

MOTOR DEALERS (AMENDMENT) ACT 1990 No. 38

NEW SOUTH WALES

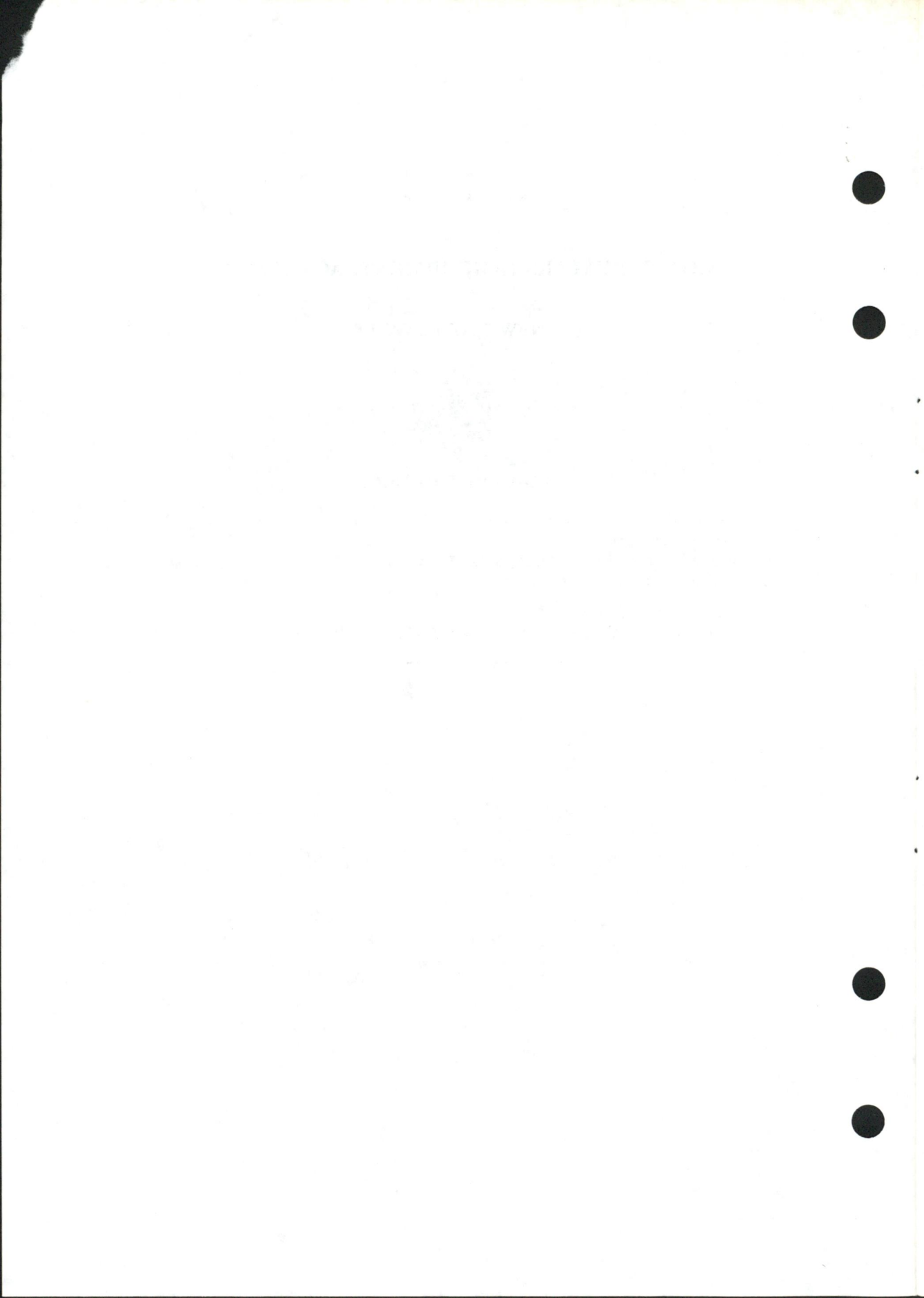


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MOTOR DEALERS (AMENDMENT) ACT 1990 No. 38

NEW SOUTH WALES



Act No. 38, 1990

An Act to amend the Motor Dealers Act 1974 to make further provision with respect to the obligations of motor dealers to repair defects in vehicles, the payment of compensation from the Motor Dealers Compensation Fund and the keeping of records; and for other purposes. [Assented to 22 June 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Motor Dealers (Amendment) Act 1990.

Commencement

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

Amendment of Motor Dealers Act 1974 No. 52

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

Savings and transitional provisions

4. Schedule 2 has effect.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Long title:

Omit "a vehicle-wrecker", insert instead "an auto-dismantler".

(2) Section 4 (**Definitions**):

(a) Insert in alphabetical order in section 4 (1):

"auto-dismantler" means a person who carries on the business of:

- (a) demolishing or dismantling motor vehicles or parts or accessories of motor vehicles; or
- (b) buying motor vehicles and substantially demolished or substantially dismantled motor vehicles and selling substantially demolished or substantially dismantled motor vehicles (whether or not the person also sells parts or accessories of motor vehicles); or

SCHEDULE 1 - AMENDMENTS - *continued*

- (c) buying and selling prescribed kinds of parts or accessories of motor vehicles;

"**auto-dismantler's licence**" means an auto-dismantler's licence granted under section 12;

- (b) From the definition of "financier" in section 4 (1), omit "who is a credit provider within the meaning of the Credit Act 1984 or a finance broker within the meaning of the Credit (Finance Brokers) Act 1984 and".
- (c) From the definition of "licence" in section 4 (1), omit "a vehicle-wrecker's", insert instead "an auto-dismantler's".
- (d) From section 4 (1), omit the definitions of "vehicle-wrecker" and "vehicle-wrecker's licence".
- (e) From section 4 (1), omit the definition of "wholesaler", insert instead:

"**wholesaler**" means a person who carries on the business of buying motor vehicles from any person and selling those vehicles to, or exchanging those vehicles with, persons who are financiers or holders of licences (other than car market operators' licences or motor vehicle consultants' licences) and only those persons;

(3) Section 5 (**Form of applications, registers, notices etc.**):

After section 5 (2), insert:

(3) The Minister may exempt any specified person or persons from any requirement under this Act relating to compliance with a form of register, notice or other document prescribed for the purposes of this Act.

(4) An exemption may be given unconditionally or subject to conditions relating to the use of the form.

(5) If an exemption is given subject to conditions, the exemption does not have effect while any of the conditions is not being complied with.

(4) Section 9 (**Offences**):

- (a) Omit "a vehicle-wrecker" wherever occurring, insert instead "an auto-dismantler".

