

Motor Car Traders (Amendment) Act 1996

Act No. 74/1996

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Victoria

No. 74 of 1996

Motor Car Traders (Amendment) Act 1996[†]

[Assented to 17 December 1996]

The Parliament of Victoria enacts as follows:

1. *Purpose*

The purpose of this Act is to amend the **Motor Car Traders Act 1986**—

- (a) to change the circumstances in which the statutory warranty relating to the sale of used cars by motor car traders applies; and
- (b) to increase the jurisdiction of the Small Claims Tribunal with respect to complaints concerning motor car traders; and

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- (c) to require all registered cars to be sold with a roadworthy certificate; and
 - (d) to enable offences under the Act to be dealt with by way of infringement notices; and
 - (e) to exempt licensed motor car traders who deal in used car parts from the licensing requirements of the **Second-Hand Dealers and Pawnbrokers Act 1989**; and
 - (f) to generally improve the operation of the Act.

2. Commencement

- (1) This section and section 1 come into operation on the day on which this Act receives the Royal Assent.
- (2) Section 13(2) comes into operation on a day to be proclaimed after 30 June 1997.
- (3) The remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (4) If a provision referred to in sub-section (2) or (3) does not come into operation on or before 1 July 1998, it comes into operation on that day.

3. Changes to definitions

- (1) In section 3(1) of the **Motor Car Traders Act 1986**—
 - (a) for the definition of "commercial vehicle" **substitute**—
 - ' **"commercial vehicle"** means—
 - (a) in relation to a motor car that was manufactured in, or imported into, Australia on or after 1 July 1988, a car—

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- (i) that is of a type that is classified as a goods carrying vehicle by the Department of Transport of the Commonwealth (or by any successor of that Department); and
 - (ii) that has a vehicle category code of MD, ME, NA, NB or NC (or any other code specified by the regulations for the purposes of this definition) stamped on its compliance plate (regardless of whether that code appears by itself or in combination with one or more numbers);
- (b) in relation to a motor car that was manufactured in, or imported into, Australia before 1 July 1988, a car constructed or adapted solely or mainly for—
- (i) the carriage of goods; or
 - (ii) the carriage of more than 10 passengers; or
 - (iii) industrial or agricultural use—
- and includes a car with a carrying capacity of 1200 kg or more, but does not include a car of a type commonly called a panel van, a station wagon or a utility;';
- (b) after the definition of "determination"
insert—
- ' "**director**", in relation to a body corporate, has the same meaning as in section 9 of the Corporations Law;';
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(c) after the definition of "hire-purchase agreement" **insert**—

' **"insolvent under administration"** means a person who is a bankrupt in respect of a bankruptcy from which the person has not been discharged and includes—

(a) a person who has executed a deed of arrangement under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) where the terms of the deed have not been fully complied with; and

(b) a person whose creditors have accepted a composition under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) where a final payment has not been made under that composition;

"licence" means a motor car trader's licence;

"licensed auctioneer" means a person who holds a current auctioneer's licence under the **Auction Sales Act 1958**;;

(d) after the definition of "owner" **insert**—

' **"prescribed"** means prescribed by this Act or the regulations;

"public auction" means an auction at which people other than licensed motor car traders may attend and bid;';

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(e) after the definition of "security interest"
insert—

' **"serious offence"** means an offence involving fraud, dishonesty, drug trafficking or violence punishable by imprisonment for 3 months or more;'

(2) For section 3(3)(e)(i) of the **Motor Car Traders Act 1986 substitute—**

"(i) whose last owner or user was a government department or a public statutory authority; or".

(3) After section 3(4) of the **Motor Car Traders Act 1986 insert—**

"(5) A reference to a person who is disqualified from holding a licence includes a reference to a person who is disqualified from holding a licence to act, or from acting, as a motor car trader in any State or Territory (regardless of whether or not motor car traders are referred to by that name in the relevant jurisdiction).

(6) A reference to a conviction for an offence includes a reference to—

(a) a finding of guilt in relation to the offence; and

(b) a conviction or finding of guilt in Australia or elsewhere.

(7) A reference to a date, code or other marking on a compliance plate, metal plate or metal component only refers to a date, code or marking stamped, engraved or otherwise placed on the plate or component in accordance with a law of the Commonwealth or of a State or Territory.

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- (8) A reference to a claim being admitted against the Fund includes a reference to a claim being admitted against the Motor Car Traders' Guarantee Fund established under the **Motor Car Traders Act 1973**.
- (9) A reference to a person includes a reference to a partnership, unless a contrary intention appears."

4. Insertion of section 7A

After section 7 of the **Motor Car Traders Act 1986** insert—

'7A. Deemed trading in motor cars

- (1) A person who buys, sells or exchanges, or offers to buy, sell or exchange, 4 or more motor cars in any period of 12 months (whether as a principal or as an agent) is deemed to be a motor car trader carrying on a business of trading in motor cars.
- (2) Sub-section (1) does not apply if the person can prove that she, he or it did not, in that period, carry on the business of trading in motor cars and did not hold herself, himself or itself out as carrying on the business of trading in motor cars.
- (3) In counting the number of motor cars bought, sold or exchanged by a person, any purchase, sale or exchange—
- (a) that is an exempt transaction for the purposes of the definition of "trading in motor cars" is not to be counted;
 - (b) that is from, to or with a licensed motor car trader is not to be counted.

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- (4) In counting the number of motor cars offered for purchase, sale or exchange by a person, any offer—
- (a) that would result in an exempt transaction for the purposes of the definition of "trading in motor cars" if it was to be accepted is not to be counted;
 - (b) that is made to a licensed motor car trader is not to be counted.
- (5) In this section an offer to sell includes an invitation to treat and the publishing (or authorising the publication) of an advertisement.
- (6) A person who buys, sells or exchanges less than 4 motor cars in any period of 12 months may still be a motor car trader carrying on a business of trading in motor cars, and nothing in this section is intended to interfere with that possibility.'

5. Insertion of section 11A

After section 11 of the **Motor Car Traders Act 1986** insert—

"11A. Authority may require further information

- (1) The Authority may ask a person who has applied for a licence for more information concerning the application if it is reasonably necessary to help it to decide whether to grant the application.
 - (2) The Authority may refuse to grant a licence to a person if she, he or it does not give it the extra information asked for within a reasonable time of being asked for the information.
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- (3) The period from when more information is asked for until when the information is supplied is not to be counted in calculating the 28 days referred to in section 13(2)."

6. Clarification of grounds on which licence objection may be made

- (1) In section 12 of the **Motor Car Traders Act 1986** before "If" **insert "(1)".**

- (2) At the end of the section 12 of the **Motor Car Traders Act 1986 insert—**

"(2) An objection may be made—

- (a) in respect of any of the matters listed in section 13(4) or (5), if the applicant is a natural person; and
- (b) in respect of any of the matters listed in section 13(6), if the applicant is a partnership or body corporate; and
- (c) on any other ground that is relevant to the issue of whether or not the applicant should be granted a licence."

