

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 3 April, 1974.*

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. , 1974.

An Act to provide for the granting of licences to persons carrying on the business of a motor dealer or a vehicle-wrecker, or a prescribed business; to require motor dealers, vehicle-wreckers and persons carrying on a prescribed business to keep certain records; to impose certain obligations on a motor dealer in relation to motor vehicles offered or displayed for sale or sold by him; to provide for the settlement by the Commissioner for Consumer Affairs of certain disputes arising in connection with the sale of motor vehicles; to establish a Motor Dealers Compensation Fund; for these and other purposes

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purposes to repeal the Second-hand Motor Dealers Act, 1956 (other than sections 18 and 19 thereof); to amend the Motor Traffic Act, 1909; and for purposes connected therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.**PRELIMINARY AND INTERPRETATION.**

- 1.** This Act may be cited as the "Motor Dealers Act, Short title. 1974".
- 10 2.** (1) This section and section 1 shall commence on Commence-
the date of assent to this Act. ment.
- (2) Part II shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.
- 15** (3) Section 59 shall commence on the day that is three months after the day on which Part II commences.
- (4) Except as provided in subsections (1), (2) and (3), the several provisions of this Act shall commence on 20 such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

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3. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY AND INTERPRETATION—ss. 1-8.

PART II.—LICENSING—ss. 9-20.

5 PART III.—DEALERS' AND OTHER RECORDS—ss. 21-23.

PART IV.—DEALINGS IN MOTOR VEHICLES—ss. 24-29.

PART V.—DISPUTES AND RESCISSIONS—ss. 30-38.

10 PART VI.—COMPENSATION FUND—ss. 39-42.

PART VII.—GENERAL—ss. 43-60.

4. (1) In this Act, except in so far as the context or Interpretation.
subject-matter otherwise indicates or requires—

15 “accessories” includes car wirelesses and tools usually carried on motor vehicles;

“cash price”—

20 (a) in relation to a motor vehicle offered or displayed for sale, means the price at which the vendor is willing to sell the vehicle for cash complete with all accessories and other attachments then fitted to or supplied with the vehicle; and

(b) in relation to the sale of a motor vehicle—

25 (i) means the price at which the vehicle is sold;

(ii)

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5 (ii) where any part of the consideration that passed, or is to pass, from the purchaser is represented by another vehicle, or other thing, means the price at which the vehicle is sold and the value of the other vehicle or thing as ascribed to it for the purposes of the sale by the parties thereto or, if no agreed value is so ascribed, the market value of the other vehicle or thing at the time of the sale; or

10
15 (iii) where all of the consideration that passed, or is to pass, from the purchaser is represented by another vehicle, or other thing, means the value of the other vehicle or thing as ascribed to it for the purposes of the sale by the parties thereto or, if no agreed value is so ascribed, the market value of the other vehicle or thing at the time of the sale;

20
25 "Commissioner" means the Commissioner for Consumer Affairs appointed pursuant to section 13 of the Consumer Protection Act, 1969, and includes any person appointed to act as such pursuant to section 14 of that Act;

"commercial vehicle" means a motor vehicle constructed or adapted principally for—

- 30 (a) the carriage of goods;
- (b) the carriage of more than ten adult persons; or
- (c) industrial or agricultural use,

but

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but does not include a motor vehicle of the kind known as a utility, a station waggon or a panel van that is of the same make as a factory-produced motor car and in which such part of the body form as is forward of the windscreen and the greater part of the mechanical equipment are the same, or substantially the same, as in that motor car;

5

“dealer” means a person who carries on the business of buying, selling or exchanging motor vehicles, but does not include a financier;

10

“dealer’s licence” means a dealer’s licence granted under section 12;

“exempted motor vehicle”, when used in or in relation to any provision of this Act, means a motor vehicle belonging to a class of motor vehicle exempted or excluded from the operation of that provision under section 8 (1) (b);

15

“exempted person”, when used in or in relation to any provision of this Act, means a person, or a person belonging to a class of person, exempted or excluded from the operation of that provision under section 8 (1) (a);

20

“financier” means a person whose ordinary business is not that of buying, selling or exchanging motor vehicles but who carries on that business only for one or more of the following purposes, that is to say—

25

(a) for the purpose of letting or hiring motor vehicles under hire-purchase agreements;

30

(b) for the purpose of selling motor vehicles on instalment terms;

(c)

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(c) for the purpose of taking or enforcing securities over motor vehicles;

(d) for any purpose that may be prescribed; or

5 (e) for the purpose of disposing of motor vehicles acquired by him in connection with any of the purposes referred to in, or prescribed in relation to, this definition,

10 but does not include such person or class of person as may be prescribed for the purposes of this definition;

“hire-purchase agreement” means, in relation to a motor vehicle, an agreement for the letting of the motor vehicle with an option to purchase;

“holder” means—

15 (a) in relation to a joint licence, each individual to whom the licence is granted or deemed under section 15 (7) (b) to be granted; or

(b) in relation to any other licence, the person to whom the licence is granted;

20 “identification number”, when used in relation to the engine or engine block of a motor vehicle or to any part or accessory of a motor vehicle, means the number and any accompanying letters or symbols stamped on or otherwise affixed to that engine,
25 engine block, part or accessory as a means of identifying that engine, engine block, part or accessory, but does not include any casting number or any number used as a means of identifying a class of engine, engine block, part or accessory;

“joint

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“joint application” means an application made pursuant to section 10 (2) for the grant of a joint licence;

“joint licence” means a licence granted pursuant to section 12 (2) (c);

5 “licence” means a dealer’s licence, a prescribed licence or a vehicle-wrecker’s licence;

“magistrate” means an industrial magistrate appointed under the Industrial Arbitration Act, 1940;

10 “model designation” means, in relation to a motor vehicle of a particular model, any words, figures, letters or symbols applied by the manufacturer of that motor vehicle for the purpose, or apparent purpose, of identifying a motor vehicle of that model;

15 “motor vehicle” means any motor car, motor carriage, motor cycle, tractor, or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer, but does not include any vehicle used on a railway or tramway;

20 “owner”, in relation to a motor vehicle, includes any person who is a joint owner, or part owner thereof and any person who has the possession and use thereof under or subject to a hire-purchase agreement, bill of sale or similar contract, but does not include any person in whom the property in the vehicle or any absolute or conditional right or licence to take possession of the motor vehicle is vested under or subject to a hire-purchase agreement, bill of sale or similar contract and who has not for the time being the possession and use thereof;

25 “prescribed business” means a business belonging to a class of business prescribed under section 7 (a);

30 “prescribed

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- “prescribed licence” means a licence prescribed under section 7 (b) and granted under section 12;
- 5 “registered” means registered under the provisions of any Act or law, whether of the State or elsewhere, relating to the registration of motor vehicles;
- “regulations” means regulations made under this Act;
- “restricted licence” means a dealer’s licence restricted in its application pursuant to section 12 (5) to the class of motor vehicle specified in the licence;
- 10 “second-hand motor vehicle” includes a motor vehicle that has, at any time before being offered or displayed for sale, or sold, been registered;
- “sell” means to sell as principal or agent;
- “trade owner” means a dealer or a financier;
- 15 “vehicle-wrecker” means a person who carries on the business of demolishing or dismantling motor vehicles;
- “vehicle-wrecker’s licence” means a vehicle-wrecker’s licence granted under section 12;
- 20 “year of manufacture” means, in relation to a motor vehicle, the year in which the vehicle was manufactured.

(2) A vehicle does not cease to be a motor vehicle for the purposes of this Act by reason only that it is not in 25 working condition or is incomplete.

(3) For the purposes of this Act—

- 30 (a) where a dealer sells a motor vehicle to a financier in the expectation that the financier will sell that motor vehicle to a particular third person and the financier does so, the dealer shall be treated as having sold the motor vehicle to that third person; and

(b)

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5 (b) where a motor vehicle is made the subject of a hire-purchase agreement, it shall be treated as being sold to the hirer, and the sale shall be treated as made when the hire-purchase agreement is entered into.

(4) A person who carries on the business of manufacturing or assembling motor vehicles is not a dealer and does not carry on the business of a dealer, by reason only of selling any such vehicle to a trade owner.

10 (5) For the purposes of this Act a motor vehicle shall be treated as having been sold notwithstanding that all or part of the consideration that passed from the purchaser in respect of the sale is represented by another vehicle or other thing.

15 5. (1) An application under this Act shall be made in or to the effect of a form approved by the Minister. Approved forms.

(2) The Minister may approve different forms for the purpose of making different applications.

20 6. (1) Anything authorised or required by or under this Act to be done by the Commissioner (other than the determination under section 35 of a dispute or the making of an order under section 36) may be done by any officer of the Bureau or the Department who is authorised generally or specially in that behalf in writing by the Commissioner, and Performance of Commissioner's functions.
25 for the purpose of doing so that officer shall be deemed to be the Commissioner.

(2) The Minister may appoint an officer of the Bureau or the Department to exercise and perform, either generally or in respect of any particular dispute, the functions of the Commissioner under section 35 or 36, or both, and for the purposes of doing so that officer shall be deemed to be the Commissioner.
30 of the Commissioner under section 35 or 36, or both, and for the purposes of doing so that officer shall be deemed to be the Commissioner.

(3)

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(3) In this section—

“Bureau” means the Consumer Affairs Bureau established under the Consumer Protection Act, 1969;

5 “Department” means the Department of Labour and Industry.

7. The Governor may—

10 (a) prescribe any class of business, carried on in relation to used or reconstructed motor vehicles, or such reconstructed parts of motor vehicles or accessories as may be prescribed; and

Governor may prescribe a class of business.

(b) prescribe a licence in relation to any such class of business and a fee to be paid therefor.

8. (1) The Governor may, by regulation made under this Act, exempt or exclude from the operation of all or 15 any of the provisions of this Act—

Exemptions.

(a) any person or class of person; or

(b) any class of motor vehicle.

20 (2) An exemption or exclusion under subsection (1) may be given unconditionally or subject to such conditions as may be prescribed in respect of the exemption or the exclusion.

(3) Where an exemption or exclusion under subsection (1) is given subject to conditions the exemption or the exclusion does not have effect during any period when the conditions are not complied with.

PART

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PART II.

LICENSING.

9. (1) On or after the relevant day, no person (other **Licences.** than an exempted person) shall—

- 5** (a) carry on or advertise that he carries on or is willing to carry on the business of a dealer unless he is the holder of a dealer's licence; or
- (b) carry on the business of a dealer at any place of business unless he is the holder of a dealer's licence, **10** granted in respect of that place of business.

Penalty : \$1,000, and in addition a further penalty of \$100 a day for each day on which the offence continues.

(2) On or after the relevant day, no person (other than an exempted person) shall—

- 15** (a) carry on or advertise that he carries on or is willing to carry on the business of a vehicle-wrecker unless he is the holder of a dealer's licence (not being a restricted licence) or a vehicle-wrecker's licence; or
- (b) carry on the business of a vehicle-wrecker at any **20** place of business unless he is the holder of a dealer's licence (not being a restricted licence) or a vehicle-wrecker's licence, granted in respect of that place of business.

Penalty : \$1,000, and in addition a further penalty of \$100 **25** a day for each day on which the offence continues.

(3)

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(3) On or after the relevant day in relation to a prescribed business, no person (other than an exempted person) shall—

- 5 (a) carry on or advertise that he carries on or is willing to carry on that business unless he is the holder of a dealer's licence (not being a restricted licence) or the prescribed licence in relation to that business; or
- 10 (b) carry on a prescribed business at any place of business unless he is the holder of a dealer's licence (not being a restricted licence) or the prescribed licence in relation to that business, granted in respect of that place of business.

15 Penalty : \$1,000, and in addition a further penalty of \$100 a day for each day on which the offence continues.

(4) On or after the relevant day no holder of a dealer's licence (being a restricted licence) shall, in the course of carrying on his business as a dealer, buy, sell or exchange a motor vehicle unless it is a vehicle belonging to a class of 20 vehicle to which his licence, in its application, is restricted.

Penalty : \$1,000.

25 (5) A person carries on the business of a dealer or a vehicle-wrecker, or a prescribed business, if he does so either by himself, as a member of a partnership or by his servant or agent.

(6) For the purposes of—

- (a) subsections (1), (2) and (4), the relevant day is the day that is three months after the day on which this Part commences; or

(b)

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5 (b) subsection (3), the relevant day in relation to any prescribed business is the day that is one month after the day on which the regulations prescribing that business are published in the Gazette or such day (being a day that is later than that day of publication) as is specified in those regulations.

10 **10.** (1) An application for the grant of a dealer's licence, a vehicle-wrecker's licence or a prescribed licence shall be lodged with the Commissioner. Application for grant of licence.

(2) Two or more individuals intending to carry on in partnership a business for which a licence is required may, but are not required to, apply for the grant of a joint licence.

(3) An application made pursuant to subsection (2) shall specify the names of the individuals to whom the licence 15 applied for, if granted, is to be granted.

(4) Where an application is made for the grant of a licence to a corporation the names of the directors of the corporation shall be specified in the application.

20 (5) Subject to subsection (6), where a business, for which a licence is required, is to be carried on at more than one place of business a separate application for the grant of a licence in respect of each such place shall be lodged with the Commissioner.

25 (6) Where a business, for which a licence is required, is to be carried on at more than one place of business but, by reason of the close proximity of those places, the person applying for the grant of the licence considers it reasonable that a single licence only should be required in respect of those places he may include a reference to all of those places 30 in an application for the grant of a single licence.

(7)

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(7) Where an applicant for the grant of a dealer's licence wishes the licence, if granted, to be restricted in its application to any class of motor vehicle he shall so state, and specify that class, in his application.

5 11. (1) Where an application for a licence is lodged, the Commissioner may request the Commissioner of Police to ascertain in relation to the application whether or not any person referred to in section 12 (2) (a), (b) or (c), as the case may be, is, or would be, a fit person to hold the licence
10 and on receipt of any such request the Commissioner of Police shall cause such inquiries as he deems necessary to be made in order to ascertain that fact and shall furnish a report of the findings to the Commissioner.

Inquiries
by
Commis-
sioner of
Police.

(2) The Commissioner may, by instrument in
15 writing, served on an applicant or, in the case of a joint application, on any one or more of the applicants, require the applicant or applicants to furnish within the period specified in the instrument such further information and documents as he may reasonably require for the purposes of the application
20 and so specifies.

12. (1) This section is subject to section 13.

Disposal
of
applica-
tions.

(2) On payment of the appropriate fee the Commissioner shall, when an application is made for the grant of a dealer's licence, a vehicle-wrecker's licence or a prescribed
25 licence—

(a) by an individual (other than an individual referred to in paragraph (c)), grant that licence to the individual;

(b) by a corporation, grant that licence to the corporation; or

(c)

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- (c) by two or more individuals making a joint application, grant that licence in the joint names of the individuals specified in the application pursuant to section 10 (3).
- 5 (3) Where, pursuant to section 10 (5), a reference to two or more places of business is included in an application for the grant of a single licence the Commissioner, if he grants the licence, may—
- 10 (a) grant the licence in respect of all of those places;
or
- (b) grant the licence in respect of one or some only of those places.
- (4) Where the Commissioner grants a single licence in respect of two or more places of business those places are
15 together, for the purposes of this Act, the place of business in respect of which the licence is granted.
- (5) Where an applicant applies for the grant of a dealer's licence restricted in its application to a class of motor vehicle the Commissioner shall, if he grants the licence, grant
20 the licence as so restricted.
- (6) The appropriate fee is—
- (a) in the case of a dealer's licence (not being a restricted licence), \$100 or such other fee as may be prescribed; or
- 25 (b) in the case of a restricted licence, a vehicle-wrecker's licence or a prescribed licence, such a fee as may be prescribed.

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13. (1) The Commissioner shall not grant a licence unless he is satisfied—

Refusal
of applica-
tion for
grant of
licence.

- 5 (a) in the case of an application by an individual, that the individual is of or above the age of eighteen years and is a fit person to hold the licence applied for;
- 10 (b) in the case of a joint application, that each of the individuals to whom the licence is to be granted is of or above the age of eighteen years and is a fit person to hold the licence applied for; or
- 15 (c) in the case of an application by a corporation, that the corporation is a fit person to hold the licence applied for, and that each one of the directors of the corporation is of or above the age of eighteen years and would, if the application were made by him, be a fit person to hold the licence applied for.

(2) In considering whether a person is or would be a fit person to hold a licence the Commissioner—

- 20 (a) shall, in the case of an individual, have regard to his character;
- (b) shall have regard to any report relating to that person furnished under section 11 by the Commissioner of Police; and
- 25 (c) shall have regard to such other matters as the Commissioner considers relevant for the purpose of determining the fitness of the person in that regard.

(3) The Commissioner shall not grant a licence in respect of any place of business unless the applicant satisfies the Commissioner that the business which it is proposed to carry on under the licence at that place may be so carried on without contravening any other Act or any instrument made under any other Act.

(4)

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5 (4) Where the Commissioner refuses to grant a licence he shall cause a notice of refusal to be served on the applicant for the licence by sending the notice by certified mail addressed to the applicant at his address last known to the Commissioner, or by causing it to be delivered to the applicant personally.

(5) In the case of a joint application it is a sufficient compliance with subsection (4) if the notice of refusal is served on any one of the applicants.

10 (6) A notice of refusal shall state the reasons for the refusal.

(7) The date on which a notice of refusal is served is—

- 15 (a) where the notice is sent by certified mail, the date when the notice would be delivered in the ordinary course of post; or
- (b) where the notice is delivered to the applicant personally, the date when it is so delivered.

20 **14.** (1) A licence shall be in the form approved by the Minister and, without prejudice to the inclusion in the licence of any other particulars, shall— Form of licences.

- (a) specify the day of issue of the licence;
- (b) specify the place of business in respect of which the licence is granted;
- 25 (c) specify the name of the person or, in the case of a joint licence the names of the individuals, to whom the licence is granted;
- (d) where the licence is granted to a corporation, specify the names of the directors of the corporation; and
- 30 (e) where the licence is restricted in its application to a class of motor vehicle, specify that class of motor vehicle.

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(2) The Minister may approve different forms for different licences.

15. (1) The applications to which this section relates are applications for the amendment— Amendment of licence.

- 5 (a) of a licence by substituting for the reference in the licence to a place of business a reference to another place of business;
- (b) of a joint licence by specifying in the licence the name of any individual;
- 10 (c) of a licence held by a corporation by specifying in the licence the name of any person who is a director of the corporation; or
- (d) of a licence in such other manner as may be prescribed.

15 (2) Subject to the regulations, on the making of an application to which this section relates and on payment of the prescribed fee, the Commissioner may refuse the application or grant the application and amend the licence in accordance with the application.

20 (3) Where a person becomes a director of a corporation that is the holder of a licence and his name is not specified as a director in the licence, the corporation shall, within one month after that person becomes a director, make the application referred to in subsection (1) (c).

25 Penalty: \$500.

(4) Where an application made pursuant to subsection (3) is refused the person to whom the application relates shall forthwith give up his directorship of the corporation concerned.

30 Penalty: \$200.

(5)

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(5) Where an application made pursuant to subsection (3) is refused the person to whom the application relates shall not again, within a period of six months after the refusal of the application, become a director of the corporation unless the corporation ceases to be the holder of a licence or the Commissioner, pursuant to subsection (6), grants an application made under that subsection in relation to that person.

Penalty : \$200.

10 (6) A corporation that is the holder of a licence may apply to the Commissioner for the approval of a person whom it is proposed to appoint or elect to be a director of the corporation and, subject to the regulations, the Commissioner may refuse or grant the application.

15 (7) Where an application referred to in—

(a) subsection (1) (a) is granted and the licence is amended by substituting a reference to another place of business, that place of business is a place of business in respect of which the licence is granted; or

20

(b) subsection (1) (b) is granted and the licence is amended by specifying the name of the individual concerned in the licence, that individual shall be deemed to be an individual to whom the licence is granted.

25

(8) The regulations may—

(a) make provision for or with respect to the making of applications under this section;

30

(b) specify the circumstances in which any such application may be refused and, for that purpose, apply any provision in this Part with or without variation or modification; and

(c)

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(c) provide for an appeal against any such refusal and, for that purpose, apply any provision in this Part with or without variation or modification.

5 **16.** If the Commissioner is satisfied that a licence has been lost or destroyed he may, on payment of the prescribed fee, issue a duplicate licence which shall be of the same force as the original licence. Duplicate licence.

17. (1) A licence has effect from and including the day of issue of the licence. Duration of licence.

10 (2) A licence continues in force unless it ceases to have effect under subsection (5) or is revoked under section 18.

15 (3) The appropriate fee in respect of a licence is payable annually on or before the anniversary of the day of issue of the licence in the year concerned.

(4) The appropriate fee, when paid in any year in respect of a licence, shall be accompanied by a form, prescribed for the purposes of this section, completed by the holder of the licence.

20 (5) If the appropriate fee in respect of a licence is not paid in accordance with subsection (3) or, if paid, is not accompanied by the prescribed form completed as provided in subsection (4), the licence ceases to have effect immediately following the anniversary concerned.

25 (6) The appropriate fee—

(a) in respect of a dealer's licence (not being a restricted licence), is \$100 or such other fee as may be prescribed; or

(b)

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(b) in respect of a restricted licence, a vehicle-wrecker's licence or a prescribed licence, is such fee as may be prescribed.

5 **18.** (1) The Commissioner may, after due inquiry, ^{Revocation} revoke a licence— _{of licence.}

- (a) if he is satisfied that the holder of the licence made a statement in or in connection with his application for the licence that he knew to be false or misleading in a material particular ;
- 10 (b) if the holder of the licence is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for three months or more, or of any offence against this Act or the regulations, or of an offence against section 32 of
- 15 the Consumer Protection Act, 1969;
- (c) if he is satisfied, in the case of the holder of a dealer's licence, that the holder has been guilty of fraudulent conduct or dishonesty in connection with his business as a dealer ;
- 20 (d) if he is satisfied, in the case of a holder of a dealer's licence, that the holder has failed to carry out any of his obligations under section 27 or has failed to carry out any of those obligations with due expedition ;
- 25 (e) if he is satisfied, in the case of a holder of a dealer's licence (not being a joint licence), that the holder does not have sufficient material and financial resources to comply with the requirements of this Act ; or
- 30 (f) if he is satisfied, in the case of a dealer's licence (being a joint licence), that the holders of the licence do not together have sufficient material and financial resources to comply with the requirements of this Act.

(2)

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(2) The power under subsection (1) (a), (b), (c) or (d) to revoke a licence may, in the case of a joint licence, be exercised if subsection (1) (a), (b), (c) or (d), as the case may be, applies to any holder of that licence.

5 (3) Where the holder of a dealer's licence (not being a joint licence) carries on the business of a dealer in partnership with one, or more than one, person, the Commissioner shall not revoke his licence under subsection (1) (e) unless the Commissioner is satisfied that his material and
10 financial resources, together with those of the person or persons with whom he carries on that business in partnership, are not sufficient to enable him to comply with the requirements of this Act.

(4) Without prejudice to his right to revoke a
15 licence under subsection (1), the Commissioner may, after due inquiry, revoke—

- (a) a licence held by a corporation if any director of the corporation is convicted of an offence referred to in subsection (1) (b); or
- 20 (b) a licence (not being a joint licence) held by any person carrying on business in partnership with any other person if the licence of that other person is revoked under paragraph (a) or under subsection (1) (b), (c) or (d).

25 (5) Before revoking a licence the Commissioner shall give the holder or, in the case of a joint licence, each of the holders, of the licence an opportunity of showing cause why the licence should not be revoked.

(6) Where the Commissioner revokes a licence, he
30 shall cause a notice of revocation to be served on the holder of the licence by sending the notice by certified mail addressed to the holder at the place of business in respect of which the licence is granted, or by causing it to be delivered to the holder personally.

(7)

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(7) In the case of a joint licence it is a sufficient compliance with subsection (6) if the notice of revocation is served on any one of the holders of the licence.

5 (8) A notice of revocation shall state the reasons for the revocation of the licence.

(9) Subject to subsection (10), the revocation of a licence has effect as on and from the date that is twenty-one days after the date on which the notice of revocation is served.

10 (10) Where the holder of a licence appeals under section 19 against the revocation of the licence, the revocation shall have effect—

(a) only if the magistrate hearing the appeal confirms the revocation or the appeal is withdrawn; and

15 (b) on the date on which that magistrate confirms the revocation, or such later date as that magistrate orders or, if the appeal is withdrawn, on the date on which it is withdrawn.

(11) The date on which a notice of revocation is served is—

20 (a) where the notice is sent by certified mail, the date when the notice would be delivered in the ordinary course of post; or

(b) where the notice is delivered to the holder of the licence personally, the date when it is so delivered.

25 (12) When the revocation of a licence has effect the person who was the holder of the licence shall forthwith deliver it to the Commissioner.

Penalty : \$200.

30 **19.** (1) An applicant for the grant of a licence may appeal to a magistrate against the refusal of the Commissioner to grant the licence.

(2)

Motor Dealers.

(2) The holder of a licence may appeal to a magistrate against the revocation by the Commissioner of the licence.

5 (3) Notice of an appeal under this section, specifying the grounds of the appeal, shall be lodged with the registrar not later than twenty-one days after the date of service.

(4) The registrar shall give notice of the time and place of the hearing of an appeal under this section to the Commissioner and to the person appealing, and shall state in
10 the notice to the Commissioner the grounds of the appeal.

(5) The hearing of an appeal may proceed notwithstanding any omission or error in a notice under subsection (4) or the failure to give any such notice if the magistrate is satisfied that the person appealing and the Commissioner had
15 knowledge of the time and place of the hearing and were not prejudiced by any such omission or error or by the failure to give any such notice.

(6) Where relevant, a report furnished pursuant to section 11 to the Commissioner by the Commissioner of Police
20 or a report furnished pursuant to section 34 to the Commissioner by a disputes committee, and certified in either case by the Commissioner to have been so furnished, shall be received in proceedings before a magistrate under this section as evidence of the contents of the report.

25 (7) A magistrate shall hear and determine an appeal made to him under this section and may confirm (with or without variation) or disallow the refusal or revocation appealed against, or make such other order in the circumstances as to him seems just.

30 (8) A magistrate may disallow the refusal or revocation appealed against if, in all of the circumstances of the case, he considers it fair and reasonable to do so.

(9) Subject to this section, the provisions of the Industrial Arbitration Act, 1940, relating to a proceeding
35 before a magistrate apply to proceedings before a magistrate under this section.

Motor Dealers.

(10) The decision of a magistrate in respect of an appeal made under this section shall be final and shall be binding on the person appealing, and on the Commissioner who shall take such steps as may be necessary to give effect
5 to the decision.

(11) Where a joint application is refused or a joint licence is revoked, an appeal under this section against the refusal or the revocation may be made either by one of the applicants or holders, as the case may be, on behalf of all of
10 the applicants or holders, or by all of the applicants or holders jointly, but not otherwise.

(12) In this section—

“date of service” means—

(a) in the case of an appeal against a refusal to
15 grant a licence, the date of service of the notice of refusal; and

(b) in the case of an appeal against a revocation of a licence, the date of service of the notice of revocation;

20 “registrar” means the industrial registrar appointed under the Industrial Arbitration Act, 1940.

20. (1) The Commissioner shall cause to be kept a Register of register, in such form as he determines, of licences granted licences. and shall cause to be recorded therein in respect of each
25 licence—

(a) the matters which under section 14 are required to be specified in the licence;

(b) particulars of any amendment of the licence made under section 15;

(c)

Motor Dealers.

- (c) particulars of any fees paid, or due but not paid, in respect of the licence under section 17;
- (d) particulars of any revocation of the licence under section 18; and
- 5 (e) such other matters as may be prescribed.

(2) The Commissioner may cause to be made such alterations in the register as are necessary to ensure that the matters recorded therein in respect of any licence are accurate.

(3) The register may, at all reasonable hours, be
10 inspected, and copies of all or any part of any entry in the register taken—

- (a) without payment, by—
 - (i) any member of the police force;
 - (ii) any officer in the public service; and
 - 15 (iii) any person authorised by the Commissioner; or
- (b) on payment of such fee as may be prescribed, by any other person.

(4) The register shall be received in proceedings
20 before any court or tribunal as evidence of the matters required by or under this Act to be recorded in it, and any document purporting to be certified by the Commissioner to be a true copy of an entry in the register shall be received in proceedings before any court or tribunal as evidence of
25 any such matters contained in the entry.

PART

Motor Dealers.

PART III.

DEALERS' AND OTHER RECORDS.

21. (1) This section does not apply—

Dealer's
register.

(a) to an exempted person; or

5 (b) in relation to an exempted motor vehicle.

(2) The holder of a dealer's licence shall keep a dealer's register at the place of business in respect of which the licence is granted.

Penalty : \$500.

10 (3) The holder of a dealer's licence shall enter in the register kept by him pursuant to subsection (2) at the place of business, in respect of which the licence is granted, the required particulars in relation to every second-hand vehicle bought, exchanged or taken in possession for sale, in, or for
15 the purpose of, carrying on the business of a dealer at that place, and shall sign his name to the entry.

Penalty : \$500.

(4) The requirements of subsection (3) shall be complied with in relation to a motor vehicle immediately after
20 the vehicle is bought, exchanged or taken in possession for sale, as the case may be.

(5) It is a sufficient compliance with subsection (3) if an agent of the dealer or a person employed by a dealer in his business as a dealer makes the entry required to be made
25 by that subsection in the dealer's register in relation to a second-hand motor vehicle, and signs his name to that entry.

(6)

Motor Dealers.

(6) A dealer shall not, pursuant to subsection (3), and an agent or an employee shall not, pursuant to subsection (5), in respect of any particulars required under subsection (3) to be entered in the dealer's register, wilfully make an entry in the register that is false or misleading in a material particular.

Penalty : \$1,000.

(7) Where a joint licence (being a dealer's licence) is granted in respect of a place of business, or two or more dealers' licences are granted in respect of the same place of business to two or more persons carrying on in partnership the business of a dealer—

- (a) it is a sufficient compliance with subsection (2) if a single dealer's register is kept at the place of business; and
- (b) each holder of the licence is guilty of an offence under subsection (2) if that section is not complied with, and of an offence under subsection (3) if that subsection is not complied with.

(8) For the purposes of this section the required particulars in relation to a second-hand motor vehicle are—

- (a) the model designation of the vehicle recognised by the motor trade industry or the year of manufacture of the vehicle;
- (b) the numbers and letters of its registration (if any);
- (c) the identification number of the engine of the vehicle;
- (d) where the vehicle is equipped with an odometer, the reading on the odometer when the vehicle was bought, exchanged or taken in possession for sale;

(e)

Motor Dealers.

- 5 (e) the name and address of the person from whom the vehicle was bought, exchanged or taken in possession for sale and, if that person was a trade owner, the name and address of the last owner of the vehicle (if any) who was not a trade owner;
- (f) the date and hour of the day when the vehicle was bought, exchanged or taken in possession for sale;
- 10 (g) any cash or other consideration given or agreed to be given and a description of any such other consideration; and
- (h) such other particulars as may be prescribed.

15 **22.** Every vehicle-wrecker or person carrying on a prescribed business shall keep a register, in the prescribed form, at the place of business in respect of which the licence allowing him to carry on that business is granted and shall record or cause to be recorded in that register the particulars of every prescribed transaction entered into in the course of carrying on at that place the business of a vehicle-wrecker or the prescribed business, as the case may be.

20 **23.** (1) A dealer's register kept pursuant to section 21 or a register kept pursuant to section 22 at any place of business may, at all reasonable times, be inspected, and copies of all or any part of any entry in the register taken by—

- (a) any member of the police force;
- 25 (b) an inspector appointed under the Consumer Protection Act, 1969;
- (c) any person authorised in writing by the Commissioner; or
- 30 (d) any person authorised in writing by the Commissioner for Motor Transport.

(2)

Motor Dealers.

(2) Subject to subsection (3), any—

5 (a) dealer, vehicle-wrecker or person carrying on a prescribed business who, on demand made at a reasonable time, refuses or neglects to produce a register kept by him pursuant to section 21 or 22, as the case may be, to a person referred to in subsection (1); or

10 (b) person who wilfully obstructs any person referred to in that subsection while acting in the exercise of any powers conferred on him under that subsection,

is guilty of an offence and liable to a penalty of \$500.

(3) A dealer, a vehicle-wrecker or a person carrying on a prescribed business is not required under this section to 15 produce a register, kept by him pursuant to section 21 or 22, to any person unless that person produces evidence of his appointment or authority, if requested to do so.

PART IV.

DEALINGS IN MOTOR VEHICLES.

20 **24.** (1) Subject to subsection (2), where a dealer offers or displays for sale a second-hand motor vehicle he shall attach, or cause to be attached, to the vehicle, in the manner prescribed, a notice, in the prescribed form, containing the required particulars in relation to that vehicle.

Notice to be displayed on second-hand motor vehicle offered for sale.

(2)

Motor Dealers.

(2) Subsection (1) does not apply to or in relation to the offering or displaying for sale of a second-hand motor vehicle for the purposes only of sale—

- (a) by bona fide auction;
- 5 (b) to an exempted person; or
- (c) to a trade owner.

(3) A notice shall not be treated for the purposes of subsection (1) as containing the required particulars if any of the required particulars contained in the notice is false
10 or misleading in a material particular.

(4) Where a second-hand motor vehicle is offered or displayed for sale by a dealer in circumstances where subsection (1) applies and the vehicle is sold the dealer shall immediately after the completion of the sale sign a copy of
15 the notice attached pursuant to subsection (1) to the vehicle and deliver it to the purchaser of the vehicle.

(5) Where a second-hand motor vehicle is offered or displayed for sale by a dealer in circumstances where subsection (1) applies and a sale of the vehicle is effected by an
20 agent of the dealer or a person employed by the dealer in his business as a dealer, compliance by that agent or employee with the requirements of subsection (4) shall be treated as compliance by the dealer with those requirements.

(6) Where—

- 25 (a) an individual carrying on the business of a dealer does not comply with the requirements of subsection (1) or the requirements of subsection (4), he is guilty, in either case, of an offence;

(b)

Motor Dealers.

5 (b) an individual carrying on in partnership (whether under a joint licence or otherwise) the business of a dealer does not comply with the requirements of subsection (1) or the requirements of subsection (4), he and each of the partners are, in either case, guilty of an offence; or

10 (c) a corporation carrying on the business of a dealer does not comply with the requirements of subsection (1) or the requirements of subsection (4), the corporation is, in either case, guilty of an offence,

and liable to a penalty of \$500.

(7) For the purposes of this section the required particulars in relation to a second-hand motor vehicle are—

15 (a) the name and business address of the dealer by whom the vehicle is offered or displayed for sale;

(b) the numbers and letters of its registration (if any);

20 (c) where the dealer is acting on behalf of another dealer, a statement to that effect and the name and address of that other dealer;

(d) where the vehicle is equipped with an odometer, the reading on the odometer entered by the dealer pursuant to section 21 in the dealer's register;

25 (e) the cash price of the vehicle or, where the vehicle is a vehicle repossessed by a financier and is offered for sale by way of tender, a statement to that effect;

30 (f) the model designation of the vehicle recognised by the motor trade industry or the year of manufacture of the vehicle; and

(g) such other particulars as may be prescribed.

(8)

Motor Dealers.

5 (8) In any case where the holder of a dealer's licence is acting on behalf of another dealer, this section, if it applies, applies to the dealer so acting and not to the other dealer, and the dealer so acting, or an agent of the dealer so acting or a person employed by that dealer and acting pursuant to subsection (5), shall comply with this section.

(9) In any case where subsection (8) applies the dealer's register referred to in subsection (7) (d) is the register of the dealer acting on behalf of the other dealer.

10 (10) This section does not apply to or in relation to the sale of an exempted motor vehicle.

25. (1) This section does not apply to or in relation to the sale of an exempted motor vehicle.

Sale of second-hand motor vehicle to trade owner.

15 (2) A dealer who sells a second-hand motor vehicle to another dealer shall sign a disposal notice, in the prescribed form, containing the required particulars and forthwith deliver it to that other dealer.

20 (3) A dealer who arranges with an auctioneer for the sale by the auctioneer of a second-hand motor vehicle, shall comply with the requirements of subsection (2) in every respect as if the auctioneer were another dealer purchasing the vehicle.

25 (4) Where the agent of a dealer or a person employed by a dealer in his business as a dealer, in his capacity as such an agent or employee—

(a) sells a second-hand motor vehicle to another dealer; or

(b) arranges with an auctioneer for the sale by an auctioneer of a second-hand vehicle,

30 compliance by that agent or employee with the requirements of subsection (2) or (3), as the case may be, shall be treated as compliance by the dealer with those requirements.

Motor Dealers.

(5) Where—

- 5 (a) an individual carrying on the business of a dealer does not comply with the requirements of subsection (2) or the requirements of subsection (3), he is guilty, in either case, of an offence;
- 10 (b) an individual carrying on in partnership (whether under a joint licence or otherwise) the business of a dealer does not comply with the requirements of subsection (2) or the requirements of subsection (3), he and each of the partners are, in either case, guilty of an offence; or
- 15 (c) a corporation carrying on the business of a dealer does not comply with the requirements of subsection (2) or the requirements of subsection (3), the corporation is, in either case, guilty of an offence,

and liable to a penalty of \$500.

- 20 (6) Where an auctioneer, pursuant to an arrangement under subsection (3) or (4) (b), sells a motor vehicle by bona fide auction to a person known to him to be a dealer he shall forthwith deliver to that person the disposal notice delivered to the auctioneer pursuant to subsection (3).

Penalty : \$500.

- 25 (7) A notice shall not be treated for the purposes of subsection (2) or (3) as containing the required particulars if any of the required particulars contained in the notice is false or misleading in a material particular.

(8) For the purposes of this section the required particulars, in relation to a second-hand motor vehicle, are—

- 30 (a) the name and business address of the dealer selling the vehicle;

(b)

Motor Dealers.