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) Omit "a vehicle-wrecker's licence" wherever occurring, insert instead "an auto-dismantler's licence".
- (c) After section 9 (12), insert:
 - (13) Despite subsection (1) (c), the holder of a dealer's licence who carries on the business of a dealer at a place other than the place in respect of which the licence is granted is not guilty of an offence against this Act if the business is carried on at that place in accordance with section 23A (2).
- (5) Section 12 (**Grant or refusal of licence**):
 - (a) Omit section 12 (2) (f), insert instead:
 - (f) the applicant does not have the prescribed qualifications or experience (if any) or does not have sufficient knowledge or expertise to carry on such a business;
 - (f1) the application does not comply with section 10 or the applicant has not complied with a requirement referred to in section 10 (6);
 - (b) Omit section 12 (4) (e), insert instead:
 - (e) the officers of the body corporate do not have the prescribed qualifications or experience (if any) or do not have sufficient knowledge or expertise to carry on such a business;
 - (e1) the application does not comply with section 10 or the applicant has not complied with a requirement referred to in section 10 (6);
 - (c) After "prescribed fee" in section 12 (8), insert "(which may include an initial contribution to the Fund)".
- (6) Section 20E (**Determination of disciplinary measures by the Commissioner**):
 - After section 20E (1), insert:
 - (1A) Without limiting the powers conferred by subsection (1), among the requirements that the

SCHEDULE 1 - AMENDMENTS - *continued*

Commissioner may specify under subsection (1) (b) is a requirement that the holder of the licence concerned:

- (a) make an additional contribution to the Fund of such amount as the Commissioner specifies; or
- (b) indemnify the Fund to such extent as the Commissioner specifies in the event of a particular contingency arising concerning the activities of the holder of the licence.

(7) Section 20I (**Interpretation**):

Omit section 20I (2) (a), insert instead:

- (a) an auto-dismantler;

(8) Sections 21-21C:

Omit sections 21-22E, insert instead:

Holder of licence to keep register

21. (1) The holder of a licence must keep at the place of business in respect of which the licence is granted a register in the prescribed form.

(2) If a person who holds a dealer's licence also carries on under the authority of that licence the business of an auto-dismantler, a wholesaler, a motor vehicle parts reconstructor or a motor vehicle consultant or a prescribed business, the person must keep a register in respect of that business as well as a register in respect of the person's business (if any) as a dealer.

(3) The holder of a dealer's licence must enter in the register kept in respect of the business carried on under the authority of that licence:

- (a) the prescribed particulars of every second-hand motor vehicle and every demonstrator motor vehicle acquired in the course of carrying on that business; and
- (b) the prescribed particulars of the disposal of each such vehicle; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (c) where a vehicle referred to in paragraph (b) is disposed of by sale at an auction - the prescribed particulars of the purchaser of the vehicle.
- (4) The holder of an auto-dismantler's licence must enter in the register kept in respect of the business carried on under the authority of that licence:
 - (a) the prescribed particulars of every motor vehicle and every prescribed part or accessory of a motor vehicle acquired in the course of carrying on that business; and
 - (b) the prescribed particulars of the disposal of each such vehicle and of each such part or accessory.
- (5) The holder of a wholesaler's licence must enter in the register kept in respect of the business carried on under the authority of that licence:
 - (a) the prescribed particulars of each second-hand motor vehicle and every demonstrator motor vehicle acquired in the course of carrying on that business; and
 - (b) the prescribed particulars of the disposal of each such vehicle.
- (6) The holder of a motor vehicle parts reconstructor's licence must enter in the register kept in respect of the business carried on under the authority of that licence:
 - (a) the prescribed particulars of every prescribed part or accessory of a motor vehicle acquired in the course of carrying on that business; and
 - (b) the prescribed particulars of the disposal of each such part or accessory.
- (7) Where the regulations so provide, the holder of a motor vehicle consultant's licence must enter in the register kept in respect of the business carried on under the authority of that licence the prescribed particulars of every prescribed transaction entered into in the course of carrying on that business.
- (8) The holder of a prescribed licence must enter in the register kept in respect of the business carried on under the

SCHEDULE 1 - AMENDMENTS - *continued*

authority of that licence the prescribed particulars of every prescribed transaction entered into in the course of carrying on that business.

(9) The holder of a licence must make an entry required by this section within 1 trading day after the transaction to which the entry relates is completed.

Special requirements for dealers who acquire motor vehicles for sale on consignment

21A. (1) A dealer who acquires motor vehicles for sale on consignment must:

- (a) keep in respect of those vehicles a separate dealer's register; and
- (b) enter in that register the prescribed particulars referred to in section 21 (3) relating to those vehicles,

and must not enter those prescribed particulars in the register required to be kept by the dealer under section 21.

(2) The dealer must make an entry required by this section within 1 trading day after the transaction to which the entry relates is completed.

Special requirements to be complied with by dealers who demolish or dismantle motor vehicles

21B. If a person who is the holder of a dealer's licence demolishes or dismantles:

- (a) a motor vehicle the particulars of which are required to be entered in the register kept under section 21 in relation to the person's business as a dealer; or

(b) parts or accessories of such a vehicle,
the person must immediately transfer the prescribed particulars from that register to the register kept in respect of the person's business as an auto-dismantler.

SCHEDULE 1 - AMENDMENTS - *continued*

Certain provisions not to apply in respect of exempted persons etc.

21C. Sections 21-21B, or such of those sections as may be specified in the relevant order, do not apply:

- (a) to an exempted person; or
- (b) in relation to an exempted motor vehicle; or
- (c) in relation to a part or accessory of a motor vehicle other than a part or accessory of a kind prescribed by the regulations.

(9) Section 22F:

Omit the section, insert instead:

Agent, partner or employee of licence holder may make entry in register on behalf of licence holder

22F. (1) When the holder of a licence is required by a provision of this Part to make an entry in a register required to be kept under this Act, it is sufficient compliance with that requirement if an agent or partner of that holder, or a person employed by that holder in the business to which the licence relates, makes the entry.

(2) If an agent, partner or employee of a holder of a licence makes an entry in such a register, the entry is, until the contrary is proved, to be presumed for the purposes of any legal proceedings to have been made by the holder.

(10) Section 23A:

Omit the section, insert instead:

Premises at which the holder of a licence may lawfully offer or display motor vehicles for sale

23A. (1) The holder of a licence must not offer or display a motor vehicle for sale except at the place of business in respect of which the licence is granted.

(2) Despite subsection (1), the holder of a licence who offers or displays a motor vehicle for sale, or buys or sells a motor vehicle, at a place other than the place of business

SCHEDULE 1 - AMENDMENTS - *continued*

in respect of which the licence is granted is not guilty of an offence against this Act if:

- (a) a person has, without being solicited to do so, invited the holder of the licence to display the vehicle to the person, or carry out all or part of the transactions relating to the sale or purchase of the vehicle, at that other place; or
 - (b) that other place is a place at which an exhibition, fair, show, display or other function is being conducted and the holder of the licence carries on business at that place in accordance with subsection (3).
- (3) The holder of a licence may carry on business at a place referred to in subsection (2) (b) only if:
- (a) the holder of the licence does not offer or display for sale at that place second-hand motor vehicles (other than second-hand tractors or second-hand self-propelled agricultural machinery); and
 - (b) the business carried on by the holder of the licence at that place is limited to advising persons with respect to the quality, performance and characteristics of motor vehicles and making offers to, or receiving offers from, persons to enter agreements for the sale of motor vehicles (not being second-hand motor vehicles other than second-hand tractors or second-hand self-propelled agricultural machinery).
- (4) In subsection (2), the reference to a place other than the place of business in respect of which the licence is granted does not include a reference to a carriageway or footpath that is in the immediate vicinity of the place of business.

