



New South Wales

Motor Dealers and Repairers Act 2013 No 107

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New South Wales

Motor Dealers and Repairers Act 2013 No 107

Act No 107, 2013

An Act with respect to the licensing and conduct of motor dealers, motor vehicle repairers, motor vehicle recyclers and motor vehicle repair tradespersons; to repeal the *Motor Dealers Act 1974* and the *Motor Vehicle Repairs Act 1980*; and for other purposes. [Assented to 27 November 2013]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Motor Dealers and Repairers Act 2013*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Part 6 and clause 11 of Schedule 2 commence on the date of assent to this Act.

3 Objects of Act

The objects of this Act are as follows:

- (a) to provide consumer protections and remedies for consumers who purchase motor vehicles from motor dealers or obtain motor vehicle repair services,
- (b) to establish appropriate standards of conduct and transparency for motor dealers, motor vehicle repairers and motor vehicle recyclers,
- (c) to provide enforcement mechanisms to prevent misleading or dishonest conduct and illegal dealings with motor vehicles and parts,
- (d) to provide protection for motor dealers against unfair contract dealings by motor vehicle manufacturers.

4 Definitions

- (1) In this Act:

accessories means additional parts, or fittings, for the purpose of enhancing the comfort, appearance or performance of motor vehicles, including sound and internet devices, navigation devices, air conditioning units and spare wheels and tools usually carried on motor vehicles, but not including parts or fittings prescribed by the regulations for the purposes of this definition.

approved means approved by the Secretary.

authorised officer—see section 149.

carrying on a business—see section 7.

close associate—see section 8.

Compensation Fund means the Motor Dealers and Repairers Compensation Fund established under section 165.

credit contract has the same meaning as it has in the *National Credit Code*.

criminal intelligence means information classified by the Commissioner of Police as criminal intelligence within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*, or declared by the Supreme Court under that Act to be criminal intelligence.

current inspection report—see section 56.

deal means buy, sell or exchange.

dealer guarantee means the obligation imposed by section 68 (1).

dealer's notice—see section 62.

demonstrator motor vehicle—see section 61.

disciplinary action—see section 45 (1).

financier means a person (other than a person prescribed by the regulations for the purposes of this definition) who carries on the business of dealing in motor vehicles only in connection with any of the following:

- (a) the provision of credit (within the meaning of the *National Credit Code*), whether or not that Code applies to the provision of that credit,
- (b) the letting of motor vehicles to other persons for periods of 3 months or more without an option to purchase,
- (c) any other purpose prescribed by the regulations.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

inspection report for a motor vehicle means an inspection report for the motor vehicle issued in accordance with the requirements of Roads and Maritime Services for vehicle registration purposes or a report prescribed by the regulations for the purposes of this definition.

licence means the following:

- (a) a motor dealer's licence,
- (b) a motor vehicle repairer's licence,
- (c) a motor vehicle recycler's licence,
- (d) a tradesperson's certificate.

licence holder means a person who is for the time being the holder of a licence.

linked credit provider has the same meaning as it has in the *National Credit Code*.

motor dealer—see section 5.

motor dealer's licence means a motor dealer's licence in force under this Act.

motor vehicle means a vehicle of the following kind that is built to be propelled by a motor that forms part of the vehicle, and includes a trailer:

- (a) any description of vehicle on wheels, other than a vehicle used on a railway or tramway or an aircraft,
- (b) any description of tracked vehicle, or any description of vehicle that moves on revolving runners inside endless tracks, that is not used exclusively on a railway or tramway.

Note. Section 9 exempts certain motor vehicles from this Act.

motor vehicle broker—see section 103.

motor vehicle recycler means a person who carries on one or more of the following businesses:

- (a) buying or obtaining motor vehicles or parts or accessories of motor vehicles and demolishing or dismantling the motor vehicles or parts or accessories,
- (b) buying and selling major body and mechanical components of motor vehicles, major car accessories and parts or accessories of motor vehicles prescribed by the regulations for the purposes of this definition.

motor vehicle recycler's licence means a motor vehicle recycler's licence in force under this Act.

motor vehicle repairer—see section 6.

motor vehicle repairer's licence means a motor vehicle repairer's licence in force under this Act.

motor vehicle stealing offence—see section 25 (6).

National Credit Code means the *National Credit Code* set out in Schedule 1 to the *National Consumer Credit Protection Act 2009* of the Commonwealth.

number-plate means a number-plate issued under a law of this State or a law of another State or a Territory.

owner of a motor vehicle means a person who:

- (a) is the sole owner, joint owner or part owner of the motor vehicle, or
- (b) has possession or use of the motor vehicle under a credit, hire-purchase, lease or other agreement, except an agreement requiring the motor vehicle to be registered in the name of someone else.

property includes real and personal property and money.

registered means registered under a law for the registration of vehicles of this State or another State or a Territory.

repair includes examine, detect faults in, adjust, carry out maintenance on, overhaul, replace, alter and paint.

repair work—see section 6 (2).

second-hand motor cycle means a motor cycle that is a second-hand motor vehicle.

second-hand motor vehicle includes a motor vehicle that, at any time before being offered or displayed for sale, or sold, has been registered to a person other than the purchaser, and includes a demonstrator motor vehicle.

Secretary means the head of the Public Service agency to which the administration of this Act is assigned.

tradesperson's certificate means a tradesperson's certificate in force under this Act.

trailer means a vehicle that:

- (a) is built to be towed, or is towed, by a motor vehicle, and
- (b) is not capable of being propelled in the course of normal use on roads without being towed by a motor vehicle,

whether or not its movement is aided by some other power source, but does not include a motor vehicle being towed or a trailer having a tare weight of 250 kilograms or less.

Tribunal means the Consumer, Trader and Tenancy Tribunal.

- (2) In this Act, a reference to buying a thing includes buying that thing as a principal or agent.
- (3) Notes included in this Act do not form part of this Act.

5 Motor dealers

- (1) A **motor dealer** means a person who carries on the business of dealing in motor vehicles as a retailer or on a wholesale basis.
- (2) A person who carries on the business of assembling or manufacturing motor vehicles is not a motor dealer merely because the person sells any of those cars to a motor dealer or a financier.
- (3) A financier is not a motor dealer.
- (4) A motor vehicle broker is not a motor dealer.

6 Motor vehicle repairers

- (1) In this Act, **motor vehicle repairer** means a person who carries on the business of carrying out repair work on motor vehicles.
- (2) In this Act, **repair work** means work of a class or classes prescribed by the regulations for the purposes of this section.

- (3) A person is not a motor vehicle repairer if the person carries out repair work only in the course of employment with another person or on the person's own motor vehicle.
- (4) This Act does not apply to any part of the business of a motor vehicle repairer that involves repairs that are not repair work.

7 Meaning of "carrying on a business"

In this Act, a reference to a person *carrying on a business* includes a reference to the person carrying on the business in partnership or by an employee, contractor, agent or other person.

8 Meaning of "close associate"

- (1) For the purposes of this Act, a person is a *close associate* of an applicant for a licence or a licence holder if the person:
 - (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in the person's own right or on behalf of any other person), in the business of the applicant or licence holder that is or will be carried on under the authority of the licence, and by virtue of that interest or power is or will be able (in the opinion of the Secretary) to exercise a significant influence over or with respect to the management or operation of that business, or
 - (b) holds or will hold any relevant position, whether in the person's own right or on behalf of any other person, in the business of the applicant or licence holder that is or will be carried on under the authority of the licence, or
 - (c) is or will be engaged as a contractor or employed in the business of the applicant or licence holder that is or will be carried on under the authority of the licence.
- (2) For the purposes of this section, a financial institution is not a close associate merely because it has a relevant financial interest in relation to a business.
- (3) The provisions of this section extend to relevant financial interests and relevant powers even if those interests and powers are not payable, exercisable or otherwise enforceable as a matter of law or equity, but are nevertheless payable, exercisable or otherwise enforceable as a matter of fact.
- (4) In this section:

relevant financial interest in 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 to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise, or
 - (c) any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the business is or is to be carried on (such as, for example, an entitlement of the owner of the premises at which the business is carried on to receive rent as lessor of the premises).

relevant position means:

 - (a) the position of director, manager or secretary, or
 - (b) any other position, however designated, if it is an executive position.

relevant power 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, or
 - (b) to elect or appoint any person to any relevant position.

9 Motor vehicles exempted from Act

This Act does not apply to the following motor vehicles:

- (a) a crane, hoist or conveyor,
- (b) an excavator, road grader, road roller, bulldozer or forklift truck or other machinery (other than a tractor), that is not constructed on a chassis of a type normally used in the construction of a truck,
- (c) a motor vehicle that is constructed or adapted for road construction or maintenance (including cleaning, sweeping or watering).

Note. Other motor vehicles, persons or other things may be exempted from provisions of this Act by the regulations (see section 186 (2) (a)).

Part 2 Licences

Division 1 Offences

10 Definitions

In this Division:

transport service owner means a person (including a NSW Government agency) who, for the purpose of any business carried on by the person, uses a motor vehicle for the carriage of passengers or goods.

11 Unlicensed motor dealers

A person must not carry on, or advertise that the person carries on or is willing to carry on, the business of a motor dealer unless:

- (a) the person is the holder of a motor dealer's licence, and
- (b) the business is carried on or proposed to be carried on at a place for which the licence is granted, and
- (c) the business is carried on or proposed to be carried on in accordance with the licence.

Maximum penalty: 1,000 penalty units or, in the case of a second or subsequent offence, 1,000 penalty units or imprisonment for 12 months, or both.

12 Unlicensed motor vehicle repairers

A person must not carry on, or advertise that the person carries on or is willing to carry on, the business of a motor vehicle repairer unless:

- (a) the person is the holder of a motor vehicle repairer's licence, and
- (b) the business is carried on or proposed to be carried on at a place for which the licence is granted, and
- (c) the business is carried on or proposed to be carried on in accordance with the licence.

Maximum penalty: 1,000 penalty units or, in the case of a second or subsequent offence, 1,000 penalty units or imprisonment for 12 months, or both.

Note. An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 159.

13 Unlicensed motor vehicle recyclers

A person must not carry on, or advertise that the person carries on or is willing to carry on, the business of a motor vehicle recycler unless:

- (a) the person is the holder of a motor vehicle recycler's licence, and
- (b) the business is carried on or proposed to be carried on at a place for which the licence is granted, and
- (c) the business is carried on or proposed to be carried on in accordance with the licence.

Maximum penalty: 1,000 penalty units or, in the case of a second or subsequent offence, 1,000 penalty units or imprisonment for 12 months, or both.

14 No offence if partner holds licence

A person is not guilty of an offence under this Division relating to the carrying on of a business if the person carries on a business in partnership with another person and the other person complies with the requirements of this Division for that business.

15 Repair work must be done by licensed motor vehicle repairers

- (1) A motor vehicle repairer or a transport service owner must not, in the course of business, enter into an agreement for any repair work to be done by another person who is not the holder of a motor vehicle repairer's licence.

Note. An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 159.

- (2) An insurer of a motor vehicle must not:
- (a) enter into an agreement, or require the owner of the motor vehicle to enter into an agreement, for any repair work to be done on the motor vehicle by any person who does not hold a motor vehicle repairer's licence, or
 - (b) specify in the contract of insurance for the motor vehicle a motor vehicle repairer who does not hold a motor vehicle repairer's licence.
- (3) This section does not apply to a contract of employment or other agreement for the provision of services as a contractor.
Maximum penalty: 20 penalty units.

16 Repair work must be done by holder of tradesperson's certificate

- (1) A motor vehicle repairer, a motor dealer or a transport service owner must not permit an employee of the person to do any repair work unless the person doing the work:
- (a) holds a tradesperson's certificate for a class of repair work that includes that work, or
 - (b) is doing the work in the course of an apprenticeship or traineeship under the supervision of a person who holds a tradesperson's certificate for a class of repair work that includes that work, or
 - (c) is doing the work in other circumstances prescribed by the regulations for the purposes of this section.

Note. An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 159.

- (2) A motor vehicle repairer or a motor dealer must not personally do any repair work in the course of the repairer's or dealer's business unless the repairer or dealer holds a tradesperson's certificate for a class of repair work that includes that work.
Maximum penalty: 20 penalty units.

17 Holding out

- (1) A person must not hold himself or herself out as the holder of a licence if the person is not the holder of such a licence.
- (2) A person must not hold himself or herself out as a person who is authorised to do a class of repair work if the person is not the holder of a tradesperson's certificate authorising that class of repair work.
Maximum penalty: 20 penalty units.

18 Transfer or loan of tradesperson's certificate

- (1) The holder of a tradesperson's certificate must not:
- (a) transfer, attempt to transfer or lend the certificate to another person, or
 - (b) allow the use of the certificate by another person.

- (2) A person must not:
 - (a) attempt to obtain the transfer to the person of a tradesperson's certificate, or
 - (b) attempt to borrow, or borrow or use, a tradesperson's certificate of which the person is not the holder.
- Maximum penalty: 20 penalty units.

19 Production of licences and certificates

- (1) The holder of a motor dealer's licence, motor vehicle repairer's licence or motor vehicle recycler's licence must not, without reasonable excuse, at the place of business specified in the licence, fail to comply with a request to produce the licence to an authorised officer.
 - (2) The holder of a tradesperson's certificate must not, without reasonable excuse, at any place where the holder does repair work, fail to comply with a request to produce the certificate to an authorised officer.
- Maximum penalty: 10 penalty units.

Division 2 Licences generally

20 Types of licences

The Secretary may grant the following licences:

- (a) a motor dealer's licence,
- (b) a motor vehicle repairer's licence,
- (c) a motor vehicle recycler's licence,
- (d) a tradesperson's certificate.

21 Application of Licensing and Registration (Uniform Procedures) Act 2002

- (1) Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* (the **Licensing Act**) applies to and in respect of a licence, subject to the modifications and limitations prescribed by this Act or the regulations.
- (2) A licence may be amended under the Licensing Act.
- (3) An application for restoration of a licence under section 10 of the Licensing Act may not be made more than 3 months after the date on which the licence expires.
- (4) The regulations may make provision for or with respect to such matters concerning a licence as are relevant to Part 2 of the Licensing Act.

Note. The Licensing Act sets out procedures for the making of applications for licences and the granting, renewal, restoration and replacement of licences. It also provides for the provision of further information by applicants for licences, the withdrawal of applications and the grant and refusal of applications.

22 Multiple licences

A person may hold 2 or more different licences under this Act.

Division 3 Grant and refusal of licence applications

23 Investigation of applications

- (1) The Secretary may make any inquiries that the Secretary considers necessary in relation to an application for a licence.

- (2) The Commissioner of Police must, at the request of the Secretary, investigate an application for a licence and, as soon as practicable after completing the investigation, report to the Secretary on the investigation.

24 Application fees

An application for a licence is to be accompanied by the fee prescribed by the regulations for the application.

25 Grounds for refusal—licences other than tradespersons' certificates

- (1) This section applies to motor dealers' licences, motor vehicle repairers' licences and motor vehicle recyclers' licences.
- (2) The Secretary must not grant a licence to an individual if the Secretary is satisfied of any of the following:
- (a) that the applicant is not over the age of 18,
 - (b) that the applicant is not a fit and proper person to hold a licence,
 - (c) that the applicant is a controlled member of a declared organisation,
Note. Controlled members are prohibited from applying for licences—see section 27 of the *Crimes (Criminal Organisations Control) Act 2012*.
 - (d) that the applicant is an undischarged bankrupt,
 - (e) that the applicant does not have the qualifications, if any, prescribed by the regulations for the purposes of the licence concerned,
 - (f) that the applicant has (as an adult) been found guilty, within the preceding 10 years, of a motor vehicle stealing offence.
- (3) The Secretary must not grant a licence to an applicant that is a body corporate if the Secretary is satisfied of any of the following:
- (a) a director or person involved in the management of the body corporate, or any other person who appears to the Secretary to have control or substantial control of the body corporate, would, if the director or person applied for the licence as an individual, be prohibited by this section from being granted the licence,
 - (b) the officers of the body corporate do not have the qualifications, if any, prescribed by the regulations for the purposes of the licence concerned,
 - (c) the reputation of the body corporate is such that it is not a fit and proper person to hold a licence.
- (4) The Secretary must not grant a licence to any applicant, if the Secretary is satisfied of any of the following:
- (a) that the applicant is not likely to carry on the business for which the licence is sought honestly and fairly,
 - (b) that the carrying on of the business at any place to which the application for the licence relates is unlawful for any reason.
- (5) The Secretary may refuse to grant a licence to an applicant if the Secretary is satisfied of any of the following:
- (a) that a close associate of the applicant is not a fit and proper person to hold a licence,
 - (b) that there is another licence in force in relation to the whole or a part of a place of business to which the application for the licence relates.

(6) In this Act:

motor vehicle stealing offence means an offence of, or relating to:

- (a) stealing a motor vehicle (within the meaning of Division 5A of Part 4 of the *Crimes Act 1900*), or
- (b) receiving, or unlawful possession of, a motor vehicle within the meaning of Division 5A of Part 4 of the *Crimes Act 1900* or a motor vehicle part.

Note. Section 18 of the *Licensing and Registration (Uniform Procedures) Act 2002* contains the power to determine a licence application.

26 Mandatory grounds for refusal—tradespersons' certificates

- (1) The Secretary must not grant a tradesperson's certificate to an individual if the Secretary is satisfied of any of the following:
 - (a) that the applicant is not a fit and proper person to hold a licence,
 - (b) that the applicant does not have the required qualifications or experience for the class of repair work for which the certificate is sought,
 - (c) that the applicant is an apprentice or trainee.
- (2) The required qualifications for a class of repair work are the qualifications or experience prescribed by the regulations for that class of repair work.