- (b) the numbers and letters of its registration (if any);
- (c) where the dealer is acting on behalf of another dealer, a statement to that effect and the name and address of that other dealer;
- 5 (d) the name and address of the last owner of the vehicle (if any) who was not a trade owner;
- (e) where the vehicle is equipped with an odometer, the reading on the odometer entered pursuant to section 21 in the dealer's register;
- 10 (f) the model designation of the vehicle recognised by the motor trade industry or the year of manufacture of the vehicle; and
- (g) such other particulars as may be prescribed.

15 (9) In any case where the holder of a dealer's licence is acting on behalf of another dealer, subsections (2) and (3) apply to the dealer so acting and not to the other dealer, and the dealer so acting, or an agent of that dealer so acting or a person employed by that dealer and acting pursuant to subsection (4), shall comply with subsections (2) and (3).

20 (10) In any case where subsection (9) applies the dealer's register referred to in subsection (8) (e) is the register of the dealer acting on behalf of the other dealer.

26. In proceedings for an offence under section 24 or 25 Defences. it is a defence if—

- 25 (a) in the case of the omission of any required particular from a notice referred to in either of those sections, the accused person proves that the motor vehicle concerned was brought into the State for the purpose of resale and that the required particular omitted was unknown to him and could not, with
- 30 reasonable diligence, be ascertained by him; or

(b)

Motor Dealers.

- 5 (b) in the case of the inclusion in any such notice of a required particular relating to the year of manufacture or the model designation of the motor vehicle concerned, or to any matter prescribed for the purposes of this section, that is false or misleading in a material particular, the accused person proves that he took all reasonable steps to ascertain the true particulars and that those included were, to the best of his knowledge and belief, true.
- 10 27. (1) Except as provided in this section and sections 28 and 29— Obligations of dealer.
- 15 (a) where a motor vehicle (not being a second-hand motor vehicle) is sold on or after the commencement of this section, by a dealer, and before—
- (i) the vehicle has been driven for 20,000 kilometres after being so sold; or
- (ii) the expiration of the period of twelve months after the vehicle is so sold,
- 20 whichever first occurs, a defect appears or occurs in the vehicle;
- (b) where a second-hand motor vehicle is sold on or after the commencement of this section by a dealer at a cash price of or over \$1,000, or such greater amount as may be prescribed, and before—
- 25 (i) the vehicle has been driven for 5,000 kilometres after being so sold; or
- (ii) the expiration of the period of three months after the vehicle is so sold,
- 30 whichever first occurs, a defect appears or occurs in the vehicle; or
- (c)

Motor Dealers.

(c) where a second-hand motor vehicle is sold on or after the commencement of this section by a dealer at a cash price of less than \$1,000, or such greater amount as may be prescribed, and before—

- 5 (i) the vehicle has been driven for 3,000 kilometres after being so sold; or
- (ii) the expiration of the period of two months after the vehicle is so sold,

10 whichever first occurs, a defect appears or occurs in the vehicle,

the dealer shall, whether or not that defect existed at the time of the sale, at his own expense, repair or make good, or cause to be repaired or made good, the defect so as to place the vehicle in a reasonable condition having regard to its age and

15 his obligation to do so shall be deemed to be a term of the contract of sale relating to the vehicle.

(2) For the purposes of calculating the period referred to in subsection (1) (a) (ii), (1) (b) (ii) or (1) (c) (ii), no regard shall be paid to any period during which

20 the dealer has the motor vehicle in his possession for the purpose or purported purpose of ascertaining or carrying out his obligations under this section.

(3) The obligation of a dealer under subsection (1) (a) in relation to a motor vehicle sold by him is extinguished

25 if, subsequent to that sale, he or another dealer acquires ownership of the vehicle, or the vehicle is repossessed by a financier.

(4) Subject to subsection (3), the obligation of a dealer under subsection (1) (a) in relation to a motor vehicle

30 subsists for the benefit of the owner, from time to time, of the vehicle and, for this purpose, the owner from time to time shall be deemed to have entered into a contract of sale with the dealer in respect of the vehicle.

(5)

Motor Dealers.

(5) The obligation of a dealer under subsection (1) (b) or (c) in relation to a motor vehicle sold by him is an obligation only to the person who purchased the vehicle from him.

5 (6) The revocation under section 18 of a dealer's licence or the ceasing of the licence to have effect under section 17 (5), does not affect his liability under this section.

(7) The fact that a dealer is not the holder of a dealer's licence or has ceased to be a dealer does not affect **10** his liability under this section.

(8) In any case where the holder of a dealer's licence is acting on behalf of another dealer in selling a motor vehicle this section applies to the dealer so acting and not to the other dealer, and the dealer so acting is liable to perform **15** the obligations under this section.

(9) A motor vehicle is not a second-hand motor vehicle for the purposes of subsection (1) (a) by reason only that the vehicle has been registered in the name of the dealer who sells the vehicle, or in the name of a dealer on whose **20** behalf the vehicle is sold, or in the name of any person on behalf of any such dealer.

(10) Where a motor vehicle is sold it is not a second-hand motor vehicle for the purposes of subsection (1) (a) by reason only that it is registered in the name of the **25** purchaser prior to the completion of the sale.

(11) Where a motor vehicle is registered in the name of any person in anticipation of the sale of the vehicle to that person, but the sale of the vehicle to that person is not completed, the vehicle is not a second-hand vehicle for the **30** purposes of subsection (1) (a) by reason only of being so registered.

Motor Dealers.

28. (1) Section 27 (1) does not apply to or in relation to any defect—

- (a) that is a defect to which, pursuant to section 29, section 27 (1) does not apply;
- 5 (b) occurring in the tyres, battery or any prescribed accessory to a motor vehicle;
- (c) arising from or incidental to any accidental damage to a motor vehicle that occurred after the sale, referred to in section 27 (1), of the vehicle, and when the vehicle was not in the possession of the dealer; or
- 10 (d) arising from misuse or negligence on the part of a driver of a motor vehicle, or arising from the use of a motor vehicle for motor racing or motor rallying, that occurred after the sale, referred to in
- 15 section 27 (1), of the vehicle.

(2) In the case of a second-hand motor vehicle section 27 (1) does not apply in relation to any superficial damage to the paint-work or upholstery of the vehicle which would have been apparent on a reasonable inspection of the vehicle carried out at the time of the sale, referred to in section 27 (1), of the vehicle.

(3) Section 27 (1) does not apply to or in respect of the sale of—

- 25 (a) a motor vehicle to a trade owner;
- (b) a second-hand motor vehicle where the purchaser has been in possession of the vehicle for a period of not less than three months immediately preceding the day of that sale;
- 30 (c) a motor vehicle to an exempted person; or
- (d) a commercial vehicle, a motor cycle or a trailer.

(4)

Motor Dealers.

5 (4) Where the proposed purchaser of a motor vehicle (not being a second-hand motor vehicle) is in possession of the vehicle for a period immediately preceding the day on which he purchases that vehicle from a dealer then, for the purposes of section 27 (1) (a), he shall be treated as having purchased the vehicle on the day when he first acquired that possession.

(5) Section 27 (1) does not apply to or in respect of the sale of—

10 (a) a second-hand motor vehicle by a dealer on behalf of a financier where the motor vehicle is a vehicle which was sold by the financier under a hire-purchase agreement and subsequently repossessed by him;

15 (b) a second-hand motor vehicle where the cash price is less than \$500 or such greater amount as may be prescribed; or

(c) an exempted motor vehicle,

20 if, but only if, at all material times when the vehicle is offered or displayed for sale by the dealer, or caused or permitted to be so offered or displayed, there is attached, in the prescribed manner to the vehicle, a notice, in the prescribed form, to the effect that section 27 (1) does not apply to or in respect of the sale of the vehicle.

25 (6) Section 27 (1) does not apply to or in respect of the sale of a second-hand motor vehicle by bona fide auction if, but only if, there is attached, in the prescribed manner, to the vehicle at the time of the auction a notice, in the prescribed form, to the effect that section 27 (1) does not apply to or in
30 respect of the sale of the vehicle.

Motor Dealers.

29. (1) A dealer may attach, in the prescribed manner, ^{Excluded} to any second-hand motor vehicle offered or displayed for sale ^{defects.} a notice, in the prescribed form, setting out with reasonable particularity any defect that he believes to exist in the vehicle together with, in relation to each such defect, his estimate of the fair cost of repairing or making good the defect.

(2) If—

(a) a notice referred to in subsection (1) has, at all material times, been attached to a second-hand motor vehicle; and

(b) at or before the time of sale of the vehicle a copy of that notice has been signed by the purchaser and upon the sale a true copy of that notice as so signed has been delivered to the purchaser for retention by him,

then section 27 (1) shall not apply to or in relation to that defect.

(3) If in any notice referred to in subsection (1) the amount estimated by the dealer as the fair cost of repairing or making good that defect is less than the amount of the fair cost of then repairing or making good that defect the purchaser may sue for and recover the difference between those fair costs as a debt due to the purchaser from the dealer.

PART V.

DISPUTES AND RESCISSIONS.

30. (1) In this Part, except in so far as the context or ^{Interpre-} subject-matter otherwise indicates or requires— ^{tation.}

“applicant” means a person who makes an application;

“application” means an application under section 31 (1) to the Commissioner, but does not include an application that has been withdrawn;

“dispute”

Motor Dealers.

“dispute” means a disagreement under section 31 (1) which is the subject of an application;

“disputes committee” means a committee appointed under section 34;

5 “tribunal” includes a Consumer Claims Tribunal constituted under the Consumer Claims Tribunals Act, 1974.

(2) A reference in this Part to a dealer includes a reference to a person who was a dealer when he sold a motor 10 vehicle that is the subject of such a disagreement as is referred to in section 31 (1) or of a dispute, notwithstanding that he has ceased to be a dealer since that vehicle was sold.

31. (1) Where, in relation to a motor vehicle, a dis- Disputes. agreement exists between a purchaser or an owner of the 15 vehicle, and a dealer concerning any one or more of the following, namely—

- (a) the existence or extent of any obligation under section 27 on the part of the dealer to the purchaser or the owner;
- 20 (b) the manner of carrying out any such obligation;
- (c) the amount of the fair cost of repairing or making good any defect referred to in section 29; or
- (d) any other matter or thing, whether or not of the same kind as a matter referred to in paragraph (a), 25 (b) or (c), arising out of the application of this Act,

the purchaser or the owner, as the case may be, may apply in writing to the Commissioner to investigate and determine the disagreement.

Motor Dealers.

(2) The Commissioner shall not exercise any power conferred on him by section 32, 33, 35 or 36 in connection with any matter in issue in a dispute—

- 5 (a) if proceedings in respect of that matter are pending before a court or a tribunal at the time when the application relating to the dispute is received by the Commissioner, unless those proceedings are discontinued before judgment is given by the court or a determination is made by the tribunal; or
- 10 (b) if, at that time, that matter has been decided by a court or a tribunal, or a court or a tribunal decides that matter pursuant to proceedings which are pending at that time.

(3) Where an application is made to the Commissioner a court or a tribunal has no jurisdiction in connection with any matter in issue in the dispute to which the application relates—

- 15 (a) unless subsection (2) applies in respect of that matter;
- 20 (b) unless the application is withdrawn; or
- (c) except in respect of proceedings commenced in a court or a tribunal after the Commissioner has dealt with the matter under this Part.

(4) An application may be withdrawn at any time.

25 **32.** (1) The Commissioner shall use his best endeavours by communication with the applicant and the dealer, or otherwise, to settle a dispute. ^{Settlement of disputes.}

(2) Where the Commissioner settles a dispute the application concerned shall be deemed to have been
30 withdrawn.

(3)

Motor Dealers.

(3) A dispute shall not be treated as having been settled unless the terms of the settlement are incorporated in a document and signed by the applicant, the dealer and the Commissioner.

5 (4) Where a dispute is settled as provided in this section the settlement shall have the same force and effect as it would have if it were a determination by the Commissioner under section 35.

10 (5) A document purporting to be signed by the Commissioner and to set out the terms of a settlement shall be received in proceedings before any court or tribunal as evidence of that settlement and the terms thereof.

15 **33.** (1) Where the Commissioner is unable under section 32 to settle a dispute he shall, subject to subsection (3), investigate the dispute. Investigation by Commissioner.

(2) The Commissioner may determine his own procedure for the purpose of investigating a dispute.

20 (3) The Commissioner may refer a dispute, or any matter forming part of, arising out of or in connection with, a dispute to a disputes committee for investigation.

(4) The Commissioner may give directions to a disputes committee with respect to the carrying out by the committee of an investigation.

25 of— **34.** (1) A disputes committee shall comprise a nominee Disputes committee.

- (a) the Commissioner;
- (b) the National Roads and Motorists' Association;
- (c) the Motor Traders' Association of New South Wales; and

(d)

Motor Dealers.

- (d) where the motor vehicle to which the dispute relates is a motor vehicle to which section 27 (1) (a) applies, or is alleged to apply, the Chamber of Automotive Industries of New South Wales,
- 5 appointed by the Commissioner.
- (2) Subject to any directions given by the Commissioner under section 33 (4), a disputes committee may determine its own procedure for the purpose of carrying out an investigation.
- 10 (3) A disputes committee shall report to the Commissioner the result of any investigation carried out by it and shall state in the report any recommendation which it wishes to make.
- 15 (4) Where the members of a disputes committee do not agree that a recommendation should be stated in the report to the Commissioner, or on the nature of the recommendation to be so stated, it shall record the disagreement in its report and may state in the report more than one recommendation.
- 20 (5) In determining a dispute the Commissioner shall have regard to the report of a disputes committee but is not bound to follow any recommendation contained in the report.
- 25 (6) Where a body referred to in subsection (1) (b), (c) or (d) changes its name and the Commissioner is satisfied that the change of name is not accompanied by any change in the nature of the body, he may, by instrument in writing, so certify and, subject to subsection (7), as from the date of that instrument the reference in subsection (1) (b), (c) or (d), as the case may be, shall be deemed to be a reference to the body under that changed name.
- 30 (7) The power of the Commissioner under subsection (6) may be exercised in relation to a body under a changed name as if that body, under that changed name, were referred to in subsection (1).

Motor Dealers.

35. (1) When the investigation of a dispute is completed the Commissioner shall determine the dispute and, for the purpose of so doing, may do any one or more of the following, namely—

Deter-
mination of
dispute.

- 5 (a) find that an obligation exists or does not exist under section 27;
- (b) determine the extent of an obligation;
- (c) determine the amount of the fair cost of repairing or making good any defect referred to in section
- 10 29; or
- (d) make any other finding or determination ancillary to a finding or determination referred to in paragraph (a), (b) or (c).

(2) Subject to subsection (3), where the Commis-
15 sioner determines that an obligation exists, in connection with a motor vehicle, under section 27 (1) (a), he shall recommend that the manufacturer of the vehicle contribute towards the cost of the dealer in discharging the obligation to such extent as he specifies in the recommendation.

20 (3) The Commissioner shall not make a recommendation under subsection (2) unless—

- (a) having regard to the nature of the defects in the vehicle and the other circumstances of the dispute, it is, in his opinion, fair and reasonable to do so;
- 25 and
- (b) the manufacturer or his agent has been afforded, in the course of the investigation of the dispute, an opportunity of being heard.

(4)

Motor Dealers.

(4) A recommendation by the Commissioner under subsection (2) does not prejudice the right of an applicant to enforce any obligation against a dealer.

5 (5) A finding or a determination of the Commissioner under subsection (1) and the terms thereof shall be binding on the applicant and the dealer and shall not be challenged in any proceedings whatsoever.

(6) Where, pursuant to subsection (1) (c), the Commissioner determines that the fair cost of repairing or
10 making good a defect is greater than the amount estimated in that connection by a dealer he may, in his discretion, order that the dealer pay to the claimant the amount represented by the difference and, if he does so, the claimant may enforce the order by filing, free of charge, with the registrar of a
15 court of competent jurisdiction—

(a) a copy of the order certified by the Commissioner to be a true copy; and

(b) the affidavit of the claimant as to the amount unpaid under the order,

20 and thereupon the registrar concerned shall enter judgment in favour of the claimant against the dealer for the amount specified in the affidavit as being unpaid.

(7) A document purporting to be signed by the Commissioner and to set out any finding or determination by
25 the Commissioner in a dispute and the terms thereof shall be received in proceedings before any court or tribunal as evidence of that finding or determination and the terms thereof.

36. (1) Without limiting the generality of the powers
30 conferred on the Commissioner under section 35, where the Commissioner is satisfied that—

Order for repair of defects.

(a) an obligation lies on a dealer under section 27; and

(b) the dealer has unreasonably—

35 (i) refused or failed to carry out that obligation; or

(ii)

Motor Dealers.

(ii) delayed or prevaricated in the carrying out of that obligation,

the Commissioner may order that any defect required to be repaired or made good under section 27 shall be repaired or
5 made good by a person (being a person other than the dealer) named in the order.

(2) Where an order is made under subsection (1) and, pursuant to the order, the applicant contracts to have the defect repaired or made good by the person named in the
10 order, the dealer shall be liable to indemnify the applicant against all costs or expenses payable by the applicant under the contract to have the defect repaired or made good, and the amount of those costs and expenses may be recovered by the applicant as a debt due from the dealer to the applicant
15 in any court of competent jurisdiction.

(3) Notwithstanding anything to the contrary in any Act or law, where an order is made under subsection (1) the dealer shall not have a lien over the motor vehicle to which the order relates in relation to any work done or purported
20 to have been done by the dealer in repairing or making good any defect to which the order relates.

37. A person shall not wilfully make any false or mis-
leading statement in or in relation to any proceeding for the
investigation or determination of a claim. False or misleading statements.

25 Penalty : \$200.

38. (1) Where the Commissioner is of the opinion— Rescission of sale.
(a) that a motor vehicle sold by a dealer is substantially different from the vehicle as represented in a notice under section 24; or
30 (b) that a notice required under that section to be displayed in relation to the vehicle was not displayed and that the vehicle as so sold was substantially different from the vehicle as represented by the dealer,

the

Motor Dealers.

the Commissioner may apply to a magistrate for an order for rescission of the sale of the vehicle.

(2) An application under this section shall set out the grounds on which it is made.

5 (3) Upon hearing the Commissioner or a representative of the Commissioner and upon affording any other person likely to be affected by any order made under this section an opportunity of being heard the magistrate may order that the sale be rescinded, the vehicle returned to the dealer
10 and any consideration passed by the purchaser or the value of any such consideration assessed under subsection (5) returned to the purchaser, and may make such further or consequential orders, including an order as to the payment of the costs of the application, as to him seem necessary or
15 desirable.

(4) Where a dealer is convicted of an offence under section 24 in respect of a vehicle sold by the dealer and the magistrate is of the opinion—

- 20 (a) that the vehicle is substantially different from the vehicle as represented in a notice under section 24; or
- (b) where no such notice was displayed in relation to the vehicle, that the vehicle as so sold was substantially different from the vehicle as
25 represented by the dealer,

the magistrate may, in addition to any penalty imposed, order that the sale be rescinded, the vehicle returned to the dealer and any consideration passed by the purchaser or the value of any such consideration assessed under subsection (5) returned
30 to the purchaser, and may make such further or consequential orders as to him seem necessary or desirable.

(5) Where in respect of any sale referred to in subsection (1) or subsection (4) all or part of the consideration that passed from the purchaser is represented by a motor

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vehicle or other thing, the magistrate may for the purposes of this section assess the value of that motor vehicle or other thing.

(6) Where there is a collateral credit agreement
5 associated with a sale of a motor vehicle that has been rescinded under this section the obligations and rights of the purchaser under that agreement shall, by force of this section, be transferred from the purchaser to the dealer and subject to
10 this section may be enforced by or against the dealer in all respects as if he were the purchaser.

(7) Notwithstanding any Act or law to the contrary, upon the making of an order rescinding a sale of a motor vehicle the rights and obligations of the parties under any contract or agreement relating to the sale or under any
15 collateral credit agreement associated with the sale of the motor vehicle shall be as provided for in that order or in any order ancillary to or consequential upon that order, and without limiting the generality of the foregoing it shall not be a bar to the making of an order rescinding a sale that the parties
20 cannot be restored to the positions that existed prior to the sale.

(8) Subject to subsection (10) (b), the provisions of the Industrial Arbitration Act, 1940, and the regulations made under that Act, relating to proceedings before a magis-
25 trate and to appeals from a magistrate to the Industrial Commission of New South Wales shall apply to proceedings before a magistrate under this section as if the proceedings under this section were proceedings under that Act.

(9) For the purposes of this section a collateral credit
30 agreement associated with the sale of a motor vehicle is a contract or agreement, arranged or procured by the dealer selling the vehicle, for the provision of credit by a person (other than that dealer) for the purposes of the sale of the vehicle.

35 (10) The regulations may—

(a) provide for the enforcement of any order made under this section; and

(b)

Motor Dealers.

- 5 (b) make provision for or with respect to appeals under this section from a magistrate to the Industrial Commission of New South Wales, whether in addition to the provisions of, or in substitution for any of the provisions of, the Industrial Arbitration Act, 1940, or the regulations made under that Act and relating to appeals.

PART VI.

COMPENSATION FUND.

10 **39.** (1) There shall be established in the Special Deposits Motor
Account in the Treasury a Motor Dealers Compensation Fund Dealers
(hereinafter in this Part referred to as "the Fund"). Compensa-
tion Fund.

(2) There shall be paid into the Fund—

- 15 (a) such proportion of the fees paid under this Act or the regulations as is determined in accordance with subsection (3); and
- 20 (b) any money recovered by the Commissioner in the exercise of any rights, or the pursuit of any remedies, to which he is subrogated under section 41.

(3) All fees paid under this Act or the regulations shall be distributed between the Fund and the Consolidated Revenue Fund in the prescribed proportions.

25 (4) Subject to section 42, there shall be paid out of the Fund the amount of any loss which is certified by the Commissioner pursuant to section 40 (2).

40. (1) Any person wishing to make a claim against the Fund shall submit his claim in writing, verified by statutory Claims
declaration, to the Commissioner. against
Fund.

(2)

Motor Dealers.

(2) Subject to this section, if the Commissioner is satisfied that a person submitting a claim has incurred a loss in connection with a motor vehicle (not being an exempted motor vehicle) by reason of the failure of a dealer to comply with any obligation arising under this Act with which he is required to comply, or by reason of the fact that a dealer has not passed an unencumbered title to the vehicle, the Commissioner may certify the amount of the loss.

(3) No loss shall be certified by the Commissioner if the loss was incurred in connection with a motor vehicle sold before the commencement of section 9.

(4) No loss shall be certified by the Commissioner unless the Commissioner is satisfied that the claimant has taken all reasonable steps to exercise such legal remedies and other rights of action available in respect of the loss incurred by him.

(5) The Commissioner shall not certify a loss incurred by a trade owner or by a person who was a trade owner when he purchased the motor vehicle in connection with which the loss is incurred.

41. On payment out of the Fund of any amount certified by the Commissioner, the Commissioner shall be subrogated to the extent of such payment to all the rights and remedies of the claimant against the person in relation to whom the claim arose or any other person incurring any liability to the claimant in relation to the subject-matter of the claim or the legal personal representatives or other persons having authority to administer any estate concerned, and the claimant shall not, to the extent of such payment be entitled to enforce those rights or remedies.

Subrogation
where claim
allowed.

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42. Where the amount standing to the credit of the Fund is insufficient to pay all the amounts certified by the Commissioner under section 40 (2) in any financial year, any such amount, so far as it remains unpaid, shall be charged against future receipts of the Fund and shall be paid out of the Fund when sufficient moneys are available therein.

Deferred payments out of Fund.

PART VII.

GENERAL.

43. Except as is expressly provided in this Act, nothing in this Act shall have the effect of limiting, restricting or otherwise affecting any right or remedy which a person would have if this Act had not been enacted.

Saving of rights and remedies.

44. A person shall not, without the prior consent in writing of the Commissioner, be competent to waive any rights conferred on him by this Act and the purported waiver of any such rights without that consent is of no effect.

No waiver of rights.

45. (1) Subject to subsection (2), where a dealer incurs any costs or expenses by virtue of the operation of this Act in relation to the sale of a motor vehicle, the dealer is not entitled to be indemnified in respect of those costs or expenses by any antecedent owner and any contract or agreement providing, directly or indirectly, for the dealer to be so indemnified is, to the extent that it does so, void.

No indemnity for dealer.

(2) Subsection (1) does not apply to a contract or agreement providing for a dealer to be indemnified, as provided in that subsection, by an antecedent owner of a motor vehicle who is a dealer or a manufacturer.

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46. (1) This section does not apply to or in respect of the sale of—

Prohibition against selling registered vehicle.

- (a) a motor vehicle to a trade owner;
- (b) a motor vehicle by bona fide auction; or
- 5 (c) a motor vehicle by a dealer on behalf of a financier where the motor vehicle is a vehicle which was sold by the financier under a hire-purchase agreement and subsequently repossessed by him.

10 (2) Subject to subsection (3), a dealer shall not sell a motor vehicle that is registered under and in accordance with the regulations at a cash price of less than \$500, or such greater amount as may be prescribed, unless a certificate in relation to the vehicle is in force.

15 Penalty : \$500.

(3) In proceedings for an offence under subsection (2) it is a defence if the accused person proves that the motor vehicle concerned was sold to a vehicle-wrecker for the purpose of being demolished.

20 (4) For the purposes of this section a certificate in relation to a motor vehicle is in force if it is issued not earlier than one month before the sale of the vehicle.

(5) In this section—

25 “certificate” means, in relation to a motor vehicle, a certificate of inspection issued under the regulations in relation to that vehicle;

“regulations” means regulations under the Motor Traffic Act, 1909.

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47. (1) A person shall not, with intent to deceive any person—

Certain misdescriptions prohibited.

- 5 (a) alter or cause or permit to be altered, or connive at the alteration of, the reading of an odometer on a second-hand motor vehicle;
- (b) state or represent as the year of manufacture of a second-hand motor vehicle a year other than the actual year of manufacture of the vehicle;
- 10 (c) state or represent as the year of first registration of a second-hand motor vehicle a year other than the actual year of first registration of the vehicle; or
- 15 (d) state or represent as the model designation of a second-hand motor vehicle a model designation other than the actual model designation of the vehicle.

Penalty : \$500.

(2) Where a dealer or a person concerned in the management or conduct of the business of a dealer is convicted of an offence under subsection (1) a purchaser who
20 purchased the motor vehicle in respect of which that offence was committed relying on—

- (a) the reading of the odometer on the vehicle as altered; or
- 25 (b) the statement or representation as to the year of manufacture or the year of first registration or the model of the vehicle,

as the case may be, may sue for and recover from the dealer or the person so convicted, as the case may be, as a debt due to the purchaser the amount (if any) determined by the
30 magistrate, before whom the conviction is had, as being the difference between the sale price of the vehicle and its fair value at the time of the sale.

(3) For the purposes of this section “year of first registration” in relation to a motor vehicle means the year in
35 which the vehicle is first registered.

(4)

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(4) Nothing in this section affects the operation of Part III of the Consumer Protection Act, 1969, but a person shall not be prosecuted in respect of the same matter for an offence under this section and that Part.

5 **48.** (1) A dealer who sells any motor vehicle to any person (not being a trade owner) and fails to disclose to that person the fact that he is a dealer is guilty of an offence and liable to a penalty of \$500. Failure to disclose fact of being a dealer.

10 (2) A person who, in the capacity of servant or agent of a dealer, negotiates any sale of a motor vehicle to any person (not being a trade owner) and fails to disclose to that person—

- (a) the fact that the sale is being made by a dealer; or
- (b) the name and address of the dealer,

15 is guilty of an offence and liable to a penalty of \$500.

(3) This section does not apply to or in connection with an exempted motor vehicle.

49. (1) Where—

- 20 (a) a dealer causes or permits to be published any advertisement calculated to suggest that a motor vehicle is being offered or displayed for sale, or that inquiries concerning a motor vehicle may be made by potential purchasers, at any premises or by telephoning any telephone number; Publica- tion of certain advertise- ments.
- 25 (b) the advertisement does not disclose that the person on whose behalf it is published is a dealer; and
- (c) the premises are not, or the telephone number is not the telephone number of, the place at which the dealer carries on business,

30 the dealer is guilty of an offence and liable to a penalty of \$500.

(2)

Motor Dealers.

(2) This section does not apply to or in connection with an exempted motor vehicle.

5 **50.** A dealer shall not cause or permit to be published any advertisement referring to a specified motor vehicle, to any specified motor vehicles, or to any specified price at which any second-hand motor vehicle may be purchased, unless the registration number or numbers of the vehicle or vehicles are specified in the advertisement. Details in certain advertisements.

Penalty : \$200.

10 **51.** For the purposes of this Act any statement or representation made by an agent of a dealer or an employee of a dealer in his business as a dealer, in relation to the quality, description or history of a motor vehicle offered or displayed for sale by that dealer shall be deemed to be such a Representation by employee of dealer. representation or statement of the dealer. 15

52. (1) A person shall not submit or tender or cause or permit to be submitted or tendered a document, to which this section applies, to any person for his signature unless at the time of the submission or tendering of the document all Tender of documents for signature. material particulars in the document have been completed. 20

Penalty : \$200.

(2) This section applies to any document evidencing or recording a contract for—

- (a) the sale of a motor vehicle; or
- 25 (b) the provision of credit for the purposes of such a sale.

53.

Motor Dealers.

53. Any person who, without lawful authority, offers, ^{Bribery.}
makes or gives to any person authorised by the Commissioner
under section 6 or appointed by the Minister under that
section, any payment, gratuity or present in consideration that
5 that person will do or omit to do some act or thing pertaining
to his authority or appointment is guilty of an offence and
liable to a penalty of \$500.
54. Where an offence against this Act committed by a ^{Offences by}
corporation is proved to have been committed with the consent ^{corporations.}
10 or connivance of any director, manager, secretary or other
officer of the corporation, he, as well as the corporation, shall
be deemed to have committed that offence and shall be liable
to be proceeded against and punished accordingly.
55. (1) Proceedings for an offence against this Act ^{Proceedings.}
15 may—
(a) be taken and prosecuted by any person acting with
the authority of the Minister; and
(b) be disposed of summarily before a magistrate or a
stipendiary magistrate.
- 20 (2) In a prosecution for any such offence, an
authority to prosecute, purporting to have been signed by the
Minister, shall be evidence of such authority without proof
of the Minister's signature.
- (3) The provisions of the Industrial Arbitration Act,
25 1940, and the regulations made under that Act, relating to
proceedings before a magistrate and to appeals from a magis-
trate to the Industrial Commission of New South Wales shall
apply to proceedings before a magistrate or a stipendiary
magistrate for offences against this Act as if the proceedings
30 under this Act were proceedings under that Act.
- (4) In proceedings for an offence against this Act
the informant may conduct his case himself, or by his counsel
or attorney, or by an agent authorised by him in writing,
or by an officer in the public service.
- (5)

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(5) Any such proceedings shall be commenced by information laid at any time within twelve months after the time when the offence is alleged to have been committed.

56. (1) Where in any proceedings (whether for an ^{Evidence.} offence against this Act or otherwise) it is proved that on a certain day or during any period a person was the holder of a dealer's licence, a vehicle-wrecker's licence or a prescribed licence it shall be presumed, in the absence of proof to the contrary, that the person was a dealer, a vehicle-
10 wrecker or a person carrying on a prescribed business, as the case may be, on that day or during that period, as the case may be.

(2) A document purporting to be certified by the Commissioner and stating that a person is not, or was not,
15 on a date specified in the document the holder of a licence shall be received in proceedings before any court or tribunal as evidence of that fact.

57. (1) The Governor may make regulations, not incon- ^{Regulations.} sistent with this Act, prescribing any matter which by this
20 Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection
25 (1), the Governor may make regulations for or with respect to—

- 30
- (a) regulating the conduct of dealers, vehicle-wreckers or persons carrying on a prescribed business, or their servants or agents, in carrying on the business of a dealer or a vehicle-wrecker, or a prescribed business;
 - (b) prohibiting or regulating the employment by dealers, vehicle-wreckers or persons carrying on a prescribed business, of persons convicted of offences under this Act or of offences involving fraud or dishonesty

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- dishonesty or other prescribed offences, or persons whose application for a licence has been refused or whose licence has been revoked;
- 5 (c) requiring dealers, vehicle-wreckers or persons carrying on a prescribed business, or their servants or agents, to make reports to prescribed persons with respect to offences involving motor vehicles or such parts of motor vehicles as may be prescribed and to forward such copies of records kept by them, at
- 10 such intervals, as may be prescribed, to persons specified in the regulations;
- (d) providing for the payment to all or any of the members of a disputes committee appointed under section 34 of fees or travelling or other allowances;
- 15 (e) providing for the remission of any fees, or part of any fees, paid in respect of a licence, in prescribed circumstances;
- (f) prescribing the circumstances in which records required by this Act to be kept may be destroyed;
- 20 and
- (g) prohibiting the commission by dealers, vehicle-wreckers or persons carrying on a prescribed business, of any prescribed practices.
- (3) The regulations may impose a penalty not
- 25 exceeding \$500 for an offence arising under the regulations.
- (4) Regulations may be made so as to apply differently to different licences or to or in respect of the holders of different licences or according to such other factors as may be specified in the regulations.
- 30 (5) Different fees may be prescribed in respect of different licences, or in respect of restricted licences according to the nature of the restriction in their application.
- (6) A person or class of person may be prescribed for the purposes of the definition of "financier" in section
- 35 4 (1) notwithstanding that that person or class of person carries

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carries on the business of buying, selling or exchanging motor vehicles only for one or more of the purposes referred to in paragraph (a), (b), (c) or (e) of that definition.

5 **58.** (1) The holder of a licence under this Act is not Savings.
required to hold a license under the Second-hand Motor Dealers Act, 1956, and any license under that Act shall cease to have effect upon the issue to the holder thereof of a licence under this Act.

10 (2) Where a license under the Second-hand Motor Dealers Act, 1956, ceases to have effect (as provided in subsection (1)) the Commissioner for Motor Transport shall refund to the person who held the license the appropriate amount in respect of that license.

15 (3) For the purposes of subsection (2) the appropriate amount in respect of a license is the amount that equals one-twelfth of the fee paid for the license in respect of each whole month of the remainder of the period for which the license would have remained in force if it had not ceased to have effect.

20 **59.** The Second-hand Motor Dealers Act, 1956 (other than sections 18 and 19 thereof) is repealed. Repeal of Act No. 5, 1956.

60. The Motor Traffic Act, 1909, is amended by inserting Amendment of Act No. 5, 1909.
after section 3 (1) (g1) the following paragraph :—

25 (g2) provide, for the purposes of determining whether or not motor vehicles are suitable for safe use or comply with the requirements of this Act and the regulations—

30 (i) for the Commissioner to authorise in writing any person whom the Commissioner is satisfied is suitably qualified to inspect and test

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- test motor vehicles and to issue certificates of inspection and rejection, in a prescribed form and in a prescribed manner, relating to such inspections;
- 5 (ii) for the Commissioner to authorise in writing any person whom the Commissioner is satisfied has suitable premises and equipment to use the premises for the purposes of conducting any inspection referred to in
- 10 subparagraph (i);
- (iii) for the issue and renewal of authorities referred to in subparagraphs (i) and (ii), their duration and form, and the fees to be paid in connection with their issue;
- 15 (iv) for the maximum charge to be made for the issue of a certificate referred to in subparagraph (i) and for different charges to be made for inspection of different classes of vehicles;
- 20 (v) for the delivery by any person or class or classes of persons of a certificate referred to in subparagraph (i) in connection with the registration, renewal or registration or transfer of registration of any motor vehicle or in respect of any class or classes of motor
- 25 vehicles, whether classified by type or age, by the price paid or otherwise;
- (vi) for the issue by the Commissioner of rules to be observed by any person referred to in
- 30 subparagraph (i) or (ii);
- (vii) for any person authorised pursuant to subparagraph (ii) to provide a security fee, in a form required by the Commissioner, for an amount of twenty dollars, or such other
- 35 amount as may be prescribed, and for any

such

Motor Dealers.

- 5 such security fee to be forfeited to the
Commissioner if the Commissioner is
satisfied that the person has failed to comply
with any of the rules referred to in sub-
paragraph (vi);
- 10 (viii) for the Commissioner to cancel or suspend
any authority referred to in subparagraph
(i) or (ii) if the holder has failed to comply
with any rule referred to in subparagraph
(vi) or if the Commissioner is for any
reason of the opinion that the holder is not
a fit and proper person to continue to hold
such authority;
- 15 (ix) for the Commissioner to appoint a com-
mittee of review to which the Commissioner
may refer for consideration and report to
him any case where consideration is being
given to the refusal, cancellation or suspen-
20 sion of an authority referred to in subpara-
graph (i) or (ii), any such committee to
include representatives of such organisations
associated with trading and servicing of
motor vehicles as the Commissioner con-
siders appropriate;
- 25 (x) for an appeal to a court of petty sessions,
and for matters related to any such appeal,
against a refusal, cancellation or suspension
of any authority referred to in subparagraph
(i) or (ii) of this paragraph.

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MOTOR VEHICLES

even should fee be forfeited to the Commissioner if the Commissioner is satisfied that the person has failed to comply with any of the rules referred to in subparagraph (vi);

(viii) for the Commissioner to cancel or suspend any authority referred to in subparagraph (i) or (ii) if the holder has failed to comply with any rule referred to in subparagraph (vi) or if the Commissioner is for any reason of the opinion that the holder is not a fit and proper person to continue to hold such authority;

(ix) for the Commissioner to appoint a committee of review to which the Commissioner may refer for consideration and report to him any case where consideration is being given to the refusal, cancellation or suspension of an authority referred to in subparagraph (i) or (ii); any such committee to include representatives of such organizations associated with training and testing of motor vehicles as the Commissioner considers appropriate;

(x) for an appeal to a court of petty sessions and for matters related to any such appeal against a refusal, cancellation or suspension of any authority referred to in subparagraph (i) or (ii) of this paragraph.

