

SECOND-HAND MOTOR VEHICLES ACT, 1971

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SECOND-HAND MOTOR VEHICLES ACT, 1971

being

Second-hand Motor Vehicles Act, 1971, No. 111 of 1971 [Assented to 9th December, 1971]¹.

An Act to Regulate Dealing in Second-hand Motor Vehicles and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

1. This Act may be cited as the "Second-hand Motor Vehicles Act, 1971". Short title.

2. This Act shall come into operation on a day to be fixed by proclamation¹. Commence-
ment.

3. This Act is divided as follows:—

Division of Act.

PART I—PRELIMINARY

PART II—ADMINISTRATION

DIVISION I—THE COMMISSIONER

DIVISION II—THE BOARD

PART III—DEALING IN SECOND-HAND VEHICLES

DIVISION I—LICENCES

DIVISION II—DEALINGS

PART IV—UNDESIRABLE PRACTICES

PART V—MISCELLANEOUS.

4. (1) In this Act, unless the contrary intention appears—

Definitions.

"authorized officer" means a person who is an authorized officer within the meaning of the Prices Act, 1948-1970²;

"cash price" in relation to the sale of a second-hand vehicle means the price at which the vendor is willing to sell the vehicle for cash:

¹ Came into operation 1st April, 1972; *Gaz.* 16th March, 1972, p. 890.

² Now Prices Act, 1948-1975.

“commercial vehicle” means a vehicle constructed or adapted solely or mainly for—

- (a) the carriage of goods;
 - (b) the carriage of persons exceeding ten in number;
- or
- (c) industrial or agricultural use,

but does not include a vehicle, being a derivative of a passenger vehicle, commonly called a utility or panel van:

“dealer” means a person, other than a financier, who carries on or acts in the business of buying or selling second-hand vehicles:

“financier” means a person whose ordinary business is not that of buying or selling second-hand vehicles but who carries on or acts in that business only for one or more of the following purposes, that is to say—

- (a) for the purpose of the hiring, under a hire purchase agreement, of the vehicle bought or sold;
- (b) for the purpose of effectuating a security over the vehicle bought or sold;
- (c) for the purpose of the hiring, where the right to purchase the vehicle is not included in that hiring, of the vehicle bought or sold;

or

- (d) for the purpose of disposing of vehicles acquired by him in connection with the purposes referred to in paragraphs (a), (b) or (c) of this definition:

“licence” means a Second-hand Vehicle Dealers Licence granted under section 17 of this Act:

“member of the Board” includes the member of the Board who is the chairman of the Board and any deputy of a member of the Board while acting as such a member of the Board:

“model designation” in relation to a vehicle of a particular model, means the words or symbols (if any) applied by the manufacturer of that vehicle to identify a vehicle of that model:

“second-hand vehicle” includes a vehicle that has, at any time before being offered or exposed for sale, been registered under the Motor Vehicles Act, 1959, as amended¹, or under any Act or law of a State or Territory of the Commonwealth that, with respect to its provision for motor vehicle registration, corresponds to that Act:

“sell” in relation to a second-hand vehicle includes offer or expose for sale and includes a disposal of or an offer to dispose of any interest in that vehicle but does not include an offer of that vehicle on hire or the hiring of that vehicle where a right to purchase the vehicle is not included in that offer or hiring and the expressions “sale” and “sold” shall be construed accordingly:

“the Board” means the Second-hand Vehicle Dealers Licensing Board established under section 6 of this Act:

¹ Now Motor Vehicles Act, 1959-1975.

“the Commissioner” means The South Australian Prices Commissioner appointed under the Prices Act, 1948, as amended¹.

“trade owner” in relation to a second-hand vehicle means any person who acquires that vehicle for the purposes of reselling that vehicle or for the purpose of the hiring of that vehicle where the right to purchase that vehicle is not included in that hiring:

“vehicle” means a motor vehicle as defined in the Motor Vehicles Act, 1959, as amended², but does not include any such motor vehicle for the time being declared by proclamation not to be included within the definition of vehicle for the purposes of this section:

“year of first registration” in relation to a vehicle, means the year in which that vehicle was first registered under the provisions of any Act or law, whether of this State or elsewhere, for the time being in force relating to the registration of vehicles.

(2) For the purposes of this Act, where a dealer sells a second-hand vehicle to a financier in the expectation that the financier will sell that vehicle to a third person and the financier so sells that vehicle to that third person, that dealer shall be deemed to have sold that vehicle to that third person.