27 Criteria for being fit and proper person to hold a licence

- (1) In determining whether a person is a fit and proper person to hold a motor dealer's licence, a motor vehicle repairer's licence or a motor vehicle recycler's licence, the Secretary may have regard to any of the following:
 - (a) whether the applicant has, in the preceding 10 years, been found guilty of an offence involving fraud or dishonesty (whether in this State or elsewhere),
 - (b) whether proceedings for such an offence have been commenced against the applicant but have not been finally determined,
 - (c) whether the applicant has been convicted of an offence against this Act or the regulations or another Act administered by the Minister,
 - (d) whether the applicant has failed to pay any contribution or other payment required to be paid by the applicant to the Compensation Fund under this Act.
- (2) An applicant is not a fit and proper person to be the holder of any licence if the Secretary has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the applicant that:
 - (a) the applicant is a member of, or regularly associates with one or more members of, a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*, and
 - (b) the nature and circumstances of the applicant's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the applicant is granted a licence.
- (3) The Secretary is not, under this or any other Act or law, required to give any reasons for refusing an application for a licence or taking disciplinary action against a person because of subsection (2) to the extent that the giving of those reasons would disclose any criminal intelligence.
- (4) This section does not limit the grounds on which the Secretary may determine that a person is not a fit and proper person to hold a licence.

Division 4 Terms of licences

28 Motor dealer's licence

A motor dealer's licence is to specify the place or places of business at which the licence holder may carry on the business of a motor dealer.

29 Motor vehicle repairer's licence

A motor vehicle repairer's licence is to specify the place or places of business at which the licence holder may carry on the business of a motor vehicle repairer.

30 Motor vehicle recycler's licence

A motor vehicle recycler's licence is to specify the place or places of business at which the licence holder may carry on the business of a motor vehicle recycler.

31 Tradesperson's certificate

A tradesperson's certificate is to specify the class or classes of repair work authorised by the certificate.

32 Conditions of licences

- (1) A licence is subject to any conditions imposed by the Secretary (when the licence is granted or at any later time) or that are prescribed by the regulations.
- (2) The Secretary may at any time, on the Secretary's own motion or on the application of the holder of a licence, by notice in writing to the holder, revoke or vary a condition of the licence imposed by the Secretary.

33 Duration of licence

- (1) A licence has effect for the term specified in the licence (not exceeding 3 years) unless it is sooner cancelled.
- (2) The suspension of a licence does not affect the term of the licence.

34 Amendment of licences

- (1) An application to amend a licence may seek to:
 - (a) add or remove a class of repair work from a tradesperson's certificate, or
 - (b) add or remove a place of business specified in a licence.
- (2) An application to amend a licence is to be accompanied by the fee, if any, prescribed by the regulations.
- (3) The Secretary may refuse to grant an application to amend a licence on any ground on which the Secretary may refuse to grant a licence in the terms of the proposed amended licence.

35 Surrender of licences

- (1) A licence holder may surrender the licence by giving it to the Secretary with a notice in writing that the licence is surrendered.
- (2) If a licence that is to be surrendered has been lost or destroyed, it is sufficient for this section if the notice in writing sets out that fact.
- (3) The surrender of a licence by the licence holder after the issue of a show cause notice under Division 2 of Part 3 does not affect the taking of any disciplinary action by the Secretary under that Division. For that purpose, the licence is taken not to have been surrendered.

36 Duplicate licences

The Secretary may issue a duplicate licence on payment of the fee prescribed by the regulations if the Secretary is satisfied that the licence has been lost or destroyed.

37 Change in place of business to be notified to Secretary

The holder of a licence must give the Secretary notice in writing, within 14 days of the change occurring, if the holder ceases to carry on a business authorised by the licence at a place specified in the licence.

Maximum penalty: 20 penalty units.

Part 3 Disciplinary provisions

Division 1 Grounds for disciplinary action

38 Grounds for disciplinary action—all licences

- (1) The grounds on which disciplinary action may be taken against a licence holder or a former licence holder are as follows:
 - (a) the person has contravened, or the Secretary has reasonable grounds to believe that the person is likely to contravene, a provision of this Act or the regulations or of any other Act administered by the Minister,
 - (b) the person has contravened, or the Secretary has reasonable grounds to believe that the person is likely to contravene, a condition of the person's licence,
 - (c) the person is not a fit and proper person to hold a licence,
 - (d) if the person were not a licence holder, the Secretary would be required by this Act to refuse an application by the person for the licence,
 - (e) the Secretary considers, in the light of evidence available to the Secretary, that the person is probably receiving or dealing in stolen goods,
 - (f) the licence may have been improperly obtained or, when it was granted, there may have been grounds for refusing to grant it.
- (2) Disciplinary action must not be commenced against a former licence holder more than 12 months after the person last ceased to be a licence holder.

39 Additional grounds for disciplinary action—motor dealers' licences, motor vehicle repairers' licences and motor vehicle recyclers' licences

Disciplinary action may also be taken against the holder or a former holder of a motor dealer's licence, a motor vehicle repairer's licence or a motor vehicle recycler's licence on the following grounds:

- (a) the business authorised by the licence has not been conducted in accordance with standards for the supply of goods and services established under the *Australian Consumer Law (NSW)*,
- (b) the business authorised by the licence has been carried on in a dishonest or unfair manner,
- (c) the person has not, for a period of 1 month or more, carried on business at a place of business to which the licence relates,
- (d) in the case of the holder or the former holder of a motor dealer's licence or motor vehicle recycler's licence, the person has contravened section 73 (1) or (3) of the *Road Transport Act 2013* or the statutory rules made under Part 4.5 of that Act,
- (e) in the case of the holder or the former holder of a motor vehicle repairer's licence, the person has contravened, or the Secretary has reasonable grounds to believe that the person is likely to contravene, section 98 of the *Road Transport Act 2013* or the statutory rules made under Part 4.5 of that Act,
- (f) in the case of the holder or the former holder of a motor dealer's licence, there has been undue delay, or unreasonable refusal, on the part of the person in paying, applying or accounting for trust money as required by or under Division 6 of Part 4,
- (g) in the case of the holder or the former holder of a motor dealer's licence, there are reasonable grounds for believing that there is a deficiency in a trust account of the motor dealer maintained under Division 6 of Part 4,

- (h) the person has failed to comply with a rectification order made against the person under Division 2 of Part 5,
- (i) the person is contravening another law by carrying on business at a place of business to which the licence relates,
- (j) in the case of a body corporate, the body corporate:
 - (i) is in the course of being wound up, is a body corporate in respect of which a receiver or other controller has been appointed or has entered into a compromise or scheme of arrangement with its creditors, or
 - (ii) may, for any other reason, be unable to or be likely to become unable to meet its liabilities.

40 Additional grounds for disciplinary action—tradespersons' certificates

Disciplinary action may also be taken against the holder of a tradesperson's certificate on the ground that the person is not competent to do repair work of a class to which the certificate relates.

Division 2 Disciplinary process

41 Show cause notice

- (1) The Secretary may give a show cause notice to a person if the Secretary is of the opinion that there are reasonable grounds to believe that there are grounds for taking disciplinary action against the person.
- (2) A show cause notice is a notice requiring a person to show cause why disciplinary action should not be taken against the person under this Act on the grounds specified in the notice.
- (3) A show cause notice is to be in writing and is to specify a period of not less than 14 days after the notice is given as the period that the person to whom the notice is directed has to show cause as specified in the notice.
- (4) The person to whom a show cause notice is given may, within the period allowed by the notice, make oral or written submissions to the Secretary in respect of the matters to which the notice relates. In the case of a corporation, submissions may be made by a director or officer of the corporation.
- (5) Except as otherwise provided by this Act, the Secretary must not take disciplinary action against a person unless the person has been given a show cause notice and the Secretary has considered any submissions made in accordance with the show cause notice.

42 Power to suspend licence when show cause notice given

- (1) When a show cause notice is given to a person, the Secretary may by notice in writing to the person suspend the person's licence pending a determination by the Secretary of whether to take disciplinary action under this Act against the person.
- (2) The Secretary may suspend a licence under this section only if satisfied that the grounds for disciplinary action specified in the show cause notice would, if established, justify the suspension or cancellation of the licence.
- (3) The suspension must not be for a period of more than 60 days after the show cause notice is given.
- (4) The Secretary is not required to give a person an opportunity to be heard before taking action against the person under this section.

- (5) The Secretary can revoke a suspension under this section at any time by notice in writing to the suspended person.
- (6) This section does not limit or otherwise affect any power to suspend a licence under section 79A of the *Fair Trading Act 1987*.

43 Inquiries and investigations

The Secretary may, if the Secretary thinks fit, conduct inquiries and carry out investigations in relation to the matters to which a show cause notice relates and the submissions, if any, made by or on behalf of the person to whom the show cause notice relates.

44 Decision to take no further action

- (1) The Secretary may at any stage of a matter that is the subject of consideration under this Part decide to take no further action whether or not the matter is the subject of a complaint or a show cause notice and whether or not the Secretary determines that there are grounds for taking disciplinary action in connection with the matter.
- (2) This section does not apply to any circumstances in which this Division requires the licence of a person to be cancelled.

45 Secretary may take disciplinary action

- (1) The Secretary may take any of the following *disciplinary actions* against a person if the Secretary is satisfied that there are grounds for taking disciplinary action against the person:
 - (a) reprimand the person,
 - (b) direct the person to take specified action within a specified time in connection with the conduct of a business or the exercise of functions under a licence,
 - (c) suspend the person's licence for a period not exceeding the unexpired term of the licence,
 - (d) impose a condition on the person's licence,
 - (e) without limiting paragraph (b), require a licence holder to make a contribution to the Compensation Fund of a specified amount or indemnify the Fund to the extent specified by the Secretary in the event of a particular contingency arising from the licence holder's activities,
 - (f) disqualify the person, either permanently or for a specified period, from being a licence holder or involved in the direction, management or conduct of a business for which a licence is required,
 - (g) cancel a licence.
- (2) The disciplinary action is to be taken by order in writing given to the person against whom the action is being taken. The order must specify the date on which the order takes effect.
- (3) The Secretary must cancel a licence if the Secretary disqualifies the licence holder from being the holder of a licence.

46 Mandatory licence cancellations

The Secretary must cancel a licence under this Division if the Secretary is satisfied that there are any of the following grounds for taking disciplinary action against the licence holder:

- (a) the licence holder (other than the holder of a tradesperson's certificate) has (as an adult) been found guilty, within the preceding 10 years, of a motor vehicle stealing offence,

- (b) the licence holder is not a fit and proper person to hold a licence.

Note. Section 27 sets out the criteria for determining whether a person is a fit and proper person to hold a licence.

47 Offences

- (1) A person who is disqualified under this Division from being involved in the direction, management or conduct of a business must not act contrary to the disqualification.

Maximum penalty: 20 penalty units.

- (2) The holder or former holder of a licence suspended or cancelled under this Division must not, without reasonable excuse, fail to return the licence to the Secretary within 7 days of the suspension or cancellation taking effect.

Maximum penalty: 20 penalty units.

Part 4 Obligations relating to sale, recycling and repair of motor vehicles

Division 1 Sale of motor vehicles generally

48 Motor vehicles must be sold at licensed premises

(1) **Offence**

The holder of a motor dealer's licence must not offer or display a motor vehicle for sale at a place other than a place of business specified in the licence.

Maximum penalty: 20 penalty units.

(2) For the purposes of this section, the place of business specified in a motor dealer's licence does not include a road or footpath in the immediate vicinity of the place of business.

(3) **Exception—trade shows**

A person is not guilty of an offence against this section if a motor vehicle is offered or displayed for sale at a trade show and the business carried on by the motor dealer while participating in the trade show is limited to the following:

- (a) advising persons with respect to the quality, performance and characteristics of motor vehicles,
- (b) making offers to, or receiving offers from, persons to enter into agreements for the sale of motor vehicles (other than second-hand motor vehicles).

(4) **Exceptions—requests by others**

A person is not guilty of an offence against this section if a motor vehicle is offered or displayed for sale at another place in response to an unsolicited request made by a person to the motor dealer to display the motor vehicle at the other place or to carry out all or part of the transactions relating to the sale or purchase of the motor vehicle at that other place.

(5) **Definitions**

In this section:

second-hand motor vehicle does not include a second-hand tractor or self-propelled agricultural machinery.

trade show means an event held at a place where a number of motor dealers, motor vehicle manufacturers or other industry participants display motor vehicles.

49 Failure to disclose being motor dealer

- (1) A motor dealer who sells a motor vehicle to another person and who fails to disclose to that person the fact that the motor dealer is a motor dealer is guilty of an offence.
- (2) An employee or agent of a motor dealer who sells a motor vehicle to another person in that capacity is guilty of an offence if the employee or agent fails to disclose to the person the fact that the sale is being made by or on behalf of a motor dealer.
- (3) This section does not apply to the sale of a motor vehicle to a motor dealer, a motor vehicle recycler or a financier.

Maximum penalty: 20 penalty units.

50 Representations and other Acts by employees or agents of motor dealers

- (1) A representation made in the course of a motor dealer's business by an employee or agent of the motor dealer about a motor vehicle offered or displayed for sale by the motor dealer is taken, for the purposes of this Act and the regulations, to have been made by the motor dealer.
- (2) If a provision of this Part requires a motor dealer to do a thing in relation to the sale or proposed sale of a motor vehicle, the motor dealer is taken to have complied with that provision if the thing is done on behalf of the motor dealer by an employee or agent of the motor dealer.

51 Misrepresentations about manufacture, registration or model of motor vehicle

(1) False representations

A person must not, in connection with offering or displaying a motor vehicle for sale or the sale of a motor vehicle, make a false representation of a kind specified in subsection (2) knowing it to be false or misleading.

Maximum penalty: 20 penalty units.

- (2) The false representations are as follows:
 - (a) a representation that the year of manufacture of the motor vehicle is a year other than the actual year of manufacture of the motor vehicle,
 - (b) a representation that the year in which the motor vehicle was first registered is a year other than the year in which the motor vehicle was actually first registered,
 - (c) a representation that the model designation of the motor vehicle is a model designation other than the actual model designation of the motor vehicle.

(3) Effect of other laws

This section does not affect the operation of Part 5 of the *Fair Trading Act 1987* (as in force before its repeal by the *Fair Trading Amendment (Australian Consumer Law) Act 2010*), or Part 4-1 of the *Australian Consumer Law (NSW)*. However, a person cannot be prosecuted in respect of the same matter for an offence under this section and either of those Parts.

(4) Compensation orders

A court that convicts a person of an offence under this section may, on its own motion or on application by the prosecutor or a person who purchased the motor vehicle relying on the false representation, order the convicted person to pay to the purchaser an amount determined by the court as being the amount of the difference between the sale price of the motor vehicle and its fair price at the time of the sale.

(5) Definition

In this section:

model designation means any words, figures, letters or symbols used by the manufacturer of a motor vehicle to identify a motor vehicle of that model.

52 Odometer tampering

(1) Offence

A person must not:

- (a) alter the reading on the odometer of a motor vehicle, or
- (b) remove or replace the odometer of a motor vehicle, or

- (c) render the odometer of a motor vehicle inoperative or inaccurate by any means.

Maximum penalty: 200 penalty units.

- (2) It is presumed, in the absence of evidence to the contrary, that a defendant in proceedings for an offence under this section committed the offence if it is proved in those proceedings that:

- (a) the defendant had possession of the motor vehicle, and
- (b) at that time or soon after the motor vehicle ceased to be in the defendant's possession, the odometer reading was less than the reading at the time the defendant acquired possession of the motor vehicle.

- (3) **Defence**

It is a defence in proceedings for an offence under this section if the defendant proves that:

- (a) the action was not taken by the defendant with the intent of enhancing the apparent value of the motor vehicle for the purpose of sale, and
- (b) the action was not taken by the defendant for any other fraudulent purpose.

- (4) **Repairs permitted**

Despite any other provision of this section, the holder of a motor vehicle repairer's licence may repair or replace an odometer if:

- (a) the holder notifies the Secretary in the approved form of the repair or replacement, and
- (b) the reading on the repaired or replacement odometer is restored so that it shows an accurate reading for the motor vehicle.

- (5) Despite any other provision of this section, any person may repair or replace an odometer if the repair or replacement:

- (a) is approved by the Secretary or a person prescribed by the regulations for the purposes of this section, and
- (b) is in accordance with the approval.

- (6) **Compensation orders**

A court that convicts a person of an offence under this section or section 53 may, on its own motion or on application by the prosecutor or a person who purchased the motor vehicle relying on the odometer reading of the motor vehicle, order the convicted person to pay to the purchaser an amount determined by the court as being the amount of the difference between the sale price of the motor vehicle and its fair price at the time of the sale.

53 Devices to facilitate odometer tampering

A person must not fit to a motor vehicle a device capable of rendering the odometer of the motor vehicle inoperative or inaccurate.

Maximum penalty: 200 penalty units.

54 Suspected odometer tampering

A licence holder or any employee of a licence holder who suspects on reasonable grounds that the odometer reading of a motor vehicle in the licence holder's possession may have been altered or be inaccurate must without unreasonable delay inform the Secretary of that suspicion.

Maximum penalty: 50 penalty units.

