



New South Wales

Motor Dealers and Repairers Bill 2013

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to establish a scheme for the licensing and regulation of motor dealers, motor vehicle repairers, motor vehicle recyclers and motor vehicle tradespersons,
- (b) to provide for remedies for customers of motor dealers and motor vehicle repairers who suffer loss as a result of illegal or unjust conduct by motor dealers or motor vehicle repairers,
- (c) to empower the Consumer, Trader and Tenancy Tribunal (the *Tribunal*) to declare terms of contracts for the supply of motor vehicles by manufacturers to motor dealers unfair and to make orders for the protection of motor dealers,
- (d) to repeal the *Motor Dealers Act 1974* and the *Motor Vehicle Repairs Act 1980*,
- (e) to make amendments consequential on the enactment of the proposed Act and to enact provisions of a savings and transitional nature as a consequence of that enactment.

Outline of provisions

Part 1 Preliminary

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, except for proposed Part 6 relating to the matters referred to in paragraph (c) of the Overview (which will commence on the date of assent to the proposed Act).

Clause 3 sets out the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act. A *licence* is defined to include a motor dealer's licence, a motor vehicle repairer's licence, a motor vehicle recycler's licence and a tradesperson's certificate.

Clause 5 defines a *motor dealer* as a person who carries on the business of dealing in motor vehicles on a wholesale or retail basis and excludes financiers, manufacturers and motor vehicle brokers from that definition.

Clause 6 defines a *motor vehicle repairer* as a person who carries on the business of carrying out one or more classes of repair work. The classes of work that are repair work are to be prescribed by the regulations.

Clause 7 provides that a reference to *carrying on a business* includes carrying on a business in partnership or by an employee, contractor, agent or other person.

Clause 8 defines *close associate* of an applicant for a licence or a licence holder.

Clause 9 exempts certain motor vehicles from the operation of the proposed Act.

Part 2 Licences

Division 1 Offences

Clause 10 defines *transport service owner*.

Clause 11 prohibits a person from carrying on, or advertising that the person carries on or is willing to carry on, the business of a motor dealer unless the person holds a motor dealer's licence, carries on the business at a place for which the licence is granted and complies with the licence.

Clause 12 prohibits a person from carrying on, or advertising that the person carries on or is willing to carry on, the business of a motor vehicle repairer unless the person holds a motor vehicle repairer's licence, carries on the business at a place for which the licence is granted and complies with the licence.

Clause 13 prohibits a person from carrying on, or advertising that the person carries on or is willing to carry on, the business of a motor vehicle recycler unless the person holds a motor vehicle recycler's licence, carries on the business at a place for which the licence is granted and complies with the licence.

Clause 14 provides that a person is not guilty of an offence under the proposed Division if the person carries on business in partnership with another person who complies with the requirements of the proposed Division for that business.

Clause 15 prohibits agreements or arrangements by motor vehicle repairers or transport service owners for classes of repair work to be done by other persons who do not hold motor vehicle repairer licences. It also prohibits insurers from requiring repair work to be done by a person who does not hold such a licence.

Clause 16 requires a motor vehicle repairer, motor dealer or transport service owner to have repair work done by the holder of an appropriate tradesperson's certificate.

Clause 17 prohibits a person from falsely holding himself or herself out as the holder of a licence or as being authorised to carry out a class of repair work.

Clause 18 prohibits the holder of a tradesperson's certificate from transferring or attempting to transfer or lending the certificate to another person. It will also be an offence to attempt to obtain such a transfer or loan.

Clause 19 makes it an offence for the holder of a licence to fail, without a reasonable excuse, to produce the licence to an authorised officer, if the request is made at a place of business specified in the licence and, in the case of a tradesperson's certificate, the place is also a place where the holder does repair work.

Division 2 Licences generally

Clause 20 empowers the Secretary (defined as the head of the Public Service agency to which the administration of the proposed Act is assigned) (the *Secretary*) to issue motor dealers' licences, motor vehicle repairers' licences, motor vehicle recyclers' licences and tradespersons' certificates (*licences*).

Clause 21 applies Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* to the licences, subject to modifications contained in or prescribed under the proposed Act. The Part applied contains procedures for the making of applications for licences and the granting, transfer, renewal, restoration and replacement of licences.

Clause 22 enables a person to hold 2 or more different licences.

Division 3 Grant and refusal of licence applications

Clause 23 enables the Secretary to make inquiries relating to applications for licences and also requires the Commissioner of Police, if requested by the Secretary, to investigate and report on an application for a licence.

Clause 24 requires licence applications to be accompanied by the application fee prescribed by the regulations.

