

Passed by both Houses



New South Wales

Motor Dealers and Repairers Amendment Bill 2023

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Motor Dealers and Repairers Act 2013 No 107	3

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

Legislative Council
2023

Clerk of the Parliaments



New South Wales

Motor Dealers and Repairers Amendment Bill 2023

Act No , 2023

An Act to amend the *Motor Dealers and Repairers Act 2013* to give effect to the recommendations of a statutory review of that Act; and for other purposes.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Motor Dealers and Repairers Amendment Act 2023*.

2 Commencement

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

Schedule 1 Amendment of Motor Dealers and Repairers Act 2013 No 107

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

consumer guarantee—see section 67(1).

NSW Fair Trading website means—

- (a) the website with the URL www.fairtrading.nsw.gov.au, or
- (b) another website used by the Secretary to provide public access to information for this Act.

online motor dealer means a motor dealer who uses a website to offer for sale and sell motor vehicles.

online motor dealer's website means the website used by an online motor dealer.

online purchaser means a purchaser of a motor vehicle from an online motor dealer through the online motor dealer's website.

required qualifications or experience, in relation to a licence application, means the qualifications, experience or other criteria specified by the Secretary, by notice published on the NSW Fair Trading website, for—

- (a) an individual who is an applicant for a licence, or
- (b) the officers of a body corporate that is an applicant for a licence.

[2] Section 4(1), definition of “Secretary”, paragraph (a)

Omit “, Department of Finance, Services and Innovation”.

Insert instead “within the department in which this Act is administered”.

[3] Section 4(1), definition of “Secretary”, paragraph (b)

Omit “Department of Finance, Services and Innovation”.

Insert instead “department in which this Act is administered”.

[4] Section 11 Unlicensed motor dealers

Insert at the end of the section—

- (2) A regulation may exempt a person or class of persons from this section in relation to the offer or display for sale of a motor vehicle at a declared trade show.
- (3) The exemption may be subject to conditions imposed by—
 - (a) a regulation, or
 - (b) the Secretary by notice published on the NSW Fair Trading website.
- (4) In this section—

declared trade show means a trade show declared by the Secretary by notice published on the NSW Fair Trading website.

[5] Section 15 Repair work must be done by licensed motor vehicle repairers

Insert at the end of section 15(1), before the note—

Maximum penalty—50 penalty units.

- [6] Section 15(1A)**
Insert at the end of the subsection, before the note—
Maximum penalty—
(a) for an individual—50 penalty units, or
(b) for a body corporate—250 penalty units.
- [7] Section 15(2)**
Insert at the end of the subsection—
Maximum penalty—50 penalty units.
- [8] Section 15**
Omit the penalty provision from the end of the section.
- [9] Section 16 Repair work must be done by holder of tradesperson's certificate**
Insert at the end of section 16(1), before the note—
Maximum penalty—50 penalty units.
- [10] Section 16(1A)**
Insert at the end of the subsection, before the note—
Maximum penalty—
(a) for an individual—50 penalty units, or
(b) for a body corporate—250 penalty units.
- [11] Section 16(2)**
Insert at the end of the subsection—
Maximum penalty—50 penalty units.
- [12] Section 16**
Omit the penalty provision from the end of the section.
- [13] Sections 17, 47(2), 48(1), 49, 57(1), 58(1), 59, 63(3), 64, 83(1), 89(1), 90, 91, 92(1), 94, 95(1), 97–99, 103(4) and 184**
Omit “20 penalty units” wherever occurring in the penalty provisions.
Insert instead “50 penalty units”.
- [14] Section 18 Transfer or loan of tradesperson's certificate**
Insert at the end of section 18(1)—
Maximum penalty—50 penalty units.
- [15] Section 18(2)**
Insert at the end of the subsection—
Maximum penalty—20 penalty units.
- [16] Section 18**
Omit the penalty provision from the end of the section.
- [17] Section 19 Production of licences and certificates**
Omit “10 penalty units” from the penalty provision. Insert instead “20 penalty units”.