Division 2 Inspection report and number-plate requirements

55 Application of Division

- (1) This Division applies to or in respect of the sale by auction or otherwise of a motor vehicle.
- (2) This Division does not apply to or in respect of the following motor vehicle sales:
 - (a) a sale of a motor vehicle that was registered for the first time, or the registration of which was renewed, within 90 days of the sale concerned,
 - (b) a sale to a motor dealer, motor vehicle recycler or financier,
 - (c) a sale by a motor vehicle recycler of a substantially demolished or dismantled motor vehicle.
- (3) In this Division, *auction* of a motor vehicle includes a proposed auction, and *sale* of a motor vehicle includes a proposed sale.

56 Current inspection reports

An inspection report is a *current inspection report* for a motor vehicle for the purposes of this Act if it was issued within the period prescribed by the regulations before the date on which it is being relied on.

57 Sale at auction with number-plates

- (1) A person must not offer or display for sale, or sell, by auction a motor vehicle to which a number-plate is attached unless a current inspection report is attached to the vehicle in the manner prescribed by the regulations.
Maximum penalty: 20 penalty units.
- (2) Despite subsection (1), a person may offer or display for sale, or sell, by auction a motor vehicle without an attached current inspection report if:
 - (a) a notice in the form prescribed by the regulations is attached to the motor vehicle in the manner prescribed by the regulations, and
 - (b) a current inspection report is provided to the purchaser by the person within 7 days following the sale, and
 - (c) the purchase price of the motor vehicle as accepted at auction or, if the sale took place after the auction, as negotiated is not subsequently altered, and
 - (d) the purchaser is not required to meet any part of the cost of any repairs required to be made to the motor vehicle in order to obtain the current inspection report.

58 Other sales with number-plates

- (1) A motor dealer must not sell a motor vehicle to which a number-plate is attached unless the motor dealer gives to the purchaser at or before the sale a current inspection report for the motor vehicle.
Maximum penalty: 20 penalty units.
- (2) This section does not apply to a sale by auction.

59 Sales of motor vehicles without number-plates attached

A motor dealer must not sell a motor vehicle without a number-plate attached unless one of the following is displayed with the vehicle:

- (a) a certificate or receipt for the surrender of the number-plates for the motor vehicle issued by Roads and Maritime Services or by a person authorised by a law of another State or a Territory to issue the certificate or receipt,

- (b) a declaration by the motor dealer in the form (if any) prescribed by the regulations that sets out the reason for the absence of any number-plate and the lack of such a certificate or receipt.

Maximum penalty: 20 penalty units.

Division 3 Dealers' notices

60 Application of Division

This Division does not apply to or in respect of the following motor vehicle sales:

- (a) a sale by bona fide auction,
- (b) a sale to a motor dealer, motor vehicle recycler or financier,
- (c) a sale by a motor vehicle recycler of a substantially demolished or dismantled motor vehicle,
- (d) a sale to a motor vehicle recycler for the purpose of the motor vehicle being wholly or partly demolished or dismantled.

61 Definition of "demonstrator motor vehicle"

In this Act:

demonstrator motor vehicle means a motor vehicle:

- (a) that has been used only for a purpose connected with its manufacture or sale or for the purpose of demonstrating the motor vehicle, or a motor vehicle of that kind, to a potential purchaser, and
- (b) that has not been sold to a person other than a motor dealer, and
- (c) that has been registered only in the name of a motor dealer, a person on behalf of a motor dealer or another person in anticipation of the sale of the motor vehicle to that person.

62 Dealers' notices—disclosure and other requirements

- (1) If a provision of this Act requires a *dealer's notice*, the notice provided must:
 - (a) be in the form prescribed by the regulations for the purposes of the provision that requires the dealer's notice, and
 - (b) contain the particulars required to complete the form, but not contain particulars that are false or misleading in a material particular.
- (2) If this Act requires more than one dealer's notice to be attached or provided in the same circumstances, the required dealers' notices must be combined in one notice.
- (3) A holder of a motor dealer's licence is not liable for a contravention of a provision of this Act that requires the attachment to, or provision of a dealer's notice for, a motor vehicle that is sold on behalf of the holder by another motor dealer.

63 Sale notices for second-hand motor vehicles (other than motor cycles or demonstrator motor vehicles)

(1) Application

This section does not apply to a second-hand motor cycle or a demonstrator motor vehicle.

(2) Offences

A motor dealer must not offer or display for sale a second-hand motor vehicle unless a dealer's notice is attached to the motor vehicle.

- (3) A motor dealer must not sell a second-hand motor vehicle unless:
- (a) at or before the sale, the motor dealer and the purchaser sign the dealer's notice required by this section, or a copy of the notice, and
 - (b) the motor dealer gives the purchaser the notice, or a copy, to keep.
- Maximum penalty (subsections (2) and (3)): 20 penalty units.

(4) **Motor vehicles on premises presumed to be for sale**

In any proceedings for an offence under subsection (2), it is presumed in the absence of evidence to the contrary, that a second-hand motor vehicle found at a place at which a motor dealer is licensed to carry on business as a motor dealer is offered or displayed for sale, unless:

- (a) the motor vehicle has attached to it, in the manner prescribed by the regulations, a notice in the prescribed form specifying that the motor vehicle is not for sale, and
- (b) the motor vehicle does not have any other notice attached to it, or any marking on it, that purports to be the price of the motor vehicle or otherwise suggests that the motor vehicle is being offered or displayed for sale.

64 Sale notices for second-hand motor cycles and demonstrator motor vehicles

A motor dealer must not sell a second-hand motor cycle or a demonstrator motor vehicle unless:

- (a) at or before the sale, the motor dealer and the purchaser sign a dealer's notice, or a copy of the notice, and
- (b) the motor dealer gives the purchaser the notice, or a copy, to keep.

Maximum penalty: 20 penalty units.

65 Damage notice for new vehicles

- (1) This section does not apply to a second-hand motor vehicle.
Note. A demonstrator motor vehicle is a second-hand motor vehicle.
- (2) A motor dealer must not sell a motor vehicle that the dealer knows is a damaged motor vehicle, or that the motor dealer would know on a reasonable inspection is a damaged motor vehicle, unless:
- (a) at or before the sale, the motor dealer and the purchaser sign a dealer's notice that contains particulars of the damage, or a copy of the notice, and
 - (b) the motor dealer gives the purchaser the notice, or a copy, to keep.
- Maximum penalty: 20 penalty units.
- (3) A motor vehicle is a **damaged motor vehicle** for the purposes of this section if any of the following damage (not being superficial damage) has been done:
- (a) the motor vehicle has suffered water damage,
 - (b) the body or frame of the motor vehicle has been damaged so that the replacement or repair of the whole or part of a panel, structural member or component of the motor vehicle is required to restore the motor vehicle to a reasonable condition,
 - (c) the body or frame of the motor vehicle has been damaged so that the replacement of not less than 4 major external panels (fittings excepted) fitted to the vehicle by means of bolts or other mechanical fastening devices is required to restore the motor vehicle to a reasonable condition.

66 Defences

- (1) In any proceedings for an offence against this Division in which it is alleged that a particular required to complete a dealer's notice was not included, it is a defence if the defendant proves that:
 - (a) the motor vehicle concerned was brought into this State for the purpose of resale, and
 - (b) the particular was not known to the defendant and the defendant could not, with reasonable diligence, find out the particular.
- (2) In any proceedings for an offence against this Division in which it is alleged that a particular required to complete a dealer's notice was false or misleading in a material particular, it is a defence if the defendant proves that:
 - (a) the defendant took all reasonable steps to find out the true particulars, and
 - (b) the particulars included were, to the best of the defendant's knowledge, true.

Division 4 Defects in motor vehicles sold by motor dealers

67 Definitions

- (1) In this Division:

defective vehicle means a motor vehicle that is in such a condition, or has such a defect, that the supply of the motor vehicle would constitute a breach of a guarantee (a **consumer guarantee**) that applies under sections 54–57 of Part 3-2 of the *Australian Consumer Law (NSW)*.

limitation period for a motor vehicle is the period for which the dealer guarantee is in force for the motor vehicle.
- (2) In this Division, a reference to a **motor vehicle** is a reference to the vehicle complete with all accessories fitted to the vehicle.

68 Dealer guarantee for defective vehicles

- (1) **Dealer guarantee**

A motor dealer must, at the motor dealer's own expense, repair or make good a motor vehicle sold by the motor dealer, if it is a defective vehicle, so as to place the motor vehicle in a reasonable condition having regard to its age.

Note. Any repairs must be carried out by the holder of a tradesperson's certificate (see section 16).
- (2) The following persons have the benefit of the dealer guarantee:
 - (a) the purchaser of the motor vehicle from the motor dealer,
 - (b) any subsequent owner of the motor vehicle, but only if the motor vehicle was not a second-hand motor vehicle when sold by the motor dealer liable for the dealer guarantee.
- (3) A motor dealer ceases to be liable for the dealer guarantee for a motor vehicle if the motor vehicle is at any time acquired by the motor dealer or another motor dealer.
- (4) The dealer guarantee does not apply to a motor vehicle if no limitation period is specified for the motor vehicle under this Division.
- (5) **Vehicle must be defective before end of limitation period**

The dealer guarantee applies only to a motor vehicle that is or becomes a defective vehicle before the end of the limitation period for the motor vehicle (whether or not it is known before the end of the limitation period that the motor vehicle is a defective vehicle).

(6) **Defects that become apparent after limitation period**

A motor dealer is not required to comply with the dealer guarantee if the condition or defect that causes a motor vehicle to be a defective vehicle becomes apparent after the limitation period and the owner of the motor vehicle fails to report the condition or defect to the motor dealer within a reasonable period of becoming aware of the condition or defect.

69 Limitation periods

(1) **Calculation of limitation period generally**

The limitation period for a motor vehicle ends when either the distance limit or time limit specified in this section is first reached for the motor vehicle.

(2) The period of the time limit for a motor vehicle commences when the motor dealer sells the motor vehicle. If the purchaser takes possession of a new motor vehicle before the sale by the motor dealer is completed, the sale is taken to have occurred on the day the purchaser first takes possession.

(3) **New vehicle driven less than 15,000 km before sale (not motor cycle)**

For a motor vehicle (not being a motor cycle or a second-hand motor vehicle) driven less than 15,000 km when sold by a motor dealer, the distance limit is 20,000 km after manufacture and the time limit is 12 months less 1 month for each 2,000 km that the vehicle was driven before it was sold by the motor dealer.

(4) **New vehicle driven for more than 15,000 km before sale (not motor cycle)**

For a motor vehicle (not being a motor cycle or a second-hand motor vehicle) driven 15,000 km or more when sold by a motor dealer, the distance limit is 5,000 km after sale and the time limit is 3 months.

(5) **Second-hand vehicle driven for not more than 160,000 km before sale (not motor cycle)**

For a second-hand motor vehicle (not being a motor cycle) driven not more than 160,000 km, and not more than 10 years old, when sold by a motor dealer, the distance limit is 5,000 km after sale and the time limit is 3 months.

(6) **New motor cycle driven less than 7,000 km before sale**

For a motor cycle (not being a second-hand motor cycle) driven less than 7,000 km when sold by a motor dealer, the distance limit is 10,000 km after manufacture and the time limit is 6 months less 1 month for each 2,000 km that the vehicle was driven before it was sold by the motor dealer.

(7) **New motor cycle driven more than 7,000 km before sale**

For a motor cycle (not being a second-hand motor cycle) driven more than 7,000 km when sold by a motor dealer, the distance limit is 3,000 km after sale and the time limit is 3 months.

(8) **Unregistrable new motor cycle**

For a motor cycle (not being a second-hand motor cycle) that is of a design that makes it incapable of being registered in this State, the distance limit is 5,000 km after sale and the time limit is 3 months.

(9) **Unregistrable second-hand motor cycle driven for not more than 30,000 km before sale**

For a second-hand motor cycle that is of a design that makes it incapable of being registered in this State driven not more than 30,000 km, and not more than 5 years old, when sold by a motor dealer, the distance limit is 3,000 km after sale and the time limit is 3 months.

(10) **Other categories**

The regulations may prescribe additional categories of limitation periods for specified motor vehicles for the purposes of this section.

70 Variation of distance and time limits by regulation

- (1) The regulations may vary a distance or time limit specified in section 69.
- (2) The regulations may do so by amending section 69 for that purpose.

71 Enforcement of dealer guarantee

The dealer guarantee applicable to a motor vehicle is enforceable by the owner of the motor vehicle as if:

- (a) it were a term of the contract of sale between the motor dealer and the owner, or
- (b) if the owner purchased the motor vehicle from a person other than the motor dealer, there was a contract of sale between the motor dealer and the owner that contained the dealer guarantee.

72 Motor vehicles for which there is no dealer guarantee

The dealer guarantee does not apply to the following motor vehicles:

- (a) a motor vehicle sold by a motor dealer at a bona fide auction if a dealer's notice specifying that the dealer guarantee does not apply to the motor vehicle is attached to the motor vehicle at the time of sale,
- (b) a substantially demolished or partially dismantled motor vehicle that is purchased by the holder of a motor vehicle recycler's licence,
- (c) a motor vehicle sold by a motor dealer that is unregistered and, at the time of sale, requires substantial repair.

Note. The regulations may also exempt other motor vehicles or specified defects and other damage (see section 186 (2) (a)).

73 Damage not covered by dealer guarantee

The dealer guarantee does not apply to damage to a motor vehicle in the following circumstances:

- (a) if the damage is incidental or accidental damage that occurred to the motor vehicle after the sale by the motor dealer and when it was not in the possession of the motor dealer,
- (b) if the damage occurred to the motor vehicle after the sale by the motor dealer and was caused by misuse by or negligence of the driver, or because the motor vehicle was used for motor racing or motor rallying,
- (c) if the damage is superficial damage to the paint-work or upholstery of a second-hand motor vehicle that would have been apparent on a reasonable inspection at the time of sale.

74 No dealer guarantee for second-hand motor vehicles where defect notice and inspection report attached

- (1) The dealer guarantee does not apply to the sale of a second-hand motor vehicle if the requirements of this section are complied with.
- (2) A motor dealer who offers or displays for sale a second-hand motor vehicle (other than a motor cycle) complies with this section if:
 - (a) a dealer's notice containing a defect notice specifying the defects and condition of the motor vehicle, and a current inspection report, are attached to the motor vehicle at all material times when the motor vehicle is offered or displayed for sale, and
 - (b) at or before the sale, the motor dealer and the purchaser sign the dealer's notice, or a copy of the notice, and
 - (c) the motor dealer gives the purchaser the notice, or a copy, to keep.
- (3) A motor dealer who offers or displays for sale a second-hand motor cycle complies with this section if, at or before the sale:
 - (a) the motor dealer and the purchaser sign a dealer's notice containing a defect notice specifying the defects and condition of the motor cycle, or a copy of the notice, and the motor dealer gives the purchaser the notice, or a copy, to keep, and
 - (b) the motor dealer gives the purchaser a current inspection report, or a copy, to keep.
- (4) The dealer guarantee continues to apply to a defective vehicle, despite this section, for a defect that:
 - (a) is not specified in a dealer's notice under this section, or
 - (b) is so specified but that is not also specified in an inspection report given under this section.
- (5) The purchaser of a motor vehicle that is not subject to a dealer guarantee because of this section may recover, as a debt due to the purchaser by the motor dealer, the difference between the reasonable cost of repairing any defect specified in the dealer's notice and the amount estimated in that notice as the reasonable cost of that repair.

75 Other motor dealer not liable

A holder of a motor dealer's licence is not liable for a dealer guarantee for a motor vehicle sold on behalf of the holder by another motor dealer.

76 Motor dealer liable for loss or damage during guarantee repairs

- (1) This section applies if a motor vehicle is delivered to a motor dealer for the purposes of assessing liability for, or complying with, the dealer guarantee for the motor vehicle.
- (2) The motor dealer is liable for any loss of or damage to the motor vehicle that occurs between the delivery of the motor vehicle to the motor dealer by the person and the delivery by the motor dealer of the motor vehicle to the person, whether or not the loss or damage occurred while the motor vehicle was in the possession of the motor dealer or any employee or other person associated with the motor dealer.
- (3) A motor dealer is not liable under this section if the motor dealer proves that the motor dealer took all reasonably practicable measures to prevent the loss or damage.

77 Effect on Australian Consumer Law remedies

A person who has enforced the dealer guarantee under this Division in respect of the condition of or a defect in a motor vehicle is not, if the dealer guarantee is fully complied with, entitled to take action against the motor dealer under the *Australian Consumer Law (NSW)* in respect of any aspect of the motor vehicle that is made good or repaired under this Division.

Division 5 Dealer-financed purchases of motor vehicles

78 Application of Division to dealer-financed purchases

- (1) This Division applies to the purchase of a motor vehicle from a motor dealer if the purchaser obtains credit, for the purpose of financing the whole or part of the purchase, from the motor dealer or a person who is a linked credit provider of the motor dealer.
- (2) This Division does not apply to or in respect of the following motor vehicle sales:
 - (a) a sale by a motor dealer to another motor dealer, a financier or a motor vehicle recycler,
 - (b) a sale at a bona fide auction,
 - (c) a sale of a vehicle intended to be used predominantly for business or other commercial purposes,
 - (d) a sale where the provision of credit by a linked credit provider of the motor dealer to the purchaser is not arranged or facilitated by the motor dealer.

79 Definitions

In this Division:

tiered loan contract has the same meaning as it has in the *National Credit Code*.

trade-in means a motor vehicle given or agreed to be given by a purchaser under a contract for the purchase of another motor vehicle in consideration for the whole or part of the purchase price.

