



New South Wales

Motor Dealers and Repairers Amendment Bill 2023

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Motor Dealers and Repairers Act 2013* (*the Act*) to address the recommendations of the statutory review of the Act, including to—

- (a) insert a new legislative framework to permit and regulate the online sale of motor vehicles by motor dealers, and
- (b) replace the requirement for motor dealers, motor vehicle recyclers and motor vehicle repairers to maintain separate registers for specified matters with a more general requirement to keep certain records in relation to their business, and
- (c) make changes relating to the consumer guarantee for motor vehicles under the *Australian Consumer Law (NSW)* (*ACL*), and
- (d) make it an offence to possess a device capable of rendering the odometer of a motor vehicle inoperative or inaccurate, and
- (e) make it an offence for a motor vehicle recycler to buy a motor vehicle or motor vehicle part or accessory with cash or to buy or sell an unidentified vehicle, and
- (f) make changes relating to the disciplinary process for licence holders and former licence holders, and
- (g) make changes to the period within which a person may make a claim for compensation from the Motor Dealers and Repairers Compensation Fund, and
- (h) increase the maximum monetary penalty for various offences, and
- (i) make other minor and consequential amendments.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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

Schedule 1[1] inserts proposed definitions of *NSW Fair Trading website*, *online motor dealer*, *online purchaser* and *required qualifications or experience*.

Schedule 1[2], [3], [53] and [62] make changes consequent on administrative changes to government departments.

Schedule 1[4] inserts a regulation-making power to enable a regulation to exempt a person from the prohibition in section 11 on unlicensed motor dealers in relation to the offer or display for sale of a motor vehicle at a declared trade show. The exemption may be subject to conditions imposed by a regulation or the Secretary.

Schedule 1[5]–[7], [9]–[11], [13]–[15], [17], [32] and [34] increase the maximum monetary penalty for various offences. **Schedule 1[8], [12] and [16]** make consequential amendments.

Schedule 1[18] inserts a proposed section that makes it an offence for a motor dealer to fail to display the motor dealer's licence number on the motor dealer's website and on all advertising material distributed or displayed by the motor dealer.

Schedule 1[19] requires an applicant for a motor dealer's licence who intends to use a website to offer for sale and sell motor vehicles to include the URL of the website in the application. **Schedule 1[21]** requires the applicant to also include, in the application, the addresses of premises intended to be used for storage or as an office and of other premises of a kind prescribed by a regulation. **Schedule 1[20]** makes a consequential amendment.

Schedule 1[22] inserts a note stating 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.

Schedule 1[23]–[25], when read with the proposed new definition of required qualifications or experience, provide that the Secretary may specify, by notice published on the NSW Fair Trading website, qualifications or experience a person must have to be granted a licence under the Act. If the applicant is a body corporate, the officers of the body corporate must have the required qualifications or experience.

Schedule 1[26] requires the Secretary to cancel a person's licence in circumstances where the Secretary would refuse an application for a licence by the person. The Secretary must provide written notice informing the person of the cancellation of the person's licence, the reasons for the cancellation and the date on which the cancellation takes effect.

Schedule 1[28] enables disciplinary action to be commenced against a former licence holder up to 5 years after the person last ceased to be a licence holder. Currently, disciplinary action must not be commenced against a former licence holder more than 12 months after the person last ceased to be a licence holder. **Schedule 1[27]** makes a consequential amendment. **Schedule 1[63]** makes a consequential amendment of a savings and transitional nature.

Schedule 1[29] inserts a proposed section that enables disciplinary action to be commenced 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 has engaged in improper conduct. The individual's response to a show cause notice will be sufficient if the Secretary is satisfied of certain conditions.

Schedule 1[30] enables the Secretary to require, as a disciplinary action against a person, the payment of an amount of up to \$11,000, for an individual, or \$50,000, for a body corporate.

Schedule 1[31] provides that the Secretary must not do so in relation to certain grounds for disciplinary action or if the person has already been found guilty of an offence relating to the grounds on which the disciplinary action is proposed to be taken. **Schedule 1[57]** enables a person on whom a payment requirement is imposed to apply to the Civil and Administrative Tribunal for an administrative review of the decision.

Schedule 1[35] enables the Secretary to impose conditions on the approval of the repair or replacement of an odometer, including in circumstances in which an odometer cannot be reset or has reached its operational limit.

