**

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

**13 Car stealing offences**

Sections 18 (1) (j) and (3) (k), 42 (1) (f) and 44 (3), as inserted by the 2001 amending Act, do not apply to or in respect of an act or omission giving rise to proceedings for an offence if the act or omission occurred before the commencement of this clause.

## **Schedule 3 Amendment of other Acts**

(Section 5)

### **3.1 Fines Act 1996 No 99**

#### **Schedule 1 Statutory provisions under which penalty notices issued**

Insert in alphabetical order:

Motor Vehicle Repairs Act 1980, section 87A

Registration of Interests in Goods Act 1986, section 19A

### **3.2 Public Finance and Audit Act 1983 No 152**

#### **Schedule 2 Statutory bodies**

Omit “Motor Vehicle Repair Industry Council”.

Insert instead “Motor Vehicle Repair Industry Authority”.

### **3.3 Registration of Interests in Goods Act 1986 No 37**

#### **[1] Section 17 Offences**

Insert after section 17 (3):

- (4) Without limiting subsection (2), for the purposes of that subsection a registrable interest that is secured by a security interest that secures the payment of a debt is taken to have ceased to be a registrable interest on the date that all principal and interest payable in respect of the debt is repaid.

**[2] Section 19A**

Insert after section 19:

**19A Penalty notices for certain offences**

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

(9) In this section:

*authorised officer* means:

- (a) the Director-General, or
- (b) a person authorised in writing by the Director-General as an authorised officer for the purposes of this section.

### **3.4 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)**

#### **Schedule 2 Public offices**

Omit “Chairperson of the Motor Vehicle Repair Industry Council”.