

Motor Car Traders (Amendment) Bill

EXPLANATORY MEMORANDUM

BACKGROUND

The amendments contained in the Motor Car Traders (Amendment) Bill 1996 ("the Bill") are primarily aimed at improving the operation of the **Motor Car Traders Act 1996** ("the Act") by (a) amending the mandatory statutory warranty provisions, (b) increasing the jurisdiction of the Small Claims Tribunals with respect to claims concerning motor car traders, (c) introducing a requirement that registered motor cars are to be sold with a certificate of roadworthiness (apart from certain sales at public auction and where the buyer is a special trader or a licensed motor car trader), (d) streamlining and strengthening the licensing process, and (e) improving the capacity to prosecute unlicensed traders.

Clause 1 states the purpose of the Bill.

Clause 2 provides for the commencement of the Bill.

Clause 3 inserts or amends a number of definitions.

Clause 4 provides that a person buying, selling etc. 4 or more motor cars in a 12 month period is deemed to be a motor car trader unless they can prove they did not hold themselves out to be carrying on the business of trading in motor cars. The clause also provides for cars which are exempt from being counted in this respect.

Clause 5 inserts a power to the Motor Car Traders Licensing Authority ("the Authority") to request further information in relation to a licence application, and power to refuse to grant a licence if this further information is not provided.

Clause 6 clarifies that objections to the granting of a licence under section 12 may be made in respect of matters in sections 13(4), (5) and (6), as amended by the Bill, and on other relevant grounds.

Clause 7 amends sections 13(4), (5), (6) and (7). Section 13(4) is amended by clarifying paragraphs 13(4)(b) and (c), and adding extra grounds [in proposed paragraphs (i) to (m)] upon which an application for a licence by a natural person must be refused.

Paragraphs (a), (b) and (c) of section 13(5) are repealed and replaced with new criteria to which the Authority is able to have regard when determining

whether a licence applicant is "fit and proper". The applicants "associates" are now relevant in this regard.

Section 13(6) is amended by adding extra grounds [in proposed paragraphs (k) to (n)] upon which an application for a licence by a partnership or body corporate must be refused.

- Clause 8 inserts a definition of "associate" for the purposes of section 13(5).
- Clause 9 inserts an extra power in section 14 that the Authority may impose conditions which must be complied with before it grants a licence, and that the Authority can require a guarantee or indemnity from a licence holder or applicant.
- Clause 10 inserts a two year ban on applications for licences after a refusal of an application to grant a licence.
- Clause 11 imposes a duty on all partners in a partnership to notify the Authority of changes in the partnership, but once this notification has been made, other partners are relieved of this requirement.
- Clause 12 inserts a requirement on the licensee to return the licence for endorsement when the licensee commences to carry on business at a place.
- Clause 13 repeals the annual licensing system and replaces it with a perpetual licensing system requiring an annual licence fee and statement.
- Clause 14 introduces a requirement that a surrendered licence must be returned to the Authority.
- Clause 15 introduces grounds upon which a licence is automatically cancelled. Certain grounds are subject to an application being made under proposed sections 29B and 29C. The clause also introduces a provision that a licence is automatically suspended 30 days after a claim is admitted against the Fund, subject to an application being made under proposed section 29A.
- Clause 16 repeals section 30 and replaces it with a duty on the Authority to hold an inquiry upon the application of the Director or Chief Commissioner of Police. The grounds upon which disciplinary action is to be taken against the licensee are extended to include those grounds under sections 13(4) and (6), as amended by the Bill. The provision gives a power to the Authority to temporarily suspend a licence on certain grounds.
- Clause 17 amends and extends the Authority's powers in the event disciplinary action is to be taken against a licensee.

- Clause 18 provides that a suspended licence has no effect, and imposes a requirement that suspended or cancelled licences must be returned to the Authority.
- Clause 19 provides for appeals to be made to the Administrative Appeals Tribunal under proposed sections 29A, 29B, 29C and 29D and repeals the reference to section 24 as this section is repealed in the Bill.
- Clause 20 provides that specified persons may carry on the business of a licensed motor car trader for 30 days after the trader dies or becomes insolvent, etc., and if an application is made by such a person within this period, they may continue to carry on the business until the application is determined.
- Clause 21 inserts a power for the Director to apply for injunctions in the Magistrate's Court to stop an unauthorised person from trading in motor cars.
- Clause 22 introduces an option for motor car traders to maintain the dealings book in electronic or mechanical form, and requires that records in such form must be copied onto paper, signed and stored together.
- Clause 23 inserts a prohibition on certain classes of persons from being employed by motor car traders. This is intended to keep undesirable persons from being employed in the motor car industry.
- Clause 24 extends the existing prohibition against consignment selling to offering to sell and having the motor car in her, his or its possession for the purpose of selling by consignment.
- Clause 25 removes the element of "intent to deceive" from sections 38(1) and (2) to remove the onus of having to prove this difficult element in prosecutions. Where appropriate, the defendant will be able rely on a lack of "intent to deceive" under sub-section (3) as a defence to this charge.
- Clause 26 introduces a requirement that all registered cars must be sold with a current roadworthy certificate. An exemption is given to cars owned by any person and sold by an auctioneer on behalf of the owner. This exemption is given because of the impracticability of imposing this requirement on these types of sales, and the consumer's expectations when purchasing motor cars at auctions. An exemption is also given where the buyer is a licenced motor car trader or special trader, in order that people may sell their cars to traders without having to provide a certificate of roadworthiness.
- Clause 27 clarifies that a clear day for the purposes of the cooling-off period excludes Saturdays, Sundays and public holidays.