MOTOR DEALERS BILL, 1974

EXPLANATORY NOTE

THE objects of this Bill are to regulate the carrying on of certain businesses, namely, a dealer's business, a vehicle-wrecker's business and a prescribed business, and to amend the Motor Traffic Act, 1909.

In pursuance of these objects the Bill—

- (a) makes provision for the licensing of dealers and vehicle-wreckers (as defined in clause 4 (1)) and of persons carrying on any prescribed business;
- (b) specifies in clause 13 the circumstances in which an application for the grant of a licence may be refused by the Commissioner for Consumer Affairs (hereinafter called "the Commissioner") and in clause 18 the circumstances in which a licence may be revoked by the Commissioner;
- (c) provides for an appeal to an industrial magistrate against the refusal to grant, or the revocation of, a licence;
- (d) requires a dealer to keep a dealer's register in which he is required to record the particulars mentioned in clause 21 (8) in respect of every second-hand motor vehicle bought, exchanged or taken in possession for sale, by him;
- (e) requires a dealer to attach to a second-hand motor vehicle which he offers or displays for sale a notice containing the particulars referred to in clause 24 (7) and to give to any purchaser of the vehicle a signed copy of the notice;
- (f) imposes in clause 27 obligations on a dealer in respect of vehicles sold by him;
- (g) makes provision in Part V for the settlement or determination by the Commissioner of disputes arising in connection with the obligations of a dealer;
- (h) provides in clause 38 for the rescission in certain circumstances of the sale of a motor vehicle;
- (i) provides in Part VI for the establishment of a Motor Dealers Compensation Fund, for the payment of money into that Fund and for meeting out of that Fund certain losses incurred by persons in connection with the purchase by them of motor vehicles;
- (j) creates certain offences including the offence of carrying on without a licence a business for which a licence is required under the Act, for which a penalty of \$1,000 may be imposed;
- (k) amends the Motor Traffic Act, 1909, so as to provide for the making of regulations with respect to the inspection of motor vehicles and the issue of certificates relating to such inspections; and
- (l) makes other provisions of a minor or ancillary character.

MOTOR DEALERS BILL, 1974

EXPLANATORY NOTE

The object of this Bill is to regulate the carrying on in certain local government areas of a business of a motor dealer and to amend the Motor Dealers Act, 1968.

The Bill is divided into three parts.

Part I contains provisions for the licensing of motor dealers and for the carrying on of a business of a motor dealer in a local government area.

Part II contains provisions for the regulation of the carrying on of a business of a motor dealer in a local government area. It includes provisions for the regulation of the carrying on of a business of a motor dealer in a local government area and for the regulation of the carrying on of a business of a motor dealer in a local government area.

Part III contains provisions for the regulation of the carrying on of a business of a motor dealer in a local government area. It includes provisions for the regulation of the carrying on of a business of a motor dealer in a local government area and for the regulation of the carrying on of a business of a motor dealer in a local government area.

Part IV contains provisions for the regulation of the carrying on of a business of a motor dealer in a local government area. It includes provisions for the regulation of the carrying on of a business of a motor dealer in a local government area and for the regulation of the carrying on of a business of a motor dealer in a local government area.

Part V contains provisions for the regulation of the carrying on of a business of a motor dealer in a local government area. It includes provisions for the regulation of the carrying on of a business of a motor dealer in a local government area and for the regulation of the carrying on of a business of a motor dealer in a local government area.

Part VI contains provisions for the regulation of the carrying on of a business of a motor dealer in a local government area. It includes provisions for the regulation of the carrying on of a business of a motor dealer in a local government area and for the regulation of the carrying on of a business of a motor dealer in a local government area.

Part VII contains provisions for the regulation of the carrying on of a business of a motor dealer in a local government area. It includes provisions for the regulation of the carrying on of a business of a motor dealer in a local government area and for the regulation of the carrying on of a business of a motor dealer in a local government area.

Part VIII contains provisions for the regulation of the carrying on of a business of a motor dealer in a local government area. It includes provisions for the regulation of the carrying on of a business of a motor dealer in a local government area and for the regulation of the carrying on of a business of a motor dealer in a local government area.

Part IX contains provisions for the regulation of the carrying on of a business of a motor dealer in a local government area. It includes provisions for the regulation of the carrying on of a business of a motor dealer in a local government area and for the regulation of the carrying on of a business of a motor dealer in a local government area.

PROOF

No. , 1974.

A BILL

To provide for the granting of licences to persons carrying on the business of a motor dealer or a vehicle-wrecker, or a prescribed business; to require motor dealers, vehicle-wreckers and persons carrying on a prescribed business to keep certain records; to impose certain obligations on a motor dealer in relation to motor vehicles offered or displayed for sale or sold by him; to provide for the settlement by the Commissioner for Consumer Affairs of certain disputes arising in connection with the sale of motor vehicles; to establish a Motor Dealers Compensation Fund; for these and other purposes

Motor Dealers.

purposes to repeal the Second-hand Motor Dealers Act, 1956 (other than sections 18 and 19 thereof); to amend the Motor Traffic Act, 1909; and for purposes connected therewith.

[MR MORRIS—26 March, 1974.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY AND INTERPRETATION.

1. This Act may be cited as the "Motor Dealers Act, 1974". Short title.
- 10 2. (1) This section and section 1 shall commence on the date of assent to this Act. Commence-ment.
- (2) Part II shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.
- 15 (3) Section 59 shall commence on the day that is three months after the day on which Part II commences.
- (4) Except as provided in subsections (1), (2) and (3), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation
- 20 published in the Gazette.

3.

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3. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY AND INTERPRETATION—ss. 1–8.

PART II.—LICENSING—ss. 9–20.

5 PART III.—DEALERS' AND OTHER RECORDS—ss. 21–23.

PART IV.—DEALINGS IN MOTOR VEHICLES—ss. 24–29.

PART V.—DISPUTES AND RESCISSIONS—ss. 30–38.

10 PART VI.—COMPENSATION FUND—ss. 39–42.

PART VII.—GENERAL—ss. 43–60.

4. (1) In this Act, except in so far as the context or interpretation subject-matter otherwise indicates or requires—

15 “accessories” includes car wirelesses and tools usually carried on motor vehicles;

“cash price”—

20 (a) in relation to a motor vehicle offered or displayed for sale, means the price at which the vendor is willing to sell the vehicle for cash complete with all accessories and other attachments then fitted to or supplied with the vehicle; and

25 (b) in relation to the sale of a motor vehicle—
(i) means the price at which the vehicle is sold;

(ii)

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5 (ii) where any part of the consideration that passed, or is to pass, from the purchaser is represented by another vehicle, or other thing, means the price at which the vehicle is sold and the value of the other vehicle or thing as ascribed to it for the purposes of the sale by the parties thereto or, if no agreed value is so ascribed, the market value of the other vehicle or thing at the time of the sale; or

10
15 (iii) where all of the consideration that passed, or is to pass, from the purchaser is represented by another vehicle, or other thing, means the value of the other vehicle or thing as ascribed to it for the purposes of the sale by the parties thereto or, if no agreed value is so ascribed, the market value of the other vehicle or thing at the time of the sale;

20
25 "Commissioner" means the Commissioner for Consumer Affairs appointed pursuant to section 13 of the Consumer Protection Act, 1969, and includes any person appointed to act as such pursuant to section 14 of that Act;

"commercial vehicle" means a motor vehicle constructed or adapted principally for—

- 30 (a) the carriage of goods;
- (b) the carriage of more than ten adult persons;
or
- (c) industrial or agricultural use,

but

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5 but does not include a motor vehicle of the kind known as a utility, a station waggon or a panel van that is of the same make as a factory-produced motor car and in which such part of the body form as is forward of the windscreen and the greater part of the mechanical equipment are the same, or substantially the same, as in that motor car;

10 “dealer” means a person who carries on the business of buying, selling or exchanging motor vehicles, but does not include a financier;

“dealer’s licence” means a dealer’s licence granted under section 12;

15 “exempted motor vehicle”, when used in or in relation to any provision of this Act, means a motor vehicle belonging to a class of motor vehicle exempted or excluded from the operation of that provision under section 8 (1) (b);

20 “exempted person”, when used in or in relation to any provision of this Act, means a person, or a person belonging to a class of person, exempted or excluded from the operation of that provision under section 8 (1) (a);

25 “financier” means a person whose ordinary business is not that of buying, selling or exchanging motor vehicles but who carries on that business only for one or more of the following purposes, that is to say—

(a) for the purpose of letting or hiring motor vehicles under hire-purchase agreements;

30 (b) for the purpose of selling motor vehicles on instalment terms;

(c)

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- (c) for the purpose of taking or enforcing securities over motor vehicles;
- (d) for any purpose that may be prescribed; or
- 5 (e) for the purpose of disposing of motor vehicles acquired by him in connection with any of the purposes referred to in, or prescribed in relation to, this definition,

10 but does not include such person or class of person as may be prescribed for the purposes of this definition;

“hire-purchase agreement” means, in relation to a motor vehicle, an agreement for the letting of the motor vehicle with an option to purchase;

“holder” means—

- 15 (a) in relation to a joint licence, each individual to whom the licence is granted or deemed under section 15 (7) (b) to be granted; or
- (b) in relation to any other licence, the person to whom the licence is granted;

20 “identification number”, when used in relation to the engine or engine block of a motor vehicle or to any part or accessory of a motor vehicle, means the number and any accompanying letters or symbols stamped on or otherwise affixed to that engine,
25 engine block, part or accessory as a means of identifying that engine, engine block, part or accessory, but does not include any casting number or any number used as a means of identifying a class of engine, engine block, part or accessory;

“joint

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- “joint application” means an application made pursuant to section 10 (2) for the grant of a joint licence;
- “joint licence” means a licence granted pursuant to section 12 (2) (c);
- 5 “licence” means a dealer’s licence, a prescribed licence or a vehicle-wrecker’s licence;
- “magistrate” means an industrial magistrate appointed under the Industrial Arbitration Act, 1940;
- 10 “model designation” means, in relation to a motor vehicle of a particular model, any words, figures, letters or symbols applied by the manufacturer of that motor vehicle for the purpose, or apparent purpose, of identifying a motor vehicle of that model;
- 15 “motor vehicle” means any motor car, motor carriage, motor cycle, tractor, or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer, but does not include any vehicle used on a railway or tramway;
- 20
- “owner”, in relation to a motor vehicle, includes any person who is a joint owner, or part owner thereof and any person who has the possession and use thereof under or subject to a hire-purchase agreement, bill of sale or similar contract, but does not include any person in whom the property in the vehicle or any absolute or conditional right or licence to take possession of the motor vehicle is vested under or subject to a hire-purchase agreement, bill of sale or similar contract and who has not for the time being the possession and use thereof;
- 25
- 30 “prescribed business” means a business belonging to a class of business prescribed under section 7 (a);
- “prescribed

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- “prescribed licence” means a licence prescribed under section 7 (b) and granted under section 12;
- 5 “registered” means registered under the provisions of any Act or law, whether of the State or elsewhere, relating to the registration of motor vehicles;
- “regulations” means regulations made under this Act;
- “restricted licence” means a dealer’s licence restricted in its application pursuant to section 12 (5) to the class of motor vehicle specified in the licence;
- 10 “second-hand motor vehicle” includes a motor vehicle that has, at any time before being offered or displayed for sale, or sold, been registered;
- “sell” means to sell as principal or agent;
- “trade owner” means a dealer or a financier;
- 15 “vehicle-wrecker” means a person who carries on the business of demolishing or dismantling motor vehicles;
- “vehicle-wrecker’s licence” means a vehicle-wrecker’s licence granted under section 12;
- 20 “year of manufacture” means, in relation to a motor vehicle, the year in which the vehicle was manufactured.

(2) A vehicle does not cease to be a motor vehicle for the purposes of this Act by reason only that it is not in
25 working condition or is incomplete.

(3) For the purposes of this Act—

- 30 (a) where a dealer sells a motor vehicle to a financier in the expectation that the financier will sell that motor vehicle to a particular third person and the financier does so, the dealer shall be treated as having sold the motor vehicle to that third person; and

(b)

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5 (b) where a motor vehicle is made the subject of a hire-purchase agreement, it shall be treated as being sold to the hirer, and the sale shall be treated as made when the hire-purchase agreement is entered into.

(4) A person who carries on the business of manufacturing or assembling motor vehicles is not a dealer and does not carry on the business of a dealer, by reason only of selling any such vehicle to a trade owner.

10 (5) For the purposes of this Act a motor vehicle shall be treated as having been sold notwithstanding that all or part of the consideration that passed from the purchaser in respect of the sale is represented by another vehicle or other thing.

15 5. (1) An application under this Act shall be made in or to the effect of a form approved by the Minister. Approved forms.

(2) The Minister may approve different forms for the purpose of making different applications.

20 6. (1) Anything authorised or required by or under this Act to be done by the Commissioner (other than the determination under section 35 of a dispute or the making of an order under section 36) may be done by any officer of the Bureau or the Department who is authorised generally or specially in that behalf in writing by the Commissioner, and Per-
formance
of Com-
missioner's
functions.
25 for the purpose of doing so that officer shall be deemed to be the Commissioner.

(2) The Minister may appoint an officer of the Bureau or the Department to exercise and perform, either generally or in respect of any particular dispute, the functions Per-
formance
of Com-
missioner's
functions.
30 of the Commissioner under section 35 or 36, or both, and for the purposes of doing so that officer shall be deemed to be the Commissioner.

(3)

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(3) In this section—

“Bureau” means the Consumer Affairs Bureau established under the Consumer Protection Act, 1969;

5 “Department” means the Department of Labour and Industry.

7. The Governor may—

10 (a) prescribe any class of business, carried on in relation to used or reconstructed motor vehicles, or such reconstructed parts of motor vehicles or accessories as may be prescribed; and

Governor may prescribe a class of business.

(b) prescribe a licence in relation to any such class of business and a fee to be paid therefor.

15 8. (1) The Governor may, by regulation made under this Act, exempt or exclude from the operation of all or any of the provisions of this Act—

Exemptions.

(a) any person or class of person; or

(b) any class of motor vehicle.

20 (2) An exemption or exclusion under subsection (1) may be given unconditionally or subject to such conditions as may be prescribed in respect of the exemption or the exclusion.

(3) Where an exemption or exclusion under subsection (1) is given subject to conditions the exemption or the exclusion does not have effect during any period when the conditions are not complied with.

PART

Motor Dealers.

PART II.

LICENSING.

9. (1) On or after the relevant day, no person (other **Licences.**
than an exempted person) shall—

- 5 (a) carry on or advertise that he carries on or is willing
to carry on the business of a dealer unless he is the
holder of a dealer's licence; or
- (b) carry on the business of a dealer at any place of
10 business unless he is the holder of a dealer's licence,
granted in respect of that place of business.

Penalty : \$1,000, and in addition a further penalty of \$100
a day for each day on which the offence continues.

(2) On or after the relevant day, no person (other
than an exempted person) shall—

- 15 (a) carry on or advertise that he carries on or is willing
to carry on the business of a vehicle-wrecker unless
he is the holder of a dealer's licence (not being a
restricted licence) or a vehicle-wrecker's licence; or
- 20 (b) carry on the business of a vehicle-wrecker at any
place of business unless he is the holder of a dealer's
licence (not being a restricted licence) or a vehicle-
wrecker's licence, granted in respect of that place
of business.

Penalty : \$1,000, and in addition a further penalty of \$100
25 a day for each day on which the offence continues.

(3)

Motor Dealers.

(3) On or after the relevant day in relation to a prescribed business, no person (other than an exempted person) shall—

- 5 (a) carry on or advertise that he carries on or is willing to carry on that business unless he is the holder of a dealer's licence (not being a restricted licence) or the prescribed licence in relation to that business; or
- 10 (b) carry on a prescribed business at any place of business unless he is the holder of a dealer's licence (not being a restricted licence) or the prescribed licence in relation to that business, granted in respect of that place of business.

Penalty : \$1,000, and in addition a further penalty of \$100
15 a day for each day on which the offence continues.

(4) On or after the relevant day no holder of a dealer's licence (being a restricted licence) shall, in the course of carrying on his business as a dealer, buy, sell or exchange a motor vehicle unless it is a vehicle belonging to a class of
20 vehicle to which his licence, in its application, is restricted.

Penalty : \$1,000.

(5) A person carries on the business of a dealer or a vehicle-wrecker, or a prescribed business, if he does so either by himself, as a member of a partnership or by his servant
25 or agent.

(6) For the purposes of—

- (a) subsections (1), (2) and (4), the relevant day is the day that is three months after the day on which this Part commences; or

(b)

Motor Dealers.

5 (b) subsection (3), the relevant day in relation to any prescribed business is the day that is one month after the day on which the regulations prescribing that business are published in the Gazette or such day (being a day that is later than that day of publication) as is specified in those regulations.

10 **10.** (1) An application for the grant of a dealer's licence, a vehicle-wrecker's licence or a prescribed licence shall be lodged with the Commissioner. Application for grant of licence.

(2) Two or more individuals intending to carry on in partnership a business for which a licence is required may, but are not required to, apply for the grant of a joint licence.

15 (3) An application made pursuant to subsection (2) shall specify the names of the individuals to whom the licence applied for, if granted, is to be granted.

(4) Where an application is made for the grant of a licence to a corporation the names of the directors of the corporation shall be specified in the application.

20 (5) Subject to subsection (6), where a business, for which a licence is required, is to be carried on at more than one place of business a separate application for the grant of a licence in respect of each such place shall be lodged with the Commissioner.

25 (6) Where a business, for which a licence is required, is to be carried on at more than one place of business but, by reason of the close proximity of those places, the person applying for the grant of the licence considers it reasonable that a single licence only should be required in respect of those places he may include a reference to all of those places
30 in an application for the grant of a single licence.

(7)

Motor Dealers.

(7) Where an applicant for the grant of a dealer's licence wishes the licence, if granted, to be restricted in its application to any class of motor vehicle he shall so state, and specify that class, in his application.

5 **11.** (1) Where an application for a licence is lodged, the Commissioner may request the Commissioner of Police to ascertain in relation to the application whether or not any person referred to in section 12 (2) (a), (b) or (c), as the case may be, is, or would be, a fit person to hold the licence and on receipt of any such request the Commissioner of Police shall cause such inquiries as he deems necessary to be made in order to ascertain that fact and shall furnish a report of the findings to the Commissioner.

Inquiries
by
Commis-
sioner of
Police.

15 (2) The Commissioner may, by instrument in writing, served on an applicant or, in the case of a joint application, on any one or more of the applicants, require the applicant or applicants to furnish within the period specified in the instrument such further information and documents as he may reasonably require for the purposes of the application and so specifies.

20 **12.** (1) This section is subject to section 13.

Disposal
of
applica-
tions.

(2) On payment of the appropriate fee the Commissioner shall, when an application is made for the grant of a dealer's licence, a vehicle-wrecker's licence or a prescribed licence—

(a) by an individual (other than an individual referred to in paragraph (c)), grant that licence to the individual;

30 (b) by a corporation, grant that licence to the corporation; or

(c)

Motor Dealers.

- (c) by two or more individuals making a joint application, grant that licence in the joint names of the individuals specified in the application pursuant to section 10 (3).
- 5 (3) Where, pursuant to section 10 (5), a reference to two or more places of business is included in an application for the grant of a single licence the Commissioner, if he grants the licence, may—
- 10 (a) grant the licence in respect of all of those places; or
- (b) grant the licence in respect of one or some only of those places.
- (4) Where the Commissioner grants a single licence in respect of two or more places of business those places are 15 together, for the purposes of this Act, the place of business in respect of which the licence is granted.
- (5) Where an applicant applies for the grant of a dealer's licence restricted in its application to a class of motor vehicle the Commissioner shall, if he grants the licence, grant 20 the licence as so restricted.
- (6) The appropriate fee is—
- (a) in the case of a dealer's licence (not being a restricted licence), \$100 or such other fee as may be prescribed; or
- 25 (b) in the case of a restricted licence, a vehicle-wrecker's licence or a prescribed licence, such a fee as may be prescribed.

Motor Dealers.

13. (1) The Commissioner shall not grant a licence unless he is satisfied—

Refusal
of applica-
tion for
grant of
licence.

- 5 (a) in the case of an application by an individual, that the individual is of or above the age of eighteen years and is a fit person to hold the licence applied for;
- 10 (b) in the case of a joint application, that each of the individuals to whom the licence is to be granted is of or above the age of eighteen years and is a fit person to hold the licence applied for; or
- 15 (c) in the case of an application by a corporation, that the corporation is a fit person to hold the licence applied for, and that each one of the directors of the corporation is of or above the age of eighteen years and would, if the application were made by him, be a fit person to hold the licence applied for.

(2) In considering whether a person is or would be a fit person to hold a licence the Commissioner—

- 20 (a) shall, in the case of an individual, have regard to his character;
- (b) shall have regard to any report relating to that person furnished under section 11 by the Commissioner of Police; and
- 25 (c) shall have regard to such other matters as the Commissioner considers relevant for the purpose of determining the fitness of the person in that regard.

(3) The Commissioner shall not grant a licence in respect of any place of business unless the applicant satisfies the Commissioner that the business which it is proposed to carry on under the licence at that place may be so carried on without contravening any other Act or any instrument made under any other Act.

(4)

Motor Dealers.

5 (4) Where the Commissioner refuses to grant a licence he shall cause a notice of refusal to be served on the applicant for the licence by sending the notice by certified mail addressed to the applicant at his address last known to the Commissioner, or by causing it to be delivered to the applicant personally.

(5) In the case of a joint application it is a sufficient compliance with subsection (4) if the notice of refusal is served on any one of the applicants.

10 (6) A notice of refusal shall state the reasons for the refusal.

(7) The date on which a notice of refusal is served is—

15 (a) where the notice is sent by certified mail, the date when the notice would be delivered in the ordinary course of post; or

(b) where the notice is delivered to the applicant personally, the date when it is so delivered.

20 **14.** (1) A licence shall be in the form approved by the Minister and, without prejudice to the inclusion in the licence of any other particulars, shall—

(a) specify the day of issue of the licence;

(b) specify the place of business in respect of which the licence is granted;

25 (c) specify the name of the person or, in the case of a joint licence the names of the individuals, to whom the licence is granted;

(d) where the licence is granted to a corporation, specify the names of the directors of the corporation; and

30 (e) where the licence is restricted in its application to a class of motor vehicle, specify that class of motor vehicle.

Motor Dealers.

(2) The Minister may approve different forms for different licences.

15. (1) The applications to which this section relates are applications for the amendment— Amendment
of licence.

- 5 (a) of a licence by substituting for the reference in the licence to a place of business a reference to another place of business;
- (b) of a joint licence by specifying in the licence the name of any individual;
- 10 (c) of a licence held by a corporation by specifying in the licence the name of any person who is a director of the corporation; or
- (d) of a licence in such other manner as may be prescribed.

15 (2) Subject to the regulations, on the making of an application to which this section relates and on payment of the prescribed fee, the Commissioner may refuse the application or grant the application and amend the licence in accordance with the application.

20 (3) Where a person becomes a director of a corporation that is the holder of a licence and his name is not specified as a director in the licence, the corporation shall, within one month after that person becomes a director, make the application referred to in subsection (1) (c).

25 Penalty : \$500.

(4) Where an application made pursuant to subsection (3) is refused the person to whom the application relates shall forthwith give up his directorship of the corporation concerned.

30 Penalty : \$200.

(5)

Motor Dealers.

(5) Where an application made pursuant to subsection (3) is refused the person to whom the application relates shall not again, within a period of six months after the refusal of the application, become a director of the corporation
5 unless the corporation ceases to be the holder of a licence or the Commissioner, pursuant to subsection (6), grants an application made under that subsection in relation to that person.

Penalty : \$200.

10 (6) A corporation that is the holder of a licence may apply to the Commissioner for the approval of a person whom it is proposed to appoint or elect to be a director of the corporation and, subject to the regulations, the Commissioner may refuse or grant the application.

15 (7) Where an application referred to in—
(a) subsection (1) (a) is granted and the licence is amended by substituting a reference to another place of business, that place of business is a place of
20 business in respect of which the licence is granted;
or
(b) subsection (1) (b) is granted and the licence is amended by specifying the name of the individual concerned in the licence, that individual shall be
25 deemed to be an individual to whom the licence is granted.

(8) The regulations may—
(a) make provision for or with respect to the making of applications under this section;
(b) specify the circumstances in which any such appli-
30 cation may be refused and, for that purpose, apply any provision in this Part with or without variation or modification; and

(c)

Motor Dealers.

(c) provide for an appeal against any such refusal and, for that purpose, apply any provision in this Part with or without variation or modification.

5 **16.** If the Commissioner is satisfied that a licence has been lost or destroyed he may, on payment of the prescribed fee, issue a duplicate licence which shall be of the same force as the original licence. Duplicate licence.

17. (1) A licence has effect from and including the day of issue of the licence. Duration of licence.

10 (2) A licence continues in force unless it ceases to have effect under subsection (5) or is revoked under section 18.

 (3) The appropriate fee in respect of a licence is payable annually on or before the anniversary of the day of issue of the licence in the year concerned. 15

 (4) The appropriate fee, when paid in any year in respect of a licence, shall be accompanied by a form, prescribed for the purposes of this section, completed by the holder of the licence.

20 (5) If the appropriate fee in respect of a licence is not paid in accordance with subsection (3) or, if paid, is not accompanied by the prescribed form completed as provided in subsection (4), the licence ceases to have effect immediately following the anniversary concerned.

25 (6) The appropriate fee—

 (a) in respect of a dealer's licence (not being a restricted licence), is \$100 or such other fee as may be prescribed; or

(b)

Motor Dealers.

- (b) in respect of a restricted licence, a vehicle-wrecker's licence or a prescribed licence, is such fee as may be prescribed.

18. (1) The Commissioner may, after due inquiry, Revocation of licence.
5 revoke a licence—

- (a) if he is satisfied that the holder of the licence made a statement in or in connection with his application for the licence that he knew to be false or misleading in a material particular;
- 10 (b) if the holder of the licence is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for three months or more, or of any offence against this Act or the regulations, or of an offence against section 32 of
15 the Consumer Protection Act, 1969;
- (c) if he is satisfied, in the case of the holder of a dealer's licence, that the holder has been guilty of fraudulent conduct or dishonesty in connection with his business as a dealer;
- 20 (d) if he is satisfied, in the case of a holder of a dealer's licence, that the holder has failed to carry out any of his obligations under section 27 or has failed to carry out any of those obligations with due expedition;
- 25 (e) if he is satisfied, in the case of a holder of a dealer's licence (not being a joint licence), that the holder does not have sufficient material and financial resources to comply with the requirements of this Act; or
- 30 (f) if he is satisfied, in the case of a dealer's licence (being a joint licence), that the holders of the licence do not together have sufficient material and financial resources to comply with the requirements of this Act.

(2)

Motor Dealers.

(2) The power under subsection (1) (a), (b), (c) or (d) to revoke a licence may, in the case of a joint licence, be exercised if subsection (1) (a), (b), (c) or (d), as the case may be, applies to any holder of that licence.

5 (3) Where the holder of a dealer's licence (not being a joint licence) carries on the business of a dealer in partnership with one, or more than one, person, the Commissioner shall not revoke his licence under subsection (1) (e) unless the Commissioner is satisfied that his material and
10 financial resources, together with those of the person or persons with whom he carries on that business in partnership, are not sufficient to enable him to comply with the requirements of this Act.

(4) Without prejudice to his right to revoke a
15 licence under subsection (1), the Commissioner may, after due inquiry, revoke—

- (a) a licence held by a corporation if any director of the corporation is convicted of an offence referred to in subsection (1) (b); or
- 20 (b) a licence (not being a joint licence) held by any person carrying on business in partnership with any other person if the licence of that other person is revoked under paragraph (a) or under subsection (1) (b), (c) or (d).

25 (5) Before revoking a licence the Commissioner shall give the holder or, in the case of a joint licence, each of the holders, of the licence an opportunity of showing cause why the licence should not be revoked.

(6) Where the Commissioner revokes a licence, he
30 shall cause a notice of revocation to be served on the holder of the licence by sending the notice by certified mail addressed to the holder at the place of business in respect of which the licence is granted, or by causing it to be delivered to the holder personally.

(7)

Motor Dealers.

(7) In the case of a joint licence it is a sufficient compliance with subsection (6) if the notice of revocation is served on any one of the holders of the licence.

5 (8) A notice of revocation shall state the reasons for the revocation of the licence.

(9) Subject to subsection (10), the revocation of a licence has effect as on and from the date that is twenty-one days after the date on which the notice of revocation is served.

10 (10) Where the holder of a licence appeals under section 19 against the revocation of the licence, the revocation shall have effect—

- (a) only if the magistrate hearing the appeal confirms the revocation or the appeal is withdrawn; and
- 15 (b) on the date on which that magistrate confirms the revocation, or such later date as that magistrate orders or, if the appeal is withdrawn, on the date on which it is withdrawn.

(11) The date on which a notice of revocation is served is—

- 20 (a) where the notice is sent by certified mail, the date when the notice would be delivered in the ordinary course of post; or
- (b) where the notice is delivered to the holder of the licence personally, the date when it is so delivered.

25 (12) When the revocation of a licence has effect the person who was the holder of the licence shall forthwith deliver it to the Commissioner.

Penalty : \$200.

30 **19.** (1) An applicant for the grant of a licence may appeal to a magistrate against the refusal of the Commissioner to grant the licence.

(2)

Motor Dealers.

(2) The holder of a licence may appeal to a magistrate against the revocation by the Commissioner of the licence.

5 (3) Notice of an appeal under this section, specifying the grounds of the appeal, shall be lodged with the registrar not later than twenty-one days after the date of service.

(4) The registrar shall give notice of the time and place of the hearing of an appeal under this section to the Commissioner and to the person appealing, and shall state in 10 the notice to the Commissioner the grounds of the appeal.

(5) The hearing of an appeal may proceed notwithstanding any omission or error in a notice under subsection (4) or the failure to give any such notice if the magistrate is satisfied that the person appealing and the Commissioner had 15 knowledge of the time and place of the hearing and were not prejudiced by any such omission or error or by the failure to give any such notice.

(6) Where relevant, a report furnished pursuant to section 11 to the Commissioner by the Commissioner of Police 20 or a report furnished pursuant to section 34 to the Commissioner by a disputes committee, and certified in either case by the Commissioner to have been so furnished, shall be received in proceedings before a magistrate under this section as evidence of the contents of the report.

25 (7) A magistrate shall hear and determine an appeal made to him under this section and may confirm (with or without variation) or disallow the refusal or revocation appealed against, or make such other order in the circumstances as to him seems just.

30 (8) A magistrate may disallow the refusal or revocation appealed against if, in all of the circumstances of the case, he considers it fair and reasonable to do so.

(9) Subject to this section, the provisions of the Industrial Arbitration Act, 1940, relating to a proceeding 35 before a magistrate apply to proceedings before a magistrate under this section.

Motor Dealers.

(10) The decision of a magistrate in respect of an appeal made under this section shall be final and shall be binding on the person appealing, and on the Commissioner who shall take such steps as may be necessary to give effect
5 to the decision.

(11) Where a joint application is refused or a joint licence is revoked, an appeal under this section against the refusal or the revocation may be made either by one of the applicants or holders, as the case may be, on behalf of all of
10 the applicants or holders, or by all of the applicants or holders jointly, but not otherwise.

(12) In this section—

“date of service” means—

- 15 (a) in the case of an appeal against a refusal to grant a licence, the date of service of the notice of refusal; and
- (b) in the case of an appeal against a revocation of a licence, the date of service of the notice of revocation;

20 “registrar” means the industrial registrar appointed under the Industrial Arbitration Act, 1940.

25 **20.** (1) The Commissioner shall cause to be kept a Register of licences. register, in such form as he determines, of licences granted and shall cause to be recorded therein in respect of each licence—

- (a) the matters which under section 14 are required to be specified in the licence;
- (b) particulars of any amendment of the licence made under section 15;

(c)

Motor Dealers.

- (c) particulars of any fees paid, or due but not paid, in respect of the licence under section 17;
- (d) particulars of any revocation of the licence under section 18; and
- 5 (e) such other matters as may be prescribed.

(2) The Commissioner may cause to be made such alterations in the register as are necessary to ensure that the matters recorded therein in respect of any licence are accurate.

(3) The register may, at all reasonable hours, be
10 inspected, and copies of all or any part of any entry in the register taken—

- (a) without payment, by—
 - (i) any member of the police force;
 - (ii) any officer in the public service; and
 - 15 (iii) any person authorised by the Commissioner; or
- (b) on payment of such fee as may be prescribed, by any other person.

(4) The register shall be received in proceedings
20 before any court or tribunal as evidence of the matters required by or under this Act to be recorded in it, and any document purporting to be certified by the Commissioner to be a true copy of an entry in the register shall be received in proceedings before any court or tribunal as evidence of
25 any such matters contained in the entry.

PART

Motor Dealers.

PART III.

DEALERS' AND OTHER RECORDS.

21. (1) This section does not apply—

Dealer's
register.

(a) to an exempted person; or

5 (b) in relation to an exempted motor vehicle.

(2) The holder of a dealer's licence shall keep a dealer's register at the place of business in respect of which the licence is granted.

Penalty : \$500.

10 (3) The holder of a dealer's licence shall enter in the register kept by him pursuant to subsection (2) at the place of business, in respect of which the licence is granted, the required particulars in relation to every second-hand vehicle bought, exchanged or taken in possession for sale, in, or for
15 the purpose of, carrying on the business of a dealer at that place, and shall sign his name to the entry.

Penalty : \$500.

(4) The requirements of subsection (3) shall be
20 the vehicle is bought, exchanged or taken in possession for sale, as the case may be.

(5) It is a sufficient compliance with subsection (3) if an agent of the dealer or a person employed by a dealer in his business as a dealer makes the entry required to be made
25 by that subsection in the dealer's register in relation to a second-hand motor vehicle, and signs his name to that entry.

(6)

Motor Dealers.

(6) A dealer shall not, pursuant to subsection (3), and an agent or an employee shall not, pursuant to subsection (5), in respect of any particulars required under subsection (3) to be entered in the dealer's register, wilfully make an entry in the register that is false or misleading in a material particular.

Penalty : \$1,000.

(7) Where a joint licence (being a dealer's licence) is granted in respect of a place of business, or two or more dealers' licences are granted in respect of the same place of business to two or more persons carrying on in partnership the business of a dealer—

(a) it is a sufficient compliance with subsection (2) if a single dealer's register is kept at the place of business; and

(b) each holder of the licence is guilty of an offence under subsection (2) if that section is not complied with, and of an offence under subsection (3) if that subsection is not complied with.

(8) For the purposes of this section the required particulars in relation to a second-hand motor vehicle are—

(a) the model designation of the vehicle recognised by the motor trade industry or the year of manufacture of the vehicle;

(b) the numbers and letters of its registration (if any);

(c) the identification number of the engine of the vehicle;

(d) where the vehicle is equipped with an odometer, the reading on the odometer when the vehicle was bought, exchanged or taken in possession for sale;

(e)

Motor Dealers.

- 5 (e) the name and address of the person from whom the vehicle was bought, exchanged or taken in possession for sale and, if that person was a trade owner, the name and address of the last owner of the vehicle (if any) who was not a trade owner;
- (f) the date and hour of the day when the vehicle was bought, exchanged or taken in possession for sale;
- 10 (g) any cash or other consideration given or agreed to be given and a description of any such other consideration; and
- (h) such other particulars as may be prescribed.

15 **22.** Every vehicle-wrecker or person carrying on a prescribed business shall keep a register, in the prescribed form, at the place of business in respect of which the licence allowing him to carry on that business is granted and shall record or cause to be recorded in that register the particulars of every prescribed transaction entered into in the course of carrying on at that place the business of a vehicle-wrecker or the prescribed business, as the case may be.

20 **23.** (1) A dealer's register kept pursuant to section 21 or a register kept pursuant to section 22 at any place of business may, at all reasonable times, be inspected, and copies of all or any part of any entry in the register taken by—

- (a) any member of the police force;
- 25 (b) an inspector appointed under the Consumer Protection Act, 1969;
- (c) any person authorised in writing by the Commissioner; or
- 30 (d) any person authorised in writing by the Commissioner for Motor Transport.

(2)

Motor Dealers.

(2) Subject to subsection (3), any—

- 5 (a) dealer, vehicle-wrecker or person carrying on a prescribed business who, on demand made at a reasonable time, refuses or neglects to produce a register kept by him pursuant to section 21 or 22, as the case may be, to a person referred to in subsection (1); or
- 10 (b) person who wilfully obstructs any person referred to in that subsection while acting in the exercise of any powers conferred on him under that subsection,

is guilty of an offence and liable to a penalty of \$500.

(3) A dealer, a vehicle-wrecker or a person carrying on a prescribed business is not required under this section to
15 produce a register, kept by him pursuant to section 21 or 22, to any person unless that person produces evidence of his appointment or authority, if requested to do so.

PART IV.

DEALINGS IN MOTOR VEHICLES.

20 **24.** (1) Subject to subsection (2), where a dealer offers or displays for sale a second-hand motor vehicle he shall attach, or cause to be attached, to the vehicle, in the manner prescribed, a notice, in the prescribed form, containing the required particulars in relation to that vehicle.

Notice to be displayed on second-hand motor vehicle offered for sale.

(2)

Motor Dealers.

(2) Subsection (1) does not apply to or in relation to the offering or displaying for sale of a second-hand motor vehicle for the purposes only of sale—

(a) by bona fide auction;

5 (b) to an exempted person; or

(c) to a trade owner.

(3) A notice shall not be treated for the purposes of subsection (1) as containing the required particulars if any of the required particulars contained in the notice is false
10 or misleading in a material particular.

(4) Where a second-hand motor vehicle is offered or displayed for sale by a dealer in circumstances where subsection (1) applies and the vehicle is sold the dealer shall immediately after the completion of the sale sign a copy of
15 the notice attached pursuant to subsection (1) to the vehicle and deliver it to the purchaser of the vehicle.

