

TASMANIA

MOTOR VEHICLE TRADERS BILL 2011

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MOTOR VEHICLE TRADERS BILL 2011

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
5 April 2011

(Brought in by the Minister for Corrections and Consumer Protection, the Honourable Nicholas James McKim)

A BILL FOR

An Act to provide for the licensing of motor vehicle traders, to regulate the conduct of motor vehicle traders and their sales persons, to ensure that the rights of persons who purchase certain motor vehicles are adequately protected, to provide for warranties on certain new and used motor vehicles, to allow for the regulation of park and sell operators, to consequentially amend the *Australian Consumer Law (Tasmania) Act 2010*, the *Consumer Affairs Act 1988* and the *Duties Act 2001*, to rescind the *Fair Trading (Code of Practice for Motor Vehicle Traders) Regulations 1996* and for related purposes

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Motor Vehicle Traders Act 2011*.

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2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

“Australian Design Rules” means –

- (a) the Australian Design Rules made under the *Motor Vehicle Standards Regulations 1989* of the Commonwealth and published by the Department of the Commonwealth responsible for the administration of transport, as amended or substituted from time to time; or
- (b) a prescribed document;

“Australian Fuel Consumption Guide”
means –

- (a) the Green Vehicle Guide produced by the Commonwealth Department of Environment and Heritage, as amended or substituted from time to time, together with the Fuel Consumption Guide Database 1986-2003 kept and published by that Department; or

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-
- (b) a prescribed document;

“authorised officer” means a person who is an authorized officer within the meaning of the *Consumer Affairs Act 1988*;

“chief executive officer”, in relation to a body corporate, means –

- (a) the chief executive officer of the body corporate; or
- (b) an individual who holds an office in the body corporate that is substantially the same as that of chief executive officer of a body corporate, regardless of the name of that office; or
- (c) an individual acting in the office of chief executive officer or an office referred to in paragraph (b);

“commercial vehicle” means a motor vehicle, within the meaning of the *Vehicle and Traffic Act 1999*, that –

- (a) if manufactured or imported on or after 1 July 1988, has a vehicle category code of MD, ME, NA, NB or NC stamped, engraved or otherwise placed on its compliance plate; or
- (b) if manufactured or imported before 1 July 1988, has the

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capacity to carry 1 200 kilograms or more and is constructed or adapted to be used principally for –

- (i) the carriage of goods; or
- (ii) the carriage of 10 or more passengers; or
- (iii) industrial purposes; or
- (iv) agricultural purposes;

“compliance plate” means an identification plate, within the meaning of the *Motor Vehicle Standards Act 1989* of the Commonwealth, that must be attached to a motor vehicle in accordance with the Australian Design Rules;

“deal in motor vehicles” has the meaning given by section 4;

“Director” means the Director of Consumer Affairs and Fair Trading appointed under section 9 of the *Consumer Affairs Act 1988*;

“director”, in relation to a body corporate, means –

- (a) a director of the body corporate; or
- (b) an individual who holds an office in the body corporate that is substantially the same as that of a

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director of a body corporate,
regardless of the name of that
office; or

- (c) an individual acting in the office
of director or in an office referred
to in paragraph (b); or
- (d) an individual not referred to in
paragraph (a), (b) or (c) but who
is concerned in the management
of the body corporate;

“finance agreement” means an agreement
under which a person agrees to provide
finance to another person in respect of a
motor vehicle and the other person –

- (a) agrees to pay or repay the amount
of finance provided at a later
time, whether the time for
repayment is fixed or
indeterminate; or
- (b) obtains a right to use the motor
vehicle (whether or not a right of
purchase is also obtained) and
agrees to make successive
payments for that use before,
during or after any period of use;
or
- (c) agrees to give to the person who
agrees to provide finance a
negotiable instrument under
which payment is not to be made
by the person against whom the

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negotiable instrument is drawn
until a later date;

“finance provider” means a person who carries on the business of buying, selling or exchanging motor vehicles only for one or more of the following purposes:

- (a) selling motor vehicles on instalment terms;
- (b) hiring motor vehicles under hire-purchase agreements;
- (c) taking or enforcing securities over motor vehicles;
- (d) letting or hiring motor vehicles with or without granting a right to purchase them;
- (e) a prescribed purpose;
- (f) disposing of motor vehicles acquired by the person in connection with any of the purposes referred to in paragraph (a), (b), (c), (d) or (e);

“fit and proper person to hold a motor vehicle trader licence” has the meaning given by section 7;

“licence number” means the identifying number on a motor vehicle trader licence;

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“licensed motor vehicle trader” means a person who holds a motor vehicle trader licence;

“manufacturer” means a person who, in Australia –

- (a) manufactures motor vehicles; or
- (b) imports new motor vehicles; or
- (c) assembles new motor vehicles; or
- (d) distributes new motor vehicles; or
- (e) sells new motor vehicles on a concession basis; or
- (f) sells new motor vehicles on a wholesale basis;

“motor cycle” means a motor cycle within the meaning of the *Vehicle and Traffic Act 1999*, other than –

- (a) a motor cycle that is not used, and is not intended to be used, on a public street; and
- (b) a motor cycle that is prescribed by the regulations not to be a motor cycle for the purposes of this definition;

“motor vehicle” means a motor vehicle, within the meaning of the *Vehicle and Traffic Act 1999*, other than a commercial vehicle;

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“motor vehicle trader” means a person carrying on the business of dealing in motor vehicles;

“motor vehicle trader licence” means a licence issued or renewed under section 14;

“park and sell operator” means a person who –

- (a) owns or manages land; and
- (b) for profit, allows other persons to park motor vehicles on that land for the purpose of offering them for sale and selling them;

“partner”, in relation to a partnership, means –

- (a) an individual who is a partner in the partnership; or
- (b) an individual who is not a partner in the partnership but is concerned in the management of the partnership; or
- (c) if a partner in the partnership is another partnership, an individual who is a partner in, or is concerned in the management of, that other partnership; or
- (d) if a partner in the partnership is a body corporate, a director or

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other individual concerned in the management of that body corporate;

“pre-sale disclosure statement” means the pre-sale disclosure statement in respect of a motor vehicle required to be displayed by a licensed motor vehicle trader under section 37;

“purchaser”, in relation to a motor vehicle, includes –

- (a) a person who receives the motor vehicle as part of an exchange arrangement; and
- (b) a person who is entitled to the use of the motor vehicle if a finance agreement is entered into in respect of the vehicle at the time of its sale;

“recondition”, in relation to an engine, means the process of reconditioning an engine set out in –

- (a) the definition of “Reconditioned (remanufactured) engine” in “AS 4182-1994: Automotive repairs – Code of practice for reconditioning reciprocating spark ignition engines” published on 21 March 1994 by Standards Australia, as amended or substituted from time to time; or

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- (b) if another standard or other document is prescribed in the regulations for the purposes of this definition, that other standard or other document, as amended or substituted from time to time;

“registered”, in relation to a motor vehicle, means registered under the *Vehicle and Traffic Act 1999*;

“regulations” means regulations made and in force under this Act;

“repair” includes replace and recondition;

“statutory warranty” means the warranty given by a licensed motor vehicle trader to the purchaser of a warranted vehicle by reason of section 43(2);

“trade in”, in relation to an item, means to transfer ownership of the item from a purchaser of a motor vehicle to a licensed motor vehicle trader who credits the value of the item against the purchase price of the motor vehicle;

“vehicle category code”, in relation to a vehicle, means the code for that type of vehicle specified in the Australian Design Rules;

“vendor”, in relation to a motor vehicle, includes a person who gives the motor vehicle under an exchange arrangement;

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“warranted vehicle” has the meaning given by section 42.

- (2) For the avoidance of doubt, a reference in this Act to buying, selling or exchanging a motor vehicle includes a reference to buying, selling or exchanging a motor vehicle on consignment.
- (3) If –
- (a) the Commonwealth Department of Environment and Heritage has a name change or ceases to exist; or
 - (b) the production and publication of the Green Vehicle Guide referred to in the definition of “Australian Fuel Consumption Guide” in subsection (1), or a document that is substituted for that Guide, is assigned to another Commonwealth Department; or
 - (c) the name of that Guide is changed; or
 - (d) the keeping and publication of the Fuel Consumption Guide Database 1986-2003 referred to in the definition of “Australian Fuel Consumption Guide” in subsection (1) is assigned to another Commonwealth Department; or
 - (e) the name of that Database is changed –
- the Minister, by order, may amend that definition.

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- (4) An order under subsection (3) that amends the definition of “Australian Fuel Consumption Guide” is a Statutory Rule for the purposes of the *Rules Publication Act 1953*.

