



ANNO TRICESIMO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1983

No. 54 of 1983

**An Act to regulate dealing in second-hand motor vehicles; to repeal the
Second-hand Motor Vehicles Act, 1971; and for other purposes.**

[Assented to 16 June 1983]

BE IT ENACTED by the Governor of the State of South Australia, with the
advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

- Short title.** 1. This Act may be cited as the "Second-hand Motor Vehicles Act, 1983".
- Commencement.** 2. (1) This Act shall come into operation on a day to be fixed by proclamation.
- (2) The Governor may, in a proclamation made for the purposes of subsection (1), suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.
- Repeal and transitional provision.** 3. (1) The Second-hand Motor Vehicles Act, 1971, is repealed.
- (2) Notwithstanding subsection (1), a licence in force under the repealed Act immediately before the commencement of this Act shall be deemed to be a licence granted and in force under this Act and shall, subject to this Act, continue in force.
- Arrangement.** 4. This Act is arranged as follows:
- PART I—PRELIMINARY
- PART II—LICENSING OF DEALERS
- DIVISION I—Grant of Licences
- DIVISION II—Registration of Premises
- DIVISION III—Disciplinary Powers

PART III—DEALING IN SECOND-HAND VEHICLES

DIVISION I—Sales Otherwise Than By Auction

DIVISION II—Sales By Auction

PART IV—DUTY OF DEALERS TO REPAIR SECOND-HAND VEHICLES**PART V—COMPENSATION FUND****PART VI—MISCELLANEOUS****5. (1) In this Act, unless the contrary intention appears—**

Interpretation.

“auctioneer” means a person who carries on the business of conducting auctions for the sale of goods, and includes a dealer who in the course of his business conducts an auction for the sale of a second-hand vehicle:

“authorized officer” means a person who is an authorized officer under the Prices Act, 1948-1982:

“the Commissioner” means the person for the time being holding or acting in the office of the Commissioner for Consumer Affairs under the Prices Act, 1948-1982:

“credit contract” means a credit contract as defined in the Consumer Credit Act, 1972-1982:

“credit provider” means a credit provider as defined in the Consumer Credit Act, 1972-1982:

“dealer” means a person who carries on the business of selling second-hand vehicles:

“licence” means a licence under this Act:

“licensed credit provider” means a person licensed as a credit provider under the Consumer Credit Act, 1972-1982:

“licensee” means the holder of a licence:

“model designation” means the words or symbols (if any) used by the manufacturer of a vehicle to identify the model of the vehicle:

“place of repair”, in relation to a dealer, means a place at which the dealer accepts delivery of vehicles that he is liable to repair pursuant to Part IV (whether or not the repairs are carried out at that place):

“registered”, in relation to a vehicle, means registered under the Motor Vehicles Act, 1959-1982, or under a corresponding Act or law of another State or a Territory of the Commonwealth:

“registered place of repair”, in relation to a dealer, means a place of repair registered in the name of the dealer under section 13:

“registered premises”, in relation to a dealer, means premises registered in the name of the dealer under section 12:

“the Registrar” means the person for the time being holding or acting in the office of the Commercial Registrar under the Commercial Tribunal Act, 1982:

“the repealed Act” means the Second-hand Motor Vehicles Act, 1971, repealed by this Act:

“second-hand vehicle” means a vehicle that has been used for a purpose not connected with its manufacture or sale including a vehicle that has been used for the purpose of demonstration in connection with the sale of another vehicle:

“sell” includes sell on behalf of another person and “sale”, “offer for sale” and “expose for sale” have corresponding meanings:

“the Tribunal” means the Commercial Tribunal established under the Commercial Tribunal Act, 1982:

“vehicle” means a vehicle—

(a) that is used or capable of being used for transportation on land;

and

(b) that is designed to be wholly or partly propelled by an engine:

“vehicle leasing agreement” means an agreement under which a vehicle is let on hire to a person for a period exceeding four months:

“vehicle leasing business” means a business in which vehicles are let on hire under vehicle leasing agreements:

“year of first registration”, in relation to a vehicle, means the year in which the vehicle was first registered under the provisions of any Act or law whether of this State or elsewhere.

(2) Where—

(a) a dealer sells a second-hand vehicle to a person who carries on a vehicle leasing business or to a credit provider with a view to the vehicle being let on hire or sold to a third person;

and

(b) the vehicle is let on hire or sold to that third person;

then—

(c) section 19 does not apply in relation to the sale by the dealer;

and

(d) the dealer shall, for the purposes of the provisions of this Act other than section 19, be deemed to have sold the vehicle to that third person.

Application.

6. The Governor may, by regulation, exempt—

(a) a specified vehicle or class of vehicles;

(b) a specified person or class of persons;

or

(c) a specified transaction or class of transactions,

from compliance with this Act or a specified provision of this Act either unconditionally or subject to conditions.

Non-derogation.

7. (1) The provisions of this Act shall be in addition to and shall not derogate from the provisions of any other Act.

(2) The provisions of this Act shall not limit or derogate from any civil remedy at law or in equity.

8. The Commissioner shall be responsible, subject to the control and directions of the Minister, for the administration of this Act.

Commissioner to be responsible for administration of Act.

PART II

PART II

LICENSING OF DEALERS

DIVISION I—GRANT OF LICENCES

DIVISION I

9. (1) A person shall not carry on business as, or hold himself out as being, a dealer unless he is a licensee.

Dealer must be licensed.

Penalty: Five thousand dollars.

(2) This section does not apply to—

(a) a licensed credit provider whose principal business is not the selling of second-hand vehicles;

or

(b) an auctioneer who sells second-hand vehicles on behalf of other persons—

(i) by auction;

or

(ii) by sales negotiated immediately after conducting auctions for the sale of the vehicles,

and who does not otherwise carry on the business of selling second-hand vehicles.

