

LEGISLATIVE ASSEMBLY

Read 1° 18 March 1980

(Brought in by Mr Ramsay and Mr Maclellan)

A BILL

To amend the *Motor Car Traders Act 1973* and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. (1) This Act may be cited as the *Motor Car Traders (Amendment) Act 1980*. Short title.

(2) In this Act the *Motor Car Traders Act 1973* is called the Principal Act Principal Act No. 8408. Amended by Nos. 9075 and 9157. Commencement.

10 (3) This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

2. (1) In section 2 (1) of the Principal Act—

(a) after the interpretation of "Committee" there shall be inserted the following interpretation:

15 "Director" means the Director of Consumer Affairs appointed for the purposes of the *Ministry of Consumer Affairs Act 1973*;

(b) the interpretation of "Second-hand motor car" is repealed; and

Amendment of No. 8408. Amendment of interpretation of "second-hand motor car".

(c) after the interpretation of "Trading in motor cars" there shall be inserted the following interpretation:

"Used motor car."

"Used motor car" includes a motor car that has, at any time before being offered or displayed for sale, been registered under the *Motor Car Act* 1958 or under any Act or law of a place outside Victoria that, with respect to its provision for registration of motor cars, corresponds with that Act. 5

(2) The Principal Act is amended as follows:

(a) In section 1 (3) for the item relating to Part VI. there shall be substituted the following item: 10

"PART VI.—SALE OF USED MOTOR CARS.;"

(b) In sections 26 (1), 26 (3), 26 (4), 28, 29 (2), 30 (1) (d), 40 (1), 40 (2) (a), 41 (1) (a), 41 (1) (b), 41 (5), 42 (1), 42 (2) (a), 46 (1) (a) and 46 (7), for the expression "second-hand" (wherever occurring) there shall be substituted the word "used"; and 15

(c) For the heading preceding section 39 there shall be substituted the following heading:

"PART VI.—SALE OF USED MOTOR CARS." 20

(3) From the commencement of this section, a reference in the regulations to a second-hand motor car shall be read and construed as a reference to a used motor car.

Amendment of No. 8404 s. 7. Repeal of provisions relating to report by committee to Governor in Council.

3. In section 7 (2) of the Principal Act paragraph (a) shall be repealed. 25

Amendment of No. 8404 s. 10. Meetings of Motor Car Traders Committee.

4. (1) In section 10 (2) of the Principal Act after the word "preside" there shall be inserted the words "and, in the absence of the chairman and the deputy chairman the members present at the meeting shall elect one of their number to be chairman of the meeting". 30

(2) In section 10 (3) of the Principal Act the words "one of whom is the chairman or the deputy chairman" shall be repealed.

Consequential amendment of No. 8408 s. 13.

(3) In section 13 of the Principal Act after the words "deputy chairman" there shall be inserted the expression "or, in the absence of the chairman and deputy chairman, the person elected to be the chairman". 35

5. After

5. After section 10 of the Principal Act there shall be inserted the following sections:

New s. 10A,
inserted in
No. 8408.

Sub-
committees.

“10A. (1) The committee may from time to time establish such sub-committees as it thinks fit to advise the committee on such 5 matters as the committee determines.

(2) A sub-committee established under sub-section (1) shall consist of two members of the committee.

(3) A member of a sub-committee shall, in addition to any fees or allowances to which he is entitled under section 11, be paid 10 such fees and travelling and other allowances as may be prescribed.

(4) The committee may at any time dissolve a sub-committee established under sub-section (1).

10B. No matter or thing done by the committee and no matter or thing done by any member of the committee shall, if the matter 15 or thing was done *bona fide* for the purposes of executing this Act, subject the committee or any member of the committee personally to any action, liability, claim or demand whatsoever.”

Immunity from
suit action.

6. In section 14 of the Principal Act for the expression “Penalty: \$1000” there shall be substituted the expression “Penalty: First 20 offence \$1000; second or subsequent offence \$2000”.

