

## **CLAUSE NOTES**

### **Motor Vehicle Traders Bill 2011**

#### **PART I – PRELIMINARY**

##### **Clause 1      Short Title**

The Act is referred to as the *Motor Vehicle Traders Act 2011*.

##### **Clause 2      Commencement**

The Act commences on a day, or days, to be proclaimed.

##### **Clause 3      Interpretation**

This clause defines a range of terminology such as “reconditioned” and “commercial vehicle”. The section also provides that the Act covers all motor vehicles including cars, four wheel drives, motor bikes, and motor scooters, but does not cover commercial vehicles such as trucks and heavy machinery.

##### **Clause 4      Meaning of “dealing in motor vehicles”**

For the purposes of the Act a person is considered to be dealing in motor vehicles if:

- they represent themselves as dealing in motor vehicles;  
or
- they buy, sell or exchange six or more motor vehicles in any 12 month period.

##### **Clause 5      Displaying Documents**

This clause allows regulations to be made that say how a document should be displayed. For example documents to be displayed would include a copy of the motor vehicle trader s

licence and a pre-sale disclosure statement with each vehicle.

## **PART 2 – LICENSING OF MOTOR TRADERS**

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

### **Clause 6      Offence of dealing in motor vehicles without a licence**

Prescribes a fine for dealing in motor vehicles without a licence. Where the business is a partnership and one partner is a licensed motor vehicle trader, the other partner(s) are taken to be licensed also. This ensures that 'silent partners' do not have to apply for a licence.

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

### **Clause 7      Who is a fit and proper person to hold a trader licence**

Defines who is not a 'fit and proper' person to hold a licence. A person is excluded from being a 'fit and proper person' if s(he):

- is under 18 years of age;
- in the last five years, was convicted of an offence involving theft, fraud, or dishonesty punishable by three years imprisonment or more;
- in the last five years, completed serving a term of imprisonment for such an offence;
- is mentally impaired;
- is subject to a guardianship or administration order;
- is bankrupt; - or is a body corporate that is subject to administration;
- is a partner in a business where another partner is not a fit and proper person;
- is a chief executive officer or director of a body

corporate that is not a fit and proper person.

The Director of Consumer Affairs and Fair Trading has discretion to decide whether or not a person is a fit and proper person.

The Director may have regard to whether the person

- has been refused a motor vehicle trader's licence in the last three years;
- has been convicted of an offence against fair trading legislation in the last five years; or
- either they, a business partner, or the body corporate has been bankrupt or under administration in the last five years.

**Clause 8      Police report for determination of fit and proper person**

Provides that an applicant for a licence may be required to provide a copy of a police report from Tasmania or any other State or Territory.

*Division 3 – Application for motor vehicle trader licence*

**Clause 9      Application**

Sets out how a person applies for a motor vehicle trader's licence. An applicant may be a sole trader, a partner in a partnership, or a body corporate.

In addition to any other information required, the applicant must provide a criminal record check, and a statement of solvency. The applicant must also pay a non refundable application fee. The fee will cover the cost of processing the application.

**Clause 10     Notifying change in application details**

Provides that an applicant must inform Consumer Affairs and Fair Trading (CAFT) if, while the application is being considered, a change in the applicant's details occurs, or the applicant is refused a stamp duty exemption, or their exemption certificate is suspended or cancelled.

**Clause 11     Investigation of application and applicant**

The Director may investigate the application and the applicant.

**Clause 12     Providing information to Commissioner of State Revenue**

Allows CAFT to share any relevant details of the application with the Office of State Revenue. The State Revenue Office ~~issues—provides exemption from~~ stamp duty ~~—exemption certificates.~~

*Division 4 – Grant, issue and terms of motor vehicle trader licence*

**Clause 13     Determination of application**

Provides that the Director can only refuse to issue a licence if he or she has reasonable grounds to believe that the applicant is not a fit and proper person.

If a licence is refused the applicant must be given written reasons for the refusal.

**Clause 14     Issue of motor vehicle trader licence**

Provides that, where a licence is granted, the licence must be issued once a licence fee is paid. The licence fee will cover the cost of issuing the licence.

**Clause 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.

**Clause 16      Duration of motor vehicle trader licence**

Provides that a motor vehicle trader licence lasts for three years.

**Clause 17      Motor vehicle trader licence not transferable**

Provides that a motor vehicle trader licence is not transferable.

**Clause 18      Renewal of motor vehicle trader licence**

Provides that holders of a motor vehicle trader's licence who wish to renew the licence may apply for renewal prior to three months before the expiry date.

If an application for renewal is lodged, but the licence would otherwise expire, the licence continues in force until it is renewed. If the Director refuses to renew a licence the licence continues in force for one month after the trader was notified of the Director's decision.