10. (1) An application for a licence must—

(a) be made to the Tribunal;

(b) be in writing in the prescribed form;

and

(c) be accompanied by the prescribed application fee.

Application for a licence.

(2) An applicant for a licence must furnish the Tribunal with such information (verified, if the Tribunal so requires, by statutory declaration) as the Tribunal may require.

(3) Where an application is made for a licence, the Registrar shall—

(a) cause the application to be advertised in the prescribed manner and form;

and

(b) cause a copy of the application to be served on the Commissioner and the Commissioner of Police.

(4) Any person (including the Commissioner or the Commissioner of Police) may, within ten days from the date on which an application is last advertised pursuant to subsection (3), lodge with the Registrar a written objection to the application setting out the grounds of the objection.

(5) The Tribunal may, on the application of any interested person, and subject to such terms as it thinks fit, extend the period within which objections must be lodged.

(6) Subject to subsection (7), the Registrar shall serve the applicant, the Commissioner and the Commissioner of Police with a copy of an objection lodged under subsection (4).

(7) Where the Commissioner or the Commissioner of Police has lodged an objection, a copy of the objection need not be served upon the Commissioner or Commissioner of Police, as the case may be.

(8) Where—

(a) an objection to an application is lodged under subsection (4);

or

(b) the Tribunal does not propose to grant an application upon the basis of documentary material alone,

the Tribunal shall conduct a hearing of the application and the Registrar shall give to the applicant, the Commissioner, the Commissioner of Police and any person who has lodged an objection at least seven days notice of the date for hearing of the application.

(9) Upon an application under this section, the Tribunal shall, subject to this Act, order that the applicant be granted a licence upon payment of the prescribed licence fee if the Tribunal is satisfied—

(a) that—

(i) where the applicant is a natural person—

(A) he is of or over the age of eighteen years;

and

(B) he is a fit and proper person to hold a licence;

or

(ii) where the applicant is a body corporate—every person who is, in the opinion of the Tribunal, in a position to control or influence substantially the affairs of the body corporate is a fit and proper person to exercise such control or influence in respect of a body corporate that is the holder of a licence;

(b) that the applicant has made suitable arrangements to fulfil the obligations that may arise under this Act;

and

(c) that the applicant has sufficient financial resources to carry on business in a proper manner under the licence.

11. (1) A licence shall, subject to this Act, remain in force until—

(a) the licence is surrendered;

or

(b) the licensee dies or, in the case of a body corporate, is dissolved.

(2) A licensee shall, not later than the prescribed date in each year—

(a) pay to the Registrar the prescribed annual licence fee;

and

(b) lodge with the Registrar an annual return containing the prescribed information.

(3) Where a licensee fails to pay the annual licence fee or lodge the annual return in accordance with subsection (2), the Registrar may, by notice in writing to the licensee, require the licensee to make good his default and, in addition, to pay to the Registrar the amount prescribed as a penalty for default.

(4) Where a licensee fails to comply with a notice under subsection (3) within fourteen days after service of the notice, his licence shall, by force of this subsection, be suspended until he complies with the notice.

(5) The Registrar shall cause notice of a suspension under subsection (4) (being notice in the prescribed form) to be published in a newspaper circulating throughout the State.

(6) Where a licence has been suspended by virtue of subsection (4) for a continuous period of six months, the licence shall, by force of this subsection, be cancelled.

(7) A licensee may, with the consent of the Tribunal, surrender his licence.

DIVISION II—REGISTRATION OF PREMISES

DIVISION II

12. (1) A licensee shall not carry on business as a dealer otherwise than at premises registered in his name under this section.

Registration of
dealer's business
premises.

Penalty: One thousand dollars.

(2) The Tribunal may—

(a) upon an application for a licence;

or

(b) upon a separate application and payment of the prescribed fee,

register premises in the name of the applicant if the Tribunal is satisfied that the premises are suitable for the purpose of carrying on business as a dealer.

(3) A separate application for registration under this section must be in writing in the prescribed form and contain the prescribed information.

(4) A licensee shall, within fourteen days after ceasing to carry on business at registered premises, notify the Registrar in writing of that fact.

Penalty: One thousand dollars.

(5) Where the Registrar—

(a) is notified by a licensee that he has ceased to carry on business at registered premises;

or

(b) is otherwise satisfied that a licensee has ceased to carry on business at registered premises,

the Registrar may cancel the registration of the premises.

13. (1) A licensee shall not carry on business as a dealer unless a place is registered in his name as a place of repair under this section.

Registration of
dealer's place of
repair.

Penalty: One thousand dollars.

(2) The Tribunal may—

(a) upon an application for a licence;

or

(b) upon a separate application and payment of the prescribed fee, register a place in the name of the applicant as a place of repair if the Tribunal is satisfied that the place is sufficiently proximate to the applicant's registered premises.

(3) A separate application for registration under this section must be in writing in the prescribed form and contain the prescribed information.

(4) The Registrar shall, at the request in writing of a licensee, cancel the registration of a place of repair registered in the name of the licensee.

DIVISION III—DISCIPLINARY POWERS

DIVISION III

Tribunal may
exercise
disciplinary
powers.

14. (1) The Tribunal may hold an inquiry for the purposes of determining whether proper cause exists for disciplinary action against a person who has carried on, or been employed or otherwise engaged in, the business of a dealer (whether with or without a licence).

(2) An inquiry shall not be held under this section except in relation to matters alleged in a complaint lodged pursuant to subsection (3) or matters disclosed by investigations conducted pursuant to subsection (4).

(3) Any person (including the Commissioner or the Commissioner of Police) may lodge with the Tribunal a complaint in the prescribed form setting out matters that are alleged to constitute grounds for disciplinary action against a person referred to in subsection (1).