7. Additional grounds of ineligibility for licences

- (1) In section 13(4) of the **Motor Car Traders Act 1986—**

- (a) for paragraphs (b) and (c) **substitute—**

"(b) the applicant is disqualified from holding a licence; or

- (c) the applicant is an insolvent under administration; or";

- (b) after paragraph (h) **insert—**

"; or

- (i) the applicant is not likely to maintain effective control of such a business; or

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- (j) the applicant is a director or officer of a corporation that is disqualified from holding a licence or was a director or officer of such a corporation when the corporation was disqualified; or
 - (k) the applicant is a represented person within the meaning of the **Guardianship and Administration Board Act 1986**; or
 - (l) the applicant has been convicted of a serious offence within the last 10 years (unless the applicant has obtained permission under section 29B); or
 - (m) the applicant has had a claim admitted against the Fund (unless the applicant has obtained permission under section 29A).".
- (2) In section 13(5) of the **Motor Car Traders Act 1986**—
- (a) after "sub-section (4)(g)" **insert** "or (6)(f)";
 - (b) for paragraphs (a), (b) and (c) **substitute**—
 - "(a) is an associate (within the meaning of section 13A) of a person who has, within the last 10 years, been convicted of a serious offence; or
 - (b) is an associate (within the meaning of section 13A) of a body corporate that has a director or secretary who has, within the last 10 years, been convicted of a serious offence; or
 - (c) was, at the time of the making of the determination, the subject of a charge pending in relation to a serious offence.".
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(3) After section 13(6)(j) of the **Motor Car Traders Act 1986** insert—

"; or

- (k) the partnership or body corporate is not likely to maintain effective control of such a business;
- (l) a partner or director of, or a person concerned in the management of, the partnership or body corporate—
 - (i) is a represented person within the meaning of the **Guardianship and Administration Board Act 1986**; or
 - (ii) has been convicted of a serious offence (unless she, he or it has obtained permission under section 29B); or
 - (iii) has had a claim admitted against the Fund (unless she, he or it has obtained permission under section 29A); or
 - (iv) is disqualified from holding a licence; or
- (m) the body corporate has been convicted of a serious offence (unless it has obtained permission under section 29B);
- (n) the partnership or body corporate has had a claim admitted against the Fund (unless it has obtained permission under section 29A)."

(4) In section 13(7) of the **Motor Car Traders Act 1986**—

- (a) for "or (h)" **substitute** ", (h) or (i)";
- (b) for "or (b)" **substitute** ", (b), (l), (m) or (n)".

(5) After section 13(10) of the **Motor Car Traders Act 1986 insert—**

"(11) Subject to this Act, a licence authorises the motor car trader to whom it has been granted to be, and to act, as a motor car trader until the licence is surrendered, suspended or cancelled."

8. Insertion of section 13A

After section 13 of the **Motor Car Traders Act 1986 insert—**

'13A. Meaning of "associate" in section 13

- (1) For the purposes of section 13(5), a natural person is an associate of another person if she or he—
- (a) is the spouse or defacto partner of that other person; or
 - (b) is a business partner of that other person or has entered into a business arrangement or relationship with that other person.
- (2) For the purposes of section 13(5), a natural person is an associate of a body corporate if she or he—
- (a) is a director or secretary of the body corporate or a spouse or defacto partner of such a director or secretary; or
 - (b) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in her or his own right or on behalf of any other person), in the business of the body corporate and thereby is able or will be able to exercise a significant influence over, or with respect to, the
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management or operation of that business; or

- (c) holds or will hold any relevant position (whether in her or his own right or on behalf of any other person) in the business of the body corporate.
- (3) For the purposes of section 13(5), a body corporate is an associate of a person if it—
- (a) is a business partner of that other person; or
 - (b) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in its own right or on behalf of any other person), in the business of the body corporate and thereby is able or will be able to exercise a significant influence over, or with respect to, the management or operation of that business.
- (4) In this section—

"relevant financial interest", in relation to a business, means—

- (a) any share in the capital of the business; or
- (b) any entitlement to receive any income derived from the business; or
- (c) any entitlement to receive any payment as a result of money advanced to the business;

"relevant position", in relation to a business, means the position of director, manager, secretary or other executive

position, however that position is designated;

"relevant power", in relation to a business, means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—

- (a) to participate in any directorial, managerial or executive decision in the business; or
- (b) to elect or appoint any person to any relevant position in the business.!

9. Changes concerning licence conditions

- (1) For section 14(1) of the **Motor Car Traders Act 1986** substitute—

"(1) The Authority may—

- (a) impose conditions that must be complied with before it grants a licence; and
- (b) on granting a licence, and at any other time, impose conditions or restrictions on a licence; and
- (c) at any time on the application of any person, or of its own motion, vary or revoke any of those conditions or restrictions."

- (2) After section 14(2) of the **Motor Car Traders Act 1986** insert—

"(3) Without limiting the generality of subsection (1), the Authority may require as a condition that the person who holds, or is to hold, the licence must provide the Authority

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with a guarantee or an indemnity in a form,
and secured in a manner, specified by the
Authority."

10. Insertion of section 15A

After section 15 of the **Motor Car Traders Act 1986** insert—

"15A. 2 year ban on applying for licence after refusal of application

- (1) If a person's application for a licence is refused by the Authority, the person is not entitled to lodge another application for a licence within 2 years after the refusal.
- (2) If the Authority is satisfied that there are special circumstances in a particular case, it may permit a person to lodge an application within 2 years after the refusal."

11. Each partner must give notice of partnership changes

- (1) In section 20(2) of the **Motor Car Traders Act 1986**, for "or a former member of the partnership" substitute "and each person who was a member of the partnership immediately before the change".
- (2) After section 20(2) of the **Motor Car Traders Act 1986** insert—

"(3) A former member of a partnership need not comply with sub-section (2) if she or he knows the partnership or another former member has already given written notice of the change to the Registrar."

12. Additional reason for a licence to be returned to the Registrar

After section 21(c) of the **Motor Car Traders Act 1986** insert—

- "; or
- (d) commences to carry on business at a place—".
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13. Substitution of sections 23 and 24

- (1) Sections 23 and 24 of the **Motor Car Traders Act 1986** are **repealed**.
- (2) After section 22 of the **Motor Car Traders Act 1986** insert—

"23. Annual licence fee and statement

- (1) A licensee must pay to the Authority the annual licence fee required by the regulations on each anniversary of the date the licensee was last issued a licence under section 13 (or under section 15 of the **Motor Car Traders Act 1973**).
 - (2) An annual licence fee may be paid at any time in the 6 weeks before it falls due.
 - (3) The payment must be accompanied by a statement in respect of the year up to the date that the payment is made that is in a form approved by the Authority and that is signed—
 - (a) by the licensee, if the licensee is a natural person; or
 - (b) if the licensee is a body corporate, by a director of the body corporate; or
 - (c) if the licensee is a partnership, by a partner.
 - (4) The statement must contain any information, and be accompanied by any documents, required by the Authority.
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24. *Extension of time*

- (1) On payment of any late fee required by the regulations, a person may apply to the Authority for an extension of time, or a further extension of time, in which to comply with section 23.
- (2) The Authority may grant the application if it is made before the date in relation to which the extension is sought.

24A. *Failure to comply with section 23*

- (1) If a licensee fails to comply with section 23, the Authority must give the licensee a written notice stating that unless the licensee complies with that section and also pays to the Authority the late payment or lodgement fee required by the regulations by the date specified in the notice, the licensee's licence will be cancelled.
- (2) The date specified in the notice must be at least 14 days after the date on which the notice is given to the licensee.
- (3) If the licensee has not complied with section 23 and paid the late payment or lodgement fee by the date specified in the notice, the licence is automatically cancelled."