(3) The Governor may by proclamation declare any motor vehicle as defined in the Motor Vehicles Act, 1959, as amended², or any motor vehicle of a class of such motor vehicles not to be included within the definition of vehicle for the purposes of this section and may by proclamation amend or vary any such declaration.

PART II

PART II

ADMINISTRATION

DIVISION I—THE COMMISSIONER

DIVISION I

5. (1) Subject to the control and directions of the Minister, the Commissioner shall be responsible for the administration of this Act.

Commissioner
to be
responsible for
administration
of this Act.

(2) For the purposes of this Act the Commissioner and every authorized officer shall have and may exercise and perform, in relation to this Act and to matters to which this Act applies, the same powers and functions as are vested in them respectively under the Prices Act, 1948, as amended¹, in relation to that Act and to matters to which that Act applies, and the provisions of that Act shall apply and have effect to and in relation to the exercise and performance of such powers and functions by the Commissioner or any authorized officer and to and in relation to all matters and persons in relation to which and to whom such powers and functions are exercised and performed as if the provisions of that Act were expressly enacted and contained in this Act with such modifications as may be necessary to render them applicable and effective accordingly.

DIVISION II—THE BOARD

DIVISION II

6. (1) For the purposes of this Act, a board by the name of the “Second-hand Vehicle Dealers Licensing Board” is hereby established.

The Board.

¹ Now Prices Act, 1948-1975.

² Now Motor Vehicles Act, 1959-1975.

(2) The Board—

(a) shall be a body corporate with perpetual succession and a common seal;

and

(b) shall have the powers, duties, functions and authorities conferred, imposed or prescribed by or under this Act.

(3) Where in any judicial proceedings, whether under this Act or not, a document is produced bearing a seal purporting to be the common seal of the Board the Court or tribunal before which those proceedings are brought shall in the absence of proof to the contrary presume that—

(a) the seal is the common seal of the Board;

and

(b) the common seal was duly affixed.

Composition of
the Board.

7. (1) Subject to this section, the Board shall consist of five members appointed by the Governor, that is to say—

(a) one person who shall be a legal practitioner as defined in the Legal Practitioners Act, 1936, as amended¹, who shall also be the chairman of the Board;

and

(b) four other members of whom—

(i) not less than one shall be nominated by the Minister as being a person who, in the opinion of the Minister, is competent to represent the interests of purchasers of second-hand vehicles;

(ii) not less than one shall be nominated by the Minister as being a person who in the opinion of the Minister, is competent to represent the interests of dealers in second-hand vehicles.

(2) A member of the Board shall not, as such, be subject to the Public Service Act, 1967, as amended², but this provision does not affect the rights, duties and obligations under that Act of any member of the Board who is an Officer or temporary Officer as defined in that Act.

(3) Every member of the Board shall be appointed as such for such term of office not exceeding four years as the Governor specifies in the instrument of appointment of the member but a member appointed to fill a casual vacancy shall be appointed only for the balance of the term of office of the member in whose place he was appointed.

(4) Where a member of the Board is through illness or any other cause unable to perform his duties or functions as a member, the Minister may, by notice in writing given to the secretary to the Board, appoint a person as the deputy of that member to act for that member during the period of such inability and the person so appointed shall while so acting be deemed to be a member of the Board.

(5) Where the member who is chairman of the Board has a deputy appointed to act for him pursuant to subsection (4) of this section the deputy so appointed shall while so acting be deemed to be the chairman of the Board.

¹ Now Legal Practitioners Act, 1936-1972.

² Now Public Service Act, 1967-1975.

(6) On the expiration of his term of office as a member of the Board a person shall, subject to subsection (1) of this section, be eligible for re-appointment.

8. The Governor may by notice in writing served on a member of the Board, remove the member from office on grounds of misconduct or incapacity to perform his duties or functions as a member.

Removal from office of member of the Board.

9. The office of a member of the Board shall become vacant if—

Casual vacancy in office of member.

(a) he dies;

(b) he resigns by written notice given to the Minister;

(c) he is removed from office by the Governor pursuant to section 8 of this Act;

(d) he is absent without leave of the Minister from four consecutive meetings of the Board;

(e) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with his creditors for less than one hundred cents in the dollar;

(f) he is convicted of any indictable offence;

or

(g) he is convicted of any other offence and receives a notice in writing from the Minister discharging him from office on the ground of that conviction.

10. (1) The common seal of the Board shall not be fixed to any instrument except in pursuance of a resolution of the Board.

Common seal, meetings and quorum.

(2) An instrument executed in pursuance of a resolution referred to in subsection (1) of this section shall be attested by the signature of not less than two members of the Board.