Clause 25 sets out mandatory grounds for refusal of a motor dealer's licence, a motor vehicle repairer's licence or a motor vehicle recycler's licence. In the case of individuals, the grounds include being under the age of 18, not being a fit and proper person to hold a licence, being a controlled member of a declared organisation, being an undischarged bankrupt, having been found guilty within the previous 10 years of a motor vehicle stealing offence and not having qualifications prescribed by the regulations. In the case of corporations, a licence may be refused if a director or person involved in management would not be able to get a licence, if the officers of the corporation do not have the qualifications prescribed by the regulations or the reputation of the corporation is such that it is not a fit and proper person to hold a licence. A licence must also be refused if the Secretary is satisfied that the applicant is not likely to carry on the business honestly and fairly or that the carrying on of the business at a proposed place is unlawful for any reason. A licence may be refused on the ground that the applicant has a close associate who is not a fit and proper person to hold a licence.

Clause 26 sets out mandatory grounds for refusal of tradespersons' certificates, including not being a fit and proper person to hold a licence, not having the required qualifications and being an apprentice or trainee.

Clause 27 sets out matters that may be considered in determining whether a person is a fit and proper person to hold a motor dealer's licence, a motor vehicle repairer's licence or a motor vehicle recycler's licence. A person who is a member of, or regularly associates with members of, a declared organisation under the *Crimes (Criminal Organisations Control) Act 2012* will not be a fit and proper person. A person will also not be a fit and proper person if there is a reasonable inference from the applicant's relationship with such an organisation that granting the licence is likely to further the organisation's criminal activities.

Division 4 Terms of licences

Clause 28 provides that a motor dealer's licence is to specify the place or places of business at which the licence holder may carry on the business of a motor dealer.

Clause 29 provides that a motor vehicle repairer's licence is to specify the place or places of business at which the licence holder may carry on the business of a motor vehicle repairer.

Clause 30 provides that a motor vehicle recycler's licence is to specify the place or places of business at which the licence holder may carry on the business of a motor vehicle recycler.

Clause 31 provides that a tradesperson's certificate is to specify the class or classes of repair work authorised by the certificate.

Clause 32 enables conditions to be imposed on licences by the Secretary or by regulations.

Clause 33 provides that a licence has effect for a maximum term of 3 years.

Clause 34 enables applications to amend licences to be made.

Clause 35 enables licences to be surrendered.

Clause 36 enables duplicate licences to be issued.

Clause 37 requires a licence holder to notify the Secretary if the licence holder ceases to carry on business at a place specified in the licence.

Part 3 Disciplinary provisions

Division 1 Grounds for disciplinary action

Clause 38 sets out the grounds on which action may be taken against a licence holder or former licence holder. The grounds include contravening or being likely to contravene the proposed Act or regulations or a licence condition, not being a fit and proper person to hold a licence, receiving or dealing in stolen goods and improperly obtaining a licence.

Clause 39 sets out additional grounds on which disciplinary action may be taken against the holder or former holder of a motor dealer's licence, a motor vehicle repairer's licence or a motor vehicle recycler's licence. The grounds include carrying on a business in a dishonest or unfair manner and, in the case of a motor dealer's licence, contravening trust account requirements relating to sales on consignment.

Clause 40 enables disciplinary action to be taken against the holder of a tradesperson's certificate on the ground that the person is not competent to do the repair work authorised by the certificate.

Division 2 Disciplinary process

Clause 41 requires a show cause notice to be issued by the Secretary to a person before the Secretary takes disciplinary action against the person. The notice must set out the grounds for the proposed action and specify a period within which the person may make submissions to the Secretary. The Secretary must consider any such submissions before taking action.

Clause 42 enables the Secretary to suspend a person's licence pending a decision as to whether to take disciplinary action against the person.

Clause 43 empowers the Secretary to conduct inquiries and investigations relating to matters to which a show cause notice relates and any submissions made in response to a notice.

Clause 44 provides that the Secretary may decide to take no further action in respect of a disciplinary matter, other than in relation to a matter where a licence is required to be cancelled.

Clause 45 sets out the actions that the Secretary may take if satisfied there are grounds for taking disciplinary action. The actions include a reprimand, directions to take specified action, suspension or cancellation of a licence, disqualification from holding a licence and a requirement to pay a contribution to the Motor Dealers and Repairers Compensation Fund (the *Compensation Fund*).

Clause 46 requires a person's licence to be cancelled if the Secretary is satisfied that the person has committed a motor vehicle stealing offence within the preceding 10 years or that the person is not a fit and proper person to hold a licence.