80 Cooling off period for dealer-financed purchases

In this Division, the *cooling off period* for the purchase of a motor vehicle is the period commencing when the purchaser enters into the contract for the purchase of the motor vehicle from the motor dealer and ending:

- (a) at 5pm on the next day that the motor dealer carries on business with the public, or
- (b) if the motor dealer closes for business before 5pm on that day, at the close of business on the next day that the dealer is open for business following that day.

81 Right to terminate contract during cooling off period

- (1) A purchaser may terminate a contract for the purchase of a motor vehicle to which this Division applies by notice in writing given to the motor dealer during the cooling off period for the purchase.
- (2) Despite any other law, the purchaser is not entitled to possession of the motor vehicle during the cooling off period, unless the purchaser and the dealer otherwise agree.
- (3) The right to terminate a contract may be exercised even though the purchaser has taken delivery of the motor vehicle concerned.

- (4) A contract for the purchase of a motor vehicle to which this Division applies must contain a provision, in the form prescribed by the regulations, setting out the purchaser's rights under this Division and the effect of this Division.
- (5) A notice of termination by a purchaser must be signed by the purchaser or the purchaser's Australian legal practitioner.
- (6) The cooling off period may be extended by a provision in the contract of sale or by agreement with the motor dealer.

82 Waiver of cooling off period

- (1) A purchaser may waive a right to terminate a contract under this Division if:
 - (a) the purchaser signs a waiver in the form prescribed by the regulations, and
 - (b) any applicable requirements of the regulations are complied with.
- (2) Regulations may be made for or with respect to requirements for waivers under this section.

83 Motor dealer may not dispose of trade-in during cooling off period

- (1) A motor dealer must not sell, give in exchange or otherwise dispose of a trade-in or any interest in or related to a trade-in, given or agreed to be given by a purchaser under a contract for a purchase to which this Division applies during the cooling off period for the purchase.
Maximum penalty: 20 penalty units.
- (2) This section does not render a sale or other transaction relating to a trade-in referred to in subsection (1) unenforceable.

84 Obligations of motor dealer on termination

- (1) On termination of a contract under this Division, the motor dealer must:
 - (a) pay to the purchaser all money received by the motor dealer under the contract, less any money that the purchaser is liable to pay under this Division, and
 - (b) return to the purchaser any trade-in under the contract.
- (2) On termination of a contract under this Division, a motor dealer who is in possession of a trade-in must return the motor vehicle to the purchaser and is liable to the purchaser for any damage to the motor vehicle while it was in the motor dealer's possession, other than fair wear and tear.

85 Obligations of purchaser on termination

- (1) On termination of a contract under this Division, the purchaser must:
 - (a) pay to the motor dealer \$250 or 2% of the purchase price, whichever is the lesser, and
 - (b) repay to the motor dealer any amount paid by the motor dealer in respect of a trade-in.
- (2) On termination of a contract under this Division, a purchaser who accepted delivery of the motor vehicle before the termination is liable to the motor dealer for any damage to the motor vehicle while it was in the purchaser's possession, other than fair wear and tear.

86 Return of motor vehicles

A purchaser or motor dealer is not required to return a motor vehicle as required by this Division if the purchaser or motor dealer is unable to return it because of a defect in the motor vehicle, not caused by the purchaser or motor dealer, that has rendered

it incapable of being driven or unroadworthy. The purchaser or motor dealer must, however, permit the collection or arrange for the collection of the motor vehicle.

87 Termination of tied loan contracts

- (1) On termination of a contract under this Division, any tied loan contract is terminated.
- (2) The regulations may make provision for or with respect to the termination of the tied loan contract.

Division 6 Sales of motor vehicles on consignment

88 Definitions

In this Division:

consignor means a person from whom a motor dealer receives motor vehicles for sale on consignment.

trust account means a trust account required by this Division to be maintained by a motor dealer.

89 Motor dealer must notify consignment sales

- (1) A motor dealer who proposes to commence to sell motor vehicles on consignment must give the Secretary notice in writing of that intention.
Maximum penalty: 20 penalty units.
- (2) A notification by the motor dealer in an application for a motor dealer's licence or to renew a motor dealer's licence that is made before a motor dealer commences to sell motor vehicles on consignment is sufficient notice for this section.

90 Trust account to be established

A motor dealer must maintain a trust account at an authorised deposit-taking institution in New South Wales in respect of amounts received for vehicles for sale on consignment.

Maximum penalty: 20 penalty units.

91 Payment of consignment sale amounts to trust account

A motor dealer who receives a motor vehicle for sale on consignment from a consignor must pay an amount equal to the value of the consideration received by the motor dealer for the motor vehicle to the trust account in respect of that consignor not later than on the next business day of the authorised deposit-taking institution after receiving the consideration.

Maximum penalty: 20 penalty units.

92 Application of money in dealer's trust account

- (1) A motor dealer must not apply money held in a trust account except for the following purposes:
 - (a) paying an amount payable to the consignor in respect of the motor vehicle,
 - (b) satisfying a debt due to the motor dealer from the consignor in respect of commission or other charges,
 - (c) paying the motor dealer an amount to which the motor dealer is entitled that was paid to the trust account but was not required to be paid to the trust account under this Division,
 - (d) a purpose approved in writing by the Secretary,

(e) a purpose prescribed by the regulations.

Maximum penalty: 20 penalty units.

- (2) Money held in a trust account is not available for payment of the debts of a motor dealer or liable to be taken in execution under the order or process of a court, except as provided by this Division or the regulations.
- (3) This Division does not take away or affect any just claim or lien that a person has against or on any money received from the sale of a motor vehicle on consignment.

93 Protection of authorised deposit-taking institutions from liability

- (1) An authorised deposit-taking institution is not liable to any person merely because the institution failed to secure compliance with any provision of this Division or the regulations relating to the keeping of trust accounts and the withdrawal of money from trust accounts.
- (2) An authorised deposit-taking institution does not have any recourse or right against money standing to the credit of a trust account in respect of any liability of the motor dealer to the institution (not being a liability in connection with that account).

94 Period for accounting to consignor

A motor dealer must account to a consignor in respect of the proceeds of sale on consignment of a motor vehicle within 14 days, or such other period as may be prescribed by the regulations, after the sale of the motor vehicle.

Maximum penalty: 20 penalty units.

95 Audit of dealer's trust account

- (1) A motor dealer must ensure that each trust account of the motor dealer is audited annually.
Maximum penalty: 20 penalty units.
- (2) The regulations may make provision for or with respect to the auditing of trust accounts, including the information and matters to be contained in any auditor's report.

96 Special audit of dealer's trust account

The Secretary may, by notice in writing to a motor dealer, require the motor dealer to take the following action if the Secretary is of the opinion that the circumstances of the motor dealer's business warrant it:

- (a) to obtain and to furnish to the Secretary a report of an auditor relating to a trust account of the motor dealer containing such information and matters as the Secretary may specify,
- (b) to lodge with the Secretary a guarantee from an authorised deposit-taking institution in favour of the Secretary (in a form approved by the Secretary) or such other security as may be specified by the Secretary in respect of the sale on consignment of motor vehicles by the dealer.

Division 7 Obligations of motor vehicle recyclers

97 Number-plates on motor vehicles acquired by motor vehicle recyclers

- (1) This section applies to the following motor vehicles acquired by a motor vehicle recycler:
 - (a) a motor vehicle that is to be demolished or dismantled by the motor vehicle recycler,

- (b) a substantially demolished or dismantled motor vehicle.
- (2) If a number-plate is attached to a motor vehicle to which this section applies when it is acquired, the motor vehicle recycler must surrender the number-plate to Roads and Maritime Services as soon as practicable after acquiring the motor vehicle.
- (3) A motor vehicle recycler must not offer for sale or sell a motor vehicle to which this section applies if a number-plate is attached to the motor vehicle.
Maximum penalty: 20 penalty units.

98 Sale of motor vehicles by motor vehicle recyclers

A motor vehicle recycler must not offer or display for sale or sell a motor vehicle, other than the following motor vehicles:

- (a) a motor vehicle that has been demolished or dismantled by the motor vehicle recycler,
- (b) a substantially demolished or dismantled motor vehicle,
- (c) a motor vehicle acquired and predominantly used by the motor vehicle recycler or an employee of the motor vehicle recycler for private use,
- (d) a motor vehicle predominantly used for the purposes of the motor vehicle recycler's business.

Maximum penalty: 20 penalty units.

99 Certain parts or accessories to be marked

- (1) This section applies to parts or accessories of a kind prescribed by the regulations for the purposes of this section.
- (2) A motor vehicle recycler must, as soon as practicable after demolishing or dismantling a motor vehicle, mark each part or accessory obtained from the motor vehicle in the manner prescribed by the regulations.
- (3) A motor vehicle recycler must, as soon as practicable after acquiring a part of a motor vehicle or accessory, mark the part or accessory in the manner prescribed by the regulations.

Maximum penalty: 20 penalty units.

Division 8 Record keeping obligations

100 Registers must be kept by motor dealers, motor vehicle recyclers and motor vehicle repairers

- (1) The holder of a motor dealer's licence, a motor vehicle recycler's licence or a motor vehicle repairer's licence must keep or cause to be kept a register relating to the holder's business.
- (2) If required by the regulations, the licence holder must keep or cause to be kept separate registers for specified matters.
- (3) A register is to be in the form, and contain the particulars, prescribed by the regulations and to be kept at the place or places prescribed by the regulations.
- (4) The entries in a register kept under this section must be made within the period (if any) specified by the regulations.
- (5) A licence holder who fails to keep or cause to be kept a register in accordance with this section is guilty of an offence.

Maximum penalty: 20 penalty units.

Division 9 Suspicious goods

101 Duty to report suspicious goods

A licence holder or any employee of a licence holder who suspects for any reason that a motor vehicle, motor vehicle part, accessory or any other thing that is in the licence holder's custody, or that is offered to the licence holder for sale, in the course of the licence holder's business may have been stolen or unlawfully obtained must without unreasonable delay inform the Secretary of the suspicion.

Maximum penalty: 20 penalty units.

102 Retention of suspicious goods

- (1) An authorised officer who has reasonable grounds for believing that a motor vehicle, motor vehicle part, accessory or any other thing that is in the possession of a licence holder has been stolen or is unlawfully obtained may issue a non-disposal notice to the licence holder.
- (2) A *non-disposal notice* is a notice that prohibits the licence holder, for a period of 14 days after the notice is given, from altering the form of the thing, selling or otherwise disposing of it in any way or parting with possession of it.
- (3) The Local Court may, on application by an authorised officer, order that the effect of a non-disposal notice be extended for a further period of up to 28 days. More than one application may be made under this subsection.
- (4) A licence holder, or an employee of a licence holder, must not contravene a notice given under this section.

Maximum penalty: 500 penalty units.

Division 10 Motor vehicle brokers' obligations

103 Motor vehicle brokers' obligations

- (1) A person is a *motor vehicle broker* for the purposes of this Act if the person carries on the business (other than as a retailer or on a wholesale basis or as a financier) of negotiating on behalf of other persons for the purchase of motor vehicles by those persons and of advising other persons on the purchase of motor vehicles.
- (2) A motor vehicle broker must disclose to any person to whom the person provides services in the course of business as a motor vehicle broker:
 - (a) whether the motor vehicle broker has a financial or other business relationship with the supplier of a motor vehicle in relation to which the services are provided, and
 - (b) whether the motor vehicle broker receives a fee or other consideration from the supplier arising out of the provision of those services.
- (3) The disclosure must be made before the motor vehicle broker provides services in that capacity.
- (4) A motor vehicle broker who fails to comply with this section is guilty of an offence.
Maximum penalty: 20 penalty units.

Part 5 Remedies relating to conduct by motor dealers, motor vehicle repairers and motor vehicle recyclers

Division 1 Unjust conduct by motor dealers, motor vehicle repairers and motor vehicle recyclers

104 Application of Division

This Division applies to the holder of a motor dealer's licence, a motor vehicle repairer's licence or a motor vehicle recycler's licence.

105 Meaning of "unjust conduct"

For the purposes of this Division, conduct of a licence holder is *unjust conduct* if it is conduct:

- (a) that is dishonest or unfair, or
- (b) that consists of anything done, or omitted to be done, in breach of contract, whether or not proceedings in respect of the breach have been brought, or
- (c) that consists of the contravention of this Act or the regulations or any other Act or regulation administered by the Minister, or
- (d) that consists of a failure to comply with a condition or restriction to which the licence is subject or an order of the Tribunal applicable to the holder.

106 Undertakings by licence holder

- (1) If it appears to the Secretary that a licence holder has, in the course of business, repeatedly engaged in unjust conduct, the Secretary may, with the consent of the Minister:
 - (a) request the licence holder to execute a deed in terms approved by the Secretary under which the licence holder gives undertakings as to:
 - (i) the discontinuance of the unjust conduct, and
 - (ii) the licence holder's future conduct, and
 - (iii) the action the licence holder will take to rectify the consequences of the licence holder's unjust conduct, or
 - (b) apply to the Tribunal under this Division.
- (2) If the Secretary makes a request or application under this section, it is presumed, unless the contrary is proved, that the Secretary does so with the authority of the Minister.
- (3) The following actions must not be taken against a licence holder, in respect of conduct the subject of undertakings in a deed approved under this section, if the licence holder observes the undertakings:
 - (a) disciplinary action under this Act,
 - (b) an application to the Tribunal for an order under this Division.
- (4) A licence holder who executes a deed under this Division must observe the undertakings given by the licence holder in the deed.
Maximum penalty: 20 penalty units.
- (5) A prosecution for an offence under subsection (4) may be instituted only by the Secretary with the leave of the Tribunal given when making an order under section 108.

107 Register of Undertakings

- (1) The Secretary must lodge a copy of any deed executed under this Division with the Registrar of the Tribunal and give a copy of the deed to the licence holder who executed it.
- (2) The Secretary must retain all deeds executed under this Division and register the deeds in a Register of Undertakings kept by the Secretary and containing the particulars prescribed by the regulations.

108 Restraint of unjust conduct

- (1) The Tribunal may, on the application of the Secretary, order a licence holder to refrain from engaging in unjust conduct in the course of carrying on business as a motor dealer, motor vehicle repairer or motor vehicle recycler, if it is satisfied after inquiry that a licence holder has repeatedly engaged in unjust conduct.
- (2) The Tribunal may, on the application of the Secretary, if it is satisfied that a licence holder has failed to observe an undertaking given by the licence holder in a deed executed under this Division:
 - (a) order the licence holder to refrain from engaging in unjust conduct in the course of carrying on business as a motor dealer, motor vehicle repairer or motor vehicle recycler, and
 - (b) in the case of an undertaking relating to action to rectify the consequences of the licence holder's unjust conduct, order the licence holder to observe the undertaking within the time specified by the Tribunal in the order.
- (3) If the licence holder is a body corporate and the Tribunal is satisfied that the unjust conduct or breach of undertaking concerned was engaged in with the consent or connivance of a person who, at the time of the conduct or breach was a director of, or a person concerned in the management of, the body corporate, the Tribunal may make an order prohibiting the person from consenting to, or conniving at, engagement in unjust conduct, or a breach of an undertaking under this Division, by the body corporate or any other body corporate of which the person is a director or in the management of which the person is concerned.
- (4) An order under this section may be made subject to such conditions as the Tribunal thinks fit.
- (5) Without limiting subsection (4), the Tribunal may impose conditions of the following kinds:
 - (a) conditions as to the duration of the order,
 - (b) conditions as to the future conduct of the person subject to the order,
 - (c) conditions specifying the action to be taken by the licence holder to rectify the consequences of the licence holder's conduct.

109 Variation or discharge of restraining order

The Tribunal may, on the application of the Secretary, vary or discharge an order made under this Division.

Division 2 Disputes

110 Definitions

In this Division:

complainant means a purchaser or owner of a motor vehicle who applies to have a dispute investigated under this Division.

motor dealer includes a person who was a motor dealer when the events the subject of a dispute to which this Division applies occurred.

motor vehicle repairer includes a person who was a motor vehicle repairer when the events the subject of a dispute to which this Division applies occurred.

111 Disputes to which Division applies

(1) Motor dealer disputes

This Division applies to disputes between motor dealers and purchasers and owners of motor vehicles arising out of the application of this Act, including (but not limited to) the following:

- (a) the existence or extent of any obligation under Division 4 of Part 4 on the part of the motor dealer to the purchaser or the owner,
- (b) the manner of carrying out any such obligation,
- (c) the amount of the fair cost of repairing or making good any defect referred to in a defect notice.

(2) Repair disputes

This Division applies to disputes between motor vehicle repairers and owners of motor vehicles arising out of the application of this Act, including (but not limited to) the following:

- (a) the manner in which any repair work has been done,
- (b) the fair cost owed by the owner to the repairer for the carrying out of any repair work.

(3) Excluded disputes

An application cannot be made or dealt with under this Division in relation to a matter in dispute if:

- (a) proceedings in respect of the matter have been commenced in a court or tribunal and have not been discontinued before being finally determined, or
- (b) the matter has been previously dealt with under this Division.

112 Investigation of disputes

- (1) A purchaser or owner of a motor vehicle who is a party to a dispute to which this Division applies may apply to the Secretary to investigate the dispute.
- (2) The Secretary is to use the Secretary's best endeavours by communication with the parties to the dispute, or otherwise, to settle the dispute.
- (3) If the Secretary is unable to settle the dispute, the Secretary is to investigate the dispute.
- (4) The Secretary may determine the procedure for the purpose of investigating the dispute.