(3) The procedure for the calling of meetings of the Board and for the conduct of business at such meetings shall, subject to this Act, be as determined by the Board.

(4) Any three members of the Board shall constitute a quorum at any meeting of the Board and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Board and shall have and may exercise and discharge all the powers, duties, functions and authorities of the Board.

(5) A decision carried by the majority of the votes cast by the members present at a meeting of the Board shall be the decision of the Board.

(6) The chairman of the Board shall preside at all meetings of the Board at which he is present and the deputy appointed by the chairman shall preside at all meetings of the Board at which he is present and where neither the chairman nor the deputy appointed by him are present at a meeting of the Board the members of the Board shall, from amongst their own number, elect a person to preside at the meeting of the Board and the person so elected shall have and may exercise all the powers and functions of the chairman of the Board for the purposes of that meeting.

(7) At all meetings of the Board the chairman of the Board shall have a deliberative vote and, in the event of equality of votes, shall have a second or casting vote.

PART II

DIVISION II

(8) The Board shall cause accurate minutes to be kept of its proceedings at its meetings.

Validity of acts of Board.

11. No act, proceeding or determination of the Board shall be invalid on the ground only of any vacancy in the office of any member of the Board or of any defect in the appointment of any member of the Board or in the appointment of any deputy of a member of the Board.

Remuneration of members.

12. A member of the Board shall, if the Governor thinks fit, be paid such fees or other remuneration as may from time to time be fixed by the Governor and shall be entitled to receive such travelling and other expenses as are from time to time approved by the Minister.

Secretary to the Board.

13. (1) There shall be a secretary to the Board who shall be appointed by the Governor.

(2) The person so appointed secretary shall be appointed under and be subject to the Public Service Act, 1967, as amended¹.

(3) The office of secretary to the Board may, if the Governor thinks fit, be held in conjunction with any other office in the public service of the State.

(4) The secretary to the Board shall have such powers, duties and functions as are conferred on him by this Act or as are conferred on him or directed to be performed by him by the Board.

(5) The Commissioner of Police shall, at the request of the secretary to the Board, cause his officers to make any investigations and reports relevant to any matter before the Board and the Commissioner shall cause such reports to be forwarded to the secretary.

Board may use the services of persons in public service.

14. With the approval of the Minister, the Board may make use of the services of any person employed in the public service of the State.

Acceptance of office of member of the Board not a bar to holding other office.

15. Notwithstanding anything contained in any other Act or law, no person shall be disqualified, by acceptance of appointment as a member of the Board, from holding the office of such a member and also any other office, or from accepting and retaining any fees or other remuneration or payment payable to such a member.

Powers of Board in dealing with applications, etc.

16. (1) For the purposes of considering or dealing with any matter the Board may—

(a) by summons under the hand of the chairman or of the secretary require the attendance of any witness;

(b) by notice in writing signed by the chairman of the Board or the secretary, require the production of any books, papers or documents relevant to the matter before the Board;

(c) inspect any books, papers and documents produced before it and make copies of or extracts from matters therein that are relevant to the matter before the Board;

and

(d) examine witnesses on oath or affirmation which may be administered by any member of the Board or by the secretary.

(2) A person into whose conduct the Board is conducting any inquiry is entitled to be represented at the inquiry by counsel or solicitor and the Board

¹ Now Public Service Act, 1967-1975.

shall give such person or his counsel or solicitor an opportunity of making to the Board such representations as, in the opinion of the Board, are relevant to the inquiry.

(3) If any person—

- (a) who has been personally served with a summons referred to in paragraph (a) of subsection (1) of this section to attend before the Board fails without lawful excuse (proof whereof shall lie on him), to attend in obedience to such summons;
 - (b) wilfully interrupts the proceedings of the Board;
- or
- (c) being called or examined as a witness in any proceeding or inquiry before the Board, refuses to be sworn or to affirm or, without lawful excuse (proof whereof shall lie on him), fails to produce any books, papers or documents mentioned in a notice referred to in paragraph (b) of subsection (1) of that section, and personally served upon him, or knowingly or wilfully makes a false statement to the Board,

he shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars or to imprisonment not exceeding six months, or to both.

PART III

PART III

DEALING IN SECOND-HAND VEHICLES

DIVISION I—LICENCES

DIVISION I

17. (1) Subject to this Act, a person, not being a body corporate, who applies to the Board in the prescribed form for a Second-hand Vehicle Dealers Licence and pays to the Board the prescribed fee therefor shall be granted such a licence upon satisfying the Board—

Application for licence.

