

Legislative Council—No 153A

As reported with an amendment, report adopted, Standing Orders suspended and passed remaining stages, 2 May 2024

South Australia

**Second-hand Vehicle Dealers (Miscellaneous)
Amendment Bill 2023**

A BILL FOR

An Act to amend the *Second-hand Vehicle Dealers Act 1995*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Second-hand Vehicle Dealers (Miscellaneous) Amendment Act 2023*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

Part 2—Amendment of *Second-hand Vehicle Dealers Act 1995*

3—Amendment of section 3—Interpretation

- 10 Section 3—after its present contents (now to be designated as subsection (1)) insert:
 - (2) A reference in this Act to repairing a defect will, in relation to a defect in the battery of a prescribed electric vehicle or prescribed hybrid vehicle, be taken to be a reference to replacing the battery.

4—Amendment of section 7—Dealers to be licensed

Section 7(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for an offence committed by an individual—
 - (i) for a first or second offence—\$150 000; or
 - (ii) for a third or subsequent offence—\$250 000 or 2 years imprisonment or both; or
- (b) for an offence committed by a body corporate—\$500 000.

5—Amendment of section 16—Notices to be displayed

(1) Section 16(3)(d) and (e)—delete paragraphs (d) and (e) and substitute:

- (d) a statement that the name and address of the last owner of the vehicle who was not a dealer are available on request from the dealer; and
- (e) if the owner referred to in paragraph (d) carried on a vehicle leasing business and let the vehicle on hire to another person under a vehicle leasing agreement—a statement that the other person's name and address are available on request from the dealer; and

(2) Section 16(5)—delete subsection (5) and substitute:

- (5) The dealer must, on request by a potential purchaser, disclose the name and address of the last owner (or lessee) of the vehicle to the potential purchaser before a contract is made for the purchase of the vehicle.

Maximum penalty: \$5 000.

6—Amendment of section 17—Form of contract

Section 17—after subsection (1) insert:

- (1a) Without limiting subsection (1), nothing in that subsection prevents a dealer from including such other information as the dealer thinks fit in a contract for the sale of a second-hand vehicle by the dealer.

7—Amendment of section 18B—Cooling-off

Section 18B(3)(d)—delete "fax or email to a fax number or" and substitute:

email to an

8—Amendment of section 20—Notices to be displayed in case of auction

(1) Section 20, heading—delete "in case of auction"

(2) Section 20(2)(c) and (d)—delete paragraphs (c) and (d) and substitute:

- (c) a statement that the name and address of the last owner of the vehicle who was not a dealer are available on request from the auctioneer; and

- (d) if the owner referred to in paragraph (c) carried on a vehicle leasing business and let the vehicle on hire to another person under a vehicle leasing agreement—a statement that the other person's name and address are available on request from the auctioneer; and

5 (3) Section 20(3)—delete subsection (3) and substitute:

- (3) The auctioneer must, on request by a potential purchaser, disclose the name and address of the last owner (or lessee) of the vehicle to the potential purchaser before a contract is made for the purchase of the vehicle.

10 Maximum penalty: \$5 000.

9—Amendment of section 23—Duty to repair

Section 23(7)(b)—delete paragraph (b) and substitute:

- (b) a defect in the tyres of a vehicle; or
- (ba) a defect in the battery of a vehicle that is not a prescribed electric vehicle or prescribed hybrid vehicle,

10—Insertion of section 23A

After section 23 insert:

23A—No duty to repair where defect disclosed prior to sale

- (1) Despite section 23, on the sale of a second-hand vehicle by a dealer, the dealer is under no duty to repair a defect that is present in the vehicle prior to the sale if—
 - (a) the defect does not, or could not reasonably be expected to, affect the ability of the vehicle to be driven safely on a road; and
 - (b) the dealer, in accordance with any requirements set out in the regulations, gives a notice in the prescribed form to the purchaser—
 - (i) identifying the defect; and
 - (ii) stating that there is no duty to repair under Part 4 in relation to the defect; and
 - (c) the purchaser acknowledges receipt of the information referred to in paragraph (b) in the prescribed form.
- (2) For the purposes of this section and any regulations made for the purposes of this section, in the case of a sale of a second-hand vehicle by auction, a reference to a dealer will be taken to include a reference to the auctioneer conducting the auction.

11—Amendment of section 33—No waiver of rights

(1) Section 33(2)—after "this Act" insert:

(other than a right conferred under section 23 relating to a defect that is present in the vehicle at the time of sale)

12—Amendment of section 34—Interference with odometers prohibited

- (1) Section 34(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a first or second offence—\$150 000;
(b) for a third or subsequent offence—\$150 000 or 2 years imprisonment or both.