14. *Surrendered licence must be returned to the Authority*

After section 27(2) of the **Motor Car Traders Act 1986** insert—

- "(3) The person who held a licence that has been surrendered must return the licence to the Authority within 14 days of surrendering it.
Penalty: 10 penalty units."
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15. Substitution of sections 28 and 29

For sections 28 and 29 of the **Motor Car Traders Act 1986** substitute—

"28. Automatic cancellation of licence on bankruptcy etc.

- (1) A licence is automatically cancelled if the licensee—
 - (a) becomes an insolvent under administration; or
 - (b) becomes an externally-administered body corporate within the meaning of the Corporations Law; or
 - (c) becomes a represented person within the meaning of the **Guardianship and Administration Board Act 1986**.
- (2) A licence is automatically cancelled 30 days after the licensee—
 - (a) is convicted of a serious offence; or
 - (b) is disqualified from holding a licence.
- (3) A licence is automatically cancelled if a partner of a licensee that is a partnership, or a director of a licensee that is a body corporate—
 - (a) is convicted of a serious offence or is disqualified from holding a licence; and
 - (b) is still a partner or director of the licensee 30 days after the conviction or disqualification.
- (4) If a person whose licence would otherwise be cancelled by sub-section (2)(a) or (3)(a) applies for permission under section 29B or 29C within the 30 day period referred to in

that sub-section, the person's licence is only automatically cancelled if the application is withdrawn or is refused by the Authority.

29. *Automatic suspension of licence if Fund claim upheld*

- (1) A licence is automatically suspended 30 days after a claim is admitted against the Fund in relation to the licensee.
- (2) If a person whose licence would otherwise be suspended by this section applies for permission under section 29A before the suspension takes effect, the person's licence is only automatically suspended if the application is withdrawn or is refused by the Authority.
- (3) This section does not apply if the circumstances giving rise to a claim occurred before section 15 of the **Motor Car Traders (Amendment) Act 1996** came into operation.

29A. *Person involved in Guarantee Fund claim may regain licence etc. in special circumstances*

- (1) This section applies to a person in relation to whom a claim has been admitted against the Fund.
 - (2) The person may apply to the Authority—
 - (a) to prevent a suspension under section 29 from taking effect or for the removal of a suspension under that section; or
 - (b) for permission to hold, or to continue to hold, a licence; or
 - (c) for permission to be employed as an employee of a motor car trader in a
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- customer service capacity (within the meaning of section 35A); or.
- (d) for permission to be a partner or director of, or a person concerned in the management of, a motor car trader.
- (3) The Authority may grant the application if it is satisfied—
- (a) that either—
- (i) the person has refunded all amounts paid out of the Fund in respect of the claim; or
- (ii) the person has agreed to refund all amounts paid out of the Fund in respect of the claim; and
- (b) that having regard to the conduct of the person before and after the claim, there is no reasonable expectation that the person will not comply with this Act and the regulations in future; and
- (c) that the granting of the application is not contrary to the public interest.

29B. *Person with criminal record may be allowed limited right to hold licence etc.*

- (1) This section applies to a person who has been convicted of a serious offence within the last 10 years.
- (2) The person may apply to the Authority for permission—
- (a) to hold, or to continue to hold, a licence; or

- (b) to be employed as an employee of a motor car trader in a customer service capacity (within the meaning of section 35A); or
 - (c) to be a partner or director of, or a person concerned in the management of, a motor car trader.
- (3) The Authority may give its permission if it is satisfied that it is not contrary to the public interest for it to do so.

29C. *Permission to continue to hold licence despite criminal act of partner or director*

- (1) This section applies if a licensee is a partnership or a body corporate and a partner or a director of the licensee is convicted of a serious offence.
- (2) The licensee may apply to the Authority for permission to continue to hold its licence.
- (3) The Authority may give its permission if it is satisfied that it is not contrary to the public interest for it to do so.

29D. *Authority may impose conditions*

- (1) In granting an application under section 29A, 29B or 29C, the Authority may impose any conditions it considers appropriate to ensure the ongoing protection of the public interest.
 - (2) After giving the person in respect of whom permission was given a chance to be heard, the Authority may at any time impose conditions in respect of the permission or vary or revoke any conditions it has previously imposed.
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- (3) A person to whom permission has been given must comply with any conditions imposed in respect of the permission.

Penalty: 25 penalty units.

- (4) After giving the person in respect of whom permission has been given a chance to be heard, if the Authority is satisfied that any condition imposed in respect of the permission has been contravened or not complied with, it may revoke the permission."

16. *Substitution of section 30*

For section 30 of the **Motor Car Traders Act 1986** substitute—

"30. *Disciplinary action*

- (1) The Authority must conduct an inquiry as to whether there is proper cause for taking disciplinary action against a licensee if the Director or the Chief Commissioner of Police applies in writing for the inquiry.
- (2) There is proper cause for taking disciplinary action against a licensee if—
- (a) the licensee improperly obtained her, his or its licence; or
 - (b) the licensee has failed to comply with this Act or the regulations; or
 - (c) the licensee does not have, or is not likely to have, sufficient financial resources to enable the licensee to continue carrying on the business to which the licence relates; or

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- (d) the licensee's motor car trading business is being carried on in a dishonest, unfair or inefficient manner; or
 - (e) the licensee or a partner, director or officer of the licensee has engaged in discreditable conduct; or
 - (f) the licensee or a partner or director of the licensee or a person concerned in the management of the licensee is not, or has ceased to be, a fit and proper person to be a licensee or a partner or director of a licensee; or
 - (g) the premises of the licensee are not suitable to carry on the business of trading in motor cars; or
 - (h) the effective control of the business to which the licence relates is not, or is unlikely to remain, with the licensee; or
 - (i) the licensee would be refused a licence under section 13(4) or (6) for any other reason if the licensee were to apply for a new licence.
- (3) If an application for an inquiry is lodged, the Registrar must—
- (a) send a copy of the application to the licensee; and
 - (b) advise the licensee and the person making the application in writing of when and where the inquiry will be held.
- (4) An inquiry must not start within 30 days of the date the application for the inquiry is lodged unless—
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- (a) the person who lodged the application, or the licensee, applies to the Authority for the inquiry to be started within that time; and
 - (b) the Authority is satisfied that there are exceptional circumstances.

30A. *Authority may temporarily suspend insolvent etc. trader without hearing*

- (1) If an application for an inquiry includes a ground based on section 30(2)(c), the Director may apply to the Authority in writing for the temporary suspension of the licensee's licence.
- (2) The Chairperson of the Authority or a Deputy Chairperson may suspend the licence for a period of up to 14 days if she or he is satisfied that there are grounds for believing that the licensee does not have sufficient financial resources to enable the licensee to continue carrying on the business to which the licence relates.
- (3) The Chairperson or Deputy Chairperson may suspend the licence without giving the licensee a chance to be heard and even though the licensee has not been given notice of either application.
- (4) If the Chairperson or a Deputy Chairperson considers an application under this section, she or he must not take part in the related inquiry under section 30.
- (5) The Authority may—
 - (a) continue a suspension imposed under sub-section (3) until the end of the inquiry; or

- (b) re-impose (from a date specified by the Authority) a suspension on a licence formerly suspended under sub-section (3) until the end of the inquiry; or
 - (c) revoke a suspension imposed under sub-section (3).
- (6) The Registrar must notify the licensee in writing of any suspension imposed under this section as quickly as possible."