Clause 47 makes it an offence to be involved in a business contrary to a disqualification under the proposed Act and also requires a suspended or cancelled licence to be returned within 7 days of suspension or cancellation.

Part 4 Obligations relating to sale, recycling and repair of motor vehicles

Division 1 Sale of motor vehicles generally

Clause 48 makes it an offence for the holder of a motor dealer's licence to offer or display a motor vehicle for sale at a place that is not specified in the licence, except in the case of a trade show or at the request of a prospective buyer.

Clause 49 makes it an offence for a motor dealer, or an employee or agent of a motor dealer, to fail to disclose that a sale is being made in that capacity.

Clause 50 provides that representations made in the course of a motor dealer's business by an employee or agent of a motor dealer about a motor vehicle are taken to have been made by the motor dealer. It also provides that a motor dealer is taken to have complied with a provision of the proposed Part if an employee or agent of the motor dealer complies with the provision.

Clause 51 makes it an offence to make a false representation about the year of manufacture or first registration or the model designation of the motor vehicle in connection with offering or displaying for sale, or sale, of the motor vehicle. A court that convicts a person of such an offence may order the person to pay compensation of an amount equal to the difference between the sale price of the motor vehicle and its fair price at the time of sale.

Clause 52 makes it an offence to alter an odometer reading or to remove, replace or render an odometer inoperative or inaccurate. Repairs or replacement may be carried out if the Secretary is notified and the odometer is restored or replaced so that it accurately reflects the reading when it was restored or replaced. A court that convicts a person of such an offence may order the person to pay compensation of an amount equal to the difference between the sale price of the motor vehicle and its fair price at the time of sale.

Clause 53 makes it an offence to fit to a motor vehicle a device capable of rendering the odometer inoperative or inaccurate.

Clause 54 requires a licence holder or any employee of a licence holder to report, without delay, suspected odometer tampering to an authorised officer.

Division 2 Inspection report and number-plate requirements

Clause 55 applies the proposed Division to sales of motor vehicles by auction and other motor vehicle sales (other than sales of newly registered motor vehicles, trade sales, and sales of substantially demolished or dismantled motor vehicles by motor vehicle recyclers).

Clause 56 defines *current inspection report* as an inspection report issued within a prescribed period before it is relied on.

Clause 57 requires a current inspection report to be attached to a motor vehicle (with a number-plate) that is offered or displayed for sale or sold by auction. If no report is attached, the motor vehicle may be displayed or offered for sale or sold by auction if a current inspection report is subsequently obtained within a specified period, the purchase price is not altered and the purchaser is not required to pay the cost of any repairs needed to obtain the report.

Clause 58 requires a current inspection report to be given by a motor dealer to the purchaser of a motor vehicle (with a number-plate) that is sold (other than by auction) by the motor dealer.

Clause 59 requires the provision, in the case of the sale by a motor dealer of a motor vehicle without number-plates, of a certificate, issued by Roads and Maritime Services or an equivalent body of the applicable jurisdiction, relating to the surrender or receipt of number-plates for the motor vehicle or a declaration by the motor dealer that sets out the reasons for the absence of the number-plates and any such certificate or receipt.

Division 3 Dealers' notices

Clause 60 applies the proposed Division to sales of motor vehicles (other than bona fide auctions, trade sales, and sales of substantially demolished or dismantled motor vehicles by motor vehicle recyclers or sales to motor vehicle recyclers).

Clause 61 defines *demonstrator motor vehicle*.

Clause 62 sets out general requirements for dealers' notices, including that they be in a form prescribed by the regulations and contain all required information and no information that is false or misleading in a material particular. Two or more dealers' notices are to be included in one notice.

Clause 63 requires a dealer's notice to be attached to a second-hand motor vehicle (other than a motor cycle or a demonstrator motor vehicle) offered or displayed for sale by a motor dealer. The motor dealer must not sell any such motor vehicle unless the dealer's notice is signed by the motor dealer at or before the sale and the purchaser and the purchaser is given a copy of the notice to keep.

Clause 64 provides that a motor dealer must not sell a second-hand motor cycle or a demonstrator motor vehicle unless a dealer's notice is signed by the motor dealer at or before the sale and the purchaser and the purchaser is given a copy of the notice to keep.

Clause 65 requires a dealer's notice setting out particulars of damage to be signed by both the motor dealer who sells a damaged motor vehicle (not being a second-hand motor vehicle) and the purchaser, with a copy to be given to the purchaser to keep.

Clause 66 establishes defences to offences under the proposed Division.