(4) Where a complaint has been lodged with the Tribunal pursuant to subsection (3), the Commissioner or the Commissioner of Police shall, at the request of the Registrar, investigate or further investigate any matters to which the complaint relates and report to the Tribunal on the results of the investigations.

(5) Where the Tribunal decides to hold an inquiry under this section, the Tribunal shall give the person to whom the inquiry relates (in this section referred to as "the respondent") reasonable notice of the subject matter of the inquiry.

(6) If, after conducting an inquiry under this section, the Tribunal is satisfied that proper cause exists for disciplinary action, the Tribunal may exercise one or more of the following powers:

- (a) it may reprimand the respondent;
 - (b) it may impose a fine not exceeding five thousand dollars on the respondent;
 - (c) where the respondent is a licensee, it may—
 - (i) suspend the licence, or registration in the name of the licensee, or both, for a specified period or until the fulfilment of stipulated conditions or until further order;
- or
- (ii) cancel the licence and registration in the name of the licensee;
- (d) it may disqualify the respondent permanently, for a specified period, until the fulfilment of stipulated conditions, or until further order, from holding a licence under this Act.

(7) If a person has been convicted of an offence and the circumstances of the offence form, in whole or in part, the subject matter of an inquiry under this section, the convicted person shall not be liable to a fine under this section in respect of conduct giving rise to the offence.

(8) Where the Tribunal cancels a licence or registration under subsection (6), the Tribunal may stipulate that the cancellation is to have effect at a future time specified by the Tribunal and impose conditions as to the conduct of the business of the respondent until that time.

(9) Where a condition is imposed by the Tribunal under subsection (8) as to the conduct of the business of the respondent, the respondent shall not contravene or fail to comply with the condition.

Penalty: Five thousand dollars.

(10) There shall be proper cause for disciplinary action under this section against the respondent if—

(a) he has been guilty of conduct that constituted a breach of this Act;

(b) he has in the course of carrying on, or being employed or otherwise engaged in, the business of a dealer—

(i) been guilty of conduct that constituted a breach of any other Act or law;

or

(ii) acted negligently, fraudulently or unfairly to the prejudice of the rights or interests of a person dealing with him in that business;

or

(c) being a licensee—

(i) he has obtained the licence improperly;

(ii) he has failed to comply with an order of the Tribunal;

(iii) he has insufficient financial resources properly to carry on business as a dealer;

(iv) registered premises of the licensee have ceased to be suitable for the purpose of carrying on business as a dealer;

(v) he has failed to fulfil with due expedition his obligations to a purchaser of a second-hand vehicle;

(vi) he has not maintained satisfactory arrangements for the fulfilment of obligations that arise under this Act;

or

(vii) he has ceased to be a fit and proper person to hold a licence, or, in the case of a body corporate, a person who has gained or is in a position substantially to control or influence the affairs of the body corporate is not or has ceased to be a fit and proper person to exercise such control or influence in respect of a body corporate that holds a licence.

(11) The powers conferred by this section may be exercised in relation to conduct whether occurring before or after the commencement of this Act.

Disqualified persons not to be involved in business of dealer.

15. Where a person who is disqualified from holding a licence is employed or otherwise engaged in the business of a dealer, that person and the dealer shall each be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

Record of disciplinary action to be kept.

16. Where the Tribunal takes disciplinary action against a person, the Registrar shall—

- (a) make an entry on the register established under the Commercial Tribunal Act, 1982, recording the disciplinary action taken;
- and
- (b) by notice in writing advise the Commissioner and the Commissioner of Police of the name of the person and the disciplinary action taken.

PART III

PART III

DEALING IN SECOND-HAND VEHICLES

DIVISION I

DIVISION I—SALES OTHERWISE THAN BY AUCTION

Application of this Division.

17. (1) This Division does not apply in relation to—

- (a) the sale of a second-hand vehicle by auction;
- or
- (b) the sale, or offering for sale, of a second-hand vehicle to a dealer.

(2) Except as provided in section 19, this Division does not apply in relation to the sale of a second-hand vehicle negotiated by an auctioneer immediately after the conduct of an auction for the sale of the vehicle.

Notices to be displayed.

18. (1) A dealer shall not offer or expose a second-hand vehicle for sale unless a notice in the prescribed form containing the required particulars and statements relating to the vehicle is attached to the vehicle.

Penalty: One thousand dollars.

(2) For the purposes of subsection (1), a vehicle owned by a dealer and located in a part of the dealer's premises in which other vehicles are exposed for sale shall be deemed to have been exposed for sale by the dealer unless a notice is attached to the vehicle in a prominent position advising that the vehicle is not for sale.

(3) For the purposes of subsection (1), the required particulars and statements relating to a vehicle are—

- (a) the name and business address of the dealer;
- (b) where the dealer is offering or exposing the vehicle for sale on behalf of another dealer—
 - (i) the name and business address of the other dealer;
 - and
 - (ii) a statement that the other dealer will be liable to discharge the duty to repair under Part IV;
- (c) the name and address of the last owner of the vehicle who was not a dealer;

- (d) where the owner referred to in paragraph (c) carried on a vehicle leasing business and let the vehicle on hire to another person pursuant to a vehicle leasing agreement—the name and address of that other person;
- (e) the price at which the vehicle (in the condition in which it is offered or exposed for sale) may be purchased for cash, including any fees and charges payable to the dealer but not including such fees and charges as may be prescribed;
- (f) the year of manufacture of the vehicle;
- (g) the year of first registration of the vehicle;
- (h) the manufacturer and model designation of the vehicle;
- (i) where the vehicle is registered—the registration number of the vehicle;
- (j) where the vehicle is not registered—the engine number of the vehicle;
- (k) where the vehicle is equipped with an odometer—
 - (i) the reading of the odometer at the time the vehicle was acquired from the owner referred to in paragraph (c);
 - and
 - (ii) A. where it is more likely than not that the reading of the odometer is a reasonably accurate measure of the distance travelled by the vehicle—a statement that the odometer reading may be regarded as reasonably accurate;
 - or
 - B. where that is not the case—such statement as is required by the regulations;
- (l) the address of the registered place of repair of the dealer who will be liable to discharge the duty to repair under Part IV;
- and
- (m) such other particulars and statements as are prescribed.