(5) Where a second-hand motor vehicle is offered or displayed for sale by a dealer in circumstances where subsection (1) applies and a sale of the vehicle is effected by an
20 agent of the dealer or a person employed by the dealer in his business as a dealer, compliance by that agent or employee with the requirements of subsection (4) shall be treated as compliance by the dealer with those requirements.

(6) Where—

25 (a) an individual carrying on the business of a dealer does not comply with the requirements of subsection (1) or the requirements of subsection (4), he is guilty, in either case, of an offence;

(b)

Motor Dealers.

5 (b) an individual carrying on in partnership (whether under a joint licence or otherwise) the business of a dealer does not comply with the requirements of subsection (1) or the requirements of subsection (4), he and each of the partners are, in either case, guilty of an offence; or

10 (c) a corporation carrying on the business of a dealer does not comply with the requirements of subsection (1) or the requirements of subsection (4), the corporation is, in either case, guilty of an offence,

and liable to a penalty of \$500.

(7) For the purposes of this section the required particulars in relation to a second-hand motor vehicle are—

15 (a) the name and business address of the dealer by whom the vehicle is offered or displayed for sale;

(b) the numbers and letters of its registration (if any);

20 (c) where the dealer is acting on behalf of another dealer, a statement to that effect and the name and address of that other dealer;

(d) where the vehicle is equipped with an odometer, the reading on the odometer entered by the dealer pursuant to section 21 in the dealer's register;

25 (e) the cash price of the vehicle or, where the vehicle is a vehicle repossessed by a financier and is offered for sale by way of tender, a statement to that effect;

30 (f) the model designation of the vehicle recognised by the motor trade industry or the year of manufacture of the vehicle; and

(g) such other particulars as may be prescribed.

(8)

Motor Dealers.

(8) In any case where the holder of a dealer's licence is acting on behalf of another dealer, this section, if it applies, applies to the dealer so acting and not to the other dealer, and the dealer so acting, or an agent of the dealer so acting
5 or a person employed by that dealer and acting pursuant to subsection (5), shall comply with this section.

(9) In any case where subsection (8) applies the dealer's register referred to in subsection (7) (d) is the register of the dealer acting on behalf of the other dealer.

10 **25.** (1) This section does not apply to or in relation to the sale of an exempted motor vehicle. Sale of second-hand motor vehicle to trade owner.

(2) A dealer who sells a second-hand motor vehicle to another dealer shall sign a disposal notice, in the prescribed form, containing the required particulars and forthwith deliver
15 it to that other dealer.

(3) A dealer who arranges with an auctioneer for the sale by the auctioneer of a second-hand motor vehicle, shall comply with the requirements of subsection (2) in every respect as if the auctioneer were another dealer purchasing
20 the vehicle.

(4) Where the agent of a dealer or a person employed by a dealer in his business as a dealer, in his capacity as such an agent or employee—

25 (a) sells a second-hand motor vehicle to another dealer; or

(b) arranges with an auctioneer for the sale by an auctioneer of a second-hand vehicle,

compliance by that agent or employee with the requirements of subsection (2) or (3), as the case may be, shall be treated
30 as compliance by the dealer with those requirements.

Motor Dealers.

(5) Where—

- 5 (a) an individual carrying on the business of a dealer does not comply with the requirements of subsection (2) or the requirements of subsection (3), he is guilty, in either case, of an offence;
- 10 (b) an individual carrying on in partnership (whether under a joint licence or otherwise) the business of a dealer does not comply with the requirements of subsection (2) or the requirements of subsection (3), he and each of the partners are, in either case, guilty of an offence; or
- 15 (c) a corporation carrying on the business of a dealer does not comply with the requirements of subsection (2) or the requirements of subsection (3), the corporation is, in either case, guilty of an offence,

and liable to a penalty of \$500.

- 20 (6) Where an auctioneer, pursuant to an arrangement under subsection (3) or (4) (b), sells a motor vehicle by bona fide auction to a person known to him to be a dealer he shall forthwith deliver to that person the disposal notice delivered to the auctioneer pursuant to subsection (3).

Penalty : \$500.

- 25 (7) A notice shall not be treated for the purposes of subsection (2) or (3) as containing the required particulars if any of the required particulars contained in the notice is false or misleading in a material particular.

(8) For the purposes of this section the required particulars, in relation to a second-hand motor vehicle, are—

- 30 (a) the name and business address of the dealer selling the vehicle;

(b)

Motor Dealers.

- (b) the numbers and letters of its registration (if any);
- (c) where the dealer is acting on behalf of another dealer, a statement to that effect and the name and address of that other dealer;
- 5 (d) the name and address of the last owner of the vehicle (if any) who was not a trade owner;
- (e) where the vehicle is equipped with an odometer, the reading on the odometer entered pursuant to section 21 in the dealer's register;
- 10 (f) the model designation of the vehicle recognised by the motor trade industry or the year of manufacture of the vehicle; and
- (g) such other particulars as may be prescribed.

(9) In any case where the holder of a dealer's licence
15 is acting on behalf of another dealer, subsections (2) and (3) apply to the dealer so acting and not to the other dealer, and the dealer so acting, or an agent of that dealer so acting or a person employed by that dealer and acting pursuant to subsection (4), shall comply with subsections (2) and (3).

20 (10) In any case where subsection (9) applies the dealer's register referred to in subsection (8) (e) is the register of the dealer acting on behalf of the other dealer.

26. In proceedings for an offence under section 24 or 25 Defences.
it is a defence if—

- 25 (a) in the case of the omission of any required particular from a notice referred to in either of those sections, the accused person proves that the motor vehicle concerned was brought into the State for the purpose of resale and that the required particular
30 omitted was unknown to him and could not, with reasonable diligence, be ascertained by him; or

(b)

Motor Dealers.

5 (b) in the case of the inclusion in any such notice of a required particular relating to the year of manufacture or the model designation of the motor vehicle concerned, or to any matter prescribed for the purposes of this section, that is false or misleading in a material particular, the accused person proves that he took all reasonable steps to ascertain the true particulars and that those included were, to the best of his knowledge and belief, true.

10 27. (1) Except as provided in this section and sections 28 and 29— Obligations of dealer.

15 (a) where a motor vehicle (not being a second-hand motor vehicle) is sold on or after the commencement of this section, by a dealer, and before—

(i) the vehicle has been driven for 20,000 kilometres after being so sold; or

(ii) the expiration of the period of twelve months after the vehicle is so sold,

20 whichever first occurs, a defect appears or occurs in the vehicle;

25 (b) where a second-hand motor vehicle is sold on or after the commencement of this section by a dealer at a cash price of or over \$1,000, or such greater amount as may be prescribed, and before—

(i) the vehicle has been driven for 5,000 kilometres after being so sold; or

(ii) the expiration of the period of three months after the vehicle is so sold,

30 whichever first occurs, a defect appears or occurs in the vehicle; or

(c)

Motor Dealers.

(c) where a second-hand motor vehicle is sold on or after the commencement of this section by a dealer at a cash price of less than \$1,000, or such greater amount as may be prescribed, and before—

- 5 (i) the vehicle has been driven for 3,000 kilometres after being so sold; or
- (ii) the expiration of the period of two months after the vehicle is so sold,

10 whichever first occurs, a defect appears or occurs in the vehicle,

the dealer shall, whether or not that defect existed at the time of the sale, at his own expense, repair or make good, or cause to be repaired or made good, the defect so as to place the vehicle in a reasonable condition having regard to its age and
15 his obligation to do so shall be deemed to be a term of the contract of sale relating to the vehicle.

(2) For the purposes of calculating the period referred to in subsection (1) (a) (ii), (1) (b) (ii) or (1) (c) (ii), no regard shall be paid to any period during which
20 the dealer has the motor vehicle in his possession for the purpose or purported purpose of ascertaining or carrying out his obligations under this section.

(3) The obligation of a dealer under subsection (1) (a) in relation to a motor vehicle sold by him is extinguished
25 if, subsequent to that sale, he or another dealer acquires ownership of the vehicle, or the vehicle is repossessed by a financier.

(4) Subject to subsection (3), the obligation of a dealer under subsection (1) (a) in relation to a motor vehicle
30 subsists for the benefit of the owner, from time to time, of the vehicle and, for this purpose, the owner from time to time shall be deemed to have entered into a contract of sale with the dealer in respect of the vehicle.

(5)

Motor Dealers.

(5) The obligation of a dealer under subsection (1) (b) or (c) in relation to a motor vehicle sold by him is an obligation only to the person who purchased the vehicle from him.

5 (6) The revocation under section 18 of a dealer's licence or the ceasing of the licence to have effect under section 17 (5), does not affect his liability under this section.

(7) The fact that a dealer is not the holder of a dealer's licence or has ceased to be a dealer does not affect **10** his liability under this section.

(8) In any case where the holder of a dealer's licence is acting on behalf of another dealer in selling a motor vehicle this section applies to the dealer so acting and not to the other dealer, and the dealer so acting is liable to perform **15** the obligations under this section.

(9) A motor vehicle is not a second-hand motor vehicle for the purposes of subsection (1) (a) by reason only that the vehicle has been registered in the name of the dealer who sells the vehicle, or in the name of a dealer on whose **20** behalf the vehicle is sold, or in the name of any person on behalf of any such dealer.

(10) Where a motor vehicle is sold it is not a second-hand motor vehicle for the purposes of subsection (1) (a) by reason only that it is registered in the name of the **25** purchaser prior to the completion of the sale.

(11) Where a motor vehicle is registered in the name of any person in anticipation of the sale of the vehicle to that person, but the sale of the vehicle to that person is not completed, the vehicle is not a second-hand vehicle for the **30** purposes of subsection (1) (a) by reason only of being so registered.

Motor Dealers.

28. (1) Section 27 (1) does not apply to or in relation Exceptions.
to any defect—

- (a) that is a defect to which, pursuant to section 29,
section 27 (1) does not apply;
- 5 (b) occurring in the tyres, battery or any prescribed
accessory to a motor vehicle;
- (c) arising from or incidental to any accidental damage
to a motor vehicle that occurred after the sale,
referred to in section 27 (1), of the vehicle, and
10 when the vehicle was not in the possession of the
dealer; or
- (d) arising from misuse or negligence on the part of
a driver of a motor vehicle that occurred after the
sale, referred to in section 27 (1), of the vehicle.

15 (2) In the case of a second-hand motor vehicle
section 27 (1) does not apply in relation to any superficial
damage to the paint-work or upholstery of the vehicle which
would have been apparent on a reasonable inspection of the
vehicle carried out at the time of the sale, referred to in
20 section 27 (1), of the vehicle.

(3) Section 27 (1) does not apply to or in respect
of the sale of—

- (a) a motor vehicle to a trade owner;
- 25 (b) a second-hand motor vehicle where the purchaser
has been in possession of the vehicle for a period
of not less than three months immediately pre-
ceding the day of that sale;
- (c) a motor vehicle to an exempted person; or
- (d) a commercial vehicle, a motor cycle or a trailer.

(4)

Motor Dealers.

5 (4) Where the proposed purchaser of a motor vehicle (not being a second-hand motor vehicle) is in possession of the vehicle for a period immediately preceding the day on which he purchases that vehicle from a dealer then, for the purposes of section 27 (1) (a), he shall be treated as having purchased the vehicle on the day when he first acquired that possession.

(5) Section 27 (1) does not apply to or in respect of the sale of—

10 (a) a second-hand motor vehicle by a dealer on behalf of a financier where the motor vehicle is a vehicle which was sold by the financier under a hire-purchase agreement and subsequently repossessed by him;

15 (b) a second-hand motor vehicle where the cash price is less than \$500 or such greater amount as may be prescribed; or

(c) an exempted vehicle,

20 if, but only if, at all material times when the vehicle is offered or displayed for sale by the dealer, or caused or permitted to be so offered or displayed, there is attached, in the prescribed manner to the vehicle, a notice, in the prescribed form, to the effect that section 27 (1) does not apply to or in respect of the sale of the vehicle.

25 (6) Section 27 (1) does not apply to or in respect of the sale of a second-hand motor vehicle by bona fide auction if, but only if, there is attached, in the prescribed manner, to the vehicle at the time of the auction a notice, in the prescribed form, to the effect that section 27 (1) does not apply to or in
30 respect of the sale of the vehicle.

Motor Dealers.

29. (1) A dealer may attach, in the prescribed manner, ^{Excluded} to any second-hand motor vehicle offered or displayed for sale ^{defects.} a notice, in the prescribed form, setting out with reasonable particularity any defect that he believes to exist in the vehicle together with, in relation to each such defect, his estimate of the fair cost of repairing or making good the defect.

(2) If—

(a) a notice referred to in subsection (1) has, at all material times, been attached to a second-hand motor vehicle; and

(b) at or before the time of sale of the vehicle a copy of that notice has been signed by the purchaser and upon the sale a true copy of that notice as so signed has been delivered to the purchaser for retention by him,

then section 27 (1) shall not apply to or in relation to that defect.

(3) If in any notice referred to in subsection (1) the amount estimated by the dealer as the fair cost of repairing or making good that defect is less than the amount of the fair cost of then repairing or making good that defect the purchaser may sue for and recover the difference between those fair costs as a debt due to the purchaser from the dealer.

PART V.

DISPUTES AND RESCISSIONS.

30. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires— ^{Interpre-}

“applicant” means a person who makes an application;

“application” means an application under section 31 (1) to the Commissioner, but does not include an application that has been withdrawn;

“dispute”

Motor Dealers.

“dispute” means a disagreement under section 31 (1) which is the subject of an application;

“disputes committee” means a committee appointed under section 34;

5 “tribunal” includes a Consumer Claims Tribunal constituted under the Consumer Claims Tribunal Act, 1974.

(2) A reference in this Part to a dealer includes a reference to a person who was a dealer when he sold a motor
10 vehicle that is the subject of such a disagreement as is referred to in section 31 (1) or of a dispute, notwithstanding that he has ceased to be a dealer since that vehicle was sold.

31. (1) Where, in relation to a motor vehicle, a dis- Disputes.
agreement exists between a purchaser or an owner of the
15 vehicle, and a dealer concerning any one or more of the following, namely—

- (a) the existence or extent of any obligation under section 27 on the part of the dealer to the purchaser or the owner;
- 20 (b) the manner of carrying out any such obligation ;
- (c) the amount of the fair cost of repairing or making good any defect referred to in section 29; or
- 25 (d) any other matter or thing, whether or not of the same kind as a matter referred to in paragraph (a), (b) or (c), arising out of the application of this Act,

the purchaser or the owner, as the case may be, may apply in writing to the Commissioner to investigate and determine the disagreement.

Motor Dealers.

(2) The Commissioner shall not exercise any power conferred on him by section 32, 33, 35 or 36 in connection with any matter in issue in a dispute—

- 5 (a) if proceedings in respect of that matter are pending before a court or a tribunal at the time when the application relating to the dispute is received by the Commissioner, unless those proceedings are discontinued before judgment is given by the court or a determination is made by the tribunal; or
- 10 (b) if, at that time, that matter has been decided by a court or a tribunal, or a court or a tribunal decides that matter pursuant to proceedings which are pending at that time.

(3) Where an application is made to the Commis-
15 sioner a court or a tribunal has no jurisdiction in connection with any matter in issue in the dispute to which the application relates—

- (a) unless subsection (2) applies in respect of that matter;
- 20 (b) unless the application is withdrawn; or
- (c) except in respect of proceedings commenced in a court or a tribunal after the Commissioner has dealt with the matter under this Part.
- (4) An application may be withdrawn at any time.

25 **32.** (1) The Commissioner shall use his best endeavours ^{Settlement} by communication with the applicant and the dealer, or ^{of disputes.} otherwise, to settle a dispute.

(2) Where the Commissioner settles a dispute the application concerned shall be deemed to have been
30 withdrawn.

(3)

Motor Dealers.

(3) A dispute shall not be treated as having been settled unless the terms of the settlement are incorporated in a document and signed by the applicant, the dealer and the Commissioner.

5 (4) Where a dispute is settled as provided in this section the settlement shall have the same force and effect as it would have if it were a determination by the Commissioner under section 35.

10 (5) A document purporting to be signed by the Commissioner and to set out the terms of a settlement shall be received in proceedings before any court or tribunal as evidence of that settlement and the terms thereof.

33. (1) Where the Commissioner is unable under section 32 to settle a dispute he shall, subject to subsection (3),
15 investigate the dispute. Investigation by Commissioner.

(2) The Commissioner may determine his own procedure for the purpose of investigating a dispute.

(3) The Commissioner may refer a dispute, or any matter forming part of, arising out of or in connection with,
20 a dispute to a disputes committee for investigation.

(4) The Commissioner may give directions to a disputes committee with respect to the carrying out by the committee of an investigation.

34. (1) A disputes committee shall comprise a nominee
25 of— Disputes committee.

- (a) the Commissioner;
- (b) the National Roads and Motorists' Association;
- (c) the Motor Traders' Association of New South Wales; and

(d)

Motor Dealers.

(d) where the motor vehicle to which the dispute relates is a motor vehicle to which section 27 (1) (a) applies, or is alleged to apply, the Chamber of Automotive Industries of New South Wales,

5 appointed by the Commissioner.

(2) Subject to any directions given by the Commissioner under section 33 (4), a disputes committee may determine its own procedure for the purpose of carrying out an investigation.

10 (3) A disputes committee shall report to the Commissioner the result of any investigation carried out by it and shall state in the report any recommendation which it wishes to make.

15 (4) Where the members of a disputes committee do not agree that a recommendation should be stated in the report to the Commissioner, or on the nature of the recommendation to be so stated, it shall record the disagreement in its report and may state in the report more than one recommendation.

20 (5) In determining a dispute the Commissioner shall have regard to the report of a disputes committee but is not bound to follow any recommendation contained in the report.

(6) Where a body referred to in subsection (1) (b), (c) or (d) changes its name and the Commissioner is satisfied that the change of name is not accompanied by any change
25 in the nature of the body, he may, by instrument in writing, so certify and, subject to subsection (7), as from the date of that instrument the reference in subsection (1) (b), (c) or (d), as the case may be, shall be deemed to be a reference to the body under that changed name.

30 (7) The power of the Commissioner under subsection (6) may be exercised in relation to a body under a changed name as if that body, under that changed name, were referred to in subsection (1).

Motor Dealers.

35. (1) When the investigation of a dispute is completed the Commissioner shall determine the dispute and, for the purpose of so doing, may do any one or more of the following, namely—

Deter-
mination of
dispute.

- 5 (a) find that an obligation exists or does not exist under section 27;
- (b) determine the extent of an obligation;
- (c) determine the amount of the fair cost of repairing or making good any defect referred to in section 29; or
- 10 (d) make any other finding or determination ancillary to a finding or determination referred to in paragraph (a), (b) or (c).

(2) Subject to subsection (3), where the Commissioner determines that an obligation exists, in connection with a motor vehicle, under section 27 (1) (a), he may recommend that the manufacturer of the vehicle contribute towards the cost of the dealer in discharging the obligation to such extent as he specifies in the recommendation.

(3) The Commissioner shall not make a recommendation under subsection (2) unless—

- 20 (a) having regard to the nature of the defects in the vehicle and the other circumstances of the dispute, it is, in his opinion, fair and reasonable to do so; and
- 25 (b) the manufacturer or his agent has been afforded, in the course of the investigation of the dispute, an opportunity of being heard.

(4)

Motor Dealers.

(4) A recommendation by the Commissioner under subsection (2) does not prejudice the right of an applicant to enforce any obligation against a dealer.

5 (5) A finding or a determination of the Commissioner under subsection (1) and the terms thereof shall be binding on the applicant and the dealer and shall not be challenged in any proceedings whatsoever.

(6) Where, pursuant to subsection (1) (c), the Commissioner determines that the fair cost of repairing or
10 making good a defect is greater than the amount estimated in that connection by a dealer he may, in his discretion, order that the dealer pay to the claimant the amount represented by the difference and, if he does so, the claimant may enforce the order by filing, free of charge, with the registrar of a
15 court of competent jurisdiction—

(a) a copy of the order certified by the Commissioner to be a true copy; and

(b) the affidavit of the claimant as to the amount unpaid under the order,

20 and thereupon the registrar concerned shall enter judgment in favour of the claimant against the dealer for the amount specified in the affidavit as being unpaid.

(7) A document purporting to be signed by the Commissioner and to set out any finding or determination by
25 the Commissioner in a dispute and the terms thereof shall be received in proceedings before any court or tribunal as evidence of that finding or determination and the terms thereof.

36. (1) Without limiting the generality of the powers
30 conferred on the Commissioner under section 35, where the Commissioner is satisfied that—

Order for repair of defects.

(a) an obligation lies on a dealer under section 27; and

(b) the dealer has unreasonably—

35 (i) refused or failed to carry out that obligation; or

(ii)

Motor Dealers.

(ii) delayed or prevaricated in the carrying out of that obligation,

the Commissioner may order that any defect required to be repaired or made good under section 27 shall be repaired or made good by a person (being a person other than the dealer) named in the order.

(2) Where an order is made under subsection (1) and, pursuant to the order, the applicant contracts to have the defect repaired or made good by the person named in the order, the dealer shall be liable to indemnify the applicant against all costs or expenses payable by the applicant under the contract to have the defect repaired or made good, and the amount of those costs and expenses may be recovered by the applicant as a debt due from the dealer to the applicant in any court of competent jurisdiction.

(3) Notwithstanding anything to the contrary in any Act or law, where an order is made under subsection (1) the dealer shall not have a lien over the motor vehicle to which the order relates in relation to any work done or purported to have been done by the dealer in repairing or making good any defect to which the order relates.

37. A person shall not wilfully make any false or misleading statement in or in relation to any proceeding for the investigation or determination of a claim.

False or misleading statements.

25 Penalty : \$200.

38. (1) Where the Commissioner is of the opinion— Rescission of sale.

(a) that a motor vehicle sold by a dealer is substantially different from the vehicle as represented in a notice under section 24; or

30 (b) that a notice required under that section to be displayed in relation to the vehicle was not displayed and that the vehicle as so sold was substantially different from the vehicle as represented by the dealer,

the

Motor Dealers.

the Commissioner may apply to a magistrate for an order for rescission of the sale of the vehicle.

(2) An application under this section shall set out the grounds on which it is made.

5 (3) Upon hearing the Commissioner or a representative of the Commissioner and upon affording any other person likely to be affected by any order made under this section an opportunity of being heard the magistrate may order that the sale be rescinded, the vehicle returned to the dealer
10 and any consideration passed by the purchaser or the value of any such consideration assessed under subsection (5) returned to the purchaser, and may make such further or consequential orders, including an order as to the payment of the costs of the application, as to him seem necessary or
15 desirable.

(4) Where a dealer is convicted of an offence under section 24 in respect of a vehicle sold by the dealer and the magistrate is of the opinion—

20 (a) that the vehicle is substantially different from the vehicle as represented in a notice under section 24; or

25 (b) where no such notice was displayed in relation to the vehicle, that the vehicle as so sold was substantially different from the vehicle as represented by the dealer,

the magistrate may, in addition to any penalty imposed, order that the sale be rescinded, the vehicle returned to the dealer and any consideration passed by the purchaser or the value of any such consideration assessed under subsection (5) returned
30 to the purchaser, and may make such further or consequential orders as to him seem necessary or desirable.

(5) Where in respect of any sale referred to in subsection (1) or subsection (4) all or part of the consideration that passed from the purchaser is represented by a motor

Motor Dealers.

vehicle or other thing, the magistrate may for the purposes of this section assess the value of that motor vehicle or other thing.

5 (6) Where there is a collateral credit agreement associated with a sale of a motor vehicle that has been rescinded under this section the obligations and rights of the purchaser under that agreement shall, by force of this section, be transferred from the purchaser to the dealer and subject to this section may be enforced by or against the dealer in all
10 respects as if he were the purchaser.

(7) Notwithstanding any Act or law to the contrary, upon the making of an order rescinding a sale of a motor vehicle the rights and obligations of the parties under any contract or agreement relating to the sale or under any col-
15 lateral credit agreement associated with the sale of the motor vehicle shall be as provided for in that order or in any order ancillary to or consequential upon that order, and without limiting the generality of the foregoing it shall not be a bar to the making of an order rescinding a sale that the parties
20 cannot be restored to the positions that existed prior to the sale.

(8) Subject to subsection (10) (b), the provisions of the Industrial Arbitration Act, 1940, and the regulations made under that Act, relating to proceedings before a magis-
25 trate and to appeals from a magistrate to the Industrial Commission of New South Wales shall apply to proceedings before a magistrate under this section as if the proceedings under this section were proceedings under that Act.

(9) For the purposes of this section a collateral credit
30 agreement associated with the sale of a motor vehicle is a contract or agreement, arranged or procured by the dealer selling the vehicle, for the provision of credit by a person (other than that dealer) for the purposes of the sale of the vehicle.

35 (10) The regulations may—

(a) provide for the enforcement of any order made under this section; and

(b)

Motor Dealers.

- 5 (b) make provision for or with respect to appeals under this section from a magistrate to the Industrial Commission of New South Wales, whether in addition to the provisions of, or in substitution for any of the provisions of, the Industrial Arbitration Act, 1940, or the regulations made under that Act and relating to appeals.

PART VI.**COMPENSATION FUND.**

- 10 **39.** (1) There shall be established in the Special Deposits Account in the Treasury a Motor Dealers Compensation Fund (hereinafter in this Part referred to as "the Fund"). Motor
Dealers
Compensa-
tion Fund.

(2) There shall be paid into the Fund—

- 15 (a) such proportion of the fees paid under this Act or the regulations as is determined in accordance with subsection (3); and
- (b) any money recovered by the Commissioner in the exercise of any rights, or the pursuit of any remedies, to which he is subrogated under section 41.
- 20

(3) All fees paid under this Act or the regulations shall be distributed between the Fund and the Consolidated Revenue Fund in the prescribed proportions.

(4) Subject to section 42, there shall be paid out 25 of the Fund the amount of any loss which is certified by the Commissioner pursuant to section 40 (2).

40. (1) Any person wishing to make a claim against the Fund shall submit his claim in writing, verified by statutory declaration, to the Commissioner. Claims
against
Fund.

(2)

Motor Dealers.

(2) Subject to this section, if the Commissioner is satisfied that a person submitting a claim has incurred a loss in connection with a motor vehicle (not being an exempted motor vehicle) by reason of the failure of a dealer to comply
5 with any obligation arising under this Act with which he is required to comply, or by reason of the fact that a dealer has not passed an unencumbered title to the vehicle, the Commissioner may certify the amount of the loss.

(3) No loss shall be certified by the Commissioner
10 if the loss was incurred in connection with a motor vehicle sold before the commencement of section 9.

(4) No loss shall be certified by the Commissioner unless the Commissioner is satisfied that the claimant has taken all reasonable steps to exercise such legal remedies and
15 other rights of action available in respect of the loss incurred by him.

(5) The Commissioner shall not certify a loss incurred by a trade owner or by a person who was a trade owner when he purchased the motor vehicle in connection
20 with which the loss is incurred.

41. On payment out of the Fund of any amount certified by the Commissioner, the Commissioner shall be subrogated to the extent of such payment to all the rights and remedies of the claimant against the person in relation to whom the
25 claim arose or any other person incurring any liability to the claimant in relation to the subject-matter of the claim or the legal personal representatives or other persons having authority to administer any estate concerned, and the claimant shall not, to the extent of such payment be entitled to enforce
30 those rights or remedies.

42.

Motor Dealers.

42. Where the amount standing to the credit of the Fund is insufficient to pay all the amounts certified by the Commissioner under section 40 (2) in any financial year, any such amount, so far as it remains unpaid, shall be charged
5 against future receipts of the Fund and shall be paid out of the Fund when sufficient moneys are available therein.

Deferred payments out of Fund.

PART VII.

GENERAL.

43. Except as is expressly provided in this Act, nothing
10 in this Act shall have the effect of limiting, restricting or otherwise affecting any right or remedy which a person would have if this Act had not been enacted.

Saving of rights and remedies.

44. A person shall not, without the prior consent in writing of the Commissioner, be competent to waive any
15 rights conferred on him by this Act and the purported waiver of any such rights without that consent is of no effect.

No waiver of rights.

45. (1) Subject to subsection (2), where a dealer incurs any costs or expenses by virtue of the operation of this Act in relation to the sale of a motor vehicle, the dealer is not
20 entitled to be indemnified in respect of those costs or expenses by any antecedent owner and any contract or agreement providing, directly or indirectly, for the dealer to be so indemnified is, to the extent that it does so, void.

No indemnity for dealer.

(2) Subsection (1) does not apply to a contract or
25 agreement providing for a dealer to be indemnified, as provided in that subsection, by an antecedent owner of a motor vehicle who is a dealer or a manufacturer.

Motor Dealers.

46. (1) This section does not apply to or in respect of the sale of—

Prohibition against selling registered vehicle.

(a) a motor vehicle to a trade owner;

(b) a motor vehicle by bona fide auction; or

5 (c) a motor vehicle by a dealer on behalf of a financier where the motor vehicle is a vehicle which was sold by the financier under a hire-purchase agreement and subsequently repossessed by him.

10 (2) Subject to subsection (3), a dealer shall not sell a motor vehicle that is registered under and in accordance with the regulations at a cash price of less than \$500, or such greater amount as may be prescribed, unless a certificate in relation to the vehicle is in force.

15 Penalty : \$500.

(3) In proceedings for an offence under subsection (2) it is a defence if the accused person proves that the motor vehicle concerned was sold to a vehicle-wrecker for the purpose of being demolished.

20 (4) For the purposes of this section a certificate in relation to a motor vehicle is in force if it is issued not earlier than one month before the sale of the vehicle.

(5) In this section—

25 “certificate” means, in relation to a motor vehicle, a certificate of inspection issued under the regulations in relation to that vehicle;

“regulations” means regulations under the Motor Traffic Act, 1909.

Motor Dealers.

47. (1) A person shall not, with intent to deceive any person— Certain misdescriptions prohibited.

- 5 (a) alter or cause or permit to be altered, or connive at the alteration of, the reading of an odometer on a second-hand motor vehicle;
- (b) state or represent as the year of manufacture of a second-hand motor vehicle a year other than the actual year of manufacture of the vehicle;
- 10 (c) state or represent as the year of first registration of a second-hand motor vehicle a year other than the actual year of first registration of the vehicle; or
- 15 (d) state or represent as the model designation of a second-hand motor vehicle a model designation other than the actual model designation of the vehicle.

Penalty : \$500.

(2) Where a dealer or a person concerned in the management or conduct of the business of a dealer is convicted of an offence under subsection (1) a purchaser who
20 purchased the motor vehicle in respect of which that offence was committed relying on—

- (a) the reading of the odometer on the vehicle as altered; or
- 25 (b) the statement or representation as to the year of manufacture or the year of first registration or the model of the vehicle,

as the case may be, may sue for and recover from the dealer or the person so convicted, as the case may be, as a debt due to the purchaser the amount (if any) determined by the
30 magistrate, before which the conviction is had, as being the difference between the sale price of the vehicle and its fair value at the time of the sale.

(3) For the purposes of this section “year of first registration” in relation to a motor vehicle means the year in
35 which the vehicle is first registered.

(4)

Motor Dealers.

(4) Nothing in this section affects the operation of Part III of the Consumer Protection Act, 1969, but a person shall not be prosecuted in respect of the same matter for an offence under this section and that Part.

5 **48.** (1) A dealer who sells any motor vehicle to any person (not being a trade owner) and fails to disclose to that person the fact that he is a dealer is guilty of an offence and liable to a penalty of \$500. Failure to disclose fact of being a dealer.

10 (2) A person who, in the capacity of servant or agent of a dealer, negotiates any sale of a motor vehicle to any person (not being a trade owner) and fails to disclose to that person—

- (a) the fact that the sale is being made by a dealer; or
- (b) the name and address of the dealer,

15 is guilty of an offence and liable to a penalty of \$500.

(3) This section does not apply to or in connection with an exempted motor vehicle.

49. (1) Where—

20 (a) a dealer causes or permits to be published any advertisement calculated to suggest that a motor vehicle is being offered or displayed for sale, or that inquiries concerning a motor vehicle may be made by potential purchasers, at any premises or by telephoning any telephone number;

25 (b) the advertisement does not disclose that the person on whose behalf it is published is a dealer; and

(c) the premises are not, or the telephone number is not the telephone number of, the place at which the dealer carries on business,

30 the dealer is guilty of an offence and liable to a penalty of \$500.

(2)

Motor Dealers.

(2) This section does not apply to or in connection with an exempted motor vehicle.

50. A dealer shall not cause or permit to be published any advertisement referring to a specified motor vehicle, to any specified motor vehicles, or to any specified price at which any second-hand motor vehicle may be purchased, unless the registration number or numbers of the vehicle or vehicles are specified in the advertisement.

Details in certain advertisements.

Penalty : \$200.

51. For the purposes of this Act any statement or representation made by an agent of a dealer or an employee of a dealer in his business as a dealer, in relation to the quality, description or history of a motor vehicle offered or displayed for sale by that dealer shall be deemed to be such a representation or statement of the dealer.

Representation by employee of dealer.

52. (1) A person shall not submit or tender or cause or permit to be submitted or tendered a document, to which this section applies, to any person for his signature unless at the time of the submission or tendering of the document all material particulars in the document have been completed.

Tender of documents for signature.

Penalty : \$200.

(2) This section applies to any document evidencing or recording a contract for—

- (a) the sale of a motor vehicle; or
- (b) the provision of credit for the purposes of such a sale.

53.

Motor Dealers.

53. Any person who, without lawful authority, offers, **Bribery.**
makes or gives to any person authorised by the Commissioner
under section 6 or appointed by the Minister under that
section, any payment, gratuity or present in consideration that
5 that person will do or omit to do some act or thing pertaining
to his authority or appointment is guilty of an offence and
liable to a penalty of \$500.

54. Where an offence against this Act committed by a **Offences by**
corporation is proved to have been committed with the consent **corporations.**
10 or connivance of any director, manager, secretary or other
officer of the corporation, he, as well as the corporation, shall
be deemed to have committed that offence and shall be liable
to be proceeded against and punished accordingly.

55. (1) Proceedings for an offence against this Act **Proceedings.**
15 may—

- (a) be taken and prosecuted by any person acting with
the authority of the Minister; and
- (b) be disposed of summarily before a magistrate or a
stipendiary magistrate.

20 (2) In a prosecution for any such offence, an
authority to prosecute, purporting to have been signed by the
Minister, shall be evidence of such authority without proof
of the Minister's signature.

(3) The provisions of the Industrial Arbitration Act,
25 1940, and the regulations made under that Act, relating to
proceedings before a magistrate and to appeals from a magis-
trate to the Industrial Commission of New South Wales shall
apply to proceedings before a magistrate or a stipendiary
magistrate for offences against this Act as if the proceedings
30 under this Act were proceedings under that Act.

(4) In proceedings for an offence against this Act
the informant may conduct his case himself, or by his counsel
or attorney, or by an agent authorised by him in writing,
or by an officer in the public service.

(5)

Motor Dealers.

(5) Any such proceedings shall be commenced by information laid at any time within twelve months after the time when the offence is alleged to have been committed.

56. (1) Where in any proceedings (whether for an ^{Evidence.} offence against this Act or otherwise) it is proved that on a certain day or during any period a person was the holder of a dealer's licence, a vehicle-wrecker's licence or a prescribed licence it shall be presumed, in the absence of proof to the contrary, that the person was a dealer, a vehicle-wrecker or a person carrying on a prescribed business, as the case may be, on that day or during that period, as the case may be.

(2) A document purporting to be certified by the Commissioner and stating that a person is not, or was not, on a date specified in the document the holder of a licence shall be received in proceedings before any court or tribunal as evidence of that fact.

57. (1) The Governor may make regulations, not inconsistent with this Act, prescribing any matter which by this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act. ^{Regulations.}

(2) Without prejudice to the generality of subsection (1), the Governor may make regulations for or with respect to—

- (a) regulating the conduct of dealers, vehicle-wreckers or persons carrying on a prescribed business, or their servants or agents, in carrying on the business of a dealer or a vehicle-wrecker, or a prescribed business;
- (b) prohibiting or regulating the employment by dealers, vehicle-wreckers or persons carrying on a prescribed business, of persons convicted of offences under this Act or of offences involving fraud or dishonesty

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- dishonesty or other prescribed offences, or persons whose application for a licence has been refused or whose licence has been revoked;
- 5 (c) requiring dealers, vehicle-wreckers or persons carrying on a prescribed business, or their servants or agents, to make reports to prescribed persons with respect to offences involving motor vehicles or such parts of motor vehicles as may be prescribed and to forward such copies of records kept by them, at
- 10 such intervals, as may be prescribed, to persons specified in the regulations;
- (d) providing for the payment to all or any of the members of a disputes committee appointed under section 34 of fees or travelling or other allowances;
- 15 (e) providing for the remission of any fees, or part of any fees, paid in respect of a licence, in prescribed circumstances;
- (f) prescribing the circumstances in which records required by this Act to be kept may be destroyed;
- 20 and
- (g) prohibiting the commission by dealers, vehicle-wreckers or persons carrying on a prescribed business, of any prescribed practices.
- (3) The regulations may impose a penalty not
- 25 exceeding \$500 for an offence arising under the regulations.
- (4) Regulations may be made so as to apply differently to different licences or to or in respect of the holders of different licences or according to such other factors as may be specified in the regulations.
- 30 (5) Different fees may be prescribed in respect of different licences, or in respect of restricted licences according to the nature of the restriction in their application.
- (6) A person or class of person may be prescribed
- 35 4 (1) notwithstanding that that person or class of person
- carries

Motor Dealers.

carries on the business of buying, selling or exchanging motor vehicles only for one or more of the purposes referred to in paragraph (a), (b), (c) or (e) of that definition.