4. Meaning of “dealing in motor vehicles”

- (1) A person deals in motor vehicles if –
- (a) the person carries on, or holds himself or herself out as carrying on, a business of dealing in motor vehicles; or
 - (b) the person during the immediately preceding 12-month period buys, sells or exchanges, or offers to buy, sell or exchange, a total of 6 or more motor vehicles otherwise than as an employee of a licensed motor vehicle trader.
- (2) For the purposes of subsection (1)(b), an offer to sell a motor vehicle includes –
- (a) an invitation to treat in respect of the sale of the vehicle; and
 - (b) the publication of, or the authorisation of the publication of, an advertisement in respect of the sale of the vehicle.
- (3) Despite subsection (1), the following persons are not dealing in motor vehicles:
- (a) a finance provider, or an employee of a finance provider, who buys, sells or exchanges motor vehicles for the

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purposes of carrying on the business of
the finance provider;

- (b) a person who buys motor vehicles for the purpose of dismantling them;
- (c) the Crown;
- (d) a person who auctions motor vehicles on behalf of the persons who own them;
- (e) a park and sell operator;
- (f) a person who buys, sells or exchanges motor vehicles as a collector of motor vehicles and those vehicles are intended to form, or formed, part of that person's collection.

(4) A person –

- (a) referred to in subsection (3)(a) may still be dealing in motor vehicles if he or she buys, sells or exchanges motor vehicles otherwise than for the purposes of carrying on the business of finance provider; or
- (b) referred to in subsection (3)(b) may still be dealing in motor vehicles if he or she buys motor vehicles otherwise than for the purpose of dismantling them; or
- (c) referred to in subsection (3)(d) may still be dealing in motor vehicles if he or she buys motor vehicles for the purpose of auctioning or onselling them; or

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- (d) referred to in subsection (3)(e) may still be dealing in motor vehicles if he or she buys, sells or exchanges motor vehicles from the land on which he or she, as a park and sell operator, allows other persons to park motor vehicles for the purposes of offering them for sale and selling them; or
- (e) referred to in subsection (3)(d) may still be dealing in motor vehicles if he or she, as an auctioneer, buys, sells or exchanges motor vehicles otherwise than on behalf of the persons who own them; or
- (f) referred to in subsection (3)(f) may still be dealing in motor vehicles if he or she buys, sells or exchanges motor vehicles otherwise than as a collector of motor vehicles for the purposes of the collection.

5. Displaying document

If a document is required by this Act to be displayed, it must be displayed –

- (a) in such a way and place that it can be easily seen and read by the intended audience; and
- (b) in accordance with any prescribed requirements.

PART 2 – LICENSING OF MOTOR TRADERS

***Division 1 – Offences relating to dealing in motor vehicles
without licence***

6. Offence to deal in motor vehicles without licence

- (1) A person must not deal in motor vehicles unless the person is a licensed motor vehicle trader.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units, and a further fine not exceeding 50 penalty units in respect of each motor vehicle bought, sold or exchanged while the body corporate dealt in motor vehicles in contravention of this section; or
 - (b) an individual, a fine not exceeding 200 penalty units, and a further fine not exceeding 20 penalty units in respect of each motor vehicle bought, sold or exchanged while the individual dealt in motor vehicles in contravention of this section.
- (2) For the purposes of subsection (1), if one partner in a partnership that carries on the business of

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dealing in motor vehicles under the name of the firm is a licensed motor vehicle trader, all the other partners are taken to be licensed motor vehicle traders.

Division 2 – Fit and proper person to hold a motor vehicle trader licence

7. Who is a fit and proper person to hold motor vehicle trader licence

(1) A person is not a fit and proper person to hold a motor vehicle trader licence if –

(a) in the case of –

(i) an individual, the individual has not attained 18 years of age; or

(ii) a body corporate, the chief executive officer of the body corporate has not attained 18 years of age; or

(b) the person, within the immediately preceding 5 years –

(i) has been convicted of an offence involving theft, fraud or other dishonesty that is punishable by a term of imprisonment of 3 years or more; or

(ii) has completed serving a term of imprisonment for such an offence; or

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- (c) the person is subject to a restriction order under the *Sentencing Act 1997* or the *Criminal Justice (Mental Impairment) Act 1999* or a similar order made under the law of another jurisdiction in Australia or elsewhere; or
 - (d) the person –
 - (i) is a represented person within the meaning of the *Guardianship and Administration Act 1995*; or
 - (ii) is the subject of an order or other determination made under the law of another jurisdiction in Australia or elsewhere that is similar in effect to an order under section 20, 51 or 65 of the *Guardianship and Administration Act 1995*; or
 - (e) the person –
 - (i) is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with creditors or made an assignment of remuneration or estate for the benefit of creditors; or
 - (ii) is an externally administered body corporate within the meaning of the Corporations Act; or

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- (f) the person is a partner in a business partnership where another partner is not a fit and proper person to hold a motor vehicle trader licence; or
 - (g) the person is a chief executive officer or director of a body corporate that –
 - (i) is not a fit and proper person to hold a motor vehicle trader licence; or
 - (ii) has as chief executive officer or director a person who is not a fit and proper person to hold a motor vehicle trader licence; or
 - (h) the person is a person of a prescribed class; or
 - (i) the Director otherwise determines that the person is not a fit and proper person to hold a motor vehicle trader licence.
- (2) For the purposes of subsection (1)(b)(ii), a person who, after serving part of a term of imprisonment to which he or she has been sentenced, is released on parole is taken to be still serving the term of imprisonment while on parole.
- (3) In determining, for the purposes of subsection (1)(i), whether or not a person is a fit and proper person to hold a motor vehicle trader licence, the Director is to have regard to –

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- (a) whether the person, within the immediately preceding 3 years, has –
- (i) in Tasmania, been refused a motor vehicle trader licence or had a motor vehicle trader licence cancelled; or
 - (ii) in another jurisdiction in Australia or elsewhere, been refused a licence or other authority that would authorise the person to deal in motor vehicles, or had such a licence or other authority suspended or cancelled; or
- (b) whether the person, within the immediately preceding 5 years, has been convicted of an offence against –
- (i) this Act; or
 - (ii) the *Consumer Affairs Act 1988*; or
 - (iii) the *Fair Trading Act 1990*; or
 - (iv) the *Australian Consumer Law (Tasmania) Act 2010*; or
 - (v) the *Trade Practices Act 1974* of the Commonwealth; or
- (c) in the case of an individual, whether the person –

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- (i) within the immediately preceding 5 years, has been declared bankrupt; or
- (ii) was a director or chief executive officer of a body corporate at a time, within the immediately preceding 5 years, when the body corporate became subject to external administration under the Corporations Act; or
- (iii) was a partner in a partnership at a time, within the immediately preceding 5 years, when in relation to the partnership business a partner assigned any of his or her remuneration or estate, or any of his or her property or the property of the partnership, for the benefit of the creditors of the partnership business; or
- (d) any other matter the Director considers relevant.

8. Police report for determination of fit and proper person to hold motor vehicle trader licence

- (1) In an investigation involving a determination as to whether or not an applicant for a motor vehicle trader licence or a licensed motor vehicle trader is a fit and proper person to hold or to continue to hold a motor vehicle trader licence, the Director may require the applicant or

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licensed motor vehicle trader to authorise the Director to obtain reports from –

- (a) the Commissioner of Police in respect of convictions and proceedings taken against the applicant or licensed motor vehicle trader in this State; and
 - (b) a person holding an office in another State or a Territory that corresponds to the office of Commissioner of Police in this State in respect of convictions and proceedings taken against the applicant or licensed motor vehicle trader in that other State or that Territory.
- (2) For the purposes of the investigation, the Director may refer to the Commissioner of Police –
 - (a) the name of the applicant for the motor vehicle trader licence or the name of the licensed motor vehicle trader; and
 - (b) any information and documentation that the Director considers relevant to the investigation.
- (3) The Commissioner of Police must inquire into, and report to the Director on, any matters concerning the applicant or licensed motor vehicle trader that the Director requests.
- (4) In this section, a reference to an applicant or a licensed motor vehicle trader includes –

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- (a) in the case of an applicant or licensed motor vehicle trader that is a partner in a partnership that intends to, or does, deal in motor vehicles, a reference to each partner in the partnership; and
- (b) in the case of an applicant or licensed motor vehicle trader that is a body corporate, a reference to the chief executive officer and each director of the body corporate.

Division 3 – Application for motor vehicle trader licence

9. Application

- (1) An individual or body corporate may apply to the Director for a motor vehicle trader licence.
- (2) An application must –
 - (a) be in a form approved by the Director; and
 - (b) include any details required by the Director; and
 - (c) be accompanied by the prescribed documents, or relevant documents of the prescribed class, relating to the identity of the applicant; and
 - (d) be accompanied by –
 - (i) a statement relating to the applicant's record of offences in

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Tasmania issued by the
Commissioner of Police; and

- (ii) a statement relating to the applicant's record of offences in any other place issued by a person holding an office in another State or a Territory that corresponds to the office of Commissioner of Police in this State; and
- (e) be accompanied by any consent by any person to the disclosure of information as the Director considers relevant for the purposes of investigating the application; and
- (f) if the applicant is an individual, be accompanied by a statement that shows whether or not that person is subject to the *Bankruptcy Act 1966* of the Commonwealth obtained by a search of the National Personal Insolvency Index maintained by the Insolvency and Trustee Service, Australia; and
- (g) if the applicant is a body corporate, be accompanied by a statement, provided by the applicant, that the applicant is not an externally-administered body corporate within the meaning of the Corporations Act; and
- (h) be accompanied by any prescribed application fee.