Division 4 Defects in motor vehicles sold by motor dealers

Clause 67 defines words and expressions used in the proposed Division. A *defective vehicle* is defined as a motor vehicle that is in such a condition, or has such a defect, that the supply of the motor vehicle would constitute a breach of a guarantee that applies under sections 54–57 of Part 3-2 of the *Australian Consumer Law (NSW)*. The *limitation period* is the period for which the dealer guarantee is in force for a motor vehicle.

Clause 68 imposes on a motor dealer the obligation to repair or make good a defective vehicle sold by the motor dealer so as to place it in a reasonable condition having regard to its age (the *dealer guarantee*). The dealer guarantee can be enforced by the purchaser of the motor vehicle and a subsequent owner other than the motor dealer or another motor dealer. The dealer guarantee does not apply unless a limitation period is specified for the vehicle and only applies to a defect or condition that occurs before the end of the limitation period, whether or not it is known during that period.

Clause 69 provides that a limitation period for a vehicle ends when either the distance limit or time limit for the motor vehicle is first reached. The proposed clause sets out the distance limits and time limits for specified vehicles.

Clause 70 enables the distance and time limits to be varied by the regulations under the proposed Act.

Clause 71 makes the dealer guarantee enforceable by a purchaser or owner of a motor vehicle as if it were a term of a contract.

Clause 72 excludes certain vehicles from the dealer guarantee.

Clause 73 excludes certain damage from being covered by the dealer guarantee, including incidental or accidental damage after sale when the motor vehicle was not in the possession of the motor dealer, damage caused by motor racing and other driver activities and superficial damage to paint-work or upholstery of a second-hand motor vehicle.

Clause 74 excludes second-hand motor vehicles from the dealer guarantee if requirements relating to the display and provision of defect notices and current inspection reports are complied with. The exclusion will not apply to a defect that is not specified in a defect notice and is not also

specified in the relevant current inspection report. If the dealer guarantee is excluded, the purchaser may recover from the motor dealer the difference between the reasonable cost of repairing a defect specified in the dealer's notice and the estimated cost of repair specified in that notice.

Clause 75 provides that the holder of a motor dealer's licence is not liable for the dealer guarantee for a motor vehicle sold by or on behalf of another motor dealer.

Clause 76 makes a motor dealer liable for damage that occurs during the period between the delivery of a motor vehicle to the motor dealer for repair under the dealer guarantee and the return of the motor vehicle to the purchaser or owner.

Clause 77 prevents a person from taking action under both the proposed Act and the *Australian Consumer Law (NSW)* in respect of any aspect of a motor vehicle.

Division 5 Dealer-financed purchases of motor vehicles

Clause 78 applies the proposed Division to a purchase of a motor vehicle where the purchaser obtains credit for the purchase from the motor dealer or a linked credit provider of the motor dealer. The proposed Division will not apply to sales to motor dealers, financiers or motor vehicle recyclers, to bona fide auctions or business or commercial purchases or where the credit is not arranged by the motor dealer.

Clause 79 defines *tyed loan contract* and *trade-in* (a motor vehicle given or agreed to be given in consideration for the whole or part of the purchase price of a motor vehicle).

Clause 80 defines the *cooling off* period for the purchase of a motor vehicle.

Clause 81 confers on the purchaser of a motor vehicle the right to terminate the contract for sale by notice in writing given during the cooling off period and permits termination even if the purchaser is in possession of the motor vehicle. A purchaser's rights to terminate in this period are to be included in the contract for the sale of a motor vehicle.

Clause 82 provides for a waiver of the right to terminate.

Clause 83 prohibits a motor dealer from selling, giving in exchange or otherwise disposing of a trade-in during the cooling off period for the purchase for which the trade-in is given.

Clause 84 requires a motor dealer, on termination during the cooling off period, to refund to the purchaser any money received by the motor dealer and to return any trade-in. The motor dealer is liable for any damage to the trade-in while it is in the motor dealer's possession, other than fair wear and tear.

Clause 85 requires a purchaser, on termination during the cooling off period, to pay to the motor dealer the lesser of \$250 or 2% of the purchase price and any amount paid to the purchaser for any trade-in. A purchaser is liable for any damage to the purchased motor vehicle while it is in the purchaser's possession, other than fair wear and tear.

Clause 86 provides for the return of a motor vehicle that is incapable of being driven or is unroadworthy and that is required to be returned under the proposed Division.

Clause 87 terminates a tied loan contract related to a contract terminated under the proposed Division and enables regulations to be made with respect to termination of tied loan contracts.

Division 6 Sales of motor vehicles on consignment

Clause 88 defines *consignor* and *trust account*.