5 **58.** (1) The holder of a licence under this Act is not ^{Savings.} required to hold a license under the Second-hand Motor Dealers Act, 1956, and any license under that Act shall cease to have effect upon the issue to the holder thereof of a licence under this Act.

10 (2) Where a license under the Second-hand Motor Dealers Act, 1956, ceases to have effect (as provided in subsection (1)) the Commissioner for Motor Transport shall refund to the person who held the license the appropriate amount in respect of that license.

15 (3) For the purposes of subsection (2) the appropriate amount in respect of a license is the amount that equals one-twelfth of the fee paid for the license in respect of each whole month of the remainder of the period for which the license would have remained in force if it had not ceased to have effect.

20 **59.** The Second-hand Motor Dealers Act, 1956 (other than sections 18 and 19 thereof) is repealed. ^{Repeal of Act No. 5, 1956.}

25 **60.** The Motor Traffic Act, 1909, is amended by inserting after section 3 (1) (g1) the following paragraph :— ^{Amendment of Act No. 5, 1909.}
 (g2) provide, for the purposes of determining whether or not motor vehicles are suitable for safe use or comply with the requirements of this Act and the regulations— ^{Sec. 3. (Regulations).}

30 (i) for the Commissioner to authorise in writing any person whom the Commissioner is satisfied is suitably qualified to inspect and test

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test motor vehicles and to issue certificates of inspection and rejection, in a prescribed form and in a prescribed manner, relating to such inspections;

5 (ii) for the Commissioner to authorise in writing any person whom the Commissioner is satisfied has suitable premises and equipment to use the premises for the purposes of conducting any inspection referred to in subparagraph (i);

10 (iii) for the issue and renewal of authorities referred to in subparagraphs (i) and (ii), their duration and form, and the fees to be paid in connection with their issue;

15 (iv) for the maximum charge to be made for the issue of a certificate referred to in subparagraph (i) and for different charges to be made for inspection of different classes of vehicles;

20 (v) for the delivery by any person or class or classes of persons of a certificate referred to in subparagraph (i) in connection with the registration, renewal or registration or transfer of registration of any motor vehicle or in respect of any class or classes of motor vehicles, whether classified by type or age, by the price paid or otherwise;

25 (vi) for the issue by the Commissioner of rules to be observed by any person referred to in subparagraph (i) or (ii);

30 (vii) for any person authorised pursuant to subparagraph (ii) to provide a security fee, in a form required by the Commissioner, for an amount of twenty dollars, or such other amount as may be prescribed, and for any

such

Motor Dealers.

- 5 such security fee to be forfeited to the
Commissioner if the Commissioner is
satisfied that the person has failed to comply
with any of the rules referred to in sub-
paragraph (vi);
- 10 (viii) for the Commissioner to cancel or suspend
any authority referred to in subparagraph
(i) or (ii) if the holder has failed to comply
with any rule referred to in subparagraph
(vi) or if the Commissioner is for any
reason of the opinion that the holder is not
a fit and proper person to continue to hold
such authority;
- 15 (ix) for the Commissioner to appoint a com-
mittee of review to which the Commissioner
may refer for consideration and report to
him any case where consideration is being
given to the refusal, cancellation or suspen-
20 sion of an authority referred to in subpara-
graph (i) or (ii), any such committee to
include representatives of such organisations
associated with trading and servicing of
motor vehicles as the Commissioner con-
siders appropriate;
- 25 (x) for an appeal to a court of petty sessions,
and for matters related to any such appeal,
against a refusal, cancellation or suspension
of any authority referred to in subparagraph
(i) or (ii) of this paragraph.

Motor Vehicle

such as may be required to be furnished to the Commissioner, if the Commissioner is satisfied that the person has failed to comply with any of the rules referred to in sub-paragraph (vi);

(vii) for the Commissioner to cancel or suspend any authority referred to in subparagraph (i) or (ii) if the holder has failed to comply with any rule referred to in subparagraph (vi) or if the Commissioner is for any reason of the opinion that the holder is not a fit and proper person to continue to hold such authority;

(ix) for the Commissioner to appoint a committee of inquiry to which the Commissioner may refer for consideration and report to him any case where consideration is being given to the refusal, cancellation or suspension of an authority referred to in subparagraph (i) or (ii) and such committee to include representatives of such organizations associated with trading and servicing of motor vehicles as the Commissioner considers appropriate;

(x) for an appeal to a court of petty sessions and for notice referred to any such appeal against a refusal, cancellation or suspension of any authority referred to in subparagraph (i) or (ii) of this paragraph.

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 52, 1974.

An Act to provide for the granting of licences to persons carrying on the business of a motor dealer or a vehicle-wrecker, or a prescribed business; to require motor dealers, vehicle-wreckers and persons carrying on a prescribed business to keep certain records; to impose certain obligations on a motor dealer in relation to motor vehicles offered or displayed for sale or sold by him; to provide for the settlement by the Commissioner for Consumer Affairs of certain disputes arising in connection with the sale of motor vehicles; to establish a Motor Dealers Compensation Fund; for these and other purposes

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purposes to repeal the Second-hand Motor Dealers Act, 1956 (other than sections 18 and 19 thereof); to amend the Motor Traffic Act, 1909; and for purposes connected therewith. [Assented to, 6th May, 1974.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY AND INTERPRETATION.

Short
title.

1. This Act may be cited as the "Motor Dealers Act, 1974".

Commence-
ment.

2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Part II shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Section 59 shall commence on the day that is three months after the day on which Part II commences.

(4) Except as provided in subsections (1), (2) and (3), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

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3. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY AND INTERPRETATION—ss.
1–8.

PART II.—LICENSING—ss. 9–20.

PART III.—DEALERS' AND OTHER RECORDS—ss. 21–
23.

PART IV.—DEALINGS IN MOTOR VEHICLES—ss. 24–
29.

PART V.—DISPUTES AND RESCISSIONS—ss. 30–38.

PART VI.—COMPENSATION FUND—ss. 39–42.

PART VII.—GENERAL—ss. 43–60.

4. (1) In this Act, except in so far as the context or Interpretation.
subject-matter otherwise indicates or requires—

“accessories” includes car wirelesses and tools usually
carried on motor vehicles;

“cash price”—

(a) in relation to a motor vehicle offered or
displayed for sale, means the price at which
the vendor is willing to sell the vehicle for
cash complete with all accessories and other
attachments then fitted to or supplied with
the vehicle; and

(b) in relation to the sale of a motor vehicle—

(i) means the price at which the vehicle
is sold;

(ii)

Motor Dealers.

(ii) where any part of the consideration that passed, or is to pass, from the purchaser is represented by another vehicle, or other thing, means the price at which the vehicle is sold and the value of the other vehicle or thing as ascribed to it for the purposes of the sale by the parties thereto or, if no agreed value is so ascribed, the market value of the other vehicle or thing at the time of the sale; or

(iii) where all of the consideration that passed, or is to pass, from the purchaser is represented by another vehicle, or other thing, means the value of the other vehicle or thing as ascribed to it for the purposes of the sale by the parties thereto or, if no agreed value is so ascribed, the market value of the other vehicle or thing at the time of the sale;

“Commissioner” means the Commissioner for Consumer Affairs appointed pursuant to section 13 of the Consumer Protection Act, 1969, and includes any person appointed to act as such pursuant to section 14 of that Act;

“commercial vehicle” means a motor vehicle constructed or adapted principally for—

- (a) the carriage of goods;
- (b) the carriage of more than ten adult persons;
or
- (c) industrial or agricultural use,

but

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but does not include a motor vehicle of the kind known as a utility, a station waggon or a panel van that is of the same make as a factory-produced motor car and in which such part of the body form as is forward of the windscreen and the greater part of the mechanical equipment are the same, or substantially the same, as in that motor car;

“dealer” means a person who carries on the business of buying, selling or exchanging motor vehicles, but does not include a financier;

“dealer’s licence” means a dealer’s licence granted under section 12;

“exempted motor vehicle”, when used in or in relation to any provision of this Act, means a motor vehicle belonging to a class of motor vehicle exempted or excluded from the operation of that provision under section 8 (1) (b);

“exempted person”, when used in or in relation to any provision of this Act, means a person, or a person belonging to a class of person, exempted or excluded from the operation of that provision under section 8 (1) (a);

“financier” means a person whose ordinary business is not that of buying, selling or exchanging motor vehicles but who carries on that business only for one or more of the following purposes, that is to say—

- (a) for the purpose of letting or hiring motor vehicles under hire-purchase agreements;
- (b) for the purpose of selling motor vehicles on instalment terms;

(c)

Motor Dealers.

- (c) for the purpose of taking or enforcing securities over motor vehicles;
- (d) for any purpose that may be prescribed; or
- (e) for the purpose of disposing of motor vehicles acquired by him in connection with any of the purposes referred to in, or prescribed in relation to, this definition,

but does not include such person or class of person as may be prescribed for the purposes of this definition;

“hire-purchase agreement” means, in relation to a motor vehicle, an agreement for the letting of the motor vehicle with an option to purchase;

“holder” means—

- (a) in relation to a joint licence, each individual to whom the licence is granted or deemed under section 15 (7) (b) to be granted; or
- (b) in relation to any other licence, the person to whom the licence is granted;

“identification number”, when used in relation to the engine or engine block of a motor vehicle or to any part or accessory of a motor vehicle, means the number and any accompanying letters or symbols stamped on or otherwise affixed to that engine, engine block, part or accessory as a means of identifying that engine, engine block, part or accessory, but does not include any casting number or any number used as a means of identifying a class of engine, engine block, part or accessory;

“joint

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“joint application” means an application made pursuant to section 10 (2) for the grant of a joint licence;

“joint licence” means a licence granted pursuant to section 12 (2) (c);

“licence” means a dealer’s licence, a prescribed licence or a vehicle-wrecker’s licence;

“magistrate” means an industrial magistrate appointed under the Industrial Arbitration Act, 1940;

“model designation” means, in relation to a motor vehicle of a particular model, any words, figures, letters or symbols applied by the manufacturer of that motor vehicle for the purpose, or apparent purpose, of identifying a motor vehicle of that model;

“motor vehicle” means any motor car, motor carriage, motor cycle, tractor, or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer, but does not include any vehicle used on a railway or tramway;

“owner”, in relation to a motor vehicle, includes any person who is a joint owner, or part owner thereof and any person who has the possession and use thereof under or subject to a hire-purchase agreement, bill of sale or similar contract, but does not include any person in whom the property in the vehicle or any absolute or conditional right or licence to take possession of the motor vehicle is vested under or subject to a hire-purchase agreement, bill of sale or similar contract and who has not for the time being the possession and use thereof;

“prescribed business” means a business belonging to a class of business prescribed under section 7 (a);

“prescribed

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“prescribed licence” means a licence prescribed under section 7 (b) and granted under section 12;

“registered” means registered under the provisions of any Act or law, whether of the State or elsewhere, relating to the registration of motor vehicles;

“regulations” means regulations made under **this Act**;

“restricted licence” means a dealer’s licence restricted in its application pursuant to section 12 (5) to the class of motor vehicle specified in the licence;

“second-hand motor vehicle” includes a motor vehicle that has, at any time before being offered or displayed for sale, or sold, been registered;

“sell” means to sell as principal or agent;

“trade owner” means a dealer or a financier;

“vehicle-wrecker” means a person who carries on the business of demolishing or dismantling motor vehicles;

“vehicle-wrecker’s licence” means a vehicle-wrecker’s licence granted under section 12;

“year of manufacture” means, in relation to a motor vehicle, the year in which the vehicle was manufactured.

(2) A vehicle does not cease to be a motor vehicle for the purposes of this Act by reason only that it is not in working condition or is incomplete.

(3) For the purposes of this Act—

(a) where a dealer sells a motor vehicle to a financier in the expectation that the financier will sell that motor vehicle to a particular third person and the financier does so, the dealer shall be treated as having sold the motor vehicle to that third person;
and

(b)

Motor Dealers.

(b) where a motor vehicle is made the subject of a hire-purchase agreement, it shall be treated as being sold to the hirer, and the sale shall be treated as made when the hire-purchase agreement is entered into.

(4) A person who carries on the business of manufacturing or assembling motor vehicles is not a dealer and does not carry on the business of a dealer, by reason only of selling any such vehicle to a trade owner.

(5) For the purposes of this Act a motor vehicle shall be treated as having been sold notwithstanding that all or part of the consideration that passed from the purchaser in respect of the sale is represented by another vehicle or other thing.

5. (1) An application under this Act shall be made in ^{Approved} or to the effect of a form approved by the Minister. ^{forms.}

(2) The Minister may approve different forms for the purpose of making different applications.

6. (1) Anything authorised or required by or under this Act to be done by the Commissioner (other than the determination under section 35 of a dispute or the making of an order under section 36) may be done by any officer of the Bureau or the Department who is authorised generally or specially in that behalf in writing by the Commissioner, and for the purpose of doing so that officer shall be deemed to be the Commissioner. <sup>Per-
formance
of Com-
missioner's
functions.</sup>

(2) The Minister may appoint an officer of the Bureau or the Department to exercise and perform, either generally or in respect of any particular dispute, the functions of the Commissioner under section 35 or 36, or both, and for the purposes of doing so that officer shall be deemed to be the Commissioner.

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(3) In this section—

“Bureau” means the Consumer Affairs Bureau established under the Consumer Protection Act, 1969;

“Department” means the Department of Labour and Industry.

Governor
may
prescribe a
class of
business.

7. The Governor may—

- (a) prescribe any class of business, carried on in relation to used or reconstructed motor vehicles, or such reconstructed parts of motor vehicles or accessories as may be prescribed; and
- (b) prescribe a licence in relation to any such class of business and a fee to be paid therefor.

Exemptions.

8. (1) The Governor may, by regulation made under this Act, exempt or exclude from the operation of all or any of the provisions of this Act—

- (a) any person or class of person; or
- (b) any class of motor vehicle.

(2) An exemption or exclusion under subsection (1) may be given unconditionally or subject to such conditions as may be prescribed in respect of the exemption or the exclusion.

(3) Where an exemption or exclusion under subsection (1) is given subject to conditions the exemption or the exclusion does not have effect during any period when the conditions are not complied with.

PART

Motor Dealers.

PART II.

LICENSING.

9. (1) On or after the relevant day, no person (other than an exempted person) shall—

- (a) carry on or advertise that he carries on or is willing to carry on the business of a dealer unless he is the holder of a dealer's licence; or
- (b) carry on the business of a dealer at any place of business unless he is the holder of a dealer's licence, granted in respect of that place of business.

Penalty : \$1,000, and in addition a further penalty of \$100 a day for each day on which the offence continues.

(2) On or after the relevant day, no person (other than an exempted person) shall—

- (a) carry on or advertise that he carries on or is willing to carry on the business of a vehicle-wrecker unless he is the holder of a dealer's licence (not being a restricted licence) or a vehicle-wrecker's licence; or
- (b) carry on the business of a vehicle-wrecker at any place of business unless he is the holder of a dealer's licence (not being a restricted licence) or a vehicle-wrecker's licence, granted in respect of that place of business.

Penalty : \$1,000, and in addition a further penalty of \$100 a day for each day on which the offence continues.

(3)

Motor Dealers.

(3) On or after the relevant day in relation to a prescribed business, no person (other than an exempted person) shall—

- (a) carry on or advertise that he carries on or is willing to carry on that business unless he is the holder of a dealer's licence (not being a restricted licence) or the prescribed licence in relation to that business; or
- (b) carry on a prescribed business at any place of business unless he is the holder of a dealer's licence (not being a restricted licence) or the prescribed licence in relation to that business, granted in respect of that place of business.

Penalty : \$1,000, and in addition a further penalty of \$100 a day for each day on which the offence continues.

(4) On or after the relevant day no holder of a dealer's licence (being a restricted licence) shall, in the course of carrying on his business as a dealer, buy, sell or exchange a motor vehicle unless it is a vehicle belonging to a class of vehicle to which his licence, in its application, is restricted.

Penalty : \$1,000.

(5) A person carries on the business of a dealer or a vehicle-wrecker, or a prescribed business, if he does so either by himself, as a member of a partnership or by his servant or agent.

(6) For the purposes of—

- (a) subsections (1), (2) and (4), the relevant day is the day that is three months after the day on which this Part commences; or

(b)

Motor Dealers.

(b) subsection (3), the relevant day in relation to any prescribed business is the day that is one month after the day on which the regulations prescribing that business are published in the Gazette or such day (being a day that is later than that day of publication) as is specified in those regulations.

10. (1) An application for the grant of a dealer's licence, a vehicle-wrecker's licence or a prescribed licence shall be lodged with the Commissioner. Application for grant of licence.

(2) Two or more individuals intending to carry on in partnership a business for which a licence is required may, but are not required to, apply for the grant of a joint licence.

(3) An application made pursuant to subsection (2) shall specify the names of the individuals to whom the licence applied for, if granted, is to be granted.

(4) Where an application is made for the grant of a licence to a corporation the names of the directors of the corporation shall be specified in the application.

(5) Subject to subsection (6), where a business, for which a licence is required, is to be carried on at more than one place of business a separate application for the grant of a licence in respect of each such place shall be lodged with the Commissioner.

(6) Where a business, for which a licence is required, is to be carried on at more than one place of business but, by reason of the close proximity of those places, the person applying for the grant of the licence considers it reasonable that a single licence only should be required in respect of those places he may include a reference to all of those places in an application for the grant of a single licence.

(7)

Motor Dealers.

(7) Where an applicant for the grant of a dealer's licence wishes the licence, if granted, to be restricted in its application to any class of motor vehicle he shall so state, and specify that class, in his application.

Inquiries
by
Commissioner of
Police.

11. (1) Where an application for a licence is lodged, the Commissioner may request the Commissioner of Police to ascertain in relation to the application whether or not any person referred to in section 12 (2) (a), (b) or (c), as the case may be, is, or would be, a fit person to hold the licence and on receipt of any such request the Commissioner of Police shall cause such inquiries as he deems necessary to be made in order to ascertain that fact and shall furnish a report of the findings to the Commissioner.

(2) The Commissioner may, by instrument in writing, served on an applicant or, in the case of a joint application, on any one or more of the applicants, require the applicant or applicants to furnish within the period specified in the instrument such further information and documents as he may reasonably require for the purposes of the application and so specifies.

Disposal
of
applica-
tions.

12. (1) This section is subject to section 13.

(2) On payment of the appropriate fee the Commissioner shall, when an application is made for the grant of a dealer's licence, a vehicle-wrecker's licence or a prescribed licence—

(a) by an individual (other than an individual referred to in paragraph (c)), grant that licence to the individual;

(b) by a corporation, grant that licence to the corporation; or

(c)

Motor Dealers.

- (c) by two or more individuals making a joint application, grant that licence in the joint names of the individuals specified in the application pursuant to section 10 (3).

(3) Where, pursuant to section 10 (5), a reference to two or more places of business is included in an application for the grant of a single licence the Commissioner, if he grants the licence, may—

- (a) grant the licence in respect of all of those places;
or
(b) grant the licence in respect of one or some only of those places.

(4) Where the Commissioner grants a single licence in respect of two or more places of business those places are together, for the purposes of this Act, the place of business in respect of which the licence is granted.

(5) Where an applicant applies for the grant of a dealer's licence restricted in its application to a class of motor vehicle the Commissioner shall, if he grants the licence, grant the licence as so restricted.

(6) The appropriate fee is—

- (a) in the case of a dealer's licence (not being a restricted licence), \$100 or such other fee as may be prescribed; or
(b) in the case of a restricted licence, a vehicle-wrecker's licence or a prescribed licence, such a fee as may be prescribed.

Motor Dealers.

Refusal
of applica-
tion for
grant of
licence.

13. (1) The Commissioner shall not grant a licence unless he is satisfied—

- (a) in the case of an application by an individual, that the individual is of or above the age of eighteen years and is a fit person to hold the licence applied for;
- (b) in the case of a joint application, that each of the individuals to whom the licence is to be granted is of or above the age of eighteen years and is a fit person to hold the licence applied for; or
- (c) in the case of an application by a corporation, that the corporation is a fit person to hold the licence applied for, and that each one of the directors of the corporation is of or above the age of eighteen years and would, if the application were made by him, be a fit person to hold the licence applied for.

(2) In considering whether a person is or would be a fit person to hold a licence the Commissioner—

- (a) shall, in the case of an individual, have regard to his character;
- (b) shall have regard to any report relating to that person furnished under section 11 by the Commissioner of Police; and
- (c) shall have regard to such other matters as the Commissioner considers relevant for the purpose of determining the fitness of the person in that regard.

(3) The Commissioner shall not grant a licence in respect of any place of business unless the applicant satisfies the Commissioner that the business which it is proposed to carry on under the licence at that place may be so carried on without contravening any other Act or any instrument made under any other Act.

(4)

Motor Dealers.

(4) Where the Commissioner refuses to grant a licence he shall cause a notice of refusal to be served on the applicant for the licence by sending the notice by certified mail addressed to the applicant at his address last known to the Commissioner, or by causing it to be delivered to the applicant personally.

(5) In the case of a joint application it is a sufficient compliance with subsection (4) if the notice of refusal is served on any one of the applicants.

(6) A notice of refusal shall state the reasons for the refusal.

(7) The date on which a notice of refusal is served is—

- (a) where the notice is sent by certified mail, the date when the notice would be delivered in the ordinary course of post; or
- (b) where the notice is delivered to the applicant personally, the date when it is so delivered.

14. (1) A licence shall be in the form approved by the Minister and, without prejudice to the inclusion in the licence of any other particulars, shall—

- (a) specify the day of issue of the licence;
- (b) specify the place of business in respect of which the licence is granted;
- (c) specify the name of the person or, in the case of a joint licence the names of the individuals, to whom the licence is granted;
- (d) where the licence is granted to a corporation, specify the names of the directors of the corporation; and
- (e) where the licence is restricted in its application to a class of motor vehicle, specify that class of motor vehicle.

(2)

Motor Dealers.

(2) The Minister may approve different forms for different licences.

Amendment
of licence.

15. (1) The applications to which this section relates are applications for the amendment—

- (a) of a licence by substituting for the reference in the licence to a place of business a reference to another place of business;
- (b) of a joint licence by specifying in the licence the name of any individual;
- (c) of a licence held by a corporation by specifying in the licence the name of any person who is a director of the corporation; or
- (d) of a licence in such other manner as may be prescribed.

(2) Subject to the regulations, on the making of an application to which this section relates and on payment of the prescribed fee, the Commissioner may refuse the application or grant the application and amend the licence in accordance with the application.

(3) Where a person becomes a director of a corporation that is the holder of a licence and his name is not specified as a director in the licence, the corporation shall, within one month after that person becomes a director, make the application referred to in subsection (1) (c).

Penalty : \$500.

(4) Where an application made pursuant to subsection (3) is refused the person to whom the application relates shall forthwith give up his directorship of the corporation concerned.

Penalty : \$200.

(5)

Motor Dealers.

(5) Where an application made pursuant to subsection (3) is refused the person to whom the application relates shall not again, within a period of six months after the refusal of the application, become a director of the corporation unless the corporation ceases to be the holder of a licence or the Commissioner, pursuant to subsection (6), grants an application made under that subsection in relation to that person.

Penalty : \$200.

(6) A corporation that is the holder of a licence may apply to the Commissioner for the approval of a person whom it is proposed to appoint or elect to be a director of the corporation and, subject to the regulations, the Commissioner may refuse or grant the application.

(7) Where an application referred to in—

- (a) subsection (1) (a) is granted and the licence is amended by substituting a reference to another place of business, that place of business is a place of business in respect of which the licence is granted, or
- (b) subsection (1) (b) is granted and the licence is amended by specifying the name of the individual concerned in the licence, that individual shall be deemed to be an individual to whom the licence is granted.

(8) The regulations may—

- (a) make provision for or with respect to the making of applications under this section;
- (b) specify the circumstances in which any such application may be refused and, for that purpose, apply any provision in this Part with or without variation or modification; and

(c)

Motor Dealers.

- (c) provide for an appeal against any such refusal and, for that purpose, apply any provision in this Part with or without variation or modification.

Duplicate
licence.

16. If the Commissioner is satisfied that a licence has been lost or destroyed he may, on payment of the prescribed fee, issue a duplicate licence which shall be of the same force as the original licence.

Duration of
licence.

17. (1) A licence has effect from and including the day of issue of the licence.

(2) A licence continues in force unless it ceases to have effect under subsection (5) or is revoked under section 18.

(3) The appropriate fee in respect of a licence is payable annually on or before the anniversary of the day of issue of the licence in the year concerned.

(4) The appropriate fee, when paid in any year in respect of a licence, shall be accompanied by a form, prescribed for the purposes of this section, completed by the holder of the licence.

(5) If the appropriate fee in respect of a licence is not paid in accordance with subsection (3) or, if paid, is not accompanied by the prescribed form completed as provided in subsection (4), the licence ceases to have effect immediately following the anniversary concerned.

(6) The appropriate fee—

- (a) in respect of a dealer's licence (not being a restricted licence), is \$100 or such other fee as may be prescribed ; or

(b)

Motor Dealers.

- (b) in respect of a restricted licence, a vehicle-wrecker's licence or a prescribed licence, is such fee as may be prescribed.

18. (1) The Commissioner may, after due inquiry, Revocation of licence. revoke a licence—

- (a) if he is satisfied that the holder of the licence made a statement in or in connection with his application for the licence that he knew to be false or misleading in a material particular;
- (b) if the holder of the licence is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for three months or more, or of any offence against this Act or the regulations, or of an offence against section 32 of the Consumer Protection Act, 1969;
- (c) if he is satisfied, in the case of the holder of a dealer's licence, that the holder has been guilty of fraudulent conduct or dishonesty in connection with his business as a dealer;
- (d) if he is satisfied, in the case of a holder of a dealer's licence, that the holder has failed to carry out any of his obligations under section 27 or has failed to carry out any of those obligations with due expedition;
- (e) if he is satisfied, in the case of a holder of a dealer's licence (not being a joint licence), that the holder does not have sufficient material and financial resources to comply with the requirements of this Act; or
- (f) if he is satisfied, in the case of a dealer's licence (being a joint licence), that the holders of the licence do not together have sufficient material and financial resources to comply with the requirements of this Act.

(2)

Motor Dealers.

(2) The power under subsection (1) (a), (b), (c) or (d) to revoke a licence may, in the case of a joint licence, be exercised if subsection (1) (a), (b), (c) or (d), as the case may be, applies to any holder of that licence.

(3) Where the holder of a dealer's licence (not being a joint licence) carries on the business of a dealer in partnership with one, or more than one, person, the Commissioner shall not revoke his licence under subsection (1) (e) unless the Commissioner is satisfied that his material and financial resources, together with those of the person or persons with whom he carries on that business in partnership, are not sufficient to enable him to comply with the requirements of this Act.

(4) Without prejudice to his right to revoke a licence under subsection (1), the Commissioner may, after due inquiry, revoke—

- (a) a licence held by a corporation if any director of the corporation is convicted of an offence referred to in subsection (1) (b); or
- (b) a licence (not being a joint licence) held by any person carrying on business in partnership with any other person if the licence of that other person is revoked under paragraph (a) or under subsection (1) (b), (c) or (d).

(5) Before revoking a licence the Commissioner shall give the holder or, in the case of a joint licence, each of the holders, of the licence an opportunity of showing cause why the licence should not be revoked.

(6) Where the Commissioner revokes a licence, he shall cause a notice of revocation to be served on the holder of the licence by sending the notice by certified mail addressed to the holder at the place of business in respect of which the licence is granted, or by causing it to be delivered to the holder personally.

(7)

Motor Dealers.

(7) In the case of a joint licence it is a sufficient compliance with subsection (6) if the notice of revocation is served on any one of the holders of the licence.

(8) A notice of revocation shall state the reasons for the revocation of the licence.

(9) Subject to subsection (10), the revocation of a licence has effect as on and from the date that is twenty-one days after the date on which the notice of revocation is served.

(10) Where the holder of a licence appeals under section 19 against the revocation of the licence, the revocation shall have effect—

- (a) only if the magistrate hearing the appeal confirms the revocation or the appeal is withdrawn; and
- (b) on the date on which that magistrate confirms the revocation, or such later date as that magistrate orders or, if the appeal is withdrawn, on the date on which it is withdrawn.

(11) The date on which a notice of revocation is served is—

- (a) where the notice is sent by certified mail, the date when the notice would be delivered in the ordinary course of post; or
- (b) where the notice is delivered to the holder of the licence personally, the date when it is so delivered.

(12) When the revocation of a licence has effect the person who was the holder of the licence shall forthwith deliver it to the Commissioner.

Penalty : \$200.

19. (1) An applicant for the grant of a licence may **Appeals.** appeal to a magistrate against the refusal of the Commissioner to grant the licence.

Motor Dealers.

(2) The holder of a licence may appeal to a magistrate against the revocation by the Commissioner of the licence.

(3) Notice of an appeal under this section, specifying the grounds of the appeal, shall be lodged with the registrar not later than twenty-one days after the date of service.

(4) The registrar shall give notice of the time and place of the hearing of an appeal under this section to the Commissioner and to the person appealing, and shall state in the notice to the Commissioner the grounds of the appeal.

(5) The hearing of an appeal may proceed notwithstanding any omission or error in a notice under subsection (4) or the failure to give any such notice if the magistrate is satisfied that the person appealing and the Commissioner had knowledge of the time and place of the hearing and were not prejudiced by any such omission or error or by the failure to give any such notice.

(6) Where relevant, a report furnished pursuant to section 11 to the Commissioner by the Commissioner of Police or a report furnished pursuant to section 34 to the Commissioner by a disputes committee, and certified in either case by the Commissioner to have been so furnished, shall be received in proceedings before a magistrate under this section as evidence of the contents of the report.

(7) A magistrate shall hear and determine an appeal made to him under this section and may confirm (with or without variation) or disallow the refusal or revocation appealed against, or make such other order in the circumstances as to him seems just.

(8) A magistrate may disallow the refusal or revocation appealed against if, in all of the circumstances of the case, he considers it fair and reasonable to do so.

(9) Subject to this section, the provisions of the Industrial Arbitration Act, 1940, relating to a proceeding before a magistrate apply to proceedings before a magistrate under this section.

(10)

Motor Dealers.

(10) The decision of a magistrate in respect of an appeal made under this section shall be final and shall be binding on the person appealing, and on the Commissioner who shall take such steps as may be necessary to give effect to the decision.

(11) Where a joint application is refused or a joint licence is revoked, an appeal under this section against the refusal or the revocation may be made either by one of the applicants or holders, as the case may be, on behalf of all of the applicants or holders, or by all of the applicants or holders jointly, but not otherwise.

(12) In this section—

“date of service” means—

- (a) in the case of an appeal against a refusal to grant a licence, the date of service of the notice of refusal; and
- (b) in the case of an appeal against a revocation of a licence, the date of service of the notice of revocation;

“registrar” means the industrial registrar appointed under the Industrial Arbitration Act, 1940.

20. (1) The Commissioner shall cause to be kept a register, in such form as he determines, of licences granted and shall cause to be recorded therein in respect of each licence—

- (a) the matters which under section 14 are required to be specified in the licence;
- (b) particulars of any amendment of the licence made under section 15;

(c)

Motor Dealers.

- (c) particulars of any fees paid, or due but not paid, in respect of the licence under section 17;
- (d) particulars of any revocation of the licence under section 18; and
- (e) such other matters as may be prescribed.

(2) The Commissioner may cause to be made such alterations in the register as are necessary to ensure that the matters recorded therein in respect of any licence are accurate.

(3) The register may, at all reasonable hours, be inspected, and copies of all or any part of any entry in the register taken—

- (a) without payment, by—
 - (i) any member of the police force;
 - (ii) any officer in the public service; and
 - (iii) any person authorised by the Commissioner;or
- (b) on payment of such fee as may be prescribed, by any other person.

(4) The register shall be received in proceedings before any court or tribunal as evidence of the matters required by or under this Act to be recorded in it, and any document purporting to be certified by the Commissioner to be a true copy of an entry in the register shall be received in proceedings before any court or tribunal as evidence of any such matters contained in the entry.

Motor Dealers.

PART III.

DEALERS' AND OTHER RECORDS.

21. (1) This section does not apply—

Dealer's
register.

- (a) to an exempted person; or
- (b) in relation to an exempted motor vehicle.

(2) The holder of a dealer's licence shall keep a dealer's register at the place of business in respect of which the licence is granted.

Penalty : \$500.

(3) The holder of a dealer's licence shall enter in the register kept by him pursuant to subsection (2) at the place of business in respect of which the licence is granted, the required particulars in relation to every second-hand vehicle bought, exchanged or taken in possession for sale, in, or for the purpose of, carrying on the business of a dealer at that place, and shall sign his name to the entry.

Penalty : \$500.

(4) The requirements of subsection (3) shall be complied with in relation to a motor vehicle immediately after the vehicle is bought, exchanged or taken in possession for sale, as the case may be.

(5) It is a sufficient compliance with subsection (3) if an agent of the dealer or a person employed by a dealer in his business as a dealer makes the entry required to be made by that subsection in the dealer's register in relation to a second-hand motor vehicle, and signs his name to that entry.

(6)

Motor Dealers.

(6) A dealer shall not, pursuant to subsection (3), and an agent or an employee shall not, pursuant to subsection (5), in respect of any particulars required under subsection (3) to be entered in the dealer's register, wilfully make an entry in the register that is false or misleading in a material particular.

Penalty : \$1,000.

(7) Where a joint licence (being a dealer's licence) is granted in respect of a place of business, or two or more dealers' licences are granted in respect of the same place of business to two or more persons carrying on in partnership the business of a dealer—

- (a) it is a sufficient compliance with subsection (2) if a single dealer's register is kept at the place of business; and
- (b) each holder of the licence is guilty of an offence under subsection (2) if that section is not complied with, and of an offence under subsection (3) if that subsection is not complied with.

(8) For the purposes of this section the required particulars in relation to a second-hand motor vehicle are—

- (a) the model designation of the vehicle recognised by the motor trade industry or the year of manufacture of the vehicle;
- (b) the numbers and letters of its registration (if any);
- (c) the identification number of the engine of the vehicle;
- (d) where the vehicle is equipped with an odometer, the reading on the odometer when the vehicle was bought, exchanged or taken in possession for sale;

(e)

Motor Dealers.

- (e) the name and address of the person from whom the vehicle was bought, exchanged or taken in possession for sale and, if that person was a trade owner, the name and address of the last owner of the vehicle (if any) who was not a trade owner;
- (f) the date and hour of the day when the vehicle was bought, exchanged or taken in possession for sale;
- (g) any cash or other consideration given or agreed to be given and a description of any such other consideration; and
- (h) such other particulars as may be prescribed.

22. Every vehicle-wrecker or person carrying on a prescribed business shall keep a register, in the prescribed form, at the place of business in respect of which the licence allowing him to carry on that business is granted and shall record or cause to be recorded in that register the particulars of every prescribed transaction entered into in the course of carrying on at that place the business of a vehicle-wrecker or the prescribed business, as the case may be.

Register
to be
kept by
vehicle-
wrecker.

23. (1) A dealer's register kept pursuant to section 21 or a register kept pursuant to section 22 at any place of business may, at all reasonable times, be inspected, and copies of all or any part of any entry in the register taken by—

Inspection
of dealer's
register.

- (a) any member of the police force;
- (b) an inspector appointed under the Consumer Protection Act, 1969;
- (c) any person authorised in writing by the Commissioner; or
- (d) any person authorised in writing by the Commissioner for Motor Transport.

(2)

Motor Dealers.

(2) Subject to subsection (3), any—

- (a) dealer, vehicle-wrecker or person carrying on a prescribed business who, on demand made at a reasonable time, refuses or neglects to produce a register kept by him pursuant to section 21 or 22, as the case may be, to a person referred to in subsection (1); or
- (b) person who wilfully obstructs any person referred to in that subsection while acting in the exercise of any powers conferred on him under that subsection,

is guilty of an offence and liable to a penalty of \$500.

(3) A dealer, a vehicle-wrecker or a person carrying on a prescribed business is not required under this section to produce a register, kept by him pursuant to section 21 or 22, to any person unless that person produces evidence of his appointment or authority, if requested to do so.

PART IV.

DEALINGS IN MOTOR VEHICLES.

Notice to
be displayed
on second-
hand motor
vehicle
offered
for sale.

24. (1) Subject to subsection (2), where a dealer offers or displays for sale a second-hand motor vehicle he shall attach, or cause to be attached, to the vehicle, in the manner prescribed, a notice, in the prescribed form, containing the required particulars in relation to that vehicle.

(2)

Motor Dealers.

(2) Subsection (1) does not apply to or in relation to the offering or displaying for sale of a second-hand motor vehicle for the purposes only of sale—

- (a) by bona fide auction;
- (b) to an exempted person; or
- (c) to a trade owner.

(3) A notice shall not be treated for the purposes of subsection (1) as containing the required particulars if any of the required particulars contained in the notice is false or misleading in a material particular.

(4) Where a second-hand motor vehicle is offered or displayed for sale by a dealer in circumstances where subsection (1) applies and the vehicle is sold the dealer shall immediately after the completion of the sale sign a copy of the notice attached pursuant to subsection (1) to the vehicle and deliver it to the purchaser of the vehicle.

(5) Where a second-hand motor vehicle is offered or displayed for sale by a dealer in circumstances where subsection (1) applies and a sale of the vehicle is effected by an agent of the dealer or a person employed by the dealer in his business as a dealer, compliance by that agent or employee with the requirements of subsection (4) shall be treated as compliance by the dealer with those requirements.

(6) Where—

- (a) an individual carrying on the business of a dealer does not comply with the requirements of subsection (1) or the requirements of subsection (4), he is guilty, in either case, of an offence;

(b)

Motor Dealers.

- (b) an individual carrying on in partnership (whether under a joint licence or otherwise) the business of a dealer does not comply with the requirements of subsection (1) or the requirements of subsection (4), he and each of the partners are, in either case, guilty of an offence; or
- (c) a corporation carrying on the business of a dealer does not comply with the requirements of subsection (1) or the requirements of subsection (4), the corporation is, in either case, guilty of an offence,

and liable to a penalty of \$500.