17. Changes concerning the Authority's disciplinary powers

- (1) For sections 31(1) and (2) of the **Motor Car Traders Act 1986** substitute—

"(1) After conducting an inquiry, if the Authority is satisfied that proper cause for taking disciplinary action against a licensee exists, the Authority may do one or more of the following—

- (a) reprimand the licensee;
 - (b) order the licensee to pay the Authority a penalty of up to \$5 000;
 - (c) require the licensee to comply within, or for, a specified time with a requirement specified by the Authority;
 - (d) suspend the licensee's licence for a specified period not exceeding 1 year;
 - (e) require the licensee or former licensee to pay the costs of the inquiry and any related costs;
 - (f) impose a condition or restriction on the licensee's licence;
 - (g) if the cause for taking disciplinary action involved one or more people
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losing money, order the licensee to pay compensation to one or more of those people, but not so that the total amount the licensee must pay under this paragraph is more than \$5 000.

- (2) As an alternative to taking action under one or more of sub-sections (1)(a), (b), (c), (d) and (f), the Authority may cancel the licensee's licence and disqualify the licensee (and any partner or director of the licensee) from holding a licence either permanently or for a specified period.
- (2A) If the Authority orders the payment of an amount under sub-section (1)(b), (e) or (g)—
- (a) it may order that the amount be paid by a specified date; and
 - (b) if the amount is not paid by that date, it may suspend the licence until the amount is paid and set a final payment date; and
 - (c) if the amount has not been paid by that final payment date, it may cancel the licence; and
 - (d) it may extend any period of time it sets under paragraph (a) or (b) at any time.
- (2B) The Authority may suspend or cancel a licence under sub-section (2A) without giving the licensee a chance to be heard."
- (2) In section 31(4) of the **Motor Car Traders Act 1986**, after "requirement within" **insert** ", or for,".

18. Insertion of sections 31A and 31B

After section 31 of the **Motor Car Traders Act 1986 insert**—

"31A. *Effect of suspension*

A person whose licence has been suspended is to be treated as a person who does not hold a licence while the licence is suspended, except for the purposes of sections 23, 24, 24A and 27.

31B. *Suspended and cancelled licences must be returned*

- (1) If the Authority suspends or cancels a licence, the person to whom the licence was issued must return the licence to the Authority within the period specified by the Authority by notice in writing given to the person.

Penalty: 25 penalty units.

- (2) If a licence is automatically suspended or cancelled under this Act, the person to whom the licence was issued must return the licence to the Authority within 7 days of becoming aware of the suspension or cancellation.

Penalty: 25 penalty units."

19. *Changes concerning applications to the AAT*

In section 32 of the **Motor Car Traders Act 1986**, for "24" substitute "29A, 29B, 29C, 29D".

20. *Substitution of section 33*

For section 33 of the **Motor Car Traders Act 1986** substitute—

"33. *Disability etc. of licensee*

- (1) The following people may carry on the motor car trading business of a person who was a

licensed motor car trader for 30 days after the person ceases to be licensed—

- (a) if the person dies, the executor named in the person's will or the administrator of the person's estate or any person who intends applying for letters of administration in relation to the person's estate;
 - (b) if the person becomes an insolvent under administration, the assignee, trustee or receiver of the person;
 - (c) if the person becomes a represented person within the meaning of the **Guardianship and Administration Board Act 1986**, the guardian or administrator of the person or any person nominated by the guardian or administrator;
 - (d) if the person becomes an externally-administered body corporate within the meaning of the Corporations Law, the liquidator, official manager, receiver, receiver and manager or other external administrator.
- (2) If a person authorised to carry on a business applies to the Authority within the 30 day period for permission to carry on the business for a longer period, the person may continue to carry on the business until the Authority makes a decision on the application.
- (3) The Authority may grant an application if it is satisfied that it is not contrary to the public interest to do so.

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- (4) In granting its permission, the Authority may limit it in any way it thinks appropriate and may impose any conditions it thinks appropriate to ensure the ongoing protection of the public interest.
- (5) The Authority may at any time withdraw any permission it has granted under this section or limit, or impose, revoke or vary conditions on, any such permission.
- (6) A person who has been granted permission under this section must comply with any limitation or condition that applies to the permission.
Penalty: 50 penalty units.
- (7) A person who carries on a motor car trading business under this section is deemed to be the holder of the former licensee's licence for the purposes of this Act."

21. *Insertion of section 33A*

After section 33 of the **Motor Car Traders Act 1986** insert—

"33A. *Injunction to stop unlicensed trading*

- (1) The Director may apply to the Magistrates' Court for an order requiring a person to stop trading in motor cars.
- (2) The Magistrates' Court may make the order if it is satisfied that the person is trading in motor cars and is not authorised to do so under this Act."

22. *Changes concerning the dealings book*

After section 35(7) of the **Motor Car Traders Act 1986** insert—

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- "(8) If a dealings book is kept in an electronic or mechanical form—
- (a) for the purposes of sub-section (2), the motor car trader must ensure—
 - (i) that the entries relating to a transaction are copied on to paper; and
 - (ii) that the paper is then signed as prescribed; and
 - (iii) that all such papers are stored together;
 - (b) it is sufficient compliance with sub-section (4) if—
 - (i) the prescribed particulars on the receipt are recorded as soon as is practicable in the dealings book; and
 - (ii) the receipt is placed with the papers stored for the purposes of sub-section (2)."

23. Insertion of sections 35A and 35B

After section 35 of the **Motor Car Traders Act 1986** insert—

'35A. Prohibited employees

- (1) A motor car trader must not employ in any customer service capacity in connection with her, his or its business any person who the motor car trader knows—
 - (a) has had a claim admitted against the Fund (unless the person has obtained permission under section 29A);

- (b) has, within the last 10 years, been convicted of a serious offence (unless the person has obtained permission under section 29B);
- (c) is for the time being disqualified from holding a licence;
- (d) is for the time being disqualified from being employed in any capacity in connection with the business of a motor car trader (regardless of whether or not motor car traders are referred to by that name in the relevant jurisdiction);
- (e) has had her or his last application for a licence refused by the Authority for any other reason.

Penalty: 100 penalty units.

- (2) A person who is not permitted to be employed in a customer service capacity by a motor car trader by this section must not participate in a customer service capacity in the business of a motor car trader.

Penalty: 100 penalty units.

- (3) In this section "**customer service capacity**" means any position that requires the holder of the position to deal with members of the public who are buying, selling or exchanging motor cars or who are seeking to buy, sell or exchange motor cars.

35B. *Transitional provision concerning existing employees*

- (1) Section 35A does not apply to any person who was employed by a motor car trader immediately before section 23 of the **Motor**

Car Traders (Amendment) Act 1996 came into operation.

- (2) However, sub-section (1) ceases to apply to a person if, as a result of an event occurring after section 23 of the **Motor Car Traders (Amendment) Act 1996** came into operation, sub-section (1) becomes the only reason the person is still eligible to be employed by a motor car trader.'

24. Substitution of section 36

For section 36 of the **Motor Car Traders Act 1986** substitute—

'36. Consignment selling prohibited

- (1) In this section "**sell a motor car by consignment**" means to sell, exchange or otherwise dispose of a motor car, or any interest in a motor car, as an agent for a person who is not a licensed motor car trader or a special trader.
- (2) A motor car trader must not—
- (a) sell a motor car by consignment, or offer to sell a motor car by consignment; or
 - (b) have a motor car in her, his or its possession for the purpose of selling it by consignment.

Penalty: 100 penalty units.

- (3) On finding a motor car trader guilty of an offence against this section, in addition to any other penalty a court may impose, the court may order the motor car trader to pay the person on whose behalf the motor car was sold all of the proceeds of the sale by consignment.