Clause 89 requires a motor dealer to notify the Secretary in writing if the motor dealer proposes to commence selling motor vehicles on consignment and provides that notice may be given in an application for a licence.

Clause 90 requires a motor dealer who sells vehicles on consignment to establish a trust account for amounts received for vehicles sold on consignment.

Clause 91 requires an amount equal to the amount received for the sale of a motor vehicle on consignment to be paid to the trust account not later than the next business day after the amount is received.

Clause 92 sets out the purposes for which money in a trust account may be used, including payments to the consignor and of debts owed by the consignor to the consignee.

Clause 93 protects an authorised deposit-taking institution from liability for things done in relation to any such trust account that do not comply with the proposed Division or regulations made under the proposed Division.

Clause 94 requires a motor dealer to account to a consignor for a sale on consignment within 14 days of the sale or within such other period as the regulations may prescribe.

Clause 95 requires a motor dealer to ensure that the trust account is audited annually and enables regulations to be made with respect to audit requirements.

Clause 96 enables the Secretary to require a motor dealer to provide an audit of a trust account and to lodge security with the Secretary in respect of the sale of motor vehicles on consignment by the motor dealer.

Division 7 Obligations of motor vehicle recyclers

Clause 97 requires a motor vehicle recycler who acquires a motor vehicle for demolition or dismantling or a substantially demolished or dismantled motor vehicle to surrender any attached number-plate to Roads and Maritime Services. A motor vehicle recycler is prohibited from selling any such vehicle with a number-plate attached.

Clause 98 limits the motor vehicles that may be sold by motor vehicle recyclers to demolished or dismantled motor vehicles, motor vehicles for private use by the motor vehicle recycler or employees or motor vehicles that are used in the business of the motor vehicle recycler.

Clause 99 provides that a motor vehicle recycler must mark parts or accessories (prescribed by the regulations) as soon as practicable after they are acquired or obtained.

Division 8 Record keeping obligations

Clause 100 requires the holder of a motor dealer's licence, a motor vehicle repairer's licence or a motor vehicle recycler's licence to keep a register relating to the business.

Division 9 Suspicious goods

Clause 101 requires a licence holder, or any employee of a licence holder, to notify the Secretary of any motor vehicle, motor vehicle part, accessory or other thing that is suspected of being stolen or unlawfully obtained.

Clause 102 enables an authorised officer to issue a non-disposal notice to a licence holder prohibiting, for 14 days, the alteration, sale or other disposal of a motor vehicle, motor vehicle part, accessory or other thing that the officer has reasonable grounds to believe is stolen or unlawfully obtained.

Division 10 Motor vehicle brokers' obligations

Clause 103 requires a motor vehicle broker to disclose any financial or other business relationship with the supplier of a motor vehicle for which broking services are provided before those services are provided.

Part 5 Remedies relating to conduct by motor dealers, motor vehicle repairers and motor vehicle recyclers

Division 1 Unjust conduct by motor dealers, motor vehicle repairers and motor vehicle recyclers

Clause 104 applies the proposed Division to the holder of a motor dealer's licence, a motor vehicle repairer's licence or a motor vehicle recycler's licence.

Clause 105 defines *unjust conduct* to be conduct that is dishonest or unfair, is a breach of contract, contravenes the proposed Act or regulations or any other Act or regulation administered by the Minister or consists of a failure to comply with a licence or an order by the Tribunal.

Clause 106 enables the Secretary, with the consent of the Minister, to require a licence holder who has repeatedly engaged in unjust conduct to enter into undertakings relating to previous unjust conduct and future conduct. A licence holder who observes the undertakings is not liable for disciplinary action for conduct the subject of the undertakings or to action for a Tribunal order.

Clause 107 requires the Secretary to lodge deeds setting out undertakings with the Tribunal and to keep a Register of Undertakings.

Clause 108 confers on the Tribunal power to order a licence holder to refrain from engaging in unjust conduct in the course of carrying on business as a motor dealer, motor vehicle repairer or motor vehicle recycler. An order may be sought if a licence holder repeatedly engages in unjust conduct or fails to observe an undertaking as to conduct. An order may extend to a director or person concerned in the management of a body corporate that is a licence holder.

Clause 109 enables the Tribunal to vary or discharge an order, on the application of the Secretary.

Division 2 Disputes

Clause 110 defines *complainant* and extends the application of the proposed Division to former motor dealers and former motor vehicle repairers.

Clause 111 applies the proposed Division to disputes relating to the dealer guarantee and to disputes about repair work.

Clause 112 enables the Secretary, on application by a purchaser or owner of a motor vehicle who is a party to a dispute, to attempt to resolve the dispute and to investigate the dispute if it is not resolved.