**Clause 19      Replacement of motor vehicle trader licence**

Provides that a replacement licence must be issued if the licence is lost, destroyed or defaced.

A replacement fee may be charged.

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

**Clause 20      Suspension of motor vehicle trader licence**

Provides that the Director may suspend a licence where: (a) the trader is under investigation;

(b) the trader is not carrying on the business of dealing in motor vehicles; or

(c) the suspension is in the public interest.

**Clause 21      Cancellation of motor vehicle trader licence**

Provides that the Director must cancel the licence if the licence holder ceases to be a 'fit and proper' person.

Before cancellation the Director must give written reasons to the motor vehicle trader and the trader must be given an opportunity to respond.

Normally cancellation takes effect one month after the trader is notified, but the Director can specify a different date.

The trader can appeal to a magistrate against the Director's decision to cancel the licence.

**Clause 22      Investigation for the purpose of determining whether licensed motor vehicle trader is a fit and proper person**

Provides that CAFT may investigate whether a licensed motor vehicle trader is a fit and proper person at any time.

*Division 6 – End of motor vehicle trader licence*

**Clause 23      When motor vehicle trader licence ceases to have effect**

Provides that the licence no longer has effect after it has expired, been surrendered or cancelled. If the licensed motor vehicle trader dies their licence ceases to have effect on that day.

**Clause 24      Surrender of motor vehicle trader licence**

Provides that a licensed motor vehicle trader must surrender their licence if they cease carrying on business as a motor vehicle trader .

**Clause 25     Carrying on motor dealing after licensed motor vehicle trader dies or becomes a represented person**

Provides that if a licensed motor vehicle trader dies or becomes subject to a guardianship order, their representative, estate or guardian has 30 days to sell off stock, or longer if the Director allows.

*Division 7 – Review of decisions*

**Clause 26     Review of decisions**

Provides that if the Director refuses to grant a licence or cancels a licence, the applicant or trader can appeal to the Magistrates Court to have the Director's decision overturned.

*Division 8 – Miscellaneous*

**Clause 27     Register of motor vehicle trader licences**

Provides that Director to maintain a register of motor vehicle trader licences. Anyone can view the register or make extracts from the register during normal business hours for a fee.

**PART 2 – REGULATION OF DEALING IN MOTOR VEHICLES**

*Division 1 – General regulation of dealing in motor vehicles*

**Clause 28     Prohibited person**

Clause 54 allows a court to make an order banning a person from trading in motor vehicles. Clause 28 provides that, if someone is banned in this way, they cannot work as an employee of a licensed motor vehicle trader .

It is a defence for the employer to show that they did not know or could not be expected to know that the staff member was subject to the court order.

**Clause 29     Advertising**

It is an offence to make a false or misleading claim or statement in an advertisement knowing or believing it to be false or misleading.

Specifically:

- any advertised method of financing must be legal;
- if a discount price or cash saving is advertised, the advertisement must also include a statement of the normal price;
- where a vehicle is advertised for sale it must actually be available for sale;
- where an undertaking is given as a warranty it must actually be a warranty;
- any advertisement about fuel consumption must show where the information about fuel consumption comes from; and
- any advertisement that compares motor vehicles from different manufacturers must specify the source of the information.

### **Clause 30     Misrepresentations**

It is an offence to misrepresent the condition of the vehicle generally, and with specific reference to :

- the age of the vehicle;
- compliance with Australian Design Rules;
- the model designation; or
- any deposit, without specifying the full cash price.

### **Clause 31     Odometer reading**

It is an offence to make a false or misleading statement with respect to an odometer reading.



The licensed motor vehicle trader must inform prospective purchasers of any doubts about the accuracy of the reading, and record the odometer reading on the documents transferring ownership.

**Clause 32     Merchantable quality**

Requires that a licensed motor vehicle trader ensure that any motor vehicle sold is fit for the purpose for which such vehicles are commonly used.

**Clause 33     Selling motor vehicle as agent**

Provides that a licensed motor vehicle trader cannot sell or exchange a motor vehicle on consignment unless the owner of the vehicle appoints them in writing as their agent.

**The licensed motor vehicle trader must disclose to any prospective purchaser in writing that the vehicle is sold or exchanged on consignment.**

**Clause 34     Contract for sale, purchase or exchange of motor vehicle**

Provides that any contract for the sale, purchase or exchange of a motor vehicle must be in writing and contain:

- the conditions of sale, purchase or exchange;
- the total price to be paid;
- any changeover price resulting from a trade-in;
- any undertakings given in addition to any warranty;
- the statutory warranty contained in section 43;
- any additional warranties; and
- a copy of the pre-sale disclosure statement and any other prescribed documents.