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- (3) On receipt of an application, the Director by written notice may require the applicant to provide further documents or information, or further consents of the kind referred to in subsection (2)(e), within the period specified in the notice.
- (4) In this section, a reference to an applicant includes –
 - (a) in the case of an applicant that is a partner in a partnership that intends to deal in motor vehicles, a reference to each partner in the partnership; and
 - (b) in the case of an applicant that is a body corporate, a reference to the chief executive officer and each director of the body corporate.

10. Notifying change in application details

If before an application for a motor vehicle trader licence is determined a material change occurs in respect of any details, documents, information or consents provided under section 9 in, or in respect of, the application, the applicant must notify the Director in writing of that change as soon as practicable.

Penalty: Fine not exceeding 20 penalty units.

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11. Investigation of application and applicant

- (1) On receipt of an application for a motor vehicle trader licence, the Director may investigate the application and applicant as he or she considers appropriate.
- (2) In this section, a reference to an applicant includes –
 - (a) in the case of an applicant that is a partner in a partnership that intends to deal in motor vehicles, a reference to each partner in the partnership; and
 - (b) in the case of an applicant that is a body corporate, a reference to the chief executive officer and each director of the body corporate.

12. Providing information to certain State Service officers

On receipt of an application for a motor vehicle trader licence, the Director may provide any details of the application that the Director considers relevant to –

- (a) the Commissioner of State Revenue; and
- (b) the Secretary of the department responsible for the administration of the *Transport Act 1981*.

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Division 4 – Grant, issue and terms of motor vehicle trader licence, &c.

13. Determination of application

- (1) On receipt of an application for a motor vehicle trader licence under section 9, the Director is to –
 - (a) grant the application if the Director –
 - (i) is satisfied that the applicant is a fit and proper person to hold a motor vehicle trader licence; and
 - (ii) has no reasonable grounds for believing that the applicant has contravened section 10 or provided false or misleading information in the application; or
 - (b) refuse to grant the application if the Director –
 - (i) is not so satisfied; or
 - (ii) does have reasonable grounds for such a belief.
- (2) On refusing to grant an application for a motor vehicle trader licence, the Director is to notify the applicant in writing of that refusal and the reason why the Director is not satisfied that the applicant is a fit and proper person to hold a motor vehicle trader licence.

14. Issue of motor vehicle trader licence

- (1) If the Director grants an application for a motor vehicle trader licence, he or she is to issue a motor vehicle trader licence to the applicant on payment of any prescribed licence fee.
- (2) A motor vehicle trader licence is to be in a form approved by the Director.
- (3) A motor vehicle trader licence takes effect on the day it is issued or a later day specified in it.

15. Authority of motor vehicle trader licence

A motor vehicle trader licence authorises the person to whom it is issued to deal in motor vehicles.

16. Duration of motor vehicle trader licence

A motor vehicle trader licence has effect for the period of 3 years from the day on which it takes effect.

17. Motor vehicle trader licence not transferable

A motor vehicle trader licence is not transferable to any other person.

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18. Renewal of motor vehicle trader licence

(1) In this section –

“expiry day” means the day on which a motor vehicle trader licence would expire if no application for its renewal were made.

(2) Not less than 3 months before the expiry day of a motor vehicle trader licence, the licensed motor vehicle trader may apply to the Director for a renewal of the licence.

(3) If the Director considers it appropriate to do so, the Director may allow a licensed motor vehicle trader to apply for the renewal of the motor vehicle trader licence within the 3-month period specified in subsection (2) but before the day determined by the Director.

(4) Divisions 2 and 3 of this Part and this Division apply in relation to an application for the renewal of a motor vehicle trader licence, and its renewal, with necessary adaptation and modification.

(5) Despite subsection (4), the regulations –

(a) may provide that a section, or part of a section, referred to in that subsection does not apply in relation to an application for the renewal of a motor vehicle trader licence and its renewal; and

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-
- (b) may provide for further matters in relation to an application for the renewal of a motor vehicle trader licence and its renewal.
- (6) If an application for the renewal of a motor vehicle trader licence is made in accordance with this section but the licence is not renewed before the expiry day, that unrenewed licence continues to have effect –
- (a) in the case where the Director has not determined the application before the expiry day, until –
- (i) the Director renews the licence and the renewal takes effect; or
- (ii) the expiration of the period of one month commencing on the day on which the licensed motor vehicle trader is notified of the Director's refusal to renew the licence; or
- (b) in the case where the Director, before the expiry day, refuses to renew the licence, until whichever of the following last occurs:
- (i) the expiry day;
- (ii) the expiration of the period of one month commencing on the day on which the licensed motor vehicle trader is notified of the

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Director's refusal to renew the
licence.

- (7) If a motor vehicle trader licence is renewed, the renewal takes effect on the day immediately following the expiry day.
- (8) If the Director refuses to renew a motor vehicle trader licence, the Director is to notify the licensed motor vehicle trader, in writing, of that refusal and the reason why the Director is not satisfied that the licensed motor vehicle trader is a fit and proper person to hold a motor vehicle trader licence.

19. Replacement motor vehicle trader licence

The Director must issue a replacement motor vehicle trader licence if –

- (a) satisfied that the motor vehicle trader licence has been lost, destroyed or badly defaced; and
- (b) any prescribed fee has been paid.

***Division 5 – Suspension and cancellation of motor vehicle
trader licence***

20. Suspension of motor vehicle trader licence

- (1) The Director may suspend a motor vehicle trader licence if –

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- (a) he or she is conducting an investigation under section 22 and considers the suspension appropriate in the circumstances; or
 - (b) he or she is satisfied that the licensed motor vehicle trader is not carrying on a business of dealing in motor vehicles; or
 - (c) he or she is satisfied that the suspension is in the public interest.
 - (2) If a motor vehicle trader licence is suspended, it is suspended for the period determined by the Director or, if the Director does not determine a period, until the Director revokes the suspension.
 - (3) On suspending a motor vehicle trader licence, the Director is to notify the licensed motor vehicle trader, in writing, of the suspension and the period of the suspension.
 - (4) A motor vehicle trader licence ceases to have effect when it is suspended and continues to be of no effect while the suspension remains in force.
 - (5) The Director may revoke the suspension of a motor vehicle trader licence or amend the period for which a motor vehicle trader licence is suspended –
 - (a) at any time; and
 - (b) by notice in writing provided to the licensed motor vehicle trader.

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21. Cancellation of motor vehicle trader licence

- (1) The Director is to cancel a motor vehicle trader licence if satisfied that the licensed motor vehicle trader is no longer a fit and proper person to hold a motor vehicle trader licence.
- (2) The Director may not cancel a motor vehicle trader licence without –
 - (a) first allowing the licensed motor vehicle trader an opportunity to make submissions in relation to the matter; and
 - (b) then considering any submissions so made.
- (3) On determining under subsection (1) whether or not to cancel a motor vehicle trader licence, the Director must notify the licensed motor vehicle trader, in writing, of that determination.
- (4) The cancellation of a motor vehicle trader licence takes effect one month after the day the licensed motor vehicle trader receives the notice provided under subsection (3) or, if that notice specifies a different day, on that specified day.

22. Investigation for purposes of determining whether licensed motor vehicle trader is fit and proper person to hold a motor vehicle trader licence

- (1) The Director at any time may investigate whether or not a licensed motor vehicle trader continues to be a fit and proper person to hold a motor vehicle trader licence.

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- (2) The Director may conduct an investigation in such manner as he or she considers appropriate.

Division 6 – End of motor vehicle trader licence

23. When motor vehicle trader licence ceases to have effect

A motor vehicle trader licence ceases to have effect –

- (a) on the day on which the licence expires unless the licence is continued under section 18 for a period after that expiry or is sooner cancelled or surrendered; or
- (b) if the licence is continued under section 18 for a period after the day on which the licence expires, at the end of that period unless the licence is sooner cancelled or surrendered; or
- (c) if the licence is cancelled, on the day on which that cancellation takes effect; or
- (d) if the licence is surrendered before it would otherwise cease to have effect, on the day it is surrendered; or
- (e) if the licensed motor vehicle trader dies, on that day.

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24. Surrender of motor vehicle trader licence

- (1) The holder of a motor vehicle trader licence may surrender the motor vehicle trader licence to the Director at any time.
- (2) The holder of a motor vehicle trader licence must surrender the licence to the Director as soon as practicable after the licence ceases to have effect.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) an individual, a fine not exceeding 20 penalty units.