- Clause 28 extends this prohibition to all motor cars, rather than to used cars alone.
- Clause 29 increases the jurisdiction of the Credit Tribunal under sections 45 and 47 from \$20 000 to \$40 000. The purpose of this amendment is to keep pace with inflation.
- Clause 30 inserts a prohibition against persons aiding and abetting a person who they know to be an unlicensed trader. The provision introduces the right for a person suffering loss from certain acts of an unlicensed trader to sue a person who provided the unlicensed trader with cars in certain circumstances.
- Clause 31 repeals the existing mandatory statutory warranty in section 54(1) and substitutes for it a mandatory statutory warranty covering used motor cars not more than 10 years old and where the car has been driven for less than 160 000 kilometres. A definition of "defect" is inserted.
- Clause 32 extends the grounds on which claims against the Motor Car Traders Guarantee Fund may be made. The provision enables claims to be made where the trader fails to remit money paid for insurance or warranties to the provider of these services, and where the trader has failed to satisfy Court and Small Claims Tribunal orders, and orders made by the Authority under section 31(1)(g).
- Clause 33 repeals sections 77(2) and (3) and inserts a provision that a certificate issued by the Committee is evidence of the matters stated in it.
- Clause 34 extends the right of the Secretary to the Committee to be subrogated jointly and severally against a body corporate and its directors at the time the claim arose. The right of subrogation is extended to rights arising from compensation orders under section 86 of the **Sentencing Act 1991**.
- Clause 35 re-names the heading of Part 6 as "Enforcement Provisions", and re-inserts the "Miscellaneous" heading after section 82(2).
- Clause 36 clarifies that the inspectorial powers in the Act are in addition to any other inspectorial powers under any other Act.
- Clause 37 inserts proposed sections 82A to 82H. Section 82A gives the Authority power to request information necessary for it to carry out its functions, and includes a privilege against self-incrimination clause. Section 82B verifies how information supplied to the Authority may be verified. Section 82C extends the current 12 month time-limit on prosecutions to 3 years.

Sections 82D to 82H introduce the system of infringement notices. Section 82D provides for the issuing of infringement notices for offences specified in

the regulations. Section 82E specifies the form of infringement notices. Section 82F provides for the late payment of infringement notice penalties. Section 82G provides for the withdrawal of infringement notices. Section 82H provides for proceedings brought in relation to infringement notices.

- Clause 38 inserts proposed sections 83A, 83B, 83C and 83D. Section 83A requires traders to retain certain documents for 7 years. Section 83B makes it an offence to destroy, conceal, etc., those documents. Section 83C requires traders to supply copies of certain documents to purchasers and sellers. Section 83D exempts a person lodging a complaint from liability arising from any losses suffered as a result of the complaint.
- Clause 39 extends the prohibition against making false and misleading statements in section 84A to documents required under the Act or by the Authority. The provision adds a requirement that the person notify the Authority of the false or misleading matter when they become aware of it. The provision repeals section 10 which is made redundant as a result of the amendments to section 84A.
- Clause 40 repeals section 86 and substitutes a new procedure for the service of notices.
- Clause 41 inserts proposed sections 88A and 88B. Section 88A clarifies that sale agreements for motor cars are not illegal, void or unenforceable solely because the trader has breached a provision of the Act or regulations. Section 88B provides that sale agreements for motor cars are voidable at the option of the vendor or purchaser where the trader has not complied with specific sections, or has committed the offence of odometer tampering.
- Clause 42 extends the Governor in Council's regulation-making power to regulate the form and content of additional warranties given in respect of motor cars, the offences for which infringement notices may be issued, and other matters.
- Clause 43 repeals the prohibition on the Authority's ability to allow costs in proceedings, and permits the Authority to order the licensee or former licensee to pay the costs of and related to the inquiry.
- Clause 44 gives the Registrar power to apply money which would otherwise be refunded to persons, to debts owed to the Authority or Committee by those persons.
- Clause 45 gives the Deputy Registrar all powers of the Registrar, but specifies that the Deputy Registrar is subject to the Registrar's direction.
- Clause 46 provides that the Director may investigate matters which the Authority refers to him or her.

- Clause 47 extends the category of persons who may apply for an extension of time for any procedural requirement under the Act to include the Chief Commissioner of Police.
- Clause 48 introduces 5 deeming provisions for use in prosecutions of unlicensed traders. These provisions are intended to facilitate the procedures in the prosecution of unlicensed traders.
- Clause 49 provides an exception to the secrecy requirements in section 116 so that certain persons may disclose information to the Committee or certain law enforcement agencies.
- Clause 50 provides for penalty increases to certain offences in the Act.
- Clause 51 contains minor miscellaneous consequential amendments.
- Clause 52 increases the jurisdiction of the Small Claims Tribunals from \$5 000 to \$10 000 in respect of claims against motor car traders. This is to accommodate the higher value of individual transactions.
- Clause 53 re-enacts the repealed section 6 and removes the requirement for licensed motor car traders who sell second-hand parts of motor cars to be also subject to the licensing requirements of the **Second-Hand Dealers and Pawnbrokers Act 1989**.
- Clause 54 contains miscellaneous statute law revision amendments to the **Motor Car Traders Act 1986**.