(4) In proceedings for an offence relating to a failure to include in a notice all the particulars and statements required under subsection (1) or the inclusion of any incorrect particulars or statement, it shall be a defence for the defendant to prove that having made a proper examination of the vehicle and having made reasonable inquiries he complied with the requirements of the subsection to the best of his knowledge, information and belief.

(5) A dealer shall not, in any advertisement published in connection with the sale of a second-hand vehicle, refer directly or indirectly to the odometer reading of the vehicle or the distance travelled by the vehicle unless a notice is attached to the vehicle in accordance with this section and the notice contains a statement by the dealer that the odometer reading of the vehicle may be regarded as reasonably accurate.

Penalty: One thousand dollars.

(6) A person from whom a dealer acquires ownership of a second-hand vehicle or on whose behalf a dealer is selling a second-hand vehicle shall not

give to the dealer any information as to any of the matters referred to in subsection (3) that is to his knowledge false or misleading in a material particular.

Penalty: Five hundred dollars.

Form of contract.

19. (1) A contract for the sale of a second-hand vehicle by a dealer must—

(a) be in writing;

(b) be comprised in one document;

(c) be signed by the parties to the sale;

and

(d) contain the following particulars set out in the prescribed manner:

(i) a brief description or identification of the vehicle;

(ii) where the vehicle is registered—the registration number of the vehicle;

(iii) where the vehicle is not registered—the engine number of the vehicle;

(iv) the price for which the vehicle is being sold and the amount of any other fees and charges payable by the purchaser together with a description of each such charge;

(v) where all or part of the the consideration passing from the purchaser is represented by a vehicle or other thing—the monetary value ascribed to that vehicle or thing;

(vi) where a place (other than a registered place of repair) has been agreed upon as the place at which the vehicle may be delivered for the purpose of a defect in the vehicle being repaired pursuant to Part IV—the address of the place agreed upon;

and

(vii) such other particulars as are prescribed.

(2) A contract referred to in subsection (1) that is not in writing signed by the parties shall not be enforceable against the purchaser.

(3) Where a contract referred to in subsection (1) does not comply with the provisions of that subsection, the dealer shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(4) The dealer shall ensure that a document that is intended to constitute a contract referred to in subsection (1) is not submitted or tendered to the purchaser for his signature unless—

(a) it contains all the material terms of the contract including particulars required under this section;

and

(b) except where the document is to be signed by the parties in each other's presence—a copy of the document is at the same time provided to the purchaser for his retention.

Penalty: One thousand dollars.

(5) Where the parties sign a document referred to in subsection (4) in each other's presence, the dealer shall ensure that a copy of the signed document is forthwith provided to the purchaser for his retention.

Penalty: One thousand dollars.

(6) Where a document referred to in subsection (4) is signed by the party other than the purchaser otherwise than in the presence of the purchaser, the dealer shall ensure that a copy of the signed document is, within seven days, provided to the purchaser for his retention.

Penalty: One thousand dollars.

(7) This section does not apply in relation to the sale of a second-hand vehicle negotiated by an auctioneer immediately after the conduct of an auction for the sale of the vehicle except where the sale is made by the auctioneer on his own behalf or on behalf of another person who is a dealer.

20. Where a second-hand vehicle is sold by a dealer, the dealer shall ensure that—

(a) a copy of the notice that was required to be attached to the vehicle under section 18;

and

(b) a notice in the prescribed form,

are provided to the purchaser for his retention before the purchaser takes possession of the vehicle.

Penalty: One thousand dollars.

Notices to be provided to purchasers of second-hand vehicles.

DIVISION II—SALES BY AUCTION

DIVISION II

21. In this Division—

Interpretation.

“trade auction” means an auction for the sale of a second-hand vehicle at which bids will be accepted only from persons who are dealers.

22. (1) An auctioneer shall not conduct an auction for the sale of a second-hand vehicle (other than a trade auction) unless a notice in the prescribed form containing the required particulars and statements relating to the vehicle is attached to the vehicle and has been attached to the vehicle at all times when the vehicle has been available for inspection by prospective bidders.

Notices to be displayed in case of auction.

Penalty: One thousand dollars.

(2) For the purposes of subsection (1), the required particulars and statements are—

(a) the name and business address of the auctioneer;

(b) where the auctioneer is conducting the auction on his own behalf—
a statement that the auctioneer will be liable to discharge the duty to repair under Part IV;

(c) where the auctioneer is conducting the auction on behalf of a dealer—

(i) the name and business address of the dealer;

and

- (ii) a statement that the dealer will be liable to discharge the duty to repair under Part IV;
 - (d) where the auctioneer is conducting the auction on behalf of another person (not being a dealer)—a statement that no duty to repair will apply under Part IV;
 - (e) the name and address of the last owner of the vehicle who was not a dealer;
 - (f) where the owner referred to in paragraph (e) carried on a vehicle leasing business and let the vehicle on hire to another person pursuant to a vehicle leasing agreement—the name and address of that other person;
 - (g) the year of manufacture of the vehicle;
 - (h) the year of first registration of the vehicle;
 - (i) the manufacturer and model designation of the vehicle;
 - (j) where the vehicle is registered—the registration number of the vehicle;
 - (k) where the vehicle is not registered—the engine number of the vehicle;
 - (l) where the vehicle is equipped with an odometer—
 - (i) the reading of the odometer at the time the vehicle was acquired from the owner referred to in paragraph (e);and
 - (ii) where the auctioneer is conducting the auction on his own behalf or on behalf of a dealer and—
 - A. it is more likely than not that the reading of the odometer is a reasonably accurate measure of the distance travelled by the vehicle—a statement that the odometer reading may be regarded as reasonably accurate;or
 - B. that is not the case—such statement as is required by the regulations;
 - (m) where a duty to repair will apply under Part IV—the address of the registered place of repair of the dealer who will be liable to discharge the duty;
- and
- (n) such other particulars and statements as are prescribed.