SCHEDULE 1 - AMENDMENTS - *continued*

(11) Section 23B:

Omit the section, insert instead:

Sale by auction of vehicles to which number-plates are attached

23B. (1) A person must not, by auction or in relation to a proposed auction, offer or display for sale, or sell, a motor vehicle to which any number-plate is attached unless there is attached to the vehicle, in the prescribed manner, an inspection report, issued in respect of the vehicle not more than 1 month before the date of the auction or proposed auction, to the effect that the vehicle was found to be roadworthy at the time of the issue of the report.

(2) Subsection (1) does not have effect in relation to a motor vehicle offered or displayed for sale, or sold, at an auction or in relation to a proposed auction if:

- (a) at the times when the vehicle is offered or displayed for sale there is attached to the vehicle or displayed at the place where the vehicle is offered or displayed for sale, in the prescribed manner, a notice in the prescribed form; and
 - (b) the terms of the notice are complied with; and
 - (c) the purchase price of the vehicle is not altered from that which was bid at the auction or which was subsequently negotiated; and
 - (d) the purchaser is not required to meet any part of the cost of repairs to the vehicle required before it is possible to comply with the terms of the notice.
- (3) This section does not have effect in relation to:
- (a) a motor vehicle offered or displayed for sale, or sold, at an auction or proposed auction if, at any time within 1 month before the auction or proposed auction, the vehicle was registered for the first time (or the registration of the vehicle was renewed) under the Traffic Act 1909; or

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) the offer or display to a trade owner of a motor vehicle for sale at an auction or proposed auction; or
 - (c) the sale of a motor vehicle to a trade owner by the acceptance of an offer referred to in paragraph (b).
- (12) **Section 23C (Sale by auction of vehicles to which no number-plates are attached):**

At the end of section 23C, insert:

 - (2) This section does not have effect in relation to:
 - (a) the offer or display to a trade owner of a motor vehicle for sale at an auction or proposed auction; or
 - (b) the sale of a motor vehicle to a trade owner by the acceptance of an offer referred to in paragraph (a).
- (13) **Section 24 (Dealers' notices in respect of sale of second-hand motor vehicles, second-hand motor cycles, demonstrators and damaged new motor vehicles):**

From section 24 (12), omit "a vehicle-wrecker", insert instead "an auto-dismantler".
- (14) **Section 26A (Sale of certain motor vehicles by auto-dismantlers):**
 - (a) Omit "A vehicle-wrecker" wherever occurring, insert instead "An auto-dismantler".
 - (b) Omit "the vehicle-wrecker" wherever occurring, insert instead "the auto-dismantler".
 - (c) From section 26A (3) (d), omit "vehicle-wrecker's", insert instead "auto-dismantler's".
 - (d) After section 26A (3), insert:
 - (4) An auto-dismantler must, as soon as practicable after demolishing or dismantling a motor vehicle in the course of carrying on the business of an auto-dismantler, mark in the prescribed manner each prescribed part or accessory derived from the demolished or dismantled vehicle.

SCHEDULE 1 - AMENDMENTS - *continued*

(5) An auto-dismantler must, as soon as practicable after purchasing or otherwise acquiring a prescribed part or accessory of a motor vehicle in the course of carrying on the business of an auto-dismantler, mark the part or accessory in the prescribed manner.

(15) Section 26B:

After section 26A, insert:

Wholesalers not to sell certain motor vehicles on consignment

26B. The holder of a wholesaler's licence must not:

- (a) receive for sale on consignment a motor vehicle from a person other than a financier or the holder of a dealer's licence, an auto-dismantler's licence or a motor vehicle parts reconstructor's licence or of another wholesaler's licence; or
- (b) sell any such motor vehicle.

(16) Section 27 (**Obligations of dealer to repair defects**):

After section 27 (1), insert:

(1A) For the purposes of subsection (1), a defect which occurs in a vehicle includes a defect:

- (a) which existed in the vehicle at any time before the occurrence of an event referred to in paragraph (a) or (b) of that subsection; and
- (b) which first became apparent after the event occurred,

but only if the defect is reported to the dealer within a reasonable period after it becomes apparent.

(17) Section 28 (**Exceptions**):

(a) Omit section 28 (3) (f), insert instead:

- (f) a motor vehicle the cash price of which exceeds the amount prescribed for the purposes of this paragraph;

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) Omit section 28 (3) (g).
- (c) From section 28 (3) (i), omit "a vehicle-wrecker", insert instead "the holder of an auto-dismantler's licence".
- (d) Omit section 28 (5) and (6), insert instead:

(5) Section 27 (1) does not apply to or in relation to the sale of an exempted motor vehicle (not being a motor cycle), but only if, at all material times when the vehicle is offered or displayed for sale, there is attached to the vehicle, in the prescribed manner, a notice in the prescribed form to the effect that section 27 (1) does not apply to or in relation to the sale of the vehicle.

(6) Section 27 (1) does not apply to or in relation to the sale of an exempted second-hand motor cycle, but only if a notice in the prescribed form is delivered to the purchaser at or before the time of sale to the effect that section 27 (1) does not apply to or in relation to the sale of the motor cycle.

(18) Section 38A (**Definitions**):

From section 38A (1), omit the definition of "failure to account".

(19) Section 39 (**Motor Dealers Compensation Fund**):

After section 39 (2) (a), insert:

- (aa) any money paid or recovered under section 20E (1A); and

(20) Section 40 (**Claims against Fund**):

- (a) Omit section 40 (2) (a), insert instead:

(a) because of the failure of a dealer or car market operator to comply with any requirement under this Act or the regulations or of the failure of a dealer or car market operator to account; or

- (b) After section 40 (3A), insert:

(3B) The Commissioner must not give a certificate under subsection (2) or (3A) unless satisfied:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) that the dealer or a car market operator with whom the person submitting the claim was dealing at the relevant time was the holder of the appropriate licence; or
 - (b) that the person submitting the claim believed on reasonable grounds that, at the relevant time, the dealer or car market operator with whom that person was dealing was the holder of such a licence.
- (c) After section 40 (7), insert:
- (8) In this section:
"failure to account" means a failure by a dealer or car market operator to account for money or other valuable property entrusted to the dealer or operator (or to any employee or agent of the dealer or operator) in the course of the business carried on by the dealer or operator and which arises from any act or omission of the dealer or operator (or the employee or agent).
- (21) Section 46 (**Certificate of inspection**):
Omit "a vehicle-wrecker" wherever occurring, insert instead "an auto-dismantler".
- (22) Section 49 (**Disclosures required in certain advertisements**):
Omit the section.
- (23) Section 50 (**Details in certain advertisements**):
Omit the section.
- (24) Section 56 (**Evidence**):
- (a) From section 56 (1), omit "vehicle-wrecker's", insert instead "auto-dismantler's".
 - (b) From section 56 (1), omit "vehicle-wrecker", insert instead "auto-dismantler".