Amendment of
No. 8408 s. 14.
Increase in
penalty for
unlicensed
trading in
motor cars.

7. (1) In section 15 (5) of the Principal Act after the words “Chief Commissioner” there shall be inserted the words “or the 25 Director”.

Amendment of
No. 8408 s. 15.
Director of
Consumer
Affairs may
object to
issue of
licences.

(2) In section 15 (6) of the Principal Act—

25 (a) after the words “Chief Commissioner” there shall be inserted the words “or the Director”;

(b) the word “and” between paragraphs (a) and (b) is repealed; and

30 (c) in paragraph (c) the word “that” (where first occurring) is repealed.

8. (1) After section 17 (1) of the Principal Act there shall be inserted the following sub-section:

Amendment of
No. 8408 s. 17.
Committee may
reprimand in
certain cases.

“(1A) If, after due inquiry the committee is satisfied that a licensed motor car trader—

35 (a) has been convicted of any offence against this Act or the regulations; or

(b) has been guilty of any other conduct that is discreditable to a motor car trader—

40 it may, if it is satisfied that the gravity of the offence or conduct does not warrant the revocation of the licence of the motor car trader but warrants a reprimand, reprimand the motor car trader—

(c) reprimand the motor car trader; or

(d) if

- (d) if it is satisfied that in all the circumstances the offence or conduct ought to be excused, decline to reprimand the motor car trader.”.

Consequential amendment of No. 8408, s. 22.

(2) In section 22 (1) of the Principal Act—

- (a) after the word “revoked” there shall be inserted the words “or a motor car trader is reprimanded by the Committee”; and
- (b) for the words “or revocation” there shall be substituted the words “revocation or reprimand”.

Amendment of No. 8408 s. 18. Auditor's certificate to accompany application for licence.

9. (1) After section 18 (1) of the Principal Act there shall be inserted the following sub-section:

“(1A) An application under sub-section (1) shall be accompanied by—

- (a) where an auditor's certificate prepared under section 38 (2) in respect of the period ended on the previous 30 June has been received by the applicant—a copy of that certificate; or
- (b) where no such certificate has been received by the applicant—a copy of the auditor's certificate prepared under section 38 (2) in respect of the period ended on 30 June in the year before the year in which the application is made.”.

(2) In section 18 (4) (a) after the word “Police” there shall be inserted the words “or the Director”.

Amendment of No. 8408 s. 19. Notice of commencement and cessation of business to be in writing.

10. In section 19 (1) of the Principal Act after the word “notice” there shall be inserted the words “in writing”.

Amendment of No. 8408, s. 20. Time within which to lodge notice of appeal against refusal, &c. of licence.

11. Section 20 of the Principal Act is amended as follows:

- (a) After the expression “20.” there shall be inserted the expression “(1)”; and
- (b) At the end of the section there shall be inserted the following expression:

“(2) A person who intends to appeal to a Magistrates' Court pursuant to sub-section (1) shall within 21 days after receiving notification of the decision to revoke his licence or to refuse to issue or renew his licence, lodge with the Clerk of the Magistrates' Court notice of his intention to appeal.”

12. (1) In

12. (1) In section 23 of the Principal Act after the word "Committee" there shall be inserted the words "or any person who by virtue of section 62 (1) or section 62 (2) of the *Consumer Affairs Act* 1972 is an inspector under that Act".

Amendment of No. 8408 ss. 23 and 26.
Persons to whom licences and purchasers books must be produced.

5 (2) In section 26 (2) (b) of the Principal Act for the word "mileage" (wherever occurring) there shall be substituted the words "distance travelled by the motor car".

(3) In section 26 (7) of the Principal Act after the words "police force" there shall be inserted the words "or any person who by virtue of section 62 (1) or section 62 (2) of the *Consumer Affairs Act* 1972 is an inspector under that Act".

13. In section 28 of the Principal Act for the expression "age of 18 years" there shall be substituted the expression "age specified in relation to the motor car or a class of motor cars in which the motor car is included in section 6 (4) of the *Motor Car Act* 1958".