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- (4) This section does not apply to sales at public auction.'

25. Changes concerning odometer tampering

(1) In section 38 of the **Motor Car Traders Act 1986**—

(a) in sub-sections (1) and (2), **omit** "with intent to deceive";

(b) for the penalty at the foot of sub-section (1) **substitute**—

"Penalty: In the case of a natural person—
240 penalty units or
imprisonment for 2 years or both.

In the case of a body corporate—
1000 penalty units.";

(c) in sub-section (3), for "motor car trader" (wherever occurring) **substitute** "person charged".

(2) After section 38(3) of the **Motor Car Traders Act 1986** **insert**—

"(4) A person must not, in the course of selling or exchanging a motor car, falsely represent the accuracy of an odometer reading of the car.

Penalty: In the case of a natural person, 100 penalty units.

In the case of a body corporate,
500 penalty units."

26. Insertion of section 42A

After section 42 of the **Motor Car Traders Act 1986** **insert**—

'42A. All registered cars must be sold with a roadworthy certificate

(1) A person must not sell a motor car that is registered under the **Road Safety Act 1986**

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unless the person gives the buyer of the car a current certificate of roadworthiness in relation to the car.

Penalty: 50 penalty units.

- (2) This section does not apply if the buyer is a licensed motor car trader or a special trader.
- (3) This section does not apply to a motor car that is sold at a public auction by a licensed auctioneer acting on behalf of the owner of the car.
- (4) In this section "**current**" means issued within the last 30 days.
- (5) Despite anything to the contrary under the **Road Safety Act 1986**, for the purposes of sub-section (1) a reference to "a motor car that is registered under the **Road Safety Act 1986**"—
 - (a) includes a reference to a car the registration of which has been suspended under that Act; but
 - (b) does not include a reference to a car the registration of which has expired and that has not been renewed on or before the day the car is sold!.

27. Clarification concerning cooling-off period

- (1) In section 43(1) of the **Motor Car Traders Act 1986**, omit "business".
 - (2) After section 43(1) of the **Motor Car Traders Act 1986** insert—
 - "(1A) For the purposes of sub-section (1), a clear day does not include any day that is—
 - (a) a Saturday or a Sunday; or
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- (b) a day that is wholly or partly observed as a public holiday throughout Victoria."

28. *Prohibition of arbitrary ending of sale clauses to apply to all cars*

In section 44 of the **Motor Car Traders Act 1986**, omit "used".

29. *Changes concerning recission orders*

(1) In section 45 of the **Motor Car Traders Act 1986**—

- (a) in sub-section (1)(c), for "prescribed notice" **substitute** "notice required by section 52(1)";
- (b) in sub-section (2), for "\$20 000" **substitute** "\$40 000".

(2) After section 45(4) of the **Motor Car Traders Act 1986** insert—

"(5) If a person applies for an order under this section, the person is not eligible to make a claim under section 76 in respect of any loss that relates to the circumstances giving rise to the application for the order until the application has been heard and determined.

(6) The amendment made by section 29 of the **Motor Car Traders (Amendment) Act 1996** increasing the limit in sub-section (2) from \$20 000 to \$40 000 only applies to agreements entered into on or after the date that section came into operation."

30. *Insertion of sections 50A and 50B*

After section 50 of the **Motor Car Traders Act 1986** insert—

"50A. Offence to aid or abet an unlicensed trader

- (1) A person must not—
- (a) in the course of carrying on a business, provide any person who is not a licensed motor car trader with motor cars that the person knows are likely to be disposed of in a manner that constitutes trading in motor cars by the unlicensed person; or
 - (b) in any other way cause or permit or aid or abet any person who is not a licensed motor car trader to carry on business as a motor car trader.
- (2) In any proceedings against a licensee for an offence under sub-section (1)(b), proof that an unlicensed person—
- (a) had possession of the licensee's licence; or
 - (b) represented herself, himself or itself as the holder of the licensee's licence with the knowledge of the licensee—
- is evidence that the licensee permitted the unlicensed person to carry on business as a motor car trader.
- (3) It is a defence to a charge against a licensee under sub-section (1)(b) if the licensee shows—
- (a) that she, he or it took all reasonable steps to prevent an unlicensed person from carrying on business under her, his or its licence; or
 - (b) that she, he or it did not know, and could not reasonably have been
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expected to know, that the unlicensed person was representing herself, himself or itself as the holder of the licensee's licence.

- (4) The Director, an inspector or a member of the police force may give a written notice to a person stating that, in the opinion of the author of the notice, motor cars are likely to be disposed of in a manner that constitutes trading in motor cars by an unlicensed person if motor cars are provided to the unlicensed person.
- (5) A person has the knowledge referred to in sub-section (1)(a) if, at any time before providing particular motor cars, she, he or it was given a notice under sub-section (4).
- (6) If a licensee is convicted of an offence against this section, her, his or its licence is automatically cancelled—
- (a) 30 days after the conviction; or
 - (b) if the licensee appeals against the conviction under section 83 or 92 of the **Magistrates' Court Act 1989** within 30 days of the conviction—
 - (i) on the day after the appeal is abandoned; or
 - (ii) on the day after the appeal is dismissed or struck out.
- (7) In addition to any other penalty a court may impose on finding a licensee guilty of an offence against this section, the court may order that the licensee be disqualified from holding a licence either permanently, or for a specified period.

50B. *Right to sue providers of motor cars to unlicensed traders*

- (1) This section applies if—
 - (a) a person provides an unlicensed person trading in motor cars with motor cars; and
 - (b) before providing those cars, the person was given a notice under section 50A(4); and
 - (c) another person suffers loss arising out of any act or omission by the unlicensed person in relation to those cars.
- (2) If the other person—
 - (a) is refused payment of a claim made under section 76 in respect of the loss; and
 - (b) is not a motor car trader—

she, he or it has a right of action against the person who provided the unlicensed person with the cars for damages in respect of the loss in so far as it involved those cars.
- (3) If the other person is paid any money out of the Fund in respect of the loss, the person who provided the unlicensed person with the cars is jointly and severally liable with the unlicensed person to reimburse the amount of that payment to the Fund."

31. *Changes to the mandatory statutory warranty for used cars*

- (1) For sections 54(1) and (2) of the **Motor Car Traders Act 1986 substitute**—

"(1) This section applies if a motor car trader sells a used motor car to a person and the car—
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- (a) was manufactured not more than 10 years before the date it is sold; and
 - (b) has been driven for less than 160 000 kilometres.
 - (2) The warranty set out in sub-section (2A) is a part of the sale contract.
 - (2A) The motor car trader warrants that if a defect appears in the motor car before the end of the warranty period, the motor car trader at her, his or its own expense—
 - (a) will arrange for the car to be taken to a place where it can be repaired or made good; and
 - (b) will repair or make good, or cause to be repaired or made good by another motor car trader or by a qualified repairer, the defect so as to place the car in a reasonable condition having regard to its age.
 - (2B) The warranty period is whichever of the following periods is the shorter—
 - (a) the period from when the car is delivered to the person buying it until it has been driven for a further 5000 kilometres; or
 - (b) the period of 3 months from the day after the car is delivered to the person buying it.
 - (2C) A motor car trader who offers or displays for sale a used motor car to which this section will not apply if the car is sold must ensure that there is attached to the car a notice in the form required by the regulations stating that the car is sold without any obligation under
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this Act to repair or make good any defects that the car may have."