113 Secretary may make rectification order

- (1) If, after completing an investigation under this Division, the Secretary is satisfied:
 - (a) that any work done or required to be done by or on behalf of a motor dealer to make good or repair a motor vehicle so as to comply with the dealer guarantee has not been done or is incomplete or defective, or
 - (b) that any repair work done by a motor vehicle repairer is incomplete or defective,

the Secretary may serve a written order (a **rectification order**) on the motor dealer or motor vehicle repairer requiring the motor dealer or motor vehicle repairer to take such steps as are specified in the order to ensure that the work is completed or the defect rectified.

- (2) A rectification order:
- (a) may specify conditions (including conditions with respect to the payment of money) to be complied with by the complainant before the requirements of the order must be complied with, and
 - (b) must specify a date by which the requirements of the order must be complied with, subject to the complainant's compliance with any such condition.

114 Effect of rectification order

- (1) Except as provided by this Act, a rectification order does not give rise to any rights or obligations.
- (2) A rectification order ceases to have effect for the purposes of being a ground for disciplinary action under this Act if the matter giving rise to the order becomes the subject of an action before the Tribunal.

Note. Contravention of a rectification order is a ground for taking disciplinary action against a licence holder.

Division 3 Rescission of motor vehicle sales and other orders

115 Definitions

In this Division:

cash price of a motor vehicle means the sum of the price (if any) at which the vehicle is sold and the amount of the value of any other vehicle or other thing that comprises the whole or part of the consideration for the sale. The value is the value given to the vehicle or other thing by the parties to the sale or, if no value is so given, the market value of the vehicle or other thing at the time of the sale.

rescission order means an order made under section 117 or 118.

116 Conferral of jurisdiction on courts

The following courts have jurisdiction to make a rescission order in relation to the sale of a motor vehicle:

- (a) the Local Court in the exercise of its jurisdiction under Part 3 of the *Local Court Act 2007*, if the cash price for which the motor vehicle was sold does not exceed the jurisdictional limit of the Local Court when sitting in its General Division within the meaning of that Act,
- (b) the District Court, if the cash price for which the motor vehicle was sold does not exceed the amount for the time being specified in section 44 (1) (a) of the *District Court Act 1973*,
- (c) the Supreme Court.

117 Rescission orders

- (1) A court may, on application by the Secretary, if it is satisfied that a ground for making the order has been made out, make an order that:
 - (a) the sale of a motor vehicle by a motor dealer is rescinded and that the motor vehicle must be returned to the motor dealer, and
 - (b) any amount paid or the value of other consideration given by the purchaser for the motor vehicle must be returned to the purchaser, subject to any financial

adjustment between the motor dealer and the purchaser that the court thinks fit to make.

- (2) The court may also make any other ancillary or consequential orders it thinks fit, including an order as to payment of the costs of the application.
- (3) The grounds for making a rescission order are as follows:
 - (a) an inspection report, receipt or declaration required to be attached to the motor vehicle under Division 2 of Part 4 was not attached at all material times when the motor vehicle was offered or displayed for sale by the motor dealer,
 - (b) a dealer's notice, or a copy of a dealer's notice, was not given to the purchaser in accordance with the applicable requirements of Division 3 of Part 4,
 - (c) the particulars included in a dealer's notice relating to the motor vehicle were, in the opinion of the court, false or misleading in a material particular,
 - (d) the body of, or mechanical equipment in, the motor vehicle was at the time it was sold by the motor dealer in such a condition that, in the opinion of the court, it is not practicable to comply with the dealer guarantee for the motor vehicle.
- (4) An appeal lies to the Supreme Court against a rescission order made under this section:
 - (a) by the Local Court as if it were exercising jurisdiction under Part 3 of the *Local Court Act 2007*, and
 - (b) by the District Court as if it were exercising jurisdiction under the *District Court Act 1973*.

118 Rescission orders after findings of guilt

- (1) If a motor dealer is found guilty of an offence under Part 4, the Local Court may, in addition to any other penalty it imposes, make an order that:
 - (a) the sale of a motor vehicle by a motor dealer is rescinded and that the motor vehicle must be returned to the motor dealer, and
 - (b) any amount paid or the value of other consideration given by the purchaser for the motor vehicle must be returned to the purchaser, subject to any financial adjustment between the motor dealer and the purchaser that the Court thinks fit to make.
- (2) The Local Court must not make a rescission order under this section if the cash price for which the motor vehicle was sold exceeds the jurisdictional limit of the Local Court when sitting in its General Division.

119 Difficulty of restoring position no bar to rescission order

Despite any other law, it is not a bar to the making of a rescission order that the parties under any contract or agreement relating to the sale of the motor vehicle or under any credit contract associated with the sale cannot be restored to the positions that existed before the sale because of the time that has elapsed since the date of the sale or the circumstances that have occurred since that date.

120 Effect of rescission orders on rights

- (1) On the rescission of the sale of a motor vehicle under this Division, the liabilities and rights of the purchaser of the motor vehicle under a credit contract under which credit is provided by a person who is a linked credit provider of the motor dealer for the purpose of financing the whole or part of the purchase:
 - (a) are, by force of this section, transferred to the motor dealer, and

- (b) subject to this section, may be enforced against the motor dealer as if the motor dealer were the purchaser.
- (2) On the rescission of the sale of a motor vehicle under this Division, the rights and liabilities of the parties to the contract for the sale of the motor vehicle or any such credit contract are, despite any other law, as specified in the rescission order and any ancillary or consequential orders.

121 Secretary and others have right to be heard before rescission order

A court must not make a rescission order unless it has given the Secretary or a representative of the Secretary, and any other person likely to be affected by the order, an opportunity to be heard.

Division 4 Penalties for unlicensed motor dealers and motor vehicle recyclers

122 Definitions

In this Division:

forfeiture order means an order made under section 123 (1) (a).

proceeds order means an order made under section 123 (1) (b).

restraining order means an order made under section 125 (1).

123 Forfeiture of motor vehicles and proceeds by unlicensed motor dealers and motor vehicle recyclers

- (1) A court that convicts a person of an offence under section 11 or 13 may, in addition to any other penalty it may impose, make one or more of the following orders:
 - (a) an order that any specified motor vehicle to which the offence relates is forfeited to the Crown,
 - (b) an order that the person pay to the Crown an amount, as assessed by the court, equal to the proceeds derived by the person from the commission of the offence or any other offence to which this section applies and which the court has taken into account in imposing any such penalty.
- (2) Before making a forfeiture order or a proceeds order, the court may require notice to be given to, and may hear, such persons as the court thinks fit.
- (3) For the purposes of making a proceeds order against a person, the court may:
 - (a) take into account such matters as the court thinks fit, and
 - (b) to the extent specified by the court—treat any interest in real or personal property acquired by the person by means of proceeds derived by the person from the commission of an offence as proceeds derived by the person from the commission of the offence, and
 - (c) treat the equivalent, in monetary value, of any interest in real or personal property derived by the person from the commission of an offence as proceeds derived by that person from the commission of the offence.
- (4) An amount payable under a proceeds order is to be paid to the Compensation Fund.
- (5) The amount payable under a proceeds order may, by leave of the court by which it was made, and regardless of the amount ordered to be paid, be recovered as a judgment debt in that court.

124 Appeals against forfeiture and proceeds orders

- (1) A person who has an interest in a motor vehicle the subject of a forfeiture order may appeal against the order in the same manner as if the order were, or were part of, an order imposing a penalty in respect of the offence (whether or not the person was convicted of the offence that resulted in the order).
- (2) A person against whom a proceeds order is made may appeal against the order in the same manner as if it were, or were part of, an order imposing a penalty in respect of the offence that resulted in the order.
- (3) The court to which an appeal is made in respect of a forfeiture order may, pending the hearing and determination of the appeal, make such orders as it thinks fit for the custody of the motor vehicle the subject of the order.
- (4) On appeal, a forfeiture order or a proceeds order may be confirmed, revoked or varied.

125 Temporary restraint on disposition of property

- (1) A court before which proceedings are being taken against a person for an offence under section 11 or 13 or that makes a proceeds order against a person may, by order, prohibit, except as is specified in the order:
 - (a) the person (the *offender*) from disposing of or otherwise dealing with any interest in specified property, and
 - (b) any other specified person from disposing of or otherwise dealing with any interest in specified property:
 - (i) that belongs to the offender and in respect of which the offender has a power of attorney from that person or any other power of disposition, or
 - (ii) that the specified person holds for or on behalf of the offender.
- (2) Without affecting any power conferred on it by subsection (1), the Supreme Court may at any time make a restraining order against a person:
 - (a) in respect of whom any other court may make such an order, or
 - (b) whom any other court has committed for trial or for sentence.
- (3) Before making a restraining order, a court may require notice to be given to, and may hear, such persons as it thinks fit.
- (4) Any person who holds an interest in property the subject of a restraining order may apply for the revocation or variation of the order.
- (5) A restraining order may be revoked or varied by the Supreme Court or:
 - (a) if proceedings in respect of the offence are being taken—by the court before which those proceedings are being taken, or
 - (b) in any other case—by the court before which proceedings in respect of the offence were last taken.
- (6) A person must not, without reasonable excuse, fail to comply with a restraining order.
Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

Division 5 Administration of motor dealers and motor vehicle recyclers

126 Definitions

In this Division:

administration means an administration under this Division.

administrator means an administrator of the affairs and property of a person holding office under this Division.

affairs of a person means the person's affairs relating to the carrying on of a business authorised to be carried on by a licence or a former licence held by the person.

person subject to administration means a person for whose affairs and property an administrator is appointed under this Division.

property of a person means the following:

- (a) property held by the person, or by an employee or agent of the person, in the course of or in connection with a business the subject of an administration, whether or not the property is held on behalf of another person,
- (b) property that would, but for the appointment of an administrator, be receivable by the person after the appointment whether on behalf of the person or another person,
- (c) interest, dividends or other income received by the administrator and arising from property held by the administrator as administrator,
- (d) records kept by or on behalf of the person in connection with a business the subject of an administration.

127 Appointment of administrator for holder of licence

- (1) The Supreme Court may, on the application of the Secretary, make an order appointing an administrator of the affairs and property of a licence holder if the Court is satisfied that:
 - (a) any ground exists on which the licence holder's licence may be suspended or cancelled under this Act, or
 - (b) the licence holder has repeatedly engaged in unjust conduct within the meaning of Division 1, or
 - (c) it is desirable in the public interest, having regard to the circumstances of the licence holder, to do so.
- (2) The Supreme Court may suspend or cancel the licence of any person subject to an order under this section.

128 Appointment of administrator for former holder of licence

- (1) The Supreme Court may, on the application of the Secretary, make an order appointing an administrator of the affairs and property of a person whose motor dealer's licence or motor vehicle recycler's licence has been suspended or cancelled on being satisfied that the appointment is necessary or desirable in order to protect the interests of persons with whom that person has had dealings.
- (2) An application for administration under this section must be made:
 - (a) not later than 12 months after the date on which the licence was suspended or cancelled, and
 - (b) in the case of a suspension, before the suspension is removed or expires.

129 Notification of appointment of administrator

- (1) The Secretary must give a copy of the order appointing an administrator of the affairs and property of a person to the person, and to any other person directed by the Supreme Court, as soon as practicable after the order is made.
- (2) The Secretary is not required to give a copy of an order to a person if:
 - (a) the Supreme Court dispensed with service, or

- (b) the person appeared, or was represented, in proceedings for the appointment of the administrator.

130 Functions of administrator

Schedule 1 contains provisions relating to the functions of an administrator and the conduct of an administration.

131 Obstruction of administrator

A person must not, without reasonable excuse, obstruct, hinder or delay an administrator in the exercise of the administrator's functions under this Act.

Maximum penalty: 20 penalty units.

132 Vacation of office by administrator

The office of an administrator becomes vacant if the administrator:

- (a) dies, or
- (b) has his or her appointment revoked by the Supreme Court, or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (d) becomes a mentally incapacitated person, or
- (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

133 Revocation of appointment of administrator

- (1) The Supreme Court may, on the application of an administrator or on the application of the Secretary, make an order revoking the appointment of the administrator.
- (2) The Supreme Court may, on the application of a person subject to administration, make an order revoking the appointment of the administrator if it is satisfied that the purpose for which that administrator was appointed has been fulfilled.
- (3) If an administrator of the affairs and property of a person has vacated office, the Supreme Court may, on the application of the Secretary, make an order appointing another person as administrator, if the Supreme Court is satisfied that the purpose for which the former administrator was appointed has not yet been fulfilled.

134 Transfer of property under administration after revocation

- (1) If the Supreme Court revokes the appointment of an administrator and is satisfied that the purpose for which the former administrator of the affairs and property of a person was appointed has been fulfilled, the Supreme Court may make an order vesting in or transferring to the person any property held in trust for the person by the administrator.
- (2) If the Supreme Court appoints a new administrator and is satisfied that the purpose for which the former administrator of the affairs and property of a person was appointed has not been fulfilled, the Supreme Court is to make an order vesting in or transferring to the new administrator any property held in trust for the person by the former administrator.
- (3) The Supreme Court may make an order under this section on its own motion or on an application for the revocation of appointment of the administrator.

135 Transfer of property under administration after vacation without revocation

- (1) An application may be made to the Supreme Court by a person subject to administration if:
 - (a) the administrator has vacated office, other than because the appointment is revoked, and
 - (b) an order for the appointment of a new administrator has not been made, and
 - (c) the application is made not earlier than 14 days after the administrator vacated office.
- (2) The Supreme Court may, on application under this section, make an order vesting in or transferring to the person any property held in trust for the person by the former administrator.

136 Orders to provide for payment of administrator's costs

An order by the Supreme Court under this Division that vests in or transfers property to a person who was subject to administration is to provide for the payment of the costs of the former administrator by the person:

- (a) to the former administrator, or
- (b) to the Compensation Fund, if the costs were paid by the Secretary from that Fund.

137 Power of Supreme Court to make certain orders

The Supreme Court may, on the application of the administrator and without derogating from any other provision of this Division or Schedule 1, make orders authorising an administrator to do such things as the Court thinks fit for the purpose of enabling the administrator to administer the affairs and property of the person subject to administration.

138 Person entitled to be heard

A person who is the subject of an application for the appointment of an administrator or who is subject to an application made by the Secretary to revoke the administration to which the person is subject or to appoint a new administrator is:

- (a) unless the Supreme Court dispenses with service, entitled to be served with a copy of the originating process, and
- (b) entitled to appear and be heard at the hearing of the application, either personally or by an Australian legal practitioner.

139 Improper withdrawal of money etc

- (1) A person must not, with the intention of defeating the purposes of this Division:
 - (a) withdraw money from, or make any payment out of, any account kept by or on behalf of a licence holder or a person whose licence is cancelled or suspended, or
 - (b) destroy or conceal, or remove from one place to another, or deliver into the possession or control of any other person, any property in relation to which an administrator is subsequently appointed.
- (2) A person must not, after being notified or becoming aware of the appointment of an administrator and without the authority of the administrator:
 - (a) withdraw money from, or make any payment out of, any account kept by or on behalf of a person subject to administration, or

- (b) destroy or conceal, or remove from one place to another, or deliver into the possession or control of any other person, any property of a person subject to administration.

Maximum penalty: 20 penalty units or imprisonment for 12 months, or both.

140 Application to Supreme Court for directions

- (1) The following persons may apply to the Supreme Court for directions as to the manner in which an administrator is required to exercise the functions conferred on the administrator by this Act, either generally or with respect to any particular matter specified in the application:
 - (a) an administrator,
 - (b) the person who is subject to the administration,
 - (c) any person who has submitted a claim to the administrator in relation to any property being administered by the administrator.
- (2) On the hearing of an application, the Supreme Court may, by order, give any directions that it considers to be appropriate in the circumstances of the case.

Part 6 Unfair contracts and unjust conduct affecting motor dealers

141 Definitions

In this Part:

distributor means a person who:

- (a) imports new motor vehicles into Australia, or
- (b) distributes new motor vehicles (whether assembled or manufactured in or outside Australia).

manufacturer means an assembler or manufacturer or distributor of motor vehicles (whether assembled or manufactured in or outside Australia) who supplies those motor vehicles for sale by a motor dealer and includes any person, or member of a class of persons, prescribed by the regulations for the purposes of this definition.

motor industry group means a body, approved by the Secretary for the purposes of this Part, that represents motor dealers.

supply contract means a contract (including any documents forming part of, or referred to in, the contract) between a manufacturer and a motor dealer for the supply of motor vehicles by the manufacturer to the motor dealer for sale by the motor dealer.

142 Unfair contracts

- (1) A term of a supply contract is **unfair** for the purposes of this Part if:
 - (a) it would cause a significant imbalance in the parties' rights and obligations arising under the contract, and
 - (b) it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term, and
 - (c) it would cause detriment (whether financial or otherwise) to a party if it were to be relied on.
- (2) Without limiting subsection (1), the following are examples of terms of supply contracts that may be unfair:
 - (a) a term that permits, or has the effect of permitting, one party (but not another party) to avoid or limit performance of the contract,
 - (b) a term that permits, or has the effect of permitting, one party (but not another party) to terminate the contract,
 - (c) a term that penalises, or has the effect of penalising, one party (but not another party) for a breach or termination of the contract,
 - (d) a term that permits, or has the effect of permitting, one party (but not another party) to vary the terms of the contract,
 - (e) a term that permits, or has the effect of permitting, one party unilaterally to vary the characteristics of the goods to be supplied under the contract,
 - (f) a term that permits, or has the effect of permitting, one party unilaterally to vary the goods required to be sold or the place at which goods are required to be sold by the motor dealer,
 - (g) a term that unreasonably limits, or has the effect of unreasonably limiting, the assignment by the motor dealer of the motor dealer's rights under the contract or the sale of the motor dealer's business,
 - (h) a term that limits, or has the effect of limiting, one party's rights to sue another party.