15 Amendment of No. 8408 s. 28.
Motor car trader not to deal with person under age for registration of a motor car.

14. (1) In section 29 (1) of the Principal Act—

(a) in paragraph (a) for the word "mileage" there shall be substituted the word "distance";

Amendment of No. 8408 s. 29.
Penalties for tampering with odometer, &c.

(b) in paragraph (b)—

20 (i) after the word "used" there shall be inserted the words "in a motor car"; and

(ii) for the words "mileage in a motor car" there shall be substituted the words "distance travelled by a motor car";

25 (c) in paragraph (c) for the words "mileage of" (where twice occurring) there shall be substituted the words "distance travelled by"; and

(d) after the word "Act" there shall be inserted the expression "Penalty: First offence \$500 second or any subsequent offence \$1000".

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(2) Section 29 (2) of the Principal Act is amended as follows:

(a) For the words "mileage of" there shall be substituted the words "distance travelled by"; and

(b) For the expression "second-hand" there shall be substituted the word "used".

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15. (1) In section 30 (1) of the Principal Act—

(a) for the words "to or by a motor car trader" there shall be substituted the words "by a motor car trader whether as principal or acting on behalf of another person";

Amendment of No. 8408 s. 30.
Agreements for the sale of motor cars.

(b) in

- (b) in paragraph (c) the words “where the vendor is a motor car trader or a motor car trader acts on behalf of the vendor in the making of the sale” shall be repealed;
- (c) after paragraph (d) there shall be inserted the following paragraph: 5
 “(da) specify the name and business address of any proprietor of the motor car within the meaning of the *Motor Car Act 1958*”; and
- (d) for paragraphs (f) and (g) there shall be substituted the following paragraphs: 10
 “(f) in the case of a used motor car, state the distance travelled by the motor car as recorded on the instrument or device installed in the motor car for recording the distance travelled by the motor car either at the time when the purchaser signs the agreement or at any earlier time at which the purchaser takes delivery of the motor car; and 15
 (g) in the case of a used motor car, state whether or not the vendor or, where a motor car trader acts on behalf of the vendor in the making of the sale, the motor car trader believes the distance so recorded to be true.” 20
- (2) In section 30 (4) of the Principal Act—
- (a) for paragraph (a) there shall be substituted the following paragraph: 25
 “(a) in any written agreement relating to the sale of a used motor car and purporting to comply with sub-section (1), the vendor or, where a motor car trader acts on behalf of the vendor in the making of the sale, the motor car trader states that he believes to be true a distance travelled by the motor car that he knows to be false or does not believe to be true;”; and 30
- (b) for the word “mileage” (where secondly occurring) there shall be substituted the words “the distance travelled by the motor car”. 35
- (3) After section 30 (4) of the Principal Act there shall be inserted the following sub-sections:
- “(4A) Without affecting the generality of sub-section (4), where—
- (a) a written agreement is entered into that complies or purports to comply with sub-section (1) in relation to a used motor car (not being a commercial vehicle within the meaning of section 39); and 40

(b) the

- (b) the purchaser of the motor car is satisfied that—
- (i) the motor car is substantially different from the motor car as represented in a notice under section 40; or
 - (ii) where no such notice was displayed in relation to the motor car, the motor car as sold by the vendor was substantially different from the motor car as represented by the motor car trader—

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the purchaser may apply to a Magistrates' Court for an order for rescission of the sale of the motor car, or recover damages from the motor car trader for any loss suffered as a result of his relying upon the representation.

15 (4B) A purchaser is not entitled to make application under sub-section (4) or sub-section (4A) for rescission of the sale of a motor car after the expiration of three months from and including the day on which the agreement was entered into.

16. (1) In section 31 (1) of the Principal Act—

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(a) after the words "in that behalf" there shall be inserted the words "in or to the effect of the prescribed form"; and

(b) in paragraphs (a) and (b) after the word "owner" (wherever occurring) there shall be inserted the expression "of the motor car or the interest (as the case may be)".