- (2) In section 54 of the **Motor Car Traders Act 1986**—
- (a) in sub-section (3), for "(1)(a)(ii) or (b)(ii)" **substitute** "(2B)(b)";
 - (b) in sub-section (4), for "Sub-section (1)" **substitute** "The warranty imposed by this section";
 - (c) for sub-section (4)(a) **substitute**—
"(a) excluded from the operation of this section by section 55; or";
 - (d) sub-section (4)(e) is **repealed**;
 - (e) for sub-section (5)(b) **substitute**—
"(b) the sale of a motor car to another motor car trader or to a special trader;"
- (3) For section 54(7) of the **Motor Car Traders Act 1986 substitute**—
- (7) This section does not apply to a motor car that is sold at a public auction by a licensed auctioneer acting on behalf of the owner of the car.
 - (8) For the purposes of this section, the date of manufacture of a motor car is—
 - (a) if the car has affixed to it a metal plate, or has stamped on one of its metal components, "Built" or "Built Date" together with a date, that date; or
 - (b) in any other case, the date stamped on the car's compliance plate.
 - (9) If a date referred to in sub-section (8) only refers to a month in a particular year, the date
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of manufacture is to be taken to be the first day of the next month.

- (10) For the purposes of this section and section 55, a motor car has a defect if one or more of its components—
- (a) is no longer in proper working condition having regard to its likely age or the number of kilometres it has travelled; or
 - (b) is defective to the extent that the car is unroadworthy or is not able to be driven.

(11) This section as amended by section 31 of the **Motor Car Traders (Amendment) Act 1996** does not apply to any motor car sold before the day that section came into operation.¹

- (4) In section 55(2) of the **Motor Car Traders Act 1986**, for "section 54(1)" substitute "the warranty imposed by section 54".

32. Extension of grounds for Guarantee Fund claims

- (1) After section 76(1)(d) of the **Motor Car Traders Act 1986** insert—

"; or

- (e) loss has been incurred from a failure of a motor car trader to remit money paid to the motor car trader as a premium or purchase price for an insurance policy or warranty to the person who was to provide the insurance or warranty; or
- (f) loss has been incurred from a failure of a motor car trader to satisfy—
 - (i) a court order; or

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- (ii) an order of the Small Claims Tribunal;
or
- (iii) an order made by the Authority under
section 31(1)(g)—

arising from the motor car trader's trading in
motor cars."

(2) After section 76(2) of the **Motor Car Traders
Act 1986 insert—**

"(3) A claim under sub-section (2) must be made
in the form required by the regulations and
must be verified by a statutory declaration.

(4) If—

- (a) a special trader who is a financier has
registered a security interest (other than
an inventory security interest) in a
motor car under the **Chattel Securities
Act 1987**; and
- (b) a person sells the car to a licensed
motor car trader; and
- (c) the sale agreement requires the motor
car trader to remit some or all of the
purchase price to the special trader; and
- (d) the motor car trader fails to remit the
agreed amount to the special trader; and
- (e) the motor car trader fails to procure the
cancellation of the security interest in
the car in accordance with section 48—

the Committee must ensure that the total
amount that it authorises to be paid in
relation to any claims made in relation to the
failures described in paragraphs (d) and (e)
does not exceed the lesser of either the
amount the motor car trader should have

remitted to the special trader or the amount prescribed for the purposes of section 77(4).

- (5) Sub-sections (1)(e) and (f) do not apply to any losses incurred before the date section 32 of the **Motor Car Traders (Amendment) Act 1996** came into operation."

33. Changes concerning the admittance or refusal of Guarantee Fund claims

- (1) Sections 77(2) and (3) of the **Motor Car Traders Act 1986** are repealed.

- (2) After section 77(4) of the **Motor Car Traders Act 1986** insert—

"(5) A certificate issued by the Committee is evidence of the matters stated in the certificate."

34. Changes concerning subrogation of claims

In section 80 of the **Motor Car Traders Act 1986**—

- (a) before "Upon" insert "(1)";

- (b) at the end of the section insert—

"(2) If a right conferred by sub-section (1) applies in respect of a body corporate, it is enforceable jointly and severally against the body corporate and the people who were its directors at the time the act or omission that gave rise to the claim occurred.

- (3) Sub-section (2) does not apply to a director if it is proved that the act or omission occurred without the knowledge or consent of the director.

- (4) A reference in sub-section (1) to the rights of the claimant includes any right

the claimant may have under section 86 of the **Sentencing Act 1991**."

35. Changes to Part headings

- (1) For the heading to Part 6 of the **Motor Car Traders Act 1986** substitute—

"PART 5A—ENFORCEMENT PROVISIONS

Division 1—General".

- (2) Before section 83 of the **Motor Car Traders Act 1986** insert—

"PART 6—MISCELLANEOUS".

36. Changes concerning inspection powers

- (1) In section 82(1) of the **Motor Car Traders Act 1986**—

- (a) paragraph (a) is **repealed**;
(b) for paragraph (c) **substitute**—

"(c) any member of the police force with such other assistance as the member requires—".

- (2) After section 82(2) of the **Motor Car Traders Act 1986** insert—

"(3) The powers conferred by this section on a person are not intended to limit any other powers the person may have."

37. Insertion of sections 82A-82H

After section 82 of the **Motor Car Traders Act 1986** insert—

'82A. *Authority may require licensee to supply information*

- (1) The Authority may require a licensee to give it any information that it requires to enable it to carry out its functions.
- (2) A licensee must comply with any requirement made under sub-section (1).
Penalty: 50 penalty units.
- (3) Sub-section (2) applies even if the giving of the information might tend to incriminate the person.
- (4) However, if before giving any information a natural person claims that the information might tend to incriminate herself or himself, the information is not admissible in evidence against the person in criminal proceedings, other than proceedings in respect of the falsity of the information.

82B. *Verification of details supplied to the Authority*

The Authority may specify how any information supplied to it under this Act is to be verified, and without limiting the scope of this power, may require that the information be supplied in the form of, or be verified by, a statutory declaration.

82C. *Extended time for prosecutions*

Despite anything to the contrary in any Act, a proceeding for an offence against this Act may be commenced within 3 years after the date on which the offence is alleged to have been committed.

Division 2—Infringement Notices

82D. Power to serve a notice

- (1) An authorised officer may serve an infringement notice on any person that she or he has reason to believe has committed an offence specified by the regulations as an offence in respect of which an infringement notice may be issued.
- (2) In this Division "**authorised officer**" means—
 - (a) an inspector under the **Consumer Affairs Act 1972**;
 - (b) a member of the police force;
 - (c) a person authorised in writing by the Director.

82E. Form of notice

An infringement notice must be in a form approved by the Director and must set out—

- (a) the date of the notice;
 - (b) the provision of this Act or the regulations that creates the offence;
 - (c) the date, time and place of the offence;
 - (d) the nature of the offence and a brief description of the offence;
 - (e) the infringement notice penalty for the offence set out in the regulations;
 - (f) how the infringement notice penalty may be paid;
 - (g) the time (not being less than 28 days after the date on which the notice is
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served) within which the infringement notice penalty must be paid;

- (h) that if the infringement notice penalty is paid before the end of that time, the matter will not be brought before the Magistrates' Court unless the notice is withdrawn within 28 days after the date on which it was served;
- (i) any other details required by the regulations.

82F. *Late payment of penalty*

If a charge has not been filed, and a courtesy letter has not been served, under Part 2 of Schedule 7 to the **Magistrates' Court Act 1989** in respect of the offence, the authorised officer may accept payment of the infringement notice penalty even if the time specified in the notice as the time within which the penalty may be paid has expired.