[18] Section 19A

Insert after section 19—

19A Licence number must appear on website and advertising

- (1) A motor dealer must ensure the motor dealer's licence number is displayed, in accordance with subsection (2), on—
 - (a) the website of the motor dealer, whether or not the dealer is an online motor dealer, and
 - (b) all advertising material distributed or displayed by the motor dealer.Maximum penalty—20 penalty units.
- (2) For subsection (1), the motor dealer's licence number must be—
 - (a) displayed in a reasonably prominent position on—
 - (i) the website, and
 - (ii) advertising material, and
 - (b) clearly legible, and
 - (c) identified as the licence number of the motor dealer.
- (3) In this section—

licence number means the unique identifier referred to in the *Licensing and Registration (Uniform Procedures) Act 2002*, section 20.

[19] Section 20B Application for licence to carry on business at premises

Insert after section 20B(2)(a)—

- (a1) if the applicant intends to be an online motor dealer—the URL of the applicant's proposed online motor dealer's website,

[20] Section 20B(3)

Insert “, URL” after “premises”.

[21] Section 20B(4A)

Insert after section 20B(4)—

- (4A) If an applicant intends to be an online motor dealer, the applicant must include the addresses of the following premises under subsection (2)(a)—
 - (a) premises intended for storage, including the storage of—
 - (i) motor vehicles, or
 - (ii) records,
 - (b) premises intended for use as an office,
 - (c) premises of a kind prescribed by a regulation.

[22] Section 20B, note

Insert at the end of the section—

Note— It is an offence under the *Crimes Act 1900*, Part 5A to knowingly provide false or misleading information or to knowingly produce documents that are false or misleading in purported compliance with a law of the State.

[23] Section 25 Grounds for refusal—licences other than tradespersons' certificates

Omit section 25(2)(e). Insert instead—

- (e) that the applicant does not have the required qualifications or experience for the licence,

[24] Section 25(3)(b)

Omit the paragraph. Insert instead—

- (b) the officers of the body corporate do not have the required qualifications or experience for the licence,

[25] Section 26 Mandatory grounds for refusal—tradespersons' certificates

Omit section 26(2).

[26] Section 37

Insert after section 36—

37 Cancellation of licence

- (1) The Secretary must cancel a person's licence if the Secretary would be required under section 25 to refuse an application for a licence by the person.
- (2) If the Secretary cancels a person's licence under subsection (1), the Secretary must, by written notice given to the person, inform the person the licence has been cancelled under this section.
- (3) The notice must—
 - (a) set out the reasons for the cancellation, and
 - (b) specify the date, not earlier than the date the notice is given to the person, on which the cancellation takes effect.
- (4) The cancellation takes effect on the date specified in the notice.

[27] Section 38 Grounds for disciplinary action—all licences

Omit "not" from section 38(1)(c). Insert instead "no longer".

[28] Section 38(2)

Omit "12 months". Insert instead "5 years".

[29] Section 39A

Insert after section 39—

39A Members of partnerships or officers of bodies corporate

- (1) Disciplinary action may be taken under this division against an individual who is a member of a partnership or an officer of a body corporate that is the holder of a licence if the holder of the licence has engaged in improper conduct.
- (2) The reference in subsection (1) to an individual who is a member of a partnership includes a reference to an individual who is an officer of a body corporate that is a member of a partnership.
- (3) It is a sufficient response to the show cause notice given to the individual under section 41 if the individual's submissions to the Secretary satisfy the Secretary that—
 - (a) the improper conduct occurred without the individual's knowledge, or
 - (b) the individual was not in a position to influence the conduct of the other members of the partnership or other officers of the body corporate, of

which the individual was a member or an officer, to prevent the improper conduct, or

(c) the individual, being in the position, used all due diligence to prevent the occurrence of the improper conduct.

(4) In this section—

improper conduct means conduct that constitutes a ground for disciplinary action under section 38 or 39.