This provision also applies to finance contracts agreements.

**Clause 35      Encumbrance**

Provides that a licensed motor vehicle trader must discharge any encumbrance (money owing) on a motor vehicle before it is offered for sale or exchange.

In order to find out whether the vehicle is encumbered, the trader must ask the person supplying the vehicle, and search the Register of Encumbered Vehicles.

**Clause 36      Clear title for used motor vehicle**

Provides that the motor vehicle trader must pass clear title to any vehicle sold or exchanged.

**Clause 37      Pre-sale disclosure requirements for used motor vehicles**

Provides that a pre-sale disclosure statement must be attached to any vehicle offered for sale or exchange.

*Division 2 – Obligations in respect of motor vehicle trader licence*

**Clause 38      Displaying licence**

Provides that the licensed motor vehicle trader and any licensed employee who is in charge of the place of business, must display a copy of their motor vehicle traders licence in a prominent position at the premises.

**Clause 39      Displaying licence number**

Provides that the motor vehicle trader licence number must be displayed on all:

- advertisements;
- pre-sale disclosure statements;

- contracts for sale;
- warranties; and
- any other prescribed documents.

**Clause 40     Unauthorised alteration of licence**

It is an offence to alter or deface a motor vehicle trader licence.

**Clause 41     Duty to notify of certain changes**

A motor vehicle trader must notify CAFT if they cease to be a fit and proper person to hold a motor vehicle trader s licence.

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

**Clause 42     Motor vehicles to which a statutory warranty applies**

Applies a statutory warranty to new and used motor vehicles offered for sale (other than commercial vehicles, motor cycles and scooters) if the vehicle has travelled less than 120,000 km, and was fitted with its compliance plate less than 7 years ago.

Applies a statutory warranty to new and used motor cycles and scooters offered for sale if they have travelled less than 15,000km, or were fitted with its compliance plate less than 3 years ago.

**Clause 43     Statutory warranty**

A licensed motor vehicle trader warrants that:

- the vehicle is fit for purpose;
- if new, the vehicle and all its parts are in working order;  
and
- if second hand, the vehicle and all its parts are in working order, except as specified in the pre-sale disclosure statement.

The statutory warranty and any additional warranties must be included in the contract of sale.

**Clause 44    Period of statutory or other warranty**

The statutory warranty takes effect on the day the purchaser takes delivery of the vehicle, and ceases to have effect after:

- 3 months;
- the vehicle has travelled 3000km;
- the vehicle is used for rally driving or racing;
- the vehicle is used as a taxi;
- the vehicle is repossessed by a finance provider;
- the vehicle is on-sold; or
- the odometer reading is altered after delivery; whichever occurs first.

**Clause 45    What the statutory warranty does not cover**

The statutory warranty does not cover:

- defects to brakes, clutch plate, tyre or battery;
- defects subject to a manufacturers recall;
- unauthorised repair;
- failure to maintain or service as recommended;
- misuse, immersion, overloading the vehicle;
- collision or damage;
- radiator freezing;
- racing;
- vehicle modification; or
- accessories.

**Clause 46    Repair under warranty**

A licensed motor vehicle trader must repair any defect in a warrantied vehicle at no cost to the purchaser if:

- there is no manufacturer's warranty or a claim for repair

has been refused by the manufacturer; and

- the claim for repair was made within 7 days of being discovered; or
- within 7 days of the manufacturer refusing to carry out repair.

Any repair must ensure that the vehicle is 'fit for purpose'.

## **PART 5 – INVESTIGATIONS AND INSPECTIONS**

### **Clause 47    Exercise of powers of authorised officers**

When conducting an investigation into alleged contravention of the Act, or to determine whether a person is a fit and proper person, authorised officers of CAFT are empowered to enter property, ask questions, and seize or copy documents and records

The powers of authorised officers are set out in the *Consumer Affairs Act 1988*. If entry to premises is refused, officers must obtain a warrant from a magistrate.

### **Clause 48    Authorised officer may give directions**

As part of an investigation, an authorised officer may give written directions to the licensed motor vehicle trader, with which the motor vehicle trader is obliged to comply (eg. that a motor vehicle trader stop breaching the Act).

### **Clause 49    Authorised officer to show identification**

An authorised officer must show identification if asked to do so.

### **Clause 50    Warrant to enter premises**

Where an authorised officer is refused entry to premises they may not enter until they have obtained a warrant.

**Clause 51      Offences in relation to an authorised officer**

A person may not threaten, obstruct, abuse or impersonating authorised officers.