25. Carrying on motor dealing after licensed motor vehicle trader dies or becomes represented person

- (1) In this section –

“prescribed administrator”, in relation to a represented person who is an externally-administered body corporate within the meaning of the Corporations Act, means the liquidator, administrator, receiver, receiver and manager or person administering a compromise or arrangement approved under Part 5.1 of the Corporations Act;

“relevant motor vehicle trader licence”
means the motor vehicle trader licence

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held by a licensed motor vehicle trader
who dies or becomes a represented
person;

“represented person” means a person who –

- (a) is a represented person within the meaning of the *Guardianship and Administration Act 1995*; or
 - (b) is the subject of an order or other determination made under the law of another jurisdiction in Australia or elsewhere that is similar in effect to an order under section 20, 51 or 65 of the *Guardianship and Administration Act 1995*; or
 - (c) is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with creditors or made an assignment of remuneration or estate for the benefit of creditors; or
 - (d) is an externally administered body corporate within the meaning of the Corporations Act.
- (2) For 30 days after a licensed motor vehicle trader dies or becomes a represented person, or such longer period as the Director determines under subsection (3), the following persons may carry on the business of dealing in motor vehicles

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which had been carried on under the relevant motor vehicle trader licence:

- (a) if the licensed motor vehicle trader dies, the personal representative of the licensed motor vehicle trader's estate or a person who intends to apply for letters of administration in relation to the licensed motor vehicle trader's estate;
- (b) if the licensed motor vehicle trader becomes a person referred to in paragraph (a) or (b) of the definition of "represented person" in subsection (1), the guardian of that person, or the administrator of that person's estate, within the meaning of *Guardianship and Administration Act 1995*;
- (c) if the licensed motor vehicle trader becomes a person referred to in paragraph (c) of the definition of "represented person" in subsection (1) –
 - (i) the Official Trustee or other trustee in whom the licensed motor vehicle trader's property has vested or who has control of the licensed motor vehicle trader's property; or
 - (ii) another person approved by the Director;
- (d) if the licensed motor vehicle trader becomes a person referred to in paragraph (d) of the definition of

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“represented person” in subsection (1),
the prescribed administrator of the
licensed motor vehicle trader.

- (3) On the application of a person referred to in subsection (2) made within the 30-day period specified in that subsection, the Director may extend the period for which the applicant may carry on the business of dealing in motor vehicles if satisfied that it would not be contrary to the public interest to do so.
- (4) If the Director grants an application, the Director may impose any conditions relating to carrying on, or winding up, the business that he or she considers appropriate.
- (5) The person carrying on the business must comply with any conditions imposed under subsection (4).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
 - (b) an individual, a fine not exceeding 20 penalty units.
- (6) If a person makes an application under subsection (3) but the Director has not determined it before the expiration of the 30-day period referred to in subsection (2), that person may continue to carry on the business after the expiration of the period until the application is determined.

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- (7) A person authorised under this section to carry on a business of dealing in motor vehicles is taken to hold a motor vehicle trader licence in the same terms as the relevant motor vehicle trader licence.

Division 7 – Review of decisions

26. Review of decisions

- (1) In this section –

“reviewable decision” means –

- (a) the refusal of the Director to grant an application for a motor vehicle trader licence or for the renewal of a motor vehicle trader licence; or
 - (b) the cancellation by the Director of a motor vehicle trader licence; or
 - (c) any prescribed decision of the Director or another person.
- (2) If the Director or another person makes a reviewable decision –
- (a) the person aggrieved by that decision may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision; and

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-
- (b) that decision is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

Division 8 – Miscellaneous

27. Register of motor vehicle trader licences

- (1) The Director is to maintain a register of motor vehicle trader licences in a form the Director considers appropriate.
- (2) The register is to contain details of the following matters relating to each motor vehicle trader licence issued:
 - (a) the day on which the licence is issued;
 - (b) the day on which the licence would expire under section 16 if not renewed;
 - (c) the name and business or other address of the holder of the licence;
 - (d) each day on which the licence is renewed;
 - (e) if the licence is suspended or cancelled, that suspension or cancellation;
 - (f) the carrying-on under section 25 of the business of dealing in motor vehicles after the licence ceases to have effect;

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- (g) if the licence ceases to have effect, the day on which it does so;
 - (h) any prescribed matter;
 - (i) any other matter the Director considers appropriate.
- (3) During normal business hours, the Director, on payment of any prescribed fee, is to –
 - (a) make the register available for inspection by a person; and
 - (b) provide to a person a copy of or extract from the register.
- (4) The Director may publish a list of all current motor vehicle trader licences at any time, and in any manner, the Director considers appropriate.

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**PART 3 – REGULATION OF DEALINGS IN MOTOR
VEHICLES**

Division 1 – General regulation of dealings in motor vehicles

28. Prohibited person

- (1) If a person is restrained by a court under section 54 from obtaining a motor vehicle trader licence, from being employed, or otherwise engaged, in the business of dealing in motor vehicles carried on by a licensed motor vehicle trader or from carrying on the business of a licensed motor vehicle trader, a licensed motor vehicle trader must not employ or otherwise engage that person in the licensed motor vehicle trader's business of dealing in motor vehicles.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units;
or
 - (b) an individual, a fine not exceeding 200 penalty units.
- (2) It is a defence in proceedings for an offence under this section if the licensed motor vehicle trader establishes that he or she did not know, and could not reasonably be expected to know, that he or she was committing an offence under subsection (1) by employing or otherwise engaging the person.

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29. Advertising

- (1) A licensed motor vehicle trader must not make a claim or give a description in an advertisement in relation to a motor vehicle knowing or believing that the claim or description is or may be false or misleading.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units;
or
 - (b) an individual, a fine not exceeding 200 penalty units.
- (2) A licensed motor vehicle trader must not advertise –
- (a) that a method of financing the purchase of a motor vehicle is available if that method is not permitted by law; or
 - (b) a discounted price, or saving on the cash price, of a motor vehicle unless the advertisement contains a statement of the price of the motor vehicle without the discount or saving; or
 - (c) that a motor vehicle is available for sale or exchange if the vehicle is not so available; or
 - (d) an undertaking in relation to a motor vehicle as a warranty if the undertaking is not a warranty; or

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(e) fuel consumption information in respect of a particular model of motor vehicle that is for sale or exchange unless –

(i) that information is drawn from the Australian Fuel Consumption Guide; and

(ii) the source of the information is specified in the advertisement.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 1 000 penalty units;
or

(b) an individual, a fine not exceeding 200 penalty units.

(3) A licensed motor vehicle trader must not make a claim in an advertisement which compares motor vehicles from different manufacturers unless the source of the information is specified in the advertisement.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 1 000 penalty units;
or

(b) an individual, a fine not exceeding 200 penalty units.

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30. Misrepresentations

(1) In this section –

“build plate” means a plate which describes the build specifications of a motor vehicle and was placed on the motor vehicle by the manufacturer at the time of its manufacture;

“model designation” means the model identification code stamped on a motor vehicle at the time of manufacture.

(2) A licensed motor vehicle trader must not –

- (a) conceal or misrepresent the condition of a motor vehicle that is offered for sale or exchange; or
- (b) make a statement in relation to the condition of a motor vehicle that is offered for sale or exchange knowing or believing that the statement is or may be false or misleading; or
- (c) make a statement or representation that a motor vehicle is available for sale or exchange knowing or believing that the motor vehicle is not available for sale or exchange; or
- (d) make a statement or representation in relation to the year in which a motor vehicle that is offered for sale or exchange was manufactured knowing or believing that –

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- (i) in the case of a motor vehicle fitted with a silver compliance plate, the year so stated or represented is not or may not be the year specified on the compliance plate as the year in which the compliance plate was fitted to the motor vehicle; or
 - (ii) in the case of a motor vehicle fitted with a green, yellow, magenta or blue compliance plate, the year so stated or represented is not or may not be the year specified on the build plate fitted to the motor vehicle; or
 - (e) make a statement or representation in relation to the year in which a motor vehicle that is offered for sale or exchange complied with the Australian Design Rules knowing or believing that the motor vehicle did not or may not have complied with those Rules in that year; or
 - (f) make a statement or representation in relation to the model designation of a motor vehicle that is offered for sale or exchange knowing or believing that the stated or represented model designation is not or may not be the correct model designation of the motor vehicle; or

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- (g) make a statement or representation that an amount, if paid, would constitute a part of the consideration for the supply of a motor vehicle that is offered for sale or exchange without specifying the full cash price.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units;
or
- (b) an individual, a fine not exceeding 200 penalty units.