Schedule 1[36] updates section 53 and makes it an offence to possess a device capable of rendering the odometer of a motor vehicle inoperative or inaccurate, unless a person is a licensed motor vehicle repairer and lawfully repairs or replaces odometers in the course of carrying on a business as a motor vehicle repairer.

Schedule 1[37] removes the current exception to the requirement that a person must not offer or display for sale, or sell, by auction a motor vehicle to which a number-plate is attached unless a current inspection report is attached to the vehicle.

Schedule 1[38] inserts a further regulation-making power relating to dealers' notices.

Schedule 1[39] inserts proposed Part 4, Division 3A relating to the online sale of motor vehicles. An online motor dealer is a motor dealer who uses a website to offer for sale and sell motor vehicles. An online purchaser means a purchaser of a motor vehicle from an online motor dealer through the online motor dealer's website. Key provisions include—

- (a) proposed section 66C, which requires an online motor dealer to give an online purchaser, and a prospective online purchaser, the opportunity to carry out inspections of a motor vehicle at certain points in an online sales transaction and at certain places, and
- (b) proposed section 66D, which enables a cap to be imposed on the deposit an online purchaser may be required to pay to an online motor dealer before the online purchaser takes possession of a motor vehicle.

Schedule 1[43] provides that a person who has already enforced certain consumer guarantees under the ACL may not, if the consumer guarantees are fully complied with, also take action against the motor dealer under the dealer guarantee in relation to a matter that has been dealt with under the consumer guarantees. **Schedule 1[40] and [41]** make consequential amendments.

Schedule 1[44] and [45] make amendments to existing provisions relating to dealer-financed purchases of motor vehicles consequent on the amendments relating to the online sale of motor vehicles. **Schedule 1[33] and [42]** make other consequential amendments relating to the online sale of motor vehicles.

Schedule 1[46] inserts proposed section 99A, which makes it an offence for a motor vehicle recycler to buy a motor vehicle or motor vehicle part or accessory with cash, by cheque payable to cash or in kind with goods and services. **Schedule 1[46]** inserts proposed section 99B, which also makes it an offence for a motor vehicle recycler to buy or sell a motor vehicle if the vehicle's unique identifier, within the meaning of the *Crimes Act 1900*, section 154E, has been removed, obliterated, defaced or altered, unless the motor vehicle recycler has received written authorisation from a police officer to buy or sell the vehicle.

Schedule 1[47] replaces the requirement for the holder of a motor dealer's licence, a motor vehicle recycler's licence or a motor vehicle repairer's licence to maintain separate registers for specified matters relating to the holder's business with the requirement that the holders of the licences instead maintain certain records in relation to their business. The Secretary may, by notice published on the NSW Fair Trading website, specify the records required to be kept, including the form of the records. A regulation may also make provision about the records required to be kept. **Schedule 1[50]–[52], [54] and [58]** make consequential amendments. In particular, **Schedule 1[54]** recasts an existing evidentiary provision relating to registers to apply instead to records and **Schedule 1[58]** recasts an existing offence relating to false and misleading information in registers to apply instead to records.

Schedule 1[48] enables the Secretary to serve a rectification order on a motor dealer if the Secretary is satisfied that an act, matter or thing done or required to be done by the motor dealer to comply with a consumer guarantee under the ACL has not been done or is incomplete or defective. The motor dealer may be required under the rectification order to take steps to ensure the act, matter or thing is completed or the defect is rectified. **Schedule 1[49]** makes a consequential amendment.

Schedule 1[55] increases the period within which a person who has incurred certain losses in connection with a motor vehicle may make a claim for compensation from the Motor Dealers and Repairers Compensation Fund. A claim may be made within 18 months, instead of 12 months, after the loss is incurred or the claimant becomes aware of the loss. **Schedule 1[56]** provides that a claim may also be made within 12 months of the claimant obtaining a judgment or order of a court in relation to the loss if the judgment or order has not been paid and was obtained within 18 months after the loss was incurred or the claimant became aware of the loss.

Schedule 1[59] inserts a regulation-making power to regulate online motor dealers.

Schedule 1[60] widens the scope of an existing regulation-making power to enable a regulation to prohibit or regulate the employment, by a licence holder, of certain categories of persons.

Schedule 1[61] enables the Secretary to exempt a licence holder from a regulation that prohibits or regulates the employment of certain categories of persons.