Clause 113 enables the Secretary to make a rectification order requiring a motor dealer to make good a defective vehicle or a motor vehicle repairer to complete or rectify repair work.

Clause 114 provides that a rectification order does not give rise to any rights or obligations.

Division 3 Rescission of motor vehicle sales and other orders

Clause 115 defines *cash price* and *rescission order*.

Clause 116 confers jurisdiction to make a rescission order in relation to the sale of a motor vehicle on the Local Court and the District Court (depending on the cash price of the motor vehicle) and on the Supreme Court.

Clause 117 enables a court to make an order rescinding the sale of a motor vehicle by a motor dealer and requiring the return of the motor vehicle and repayment to the purchaser of amounts paid by the purchaser, on application by the Secretary. The order may be made on specified grounds, including a failure to comply with a dealer's notice and inspection report requirements and the condition of the motor vehicle when it was sold.

Clause 118 enables a Local Court to make an order rescinding the sale of a motor vehicle by a motor dealer and requiring the return of the motor vehicle and repayment to the purchaser of amounts paid by the purchaser if a motor dealer is found guilty of an offence under proposed Part 4 and the cash price of the motor vehicle did not exceed the Court's jurisdictional limit.

Clause 119 provides that the fact that the parties to a sale contract or an associated credit contract cannot be restored to their previous positions is not a bar to the making of a rescission order.

Clause 120 transfers the liabilities and rights of a purchaser under a credit contract linked with a sale contract or a sale contract the subject of a rescission order to the motor dealer.

Clause 121 prevents a court from making a rescission order unless the Secretary, a representative of the Secretary and any other person likely to be affected by the making of the order has been given an opportunity to be heard.

Division 4 Penalties for unlicensed motor dealers and motor vehicle recyclers

Clause 122 defines *forfeiture order*, *proceeds order* and *restraining order*.

Clause 123 confers jurisdiction on a court that convicts a motor dealer or a motor vehicle repairer of a licensing offence to make an order forfeiting a specified motor vehicle to which the offence relates to the Crown (a *forfeiture order*) or ordering that the convicted person pay to the Crown the proceeds of the offence or any other offence of that kind (a *proceeds order*). An amount paid under a proceeds order is to be paid to the Compensation Fund.

Clause 124 provides for appeals against forfeiture orders and proceeds orders.

Clause 125 confers jurisdiction on a court in proceedings against a motor dealer or a motor vehicle repairer for a licensing offence, or on a court that makes a proceeds order, to make an order restraining the person from being prosecuted and any other specified person from disposing or otherwise dealing with specified property. The Supreme Court may vary or revoke any restraining order.

Division 5 Administration of motor dealers and motor vehicle recyclers

Clause 126 defines words and expressions used in the proposed Division.

Clause 127 confers jurisdiction on the Supreme Court to appoint an administrator for the affairs (relating to the carrying on of a business for which a licence must be held) and property of a licence holder if it is satisfied that there are grounds for suspending or cancelling the licence, that the licence holder has repeatedly engaged in unjust conduct or that it is desirable in the public interest to do so having regard to the circumstances of the licence holder.

Clause 128 confers jurisdiction on the Supreme Court to appoint an administrator for the affairs (relating to the carrying on of a business for which a licence must be held) and property of a former licence holder if the person's licence has been suspended or cancelled or it is satisfied that it is necessary or desirable to protect the interests of persons who had dealings with the person.

Clause 129 provides for notification of the order appointing an administrator.

Clause 130 refers to proposed Schedule 1 which contains further provisions relating to the functions of an administrator and the conduct of administration.

Clause 131 makes it an offence for a person, without reasonable excuse, to obstruct, hinder or delay an administrator exercising functions as an administrator.

Clause 132 sets out the circumstances in which an administrator vacates office.

Clause 133 enables the Supreme Court to revoke the appointment of an administrator on the application of the administrator, the Secretary or the person subject to administration.

Clause 134 provides for the Supreme Court to make orders transferring property when an administration is terminated or a new administrator is appointed.

Clause 135 provides for the Supreme Court to make orders transferring property to the person who was subject to administration where the administrator vacates office and no new administrator is appointed.

Clause 136 requires an order by the Supreme Court that transfers property formerly under administration to provide for the payment of the costs of the administrator by the person who was subject to administration.

Clause 137 confers on the Supreme Court power to make additional orders necessary to enable an administrator to administer the affairs and property of a person.

Clause 138 gives a person who is subject to an application for administration or to an application for other orders relating to the administration a right to be given a copy of the originating process and to appear and be heard by the Supreme Court.