(3) In proceedings for an offence relating to a failure to include in a notice all the particulars and statements required under subsection (1) or the inclusion of any incorrect particulars or statement, it shall be a defence for the defendant to prove that having made a proper examination of the vehicle and having made reasonable inquiries he complied with the requirements of the subsection to the best of his knowledge, information and belief.

(4) An auctioneer shall not, in any advertisement published in connection with an auction for the sale of a second-hand vehicle (being an auction that the auctioneer is conducting on his own behalf or on behalf of a dealer), refer

directly or indirectly to the odometer reading of the vehicle or the distance travelled by the vehicle unless a notice is attached to the vehicle in accordance with this section and the notice contains a statement by the auctioneer that the odometer reading of the vehicle may be regarded as reasonably accurate.

Penalty: One thousand dollars.

(5) A person from whom an auctioneer acquires ownership of a second-hand vehicle or on whose behalf a second-hand vehicle is to be auctioned shall not give the auctioneer any information as to any of the matters referred to in subsection (2) that is to his knowledge false or misleading in a material particular.

Penalty: Five hundred dollars.

23. Where a second-hand vehicle is sold to a person other than a dealer—

(a) by auction;

or

(b) by a sale negotiated by an auctioneer immediately after the conduct of an auction for the sale of the vehicle,

the auctioneer shall ensure that—

(c) a copy of the notice that was required to be attached to the vehicle under section 22;

and

(d) a notice in the prescribed form,

are provided to the purchaser for his retention before the purchaser takes possession of the vehicle.

Penalty: One thousand dollars.

24. (1) An auctioneer shall not conduct a trade auction unless a notice in the prescribed form is attached to the vehicle and has been attached to the vehicle at all times when the vehicle has been available for inspection by prospective bidders. Trade auctions.

Penalty: One thousand dollars.

(2) A person who advertises a trade auction must include in the advertisement a statement in the prescribed form.

Penalty: One thousand dollars.

PART IV

PART IV

DUTY OF DEALERS TO REPAIR SECOND-HAND VEHICLES

25. (1) Subject to this Act, where a dealer sells a second-hand vehicle, the dealer is under a duty to repair any defect that is present in the vehicle or that appears in the vehicle after the sale. Duty to repair.

(2) A dealer must in order to discharge the duty imposed by subsection (1) carry out the repairs in a manner that conforms to accepted trade standards.

(3) This section does not apply in relation to—

- (a) the sale of a vehicle to a dealer;
 - (b) the sale of a vehicle on behalf of a person who is not a dealer, being a sale—
 - (i) by auction;
 - or
 - (ii) negotiated by the auctioneer immediately after the conduct of an auction for the sale of the vehicle.
- (4) This section does not apply in relation to a defect that appears—
- (a) in the case of a vehicle sold at a price that is below the prescribed range—
 - (i) after the vehicle has been driven fifteen hundred kilometres after the sale;
 - or
 - (ii) after the expiration of the period of one month after the sale,whichever occurs first;
 - (b) in the case of a vehicle sold at a price that is within the prescribed range—
 - (i) after the vehicle has been driven three thousand kilometres after the sale;
 - or
 - (ii) after the expiration of the period of two months after the sale,whichever occurs first;
 - (c) in the case of a vehicle sold at a price that is above the prescribed range—
 - (i) after the vehicle has been driven five thousand kilometres after the sale;
 - or
 - (ii) after the expiration of the period of three months after the sale,whichever occurs first.

(5) Where a vehicle has a defect that a dealer is under a duty to repair pursuant to this section, the reference in subsection (4) (a) (ii), (4) (b) (ii), or (4) (c) (ii), as the case may be, to a period after the sale shall, in relation to the sale of that vehicle, be read as a reference to that period extended—

- (a) in any case where in accordance with this Act the vehicle is delivered to the dealer and the dealer carries out his duty to repair the defect—by a period equal to that elapsing between the time at which the vehicle was delivered to the dealer and the time at which he completed the repairs and made the vehicle available for recovery by the purchaser;
- or
- (b) in any other case—by such period as the Tribunal, upon the application of the purchaser, determines as representing the

period for which the purchaser did not have the use of the vehicle by reason of the defect (as distinct from any period for which the purchaser did not have the use of the vehicle by reason of his own failure to act expeditiously).

(6) This section does not apply in relation to—

- (a) any defect resulting from damage deliberately caused to the vehicle after the sale;
- (b) any defect arising from misuse of the vehicle after the sale;
- (c) any defect arising from any collision, impact or accident that occurs after the sale;
- (d) any defect in the paintwork or upholstery of a vehicle which was reasonably apparent at the time of sale;

or

- (e) any vehicle where the purchaser has been in possession of the vehicle for a period of not less than three months immediately preceding the date of the sale.

(7) This section does not apply in relation to—

- (a) a defect in a vehicle sold at a price that is below the prescribed amount;

or

- (b) a defect in the tyres or battery of a vehicle,

unless—

- (c) the defect is present in the vehicle at the time the purchaser takes possession of the vehicle;

and

- (d) by reason of the defect—

- (i) the vehicle does not comply with the Road Traffic Act, 1961-1982, or the regulations under that Act;

or

- (ii) the vehicle cannot be driven safely or cannot be driven at all.