- (a) that he is of or over the age of eighteen years;
 - (b) that he is a person of good character and repute and a fit and proper person to hold a licence;
- and
- (c) that he has sufficient material and financial resources available to him to enable him to comply with the requirements of this Act.

(2) Subject to this Act, a body corporate carrying on the business of buying or selling second-hand vehicles in the State which applies to the Board in the prescribed form for a Second-hand Vehicle Dealers Licence and pays to the Board the prescribed fee therefor shall be granted such a licence upon satisfying the Board—

- (a) that all of the persons concerned in the management or conduct of the body corporate are persons of good character and repute and are persons fit to be concerned in the management or control of the business of buying or selling second-hand vehicles;
- and
- (b) that it has sufficient material and financial resources available to it to enable it to comply with the requirements of this Act.

DIVISION I

Matters which may be considered by the Board in refusing the grant or renewal of a licence.

18. Without limiting its power to refuse an application for any other cause, the Board may refuse an application for a licence or renewal of a licence on any ground upon which the holder of a licence may be disqualified from holding or obtaining such a licence.

Licences generally.

19. (1) Subject to this Act, a licence shall be valid and effectual for the purposes of this Act for such period not exceeding twelve months as shall be stated therein.

(2) A licence may, upon application being made to the Board and payment of the prescribed fee therefor not more than one month before the date of expiration thereof, be renewed by the Board from time to time and a licence so renewed shall, subject to this Act, in the case of each renewal, be valid and effectual for a further period of twelve months commencing from the time it would have expired had it not been renewed.

(3) A licence shall cease to be valid and effectual for the purposes of this Act—

(a) upon the expiration thereof or, if it has been renewed, upon the expiration of the period for which it has been renewed;

and

(b) during any period in which the holder thereof is disqualified from holding or obtaining a licence.

(4) A person is not entitled to be granted a licence, or to have a licence renewed under this Act at any time during which he is disqualified from holding or obtaining a licence.

Disqualification.

20. (1) The Board may on its own motion, or on the application of the Commissioner, by order, disqualify any person (whether or not he is the holder of a licence) from holding or obtaining a licence for any period named in the order or until a further order of the Board—

(a) if the licence or any renewal thereof had been obtained by fraud, dishonesty or misrepresentation;

(b) if the person is convicted of any offence, the commission of which would in the opinion of the Board render him unfit to be the holder of the licence;

(c) if the person has been found, by any court or other tribunal, or, after due inquiry, by the Board, to have been guilty of fraudulent conduct or dishonesty in connection with the business of buying or selling in second-hand vehicles;

(d) if the person has been found by the Board after due inquiry, to have failed to carry out his obligations under section 24 of this Act to the satisfaction of the Board or to have failed to carry out those obligations with due expedition;

(e) if the person being the holder of a licence has been found by the Board, after due inquiry, not to have sufficient material and financial resources to enable him to comply with the requirements of this Act;

or

(f) if the person being the holder of a licence has, without the prior written consent of the Board employed in the business of buying

or selling second-hand vehicles any person who has been disqualified from holding or obtaining a licence under this Act, during any period of such disqualification,

and upon the making of an order against a person being the holder of a licence and during the period of disqualification, that person shall cease to be the holder thereof.

(2) Before making an order referred to in subsection (1) of this section the Board shall conduct an inquiry and give the person concerned an opportunity of showing cause why the order should not be made.

21. (1) When the Board makes a decision or an order—

Appeal.

(a) refusing an application by a person for a licence;

or

(b) disqualifying a person from holding or obtaining a licence,

the Board shall give that person its reasons for the decision or order, and the person may within thirty days after the reasons for the decision or order have been so given, appeal to a Local Court of full jurisdiction.

(2) The Court referred to in subsection (1) of this section shall have jurisdiction to hear and determine the appeal and may review the decision or order appealed against and the reasons therefor, and may, having regard to all matters which it considers relevant, including the interests of the public, confirm, vary or reverse the decision or order, but it shall lie upon the appellant to satisfy the court that the decision or order should be varied or reversed.

(3) Subject to the rules of court (if any) made for the purposes of this Act under section 28 of the Local and District Criminal Courts Act, 1926-1969, as amended¹, at the hearing of any appeal under this Act, the appellant and the Board shall be entitled to appear personally or by counsel or solicitor.

(4) The court may order the appellant or the Board to pay costs in connection with any appeal.

(5) Where the court by its determination of an appeal varies or reverses a decision or an order of the Board, the Board shall, as soon as practicable after receiving notice of the determination, give effect to that determination as if it were a decision or an order of the Board.