(7) For the purposes of this section the required particulars in relation to a second-hand motor vehicle are—

- (a) the name and business address of the dealer by whom the vehicle is offered or displayed for sale;
- (b) the numbers and letters of its registration (if any);
- (c) where the dealer is acting on behalf of another dealer, a statement to that effect and the name and address of that other dealer;
- (d) where the vehicle is equipped with an odometer, the reading on the odometer entered by the dealer pursuant to section 21 in the dealer's register;
- (e) the cash price of the vehicle or, where the vehicle is a vehicle repossessed by a financier and is offered for sale by way of tender, a statement to that effect;
- (f) the model designation of the vehicle recognised by the motor trade industry or the year of manufacture of the vehicle; and
- (g) such other particulars as may be prescribed.

(8)

Motor Dealers.

(8) In any case where the holder of a dealer's licence is acting on behalf of another dealer, this section, if it applies, applies to the dealer so acting and not to the other dealer, and the dealer so acting, or an agent of the dealer so acting or a person employed by that dealer and acting pursuant to subsection (5), shall comply with this section.

(9) In any case where subsection (8) applies the dealer's register referred to in subsection (7) (d) is the register of the dealer acting on behalf of the other dealer.

(10) This section does not apply to or in relation to the sale of an exempted motor vehicle.

25. (1) This section does not apply to or in relation to the sale of an exempted motor vehicle.

Sale of second-hand motor vehicle to trade owner.

(2) A dealer who sells a second-hand motor vehicle to another dealer shall sign a disposal notice, in the prescribed form, containing the required particulars and forthwith deliver it to that other dealer.

(3) A dealer who arranges with an auctioneer for the sale by the auctioneer of a second-hand motor vehicle, shall comply with the requirements of subsection (2) in every respect as if the auctioneer were another dealer purchasing the vehicle.

(4) Where the agent of a dealer or a person employed by a dealer in his business as a dealer, in his capacity as such an agent or employee—

(a) sells a second-hand motor vehicle to another dealer; or

(b) arranges with an auctioneer for the sale by an auctioneer of a second-hand vehicle,

compliance by that agent or employee with the requirements of subsection (2) or (3), as the case may be, shall be treated as compliance by the dealer with those requirements.

Motor Dealers.

(5) Where—

- (a) an individual carrying on the business of a dealer does not comply with the requirements of subsection (2) or the requirements of subsection (3), he is guilty, in either case, of an offence;
- (b) an individual carrying on in partnership (whether under a joint licence or otherwise) the business of a dealer does not comply with the requirements of subsection (2) or the requirements of subsection (3), he and each of the partners are, in either case, guilty of an offence; or
- (c) a corporation carrying on the business of a dealer does not comply with the requirements of subsection (2) or the requirements of subsection (3), the corporation is, in either case, guilty of an offence,

and liable to a penalty of \$500.

(6) Where an auctioneer, pursuant to an arrangement under subsection (3) or (4) (b), sells a motor vehicle by bona fide auction to a person known to him to be a dealer he shall forthwith deliver to that person the disposal notice delivered to the auctioneer pursuant to subsection (3).

Penalty : \$500.

(7) A notice shall not be treated for the purposes of subsection (2) or (3) as containing the required particulars if any of the required particulars contained in the notice is false or misleading in a material particular.

(8) For the purposes of this section the required particulars, in relation to a second-hand motor vehicle, are—

- (a) the name and business address of the dealer selling the vehicle;

(b)

Motor Dealers.

- (b) the numbers and letters of its registration (if any);
- (c) where the dealer is acting on behalf of another dealer, a statement to that effect and the name and address of that other dealer;
- (d) the name and address of the last owner of the vehicle (if any) who was not a trade owner;
- (e) where the vehicle is equipped with an odometer, the reading on the odometer entered pursuant to section 21 in the dealer's register;
- (f) the model designation of the vehicle recognised by the motor trade industry or the year of manufacture of the vehicle; and
- (g) such other particulars as may be prescribed.

(9) In any case where the holder of a dealer's licence is acting on behalf of another dealer, subsections (2) and (3) apply to the dealer so acting and not to the other dealer, and the dealer so acting, or an agent of that dealer so acting or a person employed by that dealer and acting pursuant to subsection (4), shall comply with subsections (2) and (3).

(10) In any case where subsection (9) applies the dealer's register referred to in subsection (8) (e) is the register of the dealer acting on behalf of the other dealer.

26. In proceedings for an offence under section 24 or 25 Defences. it is a defence if—

- (a) in the case of the omission of any required particular from a notice referred to in either of those sections, the accused person proves that the motor vehicle concerned was brought into the State for the purpose of resale and that the required particular omitted was unknown to him and could not, with reasonable diligence, be ascertained by him; or

(b)

Motor Dealers.

- (b) in the case of the inclusion in any such notice of a required particular relating to the year of manufacture or the model designation of the motor vehicle concerned, or to any matter prescribed for the purposes of this section, that is false or misleading in a material particular, the accused person proves that he took all reasonable steps to ascertain the true particulars and that those included were, to the best of his knowledge and belief, true.

Obligations
of dealer.

27. (1) Except as provided in this section and sections 28 and 29—

- (a) where a motor vehicle (not being a second-hand motor vehicle) is sold on or after the commencement of this section, by a dealer, and before—

- (i) the vehicle has been driven for 20,000 kilometres after being so sold; or
- (ii) the expiration of the period of twelve months after the vehicle is so sold,

whichever first occurs, a defect appears or occurs in the vehicle;

- (b) where a second-hand motor vehicle is sold on or after the commencement of this section by a dealer at a cash price of or over \$1,000, or such greater amount as may be prescribed, and before—

- (i) the vehicle has been driven for 5,000 kilometres after being so sold; or
- (ii) the expiration of the period of three months after the vehicle is so sold,

whichever first occurs, a defect appears or occurs in the vehicle; or

(c)

Motor Dealers.

(c) where a second-hand motor vehicle is sold on or after the commencement of this section by a dealer at a cash price of less than \$1,000, or such greater amount as may be prescribed, and before—

(i) the vehicle has been driven for 3,000 kilometres after being so sold; or

(ii) the expiration of the period of two months after the vehicle is so sold,

whichever first occurs, a defect appears or occurs in the vehicle,

the dealer shall, whether or not that defect existed at the time of the sale, at his own expense, repair or make good, or cause to be repaired or made good, the defect so as to place the vehicle in a reasonable condition having regard to its age and his obligation to do so shall be deemed to be a term of the contract of sale relating to the vehicle.

(2) For the purposes of calculating the period referred to in subsection (1) (a) (ii), (1) (b) (ii) or (1) (c) (ii), no regard shall be paid to any period during which the dealer has the motor vehicle in his possession for the purpose or purported purpose of ascertaining or carrying out his obligations under this section.

(3) The obligation of a dealer under subsection (1) (a) in relation to a motor vehicle sold by him is extinguished if, subsequent to that sale, he or another dealer acquires ownership of the vehicle, or the vehicle is repossessed by a financier.

(4) Subject to subsection (3), the obligation of a dealer under subsection (1) (a) in relation to a motor vehicle subsists for the benefit of the owner, from time to time, of the vehicle and, for this purpose, the owner from time to time shall be deemed to have entered into a contract of sale with the dealer in respect of the vehicle.

(5)

Motor Dealers.

(5) The obligation of a dealer under subsection (1) (b) or (c) in relation to a motor vehicle sold by him is an obligation only to the person who purchased the vehicle from him.

(6) The revocation under section 18 of a dealer's licence or the ceasing of the licence to have effect under section 17 (5), does not affect his liability under this section.

(7) The fact that a dealer is not the holder of a dealer's licence or has ceased to be a dealer does not affect his liability under this section.

(8) In any case where the holder of a dealer's licence is acting on behalf of another dealer in selling a motor vehicle this section applies to the dealer so acting and not to the other dealer, and the dealer so acting is liable to perform the obligations under this section.

(9) A motor vehicle is not a second-hand motor vehicle for the purposes of subsection (1) (a) by reason only that the vehicle has been registered in the name of the dealer who sells the vehicle, or in the name of a dealer on whose behalf the vehicle is sold, or in the name of any person on behalf of any such dealer.

(10) Where a motor vehicle is sold it is not a second-hand motor vehicle for the purposes of subsection (1) (a) by reason only that it is registered in the name of the purchaser prior to the completion of the sale.

(11) Where a motor vehicle is registered in the name of any person in anticipation of the sale of the vehicle to that person, but the sale of the vehicle to that person is not completed, the vehicle is not a second-hand vehicle for the purposes of subsection (1) (a) by reason only of being so registered.

Motor Dealers.

28. (1) Section 27 (1) does not apply to or in relation **Exceptions.** to any defect—

- (a) that is a defect to which, pursuant to section 29, section 27 (1) does not apply;
- (b) occurring in the tyres, battery or any prescribed accessory to a motor vehicle;
- (c) arising from or incidental to any accidental damage to a motor vehicle that occurred after the sale, referred to in section 27 (1), of the vehicle, and when the vehicle was not in the possession of the dealer; or
- (d) arising from misuse or negligence on the part of a driver of a motor vehicle, or arising from the use of a motor vehicle for motor racing or motor rallying, that occurred after the sale, referred to in section 27 (1), of the vehicle.

(2) In the case of a second-hand motor vehicle section 27 (1) does not apply in relation to any superficial damage to the paint-work or upholstery of the vehicle which would have been apparent on a reasonable inspection of the vehicle carried out at the time of the sale, referred to in section 27 (1), of the vehicle.

(3) Section 27 (1) does not apply to or in respect of the sale of—

- (a) a motor vehicle to a trade owner;
- (b) a second-hand motor vehicle where the purchaser has been in possession of the vehicle for a period of not less than three months immediately preceding the day of that sale;
- (c) a motor vehicle to an exempted person; or
- (d) a commercial vehicle, a motor cycle or a trailer.

(4)

Motor Dealers.

(4) Where the proposed purchaser of a motor vehicle (not being a second-hand motor vehicle) is in possession of the vehicle for a period immediately preceding the day on which he purchases that vehicle from a dealer then, for the purposes of section 27 (1) (a), he shall be treated as having purchased the vehicle on the day when he first acquired that possession.

(5) Section 27 (1) does not apply to or in respect of the sale of—

- (a) a second-hand motor vehicle by a dealer on behalf of a financier where the motor vehicle is a vehicle which was sold by the financier under a hire-purchase agreement and subsequently repossessed by him;
- (b) a second-hand motor vehicle where the cash price is less than \$500 or such greater amount as may be prescribed; or
- (c) an exempted motor vehicle,

if, but only if, at all material times when the vehicle is offered or displayed for sale by the dealer, or caused or permitted to be so offered or displayed, there is attached, in the prescribed manner to the vehicle, a notice, in the prescribed form, to the effect that section 27 (1) does not apply to or in respect of the sale of the vehicle.

(6) Section 27 (1) does not apply to or in respect of the sale of a second-hand motor vehicle by bona fide auction if, but only if, there is attached, in the prescribed manner, to the vehicle at the time of the auction a notice, in the prescribed form, to the effect that section 27 (1) does not apply to or in respect of the sale of the vehicle.

Motor Dealers.

29. (1) A dealer may attach, in the prescribed manner, to any second-hand motor vehicle offered or displayed for sale a notice, in the prescribed form, setting out with reasonable particularity any defect that he believes to exist in the vehicle together with, in relation to each such defect, his estimate of the fair cost of repairing or making good the defect. Excluded defects.

(2) If—

- (a) a notice referred to in subsection (1) has, at all material times, been attached to a second-hand motor vehicle; and
- (b) at or before the time of sale of the vehicle a copy of that notice has been signed by the purchaser and upon the sale a true copy of that notice as so signed has been delivered to the purchaser for retention by him,

then section 27 (1) shall not apply to or in relation to that defect.

(3) If in any notice referred to in subsection (1) the amount estimated by the dealer as the fair cost of repairing or making good that defect is less than the amount of the fair cost of then repairing or making good that defect the purchaser may sue for and recover the difference between those fair costs as a debt due to the purchaser from the dealer.

PART V.

DISPUTES AND RESCISSIONS.

30. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation.

“applicant” means a person who makes an application;

“application” means an application under section 31 (1) to the Commissioner, but does not include an application that has been withdrawn;

“dispute”

Motor Dealers.

“dispute” means a disagreement under section 31 (1) which is the subject of an application;

“disputes committee” means a committee appointed under section 34;

“tribunal” includes a Consumer Claims Tribunal constituted under the Consumer Claims Tribunals Act, 1974.

(2) A reference in this Part to a dealer includes a reference to a person who was a dealer when he sold a motor vehicle that is the subject of such a disagreement as is referred to in section 31 (1) or of a dispute, notwithstanding that he has ceased to be a dealer since that vehicle was sold.

Disputes.

31. (1) Where, in relation to a motor vehicle, a disagreement exists between a purchaser or an owner of the vehicle, and a dealer concerning any one or more of the following, namely—

- (a) the existence or extent of any obligation under section 27 on the part of the dealer to the purchaser or the owner;
- (b) the manner of carrying out any such obligation;
- (c) the amount of the fair cost of repairing or making good any defect referred to in section 29; or
- (d) any other matter or thing, whether or not of the same kind as a matter referred to in paragraph (a), (b) or (c), arising out of the application of this Act,

the purchaser or the owner, as the case may be, may apply in writing to the Commissioner to investigate and determine the disagreement.

Motor Dealers.

(2) The Commissioner shall not exercise any power conferred on him by section 32, 33, 35 or 36 in connection with any matter in issue in a dispute—

- (a) if proceedings in respect of that matter are pending before a court or a tribunal at the time when the application relating to the dispute is received by the Commissioner, unless those proceedings are discontinued before judgment is given by the court or a determination is made by the tribunal; or
- (b) if, at that time, that matter has been decided by a court or a tribunal, or a court or a tribunal decides that matter pursuant to proceedings which are pending at that time.

(3) Where an application is made to the Commissioner a court or a tribunal has no jurisdiction in connection with any matter in issue in the dispute to which the application relates—

- (a) unless subsection (2) applies in respect of that matter;
- (b) unless the application is withdrawn; or
- (c) except in respect of proceedings commenced in a court or a tribunal after the Commissioner has dealt with the matter under this Part.

(4) An application may be withdrawn at any time.

32. (1) The Commissioner shall use his best endeavours by communication with the applicant and the dealer, or otherwise, to settle a dispute. Settlement of disputes.

(2) Where the Commissioner settles a dispute the application concerned shall be deemed to have been withdrawn.

(3)

Motor Dealers.

(3) A dispute shall not be treated as having been settled unless the terms of the settlement are incorporated in a document and signed by the applicant, the dealer and the Commissioner.

(4) Where a dispute is settled as provided in this section the settlement shall have the same force and effect as it would have if it were a determination by the Commissioner under section 35.

(5) A document purporting to be signed by the Commissioner and to set out the terms of a settlement shall be received in proceedings before any court or tribunal as evidence of that settlement and the terms thereof.

Investigation by Commissioner.

33. (1) Where the Commissioner is unable under section 32 to settle a dispute he shall, subject to subsection (3), investigate the dispute.

(2) The Commissioner may determine his own procedure for the purpose of investigating a dispute.

(3) The Commissioner may refer a dispute, or any matter forming part of, arising out of or in connection with, a dispute to a disputes committee for investigation.

(4) The Commissioner may give directions to a disputes committee with respect to the carrying out by the committee of an investigation.

Disputes committee.

34. (1) A disputes committee shall comprise a nominee of—

- (a) the Commissioner;
- (b) the National Roads and Motorists' Association;
- (c) the Motor Traders' Association of New South Wales; and

(d)

Motor Dealers.

(d) where the motor vehicle to which the dispute relates is a motor vehicle to which section 27 (1) (a) applies, or is alleged to apply, the Chamber of Automotive Industries of New South Wales,

appointed by the Commissioner.

(2) Subject to any directions given by the Commissioner under section 33 (4), a disputes committee may determine its own procedure for the purpose of carrying out an investigation.

(3) A disputes committee shall report to the Commissioner the result of any investigation carried out by it and shall state in the report any recommendation which it wishes to make.

(4) Where the members of a disputes committee do not agree that a recommendation should be stated in the report to the Commissioner, or on the nature of the recommendation to be so stated, it shall record the disagreement in its report and may state in the report more than one recommendation.

(5) In determining a dispute the Commissioner shall have regard to the report of a disputes committee but is not bound to follow any recommendation contained in the report.

(6) Where a body referred to in subsection (1) (b), (c) or (d) changes its name and the Commissioner is satisfied that the change of name is not accompanied by any change in the nature of the body, he may, by instrument in writing, so certify and, subject to subsection (7), as from the date of that instrument the reference in subsection (1) (b), (c) or (d), as the case may be, shall be deemed to be a reference to the body under that changed name.

(7) The power of the Commissioner under subsection (6) may be exercised in relation to a body under a changed name as if that body, under that changed name, were referred to in subsection (1).

Motor Dealers.

Deter-
mination of
dispute.

35. (1) When the investigation of a dispute is completed the Commissioner shall determine the dispute and, for the purpose of so doing, may do any one or more of the following, namely—

- (a) find that an obligation exists or does not exist under section 27;
- (b) determine the extent of an obligation;
- (c) determine the amount of the fair cost of repairing or making good any defect referred to in section 29; or
- (d) make any other finding or determination ancillary to a finding or determination referred to in paragraph (a), (b) or (c).

(2) Subject to subsection (3), where the Commissioner determines that an obligation exists, in connection with a motor vehicle, under section 27 (1) (a), he shall recommend that the manufacturer of the vehicle contribute towards the cost of the dealer in discharging the obligation to such extent as he specifies in the recommendation.

(3) The Commissioner shall not make a recommendation under subsection (2) unless—

- (a) having regard to the nature of the defects in the vehicle and the other circumstances of the dispute, it is, in his opinion, fair and reasonable to do so; and
- (b) the manufacturer or his agent has been afforded, in the course of the investigation of the dispute, an opportunity of being heard.

(4)

Motor Dealers.

(4) A recommendation by the Commissioner under subsection (2) does not prejudice the right of an applicant to enforce any obligation against a dealer.

(5) A finding or a determination of the Commissioner under subsection (1) and the terms thereof shall be binding on the applicant and the dealer and shall not be challenged in any proceedings whatsoever.

(6) Where, pursuant to subsection (1) (c), the Commissioner determines that the fair cost of repairing or making good a defect is greater than the amount estimated in that connection by a dealer he may, in his discretion, order that the dealer pay to the claimant the amount represented by the difference and, if he does so, the claimant may enforce the order by filing, free of charge, with the registrar of a court of competent jurisdiction—

- (a) a copy of the order certified by the Commissioner to be a true copy; and
- (b) the affidavit of the claimant as to the amount unpaid under the order,

and thereupon the registrar concerned shall enter judgment in favour of the claimant against the dealer for the amount specified in the affidavit as being unpaid.

(7) A document purporting to be signed by the Commissioner and to set out any finding or determination by the Commissioner in a dispute and the terms thereof shall be received in proceedings before any court or tribunal as evidence of that finding or determination and the terms thereof.

36. (1) Without limiting the generality of the powers conferred on the Commissioner under section 35, where the Commissioner is satisfied that—

Order for repair of defects.

- (a) an obligation lies on a dealer under section 27; and
- (b) the dealer has unreasonably—
 - (i) refused or failed to carry out that obligation; or

(ii)

Motor Dealers.

(ii) delayed or prevaricated in the carrying out of that obligation,

the Commissioner may order that any defect required to be repaired or made good under section 27 shall be repaired or made good by a person (being a person other than the dealer) named in the order.

(2) Where an order is made under subsection (1) and, pursuant to the order, the applicant contracts to have the defect repaired or made good by the person named in the order, the dealer shall be liable to indemnify the applicant against all costs or expenses payable by the applicant under the contract to have the defect repaired or made good, and the amount of those costs and expenses may be recovered by the applicant as a debt due from the dealer to the applicant in any court of competent jurisdiction.

(3) Notwithstanding anything to the contrary in any Act or law, where an order is made under subsection (1) the dealer shall not have a lien over the motor vehicle to which the order relates in relation to any work done or purported to have been done by the dealer in repairing or making good any defect to which the order relates.

False or misleading statements.

37. A person shall not wilfully make any false or misleading statement in or in relation to any proceeding for the investigation or determination of a claim.

Penalty : \$200.

Rescission of sale.

38. (1) Where the Commissioner is of the opinion—

(a) that a motor vehicle sold by a dealer is substantially different from the vehicle as represented in a notice under section 24; or

(b) that a notice required under that section to be displayed in relation to the vehicle was not displayed and that the vehicle as so sold was substantially different from the vehicle as represented by the dealer,

the

Motor Dealers.

the Commissioner may apply to a magistrate for an order for rescission of the sale of the vehicle.

(2) An application under this section shall set out the grounds on which it is made.

(3) Upon hearing the Commissioner or a representative of the Commissioner and upon affording any other person likely to be affected by any order made under this section an opportunity of being heard the magistrate may order that the sale be rescinded, the vehicle returned to the dealer and any consideration passed by the purchaser or the value of any such consideration assessed under subsection (5) returned to the purchaser, and may make such further or consequential orders, including an order as to the payment of the costs of the application, as to him seem necessary or desirable.

(4) Where a dealer is convicted of an offence under section 24 in respect of a vehicle sold by the dealer and the magistrate is of the opinion—

- (a) that the vehicle is substantially different from the vehicle as represented in a notice under section 24; or
- (b) where no such notice was displayed in relation to the vehicle, that the vehicle as so sold was substantially different from the vehicle as represented by the dealer,

the magistrate may, in addition to any penalty imposed, order that the sale be rescinded, the vehicle returned to the dealer and any consideration passed by the purchaser or the value of any such consideration assessed under subsection (5) returned to the purchaser, and may make such further or consequential orders as to him seem necessary or desirable.

(5) Where in respect of any sale referred to in subsection (1) or subsection (4) all or part of the consideration that passed from the purchaser is represented by a motor

vehicle

Motor Dealers.

vehicle or other thing, the magistrate may for the purposes of this section assess the value of that motor vehicle or other thing.

(6) Where there is a collateral credit agreement associated with a sale of a motor vehicle that has been rescinded under this section the obligations and rights of the purchaser under that agreement shall, by force of this section, be transferred from the purchaser to the dealer and subject to this section may be enforced by or against the dealer in all respects as if he were the purchaser.

(7) Notwithstanding any Act or law to the contrary, upon the making of an order rescinding a sale of a motor vehicle the rights and obligations of the parties under any contract or agreement relating to the sale or under any collateral credit agreement associated with the sale of the motor vehicle shall be as provided for in that order or in any order ancillary to or consequential upon that order, and without limiting the generality of the foregoing it shall not be a bar to the making of an order rescinding a sale that the parties cannot be restored to the positions that existed prior to the sale.

(8) Subject to subsection (10) (b), the provisions of the Industrial Arbitration Act, 1940, and the regulations made under that Act, relating to proceedings before a magistrate and to appeals from a magistrate to the Industrial Commission of New South Wales shall apply to proceedings before a magistrate under this section as if the proceedings under this section were proceedings under that Act.

(9) For the purposes of this section a collateral credit agreement associated with the sale of a motor vehicle is a contract or agreement, arranged or procured by the dealer selling the vehicle, for the provision of credit by a person (other than that dealer) for the purposes of the sale of the vehicle.

(10) The regulations may—

(a) provide for the enforcement of any order made under this section; and

(b)

Motor Dealers.

- (b) make provision for or with respect to appeals under this section from a magistrate to the Industrial Commission of New South Wales, whether in addition to the provisions of, or in substitution for any of the provisions of, the Industrial Arbitration Act, 1940, or the regulations made under that Act and relating to appeals.

PART VI.

COMPENSATION FUND.

39. (1) There shall be established in the Special Deposits Account in the Treasury a Motor Dealers Compensation Fund (hereinafter in this Part referred to as "the Fund").

Motor
Dealers
Compensa-
tion Fund.

(2) There shall be paid into the Fund—

- (a) such proportion of the fees paid under this Act or the regulations as is determined in accordance with subsection (3); and
- (b) any money recovered by the Commissioner in the exercise of any rights, or the pursuit of any remedies, to which he is subrogated under section 41.

(3) All fees paid under this Act or the regulations shall be distributed between the Fund and the Consolidated Revenue Fund in the prescribed proportions.

(4) Subject to section 42, there shall be paid out of the Fund the amount of any loss which is certified by the Commissioner pursuant to section 40 (2).

40. (1) Any person wishing to make a claim against the Fund shall submit his claim in writing, verified by statutory declaration, to the Commissioner.

Claims
against
Fund.

(2)

Motor Dealers.

(2) Subject to this section, if the Commissioner is satisfied that a person submitting a claim has incurred a loss in connection with a motor vehicle (not being an exempted motor vehicle) by reason of the failure of a dealer to comply with any obligation arising under this Act with which he is required to comply, or by reason of the fact that a dealer has not passed an unencumbered title to the vehicle, the Commissioner may certify the amount of the loss.

(3) No loss shall be certified by the Commissioner if the loss was incurred in connection with a motor vehicle sold before the commencement of section 9.

(4) No loss shall be certified by the Commissioner unless the Commissioner is satisfied that the claimant has taken all reasonable steps to exercise such legal remedies and other rights of action available in respect of the loss incurred by him.

(5) The Commissioner shall not certify a loss incurred by a trade owner or by a person who was a trade owner when he purchased the motor vehicle in connection with which the loss is incurred.

Subrogation
where claim
allowed.

41. On payment out of the Fund of any amount certified by the Commissioner, the Commissioner shall be subrogated to the extent of such payment to all the rights and remedies of the claimant against the person in relation to whom the claim arose or any other person incurring any liability to the claimant in relation to the subject-matter of the claim or the legal personal representatives or other persons having authority to administer any estate concerned, and the claimant shall not, to the extent of such payment be entitled to enforce those rights or remedies.

Motor Dealers.

42. Where the amount standing to the credit of the Fund is insufficient to pay all the amounts certified by the Commissioner under section 40 (2) in any financial year, any such amount, so far as it remains unpaid, shall be charged against future receipts of the Fund and shall be paid out of the Fund when sufficient moneys are available therein. Deferred payments out of Fund.

PART VII.

GENERAL.

43. Except as is expressly provided in this Act, nothing in this Act shall have the effect of limiting, restricting or otherwise affecting any right or remedy which a person would have if this Act had not been enacted. Saving of rights and remedies.

44. A person shall not, without the prior consent in writing of the Commissioner, be competent to waive any rights conferred on him by this Act and the purported waiver of any such rights without that consent is of no effect. No waiver of rights.

45. (1) Subject to subsection (2), where a dealer incurs any costs or expenses by virtue of the operation of this Act in relation to the sale of a motor vehicle, the dealer is not entitled to be indemnified in respect of those costs or expenses by any antecedent owner and any contract or agreement providing, directly or indirectly, for the dealer to be so indemnified is, to the extent that it does so, void. No indemnity for dealer.

(2) Subsection (1) does not apply to a contract or agreement providing for a dealer to be indemnified, as provided in that subsection, by an antecedent owner of a motor vehicle who is a dealer or a manufacturer.

Motor Dealers.

Prohibition against selling registered vehicle.

46. (1) This section does not apply to or in respect of the sale of—

- (a) a motor vehicle to a trade owner ;
- (b) a motor vehicle by bona fide auction ; or
- (c) a motor vehicle by a dealer on behalf of a financier where the motor vehicle is a vehicle which was sold by the financier under a hire-purchase agreement and subsequently repossessed by him.

(2) Subject to subsection (3), a dealer shall not sell a motor vehicle that is registered under and in accordance with the regulations at a cash price of less than \$500, or such greater amount as may be prescribed, unless a certificate in relation to the vehicle is in force.

Penalty : \$500.

(3) In proceedings for an offence under subsection (2) it is a defence if the accused person proves that the motor vehicle concerned was sold to a vehicle-wrecker for the purpose of being demolished.

(4) For the purposes of this section a certificate in relation to a motor vehicle is in force if it is issued not earlier than one month before the sale of the vehicle.

(5) In this section—

“certificate” means, in relation to a motor vehicle, a certificate of inspection issued under the regulations in relation to that vehicle ;

“regulations” means regulations under the Motor Traffic Act, 1909.

Motor Dealers.

47. (1) A person shall not, with intent to deceive any person— Certain misdescriptions prohibited.

- (a) alter or cause or permit to be altered, or connive at the alteration of, the reading of an odometer on a second-hand motor vehicle;
- (b) state or represent as the year of manufacture of a second-hand motor vehicle a year other than the actual year of manufacture of the vehicle;
- (c) state or represent as the year of first registration of a second-hand motor vehicle a year other than the actual year of first registration of the vehicle; or
- (d) state or represent as the model designation of a second-hand motor vehicle a model designation other than the actual model designation of the vehicle.

Penalty : \$500.

(2) Where a dealer or a person concerned in the management or conduct of the business of a dealer is convicted of an offence under subsection (1) a purchaser who purchased the motor vehicle in respect of which that offence was committed relying on—

- (a) the reading of the odometer on the vehicle as altered; or
- (b) the statement or representation as to the year of manufacture or the year of first registration or the model of the vehicle,

as the case may be, may sue for and recover from the dealer or the person so convicted, as the case may be, as a debt due to the purchaser the amount (if any) determined by the magistrate, before whom the conviction is had, as being the difference between the sale price of the vehicle and its fair value at the time of the sale.

(3) For the purposes of this section "year of first registration" in relation to a motor vehicle means the year in which the vehicle is first registered.

(4)

Motor Dealers.

(4) Nothing in this section affects the operation of Part III of the Consumer Protection Act, 1969, but a person shall not be prosecuted in respect of the same matter for an offence under this section and that Part.

Failure to disclose fact of being a dealer.

48. (1) A dealer who sells any motor vehicle to any person (not being a trade owner) and fails to disclose to that person the fact that he is a dealer is guilty of an offence and liable to a penalty of \$500.

(2) A person who, in the capacity of servant or agent of a dealer, negotiates any sale of a motor vehicle to any person (not being a trade owner) and fails to disclose to that person—

(a) the fact that the sale is being made by a dealer; or

(b) the name and address of the dealer,

is guilty of an offence and liable to a penalty of \$500.

(3) This section does not apply to or in connection with an exempted motor vehicle.

Publication of certain advertisements.

49. (1) Where—

(a) a dealer causes or permits to be published any advertisement calculated to suggest that a motor vehicle is being offered or displayed for sale, or that inquiries concerning a motor vehicle may be made by potential purchasers, at any premises or by telephoning any telephone number;

(b) the advertisement does not disclose that the person on whose behalf it is published is a dealer; and

(c) the premises are not, or the telephone number is not the telephone number of, the place at which the dealer carries on business,

the dealer is guilty of an offence and liable to a penalty of \$500.

(2)

Motor Dealers.

(2) This section does not apply to or in connection with an exempted motor vehicle.

50. A dealer shall not cause or permit to be published any advertisement referring to a specified motor vehicle, to any specified motor vehicles, or to any specified price at which any second-hand motor vehicle may be purchased, unless the registration number or numbers of the vehicle or vehicles are specified in the advertisement. Details in certain advertisements.

Penalty : \$200.

51. For the purposes of this Act any statement or representation made by an agent of a dealer or an employee of a dealer in his business as a dealer, in relation to the quality, description or history of a motor vehicle offered or displayed for sale by that dealer shall be deemed to be such a representation or statement of the dealer. Representation by employee of dealer.

52. (1) A person shall not submit or tender or cause or permit to be submitted or tendered a document, to which this section applies, to any person for his signature unless at the time of the submission or tendering of the document all material particulars in the document have been completed. Tender of documents for signature.

Penalty : \$200.

(2) This section applies to any document evidencing or recording a contract for—

- (a) the sale of a motor vehicle; or
- (b) the provision of credit for the purposes of such a sale.

53.

Motor Dealers.

Bribery.

53. Any person who, without lawful authority, offers, makes or gives to any person authorised by the Commissioner under section 6 or appointed by the Minister under that section, any payment, gratuity or present in consideration that that person will do or omit to do some act or thing pertaining to his authority or appointment is guilty of an offence and liable to a penalty of \$500.

Offences by corporations.

54. Where an offence against this Act committed by a corporation is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the corporation, he, as well as the corporation, shall be deemed to have committed that offence and shall be liable to be proceeded against and punished accordingly.

Proceedings.

55. (1) Proceedings for an offence against this Act may—

- (a) be taken and prosecuted by any person acting with the authority of the Minister; and
- (b) be disposed of summarily before a magistrate or a stipendiary magistrate.

(2) In a prosecution for any such offence, an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of such authority without proof of the Minister's signature.

(3) The provisions of the Industrial Arbitration Act, 1940, and the regulations made under that Act, relating to proceedings before a magistrate and to appeals from a magistrate to the Industrial Commission of New South Wales shall apply to proceedings before a magistrate or a stipendiary magistrate for offences against this Act as if the proceedings under this Act were proceedings under that Act.

(4) In proceedings for an offence against this Act the informant may conduct his case himself, or by his counsel or attorney, or by an agent authorised by him in writing, or by an officer in the public service.

(5)

Motor Dealers.

(5) Any such proceedings shall be commenced by information laid at any time within twelve months after the time when the offence is alleged to have been committed.

56. (1) Where in any proceedings (whether for an **Evidence.** offence against this Act or otherwise) it is proved that on a certain day or during any period a person was the holder of a dealer's licence, a vehicle-wrecker's licence or a prescribed licence it shall be presumed, in the absence of proof to the contrary, that the person was a dealer, a vehicle-wrecker or a person carrying on a prescribed business, as the case may be, on that day or during that period, as the case may be.

(2) A document purporting to be certified by the Commissioner and stating that a person is not, or was not, on a date specified in the document the holder of a licence shall be received in proceedings before any court or tribunal as evidence of that fact.

57. (1) The Governor may make regulations, not incon- **Regulations.** sistent with this Act, prescribing any matter which by this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), the Governor may make regulations for or with respect to—

- (a) regulating the conduct of dealers, vehicle-wreckers or persons carrying on a prescribed business, or their servants or agents, in carrying on the business of a dealer or a vehicle-wrecker, or a prescribed business;
- (b) prohibiting or regulating the employment by dealers, vehicle-wreckers or persons carrying on a prescribed business, of persons convicted of offences under this Act or of offences involving fraud or dishonesty

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- dishonesty or other prescribed offences, or persons whose application for a licence has been refused or whose licence has been revoked;
- (c) requiring dealers, vehicle-wreckers or persons carrying on a prescribed business, or their servants or agents, to make reports to prescribed persons with respect to offences involving motor vehicles or such parts of motor vehicles as may be prescribed and to forward such copies of records kept by them, at such intervals, as may be prescribed, to persons specified in the regulations;
 - (d) providing for the payment to all or any of the members of a disputes committee appointed under section 34 of fees or travelling or other allowances;
 - (e) providing for the remission of any fees, or part of any fees, paid in respect of a licence, in prescribed circumstances;
 - (f) prescribing the circumstances in which records required by this Act to be kept may be destroyed; and
 - (g) prohibiting the commission by dealers, vehicle-wreckers or persons carrying on a prescribed business, of any prescribed practices.

(3) The regulations may impose a penalty not exceeding \$500 for an offence arising under the regulations.

(4) Regulations may be made so as to apply differently to different licences or to or in respect of the holders of different licences or according to such other factors as may be specified in the regulations.

(5) Different fees may be prescribed in respect of different licences, or in respect of restricted licences according to the nature of the restriction in their application.

(6) A person or class of person may be prescribed for the purposes of the definition of "financier" in section 4 (1) notwithstanding that that person or class of person

carries

Motor Dealers.

carries on the business of buying, selling or exchanging motor vehicles only for one or more of the purposes referred to in paragraph (a), (b), (c) or (e) of that definition.

58. (1) The holder of a licence under this Act is not ^{Savings.} required to hold a licence under the Second-hand Motor Dealers Act, 1956, and any licence under that Act shall cease to have effect upon the issue to the holder thereof of a licence under this Act.

(2) Where a license under the Second-hand Motor Dealers Act, 1956, ceases to have effect (as provided in subsection (1)) the Commissioner for Motor Transport shall refund to the person who held the license the appropriate amount in respect of that license.

(3) For the purposes of subsection (2) the appropriate amount in respect of a license is the amount that equals one-twelfth of the fee paid for the license in respect of each whole month of the remainder of the period for which the license would have remained in force if it had not ceased to have effect.