(8) Except as provided by the regulations, this section does not apply to a defect to which this section is declared by the regulations not to apply.

(9) Where a second-hand vehicle is sold by a dealer on behalf of another dealer, the duty imposed by this section must be discharged by that other dealer.

(10) In this section—

“defect” in relation to a second-hand vehicle means a defect in the vehicle—

- (a) by reason of which the vehicle does not comply with the Road Traffic Act, 1961-1982, or the regulations under that Act;

(b) by reason of which the vehicle cannot be driven safely or cannot be driven at all;

(c) by reason of which the part of the vehicle affected by the defect is not in proper working condition;

or

(d) that would not reasonably be expected to be present in the vehicle having regard to—

(i) the apparent condition of the vehicle at the time of its sale;

and

(ii) any representation by the dealer prior to the sale as to the condition of the vehicle:

“prescribed amount” means—

(a) five hundred dollars;

or

(b) where a different amount is prescribed for the purposes of this definition—the amount so prescribed:

“prescribed range” means—

(a) from and including fifteen hundred dollars up to but not including three thousand dollars;

or

(b) where a different range of amounts is prescribed for the purposes of this definition—the range of amounts so prescribed.

Enforcement of
duty to repair.

26. (1) Where a dealer is under a duty to repair a defect in a second-hand vehicle pursuant to this Part, the purchaser must, if he requires the dealer to discharge the duty, deliver the vehicle to the dealer during ordinary business hours—

(a) at the dealer’s registered place of repair;

or

(b) where a different place has been agreed upon by the dealer and the purchaser—at that other place,

and afford the dealer a reasonable opportunity to repair the defect.

(2) Where—

(a) the purchaser delivers the vehicle to the dealer in accordance with subsection (1) but the dealer refuses to repair the defect or fails to repair the defect with due expedition;

or

(b) the purchaser makes reasonable efforts to deliver the vehicle to the dealer in accordance with subsection (1) but is unable to do so by reason of the dealer’s refusal to accept delivery of the vehicle or the absence of the dealer or any person acting on behalf of the dealer,

the Tribunal may, upon the application of the purchaser, make one or more of the following orders:

- (c) an order that the dealer repair the defect;
- (d) an order that the dealer pay to the purchaser the reasonable costs of repairing or completing the repairs of the defect;
- (e) an order that the dealer compensate the purchaser for any loss or damage suffered by the purchaser as a result of the dealer's conduct.

(3) The purchaser is under a duty to mitigate any loss or damage referred to in subsection (2) (e).

(4) Where the Tribunal makes an order under subsection (2) (c) and the dealer fails to comply with the terms of the order, the Tribunal may, upon the further application of the purchaser, make an order referred to in subsection (2) (d) and, if appropriate, an order referred to in subsection (2) (e).

(5) Where repairs that a dealer is under a duty to carry out pursuant to this Part are carried out by another person on behalf of the dealer and the purchaser of the vehicle pays an amount to the other person in or towards payment of the costs of the repair, the Tribunal may, upon the application of the purchaser, order the dealer to reimburse the purchaser in respect of the amount paid by the purchaser.

(6) Notwithstanding the provisions of subsection (1), where—

- (a) a dealer is under a duty to repair a defect in a second-hand vehicle pursuant to this Part;
- (b) by reason of the defect the vehicle—
 - (i) cannot be driven;
 - (ii) cannot be driven safely;or
 - (iii) cannot be driven without risk of damage to the vehicle;
- (c) it is unreasonable in the circumstances having regard to the nature of the defect and the distance that the vehicle would have to be transported that the purchaser be required to deliver the vehicle to the dealer at the place referred to in subsection (1);
- (d) the purchaser has given to the dealer proper notice (whether written or oral) of the defect and afforded the dealer a reasonable opportunity to nominate a place other than that referred to in subsection (1) at which he is prepared to repair the defect;

and

- (e) the dealer fails to nominate another place or it is unreasonable in the circumstances having regard to the matters referred to in paragraph (c) that the purchaser be required to take the vehicle to the place nominated by the dealer,

then—

- (f) the purchaser may cause the vehicle to be repaired by a person other than the dealer;

and

(g) the Tribunal may, upon the application of the purchaser, order the dealer to pay to the purchaser the reasonable costs of repairing the defect.

(7) Notwithstanding the other provisions of this section, where a dealer who is under a duty to repair a defect in a vehicle pursuant to this Part is not licensed under this Act or does not have a registered place of repair—

(a) the purchaser may cause the vehicle to be repaired by a person other than the dealer;

and

(b) the Tribunal may, upon the application of the purchaser, order the dealer to pay to the purchaser the reasonable costs of repairing the defect.

(8) The Tribunal may, upon an application under this section—

(a) make an order under this section upon such terms and conditions as it thinks just;

and

(b) make such other order as to costs, or any other matter, as it thinks just.

(9) Any determination made by the Tribunal on a question of fact shall be final and without appeal.

Conciliation.

27. (1) Where, before or during the course of the hearing of an application under this Part, it appears to the Tribunal upon the basis of—

(a) evidence given in the matter;

or

(b) the attitude of the parties,

that there is a reasonable possibility of the matter being resolved by conciliation, the Tribunal may refer the matter to the Commissioner or a person appointed by the Commissioner to assist the parties to resolve the matter.

(2) If, after a matter has been referred to the Commissioner or a person appointed by the Commissioner under subsection (1), either of the parties requests that the hearing be proceeded with, the Tribunal shall resume the hearing as soon as is practicable.