25 (2) In section 31 of the Principal Act, sub-sections (4) and (5) shall be repealed.

17. In section 38 of the Principal Act for sub-section (3) there shall be substituted the following sub-sections:

30 "(3) A motor car trader who without reasonable excuse when requested to do so by the Secretary fails to produce to him any auditor's certificate prepared under section 38 (2) in relation to the motor car trader's business shall be guilty of an offence against this Act.

35 (4) A motor car trader shall retain any auditor's certificate prepared under sub-section (2) in relation to his business or a copy of that certificate for a period of at least three years after the date on which he received the certificate."

18. (1) In section 40 (1) of the Principal Act after the words "commercial vehicle" there shall be inserted the words "veteran motor car, vintage motor car or classic and historic motor car".

Amendment of
No. 8408 s. 31.
Disposal
authorities.

Amendment of
No. 8408 s. 38.
Auditor's
certificate
to be produced
on demand.

Amendment of
No. 8408 s. 40.
Notices to be
attached to
motor cars.

(2) After

(2) After section 40 (1) of the Principal Act there shall be inserted the following sub-section:

“(1A) In sub-section (1)—

- (a) a reference to a veteran motor car is a reference to a motor car which was manufactured before 1 January 1917; 5
- (b) a reference to a vintage motor car is a reference to a motor car which was manufactured after 31 December 1916 and before 1 January 1931; and
- (c) a reference to a classic and historic motor car is a reference to a motor car which was manufactured after 31 December 1930 and before 1 January 1943. 10

(3) Section 40 (3) of the Principal Act is amended as follows:

(a) For paragraph (b) there shall be substituted the following paragraph: 15

“(b) if the owner of the motor car is a motor car trader or special trader—

(i) the name of the last person registered as the owner of the motor car under the provisions of any Act or law, whether of Victoria or of any other place, relating to the registration of motor cars, who was neither a motor car trader nor a special trader; and 20

(ii) the name and address of the last owner of the motor car who was neither a motor car trader nor a special trader (if those particulars are known to the motor car trader);” and 25

(b) In paragraph (c)—

(i) for the word “mileage” (where first occurring) there shall be substituted the words “the distance travelled by the motor car”; and 30

(ii) for the word “mileage” (where secondly occurring) there shall be substituted the words “distance travelled by the motor car”.

19. After section 41 (4) (a) of the Principal Act there shall be inserted the following paragraphs: 35

“(aa) the sale of a veteran motor car, a vintage motor car or classic and historic motor car within the meaning of section 40 (1A);

(ab) the sale of a motor cycle within the meaning of the *Motor Car Act 1958*.” 40

Amendment of
No. 8408 s. 41.
Provisions as
to warranties
not to apply
to veteran or
vintage motor
cars or motor
cycles.

20. After

20. After section 44 (1) of the Principal Act there shall be inserted the following sub-section:

Amendment of No. 8408 s. 44. Committee may refer certain matters to qualified automotive engineer.

“(1A) The committee may refer to an automotive engineer selected by the committee any question arising in a dispute before
5 the committee and relating to the condition or state of repair of a motor car and may take his report into account in making its determination.”.

21. The Principal Act is amended as follows:

10 (a) In section 48 (3) for the words “motor car trader” there shall be substituted the words “person who is or has been a licensed motor car trader”;

Amendment of No. 8408 ss. 48, 49 and 52. Motor Car Traders Guarantee Fund to be applied in payment of claims against licensed motor car trader.

(b) In section 48 (4) (a) after the word “Committee” (where first occurring) there shall be inserted the words “or any sub-committee established by the committee”;

15 (c) After section 49 (1) there shall be inserted the following sub-section:

“(1A) A motor car trader or a special trader shall not be entitled to make a claim under this Part.”; and

20 (d) In section 52 (1) before the words “motor car trader” (where twice occurring) there shall be inserted the word “licensed”.

22. In section 62 (e) of the Principal Act after the word “orders” there shall be inserted the word “authorities”.

Amendment of No. 8408 s. 62. Regulations.