59. The Second-hand Motor Dealers Act, 1956 (other ^{Repeal} than sections 18 and 19 thereof) is repealed. _{of Act No. 5, 1956.}

60. The Motor Traffic Act, 1909, is amended by inserting ^{Amendment} after section 3 (1) (g1) the following paragraph :— _{of Act No. 5, 1909.}

(g2) provide, for the purposes of determining whether or not motor vehicles are suitable for safe use or comply with the requirements of this Act and the ^{Sec. 3.} regulations— _{(Regulations).}

(i) for the Commissioner to authorise in writing any person whom the Commissioner is satisfied is suitably qualified to inspect and test

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- test motor vehicles and to issue certificates of inspection and rejection, in a prescribed form and in a prescribed manner, relating to such inspections;
- (ii) for the Commissioner to authorise in writing any person whom the Commissioner is satisfied has suitable premises and equipment to use the premises for the purposes of conducting any inspection referred to in subparagraph (i);
 - (iii) for the issue and renewal of authorities referred to in subparagraphs (i) and (ii), their duration and form, and the fees to be paid in connection with their issue;
 - (iv) for the maximum charge to be made for the issue of a certificate referred to in subparagraph (i) and for different charges to be made for inspection of different classes of vehicles;
 - (v) for the delivery by any person or class or classes of persons of a certificate referred to in subparagraph (i) in connection with the registration, renewal or registration or transfer of registration of any motor vehicle or in respect of any class or classes of motor vehicles, whether classified by type or age, by the price paid or otherwise;
 - (vi) for the issue by the Commissioner of rules to be observed by any person referred to in subparagraph (i) or (ii);
 - (vii) for any person authorised pursuant to subparagraph (ii) to provide a security fee, in a form required by the Commissioner, for an amount of twenty dollars, or such other amount as may be prescribed, and for any

such

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- such security fee to be forfeited to the Commissioner if the Commissioner is satisfied that the person has failed to comply with any of the rules referred to in subparagraph (vi);
- (viii) for the Commissioner to cancel or suspend any authority referred to in subparagraph (i) or (ii) if the holder has failed to comply with any rule referred to in subparagraph (vi) or if the Commissioner is for any reason of the opinion that the holder is not a fit and proper person to continue to hold such authority;
 - (ix) for the Commissioner to appoint a committee of review to which the Commissioner may refer for consideration and report to him any case where consideration is being given to the refusal, cancellation or suspension of an authority referred to in subparagraph (i) or (ii), any such committee to include representatives of such organisations associated with trading and servicing of motor vehicles as the Commissioner considers appropriate;
 - (x) for an appeal to a court of petty sessions, and for matters related to any such appeal, against a refusal, cancellation or suspension of any authority referred to in subparagraph (i) or (ii) of this paragraph.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1974

The first part of the report deals with the general situation of the country and the progress of the work done during the year. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and a list of the names of the staff members who have been engaged in the work.

The second part of the report deals with the financial statement of the year. It shows the total income and expenditure and the balance carried over to the next year. It also shows the details of the various items of income and expenditure and the reasons for the same.

The third part of the report deals with the accounts of the various projects and the results achieved. It shows the progress of the work done and the results achieved in each project.

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.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 4 April, 1974.*

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 52, 1974.

An Act to provide for the granting of licences to persons carrying on the business of a motor dealer or a vehicle-wrecker, or a prescribed business; to require motor dealers, vehicle-wreckers and persons carrying on a prescribed business to keep certain records; to impose certain obligations on a motor dealer in relation to motor vehicles offered or displayed for sale or sold by him; to provide for the settlement by the Commissioner for Consumer Affairs of certain disputes arising in connection with the sale of motor vehicles; to establish a Motor Dealers Compensation Fund; for these and other purposes

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

J. H. BROWN,
Chairman of Committees of the Legislative Assembly.

Motor Dealers.

purposes to repeal the Second-hand Motor Dealers Act, 1956 (other than sections 18 and 19 thereof); to amend the Motor Traffic Act, 1909; and for purposes connected therewith. [Assented to, 6th May, 1974.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY AND INTERPRETATION.

Short
title.

1. This Act may be cited as the "Motor Dealers Act, 1974".

Commence-
ment.

2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Part II shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Section 59 shall commence on the day that is three months after the day on which Part II commences.

(4) Except as provided in subsections (1), (2) and (3), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3.

Motor Dealers.

3. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY AND INTERPRETATION—*ss.*
1-8.

PART II.—LICENSING—*ss.* 9-20.

PART III.—DEALERS' AND OTHER RECORDS—*ss.* 21-
23.

PART IV.—DEALINGS IN MOTOR VEHICLES—*ss.* 24-
29.

PART V.—DISPUTES AND RESCISSIONS—*ss.* 30-38.

PART VI.—COMPENSATION FUND—*ss.* 39-42.

PART VII.—GENERAL—*ss.* 43-60.

4. (1) In this Act, except in so far as the context or Interpretation—
subject-matter otherwise indicates or requires—

“accessories” includes car wirelesses and tools usually
carried on motor vehicles;

“cash price”—

(a) in relation to a motor vehicle offered or
displayed for sale, means the price at which
the vendor is willing to sell the vehicle for
cash complete with all accessories and other
attachments then fitted to or supplied with
the vehicle; and

(b) in relation to the sale of a motor vehicle—

(i) means the price at which the vehicle
is sold;

(ii)

Motor Dealers.

- (ii) where any part of the consideration that passed, or is to pass, from the purchaser is represented by another vehicle, or other thing, means the price at which the vehicle is sold and the value of the other vehicle or thing as ascribed to it for the purposes of the sale by the parties thereto or, if no agreed value is so ascribed, the market value of the other vehicle or thing at the time of the sale; or
- (iii) where all of the consideration that passed, or is to pass, from the purchaser is represented by another vehicle, or other thing, means the value of the other vehicle or thing as ascribed to it for the purposes of the sale by the parties thereto or, if no agreed value is so ascribed, the market value of the other vehicle or thing at the time of the sale;

“Commissioner” means the Commissioner for Consumer Affairs appointed pursuant to section 13 of the Consumer Protection Act, 1969, and includes any person appointed to act as such pursuant to section 14 of that Act;

“commercial vehicle” means a motor vehicle constructed or adapted principally for—

- (a) the carriage of goods;
- (b) the carriage of more than ten adult persons;
or
- (c) industrial or agricultural use,

but

Motor Dealers.

but does not include a motor vehicle of the kind known as a utility, a station waggon or a panel van that is of the same make as a factory-produced motor car and in which such part of the body form as is forward of the windscreen and the greater part of the mechanical equipment are the same, or substantially the same, as in that motor car;

“dealer” means a person who carries on the business of buying, selling or exchanging motor vehicles, but does not include a financier;

“dealer’s licence” means a dealer’s licence granted under section 12;

“exempted motor vehicle”, when used in or in relation to any provision of this Act, means a motor vehicle belonging to a class of motor vehicle exempted or excluded from the operation of that provision under section 8 (1) (b);

“exempted person”, when used in or in relation to any provision of this Act, means a person, or a person belonging to a class of person, exempted or excluded from the operation of that provision under section 8 (1) (a);

“financier” means a person whose ordinary business is not that of buying, selling or exchanging motor vehicles but who carries on that business only for one or more of the following purposes, that is to say—

(a) for the purpose of letting or hiring motor vehicles under hire-purchase agreements;

(b) for the purpose of selling motor vehicles on instalment terms;

(c)

Motor Dealers.

- (c) for the purpose of taking or enforcing securities over motor vehicles;
- (d) for any purpose that may be prescribed; or
- (e) for the purpose of disposing of motor vehicles acquired by him in connection with any of the purposes referred to in, or prescribed in relation to, this definition,

but does not include such person or class of person as may be prescribed for the purposes of this definition;

“hire-purchase agreement” means, in relation to a motor vehicle, an agreement for the letting of the motor vehicle with an option to purchase;

“holder” means—

- (a) in relation to a joint licence, each individual to whom the licence is granted or deemed under section 15 (7) (b) to be granted; or
- (b) in relation to any other licence, the person to whom the licence is granted;

“identification number”, when used in relation to the engine or engine block of a motor vehicle or to any part or accessory of a motor vehicle, means the number and any accompanying letters or symbols stamped on or otherwise affixed to that engine, engine block, part or accessory as a means of identifying that engine, engine block, part or accessory, but does not include any casting number or any number used as a means of identifying a class of engine, engine block, part or accessory;

“joint

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“joint application” means an application made pursuant to section 10 (2) for the grant of a joint licence;

“joint licence” means a licence granted pursuant to section 12 (2) (c);

“licence” means a dealer’s licence, a prescribed licence or a vehicle-wrecker’s licence;

“magistrate” means an industrial magistrate appointed under the Industrial Arbitration Act, 1940;

“model designation” means, in relation to a motor vehicle of a particular model, any words, figures, letters or symbols applied by the manufacturer of that motor vehicle for the purpose, or apparent purpose, of identifying a motor vehicle of that model;

“motor vehicle” means any motor car, motor carriage, motor cycle, tractor, or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer, but does not include any vehicle used on a railway or tramway;

“owner”, in relation to a motor vehicle, includes any person who is a joint owner, or part owner thereof and any person who has the possession and use thereof under or subject to a hire-purchase agreement, bill of sale or similar contract, but does not include any person in whom the property in the vehicle or any absolute or conditional right or licence to take possession of the motor vehicle is vested under or subject to a hire-purchase agreement, bill of sale or similar contract and who has not for the time being the possession and use thereof;

“prescribed business” means a business belonging to a class of business prescribed under section 7 (a);

“prescribed

Motor Dealers.

“prescribed licence” means a licence prescribed under section 7 (b) and granted under section 12;

“registered” means registered under the provisions of any Act or law, whether of the State or elsewhere, relating to the registration of motor vehicles;

“regulations” means regulations made under this Act;

“restricted licence” means a dealer’s licence restricted in its application pursuant to section 12 (5) to the class of motor vehicle specified in the licence;

“second-hand motor vehicle” includes a motor vehicle that has, at any time before being offered or displayed for sale, or sold, been registered;

“sell” means to sell as principal or agent;

“trade owner” means a dealer or a financier;

“vehicle-wrecker” means a person who carries on the business of demolishing or dismantling motor vehicles;

“vehicle-wrecker’s licence” means a vehicle-wrecker’s licence granted under section 12;

“year of manufacture” means, in relation to a motor vehicle, the year in which the vehicle was manufactured.

(2) A vehicle does not cease to be a motor vehicle for the purposes of this Act by reason only that it is not in working condition or is incomplete.

(3) For the purposes of this Act—

(a) where a dealer sells a motor vehicle to a financier in the expectation that the financier will sell that motor vehicle to a particular third person and the financier does so, the dealer shall be treated as having sold the motor vehicle to that third person; and

(b)

Motor Dealers.

(b) where a motor vehicle is made the subject of a hire-purchase agreement, it shall be treated as being sold to the hirer, and the sale shall be treated as made when the hire-purchase agreement is entered into.

(4) A person who carries on the business of manufacturing or assembling motor vehicles is not a dealer and does not carry on the business of a dealer, by reason only of selling any such vehicle to a trade owner.

(5) For the purposes of this Act a motor vehicle shall be treated as having been sold notwithstanding that all or part of the consideration that passed from the purchaser in respect of the sale is represented by another vehicle or other thing.

5. (1) An application under this Act shall be made in or to the effect of a form approved by the Minister. Approved forms.

(2) The Minister may approve different forms for the purpose of making different applications.

6. (1) Anything authorised or required by or under this Act to be done by the Commissioner (other than the determination under section 35 of a dispute or the making of an order under section 36) may be done by any officer of the Bureau or the Department who is authorised generally or specially in that behalf in writing by the Commissioner, and for the purpose of doing so that officer shall be deemed to be the Commissioner. Performance of Commissioner's functions.

(2) The Minister may appoint an officer of the Bureau or the Department to exercise and perform, either generally or in respect of any particular dispute, the functions of the Commissioner under section 35 or 36, or both, and for the purposes of doing so that officer shall be deemed to be the Commissioner.

(3)

Motor Dealers.

(3) In this section—

“Bureau” means the Consumer Affairs Bureau established under the Consumer Protection Act, 1969;

“Department” means the Department of Labour and Industry.

Governor
may
prescribe a
class of
business.

7. The Governor may—

- (a) prescribe any class of business, carried on in relation to used or reconstructed motor vehicles, or such reconstructed parts of motor vehicles or accessories as may be prescribed; and
- (b) prescribe a licence in relation to any such class of business and a fee to be paid therefor.

Exemptions.

8. (1) The Governor may, by regulation made under this Act, exempt or exclude from the operation of all or any of the provisions of this Act—

- (a) any person or class of person; or
- (b) any class of motor vehicle.

(2) An exemption or exclusion under subsection (1) may be given unconditionally or subject to such conditions as may be prescribed in respect of the exemption or the exclusion.

(3) Where an exemption or exclusion under subsection (1) is given subject to conditions the exemption or the exclusion does not have effect during any period when the conditions are not complied with.

PART

Motor Dealers.

PART II.

LICENSING.

9. (1) On or after the relevant day, no person (other **Licences.** than an exempted person) shall—

- (a) carry on or advertise that he carries on or is willing to carry on the business of a dealer unless he is the holder of a dealer's licence; or
- (b) carry on the business of a dealer at any place of business unless he is the holder of a dealer's licence, granted in respect of that place of business.

Penalty : \$1,000, and in addition a further penalty of \$100 a day for each day on which the offence continues.

(2) On or after the relevant day, no person (other than an exempted person) shall—

- (a) carry on or advertise that he carries on or is willing to carry on the business of a vehicle-wrecker unless he is the holder of a dealer's licence (not being a restricted licence) or a vehicle-wrecker's licence; or
- (b) carry on the business of a vehicle-wrecker at any place of business unless he is the holder of a dealer's licence (not being a restricted licence) or a vehicle-wrecker's licence, granted in respect of that place of business.

Penalty : \$1,000, and in addition a further penalty of \$100 a day for each day on which the offence continues.

(3)

Motor Dealers.

(3) On or after the relevant day in relation to a prescribed business, no person (other than an exempted person) shall—

- (a) carry on or advertise that he carries on or is willing to carry on that business unless he is the holder of a dealer's licence (not being a restricted licence) or the prescribed licence in relation to that business; or
- (b) carry on a prescribed business at any place of business unless he is the holder of a dealer's licence (not being a restricted licence) or the prescribed licence in relation to that business, granted in respect of that place of business.

Penalty : \$1,000, and in addition a further penalty of \$100 a day for each day on which the offence continues.

(4) On or after the relevant day no holder of a dealer's licence (being a restricted licence) shall, in the course of carrying on his business as a dealer, buy, sell or exchange a motor vehicle unless it is a vehicle belonging to a class of vehicle to which his licence, in its application, is restricted.

Penalty : \$1,000.

(5) A person carries on the business of a dealer or a vehicle-wrecker, or a prescribed business, if he does so either by himself, as a member of a partnership or by his servant or agent.

(6) For the purposes of—

- (a) subsections (1), (2) and (4), the relevant day is the day that is three months after the day on which this Part commences; or

(b)

Motor Dealers.

- (b) subsection (3), the relevant day in relation to any prescribed business is the day that is one month after the day on which the regulations prescribing that business are published in the Gazette or such day (being a day that is later than that day of publication) as is specified in those regulations.

10. (1) An application for the grant of a dealer's licence, a vehicle-wrecker's licence or a prescribed licence shall be lodged with the Commissioner. Application for grant of licence.

(2) Two or more individuals intending to carry on in partnership a business for which a licence is required may, but are not required to, apply for the grant of a joint licence.

(3) An application made pursuant to subsection (2) shall specify the names of the individuals to whom the licence applied for, if granted, is to be granted.

(4) Where an application is made for the grant of a licence to a corporation the names of the directors of the corporation shall be specified in the application.

(5) Subject to subsection (6), where a business, for which a licence is required, is to be carried on at more than one place of business a separate application for the grant of a licence in respect of each such place shall be lodged with the Commissioner.

(6) Where a business, for which a licence is required, is to be carried on at more than one place of business but, by reason of the close proximity of those places, the person applying for the grant of the licence considers it reasonable that a single licence only should be required in respect of those places he may include a reference to all of those places in an application for the grant of a single licence.

(7)

Motor Dealers.

(7) Where an applicant for the grant of a dealer's licence wishes the licence, if granted, to be restricted in its application to any class of motor vehicle he shall so state, and specify that class, in his application.

Inquiries
by
Commissioner of
Police.

11. (1) Where an application for a licence is lodged, the Commissioner may request the Commissioner of Police to ascertain in relation to the application whether or not any person referred to in section 12 (2) (a), (b) or (c), as the case may be, is, or would be, a fit person to hold the licence and on receipt of any such request the Commissioner of Police shall cause such inquiries as he deems necessary to be made in order to ascertain that fact and shall furnish a report of the findings to the Commissioner.

(2) The Commissioner may, by instrument in writing, served on an applicant or, in the case of a joint application, on any one or more of the applicants, require the applicant or applicants to furnish within the period specified in the instrument such further information and documents as he may reasonably require for the purposes of the application and so specifies.

Disposal
of
applica-
tions.

12. (1) This section is subject to section 13.

(2) On payment of the appropriate fee the Commissioner shall, when an application is made for the grant of a dealer's licence, a vehicle-wrecker's licence or a prescribed licence—

(a) by an individual (other than an individual referred to in paragraph (c)), grant that licence to the individual;

(b) by a corporation, grant that licence to the corporation; or

(c)

Motor Dealers.

- (c) by two or more individuals making a joint application, grant that licence in the joint names of the individuals specified in the application pursuant to section 10 (3).

(3) Where, pursuant to section 10 (5), a reference to two or more places of business is included in an application for the grant of a single licence the Commissioner, if he grants the licence, may—

- (a) grant the licence in respect of all of those places;
or
- (b) grant the licence in respect of one or some only of those places.

(4) Where the Commissioner grants a single licence in respect of two or more places of business those places are together, for the purposes of this Act, the place of business in respect of which the licence is granted.

(5) Where an applicant applies for the grant of a dealer's licence restricted in its application to a class of motor vehicle the Commissioner shall, if he grants the licence, grant the licence as so restricted.

(6) The appropriate fee is—

- (a) in the case of a dealer's licence (not being a restricted licence), \$100 or such other fee as may be prescribed; or
- (b) in the case of a restricted licence, a vehicle-wrecker's licence or a prescribed licence, such a fee as may be prescribed.

Motor Dealers.

Refusal
of applica-
tion for
grant of
licence.

13. (1) The Commissioner shall not grant a licence unless he is satisfied—

- (a) in the case of an application by an individual, that the individual is of or above the age of eighteen years and is a fit person to hold the licence applied for;
- (b) in the case of a joint application, that each of the individuals to whom the licence is to be granted is of or above the age of eighteen years and is a fit person to hold the licence applied for; or
- (c) in the case of an application by a corporation, that the corporation is a fit person to hold the licence applied for, and that each one of the directors of the corporation is of or above the age of eighteen years and would, if the application were made by him, be a fit person to hold the licence applied for.

(2) In considering whether a person is or would be a fit person to hold a licence the Commissioner—

- (a) shall, in the case of an individual, have regard to his character;
- (b) shall have regard to any report relating to that person furnished under section 11 by the Commissioner of Police; and
- (c) shall have regard to such other matters as the Commissioner considers relevant for the purpose of determining the fitness of the person in that regard.

(3) The Commissioner shall not grant a licence in respect of any place of business unless the applicant satisfies the Commissioner that the business which it is proposed to carry on under the licence at that place may be so carried on without contravening any other Act or any instrument made under any other Act.

(4)

Motor Dealers.

(4) Where the Commissioner refuses to grant a licence he shall cause a notice of refusal to be served on the applicant for the licence by sending the notice by certified mail addressed to the applicant at his address last known to the Commissioner, or by causing it to be delivered to the applicant personally.

(5) In the case of a joint application it is a sufficient compliance with subsection (4) if the notice of refusal is served on any one of the applicants.

(6) A notice of refusal shall state the reasons for the refusal.

(7) The date on which a notice of refusal is served is—

- (a) where the notice is sent by certified mail, the date when the notice would be delivered in the ordinary course of post; or
- (b) where the notice is delivered to the applicant personally, the date when it is so delivered.

14. (1) A licence shall be in the form approved by the Minister and, without prejudice to the inclusion in the licence of any other particulars, shall— Form of licences.

- (a) specify the day of issue of the licence;
- (b) specify the place of business in respect of which the licence is granted;
- (c) specify the name of the person or, in the case of a joint licence the names of the individuals, to whom the licence is granted;
- (d) where the licence is granted to a corporation, specify the names of the directors of the corporation; and
- (e) where the licence is restricted in its application to a class of motor vehicle, specify that class of motor vehicle.

(2)

Motor Dealers.

(2) The Minister may approve different forms for different licences.

Amendment
of licence.

15. (1) The applications to which this section relates are applications for the amendment—

- (a) of a licence by substituting for the reference in the licence to a place of business a reference to another place of business;
- (b) of a joint licence by specifying in the licence the name of any individual;
- (c) of a licence held by a corporation by specifying in the licence the name of any person who is a director of the corporation; or
- (d) of a licence in such other manner as may be prescribed.

(2) Subject to the regulations, on the making of an application to which this section relates and on payment of the prescribed fee, the Commissioner may refuse the application or grant the application and amend the licence in accordance with the application.

(3) Where a person becomes a director of a corporation that is the holder of a licence and his name is not specified as a director in the licence, the corporation shall, within one month after that person becomes a director, make the application referred to in subsection (1) (c).

Penalty : \$500.

(4) Where an application made pursuant to subsection (3) is refused the person to whom the application relates shall forthwith give up his directorship of the corporation concerned.

Penalty : \$200.

(5)

Motor Dealers.

(5) Where an application made pursuant to subsection (3) is refused the person to whom the application relates shall not again, within a period of six months after the refusal of the application, become a director of the corporation unless the corporation ceases to be the holder of a licence or the Commissioner, pursuant to subsection (6), grants an application made under that subsection in relation to that person.

Penalty : \$200.

(6) A corporation that is the holder of a licence may apply to the Commissioner for the approval of a person whom it is proposed to appoint or elect to be a director of the corporation and, subject to the regulations, the Commissioner may refuse or grant the application.

(7) Where an application referred to in—

- (a) subsection (1) (a) is granted and the licence is amended by substituting a reference to another place of business, that place of business is a place of business in respect of which the licence is granted; or
- (b) subsection (1) (b) is granted and the licence is amended by specifying the name of the individual concerned in the licence, that individual shall be deemed to be an individual to whom the licence is granted.

(8) The regulations may—

- (a) make provision for or with respect to the making of applications under this section;
- (b) specify the circumstances in which any such application may be refused and, for that purpose, apply any provision in this Part with or without variation or modification; and

(c)

Motor Dealers.

- (c) provide for an appeal against any such refusal and, for that purpose, apply any provision in this Part with or without variation or modification.

Duplicate
licence.

16. If the Commissioner is satisfied that a licence has been lost or destroyed he may, on payment of the prescribed fee, issue a duplicate licence which shall be of the same force as the original licence.

Duration of
licence.

17. (1) A licence has effect from and including the day of issue of the licence.

(2) A licence continues in force unless it ceases to have effect under subsection (5) or is revoked under section 18.

(3) The appropriate fee in respect of a licence is payable annually on or before the anniversary of the day of issue of the licence in the year concerned.

(4) The appropriate fee, when paid in any year in respect of a licence, shall be accompanied by a form, prescribed for the purposes of this section, completed by the holder of the licence.

(5) If the appropriate fee in respect of a licence is not paid in accordance with subsection (3) or, if paid, is not accompanied by the prescribed form completed as provided in subsection (4), the licence ceases to have effect immediately following the anniversary concerned.

(6) The appropriate fee—

- (a) in respect of a dealer's licence (not being a restricted licence), is \$100 or such other fee as may be prescribed; or

(b)

Motor Dealers.

- (b) in respect of a restricted licence, a vehicle-wrecker's licence or a prescribed licence, is such fee as may be prescribed.

18. (1) The Commissioner may, after due inquiry, Revocation of licence.
revoke a licence—

- (a) if he is satisfied that the holder of the licence made a statement in or in connection with his application for the licence that he knew to be false or misleading in a material particular;
- (b) if the holder of the licence is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for three months or more, or of any offence against this Act or the regulations, or of an offence against section 32 of the Consumer Protection Act, 1969;
- (c) if he is satisfied, in the case of the holder of a dealer's licence, that the holder has been guilty of fraudulent conduct or dishonesty in connection with his business as a dealer;
- (d) if he is satisfied, in the case of a holder of a dealer's licence, that the holder has failed to carry out any of his obligations under section 27 or has failed to carry out any of those obligations with due expedition;
- (e) if he is satisfied, in the case of a holder of a dealer's licence (not being a joint licence), that the holder does not have sufficient material and financial resources to comply with the requirements of this Act; or
- (f) if he is satisfied, in the case of a dealer's licence (being a joint licence), that the holders of the licence do not together have sufficient material and financial resources to comply with the requirements of this Act.

(2)

Motor Dealers.

(2) The power under subsection (1) (a), (b), (c) or (d) to revoke a licence may, in the case of a joint licence, be exercised if subsection (1) (a), (b), (c) or (d), as the case may be, applies to any holder of that licence.

(3) Where the holder of a dealer's licence (not being a joint licence) carries on the business of a dealer in partnership with one, or more than one, person, the Commissioner shall not revoke his licence under subsection (1) (e) unless the Commissioner is satisfied that his material and financial resources, together with those of the person or persons with whom he carries on that business in partnership, are not sufficient to enable him to comply with the requirements of this Act.

(4) Without prejudice to his right to revoke a licence under subsection (1), the Commissioner may, after due inquiry, revoke—

- (a) a licence held by a corporation if any director of the corporation is convicted of an offence referred to in subsection (1) (b); or
- (b) a licence (not being a joint licence) held by any person carrying on business in partnership with any other person if the licence of that other person is revoked under paragraph (a) or under subsection (1) (b), (c) or (d).

(5) Before revoking a licence the Commissioner shall give the holder or, in the case of a joint licence, each of the holders, of the licence an opportunity of showing cause why the licence should not be revoked.

(6) Where the Commissioner revokes a licence, he shall cause a notice of revocation to be served on the holder of the licence by sending the notice by certified mail addressed to the holder at the place of business in respect of which the licence is granted, or by causing it to be delivered to the holder personally.

(7)

Motor Dealers.

(7) In the case of a joint licence it is a sufficient compliance with subsection (6) if the notice of revocation is served on any one of the holders of the licence.

(8) A notice of revocation shall state the reasons for the revocation of the licence.

(9) Subject to subsection (10), the revocation of a licence has effect as on and from the date that is twenty-one days after the date on which the notice of revocation is served.

(10) Where the holder of a licence appeals under section 19 against the revocation of the licence, the revocation shall have effect—

- (a) only if the magistrate hearing the appeal confirms the revocation or the appeal is withdrawn; and
- (b) on the date on which that magistrate confirms the revocation, or such later date as that magistrate orders or, if the appeal is withdrawn, on the date on which it is withdrawn.

(11) The date on which a notice of revocation is served is—

- (a) where the notice is sent by certified mail, the date when the notice would be delivered in the ordinary course of post; or
- (b) where the notice is delivered to the holder of the licence personally, the date when it is so delivered.

(12) When the revocation of a licence has effect the person who was the holder of the licence shall forthwith deliver it to the Commissioner.

Penalty : \$200.

19. (1) An applicant for the grant of a licence may appeal to a magistrate against the refusal of the Commissioner to grant the licence. Appeals.

(2)

Motor Dealers.

(2) The holder of a licence may appeal to a magistrate against the revocation by the Commissioner of the licence.

(3) Notice of an appeal under this section, specifying the grounds of the appeal, shall be lodged with the registrar not later than twenty-one days after the date of service.

(4) The registrar shall give notice of the time and place of the hearing of an appeal under this section to the Commissioner and to the person appealing, and shall state in the notice to the Commissioner the grounds of the appeal.

(5) The hearing of an appeal may proceed notwithstanding any omission or error in a notice under subsection (4) or the failure to give any such notice if the magistrate is satisfied that the person appealing and the Commissioner had knowledge of the time and place of the hearing and were not prejudiced by any such omission or error or by the failure to give any such notice.

(6) Where relevant, a report furnished pursuant to section 11 to the Commissioner by the Commissioner of Police or a report furnished pursuant to section 34 to the Commissioner by a disputes committee, and certified in either case by the Commissioner to have been so furnished, shall be received in proceedings before a magistrate under this section as evidence of the contents of the report.

(7) A magistrate shall hear and determine an appeal made to him under this section and may confirm (with or without variation) or disallow the refusal or revocation appealed against, or make such other order in the circumstances as to him seems just.

(8) A magistrate may disallow the refusal or revocation appealed against if, in all of the circumstances of the case, he considers it fair and reasonable to do so.

(9) Subject to this section, the provisions of the Industrial Arbitration Act, 1940, relating to a proceeding before a magistrate apply to proceedings before a magistrate under this section.

(10)

Motor Dealers.

(10) The decision of a magistrate in respect of an appeal made under this section shall be final and shall be binding on the person appealing, and on the Commissioner who shall take such steps as may be necessary to give effect to the decision.

(11) Where a joint application is refused or a joint licence is revoked, an appeal under this section against the refusal or the revocation may be made either by one of the applicants or holders, as the case may be, on behalf of all of the applicants or holders, or by all of the applicants or holders jointly, but not otherwise.

(12) In this section—

“date of service” means—

- (a) in the case of an appeal against a refusal to grant a licence, the date of service of the notice of refusal; and
- (b) in the case of an appeal against a revocation of a licence, the date of service of the notice of revocation;

“registrar” means the industrial registrar appointed under the Industrial Arbitration Act, 1940.

20. (1) The Commissioner shall cause to be kept a Register of register, in such form as he determines, of licences granted licences. and shall cause to be recorded therein in respect of each licence—

- (a) the matters which under section 14 are required to be specified in the licence;
- (b) particulars of any amendment of the licence made under section 15;

(c)

Motor Dealers.

- (c) particulars of any fees paid, or due but not paid, in respect of the licence under section 17;
- (d) particulars of any revocation of the licence under section 18; and
- (e) such other matters as may be prescribed.

(2) The Commissioner may cause to be made such alterations in the register as are necessary to ensure that the matters recorded therein in respect of any licence are accurate.

(3) The register may, at all reasonable hours, be inspected, and copies of all or any part of any entry in the register taken—

- (a) without payment, by—
 - (i) any member of the police force;
 - (ii) any officer in the public service; and
 - (iii) any person authorised by the Commissioner;
or
- (b) on payment of such fee as may be prescribed, by any other person.

(4) The register shall be received in proceedings before any court or tribunal as evidence of the matters required by or under this Act to be recorded in it, and any document purporting to be certified by the Commissioner to be a true copy of an entry in the register shall be received in proceedings before any court or tribunal as evidence of any such matters contained in the entry.

PART

Motor Dealers.

PART III.

DEALERS' AND OTHER RECORDS.

21. (1) This section does not apply—

Dealer's
register.

- (a) to an exempted person; or
- (b) in relation to an exempted motor vehicle.

(2) The holder of a dealer's licence shall keep a dealer's register at the place of business in respect of which the licence is granted.

Penalty : \$500.

(3) The holder of a dealer's licence shall enter in the register kept by him pursuant to subsection (2) at the place of business, in respect of which the licence is granted, the required particulars in relation to every second-hand vehicle bought, exchanged or taken in possession for sale, in, or for the purpose of, carrying on the business of a dealer at that place, and shall sign his name to the entry.

Penalty : \$500.

(4) The requirements of subsection (3) shall be complied with in relation to a motor vehicle immediately after the vehicle is bought, exchanged or taken in possession for sale, as the case may be.

(5) It is a sufficient compliance with subsection (3) if an agent of the dealer or a person employed by a dealer in his business as a dealer makes the entry required to be made by that subsection in the dealer's register in relation to a second-hand motor vehicle, and signs his name to that entry.

(6)

Motor Dealers.

(6) A dealer shall not, pursuant to subsection (3), and an agent or an employee shall not, pursuant to subsection (5), in respect of any particulars required under subsection (3) to be entered in the dealer's register, wilfully make an entry in the register that is false or misleading in a material particular.

Penalty : \$1,000.

(7) Where a joint licence (being a dealer's licence) is granted in respect of a place of business, or two or more dealers' licences are granted in respect of the same place of business to two or more persons carrying on in partnership the business of a dealer—

- (a) it is a sufficient compliance with subsection (2) if a single dealer's register is kept at the place of business; and
- (b) each holder of the licence is guilty of an offence under subsection (2) if that section is not complied with, and of an offence under subsection (3) if that subsection is not complied with.

(8) For the purposes of this section the required particulars in relation to a second-hand motor vehicle are—

- (a) the model designation of the vehicle recognised by the motor trade industry or the year of manufacture of the vehicle;
- (b) the numbers and letters of its registration (if any);
- (c) the identification number of the engine of the vehicle;
- (d) where the vehicle is equipped with an odometer, the reading on the odometer when the vehicle was bought, exchanged or taken in possession for sale;

(e)

Motor Dealers.

- (e) the name and address of the person from whom the vehicle was bought, exchanged or taken in possession for sale and, if that person was a trade owner, the name and address of the last owner of the vehicle (if any) who was not a trade owner;
- (f) the date and hour of the day when the vehicle was bought, exchanged or taken in possession for sale;
- (g) any cash or other consideration given or agreed to be given and a description of any such other consideration; and
- (h) such other particulars as may be prescribed.

22. Every vehicle-wrecker or person carrying on a prescribed business shall keep a register, in the prescribed form, at the place of business in respect of which the licence allowing him to carry on that business is granted and shall record or cause to be recorded in that register the particulars of every prescribed transaction entered into in the course of carrying on at that place the business of a vehicle-wrecker or the prescribed business, as the case may be.

Register
to be
kept by
vehicle-
wrecker.

23. (1) A dealer's register kept pursuant to section 21 or a register kept pursuant to section 22 at any place of business may, at all reasonable times, be inspected, and copies of all or any part of any entry in the register taken by—

Inspection
of dealer's
register.

- (a) any member of the police force;
- (b) an inspector appointed under the Consumer Protection Act, 1969;
- (c) any person authorised in writing by the Commissioner; or
- (d) any person authorised in writing by the Commissioner for Motor Transport.

(2)

Motor Dealers.

(2) Subject to subsection (3), any—

- (a) dealer, vehicle-wrecker or person carrying on a prescribed business who, on demand made at a reasonable time, refuses or neglects to produce a register kept by him pursuant to section 21 or 22, as the case may be, to a person referred to in subsection (1); or
- (b) person who wilfully obstructs any person referred to in that subsection while acting in the exercise of any powers conferred on him under that subsection,

is guilty of an offence and liable to a penalty of \$500.

(3) A dealer, a vehicle-wrecker or a person carrying on a prescribed business is not required under this section to produce a register, kept by him pursuant to section 21 or 22, to any person unless that person produces evidence of his appointment or authority, if requested to do so.

PART IV.

DEALINGS IN MOTOR VEHICLES.

Notice to
be displayed
on second-
hand motor
vehicle
offered
for sale.

24. (1) Subject to subsection (2), where a dealer offers or displays for sale a second-hand motor vehicle he shall attach, or cause to be attached, to the vehicle, in the manner prescribed, a notice, in the prescribed form, containing the required particulars in relation to that vehicle.

(2)

Motor Dealers.

(2) Subsection (1) does not apply to or in relation to the offering or displaying for sale of a second-hand motor vehicle for the purposes only of sale—

- (a) by bona fide auction;
- (b) to an exempted person; or
- (c) to a trade owner.

(3) A notice shall not be treated for the purposes of subsection (1) as containing the required particulars if any of the required particulars contained in the notice is false or misleading in a material particular.

(4) Where a second-hand motor vehicle is offered or displayed for sale by a dealer in circumstances where subsection (1) applies and the vehicle is sold the dealer shall immediately after the completion of the sale sign a copy of the notice attached pursuant to subsection (1) to the vehicle and deliver it to the purchaser of the vehicle.

(5) Where a second-hand motor vehicle is offered or displayed for sale by a dealer in circumstances where subsection (1) applies and a sale of the vehicle is effected by an agent of the dealer or a person employed by the dealer in his business as a dealer, compliance by that agent or employee with the requirements of subsection (4) shall be treated as compliance by the dealer with those requirements.

(6) Where—

- (a) an individual carrying on the business of a dealer does not comply with the requirements of subsection (1) or the requirements of subsection (4), he is guilty, in either case, of an offence;

(b)

Motor Dealers.

- (b) an individual carrying on in partnership (whether under a joint licence or otherwise) the business of a dealer does not comply with the requirements of subsection (1) or the requirements of subsection (4), he and each of the partners are, in either case, guilty of an offence; or
- (c) a corporation carrying on the business of a dealer does not comply with the requirements of subsection (1) or the requirements of subsection (4), the corporation is, in either case, guilty of an offence,

and liable to a penalty of \$500.

(7) For the purposes of this section the required particulars in relation to a second-hand motor vehicle are—

- (a) the name and business address of the dealer by whom the vehicle is offered or displayed for sale;
- (b) the numbers and letters of its registration (if any);
- (c) where the dealer is acting on behalf of another dealer, a statement to that effect and the name and address of that other dealer;
- (d) where the vehicle is equipped with an odometer, the reading on the odometer entered by the dealer pursuant to section 21 in the dealer's register;
- (e) the cash price of the vehicle or, where the vehicle is a vehicle repossessed by a financier and is offered for sale by way of tender, a statement to that effect;
- (f) the model designation of the vehicle recognised by the motor trade industry or the year of manufacture of the vehicle; and
- (g) such other particulars as may be prescribed.

(8)

Motor Dealers.

(8) In any case where the holder of a dealer's licence is acting on behalf of another dealer, this section, if it applies, applies to the dealer so acting and not to the other dealer, and the dealer so acting, or an agent of the dealer so acting or a person employed by that dealer and acting pursuant to subsection (5), shall comply with this section.

(9) In any case where subsection (8) applies the dealer's register referred to in subsection (7) (d) is the register of the dealer acting on behalf of the other dealer.

(10) This section does not apply to or in relation to the sale of an exempted motor vehicle.

25. (1) This section does not apply to or in relation to the sale of an exempted motor vehicle.

(2) A dealer who sells a second-hand motor vehicle to another dealer shall sign a disposal notice, in the prescribed form, containing the required particulars and forthwith deliver it to that other dealer.

Sale of
second-hand
motor
vehicle to
trade
owner.

(3) A dealer who arranges with an auctioneer for the sale by the auctioneer of a second-hand motor vehicle, shall comply with the requirements of subsection (2) in every respect as if the auctioneer were another dealer purchasing the vehicle.

(4) Where the agent of a dealer or a person employed by a dealer in his business as a dealer, in his capacity as such an agent or employee—

- (a) sells a second-hand motor vehicle to another dealer; or
- (b) arranges with an auctioneer for the sale by an auctioneer of a second-hand vehicle,

compliance by that agent or employee with the requirements of subsection (2) or (3), as the case may be, shall be treated as compliance by the dealer with those requirements.

(5)

Motor Dealers.