- (2) Section 34(6)—delete "dealer" wherever occurring and substitute in each case:
person

- (3) Section 34(6)—delete ", on the application of the purchaser,"

- (4) Section 34(6)—after "purchase of the vehicle" insert:

(including, to avoid doubt, any costs reasonably incurred, or likely to be incurred, in rectifying the odometer)

13—Insertion of sections 34A and 34B

After section 34 insert:

34A—False or misleading statements in relation to odometers

A person must not knowingly make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided to a purchaser or prospective purchaser of a second-hand vehicle, or to a dealer to whom a second-hand vehicle has been or is to be sold, relating to the accuracy of the odometer reading of the second-hand vehicle.

Maximum penalty: \$30 000 or imprisonment for 2 years.

34B—Commissioner may direct owner of second-hand vehicle to correct odometer and refrain from selling vehicle etc

- (1) If the Commissioner believes on reasonable grounds that the odometer of a second-hand vehicle has been interfered with, or is otherwise substantially inaccurate, the Commissioner may, by notice in writing, do 1 or both of the following:
- (a) direct the owner of the second-hand vehicle to take such action as may be specified in the notice to rectify the odometer (including, to avoid doubt, by directing that the odometer reading be altered to reflect the estimated true reading for the second-hand vehicle, or altered so that the odometer reads a specified amount);
- (b) direct the owner of the second-hand vehicle not to sell or otherwise dispose of the second-hand vehicle—
- (i) until the specified action under paragraph (a) has been taken; or

(ii) if the specified action has not been taken—except in accordance with the written approval of the Commissioner (which may be conditional or unconditional).

- 5 (2) Without limiting subsection (1), a direction under that subsection may require that the specified action be undertaken by, or at the expense of, the Commissioner.
- (3) The Commissioner may, by notice in writing, vary or revoke a direction made under subsection (1).
- 10 (4) A person to whom a direction is given under subsection (1) may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the decision of the Commissioner to give the direction (and, in the case of a direction referred to in subsection (1)(a), the direction is, by force of
- 15 this subsection, stayed pending the determination of the application).
- (5) Subject to subsection (7), an application for review must be made within 1 month after the person is notified of the direction under subsection (1).
- (6) The Commissioner must, if so required by the person to whom a direction is given under subsection (1), state in writing the reasons for the Commissioner's decision.
- 20 (7) If the reasons of the Commissioner are not given in writing at the time of giving the direction under subsection (1) and the person (within 1 month of the direction being given) requires the Commissioner to state the reasons in writing, the time for making an application for review runs from the time at which the person receives the written statement of those reasons.
- 25 (8) A person must comply with a direction referred to in subsection (1)(a)—
- 30 (a) if the person has applied to the Tribunal under subsection (4) for a review of the decision to give the direction—on or before the day determined by the Tribunal; or
- (b) if the person has not applied to the Tribunal for a review of the decision to give the direction—on or before the day
- 35 specified in the notice under subsection (1) (being a day not less than 3 months after the direction is given).
- (9) A person must not, without reasonable excuse, refuse or fail to comply with a direction under subsection (1).
Maximum penalty: \$20 000.
- 40 (10) In the case where a person is found guilty of an offence under section 34(1) relating to interference with the odometer to which a direction under subsection (1) relates, the reasonable costs of action undertaken by, or at the expense of, the Commissioner in accordance with the direction may be recovered by the Commissioner as a debt from the person.
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- (11) To avoid doubt, nothing in subsection (10) limits section 34(6).
- (12) This section applies whether the interference with the odometer occurred, or the odometer became inaccurate, before or after the commencement of this section.
- 5 (13) A person may be charged with an offence against this section whether or not the person, or any other person, has been found guilty of, or charged with, an offence of interfering with the odometer under section 34.
- 10 (14) Section 34 does not apply in relation to the rectification of an odometer pursuant to a direction under subsection (1).
- (15) Nothing in this section limits the Australian Consumer Law, the *Fair Trading Act 1987* or any other Act or law.

14—Amendment of section 51—Service of documents

15 Section 51(1)(d)—delete "facsimile transmission to a facsimile number" and substitute:

email to an email address

15—Amendment of Schedule 3—Second-hand Vehicles Compensation Fund

Schedule 3, clause 3(2)(d)—delete "prescribed educational programs conducted" and substitute:

20 programs relating to education, research or reform

Schedule 1—Transitional provision

1—Duty to repair

25 Section 23 of the *Second-hand Vehicle Dealers Act 1995* as amended by section 9 of this Act applies in relation to a vehicle whether the sale of the vehicle occurred before or after the commencement of section 9.