SCHEDULE 1 - AMENDMENTS - *continued*

(25) Section 57 (**Regulations**):

After section 57 (2) (p), insert:

- (p1) requiring an initial contribution to be made to the Fund in respect of a licence;

(26) Schedule 1 (**Obligation of dealer to repair defects**):

Omit the matter relating to item 3 from Column 1, insert instead:

3. Second-hand motor vehicle (not being a motor cycle) that has been driven for not more than 160,000 km and was manufactured not more than 10 years before the time it is sold by dealer

SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 4)

Vehicle-wreckers

1. A person who, immediately before the commencement of Schedule 1 (4) (a) and (b), held a vehicle-wrecker's licence is to be taken to be the holder of an auto-dismantler's licence for the unexpired portion of the period for which the vehicle-wrecker's licence was issued.

Motor vehicle defects

2. Schedule 1 to the Motor Dealers Act 1974, as in force immediately before the commencement of Schedule 1(26), applies to and in respect of a motor vehicle sold by a dealer before that commencement.

[*Minister's second reading speech made in -
Legislative Assembly on 2 May 1990
Legislative Council on 31 May 1990*]







FIRST PRINT

MOTOR DEALERS (AMENDMENT) BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to make miscellaneous amendments to the Motor Dealers Act 1974:

- (a) to change the description of "vehicle-wreckers" to "auto-dismantlers" and to include within the persons who carry on such a business persons who buy and sell parts and accessories; and
- (b) to require auto-dismantlers to mark certain vehicle components handled by them; and
- (c) to expand the definition of "financier"; and
- (d) to enable wholesalers to buy from the public as well as trade owners and to prohibit them from receiving for sale or selling motor vehicles on consignment; and
- (e) to enable the Minister to approve variations of the forms of various documents; and
- (f) to enable dealers to carry on business at premises other than those in respect of which their licence is granted in certain limited circumstances; and
- (g) to enable the Commissioner for Consumer Affairs to refuse to grant a licence unless an applicant has the qualifications and experience prescribed by the regulations; and
- (h) so that applicants for licences may be required to make initial contributions to the Motor Dealers Compensation Fund and to clarify the circumstances in which compensation may be paid from the Fund; and
- (i) to expand the disciplinary powers of the Commissioner with respect to the holders of licences; and

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- (j) to clarify and simplify the requirements of the Act relating to the keeping of registers; and
- (k) to clarify the description of the defects in motor vehicles that a dealer is obliged to repair; and
- (l) to describe the second-hand motor vehicles that a dealer is obliged to repair in terms of age and distance travelled instead of sale price; and
- (m) to include within the Act certain exemptions relating to the auction or proposed auction of motor vehicles; and
- (n) to omit provisions relating to advertising; and
- (o) to make necessary savings and transitional provisions.

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

Clause 4 is a formal provision that gives effect to the Schedule of savings and transitional provisions.

SCHEDULE 1 - AMENDMENTS

Auto-dismantlers (vehicle-wreckers)

At present, a vehicle-wrecker is defined as a person who carries on the business of:

- (a) demolishing or dismantling motor vehicles or parts or accessories of motor vehicles; or
- (b) buying motor vehicles and substantially demolished or substantially dismantled motor vehicles and selling substantially demolished or substantially dismantled motor vehicles (whether or not the person also sells parts or accessories of motor vehicles),

or both.

Schedule 1 (2) (a) and (d) omit the definition of "vehicle-wrecker" and substitute a definition of "auto-dismantler". The definition of "auto-dismantler" differs from that of "vehicle-wrecker" in that an auto-dismantler is described so as to include a person who carries on the business of buying and selling prescribed kinds of parts and accessories of motor vehicles. Amendments consequential to this changed description are made throughout the proposed Act (Schedule 1 (1), (2) (c), (4) (a) and (b), (7), (13), (14) (a)-(c), (17) (c), (21) and (24)).

Schedule 1 (14) (d) amends section 26A to require auto-dismantlers to mark certain parts or accessories handled by them in the course of carrying on their business so they may be more readily identified.

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Financiers

Schedule 1 (2) (b) amends the definition of "financier" in section 4 so that it will include persons (such as banks) who provide financial accommodation but who are not covered by the present definition.

Wholesalers

Schedule 1 (2) (e) makes it clear that a wholesaler may buy motor cars from any person but may sell them only to financiers and certain licence holders.

Schedule 1 (15) makes it an offence for a wholesaler to receive for sale, or sell, a motor vehicle on consignment from persons other than financiers and certain licence holders.

Variation of forms

Schedule 1 (3) amends section 5 to enable the Minister to exempt specified persons or classes of persons from the requirement to use a register, notice or other document complying with a prescribed form. The provisions will enable the Minister to permit variations of the forms (necessitated by, for example, computerised recording of dealings) in some cases.

Places at which business may be carried on

Under section 9, it is an offence for a person (unless exempted) to carry on business as a dealer except at the place of business in respect of which the licence is granted. Section 23A makes it an offence to offer or display a motor vehicle for sale except at such a place. Clause 6 of an order published in the Gazette on 24 January 1986 at p. 349 exempts the holders of licences from these requirements in certain circumstances (for example, where new vehicles are displayed at an exhibition and the holder of a licence only advises persons as to the quality, performance and characteristics of the vehicles).

Schedule 1 (4) (c) and (10) enable a dealer to carry on business at a place other than the place of business in respect of which the licence is granted in the circumstances covered by the existing exemption order and also enable a dealer to offer or display a vehicle for sale, or buy or sell the vehicle, at a place other than a place of business by invitation of the person wishing to buy a motor vehicle.

Licences

At present, the Commissioner may refuse to grant a licence if the applicant does not have sufficient expertise to carry on the business concerned.

Schedule 1 (5) (a) and (b) expand section 12 to enable the Commissioner to refuse to grant a licence if the applicant does not have the prescribed qualifications or experience or has failed to supply certain information regarding the application.

Motor Dealers Compensation Fund

At present, any person may make a claim against the Fund in respect of loss incurred in connection with a motor vehicle because of the action of another person

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(for example, the failure to account or the failure of a dealer to pass an unencumbered title to the vehicle). The Fund is made up of a proportion of the fees paid under the Act by holders of dealers' and car market operators' licences and by applicants for those licences and of certain money recovered by the Commissioner.

Schedule 1 (5) (c), (19) (proposed section 39 (2) (aa)) and (25) enable an initial contribution to the Fund to be included in the fees payable by applicants for licences.

Schedule 1 (20) clarifies the circumstances in which a claim may be allowed against the Fund. In general, claims may be allowed only if a licensed dealer or car market operator has failed to comply with the Act or failed to account. However, a claim may also be allowed if the dealer or operator was unlicensed if there were reasonable grounds for the person who suffered the loss to believe that the dealer or operator was licensed.

A consequential amendment is made by Schedule 1 (18).

Disciplinary powers

Schedule 1 (6) amends section 20E to enable the Commissioner, as a disciplinary measure, to require the holder of a licence to make an additional contribution to the Fund or to indemnify the Fund against claims that may be made arising out of his or her activities as a licence holder.

A consequential amendment to insert proposed section 39 (2) (aa) is made by Schedule 1 (19).

Registers

Schedule 1 (8) repeals and re-enacts with modifications provisions requiring the holders of various licences to keep registers. A licence holder will be required to keep separate registers for each business for which the holder is registered. The licence holder will no longer be required to sign each entry in the register and it will be presumed in the absence of evidence to the contrary that an entry was made by, or with the authority of, the holder of the licence (Schedule 1 (9)).

