

# **Motor Car Traders Bill**

## **EXPLANATORY MEMORANDUM**

### **PART 1—PRELIMINARY**

*Clause 1* contains the purpose of the Act.

*Clause 2* provides for the coming into operation of the Act.

*Clause 3* contains the definitions to be applied under the Act.

*Clause 4* provides for certain transactions to be subject to the Act.

*Clause 5* provides that in certain circumstances a person is deemed to be a motor car trader.

*Clause 6* excludes the application of the *Second-hand Dealers Act 1958* to licensed motor car traders.

### **PART 2—LICENCES**

*Clause 7* requires motor car traders to be licensed.

*Clause 8* provides for the manner for applying for a licence.

*Clause 9* provides for the refund of the licence fee where the application is withdrawn prior to consideration by the Authority.

*Clause 10* prohibits false or misleading statements in relation to a licence application and provides a defence to a prosecution.

*Clause 11* provides for a copy of the licence application to be given to the Director and Chief Commissioner of Police in order to conduct enquiries.

*Clause 12* enables the Director and Chief Commissioner of Police to object to the granting of a licence.

*Clause 13* provides for the grounds on which the Motor Car Traders Licensing Authority will grant or refuse to grant a licence.

*Clause 14* enables the Authority to impose conditions or restrictions on a licence.

*Clause 15* provides for the endorsement of conditions or restrictions on the licence.

*Clause 16* contains special procedures granting authority to sell motor cars by public auction.

*Clause 17* provides for the name under which a licensed motor car trader may operate.

*Clause 18* provides for the form of licence.

*Clause 19* requires application for a new licence where there has been a change in partnership.

*Clause 20* requires a licensee to give notice of certain changes.

*Clause 21* requires a licence to be returned in certain circumstances.

*Clause 22* provides for the keeping of a Register of Motor Car Traders.

*Clause 23* provides for the period of a licence.

*Clause 24* contains procedures for the renewal of a licence.

*Clause 25* requires motor car traders to prominently display the licence or a copy at each place of business.

*Clause 26* provides for the issue of a duplicate licence in certain circumstances.

*Clause 27* provides for the surrender of a licence.

*Clause 28* provides for the cancellation or suspension of a licence.

*Clause 29* provides for the effect of a suspension of a licence.

*Clause 30* contains the grounds for taking disciplinary action against a licensee.

*Clause 31* provides for the disciplinary measures which the Authority may take.

*Clause 32* provides for a review of certain decisions of the Authority by the Administrative Appeals Tribunal.

*Clause 33* contains procedures in the case of the death, disability etc. of a licensee.

*Clause 34* requires a licensee to display a sign in the prescribed form.

### **PART 3—CONDUCT OF BUSINESS**

*Clause 35* requires motor car traders to keep a dealings book at each trade premises, prohibits the making of false or misleading entries and prohibits a person giving false information to a motor car trader on matters covered by the Act.

*Clause 36* prohibits consignment selling by a motor car trader.

*Clause 37* prohibits motor car traders from dealing with young persons.

*Clause 38* prohibits odometer tampering.

*Clause 39* enables the court to make orders for compensation in certain cases.

*Clause 40* provides for findings in proceedings against odometer tampering to be evidence in certain actions.

*Clause 41* contains requirements regarding agreements for the sale of used motor cars.

*Clause 42* contains requirements regarding agreements for the sale of new motor cars.

*Clause 43* provides for a cooling-off period in certain circumstances.

*Clause 44* prohibits motor car traders entering particular agreements for the sale of used motor cars.

*Clause 45* provides for the rescission of an agreement for the sale of a motor car in certain circumstances.

*Clause 46* provides for the powers and functions of the Small Claims Tribunals in an application for rescission.

*Clause 47* provides for the powers of a Magistrates' Court or a Small Claims Tribunal in an application for rescission.

*Clause 48* prohibits a motor car trader from selling a motor car without first cancelling any security interest in the vehicle.

*Clause 49* requires a financier to notify the Registrar of the failure of a motor car trader to cancel a security interest.

*Clause 50* provides for the proceeds of a sale or disposal to be held in trust in certain circumstances.

## **PART 4—SALE OF USED MOTOR CARS**

*Clause 51* is an interpretation clause for this Part.

*Clause 52* requires motor car traders to display certain particulars on vehicles offered for sale.

*Clause 53* contains certain requirements relating to the sale of unregistered vehicles by motor car traders.

*Clause 54* contains certain requirements relating to the obligations of motor car traders in particular, the statutory warranty.

*Clause 55* provides for the display of a prescribed notice excluding certain defects from the statutory warranty.

*Clause 56* prohibits any special conditions purporting to limit or modify the obligations of a motor car trader.

## **PART 5—MOTOR CAR TRADERS' GUARANTEE FUND AND CLAIMS COMMITTEE**

*Clause 57* provides for the establishment of the Guarantee Fund Claims Committee.

*Clause 58* provides for the terms and conditions of appointment of members of the Committee.

*Clause 59* provides for allowances to be paid to members of the Committee.