82G. *Withdrawal of notice*

- (1) The Director may withdraw an infringement notice within 28 days after it was served by serving a withdrawal notice on the person on whom the infringement notice was served.
- (2) If the penalty sought in the infringement notice has been paid before the notice is withdrawn, the Director must refund the amount of the penalty on withdrawing the notice.
- (3) Proceedings for the offence in respect of which an infringement notice has been served may still be taken or continued despite the withdrawal of the notice.

82H. Further proceedings concerning infringement notices

- (1) Subject to section 82G, if the penalty sought in an infringement notice is paid within the time specified in the notice or if the authorised officer accepts the payment of the penalty under section 82F, then—
 - (a) no further proceedings concerning the offence may be taken against the person on whom the notice was served; and
 - (b) no conviction is to be recorded against that person for the offence.
 - (2) If proceedings are taken against a person in respect of an offence for which an infringement notice was served on the person and a court finds the person guilty of the offence, the finding is not to be taken as a conviction for any purpose except—
 - (a) the making of the finding itself; and
 - (b) any later proceedings that may be taken in respect of the finding itself (including proceedings by way of appeal or review).
 - (3) Sub-section (2) does not apply to proceedings taken after the withdrawal of an infringement notice.
 - (4) The payment of a penalty sought by an infringement notice is not and must not be taken to be—
 - (a) an admission of guilt in relation to the offence in respect of which the notice was issued; or
 - (b) an admission of liability for the purpose of any civil claim or proceeding arising
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out of the same occurrence, and the payment does not in any way affect or prejudice any such claim or proceeding.

- (5) Nothing in this section prevents the Authority from conducting an inquiry under section 30 and taking disciplinary action under section 31 against a person for any act or omission for which an infringement notice was issued.!

38. Insertion of sections 83A-83D

After section 83 of the **Motor Car Traders Act 1986** insert—

"83A. Records must be held for 7 years

A motor car trader must retain for at least 7 years any document that she, he or it is required to keep by this Act or the regulations.

Penalty: 50 penalty units.

83B. Offence to destroy documents required by the Act

- (1) A motor car trader must not destroy, conceal, mutilate or alter any document that she, he or it is required to keep by this Act or the regulations.

Penalty: 240 penalty units or imprisonment for 2 years or both.

- (2) It is a defence to a charge under sub-section (1) if the person charged can show that the destruction, concealment, mutilation or alteration of the document was not done with the intention of defeating the purposes of this Act.

83C. *Motor car traders must supply copies of agreements etc.*

- (1) A motor car trader must give a person who buys, sells or exchanges a motor car from, to or with the motor car trader a copy of any document listed in the regulations for the purposes of this section as soon as is practicable after the purchase, sale or exchange.

Penalty: 50 penalty units.

- (2) This section does not apply if the person who buys, sells or exchanges the car from, to or with the motor car trader is a licensed motor car trader or a special trader.

83D. *Complaints concerning motor car trader are privileged*

If a person—

- (a) lodges a complaint with the Authority or the Committee; or
(b) produces or gives a document or any information or evidence to the Authority or the Committee—

the person is not liable in any way for any loss, damage or injury suffered by another person by reason only of the lodging of that complaint or the production or giving of that document, information or evidence."

39. *Changes concerning false or misleading statements*

- (1) After section 84A(1)(c) of the **Motor Car Traders Act 1986** insert—

"; or

(d) any document required by this Act or by the Authority—".

(2) After section 84A(2)(b) of the **Motor Car Traders Act 1986** insert—

"—

and the person notified the Authority of the false or misleading matter or omission as soon as the person became aware of it."

(3) Section 10 of the **Motor Car Traders Act 1986** is **repealed**.

40. Substitution of section 86

For section 86 of the **Motor Car Traders Act 1986** substitute—

"86. Service of notices

A person may give to, or serve on, another person a notice or a copy of a notice under this Act—

- (a) by delivering it personally to the other person; or
- (b) by sending it by post addressed to the other person's last known place of residence or business."

41. Insertion of sections 88A and 88B

After section 88 of the **Motor Car Traders Act 1986** insert—

"88A. Agreement not illegal etc. by reason of offence

- (1) An agreement for the purchase or sale of a motor car is not illegal, void or unenforceable by reason only that the motor

car trader with whom the agreement is made is guilty of an offence under this Act or the regulations in relation to the agreement.

- (2) If a motor car trader commits an offence under this Act or the regulations in relation to an agreement for the purchase or sale of a motor car, the other party to the agreement does not aid, abet, counsel or procure the offence by reason only of being, or having been, a party to the agreement.
- (3) This section only applies to agreements entered into after the date section 41 of the **Motor Car Traders (Amendment) Act 1996** came into operation.

88B. *Agreement voidable if section 37, 38, 41 or 42 breached*

- (1) A person may withdraw from an agreement with a motor car trader to buy or sell a motor car if—
 - (a) the agreement does not comply with section 37, 41 or 42 or if the motor car trader has committed an offence under section 38 in relation to the car; and
 - (b) the car is still in the possession of the person or the motor car trader.
 - (2) A person may only do this within 3 months of the date the agreement was signed.
 - (3) To withdraw from the agreement, the person must give the motor car trader (or an employee or agent of the motor car trader) a written notice stating that the person is exercising the right conferred on her, him or it by this section and describing briefly the reason for the withdrawal.
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- (4) If a person withdraws from an agreement under this section, the parties to the agreement must do everything that is practicable to restore themselves to the position they were in before entering into the agreement.
- (5) In particular, the motor car trader must refund any money paid to her, him or it under the agreement by the other party to the agreement.
- Penalty: 50 penalty units.
- (6) This section only applies to agreements entered into after the date section 41 of the **Motor Car Traders (Amendment) Act 1996** came into operation."

42. Changes concerning regulation-making powers

- (1) In section 90(1) of the **Motor Car Traders Act 1986**—
- (a) for paragraph (d) **substitute**—
- "(d) regulating the form and content of any warranties or insurance policies given in respect of motor cars (other than the warranty imposed by section 54); and";
- (b) in paragraph (e)—
- (i) for "the charges of the motor car trader" substitute "any charges";
- (ii) for "of a new car" **substitute** "by any person of a motor car";
- (c) in paragraph (i), **omit** ", renewal of licences";
- (d) for paragraphs (k) and (l) **substitute**—
- "(k) prescribing, for the purposes of Division 2 of Part 5A—

- (i) the offences under this Act or the regulations in respect of which an infringement notice may be issued; and
 - (ii) the penalties that apply if those offences are dealt with by an infringement notice; and
- (1) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary or expedient to be prescribed to give effect to this Act."
- (2) After section 90(2) of the **Motor Car Traders Act 1986** insert—
- "(3) Regulations made under sub-section (1)(k)(ii) must not specify a penalty in respect of an offence by a person that is more than one-tenth of the maximum penalty the person would be liable for under the Act or the regulations for committing that offence for the first time."

43. Substitution of section 107

For section 107 of the **Motor Car Traders Act 1986** substitute—

"107. Costs

Except as permitted by section 31(1)(e), costs must not be allowed in any proceedings before the Authority."