(6) The court may, at any time after an appeal, against a decision or order of the Board disqualifying a person from holding or obtaining a licence, has been lodged and on the application of the appellant, make an order postponing the effect of the decision or order appealed against until the appeal is determined by the court or until such other time as may be fixed by the court and the order shall have effect according to the tenor thereof.

DIVISION II—DEALINGS

DIVISION II

22. (1) On and after the day fixed for the purposes of this section², a person, other than a financier, shall not carry on or act in the business of buying or selling second-hand vehicles unless he is—

Prohibition on dealing in second-hand vehicles unless licensed.

(a) the holder of a licence;

¹ Now Local and District Criminal Courts Act, 1926-1975.

² 1st August, 1973, was the day fixed for purposes of s. 22, *Gaz.* 21st June, 1973, p. 2565.

(b) in the employ of and acting on behalf of the holder of a licence.

Penalty: Five hundred dollars.

(2) The Governor may, by proclamation, fix a day to be the day for the purposes of this section¹ but the day so fixed shall not be a day that occurs earlier than three months after the day of commencement of this Act.

Particulars to
be displayed.

23. (1) On and after the commencement of this Act a dealer shall not offer or display for sale or cause, suffer or permit to be so offered or displayed a second-hand vehicle, not being a commercial vehicle, unless there is attached to that vehicle a notice in the prescribed form containing the required particulars.

Penalty: Two hundred dollars.

(2) Where the Commissioner is satisfied that—

(a) a second-hand vehicle referred to in subsection (1) of this section has been brought into this State from a place outside this State for the purposes of sale;

and

(b) any one or more of the required particulars are not available to the person referred to in subsection (1) of this section,

he may by notice in writing direct that such of the required particulars as are referred to in that notice need not be contained in the prescribed form referred to in that subsection and the omission by a person of those required particulars will not constitute an offence against the provisions of that subsection if in any proceedings for such an offence that person proves that the omission of those particulars was authorized by a notice under this subsection.

(3) For the purposes of this section the required particulars are—

(a) the name and business address of the person from whom the vehicle is to be bought;

(b) the name of the last owner of the vehicle, who was not the trade owner of the vehicle;

(c) where the vehicle is equipped with an odometer, the reading on the odometer of the vehicle at the time the vehicle was acquired from the owner referred to in paragraph (b) of this subsection;

(d) the cash price of the vehicle;

(e) the year of first registration of the vehicle and the model designation (if any) of the vehicle;

and

(f) such other particulars as are prescribed.

(4) A person shall not insert, or suffer or permit to be inserted, in any notice referred to in subsection (1) of this section any statement or representation that is false or misleading in a material particular.

Penalty: Five hundred dollars.

¹ 1st August, 1973, was the day fixed for purposes of s. 22, *Gaz.* 21st June, 1973, p. 2565.

(5) In any proceedings for an offence that is a contravention of subsection (4) of this section where the contravention consists of a false or misleading statement as to —

(a) the year of first registration of the vehicle;

or

(b) the model designation of the vehicle,

it shall be a defence for the defendant to prove that—

(c) he took reasonable steps to ascertain the year of first registration or, as the case may be, the model designation of the vehicle;

and

(d) to the best of his knowledge and belief the statement made as to the year of first registration or, as the case may be, the model designation, was a true and accurate one.

24. (1) Except as provided in this section, where any second-hand vehicle is, on or after the commencement of this Act, sold by a dealer to any person who does not by reason of that sale become a trade owner of that vehicle—

Obligations of dealer.

(a) at a cash price of or over one thousand dollars or such other amount as if from time to time prescribed and—

(i) before that vehicle has been driven for five thousand kilometres after the sale;

or

(ii) before the expiration of the period of three months next following the day of the sale,

whichever event first occurs, a defect appears in that vehicle, whether or not that defect existed at the time of the sale, the dealer who sold that vehicle shall repair or make good, or cause to be repaired or made good, that defect so as to place that vehicle in a reasonable condition having regard to its age;

or

(b) at a cash price of less than one thousand dollars or such other amount as is from time to time prescribed and—

(i) before that vehicle has been driven for three thousand kilometres after the sale;

or

(ii) before the expiration of the period of two months next following the day of the sale,

whichever event first occurs, a defect appears in that vehicle, whether or not that defect existed at the time of the sale, the dealer who sold that vehicle shall repair or make good, or cause to be repaired or made good, that defect so as to place that vehicle in a reasonable condition having regard to its age.