(3) Nothing said or done in the course of any attempt to resolve a matter under this section shall subsequently be given in evidence in any proceedings.

(4) Where a matter is resolved under this section, the Tribunal may embody in an order the terms upon which it has been resolved.

PART V

PART V

COMPENSATION FUND

Second-hand
Vehicles
Compensation
Fund.

28. (1) A fund entitled the "Second-hand Vehicles Compensation Fund" shall be established and administered by the Commissioner.

(2) There shall be paid into the Fund—

- (a) the contributions required to be paid in accordance with section 29;
 - (b) any amounts recovered by the Commissioner under section 31;
 - (c) such amounts as are paid from the General Revenue of the State under subsection (4);
- and
- (d) any amounts derived by investment under subsection (6).

(3) There shall be paid out of the Fund—

- (a) any amount authorized by the Tribunal under section 30;
- (b) any expenses certified by the Treasurer as having been incurred in administering the Fund;

and

- (c) any amount required to be paid into the General Revenue of the State under subsection (5).

(4) Where the amount standing to the credit of the Fund is not sufficient to meet an amount that may be authorized to be paid under section 30, the Minister may, with the approval of the Treasurer, authorize the payment of such amount as he may specify out of the General Revenue of the State which is, by virtue of this section, appropriated to the necessary extent.

(5) The Minister may authorize payment from the Fund into the General Revenue of the State of any amount paid into the Fund from the General Revenue of the State if the Minister is satisfied that the balance remaining in the Fund will be sufficient to meet any amounts that may be authorized to be paid under section 30.

(6) Any moneys standing to the credit of the Fund that are not immediately required for the purposes of this Act may be invested in such manner as is approved by the Minister.

29. (1) Every licensee must pay to the Commissioner for payment into the Fund such contribution as he is required to pay in accordance with the regulations. Licenses required to pay contributions.

(2) If a licensee fails to pay a contribution within the time allowed for payment by the regulations, his licence shall, by virtue of this subsection, be suspended until the contribution is paid.

30. (1) Where—

- (a) the Tribunal has made an order for the payment by a dealer of a sum of money to the purchaser of a second-hand vehicle;

and

- (b) either—

- (i) the dealer against whom the order was made has failed to comply with the order within a period of one month from the date of service of the order;

or

- (ii) the Tribunal is satisfied that, by reason of the death, disappearance or insolvency of the dealer, there is no reasonable prospect of the order being complied with,

Claim against Fund.

the Tribunal may, upon the application of the purchaser, authorize payment of the amount specified in the order to the purchaser out of the Fund.

(2) Where, upon the application of a person (not being a dealer) who has purchased a second-hand vehicle from a dealer or sold a second-hand vehicle to a dealer, the Tribunal is satisfied—

(a) that the person has a valid unsatisfied claim against the dealer arising out of or in connection with the purchase or sale but otherwise than in pursuance of this Act;

and

(b) that, by reason of the death, disappearance or insolvency of the dealer, there is no reasonable prospect of the claim being satisfied,

the Tribunal may authorize payment of the amount of the claim to that person out of the Fund.

Right of
Commissioner
where claim
allowed.

31. On payment out of the Fund of an amount authorized by the Tribunal the Commissioner is subrogated to the rights of the person to whom the payment was made in respect of the order or claim in relation to which the payment was made.

Accounts and
audit.

32. (1) The Commissioner shall cause proper accounts to be kept of the receipts and payments of the Fund.

(2) The Auditor-General may at any time, and shall at least once in every year, audit the accounts of the Fund.

PART VI

PART VI

MISCELLANEOUS

No waiver of
rights.

33. (1) Subject to this section, any purported exclusion, limitation, modification or waiver of the rights conferred by this Act shall be void.

(2) A person (not being a minor) who proposes to purchase a second-hand vehicle may waive a right conferred on him by this Act if he has obtained from the Commissioner a certificate in the prescribed form certifying that an authorized officer, having explained to the person the effect of the waiver of that right in relation to the proposed purchase of that vehicle, was satisfied that the person understood the effect of the waiver.

(3) The Commissioner shall not issue a certificate under subsection (2) unless—

(a) the prospective purchaser has supplied the prescribed particulars in relation to the proposed purchase of the vehicle together with any other information the Commissioner may require;

and

(b) an authorized officer has explained to the prospective purchaser the effect of the waiver and satisfied himself that the person understands the effect of the waiver.

(4) Where a dealer purports to exclude, limit or modify any of the rights conferred by this Act, he shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

(5) A person who enters into an agreement or arrangement with intent either directly or indirectly to defeat, evade or prevent the operation of this Act shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

(6) A dealer shall not exhibit or otherwise publish a statement, notice or advertisement in connection with the sale of a second-hand vehicle—

(a) to the effect that the sale is conditional upon a purchaser obtaining a certificate under subsection (2);

or

(b) in such manner as to induce a prospective purchaser of the vehicle to obtain a certificate under subsection (2).

Penalty: Two thousand dollars.

(7) A contract for the sale of a second-hand vehicle conditional upon the purchaser obtaining a certificate under subsection (2) shall be void.

34. (1) A person shall not interfere with the odometer on a second-hand vehicle.

Interference with
odometers
prohibited.

Penalty: Two thousand dollars.

(2) For the purposes of subsection (1), a person interferes with an odometer if he—

(a) alters the reading on the odometer;

(b) removes or replaces the odometer;

or

(c) renders the odometer inoperative or inaccurate by any means whatsoever.

(3) A person may, with the written approval of the Commissioner, alter the reading on an odometer, or replace an odometer, in accordance with the terms of that approval.