Clause 139 makes it an offence, for the purpose of defeating the purposes of the proposed Division, to withdraw money or make payments from accounts and to destroy or conceal or remove property or to deliver it to another person. It will also be an offence to withdraw money from or make a payment from an account, or to destroy or conceal or remove property subject to an administration order or to deliver it to another person without the authority of the administrator.

Clause 140 enables an application to be made to the Supreme Court for a direction as to the exercise of functions by an administrator.

Part 6 Unfair contracts and unjust conduct affecting motor dealers

Clause 141 defines words and expressions used in the proposed Part.

Clause 142 provides that a term of a supply contract for the supply of motor vehicles to a motor dealer by a manufacturer is *unfair* if it would cause a significant imbalance in the parties' rights and obligations, is not reasonably necessary to protect the interests of the advantaged party and would cause financial or other detriment to a party if relied on. The provision also sets out examples of unfair provisions.

Clause 143 provides that conduct of a manufacturer is *unjust* if it occurs in connection with a supply contract and is dishonest or unfair or is authorised by an unfair term of a supply contract.

Clause 144 enables a motor industry group (representing motor dealers) or a motor dealer to raise a dispute with a manufacturer about an unfair term of a supply contract or class of supply contracts or unjust conduct by a manufacturer with the Small Business Commissioner. The dispute will be dealt with under the procedures under the *Small Business Commissioner Act 2013* that provide for mediation and certification by the Commissioner when a dispute cannot be resolved.

Clause 145 enables a motor industry group or the Small Business Commissioner or a motor dealer to apply to the Tribunal for a declaration that a term of a supply contract or class of supply contracts is unfair or a motor dealer to apply for such a declaration about a term of a particular supply contract. An application can only be made if there has been a certification by the Small Business Commissioner about the matter.

Clause 146 confers jurisdiction on the Tribunal to make such a declaration after taking into account all the circumstances of the case. Among other things, the Tribunal may consider whether another party to the supply contract exerted undue influence, unfair pressure or unfair tactics on the motor dealer.

Clause 147 sets out the orders the Tribunal may make if it makes such a declaration, including orders declaring part or the whole of supply contracts to be void, varying supply contracts, directing parties to supply contracts to take or not take actions and ordering the payment of compensation.

Clause 148 makes it clear that the proposed Part does not limit or restrict any other law that provides for relief against unjust conduct or unfair contract terms.

Part 7 Enforcement and offences

Division 1 Inspection powers

Clause 149 enables authorised officers to be appointed by the Secretary and also makes the Secretary, police officers and other members of the NSW Police Force, investigators appointed

under the *Fair Trading Act 1987* and persons authorised by the Chief Executive of Roads and Maritime Services authorised officers.

Clause 150 specifies that the powers of authorised officers are to be used for ascertaining whether the proposed Act or the regulations under the proposed Act are being or have been contravened, investigating complaints and for other related purposes.

Clause 151 sets out the powers of entry and investigation of authorised officers.

Clause 152 enables an authorised officer, by notice in writing, to require documents to be produced.

Clause 153 confers on police officers a power of entry and search in connection with stolen motor vehicles and stolen parts and accessories for motor vehicles.

Clause 154 enables an authorised officer to obtain a search warrant to search premises if the officer believes on reasonable grounds that a provision of the proposed Act or the regulations is being or has been contravened on the premises.

Clause 155 sets out offences related to failure to comply with requirements made, or to answer questions by, an authorised officer or police officer under the proposed Division, as well as other related offences.

Division 2 Proceedings for offences

Clause 156 limits the persons who may take proceedings for offences under the proposed Act to the Secretary and the Chief Executive of Roads and Maritime Services (or persons acting on their behalf) and police officers. Offences are to be dealt with summarily, and with certain exceptions, must be commenced within 1 year of the alleged time when the offences are committed. There will be a 3-year period for commencing proceedings for licensing and odometer offences.

Clause 157 enables a court that finds a person guilty of an offence against the proposed Act or the regulations to make determinations and orders, in addition to any penalty imposed, including orders for the payment of compensation and the carrying out of work.

Clause 158 enables penalty notices to be issued for offences under the proposed Act that are prescribed by the regulations.

Division 3 Liability of persons involved in corporations

Clause 159 makes a person who is a director of a corporation or involved in the management of a corporation and in a position to influence relevant conduct liable for an offence if the corporation commits a motor vehicle repairer licensing offence or permits or arranges repair work to be done by an unlicensed person and the person knows or ought reasonably to know that the offence would be or is being committed and fails to take reasonable steps to prevent or stop the offence.