44. Registrar may divert refund money

After section 109(2A) of the **Motor Car Traders Act 1986** insert—

"(2B) If—

(a) a person—

(i) pays a fee under this Act and the Registrar then waives or reduces the fee; or

(ii) is for any other reason entitled to a refund of a fee under this Act; and

(b) the person owes the Authority or the Committee any money—

the Registrar may give the refund to which the person is entitled to the Authority or the Committee to enable it to be applied towards the debt owed to the Authority or the Committee."

45. *Change concerning the functions of Deputy Registrars*

(1) For section 109(4) of the **Motor Car Traders Act 1986** substitute—

"(4) A Deputy Registrar may exercise any of the powers of the Registrar, but is subject to the directions of the Registrar in exercising those powers."

(2) In section 109(5) of the **Motor Car Traders Act 1986**—

(a) **omit** "or (4)";

(b) **omit** "or Registrar, as the case may be".

46. *Substitution of section 112*

For section 112 of the **Motor Car Traders Act 1986** substitute—

"112. Authority may request Director to investigate matters

The Authority may request the Director to investigate a matter, and the Director may investigate that matter."

47. Addition to list of those who may ask for extension of time or amendment

- (1) In section 113(1) of the **Motor Car Traders Act 1986**, after "the Director" insert ", the Chief Commissioner of Police".
- (2) After section 113A(1)(a)(ii) of the **Motor Car Traders Act 1986** insert—
"(iii) the Chief Commissioner of Police; or".

48. Insertion of section 115A

After section 115 of the **Motor Car Traders Act 1986** insert—

"115A. Simplified procedure concerning proof that person traded in motor cars

- (1) In any hearing of a charge for an offence against section 7, a statement by the prosecutor or the informant—
 - (a) that an address, telephone number or post office box number is a person's address, telephone number or post office box number is evidence of that fact;
 - (b) that a person was registered in relation to a business name on a specified date is evidence of that fact;
 - (c) that an advertisement (or invitation to treat) for the purchase, sale or exchange of a motor car contained—
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- (i) the name, address, telephone number or post office box number of the person charged or an agent of the person charged; or
 - (ii) a business name in relation to which the person charged or an agent of the person charged is registered—

is evidence that the person charged offered to buy, sell or exchange the motor car (as the case may be);

- (d) that such an advertisement (or invitation to treat) was published is evidence that the advertisement (or invitation) was published;
 - (e) that such an advertisement (or invitation to treat) was published on a specified date is evidence that the advertisement (or invitation) was published on that date.
- (2) Nothing in this section prevents the asking of any question concerning the basis on which a statement was made under this section."

49. *Change to secrecy provision*

After section 116(2) of the **Motor Car Traders Act 1986** insert—

- "(3) Despite sub-section (2), a person to whom this section applies may disclose any information referred to in that sub-section to—
- (a) the Committee; or

- (b) a law enforcement or regulatory agency of the Commonwealth or any State or Territory specified by the regulations for the purposes of this section."

50. Changes to penalties

In the **Motor Car Traders Act 1986**—

- (a) in section 14(2), for "50 penalty units" **substitute** "100 penalty units";
- (b) in sections 15(2), 25(2), 34, 52(1) and (6) and 116(2), for "5 penalty units" **substitute** "10 penalty units";
- (c) in section 35(2), for "10 penalty units" **substitute** "50 penalty units";
- (d) in section 35(3), for "50 penalty units" **substitute** "100 penalty units";
- (e) at the foot of section 43(3) **insert**—
"Penalty: 50 penalty units .";
- (f) in section 48(1), for "50 penalty units" **substitute** "100 penalty units or imprisonment for 12 months";
- (g) in section 82(2), for "10 penalty units" **substitute** "50 penalty units or imprisonment for 6 months".

51. Minor consequential amendments

In the **Motor Car Traders Act 1986**—

- (a) sections 5, 6, 8(4), 16(10) and 53 are **repealed**;
- (b) in section 8(3), for "prescribed fee for the licence" **substitute** "first annual fee for the licence";

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- (c) in section 25(1) for "police officer or the Registrar" **substitute** "member of the police force";
 - (d) in section 102, **omit** "or renewal of licence" (wherever occurring).

52. Amendment of the Small Claims Tribunals Act 1973

- (1) In section 2(1) of the **Small Claims Tribunals Act 1973**, in the definition of "small claim", for paragraph (a) **substitute**—

"(a) a claim for payment of money in an amount not exceeding "\$5000" (or \$10 000 if the claim is against a motor car trader within the meaning of the **Motor Car Traders Act 1986** in relation to the purchase, sale or exchange of a motor car);".

- (2) After section 2(3A) of the **Small Claims Tribunals Act 1973** insert—

"(3B) The amendment made by section 52 of the **Motor Car Traders (Amendment) Act 1996** increasing the limit on what constitutes a small claim in relation to a motor car trader from \$5000 to \$10 000 only applies to small claims referred to a Small Claims Tribunal on or after the date that section came into operation."

53. Insertion of section 39A into the Small Claims Tribunals Act 1973

After section 39 of the **Small Claims Tribunals Act 1973** insert—

"39A. Supreme Court—limitation of jurisdiction

It is the intention of section 15(1), as it applies to a claim that is a small claim only because of the amendments made by section

52 of the **Motor Car Traders (Amendment) Act 1996**, to alter or vary section 85 of the **Constitution Act 1975**."

54. Amendment to the Second-Hand Dealers and Pawnbrokers Act 1989

(1) After section 4(e) of the **Second-Hand Dealers and Pawnbrokers Act 1989** insert—

"; or

(f) a licensed motor car trader under the **Motor Car Traders Act 1986** in buying, selling, exchanging or otherwise dealing in a motor car (within the meaning of that Act) in accordance with that Act."

(2) After section 6(5) of the **Second-Hand Dealers and Pawnbrokers Act 1989** insert—

"(6) Despite sub-section (1), a person who holds a motor car trader's licence under the **Motor Car Traders Act 1986** may buy, sell, exchange or otherwise deal in second-hand goods that are motor car parts without holding a second-hand dealer's licence, but must in all other respects comply with this Act."

55. Statute law revision

(1) In the **Motor Car Traders Act 1986**—

- (a) in section 3(3)(e)(ii), for "him by the Companies (Victoria) Code" substitute "her or him by the Corporations Law";
 - (b) in section 62, for "**Public Service Act 1974**" substitute "**Public Sector Management Act 1992**";
 - (c) in section 84(a), for "purchases" substitute "purchasers";
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- (d) in section 109(1), for "**Public Service Act 1974**" substitute "**Public Sector Management Act 1992**";
- (e) sections 118, 119, 121 and 122 and the Schedule are **repealed**.
- (2) For section 58(2) of the **Motor Car Traders Act 1986** substitute—
- "(2) The **Public Sector Management Act 1992** (including Part 9) does not apply to a member of the Committee in respect of the office of member."
- (3) For section 93(3) of the **Motor Car Traders Act 1986** substitute—
- "(3) The **Public Sector Management Act 1992** (including Part 9) does not apply to a member of the Authority in respect of the office of member."
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Motor Car Traders (Amendment) Act 1996
Act No. 74/1996

NOTES

† *Minister's second reading speech—*

Legislative Assembly: 31 October 1996

Legislative Council: 3 December 1996

The long title for the Bill for this Act was "to amend the **Motor Car Traders Act 1986**, the **Small Claims Tribunals Act 1973** and the **Second-Hand Dealers and Pawnbrokers Act 1989** and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 19 November 1996

Legislative Council: 3 December 1996

Absolute majorities:

Legislative Assembly: 21 November 1996

Legislative Council: 5 December 1996