(2) For the purposes of calculating the period referred to in subparagraph (ii) of paragraph (a) or subparagraph (ii) of paragraph (b) of subsection (1) of this section, no regard shall be paid to any period during which the dealer has the vehicle in his possession for the purpose or purported purpose of ascertaining or carrying out his obligations under this section.

DIVISION II

(3) Subsection (1) of this section does not apply to or in relation to any defect—

- (a) that is a defect to which, pursuant to section 25 of this Act, that subsection does not apply;
- (b) arising from or incidental to any accidental damage to the vehicle that occurred after the sale referred to in that subsection;
- (c) arising from misuse or negligence on the part of a driver of the vehicle that occurred after the sale referred to in that subsection;
- (d) occurring in the tyres, battery or any prescribed accessory to the vehicle;
- (e) occurring in any vehicle the cash price of which at the time of the sale referred to in that subsection did not exceed five hundred dollars or such other amount as is, from time to time prescribed;

or

- (f) occurring in a vehicle that has, for the time being, been exempted from the provisions of subsection (1) of this section by notice under subsection (5) of this section.

(4) This section does not apply to or in relation to—

- (a) the sale of a vehicle where the proposed purchaser has been in possession of that vehicle for a period of not less than three months immediately preceding the day of that sale;

or

- (b) the sale of any commercial vehicle.

(5) The Commissioner may, by notice published in the *Gazette*, exempt a vehicle or a vehicle of a class from the provisions of subsection (1) of this section and may by notice published in a like manner revoke or amend any such exemption.

Excluded
defects.

25. (1) A dealer may affix or attach to any second-hand vehicle offered or displayed for sale a notice, in the prescribed form, setting out with reasonable particularity any defect that he believes to exist in that vehicle together with, in relation to each such defect his estimate of the fair cost of repairing or making good that defect.

(2) If—

- (a) a notice referred to in subsection (1) of this section has, at all material times, been attached to a second-hand vehicle;

and

- (b) at or before the time of sale a copy of that notice has been signed by the purchaser and upon the sale a true copy of that notice as so signed has been delivered to the purchaser for retention by him,

then subsection (1) of section 24 of this Act shall not apply to and in relation to that defect.

(3) If in any notice referred to in subsection (1) of this section the amount estimated by the dealer as the fair cost of repairing or making good any defect is less than the amount of the fair cost of repairing or making good that defect the purchaser may sue for and recover the difference between those fair costs as a debt due to the purchaser from the dealer.

26. If a dispute arises between a purchaser and dealer as to—

- (a) the extent of the obligations of the dealer under section 24 of this Act;
- (b) the manner of the carrying out by the dealer of those obligations;
- (c) the amount of the fair cost of repairing or making good any defect referred to in subsection (1) of section 25 of this Act;

or

- (d) any other matter or thing, whether or not of the same kind as the foregoing, arising out of the application of this Act,

and the dealer and the purchaser in writing agree to submit the dispute to the Commissioner, a determination of the dispute made pursuant to section 27 of this Act shall be final and binding on both parties.

27. (1) Where a dispute is submitted to the Commissioner pursuant to section 26 of this Act the Commissioner may hear and determine the dispute or the Commissioner may appoint some person to hear and determine the dispute. Hearing of
dispute by
Commissioner.

(2) Without limiting the generality of the powers conferred on the Commissioner or person pursuant to subsection (1) of this section, where the Commissioner or person is satisfied—

- (a) that an obligation lies on the dealer under section 24 of this Act;

and

- (b) that the dealer has unreasonably—

- (i) refused or failed to carry out that obligation;

or

- (ii) delayed or prevaricated in the carrying out of that obligation,

the Commissioner or person may order that any defect required to be repaired or made good under section 24 of this Act shall be repaired or made good by a person named in the order being a person other than the dealer.

(3) Where an order is made pursuant to subsection (2) of this section and the purchaser has pursuant to an order under that subsection contracted to have the defect repaired or made good by a person other than the dealer, the dealer against whom that order was made shall be liable to indemnify the purchaser against all costs or expenses payable by the purchaser pursuant to that contract and the amount of such indemnity may be sued for and recovered by the purchaser as a debt due from the dealer to the purchaser.

(4) Where an order is made pursuant to subsection (2) of this section, notwithstanding any Act or law to the contrary the dealer shall not have a lien over the vehicle to which the order relates in relation to any work done or purported to have been done in repairing or making good any defect to which the order relates.

(5) A person shall not wilfully make any false or misleading statement or claim in or in relation to any hearing or determination under this section.

Penalty: Two hundred dollars.