31. Odometer reading

- (1) A licensed motor vehicle trader must not make a statement in relation to the condition of an odometer, or the reading on an odometer, of a motor vehicle that is offered for sale or exchange knowing or believing that the statement is or may be false or misleading.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units;
or
 - (b) an individual, a fine not exceeding 200 penalty units.
- (2) If a licensed motor vehicle trader has reasonable grounds to doubt the accuracy of the odometer

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reading of a used motor vehicle that he or she is offering for sale or exchange, the licensed motor vehicle trader must –

- (a) take reasonable steps to verify the accuracy of the reading before offering the motor vehicle for sale or exchange; and
- (b) inform any prospective purchaser of the motor vehicle, in writing, of –
 - (i) the verified facts in relation to the reading; and
 - (ii) the grounds on which the accuracy of the reading was questioned; and
- (c) record the odometer reading on the documents transferring the ownership of the motor vehicle at the time of its sale or exchange.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
 - (b) an individual, a fine not exceeding 200 penalty units.
- (3) If a licensed motor vehicle trader knows that the odometer of a motor vehicle which he or she is offering for sale or exchange has been replaced or interfered with, the licensed motor vehicle

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trader must inform any prospective purchaser of the motor vehicle, in writing, of that fact.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units;
or
 - (b) an individual, a fine not exceeding 200 penalty units.
- (4) For the purposes of subsection (3), an odometer has been interfered with if –
- (a) the reading on the odometer has been altered; or
 - (b) the odometer has been rendered inoperative or inaccurate by any means.

32. Merchantable quality

A licensed motor vehicle trader must ensure that a motor vehicle sold or exchanged by him or her is fit for the purpose for which such vehicles are commonly purchased to such extent as it is reasonable in the circumstances to expect, having regard to the description and price of the motor vehicle and all other relevant circumstances.

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding 1 000 penalty units;
or
- (b) an individual, a fine not exceeding 200 penalty units.

33. Selling motor vehicle as agent

A licensed motor vehicle trader must not sell or exchange a motor vehicle which the licensed motor vehicle trader has accepted for sale or exchange on consignment unless the owner, in writing provided to the licensed motor vehicle trader, has appointed the licensed motor vehicle trader as his or her agent.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units;
or
- (b) an individual, a fine not exceeding 200 penalty units.

34. Contract for sale, purchase or exchange of motor vehicle

- (1) A licensed motor vehicle trader must not enter into any contract in relation to the sale, purchase or exchange of a motor vehicle unless the contract –

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- (a) is in writing; and
- (b) contains the following information and matters:
 - (i) the conditions of the sale, purchase or exchange;
 - (ii) the total price or other consideration, or both, to be paid or given in respect of the sale, purchase or exchange;
 - (iii) if the contract involves the trade-in of any motor vehicle and the purchase of another motor vehicle, the changeover price to be paid by the purchaser;
 - (iv) any undertaking made by the licensed motor vehicle trader to the purchaser in any advertisement or during negotiations in respect of the motor vehicle which is not included in any warranty relating to the vehicle; and
- (c) contains, in the case of a contract for the sale of a motor vehicle or supply of a motor vehicle on exchange –
 - (i) a statutory warranty in accordance with section 43; and
 - (ii) all other warranties relating to the motor vehicle; and

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- (d) in the case of a contract for the sale of a used motor vehicle or the supply of a used motor vehicle on exchange, has attached to it a copy of the pre-sale disclosure statement; and
- (e) contains the prescribed information, statements and terms; and
- (f) if the Director determines the form in which information or a statement is to be provided or made, contains that information or statement in that form.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
 - (b) an individual, a fine not exceeding 100 penalty units.
- (2) Without limiting the contracts to which subsection (1) applies, that subsection applies to a finance agreement under which the licensed motor vehicle trader agrees to provide finance to another person in respect of a motor vehicle sold or supplied on exchange by the licensed motor vehicle trader.

35. Encumbrance

- (1) In this section –

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“encumbrance” includes a security interest within the meaning of the *Motor Vehicles Securities Act 1984*;

“motor vehicles securities register” means the register kept under section 5 of the *Motor Vehicles Securities Act 1984*.

- (2) Before a licensed motor vehicle trader purchases a motor vehicle, accepts a motor vehicle for sale or exchange on consignment or accepts a motor vehicle on a trade-in basis, the licensed motor vehicle trader must –
- (a) ask the vendor or owner of, or the person exchanging, the motor vehicle whether the motor vehicle is subject to any encumbrance; and
 - (b) search the motor vehicles securities register to determine whether there is an encumbrance registered in respect of the motor vehicle.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
 - (b) an individual, a fine not exceeding 100 penalty units.
- (3) If a licensed motor vehicle trader is informed, or becomes aware, that a motor vehicle is subject to an encumbrance, the licensed motor vehicle trader –

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- (a) must discharge the encumbrance on purchasing the motor vehicle or accepting the motor vehicle on a trade-in basis or exchange; and
 - (b) must not accept the motor vehicle for sale or exchange on consignment unless it is a condition of the consignment that the proceeds of the sale or exchange are paid first in discharge of the encumbrance.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units;
or
- (b) an individual, a fine not exceeding 200 penalty units.

36. Clear title for used motor vehicle

- (1) In this section –

“encumbrance” includes a security interest within the meaning of the *Motor Vehicles Securities Act 1984*.

- (2) If a licensed motor vehicle trader sells, or supplies on exchange, a used motor vehicle, he or she must pass the title to the motor vehicle free from all encumbrances and interests.

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
 - (b) an individual, a fine not exceeding 200 penalty units.
- (3) Subsection (2) does not apply to the sale, or supply on exchange, of a motor vehicle by a licensed motor vehicle trader acting on consignment.

37. Pre-sale disclosure requirements for used motor vehicles

- (1) A licensed motor vehicle trader must display in, on or attached to a used motor vehicle which is offered for sale or exchange a pre-sale disclosure statement that complies with the regulations.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
 - (b) an individual, a fine not exceeding 100 penalty units.
- (2) Subsection (1) does not apply if the used motor vehicle is only offered for sale or exchange to other licensed motor vehicle traders.
- (3) A licensed motor vehicle trader must not knowingly or recklessly make a statement or representation in a pre-sale disclosure statement that is false or misleading.

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Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

Division 2 – Obligations in respect of motor vehicle trader licence

38. Displaying licence

- (1) A licensed motor vehicle trader must display a full-size copy of his or her motor vehicle trader licence in a prominent position at each premises at which the trader buys, sells or exchanges motor vehicles.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
 - (b) an individual, a fine not exceeding 100 penalty units.
- (2) If a licensed motor vehicle trader is in charge of premises at which another licensed motor vehicle trader buys, sells or exchanges motor vehicles, he or she must display a full-size copy of his or her motor vehicle trader licence in a prominent position at those premises.

Penalty: Fine not exceeding 100 penalty units.

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39. Displaying licence number

A licensed motor vehicle trader must specify the number of his or her motor vehicle trader licence on all –

- (a) advertisements relating to the sale of motor vehicles by the licensed motor vehicle trader or the business of dealing in motor vehicles carried on by the licensed motor vehicle trader; and
- (b) pre-sale disclosure statements provided by the licensed motor vehicle trader; and
- (c) contracts for the sale of motor vehicles entered into by the licensed motor vehicle trader; and
- (d) warranties given by the licensed motor vehicle trader and other documents relating to such warranties; and
- (e) prescribed documents.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

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40. Unauthorised alteration of licence

A person must not alter or deface a current motor vehicle trader licence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units;
or
- (b) an individual, a fine not exceeding 200 penalty units.

41. Duty to notify of certain changes

- (1) If a licensed motor vehicle trader becomes aware of any change in circumstances that have resulted in the trader not being a fit and proper person to hold a motor vehicle trader licence, the trader must notify the Director in writing of that change as soon as practicable.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 40 penalty units; or
 - (b) an individual, a fine not exceeding 10 penalty units.
- (2) A licensed motor vehicle trader must notify the Director in writing as soon as practicable after any change in any of the following information occurs:

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- (a) the name of the licensed motor vehicle trader;
- (b) the address or telephone number of the principal or registered office, or principal place of business, of the licensed motor vehicle trader;
- (c) the email address of the licensed motor vehicle trader;
- (d) any other prescribed information.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 40 penalty units; or
- (b) an individual, a fine not exceeding 10 penalty units.

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**PART 4 – STATUTORY AND OTHER WARRANTIES
AND REPAIRING WARRANTIED VEHICLE**

42. Motor vehicles to which a statutory warranty applies

- (1) A new or used motor vehicle, other than a motor cycle, is a warrantied vehicle if –
 - (a) it is offered for sale or exchange by a licensed motor vehicle trader to persons who are not licensed motor vehicle traders; and
 - (b) the motor vehicle has travelled less than 120 000 kilometres before its sale; and
 - (c) the motor vehicle was fitted with its compliance plate less than 7 years before its sale or exchange.
- (2) A new or used motor cycle is a warrantied vehicle if –
 - (a) it is offered for sale or exchange by a licensed motor vehicle trader, to persons who are not licensed motor vehicle traders; and
 - (b) the motor cycle has travelled less than 15 000 kilometres before its sale; and
 - (c) the motor cycle was fitted with its compliance plate less than 3 years before its sale; and

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- (d) the motor cycle is not designed to be raced in competition.
- (3) Despite subsections (1) and (2), a motor vehicle referred to in either of those subsections is not a warrantied vehicle if –
 - (a) the motor vehicle is a commercial vehicle; or
 - (b) the motor vehicle is only offered for sale or exchange to other licensed motor vehicle traders.