Clause 160 makes a person who is a director of a corporation or involved in the management of a corporation and in a position to influence relevant conduct liable for an offence if the corporation commits an offence against the proposed Act or the regulations and the person aids, abets, procures or induces the offence, conspires to have the offence committed or is in any other way knowingly concerned in or party to the offence.

Division 4 Evidentiary provisions

Clause 161 provides for the use of evidentiary certificates as evidence of licensing matters or exemptions under the proposed Act in court proceedings and before other persons and bodies that receive evidence.

Clause 162 makes the contents of registers kept under the proposed Act evidence of the matters contained in them.

Clause 163 provides for specified conduct relating to the sale of motor vehicles to be evidence of carrying on business as a motor dealer and for certain publications to be evidence of advertising for the purposes of related offences under the proposed Act.

Part 8 Motor Dealers and Repairers Compensation Fund

Clause 164 defines a *failure to account* by a motor dealer.

Clause 165 provides for the establishment of the Compensation Fund.

Clause 166 sets out the amounts to be paid to the Compensation Fund, including licence fees and contributions after disciplinary action.

Clause 167 sets out the amounts to be paid from the Compensation Fund, including losses certified by the Secretary under the proposed Part and legal and administrative costs.

Clause 168 specifies the losses for which a person may claim compensation from the Compensation Fund, including losses incurred because of incompetent repair work, a contravention or breach of contract by a motor dealer or a failure to give an unencumbered title to a motor vehicle.

Clause 169 sets out the procedure for making claims for compensation.

Clause 170 empowers the Secretary to determine claims for compensation and provides that a claim may be disallowed to the extent that loss was suffered because of failure to mitigate it or delay in making a claim. A claim must be disallowed unless the person against whom the claim was made was licensed or reasonably thought to be licensed.

Clause 171 enables the Secretary to certify an amount of loss not exceeding \$40,000.

Clause 172 provides for the Secretary, at the request of a claimant, to review a disallowed claim.

Clause 173 subrogates the Crown to all the rights and remedies of a claimant in respect of the claim, if payment is made to the claimant. The amount paid is taken to be a debt due to the Crown and the Secretary may take action on behalf of the Crown.

Clause 174 enables the Secretary to recover amounts payable by a corporation as a result of a payment from the Compensation Fund from the directors of the corporation at the time the relevant conduct occurred.

Clause 175 provides for payments and priorities of payments from the Compensation Fund when the Compensation Fund is not sufficient to account for the amounts payable from the Compensation Fund.

Part 9 Miscellaneous

Clause 176 confers jurisdiction on the Administrative Decisions Tribunal to review licensing decisions made by the Secretary.

Clause 177 requires the Secretary to keep a register of licences issued under the proposed Act.

Clause 178 makes it an offence to disclose information obtained in connection with the administration or execution of the proposed Act except with the consent of the person concerned or in other specified circumstances.

Clause 179 makes it clear that the proposed Act does not limit, restrict or otherwise affect any other right or remedy of a person under any other law.

Clause 180 provides that the provisions of the proposed Act prevail over any attempt by a contract to annul, vary or exclude the provisions.

Clause 181 prohibits a motor dealer from obtaining an indemnity from the previous owner of a motor vehicle in relation to costs or expenses incurred by the motor dealer because of the proposed Act.

Clause 182 requires the NSW Police Force and Roads and Maritime Services to provide information to the Secretary for the purposes of licensing, disciplinary proceedings, investigations or law enforcement under the proposed Act. The Secretary will also have a duty to supply information to police for law enforcement purposes and may enter into agreements with other jurisdictions for the supply of information.

Clause 183 makes it an offence to enter information in a register knowing it to be false or misleading in a material particular.

Clause 184 makes it an offence to submit a document for signature by a person, being evidence of the sale of a motor vehicle, unless all material particulars in the document have been completed.

Clause 185 sets out the manner in which documents may be served under the proposed Act.

Clause 186 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 187 enables the Secretary to delegate his or her functions under the proposed Act.

Clause 188 excludes the Secretary, an authorised officer and persons acting under their direction from personal liability for acts or omissions done in good faith for the purposes of administering the proposed Act.

Clause 189 provides that the proposed Act is to bind the Crown.

Clause 190 repeals the *Motor Dealers Act 1974* and the *Motor Vehicle Repairs Act 1980*.

Clause 191 provides for the review of the proposed Act in 5 years.

Schedule 1 Administration of businesses

Schedule 1 contains additional provisions relating to the powers that may be exercised by an administrator of the affairs and property of a licence holder.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 3 Consequential amendment of other Acts

Schedule 3 amends the Acts specified in the Schedule.