[30] Section 45 Secretary may take disciplinary action

Insert after section 45(1)(d)—

(d1) require the person to pay to the Secretary the following within a specified time—

(i) for an individual—an amount up to \$11,000,

(ii) for a body corporate—an amount up to \$50,000,

[31] Section 45(4)

Insert after section 45(3)—

(4) The Secretary must not require a person to pay an amount under subsection (1)(d1)—

(a) in relation to grounds for disciplinary action mentioned in section 38(1)(c)–(f), 39(j) or 40, or

(b) if the person has been found guilty of an offence in relation to the grounds specified in the show cause notice given to the person.

[32] Section 47 Offences

Omit “20 penalty units” from section 47(1), penalty provision.

Insert instead “200 penalty units”.

[33] Section 48 Motor vehicles must be sold at licensed premises

Omit section 48(5). Insert instead—

(5) **Exception—online motor dealers**

A person is not guilty of an offence against this section if a motor vehicle is displayed for sale at another place if—

(a) the person is an online motor dealer, and

(b) the place is a place agreed to under section 66C(1)(b).

[34] Section 52 Odometer tampering

Omit “200 penalty units” in section 52(1). Insert instead “500 penalty units”.

[35] Section 52(5A)

Insert after section 52(5)—

(5A) An approval by the Secretary under subsection (5)(a) may be given subject to conditions, including in circumstances in which an odometer cannot be reset or has reached its operational limit.

[36] Section 53

Omit the section. Insert instead—

53 Devices to facilitate odometer tampering

- (1) A person must not possess a device capable of rendering the odometer of a motor vehicle inoperative or inaccurate.
Maximum penalty—500 penalty units.
- (2) 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—500 penalty units.
- (3) It is a defence in proceedings for an offence under subsection (1) if the defendant—
 - (a) holds a motor vehicle repairer’s licence, and
 - (b) lawfully repairs or replaces the odometers of motor vehicles in the course of carrying on a business as a motor vehicle repairer.

[37] Section 57 Sale at auction with number-plates

Omit section 57(2).

[38] Section 62 Dealers’ notices—disclosure and other requirements

Insert after section 62(3)—

- (4) A regulation may make further provision about dealers’ notices, including—
 - (a) the storage, including electronic storage, of dealers’ notices, and
 - (b) the production of dealers’ notices.

[39] Part 4, Division 3A

Insert after Division 3—

Division 3A Online sale of motor vehicles

66A Preliminary

- (1) To avoid doubt, a motor dealer may carry on a business as a motor dealer wholly or partly as an online motor dealer.
- (2) If a motor dealer carries on a business as a motor dealer partly as an online motor dealer, a reference in this Act to an online motor dealer applies to the motor dealer only when acting as an online motor dealer.

66B Disclosure requirements

- (1) This section applies in relation to a requirement of this Act for a current inspection report, dealer’s notice or other document to be attached to a motor vehicle.
- (2) The requirement is taken to have been satisfied—
 - (a) by a motor dealer who carries on a business wholly as an online motor dealer—if the report, notice or document is publicly available on the online motor dealer’s website, or
 - (b) by a motor dealer who carries on a business partly as an online motor dealer—if the report, notice or document is publicly available on the online motor dealer’s website in addition to being attached to the motor vehicle as otherwise required by this Act.

66C Opportunities to inspect motor vehicles

- (1) Before an online purchaser purchases a motor vehicle from an online motor dealer, the online motor dealer must give the prospective online purchaser an opportunity to carry out an inspection of the motor vehicle at—
- (a) the place at which the motor vehicle is ordinarily stored, or
 - (b) a place agreed to by the prospective online purchaser and the online motor dealer.

Maximum penalty—20 penalty units.

- (2) The online motor dealer must also give the online purchaser an opportunity to carry out an inspection of the motor vehicle purchased by the online purchaser—

- (a) at the time the motor vehicle is delivered to the online purchaser but before the online purchaser takes possession of the motor vehicle, or
- (b) at the time the online purchaser collects the motor vehicle but before the online purchaser takes possession of the motor vehicle.