143 Unjust conduct

Conduct of a manufacturer is *unjust conduct* for the purposes of this Part if it is conduct:

- (a) that occurs in connection with a supply contract and is conduct that is dishonest or unfair, or
- (b) that is authorised by an unfair term of a supply contract.

144 Complaints to Small Business Commissioner

- (1) A motor industry group may apply to the Small Business Commissioner for assistance in dealing with a dispute about an unfair term of a supply contract or a class of supply contracts or unjust conduct by a manufacturer who is a party to a supply contract or class of supply contracts.
- (2) A motor dealer may apply to the Small Business Commissioner for assistance in dealing with a dispute about an unfair term of a supply contract or unjust conduct by a manufacturer who is a party to a supply contract.
- (3) The application is to be dealt with under the *Small Business Commissioner Act 2013* as if it were made by a small business under Division 2 of Part 2 of that Act.

145 Applications to Tribunal about unfair supply contracts and unjust conduct

- (1) A motor industry group or the Small Business Commissioner may apply to the Tribunal on behalf of a motor dealer or class of motor dealers for a declaration that a term of a supply contract or a class of supply contracts is unfair, or that conduct of a manufacturer is unjust, and for orders under this Part.
- (2) A motor dealer may apply to the Tribunal for a declaration that a term of a supply contract is unfair, or that conduct of a manufacturer is unjust, and for orders under this Part.
- (3) An application may not be made by a motor industry group or a motor dealer in relation to a matter unless the motor industry group or motor dealer has first made a complaint to the Small Business Commissioner about the matter and the Commissioner has provided a certificate under section 19 of the *Small Business Commissioner Act 2013* as to the outcome of procedures under that Act relating to the complaint.
- (4) An applicant for a declaration and an order under this Part must give notice in writing of the application to the Secretary.

146 Declarations by Tribunal

- (1) The Tribunal may, on application under this Part by a motor industry group, the Small Business Commissioner or a motor dealer, declare a term of a supply contract or a class of supply contracts to be an unfair term or declare conduct of a manufacturer to be unjust conduct.
- (2) In determining whether to make a declaration that a term of a supply contract is an unfair term or that conduct is unjust, the Tribunal may take into account such matters as it thinks fit and is to have regard to all the circumstances of the case, including the contract as a whole.
- (3) Without limiting subsection (2), the Tribunal may consider the following (if relevant):
 - (a) the extent to which the supply contract is expressed in reasonably plain language and is presented clearly,

- (b) whether or not there was any material inequality in bargaining power between the parties to the supply contract,
- (c) whether or not at or before the time the supply contract was made its provisions were the subject of negotiation,
- (d) whether or not it was reasonably practicable for a motor dealer to negotiate for the alteration of or to reject the term of the supply contract or any matter related to the contract,
- (e) whether a term of a supply contract imposes conditions which are unreasonably difficult to comply with or not reasonably necessary for the protection of the legitimate interests of any party to the supply contract,
- (f) whether or not and when independent legal or other expert advice was obtained by the motor dealer,
- (g) whether any undue influence, unfair pressure or unfair tactics were exerted on or used against the motor dealer:
 - (i) by any other party to the supply contract, or
 - (ii) by any person acting or appearing or purporting to act for or on behalf of any other party to the supply contract, or
 - (iii) by any person to the knowledge (at the time the supply contract was made) of any other party to the supply contract or of any person acting or appearing or purporting to act for or on behalf of any other party to the supply contract,
- (h) the conduct of the parties in relation to similar contracts or courses of dealing to which any of them has been a party.

147 Orders by Tribunal if term declared unfair or conduct declared unjust

- (1) The Tribunal may, if it declares a term of a supply contract or of a class of supply contracts to be an unfair term, do any of the following:
 - (a) make an order declaring the contract or contracts to be void, in whole or in part,
 - (b) make an order varying, in whole or in part, any term of the contract or contracts,
 - (c) make an order directing a party to the contract or contracts to take or not to take specified actions relating to the subject-matter of the contract or contracts (whether or not permitted by the contract or contracts),
 - (d) make an order directing a party to the contract to pay an amount of compensation to another party to the contract,
 - (e) make any other consequential or ancillary orders it thinks fit.
- (2) The Tribunal may, if it declares conduct by a manufacturer to be unjust, do any of the following:
 - (a) make an order directing a manufacturer or other person to take or not to take specified actions relating to the conduct or the subject-matter of the supply contract or contracts (whether or not permitted by the contract or contracts),
 - (b) make an order directing a party to the contract to pay an amount of compensation to another party to the contract,
 - (c) make any other consequential or ancillary orders it thinks fit.
- (3) An order made by the Tribunal under this section takes effect when it is made or at such other time as the Tribunal specifies.

- (4) In making an order under this section, the amount of compensation the Tribunal may order to be paid is not subject to any limitation on the Tribunal's jurisdiction under any other Act or law.

148 Operation of other laws

This Part does not limit or restrict the operation of any other law that provides for relief against unjust conduct or unfair contract terms.

Part 7 Enforcement and offences

Division 1 Inspection powers

149 Authorised officers

- (1) In this Act:

authorised officer means:

- (a) the Secretary, or
- (b) a person for the time being authorised in writing as an authorised officer by the Secretary, or
- (c) a police officer, or
- (d) any other member of the NSW Police Force who is authorised by the Commissioner of Police in writing to exercise functions of an authorised officer under this Act, or
- (e) a person for the time being authorised in writing as an authorised officer by the Chief Executive of Roads and Maritime Services, or
- (f) an investigator.

investigator means an investigator appointed under section 18 of the *Fair Trading Act 1987*.

- (2) An authorised officer who is a person for the time being authorised in writing by the Secretary or the Chief Executive of Roads and Maritime Services is to be provided by the Secretary or the Chief Executive of Roads and Maritime Services with a certificate of identification.
- (3) An authorised officer who is provided with a certificate of identification or is an investigator must, when exercising on any premises any function of the authorised officer or investigator under this Act, produce the officer's or investigator's certificate of identification to any person apparently in charge of the premises who requests its production.

150 Purposes for which powers of authorised officer may be exercised

An authorised officer may exercise the powers conferred by this Division for any of the following purposes:

- (a) ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened,
- (b) ascertaining whether the provisions of Part 4.5 of the *Road Transport Act 2013* are being complied with or have been contravened,
- (c) investigating a complaint made under this Act,
- (d) obtaining evidence, records or information in relation to a matter that constitutes or may constitute a contravention of a provision referred to in paragraph (a) or (b).

151 Powers of entry, inspection etc

- (1) An authorised officer may enter and inspect at any reasonable time any premises that the officer believes on reasonable grounds are used for the carrying on of the business or a trade for which a licence is required under this Act, whether or not the business or trade is being carried on by the holder of a licence.
- (2) An authorised officer who enters premises under this section or under the authority of a search warrant under this Part may do any one or more of the following:

- (a) require any person on those premises to produce any records in the possession or under the control of that person relating to the carrying on of the business of a motor dealer, motor vehicle repairer or motor vehicle recycler and (in the case of records stored electronically) to produce any such record in written form,
 - (b) require any person on those premises to produce any register required to be kept at those premises under this Act and to produce any such register in written form,
 - (c) inspect, take copies of or extracts from, or make notes from, any such records (including registers), and for that purpose may take temporary possession of any such records (including registers),
 - (d) take possession of any such records (including registers) if the authorised officer considers it necessary to do so for the purpose of obtaining evidence or protecting evidence from destruction,
 - (e) take such photographs, films and audio, video and other recordings as the authorised officer considers necessary,
 - (f) search for and examine any motor vehicles and parts and accessories of motor vehicles,
 - (g) require any person on those premises to answer questions or otherwise furnish information in relation to records at the premises or any statement made by the person,
 - (h) require the owner or occupier of those premises to provide the authorised officer with such assistance and facilities as is or are reasonably necessary to enable the authorised officer to exercise the functions of an authorised officer under this section.
- (3) An authorised officer is not entitled to enter a part of premises used for residential purposes, except:
- (a) with the consent of the occupier of the part, or
 - (b) under the authority of a search warrant.
- (4) The regulations may make provision with respect to the keeping of a register under this Act during any period in which the register is in the possession of an authorised officer.

152 Power of authorised officer to obtain information, records and evidence

- (1) An authorised officer may, by notice in writing given to a person, require the person to produce to the authorised officer, in accordance with the notice, specified records or records of a specified class or description to an authorised officer at a specified time or within a specified period.
- (2) An authorised officer may inspect and take notes, copies and extracts of or from any record or statement produced under this section.

153 Police entry power

- (1) For the purpose of searching for, or obtaining information concerning, stolen motor vehicles and stolen parts and accessories of motor vehicles, a police officer may:
 - (a) enter premises that the police officer suspects on reasonable grounds are used for the carrying on of a business or trade for which a licence is required, whether or not the business or trade is being carried on by the holder of a licence, and
 - (b) search for and examine any motor vehicles and parts and accessories of motor vehicles on those premises, and

- (c) require the production of records, and
 - (d) inspect and require explanations of any record, and
 - (e) take notes, copies and extracts of or from any record or statement produced under this section.
- (2) The power of a police officer to enter premises does not permit entry to any part of premises used for residential purposes unless:
- (a) a person holds a licence granted in respect of the premises, or
 - (b) the police officer is acting pursuant to a search warrant.
- (3) In this section:
stolen means stolen or otherwise unlawfully obtained.

154 Search warrants

- (1) An authorised officer may apply to an issuing officer for a search warrant if the applicant has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened on premises.
- (2) An issuing officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant, when accompanied by a police officer, and any other person named in the warrant:
- (a) to enter the premises concerned, and
 - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:
issuing officer means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

155 Obstruction and other related offences

A person must not:

- (a) without reasonable excuse, refuse or fail to comply with any notice given or requirement made, or to answer any question asked, by an authorised officer or a police officer under this Division, or
- (b) provide information or give evidence in purported compliance with a requirement made or question asked by an authorised officer or police officer under this Division knowing the information or evidence to be false or misleading in a material particular, or
- (c) wilfully delay, hinder or obstruct an authorised officer or a police officer in the exercise of the officer's functions under this Act, or
- (d) conceal or attempt to conceal any motor vehicle or part of or accessory for a motor vehicle that an authorised officer or a police officer is entitled to search for and examine under this Division.

Maximum penalty: 20 penalty units.

Division 2 Proceedings for offences

156 Proceedings

- (1) Proceedings for an offence against this Act or the regulations may be taken and prosecuted only by the following persons:
 - (a) the Secretary or, in the name of the Secretary, a person acting with the authority of the Secretary,
 - (b) a police officer,
 - (c) the Chief Executive of Roads and Maritime Services or, in the name of the Chief Executive, a person acting with the authority of the Chief Executive.
- (2) Proceedings for an offence under this Act or the regulations (other than proceedings for an indictable offence) may be dealt with:
 - (a) summarily before the Local Court, or
 - (b) summarily before the Supreme Court in its summary jurisdiction.
- (3) The maximum monetary penalty that the Local Court may impose in proceedings for an offence under this Act or the regulations is the maximum penalty specified for that offence or 100 penalty units, whichever is the lesser.
- (4) Any proceedings for an offence against this Act or the regulations must be commenced not later than 1 year after the time when the offence is alleged to have been committed.
- (5) Despite subsection (4), proceedings for an offence under Division 1 of Part 2 or section 52, 53 or 54 may be commenced at any time within 3 years after the time when the offence is alleged to have been committed.

157 Additional orders after findings of guilt

- (1) If a person is found guilty of an offence under this Act or the regulations, the court may, in addition to any other penalty it imposes, make any of the following:
 - (a) a finding or determination relating to an act or omission of the person found guilty,
 - (b) an order for the payment of compensation,
 - (c) an order for the carrying out of any work,
 - (d) an order ancillary to any such order.
- (2) A court may make an order against a person under this section even though proceedings for any other order against the person under this Act have been commenced.
- (3) The powers of a court under this section are in addition to any other powers of the court under this Act.

158 Penalty notices

- (1) A penalty notice officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.

- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (10) In this section, *penalty notice officer* means a person prescribed by the regulations for the purposes of this section.

Division 3 Liability of persons involved in corporations

159 Liability of directors etc for offences by corporation—offences attracting executive liability

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
 - (a) section 12,
 - (b) section 15 (1) or 16 (1).
- (2) A person commits an offence against this section if:
 - (a) a corporation commits an executive liability offence, and
 - (b) the person is:
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
 - (c) the person:
 - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
 - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.

- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:
director has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.
reasonable steps, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:
 - (a) action towards:
 - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
 - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
 - (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
 - (c) action towards ensuring that:
 - (i) the plant, equipment and other resources, and
 - (ii) the structures, work systems and other processes,relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
 - (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

160 Liability of directors etc for offences by corporation—accessory to the commission of the offences

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 159.
- (2) A person commits an offence against this section if:
 - (a) a corporation commits a corporate offence, and
 - (b) the person is:
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
 - (c) the person:

- (i) aids, abets, counsels or procures the commission of the corporate offence, or
- (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
- (iii) conspires with others to effect the commission of the corporate offence, or
- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

Division 4 Evidentiary provisions

161 Evidence of licensing matters and exemptions

A document purporting to be a certificate signed by the Secretary and certifying the following matters is evidence of the matters certified in all courts and before all persons and bodies authorised by law to receive evidence:

- (a) that a specified person is or is not or was or was not on any date or during any specified period the holder of a licence,
- (b) that a specified licence is or is not or was or was not subject to a specified condition on any date or during any specified period,
- (c) that a specified class of repair work is or is not or was or was not specified for a tradesperson's certificate on any date or during any specified period,
- (d) that a specified place of business is or is not or was or was not specified in a specified licence on any date or during any specified period,
- (e) that a person or thing is or is not or was or was not on any date or during any specified period exempted from a specified provision of this Act or the regulations or the whole of this Act or the regulations,
- (f) that any such exemption is or is not or was or was not subject to a specified condition on any date or during any specified period.

162 Evidence as to entries in registers

A register required to be kept by this Act, whether or not the register has been kept in or to the effect of the prescribed form, is evidence in proceedings in all courts and before all persons and bodies authorised by law to receive evidence, of the matters required by or under this Act to be recorded in it. An entry in any such register is evidence of the matters contained in the entry.

163 Evidence of carrying on business as motor dealer and advertising

- (1) If in any proceedings for an offence under this Act or the regulations it is proved that a person sold, or offered or displayed for sale, more than 4 motor vehicles within a 12 month period to any other person or persons (other than a motor dealer), it is presumed in the absence of evidence to the contrary that the person was carrying on business as a motor dealer during that period.
- (2) Nothing in subsection (1) precludes a person who sells, or offers or displays for sale, 4 or less motor vehicles within a 12 month period to any other person or persons from being found to be a motor dealer.
- (3) If in any proceedings for an offence under this Act or the regulations it is proved that a statement has been published containing identifying particulars of a person, or the agent of a person, who is a person specified in subsection (4), the person is presumed in the absence of evidence to the contrary to have caused the statement to be published on the day on which it was published.
- (4) The specified persons are as follows:
 - (a) the owner or supplier of any motor vehicle, substantially demolished or substantially dismantled motor vehicle or parts of or accessories for motor vehicles that the statement promotes or is intended to promote,
 - (b) the supplier of any services relating to motor vehicles, parts or accessories referred to in paragraph (a) that the statement promotes or is intended to promote,
 - (c) a person who has, otherwise than as an owner, an interest in any motor vehicles, parts or accessories referred to in paragraph (a) or the supply of any services referred to in paragraph (b) that the statement promotes or is intended to promote.

Part 8 Motor Dealers and Repairers Compensation Fund

164 Meaning of “failure to account” by motor dealer

- (1) In this Part, a reference to a *failure to account* by a motor dealer is a reference to a failure by the motor dealer to account for money or other valuable property entrusted to the motor dealer or an associate of the motor dealer in the course of the carrying on of the motor dealer’s business as a motor dealer.
- (2) Without limiting subsection (1), the failure of a motor dealer to return a deposit, or other money or thing, given to the dealer by a person in respect of the purchase of a motor vehicle that did not proceed is a failure to account.
- (3) This Part applies only to a failure to account that arises from an act or omission of the motor dealer or an associate of the motor dealer.
- (4) In this section:
associate of a motor dealer means:
 - (a) an employee or agent of the motor dealer, or
 - (b) a person who has the apparent control or charge for the time being of the business of the motor dealer or of any place at which that business is being carried on.

165 Motor Dealers and Repairers Compensation Fund

There is to be established in the Special Deposits Account a fund called the Motor Dealers and Repairers Compensation Fund. The Secretary is to administer the Compensation Fund.

166 Money payable to Compensation Fund

- (1) The Compensation Fund is to consist of the following:
 - (a) amounts of licence fees determined in accordance with the regulations,
 - (b) contributions required to be made to the Compensation Fund as a result of disciplinary action taken against a person,
 - (c) any amounts required or permitted to be paid to the credit of the Compensation Fund under this or any other Act,
 - (d) income from the investment of the Compensation Fund.
- (2) The regulations are to provide for the proportion of the total licence fees or other fees payable under this Act that are to be paid to the Compensation Fund instead of the Consolidated Fund.