43. Statutory warranty

- (1) In this section –
 - “contract of sale or exchange”** includes a finance agreement relating to the sale, or the supply in an exchange, of a motor vehicle by a licensed motor vehicle trader.
- (2) Subject to section 45, a licensed motor vehicle trader who sells or supplies in an exchange a warrantied vehicle warrants that –
 - (a) the motor vehicle is fit for the purpose or purposes for which such vehicles are commonly purchased to such extent as it is reasonable in the circumstances to expect, having regard to the age, description and price of the motor vehicle and all other relevant circumstances; and

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- (b) in the case of a new motor vehicle, the motor vehicle and all its parts are in working order at the time of the sale or exchange; and
 - (c) in the case of a used motor vehicle, the motor vehicle and all its parts are in working order at the time of the sale or exchange except as otherwise specified in the pre-sale disclosure statement relating to the motor vehicle; and
 - (d) in the case of a used motor vehicle, the motor vehicle complies with the information contained in the pre-sale disclosure statement.
- (3) If a licensed motor vehicle trader sells or supplies in an exchange a warrantied vehicle, the statutory warranty and any other warranties given by the licensed motor vehicle trader must –
 - (a) be included in the contract of sale or exchange; and
 - (b) be in any relevant form determined by the Director; and
 - (c) include any relevant prescribed information; and
 - (d) comply with any relevant prescribed requirements.
- (4) Subsections (2) and (3) do not apply in respect of a warrantied vehicle if the motor vehicle is

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sold to or exchanged through another licensed motor vehicle trader for the purpose of that other trader on-selling it.

- (5) The failure of a licensed motor vehicle trader to include the statutory warranty in a contract as required under subsection (3) and section 34(1) does not affect the operation of the warranty or the contract.
- (6) Nothing in this section prevents a licensed motor vehicle trader, when selling or exchanging a warrantied vehicle, from including in the written warranties included in the contract as required under subsection (3) and section 34(1) further warranties in addition to the statutory warranty.

44. Period of statutory or other warranty

- (1) In this section –

“purchaser” includes, if a finance agreement is made on the sale or exchange of a motor vehicle, a person who is entitled to the use of the motor vehicle.

- (2) A statutory warranty takes effect on the day on which the purchaser of the warrantied vehicle takes delivery of it.
- (3) A statutory warranty ceases to have effect when whichever of the following first occurs:
 - (a) the expiration of the period of 3 months commencing on the delivery of the warrantied vehicle to the purchaser;

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- (b) the warrantied vehicle travels 3 000 kilometres after being delivered to the purchaser;
 - (c) the warrantied vehicle is used after delivery to the purchaser for rally driving or motor racing;
 - (d) the warrantied vehicle is used after delivery to the purchaser as a taxi or hire vehicle;
 - (e) the warrantied vehicle is repossessed by a person who provided finance to the purchaser under a finance agreement;
 - (f) the purchaser sells the warrantied vehicle to another person;
 - (g) after delivery of the warrantied vehicle to the purchaser, the odometer reading of the warrantied vehicle is altered.
- (4) If a licensed motor vehicle trader gives a warranty in addition to the statutory warranty –
- (a) that additional warranty takes effect and ceases to have effect as specified in it; or
 - (b) if that additional warranty does not specify when it takes effect or ceases to have effect, it takes effect or ceases to have effect as specified in subsection (2) or (3) as if it were a statutory warranty.

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45. What the statutory warranty does not cover

(1) In this section –

“accessory” includes an audio system, other sound system, telephone, aerial, clock, cigarette lighter, light globe, sealed beam light and any thing prescribed for the purposes of this definition;

“clutch-driven plate” means a metal disc which is mounted on an input shaft to the gearbox and to which the clutch linings are riveted or bonded.

(2) Except as otherwise stated in written warranties included in a contract of sale or exchange, within the meaning of section 43, in respect of a warrantied vehicle, the statutory warranty and other warranties do not apply to any defect –

(a) that occurs in any –

(i) brake lining, pad, drum or disc;
or

(ii) clutch-driven plate; or

(iii) tyre; or

(iv) battery; or

(v) prescribed item or item of a prescribed class; or

(b) that is subject to a manufacturer’s recall;
or

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- (c) that results after delivery of the warrantied vehicle to the purchaser from –
- (i) any repair which is carried out by a person not authorised by the licensed motor vehicle trader; or
 - (ii) failure to maintain or service the warrantied vehicle as recommended by its manufacturer; or
 - (iii) misuse of the warrantied vehicle; or
 - (iv) any negligent act or omission by the purchaser or another person; or
 - (v) immersion of the warrantied vehicle or any of its parts; or
 - (vi) overloading the warrantied vehicle; or
 - (vii) collision or accidental or intentional damage; or
 - (viii) water freezing; or
 - (ix) racing, pace-making, reliability-trialling, speed-testing or hill-climbing; or
 - (x) modification of the warrantied vehicle from the manufacturer's specifications carried out by a

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person not authorised by the
licensed motor vehicle trader; or

(xi) prescribed circumstances or
circumstances of a prescribed
class; or

(d) that does not render, or is not likely to
render, the warrantied vehicle
unroadworthy or unserviceable,
including a defect that occurs in any
accessory, glass, trim or paintwork on the
vehicle; or

(e) that is prescribed or is of a prescribed
class of defects.

(3) Except as otherwise stated in written warranties
included in a contract of sale or exchange, within
the meaning of section 43, the statutory warranty
and other warranties –

(a) do not cover or contribute towards any
routine servicing of the warrantied
vehicle which is recommended by the
manufacturer; and

(b) do not indemnify the purchaser of the
warrantied vehicle against any
inconvenience, loss of time or loss of
motor vehicle use caused by, or as a
consequence of, any defect in the
warrantied vehicle.

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46. Repair under warranty

- (1) A licensed motor vehicle trader must repair any defect in a warrantied vehicle at no cost to its owner if –
- (a) at the time the defect occurred, the written warranties included in a contract of sale or exchange, within the meaning of section 43, applied to the defect; and
 - (b) the defect was not specified in the pre-sale disclosure statement relating to the warrantied vehicle; and
 - (c) there is no warranty given by the manufacturer that applies in respect of the warrantied vehicle, or a claim for repair of the defect has been made under a warranty given by the manufacturer but refused by the manufacturer or his or her agent; and
 - (d) the claim for the repair of the defect was made –
 - (i) within 7 days after the defect was first discovered or any longer period stated in the written warranties included in a contract of sale or exchange, within the meaning of section 43; or
 - (ii) if a claim was first made to a manufacturer under a warranty given by the manufacturer, within 7 days after the owner received

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notice that the manufacturer or
his or her agent refused the claim.

- (2) A licensed motor vehicle trader who repairs a defect in a warrantied vehicle as required under subsection (1) must –
- (a) carry out the repair in a manner that conforms to accepted industry standards; and
 - (b) carry out the repair in such a manner as to ensure that the motor vehicle once repaired –
 - (i) is fit for the purpose or purposes for which such vehicles are commonly purchased to such extent as it is reasonable in the circumstances to expect, having regard to any prescribed circumstances and all relevant circumstances; and
 - (ii) is in a reasonable condition having regard to its age, the description and price of the motor vehicle, any prescribed circumstances and all other relevant circumstances; and
 - (c) comply with any prescribed requirements.
- (3) A licensed motor vehicle trader may repair a defect in a warrantied vehicle as required under subsection (1) by carrying out the repair himself

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or herself or by arranging for it to be repaired by
another person.

PART 5 – INVESTIGATIONS AND INSPECTIONS

47. Exercise of powers of authorised officer

The powers of an authorised officer under the *Consumer Affairs Act 1988* may be exercised for the purposes of determining whether or not –

- (a) an application for a motor vehicle trader licence should be granted; or
- (b) a person has engaged, is engaging or is proposing to engage in conduct that constitutes or would constitute –
 - (i) contravention of this Act; or
 - (ii) an attempt to contravene this Act; or
 - (iii) aiding, abetting, counselling or procuring another person to contravene this Act; or
 - (iv) inducing, or attempting to induce, by way of threats, promises or otherwise, another person to contravene this Act; or
 - (v) conspiring to contravene this Act; or
- (c) a motor vehicle trader licence should be cancelled.