Maximum penalty—20 penalty units.

- (3) A regulation may make provision about—

- (a) places at which motor vehicles may be made available for inspection or collection, and
- (b) requirements relating to the safety of online purchasers and prospective online purchasers while at the places.

66D Maximum deposit

An online motor dealer must not require an online purchaser to pay more than the percentage, if any, prescribed by a regulation of a motor vehicle's purchase price before the online purchaser takes possession of the motor vehicle.

Maximum penalty—100 penalty units.

[40] Section 67 Definitions

Insert in alphabetical order in section 67(1)—

consumer guarantee means a guarantee that applies under the *Australian Consumer Law (NSW)*, Part 3-2, sections 54–57.

[41] Section 67(1), definition of “defective vehicle”

Omit “guarantee (a *consumer guarantee*) that applies under sections 54–57 of Part 3-2 of the *Australian Consumer Law (NSW)*”.

Insert instead “consumer guarantee”.

[42] Section 73 Damage not covered by dealer guarantee

Omit “a reasonable inspection at the time of sale.” from section 73(c). Insert instead—

a reasonable inspection—

- (i) at the time of sale, or
- (ii) for a motor vehicle purchased by an online purchaser—at the time the online purchaser took possession of the motor vehicle.

[43] Section 77 Effect on Australian Consumer Law remedies

Insert at the end of the section—

- (2) A person who has enforced a consumer guarantee in relation to the condition of or a defect in a motor vehicle is not, if the consumer guarantee is fully complied with, entitled to take action against the motor dealer under the dealer guarantee in relation to an aspect of the motor vehicle that has been dealt with under the consumer guarantee.

[44] Section 80 Cooling off period for dealer-financed purchases

Insert at the end of section 80(b)—

, or

- (c) for a motor vehicle purchased by an online purchaser, at 5pm on the next day.

[45] Section 86 Return of motor vehicles

Insert at the end of the section—

- (2) An online purchaser of a motor vehicle is not required to return a motor vehicle as required by this division if the online purchaser permits the collection of the motor vehicle.

[46] Sections 99A and 99B

Insert after section 99—

99A Requirement for cashless transactions

A motor vehicle recycler must not, in the course of carrying on a business of a motor vehicle recycler, buy a motor vehicle or a motor vehicle part or accessory—

- (a) with cash, or
(b) by cheque payable to cash, or
(c) in kind with goods or services.

Maximum penalty—100 penalty units.

99B Prohibitions on buying or disposing of unidentified vehicles

- (1) A motor vehicle recycler must not, other than with the written authorisation of a police officer, buy a motor vehicle if the unique identifier for the motor vehicle has been removed, obliterated, defaced or altered (an *unidentified vehicle*).

Maximum penalty—100 penalty units.

- (2) A motor vehicle recycler who receives or is in possession of an unidentified vehicle must not, other than with the written authorisation of a police officer, sell or dispose of the unidentified vehicle.

Maximum penalty—100 penalty units.

- (3) In this section—

unique identifier, for a motor vehicle, has the same meaning as in the *Crimes Act 1900*, section 154E.

[47] Section 100

Omit the section. Insert instead—

100 Records must be kept by motor dealers, motor vehicle recyclers and motor vehicle repairers

- (1) The holder of a motor dealer's licence, a motor vehicle recycler's licence or a motor vehicle repairer's licence must keep or cause to be kept records in relation to the holder's business.
Maximum penalty—50 penalty units.
- (2) The Secretary may, by notice published on the NSW Fair Trading website, specify the records required to be kept under this section, including the form of the records.
- (3) A regulation may also make provision about records required to be kept under this section, including the following—
 - (a) the records to be kept,
 - (b) the form of the records,
 - (c) the storage, including electronic storage, of the records,
 - (d) the production of the records.