167 Money payable from Compensation Fund

The following may be paid from the Compensation Fund:

- (a) the amount of any loss certified by the Secretary under this Part,
- (b) legal costs incurred by the Secretary in connection with claims against the Compensation Fund,
- (c) the costs of administering the Compensation Fund,
- (d) any amount that is required or permitted to be paid from the Compensation Fund under this or any other Act.

168 Matters for which claims may be made

- (1) The following losses incurred by a person are losses for which the person may claim compensation under this Part:
 - (a) a loss because the repair work carried out on a motor vehicle by or on behalf of a motor vehicle repairer or by a tradesperson was not competently done,
 - (b) a loss incurred in connection with a motor vehicle because a motor dealer failed to comply with this Act or the regulations,
 - (c) a loss incurred in connection with a motor vehicle because of a breach by a motor dealer of a contract made by the person with the motor dealer, but only if the breach is of a kind prescribed by the regulations for the purposes of this section,
 - (d) a loss incurred in connection with a motor vehicle because the motor dealer failed to give to the person an unencumbered title to the motor vehicle,
 - (e) a loss incurred because of a failure to account by a motor dealer.
- (2) The following losses incurred by a person are not losses for which the person may claim compensation under this Part:
 - (a) a loss for which compensation has been paid under this Part or for which the Secretary has previously given a certificate under this Part,
 - (b) a loss incurred by the person when acting in the capacity of a motor dealer, motor vehicle repairer, financier or motor vehicle recycler,
 - (c) a loss consisting of or arising from death or personal injury,
 - (d) a loss of or damage to property other than a motor vehicle,
 - (e) a loss of or damage to improvements made to a motor vehicle after the motor vehicle was purchased from the motor dealer concerned,
 - (f) a loss incurred by the claimant (including a statutory body representing the Crown) in connection with any repair work done by an employee of the claimant.
- (3) The regulations may prescribe other losses for which a claim for compensation may, or may not, be made under this Part.

169 Making of claims

- (1) A person may apply to the Secretary in writing for compensation under this Part.
- (2) An application is to be accompanied by the information or documents (if any) specified by the regulations or that the Secretary requires in any particular case.
- (3) A claim for compensation under this Part must be made:
 - (a) within 12 months after the loss is incurred or the claimant becomes aware of the loss, or
 - (b) within such further period as the Secretary may in any case allow.

170 Determination of claims

- (1) The Secretary may allow, wholly or partly, a claim for compensation if the Secretary is satisfied that it relates to a loss for which compensation may be paid under this Part.
- (2) The Secretary may disallow any claim, wholly or partly, in appropriate cases. In particular, the Secretary may disallow a claim to the extent that the loss was suffered as a result of a failure to mitigate loss or was occasioned by unreasonable delay in making a claim.

- (3) The Secretary must disallow a claim in connection with a loss unless the motor dealer, motor vehicle repairer or tradesperson involved:
 - (a) was at the time of the relevant act or omission from which the loss arose the holder of the applicable licence, or
 - (b) the Secretary is satisfied that the claimant believed on reasonable grounds that the motor dealer, motor vehicle repairer or tradesperson was the holder of such a licence.
- (4) The Secretary must disallow a claim unless the Secretary is satisfied that the claimant has taken all reasonable steps to exercise any legal remedies or other rights of action available to the claimant in respect of the loss.
- (5) The Secretary must give a claimant for compensation notice in writing of the Secretary's decision as to the claim.

171 Certification of loss

- (1) The Secretary is to certify the amount of loss when the Secretary allows a claim for compensation under this Part.
- (2) The amount certified is to be the lesser of the actual amount of the loss or \$40,000.

172 Review of claim determinations

- (1) A claimant whose claim for compensation under this Part is wholly or partly disallowed may request the Secretary in writing to reconsider the decision.
- (2) A request under this section must be made within 12 months of the decision to disallow the claim.
- (3) On receiving a request, the Secretary is to reconsider the claim and may allow or disallow the whole or part of the claim.
- (4) The Secretary must give a claimant for compensation notice in writing of the Secretary's decision as to the claim.
- (5) A claimant may not request more than one reconsideration in respect of any particular claim.
- (6) A decision of the Secretary under this section is final.

173 Subrogation

- (1) On payment out of the Compensation Fund in settlement in whole or in part of a claim under this Act, the Crown is subrogated, to the extent of the payment, to all the rights and remedies of the claimant against the person in relation to whom the claim arose, or any other person.
- (2) A certificate given by the Secretary certifying that a specified amount has been paid out of the Compensation Fund in settlement in whole or in part of a claim under this Act is evidence of the matter certified.
- (3) In the enforcement of any rights or remedies to which the Crown is subrogated under this section for the purpose of recovering an amount paid out of the Compensation Fund, the amount is taken to be a debt due to the Crown and may be recovered accordingly.
- (4) The Secretary may exercise the rights and remedies to which the Crown is subrogated under this section in the name of the Crown or in the name of the claimant concerned.

174 Recovery of payments from directors

- (1) This section applies when the payment of an amount out of the Compensation Fund has been made as a consequence of the act or omission of a corporation (including the payment of any amount to an administrator of the affairs and property of the corporation).
- (2) The Secretary may recover, jointly or severally, from any person who was a director or persons who were directors of the corporation at the time of the relevant act or omission, the amount of the payment as a debt in any court of competent jurisdiction.
- (3) In any proceedings for the recovery of an amount under this section, judgment is not to be entered against a defendant who proves that the act or omission occurred without the defendant's express or implied authority or consent.
- (4) Proceedings may be brought for the recovery of an amount under this section whether or not the person against whom the proceedings are brought, or any other person, has been convicted of an offence in respect of the act or omission as a consequence of which the amount was paid.
- (5) When this section renders a person or persons liable to pay an amount as a consequence of an act or omission of a corporation, the payment by the person or any of those persons of the whole or any part of the amount does not render the corporation liable to the person concerned in respect of the amount so paid.
- (6) An amount recovered by the Secretary under this section is payable to the Compensation Fund.

175 Deferral of Compensation Fund payments

- (1) If the amount in the Compensation Fund is not sufficient to pay all the amounts certified by the Secretary in any financial year, the unpaid amounts are to be charged against future receipts of the Fund and are to be paid when sufficient funds are available.
- (2) If a number of claims against the Compensation Fund cannot be satisfied because the Fund is not sufficient, the Secretary has an unfettered discretion to determine the division and allocation of the available money among the various parties (whether or not to the exclusion of any one of them).

Part 9 Miscellaneous

176 Reviews by Administrative Decisions Tribunal

- (1) If the Secretary:
 - (a) refuses to grant an application for, or suspends or cancels, a licence, or
 - (b) imposes a condition on a licence, or
 - (c) imposes a disqualification referred to in Division 2 of Part 3,the applicant for the licence, the licence holder or former licence holder or the person disqualified may apply to the Administrative Decisions Tribunal for a review of the decision of the Secretary.
- (2) On an application for a review of a decision of the Secretary to refuse to grant a licence because the applicant had been convicted of or found guilty of an offence the Administrative Decisions Tribunal may determine that the fact should be ignored on one or more of the following grounds:
 - (a) the triviality of the acts or omissions giving rise to the offence concerned,
 - (b) the time that has passed since the offence concerned was committed,
 - (c) the subsequent good behaviour of the offender,
 - (d) any other ground prescribed by the regulations.
- (3) In determining an application for a review of any decision to refuse to grant, or to cancel, a licence because of information provided to the Secretary by the Commissioner of Police, the Administrative Decisions Tribunal (and any Appeal Panel in determining any appeal against such a review under the *Administrative Decisions Tribunal Act 1997*):
 - (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose any criminal intelligence, and
 - (b) in order to prevent the disclosure of any criminal intelligence, is to receive evidence and hear argument in the absence of the public, the applicant for review and the applicant's representative and any other interested party, unless the Commissioner of Police approves otherwise.

177 Register of licences

- (1) The Secretary must keep a register of licences issued under this Act.
- (2) The register is to be in the form determined by the Secretary and is to be available for inspection by the public.
- (3) The regulations may prescribe particulars of licences to be included in the register.
- (4) The regulations may prescribe the fees (if any) for inspections of the register or copies of information contained on the register.
- (5) The Secretary may, on application by a person accompanied by the fee (if any) prescribed by the regulations, issue a certificate certifying that a person was or was not, on a specified date or during a specified period, the holder of a specified licence.

178 Disclosure of information

A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act (or any such other Act), or

- (c) for the purposes of any legal proceedings arising out of this Act (or any such other Act) or of any report of any such proceedings, or
 - (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
 - (e) with other lawful excuse.
- Maximum penalty: 20 penalty units.

179 Saving of rights and remedies under other law

This Act does not, except as provided by this Act, limit, restrict or otherwise affect any right or remedy of a person under any other law.

180 Contracting out void

- (1) The provisions of this Act have effect despite any stipulation to the contrary and no contract or agreement made or entered into before, on or after the commencement of this section operates to annul, vary or exclude any of the provisions of this Act.
- (2) To avoid doubt, a stipulation to the contrary includes a provision in a contract that the law applicable to a contract is the law of a jurisdiction other than this State.

181 No indemnity for motor dealers by previous owners

- (1) A motor dealer is not entitled to be indemnified by a previous owner of a motor vehicle for any costs or expenses incurred because of the operation of this Act by the motor dealer in relation to the sale by the motor dealer of the motor vehicle.
- (2) Any contract or arrangement that provides directly, or indirectly, for such an indemnity is void to the extent that it so provides.
- (3) This section does not apply to an indemnity provided by a previous owner who is a motor dealer or a motor vehicle recycler or who carries on the business of manufacturing or assembling motor vehicles.

182 Provision of information

- (1) An officer of a relevant authority in charge of any record or information must, on request, supply the record or information to the Secretary if access to the record or information is reasonably necessary for the proper exercise of any function of the Secretary under this Act relating to licensing, disciplinary proceedings, investigations or law enforcement.
- (2) It is the duty of the Secretary to supply to the Commissioner of Police, or any police officer or member of the NSW Police Force who is authorised by the Commissioner for the purposes of this section, the information relating to licences and other matters that is reasonably necessary for the performance by police officers of their law enforcement duties.
- (3) The Secretary may, in accordance with an agreement approved by the Minister for the purposes of this subsection and entered into with an authority of this State or another State or a Territory or the Commonwealth, supply to that authority a record or information provided to the Secretary under this section.
- (4) The Minister may approve an agreement for the purposes of subsection (3) only if it relates to one or more of the following:
 - (a) offences, or the regulation of conduct, relating to motor vehicles or motor dealing or motor vehicle repairs,
 - (b) law enforcement by an authority of another State or a Territory or of the Commonwealth.

- (5) This section does not apply to the supply of a record or information to which the *Criminal Records Act 1991* applies.
- (6) In this section:
relevant authority means:
 - (a) the NSW Police Force, or
 - (b) Roads and Maritime Services, or
 - (c) any other authority prescribed by the regulations for the purposes of this definition.

183 False or misleading register entries

A person must not, in respect of any particulars or information required under this Act to be entered in a register, make an entry in the register knowing it to be false or misleading in a material particular.

Maximum penalty: 20 penalty units.

184 Tender of documents for signature

A person must not submit or tender or cause or permit to be submitted or tendered a document that is, or is evidence of, the sale of a motor vehicle, to any person for that person's signature unless at the time of the submission or tendering of the document all material particulars in the document have been completed.

Maximum penalty: 20 penalty units.

185 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be given to any person may be given by:
 - (a) in the case of a natural person:
 - (i) delivering it to the person personally, or
 - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
 - (iii) sending it by facsimile transmission to the facsimile number of the person or by email to the internet address of the person, or
 - (b) in the case of a body corporate:
 - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
 - (ii) sending it by facsimile transmission to the facsimile number of the body corporate or by email to the internet address of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be given to or served on a person in any other manner.

186 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) In particular, the regulations may make provision for or with respect to the following matters:
- (a) the exemption, unconditionally or subject to conditions, of persons or things or classes of persons or things from any or all of the provisions of this Act,
 - (b) fees for applications under this Act and licence fees,
 - (c) fees for any inspection made or information supplied by the Secretary,
 - (d) the waiver or refund of fees payable under this Act or the regulations,
 - (e) regulating the conduct of any person who is required to hold a motor dealer's licence, motor vehicle repairer's licence or motor vehicle recycler's licence, or of the person's employees or agents, in carrying on the business to which the licence relates,
 - (f) prohibiting or regulating the employment by any person who is required to hold a licence of persons convicted of offences under this Act or of offences involving fraud or dishonesty or other prescribed offences, or of persons whose applications for licences have been refused or whose licences have been revoked,
 - (g) requiring any person who is required to hold a licence, or the person's employees or agents, to keep records and report to specified persons as to offences involving motor vehicles or parts of motor vehicles,
 - (h) providing for the form and content of advertisements by licence holders, including:
 - (i) requiring the inclusion of specified information in advertisements or the use of specified statements in advertisements, and
 - (ii) prohibiting the inclusion of specified information in advertisements or the use of specified statements in advertisements,
 - (i) regulating the sale of motor vehicles on consignment,
 - (j) providing for the keeping and management of trust accounts by the holders of motor dealers' licences,
 - (k) providing for the making of claims against the Compensation Fund, including the form and manner in which claims may be made and the time within which claims are to be made,
 - (l) requiring a person who is granted a licence to make an initial contribution to the Compensation Fund,
 - (m) requiring a licence holder to provide information about any partner of the licence holder in a business the subject of the licence.
- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

187 Delegation

The Secretary may delegate the exercise of any function of the Secretary under this Act (other than this power of delegation) to:

- (a) any member of staff of the Public Service agency of which the Secretary is the head, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

188 Exclusion of personal liability

Anything done or omitted to be done by the Secretary or an authorised officer or a person acting under the direction of the Secretary or an authorised officer does not

subject the Secretary, authorised officer, or the person so acting, personally to any action, liability, claim or demand if the thing was done or omitted to be done, in good faith for the purpose of administering this Act.

189 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

190 Repeals

The *Motor Dealers Act 1974* No 52 and the *Motor Vehicle Repairs Act 1980* No 71 are repealed.

191 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Administration of businesses

(Section 130)

1 Interpretation

Words and expressions used in this Schedule have the same meanings as they have in Division 5 of Part 5.

2 General duty of administrator

On the appointment of an administrator taking effect, the administrator must:

- (a) subject to and in accordance with any directions given to the administrator by the Supreme Court, administer the affairs of the person subject to administration until the appointment is terminated, and
- (b) subject to this Act, acquire or take into possession and administer all property to which that person is or appears to be entitled.

3 Administrator may obtain property

- (1) An administrator may, in the administrator's own name or that of the person subject to administration, apply to the Supreme Court for an order for the transfer or delivery of property to the administrator if the person subject to administration fails, wholly or partly, to comply with a requirement to:
 - (a) transfer or deliver to the administrator property in the possession of the person, or
 - (b) permit the administrator to acquire or take possession of property in the possession of the person.
- (2) The Supreme Court may make the order applied for, subject to such conditions (if any) as it thinks fit to impose.
- (3) The Supreme Court may, on application by an administrator, if it appears to the Court that an order made under this clause is not complied with, authorise a police officer, or the administrator or some other person and a police officer:
 - (a) to enter any premises or other place specified in the order, and
 - (b) to search for any property which the administrator is entitled to acquire or take into possession, and
 - (c) to seize any such property and remove it to such place as the administrator thinks fit.
- (4) Any person who, without reasonable excuse, obstructs, hinders or delays any police officer, the administrator or other person in the exercise of a power conferred by an order made under subclause (3) is guilty of contempt of the Supreme Court and may be punished accordingly.
- (5) In this clause, property in the *possession* of a person includes property at the disposal of or under the control of the person.

4 Dealings with property by administrator

- (1) An administrator:
 - (a) may deal with any property which the administrator has acquired or of which the administrator has taken possession under this Act in any manner in which the person subject to administration might lawfully have dealt with that property, and

- (b) must, as soon as practicable after acquiring or taking possession of that property, deliver that property to such persons as appear to the administrator to be lawfully entitled to it.
- (2) An administrator must apply the property acquired and held by the administrator, or in the possession of the administrator in his or her capacity as administrator, in the following order for the following purposes:
 - (a) firstly, in reimbursing the Secretary in respect of all amounts paid out of the Compensation Fund in settlement in whole or in part of claims made against the Fund in respect of a failure or default of the person subject to administration,
 - (b) secondly, in satisfying or partially satisfying the amounts of claims against that person with respect to the business concerned to the extent that those claims have not otherwise been fully satisfied,
 - (c) thirdly, in paying the amounts incurred by the administrator as expenses of the administration.
- (3) Amounts referred to in subclause (2) rank equally between themselves and are to be paid in full unless the property referred to in that subclause is insufficient for those amounts to be paid, in which case the amounts are to abate in equal proportions between themselves.
- (4) Any property remaining after that application is to be held in trust for the person subject to administration.

5 Powers in relation to property

- (1) Without restricting any power conferred on an administrator by this Act, the administrator may, in his or her own name or in the name of the person subject to administration do any of the following:
 - (a) prove, grant, claim and draw a dividend in respect of any debt due to the person in connection with the business concerned,
 - (b) take or defend proceedings relating to any matter concerning that business before any court for the recovery of damages or for any other remedy, whether for a tort, a breach of contract or any other cause of action, which could have been taken or defended by that holder or person,
 - (c) employ an Australian legal practitioner or other agent to give advice or take or defend proceedings with respect to any matter concerning that business or otherwise to act for the administrator in relation to the administration of the affairs and property of the person,
 - (d) for the purpose of providing sufficient money to make any reimbursement, or to satisfy or pay any amount referred to in clause 4, sell, lease or hire any property that the administrator has acquired or of which the administrator has taken possession under this Act,
 - (e) give receipts for money received by the administrator in the course of and in connection with the administration of the affairs and property of the person.
- (2) A receipt given by the administrator under this clause is an effective discharge of the person paying the money from all responsibility with respect to the application of that money.