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48. Authorised officer may give directions

- (1) As the result of or during an inspection for the purposes of this Act, in addition to exercising powers under the *Consumer Affairs Act 1988* an authorised officer may give written directions to a licensed motor vehicle trader.
- (2) Without limiting the directions that may be given under subsection (1), those directions may include directions requiring a licensed motor vehicle trader to take any action or measures to ensure that the licensed motor vehicle trader is not in, or does not continue to be in, contravention of this Act.
- (3) A licensed motor vehicle trader given a direction under subsection (1) must comply with the direction.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units;
or
 - (b) an individual, a fine not exceeding 200 penalty units.
- (4) On convicting a person, or finding a person guilty, of an offence under subsection (3), the court, in addition to imposing a penalty under that subsection, may order that person to comply with the direction in respect of which the offence was committed.

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49. Authorised officer to show identification

If a person on premises entered by an authorised officer for the purposes of an inspection under this Act requests that the authorised officer produce identification –

- (a) the officer must produce his or her certificate of identification as an authorised officer to that person; and
- (b) the officer may not take any action or further action under this Act in relation to the inspection until he or she has so produced that certificate of identification.

50. Warrant to enter premises

- (1) If a person refuses to allow an authorised officer to enter, remain in and inspect premises that the authorised officer may lawfully enter under this Act, the authorised officer may apply to a justice of the peace for a warrant.
- (2) On receipt of an application under subsection (1), a justice of the peace may issue a warrant if satisfied, by information on oath, that a person has refused to allow an authorised officer to enter, remain in and inspect premises and that the authorised officer has reasonable grounds to believe that –
 - (a) a licensed motor vehicle trader or other person is dealing in motor vehicles at those premises; or

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- (b) a document relating to dealing in motor vehicles is or may be on those premises.
 - (3) A warrant authorises an authorised officer and such police officers and other assistants as the authorised officer considers appropriate, using such force as is reasonable –
 - (a) to enter, remain in and inspect the premises specified in the warrant; and
 - (b) to perform and exercise any functions and powers the authorised officer and assistants may perform and exercise in, or in respect of, any premises lawfully entered under this Act.
 - (4) An application for a warrant –
 - (a) may be in a written form approved and provided by the Director; or
 - (b) if the justice of the peace is satisfied that the circumstances are urgent or that the delay resulting from a written application would frustrate the effective execution of the warrant, may be made by telephone, telex, facsimile, e-mail or other electronic means.
 - (5) Section 15 of the *Search Warrants Act 1997* applies, with necessary modifications and adaptations, in respect of an application under subsection (4)(b) and a warrant issued as a result of such an application.

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- (6) A person must not refuse to allow an authorised officer or any police officer or other person assisting the authorised officer to enter, remain in and inspect premises when authorised by a warrant under this section.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units;
or
- (b) an individual, a fine not exceeding 200 penalty units.

51. Offences in relation to authorised officer

A person must not, without reasonable excuse –

- (a) resist, impede, obstruct or assault –
 - (i) an authorised officer who is performing or exercising any function or power under this Act;
or
 - (ii) a person assisting that officer; or
- (b) use threatening, abusive or insulting language to such an officer or assistant;
or
- (c) prevent or attempt to prevent a person from answering questions, giving information or providing documents to such an officer or assistant; or

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(d) impersonate an authorised officer.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units;
or
- (b) an individual, a fine not exceeding 200 penalty units.

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**PART 6 – OFFENCES AND LEGAL PROCEEDINGS,
&C.**

52. False or misleading statements

A person must not, in answering a question, giving information or providing a document under this Act –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is false or misleading; or
- (c) provide a document that the person knows to be false or misleading without informing the person to whom the document is provided of that knowledge.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
- (b) an individual, a fine not exceeding 200 penalty units.

53. Infringement notice

- (1) In this section –

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“infringement offence” means an offence against this Act or the regulations that is prescribed by the regulations to be an infringement offence.

- (2) The Commissioner, an authorised officer or a police officer may issue and serve an infringement notice on a person if he or she reasonably believes that the person has committed an infringement offence.
- (3) An infringement notice may not be served on an individual who has not attained the age of 16 years.
- (4) An infringement notice –
 - (a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and
 - (b) is not to relate to more than 3 offences.
- (5) The regulations –
 - (a) may prescribe the penalty applicable to each infringement offence that is payable under an infringement notice; and
 - (b) may prescribe different penalties for bodies corporate and individuals.
- (6) In the application of the *Monetary Penalties Enforcement Act 2005* to an infringement notice issued and served under this section –
 - (a) the Commissioner, an authorised officer or the police officer who issued and

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served the infringement notice is taken to be a public sector body within the meaning of that Act; and

- (b) a penalty prescribed under subsection (5) in respect of an infringement offence is taken to be the prescribed penalty applicable to that offence for the purposes of section 14(a)(ii) of that Act.

54. Injunction to stop or prevent contravention of Act

- (1) If the Supreme Court is satisfied, on the application of the Director, that a person has engaged, is engaging or is proposing to engage in conduct that constitutes or would constitute –
 - (a) a contravention of this Act; or
 - (b) an attempt to contravene this Act; or
 - (c) aiding, abetting, counselling or procuring another person to contravene this Act; or
 - (d) inducing, or attempting to induce, by way of threats, promises or otherwise, another person to contravene this Act; or
 - (e) conspiring to contravene this Act –

the Court may grant an injunction in such terms as the Court considers appropriate.

- (2) Without limiting the generality of subsection (1), an injunction may restrain a person from carrying on a business of dealing in motor

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vehicles, whether or not as part of, or incidental to, the carrying-on of another business or from being employed or engaged in such a business of dealing in motor vehicles –

- (a) for the period specified in the injunction;
or
 - (b) except on conditions specified in the injunction.
- (3) If an application for an injunction under subsection (1) has been made and the Supreme Court considers it appropriate to do so, the Supreme Court may grant an injunction by consent of all the parties to the proceedings whether or not the Court is satisfied that a person has engaged, is engaging or is proposing to engage in conduct of a kind referred to in that subsection.
- (4) If an application for an injunction under subsection (1) has been made and the Supreme Court considers it appropriate to do so, the Supreme Court may grant an interim injunction.
- (5) In making an interim injunction under this section, the Supreme Court may not require, as a condition of the grant of that interim injunction, any person to give an undertaking as to damages.
- (6) The Supreme Court may rescind or vary an injunction or interim injunction granted under this section.

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55. Rescission of contract

(1) In this section –

“purchase contract” means a contract entered into in relation to the sale or supply on exchange of a motor vehicle by a licensed motor vehicle trader;

“purchaser” includes, if a finance agreement is made on the sale or exchange of a motor vehicle, a person who is entitled to the use of the motor vehicle;

“rescission period” means the period of 90 days commencing on the day the purchaser takes delivery of the motor vehicle purchased under a purchase contract.

(2) If a purchaser under a purchase contract –

(a) has, within the rescission period, reason to believe that –

- (i) the licensed motor vehicle trader made a false representation in relation to the odometer or odometer reading; or
- (ii) the purchase contract is not in accordance with section 34; or
- (iii) the motor vehicle is substantially different from the motor vehicle represented in the pre-sale disclosure statement; and

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- (b) notifies the licensed motor vehicle trader, in writing, of that belief and the reasons for it within, or not later than 14 days after the end of, the rescission period –

the purchaser may apply within the period specified in subsection (3) to the Magistrates Court for an order rescinding that contract on a ground referred to in paragraph (a).

(3) An application –

- (a) may be made within 60 days after the purchaser notifies the licensed motor vehicle trader in accordance with subsection (2)(b); and

- (b) may be made to –

- (i) a Magistrates Court that is hearing proceedings in relation to an offence connected with the ground for the application at the time when the application may be made; or

- (ii) the Magistrates Court (Civil Division).

(4) On receipt of an application, the Magistrates Court may –

- (a) rescind or affirm the purchase contract; and

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- (b) make such other orders as it considers appropriate in connection with that rescission or affirmation.

(5) Nothing in this section affects –

- (a) any other right or remedy which the purchaser may have to rescind a purchase contract; or
- (b) any other remedy the purchaser may have in respect of the purchase contract.

56. Compensation when person convicted of offence

(1) In this section –

“loss or damage” does not include the death of or injury to a person but, without limiting what it may include, does include –

- (a) the cost of repairing a defect in a motor vehicle; and
- (b) loss and costs suffered because the sale, purchase or exchange contract or financial agreement did not meet the requirements of this Act; and
- (c) loss and costs suffered in obtaining the rescission of a contract under section 55.

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(2) If, in proceedings for an offence against this Act –

- (a) a court convicts a person, or finds a person guilty, of the offence; and
- (b) the court is satisfied on the application of another person that the other person has suffered, or is likely to suffer, loss or damage as a result of the commission of that offence –

the court may make any order against the offender, or the offender’s employer, that the court considers appropriate for the purposes of compensating the other person, in whole or in part, for the loss or damage or to prevent or reduce the loss or damage.