*Clause 60* provides for the resignation or removal from office of members of the Committee.

*Clause 61* provides for the appointment of an acting chairperson to the Committee.

*Clause 62* provides for the appointment of a Secretary to the Committee.

*Clause 63* provides that an act or determination of the Committee is not invalid by reason of a vacancy or irregularity in the appointment of a member.

*Clause 64* enables the Chairperson to give directions for the expeditious and just hearing of any proceedings before the Committee.

*Clause 65* provides for fixing of the time and place for hearings.

*Clause 66* provides for the constitution of the Committee in determining claims.

*Clause 67* provides for the determination of questions before the Committee.

*Clause 68* provides for the appearance of a claimant before the Committee.

*Clause 69* provides for the giving of evidence before the Committee.

*Clause 70* provides for procedures of the Committee.

*Clause 71* enables persons to request a written copy of the reasons for a determination.

*Clause 72* prohibits contempt of the Committee.

*Clause 73* provides for protection for the members of the Committee and the Secretary for things done in the execution of the Act.

*Clause 74* establishes the Motor Car Traders Guarantee Fund and provides for payments into and out of the Fund.

*Clause 75* provides for the powers and duties of the Treasurer in relation to the Fund.

*Clause 76* contains the grounds upon which a claim may be made against the Fund.

*Clause 77* contains the procedures for admitting or refusing a claim.

*Clause 78* provides that if a claim is admitted, no further claim may be made in respect of the same matter.

*Clause 79* provides for appeals to the Administrative Appeals Tribunal against the Committee's refusal to admit a claim.

*Clause 80* provides for the rights of subrogation where claims have been paid.

*Clause 81* enables deferred payment of claims to be made in some circumstances.

## **PART 6—MISCELLANEOUS**

*Clause 82* provides for the powers of inspection.

*Clause 83* prohibits a motor car trader or agent of a motor car trader from selling or exchanging motor cars without disclosing that the person is a motor car trader.

*Clause 84* makes it an offence for motor car traders to place certain advertisements.

*Clause 85* provides for the responsibilities and liabilities of officers of bodies corporate.

*Clause 86* provides for the the service of notices.

*Clause 87* provides for certificates to be signed by the Registrar to be evidence of the matter stated therein.

*Clause 88* prohibits any attempt to exclude, limit or modify the operation of the Act.

*Clause 89* provides that nothing in the Act limits, restricts or otherwise affects the rights or remedies a person may have.

*Clause 90* allows the Governor in Council to make regulations.

## **PART 7—MOTOR CAR TRADERS LICENSING AUTHORITY**

*Clause 91* provides for the establishment of the Motor Car Traders Licensing Authority.

*Clause 92* contains the qualifications necessary for appointment as Chairperson or Deputy Chairperson.

*Clause 93* provides for the terms and conditions of appointment of the Chairperson, Deputy Chairperson and members of the Authority.

*Clause 94* provides for allowances to be paid to members of the Authority.

*Clause 95* provides for the resignation or removal from office of members of the Authority.

*Clause 96* provides for the appointment of an acting chairperson or Deputy Chairperson of the Authority.

*Clause 97* provides for the appointment of acting members of the Authority.

*Clause 98* provides that an act or determination of the Authority is not invalid by reason of a vacancy or irregularity in the appointment of a member.

*Clause 99* enables the Chairperson or Deputy Chairperson to give directions for the expeditious and just hearing of any proceedings before the Authority.

*Clause 100* provides for the use of experts in certain circumstances.

- Clause 101* provides for fixing of the time and place for hearings before the Authority.
- Clause 102* provides for the constitution of the Authority.
- Clause 103* provides for the determination of questions before the Authority.
- Clause 104* provides for the appearance of persons before the Authority.
- Clause 105* provides for the giving of evidence before the Authority.
- Clause 106* provides for procedures of the Authority.
- Clause 107* provides that costs are not allowed in any proceedings before the Authority.
- Clause 108* provides for the determination of questions of law by the Supreme Court.
- Clause 109* provides for the appointment of a Registrar and staff to the Authority.
- Clause 110* enables persons to request a written copy of the reasons for a determination.
- Clause 111* requires the Director to give effect to a determination of the Authority.
- Clause 112* allows the Authority to request the Director to investigate matters.
- Clause 113* enables the Authority to extend any time limit for actions under the Act.
- Clause 114* prohibits contempt of the Authority.
- Clause 115* provides for a certificate signed by the Registrar to be received by courts as evidence of the matters certified.
- Clause 116* contains a secrecy provision.
- Clause 117* provides protection for the Authority, the Registrar or Deputy Registrar for things done in executing the Act.

#### **PART 8—TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS**

- Clause 118* contains transitional provisions relating to licences.
- Clause 119* contains transitional provisions relating to hearings before the Motor Car Traders Committee.
- Clause 120* contains transitional provisions regarding the right of subrogation.
- Clause 121* provides for the repeal of the *Motor Car Traders Act 1973*.
- Clause 122* provides for consequential amendments.