28. (1) Where a dispute arises as to any matter or thing referred to in section 26 of this Act and the dealer and the purchaser have not agreed to Reference of a
dispute to the
court.

DIVISION II

submit the dispute to the Commissioner pursuant to that section then either party may apply to a local court of full jurisdiction for the dispute to be heard and determined as a proceeding in that court and upon such an application being made the court shall hear and determine the matter as expeditiously as possible.

(2) For the purposes of a proceeding referred to in subsection (1) of this section and subject to this subsection the local court shall have and may exercise all the powers and functions conferred on the Commissioner under section 27 of this Act and that section shall apply and have effect as if in that section there were substituted for each reference to the Commissioner a reference to the local court but nothing in this section shall authorize or empower the local court to appoint some other person to hear and determine the dispute.

(3) For the purposes of subsection (1) of this section a dealer and purchaser shall be deemed not to have agreed to submit a dispute to the Commissioner if one party has not, within seven days of being served personally or by post with a request by the other party to agree to submit the dispute to the Commissioner, so agreed.

Rescission of
sale.

29. (1) Where the Commissioner is of the opinion that a second-hand vehicle not being a commercial vehicle sold by a dealer is substantially different from the vehicle as represented in a notice under section 23 of this Act or where no such notice was displayed in relation to the vehicle that the vehicle as so sold was substantially different from the vehicle as represented by the dealer, the Commissioner may apply to a local court of full jurisdiction for an order for rescission of the sale of the vehicle.

(2) An application referred to in subsection (1) of this section shall set out the grounds on which it is made.

(3) Upon hearing the Commissioner or a representative of the Commissioner and upon affording any other person likely to be affected by the order an opportunity of being heard the court may order that the sale be rescinded the vehicle be returned to the dealer and any consideration passed by the purchaser be returned to the purchaser and may make such further or consequential orders including an order as to the payment of the costs of the application as to it seems necessary or desirable.

(4) Where there is a collateral credit agreement associated with a sale of a second-hand vehicle that has been rescinded under this section the obligations and rights of the purchaser under that agreement shall, by force of this section, be transferred from the purchaser to the dealer and subject to this section may be enforced by or against the dealer in all respects as if he were the purchaser.

(5) Notwithstanding any Act or law to the contrary, upon an order rescinding a sale being made the rights and obligations of the parties under any contract or agreement relating to the sale or under any contract or agreement relating to a collateral credit agreement connected with the sale shall be as provided for in that order or in any order ancillary to or consequential upon that order and without limiting the generality of the foregoing it shall not be a bar, to the making of an order rescinding a sale, that the parties cannot be restored to the positions that existed prior to the sale.

(6) In this section "collateral credit agreement" means a contract or agreement for the provision of credit for the purposes of the sale of a second-hand vehicle by a person other than the dealer who took part in the

negotiations for the sale of that vehicle where that contract or agreement was arranged or procured by that dealer.

PART IV

PART IV

UNDESIRABLE PRACTICES

30. (1) A person shall not, in relation to the business of buying or selling second-hand vehicles carry out or give effect to any undesirable practice.

Undesirable practices.

Penalty: Five hundred dollars.

(2) In this section an undesirable practice means an undesirable practice prescribed by regulation under this Act.

PART V

PART V

MISCELLANEOUS

31. Nothing in this Act shall limit, restrict or otherwise affect the operation of the Second-hand Dealers Act, 1919, as amended¹.

Application of Second-hand Dealers Act not affected.

32. For the purposes of this Act, any statement or representation made by an employee of a dealer or a person appearing to act on behalf of a dealer in relation to the quality, description or history of a second-hand motor vehicle offered or displayed for sale by that dealer shall be deemed to be such a representation or statement of the dealer.

Representation by employee of dealer.

33. (1) Where in respect of a contract or agreement in relation to a sale all or portion of the consideration passing from the purchaser is represented by a vehicle or other thing the dealer shall give to the purchaser a note in writing of the monetary value he ascribes to that vehicle or thing.

Value of vehicle or thing traded in.

Penalty: One hundred dollars.

(2) For the purposes of this Act or of any proceedings under section 29 of this Act the value ascribed pursuant to subsection (1) of this section shall be the value of that vehicle or thing.

34. (1) A person shall not submit or tender or suffer or permit to be submitted or tendered a document, to which this section applies, to any person for his signature unless at the time of the submission or tendering all material particulars in that document have been completed.

Tender of documents for signature.

Penalty: One hundred dollars.

(2) This section applies to any document evidencing or recording any contract or agreement for the sale of a second-hand vehicle or evidencing or recording any collateral credit agreement as defined in section 29 of this Act connected with such a sale.