Auctions

Section 23B makes it an offence, by auction or in relation to a proposed auction, to offer or display for sale, or sell, a motor vehicle to which a number-plate is attached without an inspection report stating that the vehicle is roadworthy. Section 23C makes it an offence to so offer or display for sale, or sell, a motor vehicle without a number-plate without certain documentation.

Exemption orders published in the Gazette on 24 January 1986 at p. 347 and on 28 February 1986 at p. 926 exempt persons from these requirements in certain circumstances (for example, if the vehicle was first registered within 1 month before the auction or if a specified notice is displayed on the vehicle and its terms are complied with). Schedule 1 (11) and (12) substitute and amend sections 23B and 23C, respectively, to include within the sections the terms of those exemption orders. Proposed section 23B (2) (a) also provides an exemption when a notice in the prescribed form is displayed at the auction premises.

Motor Dealers (Amendment) 1990

Obligations of dealer to repair defects

Under section 27, a dealer is obliged to repair defects occurring in certain motor vehicles described in Schedule 1 within specified time and distance limits.

Schedule 1 (16) makes it clear that, provided the defect is reported within a reasonable period after it is discovered, the obligation to repair a defect includes any defect which existed in the vehicle until those limits are reached even if the defect did not become apparent until after the relevant period of time had passed or the distance had been driven.

Schedule 1 (26) alters the description in Schedule 1 of the second-hand motor vehicles (not being motor cycles) in respect of which the obligation to repair arises. At present, the obligation arises in respect of vehicles sold at a cash price of or over \$2,500. Under the proposed amendment it will arise in respect of motor vehicles that are not more than 10 years old and that have been driven for not more than 160,000 km.

Schedule 1 (17) (a) makes a consequential amendment to allow for motor vehicles exceeding a prescribed cash price to be exempted. Schedule 1 (17) (b) and (d) make consequential amendments relating to exemptions from section 27 (1).

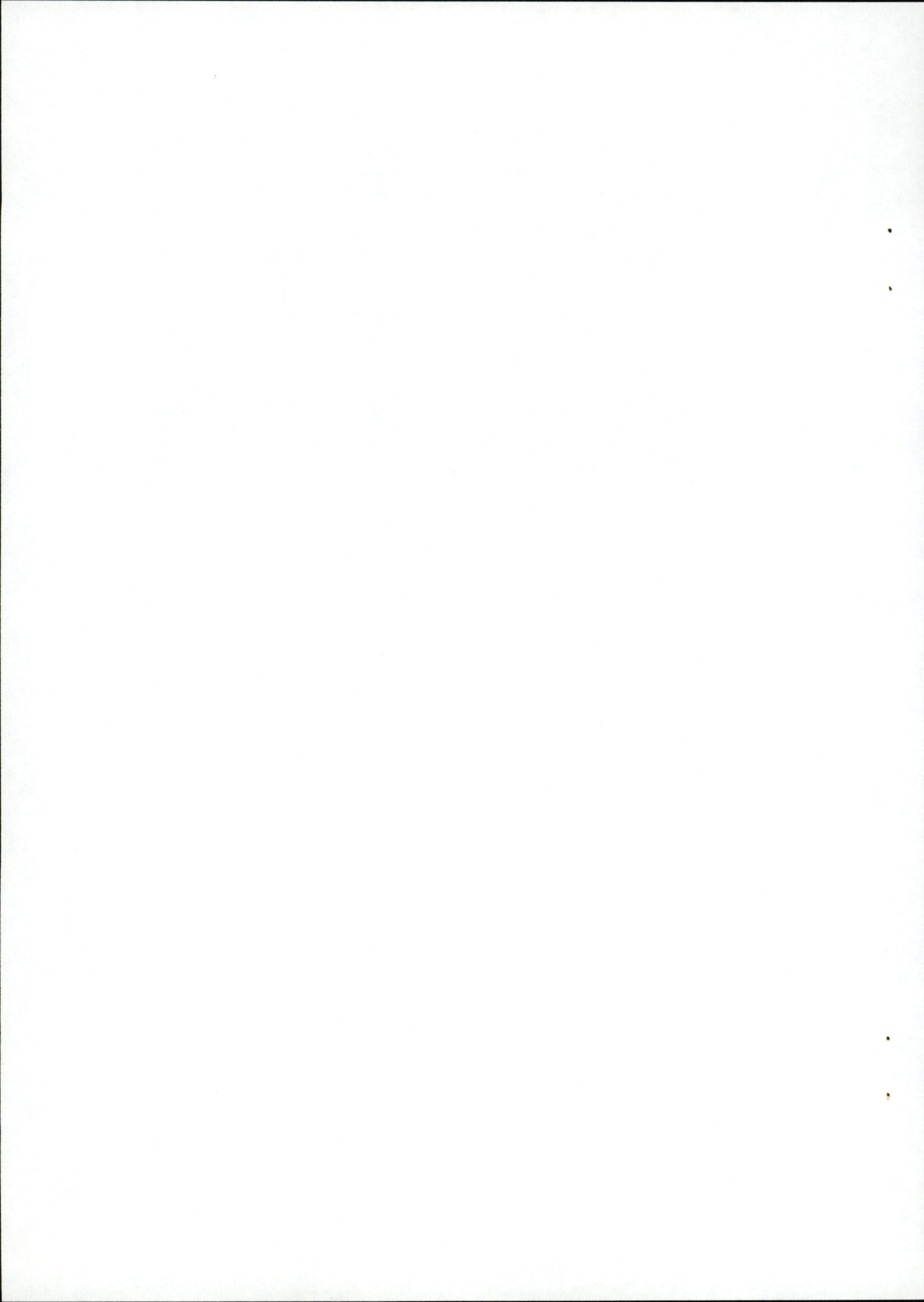
Advertising

Schedule 1 (22) and (23) omit provisions relating to advertising. Provision relating to advertising will instead be made by regulations under section 57 (2) (j).

SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS

Clause 1 is a savings provision relating to the changed description of "vehicle-wrecker".

Clause 2 provides for the existing provisions of Schedule 1 to the Principal Act relating to the description of the second-hand motor vehicles in respect of which the obligation of a dealer to repair defects arises to continue to apply to vehicles sold before the commencement of Schedule 1 (26).