(3) An order under subsection (2) may be made in addition to, or in substitution for, any penalty or other order the court may impose or make in respect of the offence.

57. Compensation in civil proceedings

(1) In this section –

“**loss or damage**” does not include the death of or injury to a person but, without limiting what it may include, does include –

- (a) the cost of repairing a defect in a motor vehicle; and

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- (b) loss and costs suffered because the sale, purchase or exchange contract or financial agreement did not meet the requirements of this Act; and
 - (c) loss and costs suffered in obtaining the rescission of a contract under section 55.
- (2) If a person suffers loss or damage as a result of a contravention of a provision of this Act by a licensed motor vehicle trader or other person, that person may recover an amount equal to the loss or damage suffered from the licensed motor vehicle trader or other person in a court of competent jurisdiction.
- (3) In determining the loss or damage suffered by a person, the court may have regard to the difference between the market value of the motor vehicle at the time it was purchased by the person and the purchase price paid.
- (4) For the purposes of determining the loss or damage suffered by a person as a result of a licensed motor vehicle trader contravening section 35 or 36, the loss or damage is the amount paid by the person who purchased the motor vehicle in discharging the encumbrance on the title to the vehicle.
- (5) In an action under this section for loss or damage suffered by reason of a contravention of section 31 –

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- (a) a finding of any fact by a court made in proceedings for an offence against that section is evidence of that fact; and
 - (b) the finding may be proved by production of a document under the seal of the court from which the finding appears.

58. Liability of employee or agent

- (1) If it is an offence against this Act for a licensed motor vehicle trader to do any act or omit to do any act, an employee or agent of a licensed motor vehicle trader who does such an act or omits to do such an act is also guilty of the offence and liable to the penalty prescribed for the offence.
- (2) An employee or agent may be found guilty of an offence as referred to in subsection (1) whether or not proceedings have been brought against the licensed motor vehicle trader.

59. Vicarious liability

- (1) If an employee or agent commits an offence against this Act, the employer or principal is also guilty of the offence and liable to the penalty prescribed for the offence unless the employer or principal establishes that he or she, by the exercise of reasonable diligence, could not have prevented the employee or agent from committing the offence.

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- (2) A person may be found guilty of an offence as referred to in subsection (1) whether or not proceedings have been brought against the employee or agent.

60. Offence by body corporate

- (1) If a body corporate commits an offence against this Act, each director and other person concerned in the management of the body corporate is taken to have also committed the offence and may be found guilty of the offence unless the director or person establishes that –
- (a) the act or omission constituting the offence took place without the knowledge or consent of the director or person; or
 - (b) the director or person used all due diligence to prevent that act or omission by the body corporate.
- (2) A director, or other person, referred to in subsection (1) may be found guilty of an offence against this Act whether or not the body corporate is charged with or found guilty of the offence.

61. Evidentiary matters

- (1) For the purposes of this section, an odometer has been interfered with if –

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- (a) the reading on the odometer has been altered; or
 - (b) the odometer has been rendered inoperative or inaccurate by any means.
 - (2) If in any proceedings it is established that an odometer in a motor vehicle has been replaced or interfered with while the vehicle was on the business premises of a licensed motor vehicle trader or in the possession, custody or control of a licensed motor vehicle trader, the licensed motor vehicle trader is taken to have replaced or interfered with the odometer unless the licensed motor vehicle trader establishes that he or she could not by the exercise of reasonable diligence have prevented the replacement of or interference with the odometer.

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PART 7 – MISCELLANEOUS

62. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may –
 - (a) specify that a motor vehicle of a prescribed class is, or is not, a new motor vehicle or a used motor vehicle for the purposes of this Act; and
 - (b) provide for the form and content of pre-sale disclosure statements; and
 - (c) prescribe the particulars, terms and conditions of, for or relating to an agreement by a licensed motor vehicle trader for the purchase, sale or exchange of a motor vehicle; and
 - (d) regulate, or otherwise provide for, licensed motor vehicle traders, and park and sell operators, and their businesses; and
 - (e) provide for fees and charges payable in respect of a matter under this Act; and
 - (f) exempt a person or vehicle, or a person or vehicle of a prescribed class, from the operation of this Act or a prescribed provision of this Act.

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- (3) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
 - (4) The regulations may –
 - (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.
 - (5) The regulations may authorise any matter to be from time to time determined, applied, approved or regulated by the Director or a person or body specified in the regulations.
 - (6) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or an Act amending this Act.
 - (7) Regulations made under subsection (6) may take effect on the day on which this Act, or a provision of an Act that amends this Act, takes effect or a later day as specified in the regulations, whether the day so specified is before, on or after the day on which the regulations under that subsection are made.

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63. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

64. Consequential amendments

The legislation specified in Schedule 1 is amended as specified in that Schedule.

65. Legislation rescinded

The legislation specified in Schedule 2 is rescinded.

SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Section 64

Australian Consumer Law (Tasmania) Act 2010

1. Section 50 is amended as follows:

- (a) by omitting from subsection (1) “1 January 2012.” and substituting “1 April 2012.”;
- (b) by omitting from subsection (2) “1 January 2012” and substituting “1 April 2012”.

Consumer Affairs Act 1988

- 1. Section 3A is amended by inserting “the *Motor Vehicle Traders Act 2011*,” after “*Collections for Charities Act 2001*,”.**

Duties Act 2001

1. Section 3 is amended as follows:

- (a) by inserting the following definition after the definition of “lease”:

“licensed motor vehicle trader”
means a person who holds a motor vehicle trader licence under the *Motor Vehicle Traders Act 2011*;

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- (b) by inserting the following definition after the definition of “motor vehicle”:

“motor vehicle trader licence” has the same meaning as in the *Motor Vehicle Traders Act 2011*;

2. Section 204 is repealed and the following section is substituted:

204. Exemptions for motor dealers

Duty under this Chapter is not payable by –

- (a) a licensed motor vehicle trader in respect of the registration or transfer of a motor vehicle acquired and used for a purpose specified in section 214(1); or
- (b) a motor dealer who holds an exemption certificate in respect of the registration or transfer of a type of motor vehicle specified in that certificate acquired and used solely for a purpose specified in section 214(1).

3. Section 206(2) is amended by inserting after paragraph (a) the following paragraph:

- (ab) is not a licensed motor vehicle trader and is not dealing in motor vehicles within

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the meaning of the *Motor Vehicle Traders Act 2011*; and

4. Section 212(1) is amended as follows:

- (a) by omitting from paragraph (d) “available.” and substituting “available; or”;
- (b) by inserting the following paragraph after paragraph (d):
 - (e) is a licensed motor vehicle trader or is dealing in motor vehicles within the meaning of the *Motor Vehicle Traders Act 2011*.

5. Section 214 is amended as follows:

- (a) by omitting from subsection (1) “vehicle” first occurring and substituting “vehicle, and a motor vehicle trader licence in force under the *Motor Vehicle Traders Act 2011* may only be used to obtain exemption from payment of duty in respect of the registration or transfer of a motor vehicle,”;
- (b) by omitting from subsection (1)(c) “a holder” and substituting “an exemption certificate holder, or a licensed motor vehicle trader,”;

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- (c) by omitting from subsection (1)(c) “certificates” and substituting “certificates, other licensed motor vehicle traders”;
- (d) by inserting in subsection (1) “or the licensed motor vehicle trader” after “holder of the exemption certificate”;
- (e) by inserting in subsection (1) “or motor vehicle trader licence” after “number of the exemption certificate”;
- (f) by inserting in subsection (2) “motor vehicle trader licence or” after “using the”.

6. Section 215 is amended as follows:

- (a) by inserting in subsection (1) “or a motor vehicle trader licence” after “certificate”;
- (b) by omitting from subsection (2) “certificate that is used” and substituting “certificate, or a licensed motor vehicle trader, who uses the exemption certificate or the motor vehicle trader licence”.

7. Section 216(1) is amended by inserting “or a licensed motor vehicle trader” after “certificate”.

8. Section 217 is amended as follows:

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- (a) by omitting from subsection (1) “to which an exemption certificate relates” and substituting “for which an exemption has been claimed under section 204 by the holder of an exemption certificate or a licensed motor vehicle trader”;
- (b) by inserting in subsection (1) “or licensed motor vehicle trader” after “the exemption certificate”;
- (c) by inserting in subsection (2) “or the licensed motor vehicle trader” after “certificate”.

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SCHEDULE 2 – LEGISLATION RESCINDED

Section 65

Fair Trading (Code of Practice for Motor Vehicle Traders)
Regulations 1996 (No. 5 of 1996)

Fair Trading (Code of Practice for Motor Vehicle Traders)
Amendment Regulations 1999 (No. 101 of 1999)

Fair Trading (Code of Practice for Motor Vehicle Traders)
Amendment Regulations 2000 (No. 132 of 2000)