35. (1) A person shall not, wilfully and with intent to enhance the value of a second-hand vehicle—

Certain misdescriptions prohibited.

(a) alter or cause to be altered or connive in the alteration of the reading of an odometer on the vehicle;

¹ Now Second-hand Dealers Act, 1919-1971.

- (b) state or represent as the year of manufacture of the vehicle a year other than the actual year of manufacture of the vehicle;
- (c) state or represent as the year of first registration of the vehicle a year other than the actual year of first registration of the vehicle;
- or
- (d) state or represent as the model designation of the vehicle a model designation other than the actual model designation of the vehicle.

Penalty: Two hundred dollars.

(2) If in any proceedings for an offence that is a contravention of subsection (1) of this section it is proved that—

- (a) a second-hand vehicle, not being a commercial vehicle, was offered or displayed for sale by a dealer;

and

- (b) the distance travelled by the vehicle as ascertained by reference to the reading of the odometer of the vehicle is less than that distance as ascertained by reference to the reading of the odometer of the vehicle set out in the notice displayed pursuant to section 23 of this Act in relation to that vehicle,

it shall be presumed in the absence of proof to the contrary that the dealer who so offered or displayed the vehicle has wilfully altered or caused to be altered or connived in the alteration of the odometer of the vehicle with intent to enhance the value of the vehicle.

(3) Where a dealer or a person concerned in management or conduct of the business of a dealer is convicted of an offence that is a contravention of subsection (1) of this section a purchaser who purchased the second-hand vehicle in respect of which that offence was committed from that dealer relying on—

- (a) the reading of the odometer of the vehicle as altered;
- (b) the statement or representation as to the year of manufacture of the vehicle;

or

- (c) the statement or representation as to the year of first registration of the vehicle or as to the model designation of the vehicle,

as the case may be, may sue for and recover from the dealer so convicted as a debt due to him an amount equal to three times the prescribed amount.

(4) In subsection (3) of this section “the prescribed amount” means the amount determined by the court as being the difference between the sale price of the vehicle and its fair value at the time of the sale.

Other rights or remedies.

36. Except as is expressly provided in this Act, nothing in this Act shall have the effect of limiting, restricting or otherwise affecting any right or remedy a person would have had had this Act not been enacted.

No waiver of rights.

37. A person shall not without the prior consent of the Commissioner be competent to waive any rights conferred on him by this Act.

No indemnity for dealer.

38. Where a dealer incurs any costs or expenses by virtue of the operation of this Act in relation to the sale of a second-hand vehicle, the dealer shall not be entitled to be indemnified in respect of those costs or expenses by any antecedent owner, other than a trade owner, of that vehicle and any purported

contract or agreement of such indemnity shall, by force of this section be void and of no effect.

39. A member of the Board shall not otherwise than in the exercise of his powers, duties or functions as such a member, disclose any information that has come to his knowledge in his capacity as such a member.

Disclosure of information by member of the Board.

Penalty: Five hundred dollars.

40. (1) Where—

(a) a person has been convicted of an offence against this Act;

and

(b) the act or omission that constituted the offence continues after he is so convicted,

Penalty for continuing offence.

he shall be guilty of an offence against this section and shall be liable, for each such offence, to a penalty not exceeding one hundred dollars and an additional penalty not exceeding fifty dollars for each day on which the offence continues.

41. Proceedings for offences against this Act or against any provision of this Act shall be disposed of summarily.

Summary proceedings.

42. (1) The Governor may make such regulations as are necessary or expedient for the purposes of giving effect to the provisions or objects of this Act.

Regulations.

(2) Without limiting the generality of the provisions of subsection (1) of this section, the regulations may—

(a) prescribe any practice relating to the business of buying or selling used vehicles that in the opinion of the Governor is an undesirable practice;

(b) prescribe the information and particulars that shall be included in any advertising material relating to second-hand motor vehicles and the form and manner in which that information or those particulars shall be set out in that advertising material;

(c) provide for and prescribe the forms to be used for the purposes of this Act;

(d) prescribe the manner in which any notice under this Act shall be attached or affixed to a vehicle;

(e) provide for the form of a notice that shall be affixed to a vehicle indicating that the vehicle has been exempted from the provisions of subsection (1) of section 24 of this Act;

(f) provide for and prescribe the method of evidencing and the documents required to effectuate sales of second-hand motor vehicles between trade owners;

and

(g) provide for and prescribe penalties not exceeding, in each case, two hundred dollars, for a contravention of or failure to comply with any provision of the regulations.