FIRST PRINT

MOTOR DEALERS (AMENDMENT) BILL 1990

NEW SOUTH WALES

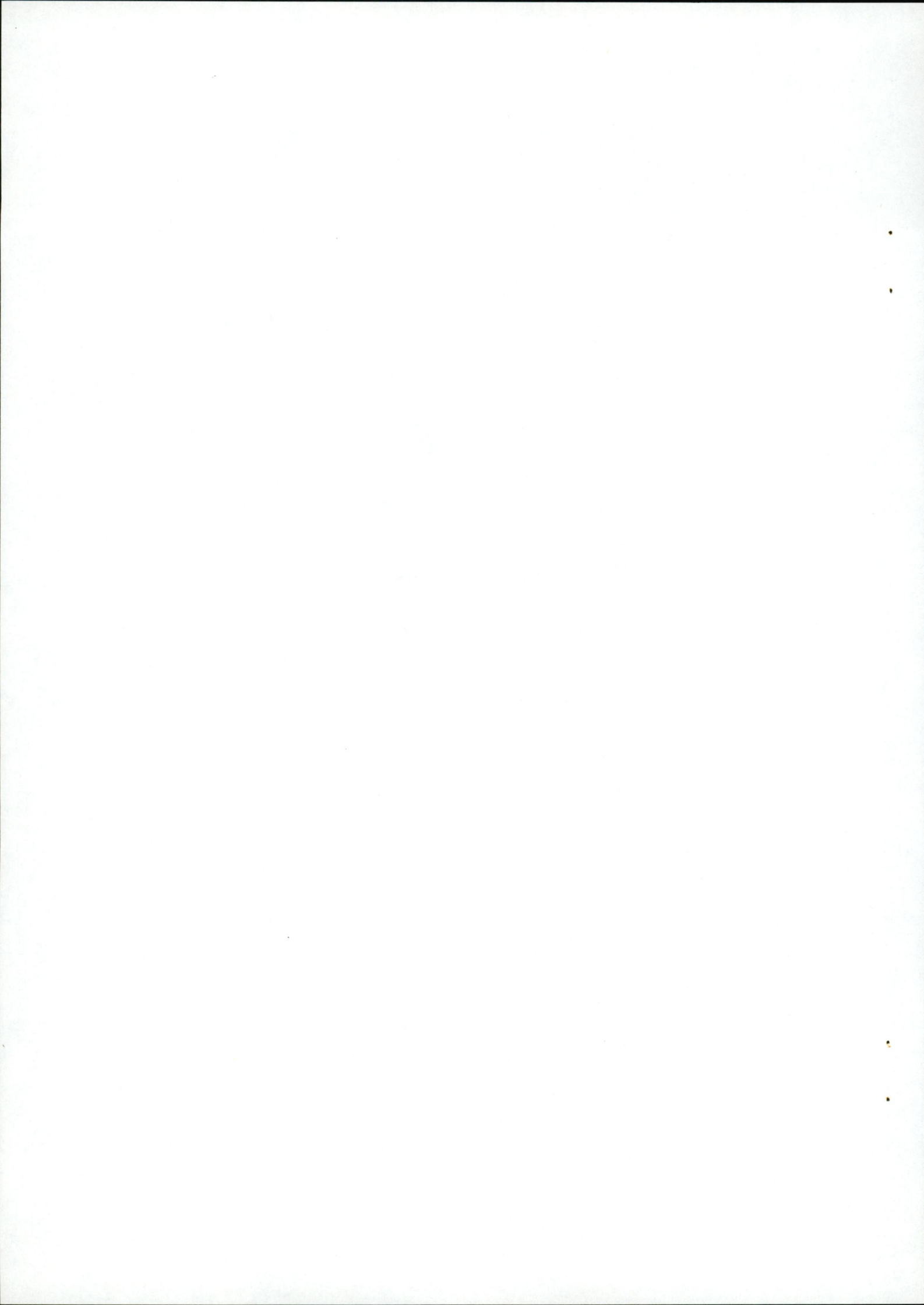


TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Motor Dealers Act 1974 No. 52
4. Savings and transitional provisions

SCHEDULE 1 - AMENDMENTS

SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS



MOTOR DEALERS (AMENDMENT) BILL 1990

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to amend the Motor Dealers Act 1974 to make further provision with respect to the obligations of motor dealers to repair defects in vehicles, the payment of compensation from the Motor Dealers Compensation Fund and the keeping of records; and for other purposes.

Motor Dealers (Amendment) 1990

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Motor Dealers (Amendment) Act 1990.

Commencement

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

Amendment of Motor Dealers Act 1974 No. 52

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

Savings and transitional provisions

4. Schedule 2 has effect.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Long title:

Omit "a vehicle-wrecker", insert instead "an auto-dismantler".

(2) Section 4 (**Definitions**):

(a) Insert in alphabetical order in section 4 (1):

"**auto-dismantler**" means a person who carries on the business of:

- (a) demolishing or dismantling motor vehicles or parts or accessories of motor vehicles; or
- (b) buying motor vehicles and substantially demolished or substantially dismantled motor vehicles and selling substantially demolished or substantially dismantled motor vehicles (whether or not the person also sells parts or accessories of motor vehicles); or

SCHEDULE 1 - AMENDMENTS - *continued*

- (c) buying and selling prescribed kinds of parts or accessories of motor vehicles;

"auto-dismantler's licence" means an auto-dismantler's licence granted under section 12;

- (b) From the definition of "financier" in section 4 (1), omit "who is a credit provider within the meaning of the Credit Act 1984 or a finance broker within the meaning of the Credit (Finance Brokers) Act 1984 and".
- (c) From the definition of "licence" in section 4 (1), omit "a vehicle-wrecker's", insert instead "an auto-dismantler's".
- (d) From section 4 (1), omit the definitions of "vehicle-wrecker" and "vehicle-wrecker's licence".
- (e) From section 4 (1), omit the definition of "wholesaler", insert instead:

"wholesaler" means a person who carries on the business of buying motor vehicles from any person and selling those vehicles to, or exchanging those vehicles with, persons who are financiers or holders of licences (other than car market operators' licences or motor vehicle consultants' licences) and only those persons;

- (3) Section 5 (Form of applications, registers, notices etc.):

After section 5 (2), insert:

(3) The Minister may exempt any specified person or persons from any requirement under this Act relating to compliance with a form of register, notice or other document prescribed for the purposes of this Act.

(4) An exemption may be given unconditionally or subject to conditions relating to the use of the form.

(5) If an exemption is given subject to conditions, the exemption does not have effect while any of the conditions is not being complied with.

- (4) Section 9 (Offences):

- (a) Omit "a vehicle-wrecker" wherever occurring, insert instead "an auto-dismantler".

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) Omit "a vehicle-wrecker's licence" wherever occurring, insert instead "an auto-dismantler's licence".
 - (c) After section 9 (12), insert:
 - (13) Despite subsection (1) (c), the holder of a dealer's licence who carries on the business of a dealer at a place other than the place in respect of which the licence is granted is not guilty of an offence against this Act if the business is carried on at that place in accordance with section 23A (2).
- (5) Section 12 (**Grant or refusal of licence**):
- (a) Omit section 12 (2) (f), insert instead:
 - (f) the applicant does not have the prescribed qualifications or experience (if any) or does not have sufficient knowledge or expertise to carry on such a business;
 - (f1) the application does not comply with section 10 or the applicant has not complied with a requirement referred to in section 10 (6);
 - (b) Omit section 12 (4) (e), insert instead:
 - (e) the officers of the body corporate do not have the prescribed qualifications or experience (if any) or do not have sufficient knowledge or expertise to carry on such a business;
 - (e1) the application does not comply with section 10 or the applicant has not complied with a requirement referred to in section 10 (6);
 - (c) After "prescribed fee" in section 12 (8), insert "(which may include an initial contribution to the Fund)".
- (6) Section 20E (**Determination of disciplinary measures by the Commissioner**):
- After section 20E (1), insert:
 - (1A) Without limiting the powers conferred by subsection (1), among the requirements that the

SCHEDULE 1 - AMENDMENTS - *continued*

Commissioner may specify under subsection (1) (b) is a requirement that the holder of the licence concerned:

- (a) make an additional contribution to the Fund of such amount as the Commissioner specifies; or
- (b) indemnify the Fund to such extent as the Commissioner specifies in the event of a particular contingency arising concerning the activities of the holder of the licence.