(4) If in proceedings for an offence against subsection (1) it is proved that the defendant had possession of the vehicle and that, during the time it was in the possession of the defendant, or shortly after the time it ceased to be in the possession of the defendant, the odometer reading was less than the odometer reading at the time the defendant acquired possession of the vehicle, it shall be presumed, in the absence of proof to the contrary, that the defendant interfered with the odometer of the vehicle.

(5) In any proceedings for an offence against subsection (1) it shall be a defence for the defendant to prove—

(a) that the action was not taken by him with the intent of enhancing the apparent value of the vehicle for the purpose of sale;

and

(b) that the action was not taken by him for any other fraudulent purpose.

35. For the purposes of this Act, where it is proved that a person has sold, or offered or exposed for sale, six or more second-hand vehicles during a period of twelve months, the person shall, unless the contrary is proved, be

Evidentiary
provision.

deemed to have been carrying on the business of selling second-hand vehicles throughout the period of that activity.

Liability of dealers for acts or omissions of employees or agents.

36. For the purposes of this Act, an act or omission of an employee or agent of a dealer shall be deemed to be an act or omission of the dealer unless the dealer proves that the person was not acting in the course of his employment or agency.

Certain agreements to indemnify dealer void.

37. An agreement between a dealer and a person (other than a dealer) from whom the dealer purchases a second-hand vehicle which indemnifies the dealer in respect of any costs incurred by him arising by virtue of this Act in relation to that vehicle shall be void.

Investigations.

38. The Commissioner or the Commissioner of Police shall, at the request of the Registrar, cause his officers to investigate and report upon any matter relevant to the determination of—

(a) any application or other matter before the Tribunal;

or

(b) any matter that might constitute proper cause for disciplinary action under this Act.

Annual Report.

39. (1) The Commissioner shall, on or before the thirty-first day of October in each year, submit to the Minister a report upon the administration of this Act during the period of twelve months ending on the preceding thirtieth day of June.

(2) The report shall contain the audited statement of accounts of the Fund for the period to which the report relates.

(3) The Minister shall, as soon as practicable after his receipt of the report, cause a copy of the report to be laid before each House of Parliament.

Service of documents.

40. (1) Any notice or document required or authorized by this Act or the Commercial Tribunal Act, 1982, to be given to or served on any person shall be deemed to have been duly served if it has been—

(a) served on the person personally;

(b) posted in an envelope addressed to the person at his last known address, or, in the case of a licensee, his address for service;

or

(c) in the case of a licensee, left for him at his address for service with a person apparently over the age of sixteen years.

(2) The address for service of a licensee is the last address for service of that person of which notice has been given in accordance with the regulations.

False or misleading information.

41. A person shall not, in furnishing any information required under this Act, make a statement that is false or misleading in a material particular.

Penalty: One thousand dollars.

Name in which licensee may carry on business.

42. A licensee shall not carry on business as a dealer otherwise than in the name in which he is licensed.

Penalty: One thousand dollars.

43. Where a licence granted to a person is suspended or cancelled under this Act, that person shall, at the direction of the Tribunal or the Registrar, return the licence to the Registrar.

Return of licences suspended or cancelled.

Penalty: One thousand dollars.

44. Where a body corporate is guilty of an offence against this Act, every member of the governing body of the body corporate shall be guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless he proves that he could not by the exercise of reasonable diligence have prevented the commission of that offence.

Offences by bodies corporate.

45. (1) A person convicted of an offence against any provision of this Act in respect of a continuing act or omission—

Continuing offences.

(a) shall be liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than the amount equal to one-tenth of the maximum penalty prescribed for that offence;

and

(b) shall, if the act or omission continues after he is convicted, be guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than the amount equal to one-tenth of the maximum penalty prescribed for the offence.

(2) Where an offence against a provision of this Act consists of an omission to do something that is required to be done, the omission shall, for the purposes of subsection (1), be deemed to continue for so long as the thing required to be done remains undone after the expiration of the period for compliance with the requirement.

46. Proceedings for an offence against this Act shall be disposed of summarily.

Summary proceedings.

47. (1) Proceedings for an offence against this Act shall be commenced within twelve months after the date on which the offence is alleged to have been committed.

Commencement of prosecutions.

(2) Proceedings for an offence against this Act shall not be commenced by a person other than the Commissioner or an authorized officer except with the consent of the Minister.

(3) An apparently genuine document purporting to be a certificate of the Minister certifying that he has consented to the commencement of proceedings for an offence against this Act shall be accepted, in the absence of proof to the contrary, as proof of the matter so certified.

48. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

Regulations.

(2) Without limiting the generality of subsection (1), those regulations may—

(a) prescribe the information and particulars that shall be included in any advertising material relating to second-hand vehicles and

the form and manner in which that information or those particulars shall be set out;

- (b) provide for and prescribe the forms of any application, notice or certificate under this Act;
 - (c) prescribe the manner in which any notice under this Act shall be attached to a second-hand vehicle;
 - (d) provide for and regulate the display by dealers of licences and notices at registered premises and registered places of repair;
 - (e) provide for and prescribe the method of evidencing and the documents required to effectuate sales of second-hand vehicles between persons who carry on the business of buying and selling second-hand vehicles;
 - (f) in prescribing fees for licences, provide that different fees may be paid by different classes of persons;
 - (g) prescribe a code of practice for licensees;
- and
- (h) provide for and prescribe penalties not exceeding one thousand dollars for contravention of, or non-compliance with, any regulation.

(3) A code of practice may be prescribed for the purposes of this Act by referring to, or incorporating, in whole or in part, and with or without modifications, a code of practice for the time being, or from time to time, adopted by a body which, in the opinion of the Governor, represents the interests of a substantial section of licensees.

(4) Any regulations made under this Act may be of a general or limited application and may vary according to the persons or classes of persons, the vehicles or classes of vehicles, the times, the places or the circumstances to which they are expressed to apply.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor