

South Australia

## **Second-hand Vehicle Dealers Variation Regulations 2016**

under the *Second-hand Vehicle Dealers Act 1995*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Second-hand Vehicle Dealers Variation Regulations 2016*.

#### **2—Commencement**

These regulations come into operation on the day on which they are made.

#### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

### **Part 2—Variation of *Second-hand Vehicle Dealers Regulations 2010***

#### **4—Variation of regulation 6—Forms**

Regulation 6—after "Times New Roman" wherever occurring insert:  
or Calibri

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## 5—Variation of regulation 22—Second-hand Vehicles Compensation Fund (Schedule 3 of Act)

Regulation 22(3)—delete "the educational program relating to the provisions contained in the *Second-hand Vehicle Dealers (Cooling-off Rights) Amendment Act 2009*" and substitute:

an educational program approved by the Commissioner

## 6—Variation of regulation 23—Waiver of rights (section 33 of Act)

- (1) Regulation 23(2), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (2) Regulation 23(4), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$5 000.  
Expiation fee: \$315.

## 7—Variation of Schedule 2—Forms

- (1) Schedule 2, Form 1—before the heading to Part A insert:  
Dealer Reference or Stock No:
- (2) Schedule 2, Form 1, Part A, The dealer—after the last list item (and accompanying Note) insert:  

Has the vehicle ever been recorded as wrecked, written-off or having suffered significant damage as a result of exposure to water? (Yes or No)
- (3) Schedule 2, Form 1, Part B—delete Part B and substitute:

### Part B

#### Duty to repair—Part 4 of the *Second-hand Vehicle Dealers Act 1995*

*The following is only a brief summary of the extent of the duty to repair. Full details must be given to a purchaser by the dealer at the time of sale (as well as a copy of this notice).*

Sale price	Duty to repair
Up to and including \$3 000	No duty to repair—but vehicle must be roadworthy at time of sale.
\$3 001—\$6 000	2 months or 3 000 kilometres, whichever occurs first.
Over \$6 000	3 months or 5 000 kilometres, whichever occurs first.

This vehicle cannot be registered until it is converted to right-hand configuration to the standard required by the Registrar of Motor Vehicles, and the dealer does not accept a duty to perform that work as part of a duty to repair.

*[Strike out if not applicable]*

The dealer does not accept a duty to repair any defect in the following accessories, being accessories not originally fitted by the vehicle's manufacturer, or not produced or approved by the manufacturer for fitting to vehicles of that kind:

*[List accessories]*

If the dealer is under a duty to repair a defect in the vehicle, the purchaser must deliver the vehicle to the following agreed place of repair:

*[Insert name and address]*

If no place of repair has been agreed on, the purchaser must deliver the vehicle to any of the following registered premises of the dealer:

*[Insert names and addresses]*

- (4) Schedule 2, Form 2—delete "Consumer and Business Affairs" wherever occurring and substitute in each case:

Consumer and Business Services

- (5) Schedule 2, Form 3, Part 2—delete "(for example radios, tape players and air-conditioners)"

- (6) Schedule 2, Form 3, Part 2—delete "Consumer and Business Affairs" wherever occurring and substitute in each case:

Consumer and Business Services

- (7) Schedule 2, Form 5—delete Form 5 and substitute:

**Form 5—Particulars to be included in a contract for the sale of a second-hand vehicle by a dealer**

***Second-hand Vehicle Dealers Act 1995***

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Dealer Reference or Stock No:

Name in which dealer is licensed:

Business address:

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Make:	Model:	Body Type:	Colour:	Body— Trim—
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Year of manufacture:	Year of first registration:	Registration No:	Expiry date:	Engine No:	VIN No:
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DETAILS OF PURCHASE	\$	c	METHOD OF PAYMENT	\$	c
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Cash Price

Deposit

Additional options,  
accessories etc\*

Trade-in allowance\*

**Total price of vehicle**

Less pay-out

(Name of financier: )

				Amount of deposit to be paid if contract rescinded (and preferred method of payment of refund)
Registration (number of months)				Equity (Deficiency)
3rd Party compulsory insurance				Less refund to purchaser
Stamp duty and/or transfer fee				Net equity (or deficiency)
Dealer to arrange above YES/NO				Total deposit and trade-in
Vehicle insurance: [company]				Payable on delivery
Other (give full details including other parties to whom payment must be made)				(Amount payable on delivery includes amount to be financed where applicable)
<b>TOTAL PAYABLE</b>				<b>TOTAL PAYMENT</b>
Options/accessories/additional work included in this amount	\$	c		*Trade-in details
				Make: Model:
				Body Type: Colour: Body:
				Trim:
				Year of Manufacture: Year of 1st Registration:
				Registration No: Expiry Date:
				Engine No: Odometer: kms
				Payout to:
				Account No: Valid until:
<b>TOTAL</b>				

\*Address to which vehicle is to be delivered for repair of defects under the *Second-hand Vehicle Dealers Act 1995*.

REPAIRER'S NAME:

ADDRESS:

\*The vehicle may be delivered to any of the following registered premises of the dealer for repair:

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**COOLING-OFF RIGHTS**

\*This contract is subject to a 2 day cooling-off period under section 18B of the *Second-hand Vehicle Dealers Act 1995* expiring on [insert date and time when period is to expire]

The purchaser under a contract that is subject to a cooling-off period under the *Second-hand Vehicle Dealers Act 1995*, may, within 2 clear business days after signing the contract (the **cooling-off period**), by giving the dealer written notice that he or she does not wish to proceed with the purchase, rescind the contract. The written notice must be given to the dealer before the end of the cooling-off period. If this occurs, the contract is rescinded. (The 2 day period may include a Saturday but will not include a Sunday or public holiday.)

If the contract is rescinded by the purchaser, the dealer is entitled to keep 2% of the contract price or \$100, whichever is the lesser. The purchaser is entitled to the return of the balance of any deposit paid to the dealer by the end of the next clear business day.

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\*This contract is not subject to a 2 day cooling-off period under section 18B of the *Second-hand Vehicle Dealers Act 1995*.

A purchaser who wishes to be bound by the contract may waive his or her right to the cooling-off period by signing the *Waiver of Cooling-off Rights* document provided by the dealer.

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I acknowledge that, *before* the signing of the contract for the purchase of the vehicle, I was informed of/I did not request\* the name and address of—

- (a) the last owner of the vehicle (who was not a dealer)\*;
- (b) the person who leased the vehicle from the last owner of the vehicle (who was not a dealer) under a vehicle leasing agreement\*.

Signature of purchaser:

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Any purported exclusion, limitation, modification or waiver of your rights under the Act is void. The only way you can give away your rights under the *Second-hand Vehicle Dealers Act 1995* is if you have signed a waiver document in accordance with the *Second-hand Vehicle Dealers Regulations 2010*.

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**In addition to any statutory warranty that may apply, you also have rights under the Australian Consumer Law that cannot be excluded.**

\*Strike out whichever does not apply.

- (8) Schedule 2, Form 6—delete Form 6 and substitute:

**Form 6—Particulars to be included in a contract for the sale of a second-hand motorcycle by a dealer**

***Second-hand Vehicle Dealers Act 1995***

Name in which dealer is licensed:

Business address:

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Make:	Model:	Colour:
Year of manufacture:	Year of first registration:	Registration No:
		Expiry date:
		Engine No:
		VIN No:
DETAILS OF PURCHASE		METHOD OF PAYMENT
Cash Price	\$	c
Additional options, accessories etc*		Trade-in allowance*
<b>Total price of motorcycle</b>		Less pay-out

	Amount of deposit to be paid if contract rescinded (and preferred method of payment of refund)
Registration (number of months)	Equity (Deficiency)
3rd Party compulsory insurance	Less refund to purchaser
Stamp duty and/or transfer fee	Net equity (or deficiency)
Dealer to arrange above YES/NO	Total deposit and trade-in
Motorcycle insurance: [company]	Payable on delivery
Other (give full details including other parties to whom payment must be made)	(Amount payable on delivery includes amount to be financed where applicable)
<b>TOTAL PAYABLE</b>	<b>TOTAL PAYMENT</b>
Options/accessories/additional work included in this amount \$ c	*Trade-in details
	Make: Model:
	Colour:
	Year of Manufacture: Year of 1st Registration:
	Registration No: Expiry Date:
	Engine No: Odometer: kms
	Payout to:
	Account No: Valid until:
<b>TOTAL</b>	

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**COOLING-OFF RIGHTS**

\*This contract is subject to a 2 day cooling-off period under section 18B of the *Second-hand Vehicle Dealers Act 1995* expiring on [insert date and time when period is to expire]

The purchaser under a contract that is subject to a cooling-off period under the *Second-hand Vehicle Dealers Act 1995*, may, within 2 clear business days after signing the contract (the **cooling-off period**), by giving the dealer written notice that he or she does not wish to proceed with the purchase, rescind the contract. The written notice must be given to the dealer before the end of the cooling-off period. If this occurs, the contract is rescinded. (The 2 day period may include a Saturday but will not include a Sunday or public holiday.)

If the contract is rescinded by the purchaser, the dealer is entitled to keep 2% of the contract price or \$100, whichever is the lesser. The purchaser is entitled to the return of the balance of any deposit paid to the dealer by the end of the next clear business day.

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\*This contract is not subject to a 2 day cooling-off period under section 18B of the *Second-hand Vehicle Dealers Act 1995*.

A purchaser who wishes to be bound by the contract may waive his or her right to the cooling-off period by signing the *Waiver of Cooling-off Rights* document provided by the dealer.

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I acknowledge that, *before* the signing of the contract for the purchase of the vehicle, I was informed of/I did not request\* the name and address of—

- (a) the last owner of the vehicle (who was not a dealer)\*;
- (b) the person who leased the vehicle from the last owner of the vehicle (who was not a dealer) under a vehicle leasing agreement\*.

Signature of purchaser:

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Any purported exclusion, limitation, modification or waiver of your rights under the Act is void. The only way you can give away your rights under the *Second-hand Vehicle Dealers Act 1995* is if you have signed a waiver document in accordance with the *Second-hand Vehicle Dealers Regulations 2010*.

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#### IMPORTANT INFORMATION

There is no duty to repair second-hand motorcycles under the *Second-hand Vehicle Dealers Act 1995*.

*\*Strike out whichever does not apply.*

- (9) Schedule 2, Form 7—before the heading to Part A insert:

Dealer Reference or Stock No:

- (10) Schedule 2, Form 7, Part A, The Dealer—after the last list item insert:

Has the vehicle ever been recorded as wrecked, written-off or having suffered significant damage as a result of exposure to water? (Yes or No)

- (11) Schedule 2, Form 7, Part B—delete Part B and substitute:

### **Part B**

#### **Duty to repair—Part 4 of the *Second-hand Vehicle Dealers Act 1995***

*The following is only a brief summary of the extent of the duty to repair. Full details must be given to a purchaser by the auctioneer at the time of sale (as well as a copy of this notice).*

<b>Sale price</b>	<b>Duty to repair</b>
Up to and including \$3 000	No duty to repair—but vehicle must be roadworthy at time of sale.
\$3 001—\$6 000	2 months or 3 000 kilometres, whichever occurs first.
Over \$6 000	3 months or 5 000 kilometres, whichever occurs first.

This vehicle cannot be registered until it is converted to right-hand configuration to the standard required by the Registrar of Motor Vehicles, and the seller does not accept a duty to perform that work as part of a duty to repair.

*[Strike out if not applicable]*

The seller does not accept a duty to repair any defect in the following accessories, being accessories not originally fitted by the vehicle's manufacturer, or not produced or approved by the manufacturer for fitting to vehicles of that kind:

*[List accessories]*

If the dealer is under a duty to repair a defect in the vehicle, the purchaser must deliver the vehicle to the following agreed place of repair:

*[Insert name and address]*

If no place of repair has been agreed on, the purchaser must deliver the vehicle to any of the following registered premises of the dealer:

*[Insert names and addresses]*

- (12) Schedule 2, Form 7—after Part C insert:

**In addition to any statutory warranty that may apply, you also have rights under the Australian Consumer Law that cannot be excluded.**

- (13) Schedule 2, Form 9, Part 2—delete "(for example radios, tape players and air-conditioners)"

- (14) Schedule 2, Form 9, Part 2—delete "Consumer and Business Affairs" wherever occurring and substitute in each case:

Consumer and Business Services

- (15) Schedule 2, Form 11, The vehicle—after the last list item insert:

Has the vehicle ever been recorded as wrecked, written-off or having suffered significant damage as a result of exposure to water? (Yes or No)

## **8—Variation of Schedule 4—Defects in vehicles**

Schedule 4, Part 1—delete Part 1 and substitute:

### **Part 1—Defects in accessories**

A dealer is not under a duty to repair a defect in an accessory not originally fitted by the vehicle's manufacturer, or not produced or approved by the manufacturer for fitting to vehicles of that kind if the dealer has stated in the Section 16 Notice or in the Auction Notice (as the case may be) that the dealer does not accept a duty to repair a defect in that accessory.

## **9—Variation of Schedule 6—Waiver of rights**

- (1) Schedule 6, Document 1, Part 1—delete "Consumer and Business Affairs" wherever occurring and substitute in each case:

Consumer and Business Services

- (2) Schedule 6, Document 1, Part 2, Notes, item 3—delete "Consumer and Business Affairs" and substitute:

Consumer and Business Services



- (3) Schedule 6, Document 2—delete Document 2 and substitute:

**Document 2—Waiver of cooling-off rights**

**This is an important document. It takes away some of your legal rights. Read it carefully. This form must be completed in duplicate.**

**Cooling-off rights**

The *Second-hand Vehicle Dealers Act 1995* gives you the right to change your mind about buying a second-hand vehicle.

Under section 18B of the *Second-hand Vehicle Dealers Act 1995*, you have 2 clear business days after signing the contract to change your mind about buying the vehicle. These 2 days are called the *cooling-off period*. If you change your mind, you must, before the end of the cooling-off period, give the dealer written notice that you do not wish to go ahead with the purchase. This notice means that the contract is rescinded.

If the contract is rescinded, the dealer is entitled to keep 2% of the contract price or \$100, whichever is the lesser. The dealer may decide to take this amount out of any deposit you have already paid. You are entitled to the return of the rest of any deposit you paid to the dealer (less 2% of the contract price or \$100, whichever is the lesser).

You are entitled to give up (or waive) your cooling-off right by signing this document. If you sign this document, you will lose your right to rescind the sales contract under section 18B of the *Second-hand Vehicle Dealers Act 1995*. This decision should not be taken lightly. You should not sign this document unless you are absolutely certain you want to buy the vehicle and are sure you won't change your mind about the sale.

If you decide to go ahead and waive your cooling-off rights by signing this document, you must give the completed and signed copy of the document to the dealer and keep the other copy for your records.

A dealer or salesperson employed by the dealer who has been involved in any way in the transaction for the sale of the vehicle must not be a witness to the signing of this document.

**Details of transaction**

Date contract was made:  
Make and model of vehicle:  
Registration No:  
Engine No:  
Vehicle identification No:  
Year of manufacture:  
Dealer's name:  
Dealer's licence No:  
Dealer's business address:  
Dealer's telephone No:

### **Waiving your cooling-off rights**

I acknowledge that section 18B of the *Second-hand Vehicle Dealers Act 1995* gives me the right to decide within 2 clear business days not to go ahead with the purchase and to rescind the contract.

I acknowledge that by signing this document **I will lose my right to cancel the contract for the sale of the vehicle.**

Purchaser's name:

Purchaser's telephone No:

Purchaser's address:

Purchaser's signature:

Date:

Name of witness:

Address of witness:

Signature of witness:

Date:

#### **Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

### **Made by the Governor**

with the advice and consent of the Executive Council  
on 22 September 2016

No 229 of 2016

CBS0001/16CS