(7) Section 20I (Interpretation):

Omit section 20I (2) (a), insert instead:

- (a) an auto-dismantler;

(8) Sections 21-21C:

Omit sections 21-22E, insert instead:

Holder of licence to keep register

21. (1) The holder of a licence must keep at the place of business in respect of which the licence is granted a register in the prescribed form.

(2) If a person who holds a dealer's licence also carries on under the authority of that licence the business of an auto-dismantler, a wholesaler, a motor vehicle parts reconstructor or a motor vehicle consultant or a prescribed business, the person must keep a register in respect of that business as well as a register in respect of the person's business (if any) as a dealer.

(3) The holder of a dealer's licence must enter in the register kept in respect of the business carried on under the authority of that licence:

- (a) the prescribed particulars of every second-hand motor vehicle and every demonstrator motor vehicle acquired in the course of carrying on that business; and
- (b) the prescribed particulars of the disposal of each such vehicle; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (c) where a vehicle referred to in paragraph (b) is disposed of by sale at an auction - the prescribed particulars of the purchaser of the vehicle.
- (4) The holder of an auto-dismantler's licence must enter in the register kept in respect of the business carried on under the authority of that licence:
 - (a) the prescribed particulars of every motor vehicle and every prescribed part or accessory of a motor vehicle acquired in the course of carrying on that business; and
 - (b) the prescribed particulars of the disposal of each such vehicle and of each such part or accessory.
- (5) The holder of a wholesaler's licence must enter in the register kept in respect of the business carried on under the authority of that licence:
 - (a) the prescribed particulars of each second-hand motor vehicle and every demonstrator motor vehicle acquired in the course of carrying on that business; and
 - (b) the prescribed particulars of the disposal of each such vehicle.
- (6) The holder of a motor vehicle parts reconstructor's licence must enter in the register kept in respect of the business carried on under the authority of that licence:
 - (a) the prescribed particulars of every prescribed part or accessory of a motor vehicle acquired in the course of carrying on that business; and
 - (b) the prescribed particulars of the disposal of each such part or accessory.
- (7) Where the regulations so provide, the holder of a motor vehicle consultant's licence must enter in the register kept in respect of the business carried on under the authority of that licence the prescribed particulars of every prescribed transaction entered into in the course of carrying on that business.
- (8) The holder of a prescribed licence must enter in the register kept in respect of the business carried on under the

SCHEDULE 1 - AMENDMENTS - *continued*

authority of that licence the prescribed particulars of every prescribed transaction entered into in the course of carrying on that business.

(9) The holder of a licence must make an entry required by this section within 1 trading day after the transaction to which the entry relates is completed.

Special requirements for dealers who acquire motor vehicles for sale on consignment

21A. (1) A dealer who acquires motor vehicles for sale on consignment must:

- (a) keep in respect of those vehicles a separate dealer's register; and
- (b) enter in that register the prescribed particulars referred to in section 21 (3) relating to those vehicles,

and must not enter those prescribed particulars in the register required to be kept by the dealer under section 21.

(2) The dealer must make an entry required by this section within 1 trading day after the transaction to which the entry relates is completed.

Special requirements to be complied with by dealers who demolish or dismantle motor vehicles

21B. If a person who is the holder of a dealer's licence demolishes or dismantles:

- (a) a motor vehicle the particulars of which are required to be entered in the register kept under section 21 in relation to the person's business as a dealer; or
 - (b) parts or accessories of such a vehicle,
- the person must immediately transfer the prescribed particulars from that register to the register kept in respect of the person's business as an auto-dismantler.

SCHEDULE 1 - AMENDMENTS - *continued*

Certain provisions not to apply in respect of exempted persons etc.

21C. Sections 21-21B, or such of those sections as may be specified in the relevant order, do not apply:

- (a) to an exempted person; or
- (b) in relation to an exempted motor vehicle; or
- (c) in relation to a part or accessory of a motor vehicle other than a part or accessory of a kind prescribed by the regulations.

(9) Section 22F:

Omit the section, insert instead:

Agent, partner or employee of licence holder may make entry in register on behalf of licence holder

22F. (1) When the holder of a licence is required by a provision of this Part to make an entry in a register required to be kept under this Act, it is sufficient compliance with that requirement if an agent or partner of that holder, or a person employed by that holder in the business to which the licence relates, makes the entry.

(2) If an agent, partner or employee of a holder of a licence makes an entry in such a register, the entry is, until the contrary is proved, to be presumed for the purposes of any legal proceedings to have been made by the holder.

(10) Section 23A:

Omit the section, insert instead:

Premises at which the holder of a licence may lawfully offer or display motor vehicles for sale

23A. (1) The holder of a licence must not offer or display a motor vehicle for sale except at the place of business in respect of which the licence is granted.

(2) Despite subsection (1), the holder of a licence who offers or displays a motor vehicle for sale, or buys or sells a motor vehicle, at a place other than the place of business

SCHEDULE 1 - AMENDMENTS - *continued*

in respect of which the licence is granted is not guilty of an offence against this Act if:

- (a) a person has, without being solicited to do so, invited the holder of the licence to display the vehicle to the person, or carry out all or part of the transactions relating to the sale or purchase of the vehicle, at that other place; or
- (b) that other place is a place at which an exhibition, fair, show, display or other function is being conducted and the holder of the licence carries on business at that place in accordance with subsection (3).

(3) The holder of a licence may carry on business at a place referred to in subsection (2) (b) only if:

- (a) the holder of the licence does not offer or display for sale at that place second-hand motor vehicles (other than second-hand tractors or second-hand self-propelled agricultural machinery); and
- (b) the business carried on by the holder of the licence at that place is limited to advising persons with respect to the quality, performance and characteristics of motor vehicles and making offers to, or receiving offers from, persons to enter agreements for the sale of motor vehicles (not being second-hand motor vehicles other than second-hand tractors or second-hand self-propelled agricultural machinery).

(4) In subsection (2), the reference to a place other than the place of business in respect of which the licence is granted does not include a reference to a carriageway or footpath that is in the immediate vicinity of the place of business.

SCHEDULE 1 - AMENDMENTS - *continued*

(11) Section 23B:

Omit the section, insert instead:

Sale by auction of vehicles to which number-plates are attached

23B. (1) A person must not, by auction or in relation to a proposed auction, offer or display for sale, or sell, a motor vehicle to which any number-plate is attached unless there is attached to the vehicle, in the prescribed manner, an inspection report, issued in respect of the vehicle not more than 1 month before the date of the auction or proposed auction, to the effect that the vehicle was found to be roadworthy at the time of the issue of the report.