6 Property may not be subject of debt recovery proceedings

Property held by or in the possession of an administrator in that capacity must not be levied on or taken or attached under any judgment.

7 Power of administrator to invest money

- (1) An administrator may invest any money acquired by the administrator or of which the administrator has taken possession under this Act in any manner in which a trustee is authorised by law to invest funds in respect of which the trustee is trustee.
- (2) Any income accruing from the investment of any money by an administrator under this clause and any profit resulting from the sale of any such investment is to be added to, and form part of, the property held by the administrator or in the possession of the administrator in his or her capacity as administrator.

8 Power of administrator to require information to be given

- (1) An administrator may require any person who is in possession of information concerning property in respect of which he or she has been appointed administrator to provide the administrator with that information.
- (2) A person must not, without reasonable excuse, fail to comply with a requirement made of the person under subclause (1).
Maximum penalty: 20 penalty units.

9 Power of administrator to prohibit withdrawal of money from authorised deposit-taking institution

- (1) An administrator may, by notice in writing given to an authorised deposit-taking institution, prohibit the withdrawal of money from, or any dealing (including the completion of any dealing commenced before the service of the notice) with, an account of the person subject to administration if the administrator has reasonable grounds for believing that the person holds such an account with the institution.
- (2) Without preventing any other mode of service, the notice may be given by leaving the notice and the copy of the order accompanying the notice with the manager of, or the person apparently in charge of, the authorised deposit-taking institution at which the account is kept.
- (3) The authorised deposit-taking institution to which a notice is given must not permit the withdrawal of money from, or any dealing (including the completion of any dealing commenced before the service of the notice) with, any account to which the notice relates except with the authority of the administrator.
- (4) Any authorised deposit-taking institution that contravenes this clause is liable to the administrator in respect of any loss sustained because of that contravention and the amount of that loss may be recovered by the administrator in proceedings taken against the institution in a court of competent jurisdiction.
- (5) The administrator may withdraw from an account referred to in subclause (1) all or any of the money held in that account and pay that money into a special account or special accounts in his or her own name and may operate, and otherwise deal with, that account or those accounts according to law.

10 Claims against property administered by administrator

- (1) An administrator may give to any person (including the person subject to administration) a notice to the effect that, if that person has any claim in respect of any property held by or in the possession of the administrator in that capacity, the claim will not be entertained unless full particulars of the property claimed and the grounds of the claim are submitted to the administrator within the period, being not less than 30 days after the notice is given, specified in the notice.
- (2) The administrator may disregard any claim made by a person to whom a notice is given otherwise than in compliance with the terms of the notice.

11 Power of Supreme Court to order person to attend before Court for examination

- (1) On the application of an administrator, the Supreme Court may order any person (including the person subject to administration) to appear before the Court to be examined on oath with respect to any property that is being administered by the administrator or that the administrator is entitled to administer.
- (2) On an examination before the Supreme Court, the Court may put or allow to be put to the person being examined such questions as it thinks fit.
- (3) A person examined before the Supreme Court is not excused from answering a question put to the person on the ground that the answer might incriminate the person. If the person claims, before answering the question, that the answer might incriminate the person, neither the question nor the answer is admissible in evidence against the person in criminal proceedings, other than proceedings in relation to the making of a false statement on oath in respect of the answer.
- (4) A person attending for examination under this clause is entitled to be paid such expenses (if any) as the Supreme Court may allow.
- (5) The expenses are to be paid by the administrator and are to form part of the expenses of the administration.

12 Expenses of administrator

- (1) All amounts incurred by an administrator in the course of administration, to the extent that they have not otherwise been paid to the administrator or otherwise met under this Act, are to be paid to the administrator by the Secretary out of the Compensation Fund.
- (2) The amounts so payable include money payable to the administrator as remuneration for his or her services and the costs of bringing or defending or otherwise participating in legal proceedings in the course of and in connection with the administration.
- (3) Any amounts paid or payable to an administrator out of the Compensation Fund as expenses of the administration under this Act may be recovered in the Supreme Court by the Secretary from the person subject to administration as a debt due from that person to the Secretary.
- (4) The Secretary and an administrator may enter into an agreement as to the amount to be paid to the administrator as his or her remuneration.
- (5) In default of any such agreement, the Supreme Court may, on application by the Secretary or the administrator, determine the amount of remuneration to be paid to the administrator.
- (6) The Supreme Court may, on application by a person subject to administration within the period prescribed by the regulations:
 - (a) re-open any agreement entered into under subclause (4) with respect to the remuneration paid or to be paid to the administrator, and
 - (b) determine the amount of remuneration that, in the opinion of the Court, ought, in fairness to the person, to have been agreed to, and
 - (c) if the amount of remuneration agreed to has been paid to the administrator and that amount exceeds the amount determined by the Court, order the excess to be refunded to the person.
- (7) If, in the course of proceedings to recover amounts for expenses of administration from the person subject to administration, it appears to the Supreme Court that the amounts sought to be recovered from the person for the expenses of administration are excessive, the Court may:

- (a) by order, direct that an account be taken between the Secretary and the administrator, and
- (b) by further order or orders, relieve the person from payment of any amount that exceeds the amount the Court determines is fairly payable for those expenses, and
- (c) direct that any such excess amount that has been paid to or allowed in account by the Secretary to the administrator be refunded by the administrator.

13 Claim or charge against administrator may be paid from Fund

- (1) The Secretary is to reimburse the administrator for any costs, charges, expenses or damages reasonably incurred by the administrator for a good faith claim relating to the carrying out or purported carrying out of the administrator's functions under this Act.
- (2) Any amounts payable under this clause may be paid from the Compensation Fund.
- (3) For the purposes of this clause, a claim is a *good faith claim* if it is made for any act or omission done or omitted in good faith by the administrator, or an employee or agent of the administrator.

14 Reports by administrator

- (1) An administrator must, at such times as the Supreme Court determines, provide a report to the Court and the Secretary on the administration containing the information required by the Court.
- (2) At the end of the administration the administrator must lodge the following with the Supreme Court:
 - (a) the administrator's final report on the administration,
 - (b) all records in his or her possession or under his or her control relating to that administration.
- (3) The records are to be kept in the custody of the Supreme Court, subject to any order of the Court directing the destruction or other disposal of those records.
- (4) This clause is subject to any orders made or directions given by the Supreme Court under this Act.

Schedule 2 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part:

existing licence holder means a person who was, immediately before the commencement of Part 2 of this Act:

- (a) the holder of a licence under the *Motor Dealers Act 1974*, or
- (b) the holder of a licence or a tradesperson's certificate under the *Motor Vehicle Repairs Act 1980*.

former Acts means the *Motor Dealers Act 1974* and the *Motor Vehicle Repairs Act 1980*.

1974 Act means the *Motor Dealers Act 1974*.

1980 Act means the *Motor Vehicle Repairs Act 1980*.

3 General savings

- (1) Any act, matter or thing done or omitted to be done under a provision of a former Act and having any force or effect immediately before the commencement of a provision of this Act that replaces that provision is, on that commencement, taken to have been done or omitted under the provision of this Act.
- (2) This clause does not apply:
 - (a) to the extent that its application is inconsistent with any other provision of this Schedule or a provision of a regulation made under this Schedule, or
 - (b) to the extent that its application would be inappropriate in a particular case.

Note. Among other things, this clause applies to existing undertakings and other actions relating to unjust conduct under the former Acts and also to persons for whom an administrator had been appointed under the 1974 Act.

4 Existing licences under the former Acts

- (1) An existing licence holder who was, immediately before the commencement of Part 2 of this Act, the holder of:
 - (a) a dealer's licence or a wholesaler's licence under the 1974 Act is taken to be the holder of a motor dealer's licence granted under this Act, or
 - (b) an auto-dismantler's licence under the 1974 Act is taken to be the holder of a motor vehicle recycler's licence granted under this Act, or
 - (c) a motor vehicle parts reconstructor's licence under the 1974 Act is taken to be the holder of a motor vehicle repairer's licence granted under this Act, or
 - (d) a licence in respect of a class of repair work under the 1980 Act is, subject to the regulations, taken to be the holder of a motor vehicle repairer's licence, or
 - (e) a tradesperson's certificate in respect of a class of repair work under the 1980 Act is, subject to the regulations, taken to be the holder of a tradesperson's certificate for that class of repair work granted under this Act.
- (2) An existing licence that is, by operation of this clause, taken to be a licence under this Act is subject to the same conditions that applied to the licence immediately before the commencement of Part 2 of this Act and any such conditions may be varied or revoked as if they were imposed under this Act.
- (3) Despite subclause (2), an existing licence that was a motor vehicle repairer's licence under the 1980 Act is not subject to any condition limiting the licence to a class or classes of repair work.
- (4) An existing licence continued in force by this clause ceases to have effect on the day specified for the purposes of this clause by the regulations.
- (5) The regulations may specify different days for the termination of different existing licences or classes of existing licences.

5 References to licences

In any document, a reference:

- (a) to a dealer's licence or a wholesaler's licence under the 1974 Act is taken to be a reference to a motor dealer's licence granted under this Act, or
- (b) to an auto-dismantler's licence under the 1974 Act is taken to be a reference to a motor vehicle recycler's licence granted under this Act, or
- (c) to a motor vehicle parts reconstructor's licence under the 1974 Act is taken to be a reference to a motor vehicle repairer's licence granted under this Act, or
- (d) to a licence in respect of a class of repair work under the 1980 Act is, subject to the regulations, taken to be a reference to a motor vehicle repairer's licence for that class of repair work granted under this Act, or
- (e) to a tradesperson's certificate in respect of a class of repair work under the 1980 Act is, subject to the regulations, taken to be a reference to a tradesperson's certificate for that class of repair work granted under this Act.

6 Existing disputes

Any dispute being dealt with under a former Act immediately before the commencement of Division 2 of Part 5 of this Act is to continue to be dealt with under that former Act as if that Act were in force.

7 Existing disciplinary proceedings

- (1) This clause applies to disciplinary proceedings under a former Act commenced against a person but not finally determined before the commencement of Part 3 of this Act.
- (2) Disciplinary proceedings to which this clause applies are to continue to be determined as if the former Act continued to be in force.
- (3) Without limiting any other action that may be taken, disciplinary action taken in such proceedings may be taken in relation to any licence held, or taken to be held, by the person concerned under this Act.
- (4) Disciplinary proceedings are taken to have been commenced against a person for the purposes of this clause if a show cause notice had been issued to the person under the former Act.

8 Compensation Fund

- (1) The Compensation Fund is a continuation of the following Funds under the former Acts:
 - (a) the Motor Dealers Compensation Fund,
 - (b) the Motor Vehicle Repair Industry Contingency Fund,
 - (c) the Motor Vehicle Repair Industry Education and Research Fund,
 - (d) the Motor Vehicle Repair Industry General Fund.
- (2) Any amount payable to or from any of those Funds immediately before the commencement of this clause is payable instead to or from the Compensation Fund under this Act.
- (3) Any payment under a former Act out of the Motor Dealers Compensation Fund or the Motor Vehicle Repair Industry Contingency Fund in settlement in whole or in part of a claim under the former Act is, for the purposes of this Act, taken to be a payment made out of the Compensation Fund under this Act in settlement in whole or in part of the claim concerned as if it were a claim under this Act.

9 Act extends to acts and omissions before commencement

Unless the context otherwise indicates or requires, a provision of this Act extends to any act or omission occurring before the commencement of the provision.

10 Authorised officers

- (1) A person who held office as an inspector under the 1980 Act immediately before the commencement of section 149 of this Act is taken to be an authorised officer appointed under that section.
- (2) A person who held office as an authorised officer under the 1974 Act immediately before the commencement of section 149 of this Act is taken to be an authorised officer appointed under that section.

11 Unfair contracts affecting motor dealers

Part 6 of this Act applies to contracts in force immediately before the commencement of that Part and to any unjust conduct being carried out immediately before that commencement.

12 References to road transport legislation

A reference in this Act:

- (a) to a contravention of section 73 (1) or (3) of the *Road Transport Act 2013* includes a reference to a contravention of section 22 (2) or (4) of the *Road Transport (Vehicle Registration) Act 1997*, and
- (b) to a contravention of section 98 of the *Road Transport Act 2013* includes a reference to a contravention of section 16Q of the *Road Transport (Vehicle Registration) Act 1997*.

13 Part subject to regulations

This Part is subject to the regulations.

Schedule 3 Consequential amendment of other Acts

3.1 Consumer Claims Act 1998 No 162

Section 14 Limitation on Tribunal's jurisdiction to make orders

Omit "*Motor Dealers Act 1974*" from the definition of *new motor vehicle* in section 14 (4).
Insert instead "*Motor Dealers and Repairers Act 2013*".

3.2 Crimes (Criminal Organisations Control) Act 2012 No 9

Section 27 Prohibition on carrying on of certain activities when interim control order or control order takes effect

Omit paragraphs (g) and (h) of the definition of *prescribed activity* in section 27 (6).
Insert instead:

- (g) carrying on business as a motor dealer, motor vehicle repairer or motor vehicle recycler within the meaning of the *Motor Dealers and Repairers Act 2013*,

3.3 Duties Act 1997 No 123

[1] Section 267 Exemptions

Omit "a dealer licensed under the *Motor Dealers Act 1974*" from section 267 (4) (c).
Insert instead "a motor dealer licensed under the *Motor Dealers and Repairers Act 2013*".

[2] Section 270 Exemptions for motor dealers

Omit "a dealer's licence or a wholesaler's licence issued under the *Motor Dealers Act 1974*" from section 270 (1).
Insert instead "a motor dealer's licence issued under the *Motor Dealers and Repairers Act 2013*".

3.4 Fair Trading Act 1987 No 68

[1] Section 8 Delegation by Director-General

Omit section 8 (1) (d) and (e).

[2] Section 25F Functions

Omit the definition of *motor vehicle* from section 25F (2). Insert instead:
motor vehicle has the same meaning as it has in the *Motor Dealers and Repairers Act 2013*.

3.5 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Omit:
Motor Dealers Act 1974, section 53E
Motor Vehicle Repairs Act 1980, section 87A

Insert instead:
Motor Dealers and Repairers Act 2013, section 158

3.6 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Omit:

Motor Dealers Act 1974, section 53AA

Motor Vehicles Repairs Act 1980, section 75A

Insert instead:

Motor Dealers and Repairers Act 2013, section 154

3.7 Licensing and Registration (Uniform Procedures) Act 2002 No 28

Schedule 1 Licences to which Part 2 of Act applies

Omit the matter relating to the *Motor Dealers Act 1974*. Insert instead:

Motor Dealers and Repairers Act 2013

section 20 (a), motor dealer's licence

section 20 (b), motor vehicle repairer's licence

section 20 (c), motor vehicle recycler's licence

section 20 (d), tradesperson's certificate

3.8 Motor Vehicles Taxation Act 1988 No 111

Section 3 Definitions

Omit "licence under the *Motor Dealers Act 1974*" from section 3 (2) (d).

Insert instead "motor dealer's licence under the *Motor Dealers and Repairers Act 2013*".

3.9 Pawnbrokers and Second-hand Dealers Act 1996 No 13

Section 4 Restrictions on operation of this Act

Omit "*Motor Dealers Act 1974*" from section 4 (1).

Insert instead "*Motor Dealers and Repairers Act 2013*".

3.10 Road Transport Act 2013 No 18

[1] Section 72 Definitions

Omit "dealer's licence within the meaning of the *Motor Dealers Act 1974*" from the definition of *licensed motor dealer*.

Insert instead "motor dealer's licence within the meaning of the *Motor Dealers and Repairers Act 2013*".

[2] Section 82 Definitions

Omit the definitions of *auto-dismantler* and *dealer*. Insert in alphabetical order:

motor dealer has the same meaning as it has in the *Motor Dealers and Repairers Act 2013*, and includes any other person declared to be a motor dealer by the statutory rules under this Act.

motor vehicle recycler has the same meaning as it has in the *Motor Dealers and Repairers Act 2013*, and includes any other person declared to be a motor vehicle recycler by the statutory rules under this Act.

[3] Section 82, definition of “licensed repairer”

Omit “licence under the *Motor Vehicle Repairs Act 1980*”.

Insert instead “motor vehicle repairer’s licence within the meaning of the *Motor Dealers and Repairers Act 2013*”.

[4] Sections 83 (3) and 93 (2)

Omit “an auto-dismantler” wherever occurring. Insert instead “a motor vehicle recycler”.

[5] Sections 87 and 99 (2) (d)

Omit “auto-dismantler” and “dealer” wherever occurring.

Insert instead “motor vehicle recycler” and “motor dealer”.

[6] Section 93 Information about written-off and demolished vehicles

Omit “An auto-dismantler” from section 93 (3). Insert instead “A motor vehicle recycler”.

[7] Section 93 (3)

Omit “the auto-dismantler” wherever occurring. Insert instead “the motor vehicle recycler”.

[8] Section 101 Unauthorised disclosure of information

Omit section 101 (d). Insert instead:

- (d) to the Secretary within the meaning of the *Motor Dealers and Repairers Act 2013* for the purposes of any disciplinary or legal proceedings arising out of that Act or the regulations under that Act, or

[Second reading speech made in—

Legislative Assembly on 24 October 2013

Legislative Council on 20 November 2013]