[48] Section 113 Secretary may make rectification order

Omit section 113(1)(a). Insert instead—

- (a) that an act, matter or thing done or required to be done by or on behalf of a motor dealer to comply with a dealer guarantee or consumer guarantee—
 - (i) has not been done, or
 - (ii) is incomplete, or
 - (iii) is defective, or

[49] Section 113(1)

Omit “the work”. Insert instead “the act, matter or thing or work”.

[50] Section 151 Powers of entry, inspection etc

Omit section 151(2)(b) and (4).

[51] Section 151(2)(c)

Insert “including in electronic form,” after “extracts from,”.

[52] Section 151(2)(c) and (d)

Omit “(including registers)” wherever occurring.

[53] Section 156 Proceedings

Omit “the Department of Transport” wherever occurring in section 156(1)(c).

Insert instead “the department in which the *Road Transport Act 2013* is administered”.

[54] Section 162

Omit the section. Insert instead—

162 Evidence as to entries in records

A record required to be kept under this Act is admissible as evidence of the following in proceedings in all courts and before all persons and bodies authorised by law to receive evidence—

- (a) matters required under this Act to be included in the record,
- (b) matters otherwise contained in the record.

[55] Section 169 Making of claims

Omit “12 months” from section 169(3)(a). Insert instead “18 months”.

[56] Section 169(3)(a1)

Insert after section 169(3)(a)—

- (a1) within 12 months of the claimant obtaining a judgment or order of a court in relation to the loss if—
 - (i) the judgment or order was obtained within 18 months after the loss was incurred or the claimant became aware of the loss, and
 - (ii) the judgment or order has not been paid, or

[57] Section 176 Administrative reviews by Civil and Administrative Tribunal

Insert at the end of section 176(1)(c)—

or

- (d) requires the payment of an amount under section 45(1)(d1),

[58] Section 183

Omit the section. Insert instead—

183 False or misleading records

A person must not include information in a record required to be kept under this Act if the person knows the information is false or misleading in a material particular.

Maximum penalty—50 penalty units.

[59] Section 186 Regulations

Insert after section 186(2)(e)—

- (e1) regulating online motor dealers, including the sale of motor vehicles by online motor dealers,

[60] Section 186(2)(f)

Omit “persons convicted of offences under this Act or of offences involving fraud or dishonesty or other prescribed offences, or of persons whose applications for licences have been refused or whose licences have been revoked,”.

Insert instead—

the following persons—

- (i) a person found guilty or convicted of, or charged with, offences under this Act, offences involving fraud or dishonesty or other prescribed offences, whether or not in New South Wales,
- (ii) a person who has been refused a licence or who is a director or officer of a body corporate that has been refused a licence,
- (iii) a person whose licence has been suspended, cancelled or revoked,
- (iv) a person who is disqualified from holding a licence or being involved in the direction, management or conduct of a business for which a licence is required,

[61] Section 186(2A)

Insert after section 186(2)—

- (2A) The Secretary may, in accordance with a regulation, exempt a person who is required to hold a licence from a regulation made under section 186(2)(f).

[62] Section 187 Delegation

Omit “Department of Finance, Services and Innovation” from section 187(a).

Insert instead “department in which this Act is administered”.

[63] Schedule 2 Savings, transitional and other provisions

Insert after Part 5—

Part 6 Provisions consequent on enactment of Motor Dealers and Repairers Amendment Act 2023

24 Definitions

In this part—

amendment Act means the *Motor Dealers and Repairers Amendment Act 2023*.

existing motor dealer means a person who was the holder of a motor dealer’s licence immediately before the commencement of clause 25.

25 Online motor dealers must notify Secretary

An existing motor dealer is not authorised by the existing motor dealer’s licence to carry on a business as an online motor dealer unless, at least 20 business days before starting to carry on the business, the existing motor dealer gives the Secretary in the approved form the information referred to in section 20B(2)(a1) and (4A).

26 Disciplinary action against former licence holders

Section 38(2), as in force immediately before its amendment by the amendment Act, continues to apply to a person who last ceased to be a licence holder before the commencement of the amendment.