**PART 6 – OFFENCES AND LEGAL PROCEEDINGS**

**Clause 52      False or misleading statements**

It is an offence to make a false or misleading statement when answering a question or providing documentation under the Act.

**Clause 53      Infringement Notice**

An infringement notice may be served on a person where an “infringement offence” has been committed. An “infringement offence” means an offence against this Act or the regulations, as prescribed.

**Clause 54      Injunction to stop or prevent contravention of Act**

Provides that the Director can apply to the Supreme Court for an order against a motor vehicle trader on the grounds that the trader is intending to contravene the Act, or has contravened the Act.

The Court may make relevant orders, including an order that the person stop carrying on the business of dealing in motor vehicles, permanently, or for a period of time.

**Clause 55      Rescission of contract**

A contract for the purchase of a vehicle can be rescinded (cancelled) during the statutory warranty period of three months, or an additional 14 days after the warranty period if:

- the motor vehicle trader made a false representation in relation to the odometer;
- the purchase contract did not contain the information required by the Act; or
- the motor vehicle differs substantially from the description in the pre-sale disclosure statement.

If the trader does not accept return of the vehicle and refund any monies paid, or come to another satisfactory arrangement with the purchaser, the purchaser may apply to the Magistrates Court for an order cancelling the contract. The purchaser must apply to the Court within 30 days of notifying the trader of the problem.

#### **Clause 56 Compensation when person convicted of an offence**

The Magistrates Court may order a motor vehicle trader to compensate the purchaser for:

- the cost of repairing a defect in the vehicle;
- any loss arising because the purchase contract did not meet the requirements of the Act; and
- costs associated with obtaining a Court order cancelling the purchase contract.

The Court may award these costs to the purchaser instead of *or in addition to* any penalty for breach of the Act.

#### **Clause 57 Compensation in civil proceedings**

Provides that a person may sue the motor vehicle trader for any loss they have suffered as a result of the motor vehicle trader breaching the Act.

#### **Clause 58 Liability of employee or agent**

If an employee of a licensed motor vehicle trader breaches the

Act the employee is liable for that breach.

**Clause 59     Vicarious liability**

Provides that if an employee or agent commits an offence, the employer or principle is also guilty of the offence.

It is a defence to show that the employer or principle could not have reasonably have prevented the employee's or agent's offence.

**Clause 60     Offence by body corporate**

If a body corporate commits an offence against the Act, each director and other person concerned in the management of the body corporate is personally liable, and the body corporate is liable.

It is a defence to show that the offence took place without the person's knowledge or consent, or the person used all due diligence to prevent the offence by the body corporate.

**Clause 61     Evidentiary matters**

Defines "interfering with an odometer" as altering the reading on the odometer or rendering it inoperative or inaccurate.

It is a defence to show that the motor vehicle trader could not have prevented the interference by exercising due diligence.

**PART 7 – MISCELLANEOUS**

**Clause 62     Regulations**

Sets out the matters that the Governor may make regulations about. These include fees payable, the content of forms, and the form and content of the pre-sale disclosure statement.



**Clause 63     Administration of Act**

The Act is administered by the Department of Justice.

**Clause 64     Consequential Amendments**

Legislation specified in Schedule 1 is amended as specified in that Schedule.

**Clause 65     Legislation rescinded**

Legislation specified in Schedule 2 is rescinded.

**Schedule 1    Consequential Amendments**

Amends the *Duties Act 2001* to provide that a grant of stamp duty exemption is automatic for holders of a motor vehicle traders licence issued under this Act.

**Schedule 2    Legislation rescinded**

Rescinds the following:

- *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*
- *Fair Trading (Code of Practice for Motor Vehicle Traders) Amendment Regulations 2000.*

**Notes**

The *Second-Hand Dealers and Pawn Brokers Act 1994* currently obliges traders in second hand motor vehicles to notify police if they intend to conduct business. If the Commissioner of Police considers that the trader is not a 'fit and proper' person the Commissioner can file an objection with the Magistrates Court.

The Act also provides in section 3(3) that the Minister for Justice may, by order published in the *Gazette*, exempt from the

operation of the Act persons who are engaged in a trade specified in the order.

Once the *Motor Vehicle Traders Act 2011* commences, motor vehicle traders will be exempted from the *Second-Hand Dealers and Pawnbrokers Act 1994* by order. That means they will not have to inform police of their intended business.

Note that the definition of “motor vehicle trader” is someone who sells or exchanges six or more “motor vehicles” in a 12 month period. If someone sells commercial vehicles second hand, or sells less than six vehicles in 12 months as a side line to their business, they may still be caught by the *Second-hand Dealers and Pawnbrokers Act*.