(5) Where—

- (a) an individual carrying on the business of a dealer does not comply with the requirements of subsection (2) or the requirements of subsection (3), he is guilty, in either case, of an offence;
- (b) an individual carrying on in partnership (whether under a joint licence or otherwise) the business of a dealer does not comply with the requirements of subsection (2) or the requirements of subsection (3), he and each of the partners are, in either case, guilty of an offence; or
- (c) a corporation carrying on the business of a dealer does not comply with the requirements of subsection (2) or the requirements of subsection (3), the corporation is, in either case, guilty of an offence,

and liable to a penalty of \$500.

(6) Where an auctioneer, pursuant to an arrangement under subsection (3) or (4) (b), sells a motor vehicle by bona fide auction to a person known to him to be a dealer he shall forthwith deliver to that person the disposal notice delivered to the auctioneer pursuant to subsection (3).

Penalty: \$500.

(7) A notice shall not be treated for the purposes of subsection (2) or (3) as containing the required particulars if any of the required particulars contained in the notice is false or misleading in a material particular.

(8) For the purposes of this section the required particulars, in relation to a second-hand motor vehicle, are—

- (a) the name and business address of the dealer selling the vehicle;

(b)

Motor Dealers.

- (b) the numbers and letters of its registration (if any);
- (c) where the dealer is acting on behalf of another dealer, a statement to that effect and the name and address of that other dealer;
- (d) the name and address of the last owner of the vehicle (if any) who was not a trade owner;
- (e) where the vehicle is equipped with an odometer, the reading on the odometer entered pursuant to section 21 in the dealer's register;
- (f) the model designation of the vehicle recognised by the motor trade industry or the year of manufacture of the vehicle; and
- (g) such other particulars as may be prescribed.

(9) In any case where the holder of a dealer's licence is acting on behalf of another dealer, subsections (2) and (3) apply to the dealer so acting and not to the other dealer, and the dealer so acting, or an agent of that dealer so acting or a person employed by that dealer and acting pursuant to subsection (4), shall comply with subsections (2) and (3).

(10) In any case where subsection (9) applies the dealer's register referred to in subsection (8) (e) is the register of the dealer acting on behalf of the other dealer.

26. In proceedings for an offence under section 24 or 25 **Defences.** it is a defence if—

- (a) in the case of the omission of any required particular from a notice referred to in either of those sections, the accused person proves that the motor vehicle concerned was brought into the State for the purpose of resale and that the required particular omitted was unknown to him and could not, with reasonable diligence, be ascertained by him; or
- (b)

Motor Dealers.

- (b) in the case of the inclusion in any such notice of a required particular relating to the year of manufacture or the model designation of the motor vehicle concerned, or to any matter prescribed for the purposes of this section, that is false or misleading in a material particular, the accused person proves that he took all reasonable steps to ascertain the true particulars and that those included were, to the best of his knowledge and belief, true.

Obligations
of dealer.

27. (1) Except as provided in this section and sections 28 and 29—

- (a) where a motor vehicle (not being a second-hand motor vehicle) is sold on or after the commencement of this section, by a dealer, and before—

- (i) the vehicle has been driven for 20,000 kilometres after being so sold; or
(ii) the expiration of the period of twelve months after the vehicle is so sold,

whichever first occurs, a defect appears or occurs in the vehicle;

- (b) where a second-hand motor vehicle is sold on or after the commencement of this section by a dealer at a cash price of or over \$1,000, or such greater amount as may be prescribed, and before—

- (i) the vehicle has been driven for 5,000 kilometres after being so sold; or
(ii) the expiration of the period of three months after the vehicle is so sold,

whichever first occurs, a defect appears or occurs in the vehicle; or

(c)

Motor Dealers.

(c) where a second-hand motor vehicle is sold on or after the commencement of this section by a dealer at a cash price of less than \$1,000, or such greater amount as may be prescribed, and before—

(i) the vehicle has been driven for 3,000 kilometres after being so sold; or

(ii) the expiration of the period of two months after the vehicle is so sold,

whichever first occurs, a defect appears or occurs in the vehicle,

the dealer shall, whether or not that defect existed at the time of the sale, at his own expense, repair or make good, or cause to be repaired or made good, the defect so as to place the vehicle in a reasonable condition having regard to its age and his obligation to do so shall be deemed to be a term of the contract of sale relating to the vehicle.

(2) For the purposes of calculating the period referred to in subsection (1) (a) (ii), (1) (b) (ii) or (1) (c) (ii), no regard shall be paid to any period during which the dealer has the motor vehicle in his possession for the purpose or purported purpose of ascertaining or carrying out his obligations under this section.

(3) The obligation of a dealer under subsection (1) (a) in relation to a motor vehicle sold by him is extinguished if, subsequent to that sale, he or another dealer acquires ownership of the vehicle, or the vehicle is repossessed by a financier.

(4) Subject to subsection (3), the obligation of a dealer under subsection (1) (a) in relation to a motor vehicle subsists for the benefit of the owner, from time to time, of the vehicle and, for this purpose, the owner from time to time shall be deemed to have entered into a contract of sale with the dealer in respect of the vehicle.

(5)

Motor Dealers.

(5) The obligation of a dealer under subsection (1) (b) or (c) in relation to a motor vehicle sold by him is an obligation only to the person who purchased the vehicle from him.

(6) The revocation under section 18 of a dealer's licence or the ceasing of the licence to have effect under section 17 (5), does not affect his liability under this section.

(7) The fact that a dealer is not the holder of a dealer's licence or has ceased to be a dealer does not affect his liability under this section.

(8) In any case where the holder of a dealer's licence is acting on behalf of another dealer in selling a motor vehicle this section applies to the dealer so acting and not to the other dealer, and the dealer so acting is liable to perform the obligations under this section.

(9) A motor vehicle is not a second-hand motor vehicle for the purposes of subsection (1) (a) by reason only that the vehicle has been registered in the name of the dealer who sells the vehicle, or in the name of a dealer on whose behalf the vehicle is sold, or in the name of any person on behalf of any such dealer.

(10) Where a motor vehicle is sold it is not a second-hand motor vehicle for the purposes of subsection (1) (a) by reason only that it is registered in the name of the purchaser prior to the completion of the sale.

(11) Where a motor vehicle is registered in the name of any person in anticipation of the sale of the vehicle to that person, but the sale of the vehicle to that person is not completed, the vehicle is not a second-hand vehicle for the purposes of subsection (1) (a) by reason only of being so registered.

Motor Dealers.

28. (1) Section 27 (1) does not apply to or in relation ^{Exceptions.} to any defect—

- (a) that is a defect to which, pursuant to section 29, section 27 (1) does not apply;
- (b) occurring in the tyres, battery or any prescribed accessory to a motor vehicle;
- (c) arising from or incidental to any accidental damage to a motor vehicle that occurred after the sale, referred to in section 27 (1), of the vehicle, and when the vehicle was not in the possession of the dealer; or
- (d) arising from misuse or negligence on the part of a driver of a motor vehicle, or arising from the use of a motor vehicle for motor racing or motor rallying, that occurred after the sale, referred to in section 27 (1), of the vehicle.

(2) In the case of a second-hand motor vehicle section 27 (1) does not apply in relation to any superficial damage to the paint-work or upholstery of the vehicle which would have been apparent on a reasonable inspection of the vehicle carried out at the time of the sale, referred to in section 27 (1), of the vehicle.

(3) Section 27 (1) does not apply to or in respect of the sale of—

- (a) a motor vehicle to a trade owner;
- (b) a second-hand motor vehicle where the purchaser has been in possession of the vehicle for a period of not less than three months immediately preceding the day of that sale;
- (c) a motor vehicle to an exempted person; or
- (d) a commercial vehicle, a motor cycle or a trailer.

(4)

Motor Dealers.

(4) Where the proposed purchaser of a motor vehicle (not being a second-hand motor vehicle) is in possession of the vehicle for a period immediately preceding the day on which he purchases that vehicle from a dealer then, for the purposes of section 27 (1) (a), he shall be treated as having purchased the vehicle on the day when he first acquired that possession.

(5) Section 27 (1) does not apply to or in respect of the sale of—

- (a) a second-hand motor vehicle by a dealer on behalf of a financier where the motor vehicle is a vehicle which was sold by the financier under a hire-purchase agreement and subsequently repossessed by him;
- (b) a second-hand motor vehicle where the cash price is less than \$500 or such greater amount as may be prescribed; or
- (c) an exempted motor vehicle,

if, but only if, at all material times when the vehicle is offered or displayed for sale by the dealer, or caused or permitted to be so offered or displayed, there is attached, in the prescribed manner to the vehicle, a notice, in the prescribed form, to the effect that section 27 (1) does not apply to or in respect of the sale of the vehicle.

(6) Section 27 (1) does not apply to or in respect of the sale of a second-hand motor vehicle by bona fide auction if, but only if, there is attached, in the prescribed manner, to the vehicle at the time of the auction a notice, in the prescribed form, to the effect that section 27 (1) does not apply to or in respect of the sale of the vehicle.

Motor Dealers.

29. (1) A dealer may attach, in the prescribed manner, to any second-hand motor vehicle offered or displayed for sale a notice, in the prescribed form, setting out with reasonable particularity any defect that he believes to exist in the vehicle together with, in relation to each such defect, his estimate of the fair cost of repairing or making good the defect. ^{Excluded defects.}

(2) If—

- (a) a notice referred to in subsection (1) has, at all material times, been attached to a second-hand motor vehicle; and
- (b) at or before the time of sale of the vehicle a copy of that notice has been signed by the purchaser and upon the sale a true copy of that notice as so signed has been delivered to the purchaser for retention by him,

then section 27 (1) shall not apply to or in relation to that defect.

(3) If in any notice referred to in subsection (1) the amount estimated by the dealer as the fair cost of repairing or making good that defect is less than the amount of the fair cost of then repairing or making good that defect the purchaser may sue for and recover the difference between those fair costs as a debt due to the purchaser from the dealer.

PART V.

DISPUTES AND RESCISSIONS.

30. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires— ^{Interpretation.}

“applicant” means a person who makes an application;

“application” means an application under section 31 (1) to the Commissioner, but does not include an application that has been withdrawn;

“dispute”

Motor Dealers.

“dispute” means a disagreement under section 31 (1) which is the subject of an application;

“disputes committee” means a committee appointed under section 34;

“tribunal” includes a Consumer Claims Tribunal constituted under the Consumer Claims Tribunals Act, 1974.

(2) A reference in this Part to a dealer includes a reference to a person who was a dealer when he sold a motor vehicle that is the subject of such a disagreement as is referred to in section 31 (1) or of a dispute, notwithstanding that he has ceased to be a dealer since that vehicle was sold.

Disputes.

31. (1) Where, in relation to a motor vehicle, a disagreement exists between a purchaser or an owner of the vehicle, and a dealer concerning any one or more of the following, namely—

- (a) the existence or extent of any obligation under section 27 on the part of the dealer to the purchaser or the owner;
- (b) the manner of carrying out any such obligation;
- (c) the amount of the fair cost of repairing or making good any defect referred to in section 29; or
- (d) any other matter or thing, whether or not of the same kind as a matter referred to in paragraph (a), (b) or (c), arising out of the application of this Act,

the purchaser or the owner, as the case may be, may apply in writing to the Commissioner to investigate and determine the disagreement.

(2)

Motor Dealers.

(2) The Commissioner shall not exercise any power conferred on him by section 32, 33, 35 or 36 in connection with any matter in issue in a dispute—

- (a) if proceedings in respect of that matter are pending before a court or a tribunal at the time when the application relating to the dispute is received by the Commissioner, unless those proceedings are discontinued before judgment is given by the court or a determination is made by the tribunal; or
- (b) if, at that time, that matter has been decided by a court or a tribunal, or a court or a tribunal decides that matter pursuant to proceedings which are pending at that time.

(3) Where an application is made to the Commissioner a court or a tribunal has no jurisdiction in connection with any matter in issue in the dispute to which the application relates—

- (a) unless subsection (2) applies in respect of that matter;
- (b) unless the application is withdrawn; or
- (c) except in respect of proceedings commenced in a court or a tribunal after the Commissioner has dealt with the matter under this Part.

(4) An application may be withdrawn at any time.

32. (1) The Commissioner shall use his best endeavours ^{Settlement} by communication with the applicant and the dealer, or ^{of disputes.} otherwise, to settle a dispute.

(2) Where the Commissioner settles a dispute the application concerned shall be deemed to have been withdrawn.

(3)

Motor Dealers.

(3) A dispute shall not be treated as having been settled unless the terms of the settlement are incorporated in a document and signed by the applicant, the dealer and the Commissioner.

(4) Where a dispute is settled as provided in this section the settlement shall have the same force and effect as it would have if it were a determination by the Commissioner under section 35.

(5) A document purporting to be signed by the Commissioner and to set out the terms of a settlement shall be received in proceedings before any court or tribunal as evidence of that settlement and the terms thereof.

Investiga-
tion by
Commis-
sioner.

33. (1) Where the Commissioner is unable under section 32 to settle a dispute he shall, subject to subsection (3), investigate the dispute.

(2) The Commissioner may determine his own procedure for the purpose of investigating a dispute.

(3) The Commissioner may refer a dispute, or any matter forming part of, arising out of or in connection with, a dispute to a disputes committee for investigation.

(4) The Commissioner may give directions to a disputes committee with respect to the carrying out by the committee of an investigation.

Disputes
committee.

34. (1) A disputes committee shall comprise a nominee of—

- (a) the Commissioner;
- (b) the National Roads and Motorists' Association;
- (c) the Motor Traders' Association of New South Wales; and

(d)

Motor Dealers.

(d) where the motor vehicle to which the dispute relates is a motor vehicle to which section 27 (1) (a) applies, or is alleged to apply, the Chamber of Automotive Industries of New South Wales,

appointed by the Commissioner.

(2) Subject to any directions given by the Commissioner under section 33 (4), a disputes committee may determine its own procedure for the purpose of carrying out an investigation.

(3) A disputes committee shall report to the Commissioner the result of any investigation carried out by it and shall state in the report any recommendation which it wishes to make.

(4) Where the members of a disputes committee do not agree that a recommendation should be stated in the report to the Commissioner, or on the nature of the recommendation to be so stated, it shall record the disagreement in its report and may state in the report more than one recommendation.

(5) In determining a dispute the Commissioner shall have regard to the report of a disputes committee but is not bound to follow any recommendation contained in the report.

(6) Where a body referred to in subsection (1) (b), (c) or (d) changes its name and the Commissioner is satisfied that the change of name is not accompanied by any change in the nature of the body, he may, by instrument in writing, so certify and, subject to subsection (7), as from the date of that instrument the reference in subsection (1) (b), (c) or (d), as the case may be, shall be deemed to be a reference to the body under that changed name.

(7) The power of the Commissioner under subsection (6) may be exercised in relation to a body under a changed name as if that body, under that changed name, were referred to in subsection (1).

Motor Dealers.

Deter-
mination of
dispute.

35. (1) When the investigation of a dispute is completed the Commissioner shall determine the dispute and, for the purpose of so doing, may do any one or more of the following, namely—

- (a) find that an obligation exists or does not exist under section 27;
- (b) determine the extent of an obligation;
- (c) determine the amount of the fair cost of repairing or making good any defect referred to in section 29; or
- (d) make any other finding or determination ancillary to a finding or determination referred to in paragraph (a), (b) or (c).

(2) Subject to subsection (3), where the Commissioner determines that an obligation exists, in connection with a motor vehicle, under section 27 (1) (a), he shall recommend that the manufacturer of the vehicle contribute towards the cost of the dealer in discharging the obligation to such extent as he specifies in the recommendation.

(3) The Commissioner shall not make a recommendation under subsection (2) unless—

- (a) having regard to the nature of the defects in the vehicle and the other circumstances of the dispute, it is, in his opinion, fair and reasonable to do so; and
- (b) the manufacturer or his agent has been afforded, in the course of the investigation of the dispute, an opportunity of being heard.

(4)

Motor Dealers.

(4) A recommendation by the Commissioner under subsection (2) does not prejudice the right of an applicant to enforce any obligation against a dealer.

(5) A finding or a determination of the Commissioner under subsection (1) and the terms thereof shall be binding on the applicant and the dealer and shall not be challenged in any proceedings whatsoever.

(6) Where, pursuant to subsection (1) (c), the Commissioner determines that the fair cost of repairing or making good a defect is greater than the amount estimated in that connection by a dealer he may, in his discretion, order that the dealer pay to the claimant the amount represented by the difference and, if he does so, the claimant may enforce the order by filing, free of charge, with the registrar of a court of competent jurisdiction—

- (a) a copy of the order certified by the Commissioner to be a true copy; and
- (b) the affidavit of the claimant as to the amount unpaid under the order,

and thereupon the registrar concerned shall enter judgment in favour of the claimant against the dealer for the amount specified in the affidavit as being unpaid.

(7) A document purporting to be signed by the Commissioner and to set out any finding or determination by the Commissioner in a dispute and the terms thereof shall be received in proceedings before any court or tribunal as evidence of that finding or determination and the terms thereof.

36. (1) Without limiting the generality of the powers conferred on the Commissioner under section 35, where the Commissioner is satisfied that—

Order for repair of defects.

- (a) an obligation lies on a dealer under section 27; and
- (b) the dealer has unreasonably—
 - (i) refused or failed to carry out that obligation; or

(ii)

Motor Dealers.

- (ii) delayed or prevaricated in the carrying out of that obligation,

the Commissioner may order that any defect required to be repaired or made good under section 27 shall be repaired or made good by a person (being a person other than the dealer) named in the order.

(2) Where an order is made under subsection (1) and, pursuant to the order, the applicant contracts to have the defect repaired or made good by the person named in the order, the dealer shall be liable to indemnify the applicant against all costs or expenses payable by the applicant under the contract to have the defect repaired or made good, and the amount of those costs and expenses may be recovered by the applicant as a debt due from the dealer to the applicant in any court of competent jurisdiction.

(3) Notwithstanding anything to the contrary in any Act or law, where an order is made under subsection (1) the dealer shall not have a lien over the motor vehicle to which the order relates in relation to any work done or purported to have been done by the dealer in repairing or making good any defect to which the order relates.

False or misleading statements.

37. A person shall not wilfully make any false or misleading statement in or in relation to any proceeding for the investigation or determination of a claim.

Penalty : \$200.

Rescission of sale.

38. (1) Where the Commissioner is of the opinion—

- (a) that a motor vehicle sold by a dealer is substantially different from the vehicle as represented in a notice under section 24; or
- (b) that a notice required under that section to be displayed in relation to the vehicle was not displayed and that the vehicle as so sold was substantially different from the vehicle as represented by the dealer,

the

Motor Dealers.

the Commissioner may apply to a magistrate for an order for rescission of the sale of the vehicle.

(2) An application under this section shall set out the grounds on which it is made.

(3) Upon hearing the Commissioner or a representative of the Commissioner and upon affording any other person likely to be affected by any order made under this section an opportunity of being heard the magistrate may order that the sale be rescinded, the vehicle returned to the dealer and any consideration passed by the purchaser or the value of any such consideration assessed under subsection (5) returned to the purchaser, and may make such further or consequential orders, including an order as to the payment of the costs of the application, as to him seem necessary or desirable.

(4) Where a dealer is convicted of an offence under section 24 in respect of a vehicle sold by the dealer and the magistrate is of the opinion—

- (a) that the vehicle is substantially different from the vehicle as represented in a notice under section 24; or
- (b) where no such notice was displayed in relation to the vehicle, that the vehicle as so sold was substantially different from the vehicle as represented by the dealer,

the magistrate may, in addition to any penalty imposed, order that the sale be rescinded, the vehicle returned to the dealer and any consideration passed by the purchaser or the value of any such consideration assessed under subsection (5) returned to the purchaser, and may make such further or consequential orders as to him seem necessary or desirable.

(5) Where in respect of any sale referred to in subsection (1) or subsection (4) all or part of the consideration that passed from the purchaser is represented by a motor

vehicle

Motor Dealers.

vehicle or other thing, the magistrate may for the purposes of this section assess the value of that motor vehicle or other thing.

(6) Where there is a collateral credit agreement associated with a sale of a motor vehicle that has been rescinded under this section the obligations and rights of the purchaser under that agreement shall, by force of this section, be transferred from the purchaser to the dealer and subject to this section may be enforced by or against the dealer in all respects as if he were the purchaser.

(7) Notwithstanding any Act or law to the contrary, upon the making of an order rescinding a sale of a motor vehicle the rights and obligations of the parties under any contract or agreement relating to the sale or under any collateral credit agreement associated with the sale of the motor vehicle shall be as provided for in that order or in any order ancillary to or consequential upon that order, and without limiting the generality of the foregoing it shall not be a bar to the making of an order rescinding a sale that the parties cannot be restored to the positions that existed prior to the sale.

(8) Subject to subsection (10) (b), the provisions of the Industrial Arbitration Act, 1940, and the regulations made under that Act, relating to proceedings before a magistrate and to appeals from a magistrate to the Industrial Commission of New South Wales shall apply to proceedings before a magistrate under this section as if the proceedings under this section were proceedings under that Act.

(9) For the purposes of this section a collateral credit agreement associated with the sale of a motor vehicle is a contract or agreement, arranged or procured by the dealer selling the vehicle, for the provision of credit by a person (other than that dealer) for the purposes of the sale of the vehicle.

(10) The regulations may—

(a) provide for the enforcement of any order made under this section; and

(b)

Motor Dealers.

- (b) make provision for or with respect to appeals under this section from a magistrate to the Industrial Commission of New South Wales, whether in addition to the provisions of, or in substitution for any of the provisions of, the Industrial Arbitration Act, 1940, or the regulations made under that Act and relating to appeals.

PART VI.

COMPENSATION FUND.

39. (1) There shall be established in the Special Deposits Account in the Treasury a Motor Dealers Compensation Fund (hereinafter in this Part referred to as "the Fund").

Motor
Dealers
Compensa-
tion Fund.

(2) There shall be paid into the Fund—

- (a) such proportion of the fees paid under this Act or the regulations as is determined in accordance with subsection (3); and
- (b) any money recovered by the Commissioner in the exercise of any rights, or the pursuit of any remedies, to which he is subrogated under section 41.

(3) All fees paid under this Act or the regulations shall be distributed between the Fund and the Consolidated Revenue Fund in the prescribed proportions.

(4) Subject to section 42, there shall be paid out of the Fund the amount of any loss which is certified by the Commissioner pursuant to section 40 (2).

40. (1) Any person wishing to make a claim against the Fund shall submit his claim in writing, verified by statutory declaration, to the Commissioner.

Claims
against
Fund.

(2)

Motor Dealers.

(2) Subject to this section, if the Commissioner is satisfied that a person submitting a claim has incurred a loss in connection with a motor vehicle (not being an exempted motor vehicle) by reason of the failure of a dealer to comply with any obligation arising under this Act with which he is required to comply, or by reason of the fact that a dealer has not passed an unencumbered title to the vehicle, the Commissioner may certify the amount of the loss.

(3) No loss shall be certified by the Commissioner if the loss was incurred in connection with a motor vehicle sold before the commencement of section 9.

(4) No loss shall be certified by the Commissioner unless the Commissioner is satisfied that the claimant has taken all reasonable steps to exercise such legal remedies and other rights of action available in respect of the loss incurred by him.

(5) The Commissioner shall not certify a loss incurred by a trade owner or by a person who was a trade owner when he purchased the motor vehicle in connection with which the loss is incurred.

Subrogation
where claim
allowed.

41. On payment out of the Fund of any amount certified by the Commissioner, the Commissioner shall be subrogated to the extent of such payment to all the rights and remedies of the claimant against the person in relation to whom the claim arose or any other person incurring any liability to the claimant in relation to the subject-matter of the claim or the legal personal representatives or other persons having authority to administer any estate concerned, and the claimant shall not, to the extent of such payment be entitled to enforce those rights or remedies.

Motor Dealers.

42. Where the amount standing to the credit of the Fund is insufficient to pay all the amounts certified by the Commissioner under section 40 (2) in any financial year, any such amount, so far as it remains unpaid, shall be charged against future receipts of the Fund and shall be paid out of the Fund when sufficient moneys are available therein. Deferred payments out of Fund.

PART VII.

GENERAL.

43. Except as is expressly provided in this Act, nothing in this Act shall have the effect of limiting, restricting or otherwise affecting any right or remedy which a person would have if this Act had not been enacted. Saving of rights and remedies.

44. A person shall not, without the prior consent in writing of the Commissioner, be competent to waive any rights conferred on him by this Act and the purported waiver of any such rights without that consent is of no effect. No waiver of rights.

45. (1) Subject to subsection (2), where a dealer incurs any costs or expenses by virtue of the operation of this Act in relation to the sale of a motor vehicle, the dealer is not entitled to be indemnified in respect of those costs or expenses by any antecedent owner and any contract or agreement providing, directly or indirectly, for the dealer to be so indemnified is, to the extent that it does so, void. No indemnity for dealer.

(2) Subsection (1) does not apply to a contract or agreement providing for a dealer to be indemnified, as provided in that subsection, by an antecedent owner of a motor vehicle who is a dealer or a manufacturer.

46.

Motor Dealers.

Prohibition against selling registered vehicle.

46. (1) This section does not apply to or in respect of the sale of—

- (a) a motor vehicle to a trade owner;
- (b) a motor vehicle by bona fide auction; or
- (c) a motor vehicle by a dealer on behalf of a financier where the motor vehicle is a vehicle which was sold by the financier under a hire-purchase agreement and subsequently repossessed by him.

(2) Subject to subsection (3), a dealer shall not sell a motor vehicle that is registered under and in accordance with the regulations at a cash price of less than \$500, or such greater amount as may be prescribed, unless a certificate in relation to the vehicle is in force.

Penalty : \$500.

(3) In proceedings for an offence under subsection (2) it is a defence if the accused person proves that the motor vehicle concerned was sold to a vehicle-wrecker for the purpose of being demolished.

(4) For the purposes of this section a certificate in relation to a motor vehicle is in force if it is issued not earlier than one month before the sale of the vehicle.

(5) In this section—

“certificate” means, in relation to a motor vehicle, a certificate of inspection issued under the regulations in relation to that vehicle;

“regulations” means regulations under the Motor Traffic Act, 1909.

Motor Dealers.

47. (1) A person shall not, with intent to deceive any person—

Certain
misdescrip-
tions pro-
hibited.

- (a) alter or cause or permit to be altered, or connive at the alteration of, the reading of an odometer on a second-hand motor vehicle;
- (b) state or represent as the year of manufacture of a second-hand motor vehicle a year other than the actual year of manufacture of the vehicle;
- (c) state or represent as the year of first registration of a second-hand motor vehicle a year other than the actual year of first registration of the vehicle; or
- (d) state or represent as the model designation of a second-hand motor vehicle a model designation other than the actual model designation of the vehicle.

Penalty : \$500.

(2) Where a dealer or a person concerned in the management or conduct of the business of a dealer is convicted of an offence under subsection (1) a purchaser who purchased the motor vehicle in respect of which that offence was committed relying on—

- (a) the reading of the odometer on the vehicle as altered; or
- (b) the statement or representation as to the year of manufacture or the year of first registration or the model of the vehicle,

as the case may be, may sue for and recover from the dealer or the person so convicted, as the case may be, as a debt due to the purchaser the amount (if any) determined by the magistrate, before whom the conviction is had, as being the difference between the sale price of the vehicle and its fair value at the time of the sale.

(3) For the purposes of this section “year of first registration” in relation to a motor vehicle means the year in which the vehicle is first registered.

(4)

Motor Dealers.

(4) Nothing in this section affects the operation of Part III of the Consumer Protection Act, 1969, but a person shall not be prosecuted in respect of the same matter for an offence under this section and that Part.

Failure to disclose fact of being a dealer.

48. (1) A dealer who sells any motor vehicle to any person (not being a trade owner) and fails to disclose to that person the fact that he is a dealer is guilty of an offence and liable to a penalty of \$500.

(2) A person who, in the capacity of servant or agent of a dealer, negotiates any sale of a motor vehicle to any person (not being a trade owner) and fails to disclose to that person—

- (a) the fact that the sale is being made by a dealer; or
- (b) the name and address of the dealer,

is guilty of an offence and liable to a penalty of \$500.

(3) This section does not apply to or in connection with an exempted motor vehicle.

Publica-
tion of
certain
advertisements.

49. (1) Where—

- (a) a dealer causes or permits to be published any advertisement calculated to suggest that a motor vehicle is being offered or displayed for sale, or that inquiries concerning a motor vehicle may be made by potential purchasers, at any premises or by telephoning any telephone number;
- (b) the advertisement does not disclose that the person on whose behalf it is published is a dealer; and
- (c) the premises are not, or the telephone number is not the telephone number of, the place at which the dealer carries on business,

the dealer is guilty of an offence and liable to a penalty of \$500.

(2)

Motor Dealers.

(2) This section does not apply to or in connection with an exempted motor vehicle.

50. A dealer shall not cause or permit to be published any advertisement referring to a specified motor vehicle, to any specified motor vehicles, or to any specified price at which any second-hand motor vehicle may be purchased, unless the registration number or numbers of the vehicle or vehicles are specified in the advertisement. Details in certain advertisements.

Penalty : \$200.

51. For the purposes of this Act any statement or representation made by an agent of a dealer or an employee of a dealer in his business as a dealer, in relation to the quality, description or history of a motor vehicle offered or displayed for sale by that dealer shall be deemed to be such a representation or statement of the dealer. Representation by employee of dealer.

52. (1) A person shall not submit or tender or cause or permit to be submitted or tendered a document, to which this section applies, to any person for his signature unless at the time of the submission or tendering of the document all material particulars in the document have been completed. Tender of documents for signature.

Penalty : \$200.

(2) This section applies to any document evidencing or recording a contract for—

- (a) the sale of a motor vehicle; or
- (b) the provision of credit for the purposes of such a sale.

53.

Motor Dealers.

- Bribery.** **53.** Any person who, without lawful authority, offers, makes or gives to any person authorised by the Commissioner under section 6 or appointed by the Minister under that section, any payment, gratuity or present in consideration that that person will do or omit to do some act or thing pertaining to his authority or appointment is guilty of an offence and liable to a penalty of \$500.
- Offences by corporations.** **54.** Where an offence against this Act committed by a corporation is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the corporation, he, as well as the corporation, shall be deemed to have committed that offence and shall be liable to be proceeded against and punished accordingly.
- Proceedings.** **55.** (1) Proceedings for an offence against this Act may—
- (a) be taken and prosecuted by any person acting with the authority of the Minister; and
 - (b) be disposed of summarily before a magistrate or a stipendiary magistrate.
- (2) In a prosecution for any such offence, an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of such authority without proof of the Minister's signature.
- (3) The provisions of the Industrial Arbitration Act, 1940, and the regulations made under that Act, relating to proceedings before a magistrate and to appeals from a magistrate to the Industrial Commission of New South Wales shall apply to proceedings before a magistrate or a stipendiary magistrate for offences against this Act as if the proceedings under this Act were proceedings under that Act.
- (4) In proceedings for an offence against this Act the informant may conduct his case himself, or by his counsel or attorney, or by an agent authorised by him in writing, or by an officer in the public service.
- (5)

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(5) Any such proceedings shall be commenced by information laid at any time within twelve months after the time when the offence is alleged to have been committed.

56. (1) Where in any proceedings (whether for an offence against this Act or otherwise) it is proved that on a certain day or during any period a person was the holder of a dealer's licence, a vehicle-wrecker's licence or a prescribed licence it shall be presumed, in the absence of proof to the contrary, that the person was a dealer, a vehicle-wrecker or a person carrying on a prescribed business, as the case may be, on that day or during that period, as the case may be. Evidence.

(2) A document purporting to be certified by the Commissioner and stating that a person is not, or was not, on a date specified in the document the holder of a licence shall be received in proceedings before any court or tribunal as evidence of that fact.

57. (1) The Governor may make regulations, not inconsistent with this Act, prescribing any matter which by this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), the Governor may make regulations for or with respect to—

- (a) regulating the conduct of dealers, vehicle-wreckers or persons carrying on a prescribed business, or their servants or agents, in carrying on the business of a dealer or a vehicle-wrecker, or a prescribed business;
- (b) prohibiting or regulating the employment by dealers, vehicle-wreckers or persons carrying on a prescribed business, of persons convicted of offences under this Act or of offences involving fraud or dishonesty

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dishonesty or other prescribed offences, or persons whose application for a licence has been refused or whose licence has been revoked;

- (c) requiring dealers, vehicle-wreckers or persons carrying on a prescribed business, or their servants or agents, to make reports to prescribed persons with respect to offences involving motor vehicles or such parts of motor vehicles as may be prescribed and to forward such copies of records kept by them, at such intervals, as may be prescribed, to persons specified in the regulations;
- (d) providing for the payment to all or any of the members of a disputes committee appointed under section 34 of fees or travelling or other allowances;
- (e) providing for the remission of any fees, or part of any fees, paid in respect of a licence, in prescribed circumstances;
- (f) prescribing the circumstances in which records required by this Act to be kept may be destroyed; and
- (g) prohibiting the commission by dealers, vehicle-wreckers or persons carrying on a prescribed business, of any prescribed practices.

(3) The regulations may impose a penalty not exceeding \$500 for an offence arising under the regulations.

(4) Regulations may be made so as to apply differently to different licences or to or in respect of the holders of different licences or according to such other factors as may be specified in the regulations.

(5) Different fees may be prescribed in respect of different licences, or in respect of restricted licences according to the nature of the restriction in their application.

(6) A person or class of person may be prescribed for the purposes of the definition of "financier" in section 4 (1) notwithstanding that that person or class of person

carries

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carries on the business of buying, selling or exchanging motor vehicles only for one or more of the purposes referred to in paragraph (a), (b), (c) or (e) of that definition.

58. (1) The holder of a licence under this Act is not required to hold a license under the Second-hand Motor Dealers Act, 1956, and any license under that Act shall cease to have effect upon the issue to the holder thereof of a licence under this Act. Savings.

(2) Where a license under the Second-hand Motor Dealers Act, 1956, ceases to have effect (as provided in subsection (1)) the Commissioner for Motor Transport shall refund to the person who held the license the appropriate amount in respect of that license.

(3) For the purposes of subsection (2) the appropriate amount in respect of a license is the amount that equals one-twelfth of the fee paid for the license in respect of each whole month of the remainder of the period for which the license would have remained in force if it had not ceased to have effect.

59. The Second-hand Motor Dealers Act, 1956 (other than sections 18 and 19 thereof) is repealed. Repeal
of Act No.
5, 1956.

60. The Motor Traffic Act, 1909, is amended by inserting after section 3 (1) (g1) the following paragraph :— Amendment
of Act No.
5, 1909.

(g2) provide, for the purposes of determining whether or not motor vehicles are suitable for safe use or comply with the requirements of this Act and the regulations— Sec. 3.
(Regula-
tions).

(i) for the Commissioner to authorise in writing any person whom the Commissioner is satisfied is suitably qualified to inspect and test

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- test motor vehicles and to issue certificates of inspection and rejection, in a prescribed form and in a prescribed manner, relating to such inspections;
- (ii) for the Commissioner to authorise in writing any person whom the Commissioner is satisfied has suitable premises and equipment to use the premises for the purposes of conducting any inspection referred to in subparagraph (i);
 - (iii) for the issue and renewal of authorities referred to in subparagraphs (i) and (ii), their duration and form, and the fees to be paid in connection with their issue;
 - (iv) for the maximum charge to be made for the issue of a certificate referred to in subparagraph (i) and for different charges to be made for inspection of different classes of vehicles;
 - (v) for the delivery by any person or class or classes of persons of a certificate referred to in subparagraph (i) in connection with the registration, renewal or registration or transfer of registration of any motor vehicle or in respect of any class or classes of motor vehicles, whether classified by type or age, by the price paid or otherwise;
 - (vi) for the issue by the Commissioner of rules to be observed by any person referred to in subparagraph (i) or (ii);
 - (vii) for any person authorised pursuant to subparagraph (ii) to provide a security fee, in a form required by the Commissioner, for an amount of twenty dollars, or such other amount as may be prescribed, and for any

such

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such security fee to be forfeited to the Commissioner if the Commissioner is satisfied that the person has failed to comply with any of the rules referred to in subparagraph (vi);

- (viii) for the Commissioner to cancel or suspend any authority referred to in subparagraph (i) or (ii) if the holder has failed to comply with any rule referred to in subparagraph (vi) or if the Commissioner is for any reason of the opinion that the holder is not a fit and proper person to continue to hold such authority;
- (ix) for the Commissioner to appoint a committee of review to which the Commissioner may refer for consideration and report to him any case where consideration is being given to the refusal, cancellation or suspension of an authority referred to in subparagraph (i) or (ii), any such committee to include representatives of such organisations associated with trading and servicing of motor vehicles as the Commissioner considers appropriate;
- (x) for an appeal to a court of petty sessions, and for matters related to any such appeal, against a refusal, cancellation or suspension of any authority referred to in subparagraph (i) or (ii) of this paragraph.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

*Government House,
Sydney, 6th May, 1974.*

CHAPTER I

1. The Commission shall be established in accordance with the provisions of this Act and shall have the following functions:

(a) to investigate and report on the activities of the Commission; (b) to advise the Government on the measures to be taken to give effect to the provisions of this Act; (c) to advise the Government on the measures to be taken to give effect to the provisions of this Act.

2. The Commission shall consist of a Chairman and such other members as may be appointed by the Government. The Commission shall be a body corporate and shall have perpetual succession.

3. The Commission shall have the right to call for and examine any documents or papers which may be in the possession or control of any person and to require any person to produce any such documents or papers.

4. The Commission shall have the right to call for and examine any documents or papers which may be in the possession or control of any person and to require any person to produce any such documents or papers.

5. The Commission shall have the right to call for and examine any documents or papers which may be in the possession or control of any person and to require any person to produce any such documents or papers.

6. The Commission shall have the right to call for and examine any documents or papers which may be in the possession or control of any person and to require any person to produce any such documents or papers.