(2) Subsection (1) does not have effect in relation to a motor vehicle offered or displayed for sale, or sold, at an auction or in relation to a proposed auction if:

- (a) at the times when the vehicle is offered or displayed for sale there is attached to the vehicle or displayed at the place where the vehicle is offered or displayed for sale, in the prescribed manner, a notice in the prescribed form; and
- (b) the terms of the notice are complied with; and
- (c) the purchase price of the vehicle is not altered from that which was bid at the auction or which was subsequently negotiated; and
- (d) the purchaser is not required to meet any part of the cost of repairs to the vehicle required before it is possible to comply with the terms of the notice.

(3) This section does not have effect in relation to:

- (a) a motor vehicle offered or displayed for sale, or sold, at an auction or proposed auction if, at any time within 1 month before the auction or proposed auction, the vehicle was registered for the first time (or the registration of the vehicle was renewed) under the Traffic Act 1909; or

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) the offer or display to a trade owner of a motor vehicle for sale at an auction or proposed auction;
or
 - (c) the sale of a motor vehicle to a trade owner by the acceptance of an offer referred to in paragraph (b).
- (12) **Section 23C (Sale by auction of vehicles to which no number-plates are attached):**
- At the end of section 23C, insert:
- (2) This section does not have effect in relation to:
 - (a) the offer or display to a trade owner of a motor vehicle for sale at an auction or proposed auction;
or
 - (b) the sale of a motor vehicle to a trade owner by the acceptance of an offer referred to in paragraph (a).
- (13) **Section 24 (Dealers' notices in respect of sale of second-hand motor vehicles, second-hand motor cycles, demonstrators and damaged new motor vehicles):**
- From section 24 (12), omit "a vehicle-wrecker", insert instead "an auto-dismantler".
- (14) **Section 26A (Sale of certain motor vehicles by auto-dismantlers):**
- (a) Omit "A vehicle-wrecker" wherever occurring, insert instead "An auto-dismantler".
 - (b) Omit "the vehicle-wrecker" wherever occurring, insert instead "the auto-dismantler".
 - (c) From section 26A (3) (d), omit "vehicle-wrecker's", insert instead "auto-dismantler's".
 - (d) After section 26A (3), insert:
 - (4) An auto-dismantler must, as soon as practicable after demolishing or dismantling a motor vehicle in the course of carrying on the business of an auto-dismantler, mark in the prescribed manner each prescribed part or accessory derived from the demolished or dismantled vehicle.

SCHEDULE 1 - AMENDMENTS - *continued*

(5) An auto-dismantler must, as soon as practicable after purchasing or otherwise acquiring a prescribed part or accessory of a motor vehicle in the course of carrying on the business of an auto-dismantler, mark the part or accessory in the prescribed manner.

(15) Section 26B:

After section 26A, insert:

Wholesalers not to sell certain motor vehicles on consignment

26B. The holder of a wholesaler's licence must not:

- (a) receive for sale on consignment a motor vehicle from a person other than a financier or the holder of a dealer's licence, an auto-dismantler's licence or a motor vehicle parts reconstructor's licence or of another wholesaler's licence; or
- (b) sell any such motor vehicle.

(16) Section 27 (**Obligations of dealer to repair defects**):

After section 27 (1), insert:

(1A) For the purposes of subsection (1), a defect which occurs in a vehicle includes a defect:

- (a) which existed in the vehicle at any time before the occurrence of an event referred to in paragraph (a) or (b) of that subsection; and
- (b) which first became apparent after the event occurred,

but only if the defect is reported to the dealer within a reasonable period after it becomes apparent.

(17) Section 28 (**Exceptions**):

(a) Omit section 28 (3) (f), insert instead:

- (f) a motor vehicle the cash price of which exceeds the amount prescribed for the purposes of this paragraph;

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) Omit section 28 (3) (g).
- (c) From section 28 (3) (i), omit "a vehicle-wrecker", insert instead "the holder of an auto-dismantler's licence".
- (d) Omit section 28 (5) and (6), insert instead:
 - (5) Section 27 (1) does not apply to or in relation to the sale of an exempted motor vehicle (not being a motor cycle), but only if, at all material times when the vehicle is offered or displayed for sale, there is attached to the vehicle, in the prescribed manner, a notice in the prescribed form to the effect that section 27 (1) does not apply to or in relation to the sale of the vehicle.
 - (6) Section 27 (1) does not apply to or in relation to the sale of an exempted second-hand motor cycle, but only if a notice in the prescribed form is delivered to the purchaser at or before the time of sale to the effect that section 27 (1) does not apply to or in relation to the sale of the motor cycle.
- (18) **Section 38A (Definitions):**
 - From section 38A (1), omit the definition of "failure to account".
- (19) **Section 39 (Motor Dealers Compensation Fund):**
 - After section 39 (2) (a), insert:
 - (aa) any money paid or recovered under section 20E (1A); and
- (20) **Section 40 (Claims against Fund):**
 - (a) Omit section 40 (2) (a), insert instead:
 - (a) because of the failure of a dealer or car market operator to comply with any requirement under this Act or the regulations or of the failure of a dealer or car market operator to account; or
 - (b) After section 40 (3A), insert:
 - (3B) The Commissioner must not give a certificate under subsection (2) or (3A) unless satisfied:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) that the dealer or a car market operator with whom the person submitting the claim was dealing at the relevant time was the holder of the appropriate licence; or
 - (b) that the person submitting the claim believed on reasonable grounds that, at the relevant time, the dealer or car market operator with whom that person was dealing was the holder of such a licence.
- (c) After section 40 (7), insert:
- (8) In this section:
"failure to account" means a failure by a dealer or car market operator to account for money or other valuable property entrusted to the dealer or operator (or to any employee or agent of the dealer or operator) in the course of the business carried on by the dealer or operator and which arises from any act or omission of the dealer or operator (or the employee or agent).
- (21) Section 46 (**Certificate of inspection**):
Omit "a vehicle-wrecker" wherever occurring, insert instead "an auto-dismantler".
- (22) Section 49 (**Disclosures required in certain advertisements**):
Omit the section.
- (23) Section 50 (**Details in certain advertisements**):
Omit the section.
- (24) Section 56 (**Evidence**):
- (a) From section 56 (1), omit "vehicle-wrecker's", insert instead "auto-dismantler's".
 - (b) From section 56 (1), omit "vehicle-wrecker", insert instead "auto-dismantler".

SCHEDULE 1 - AMENDMENTS - *continued*

(25) Section 57 (Regulations):

After section 57 (2) (p), insert:

- (p1) requiring an initial contribution to be made to the Fund in respect of a licence;

(26) Schedule 1 (Obligation of dealer to repair defects):

Omit the matter relating to item 3 from Column 1, insert instead:

3. Second-hand motor vehicle (not being a motor cycle) that has been driven for not more than 160,000 km and was manufactured not more than 10 years before the time it is sold by dealer

SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 4)

Vehicle-wreckers

1. A person who, immediately before the commencement of Schedule 1 (4) (a) and (b), held a vehicle-wrecker's licence is to be taken to be the holder of an auto-dismantler's licence for the unexpired portion of the period for which the vehicle-wrecker's licence was issued.

Motor vehicle defects

2. Schedule 1 to the Motor Dealers Act 1974, as in force immediately before the commencement of Schedule 1(26), applies to and in respect of a motor vehicle sold by a dealer before that commencement.
