

Explanatory Paper for Motor Dealers and Repairers Amendment (Statutory Review) Bill 2022

February 2022



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1. Introduction

The *Motor Dealers and Repairers Act 2013* (the Act) and the Motor Dealers and Repairers Regulation 2014 provide the regulatory framework for the buying, selling and repair of motor vehicles in New South Wales (NSW).

In 2020, NSW Fair Trading, a division of the NSW Department of Customer Service (the Department), undertook a Statutory Review (the Review) of the Act, as required under section 191 of the Act, to ensure that its policy objectives remain valid and the terms of the Act remain appropriate for securing those objectives.

The Review found that the objectives of the Act were still valid and the regulatory framework continues to be largely appropriate. Feedback from the public consultation, conducted as part of the Review raised several issues:

- some of the record-keeping requirements are onerous and laborious
- the Act had not kept up with rapid improvements in technology
- regulatory gaps around the conduct of some motor vehicle recyclers.

The Review found there are opportunities to ease the regulatory burden, while maintaining the standards of conduct and consumer protection as well as continuing to meet the objectives of the Act.

The proposed Bill would make amendments in several key areas:

- consumer and industry safety and protection
- increased transparency and accountability
- strengthened compliance mechanisms
- regulation that responds to ever-changing challenges faced by industry.

The proposed amendments are explained in detail below and are accompanied by questions to help encourage stakeholder feedback to inform their further development. It is important to note that the proposed Bill is not final and consideration will be given to all feedback and comments received.

This document should be read alongside a copy of the proposed Bill.

2. Consultation process

Call for feedback

Interested individuals and organisations are invited to give feedback on any matter relevant to the Motor Dealers and Repairers Amendment (Statutory Review) Bill 2022, whether or not the matters are addressed specifically in this explanatory paper.

Participation is available on the Have Your Say consultation website, through the survey or a written submission that is in an 'accessible' format.

Accessibility is about making documents more easily available to members of the public who have some form of impairment (visual, physical, cognitive). More information on how you can make your submission accessible is available on the WebAIM website at <http://webaim.org/techniques/word>.

You can provide feedback in one of the following ways:

- Completing the online survey at the NSW Government Have Your Say website.
<https://www.haveyoursay.nsw.gov.au/motor-dealers-amendment-bill>
- Uploading your written submission on the NSW Government Have Your Say website. <https://www.haveyoursay.nsw.gov.au/motor-dealers-amendment-bill/upload-your-motor-dealers-submission>

The closing date for feedback is COB Monday 14 March 2022.

After the consultation period has closed:

- all feedback and submissions will be considered
- there may be targeted consultation on specific issues
- a report on the review and its findings will be submitted to the Minister for Small Business and the Minister for Fair Trading
- the final report is required to be tabled in both Houses of Parliament by 30 June 2022.

2.1 Release of submissions

We will make all uploaded submissions publicly available on the Have Your Say website. If you do not want your personal details or part of your submission published, please state this clearly in your submission and tell us why. Automatically generated confidentiality statements are not sufficient. Submissions may be referred to in a report on the outcome of the consultation, however any anonymous submissions will be referred to as such.

Please note, even if you state that you do not wish us to publish certain information, we may need to release that information by law. For example, to comply with the *Government Information (Public Access) Act 2009*.

3. Proposed Amendments

3.1 Future proofing and creating efficiencies in the legislative framework

The automotive industry in New South Wales (NSW) is rapidly evolving, due to changing business models and new technologies. The proposed amendments to the Act seek to ‘future-proof’ this highly significant industry by adapting to this changing environment.

Prescribed parts

Currently, S.100(3) of the *Motor Vehicle and Repairers Act 2013* (the Act) says that prescribed parts lists are listed in the Regulations. The Bill proposes an amendment to this section that will move the list to a register approved by Ministerial Order and updated on the NSW Fair Trading website. The Ministerial Order, which is a regulatory instrument, is a more efficient process than amending the Regulation and would enable rapid policy responses to emerging trends in the industry. For example, with the growing uptake of Electric Vehicles (EV) by consumers – stimulated by both Federal and State policy initiatives and the emergence of viable hydrogen-fuelled vehicles, new parts will need to be rapidly approved to reflect market changes.

Qualification requirements

To adapt to rapid changes in industry training, the Bill aims to remove qualification requirements for the issue of a licence or tradesperson certificate from the Regulation. Instead moving it to approval by Ministerial Order (refer to amendments in S.25 and S.26). Allowing qualifications to be approved by Ministerial Order and published online on the NSW Legislation website will make it easier and faster to amend the name and course numbers of approved courses. Currently, this involves a lengthy process to amend the Regulation each time. By providing the Minister with discretion over listing qualifications

through the proposed Bill, new repair classes can be added to ensure the industry can easily adapt to changing market influences.

Online selling

To recognise shifting consumer preferences and emerging online motor dealing trends, amendments have been made to the notified premise provisions to allow for the entire purchase process of a vehicle to take place online.

Specific requirements for online motor dealers have been introduced, including additional information on licence applications (the website URL), motor dealer licence numbers on all website and advertising materials, restricting online end-to-end sales to new cars only, protections for a purchaser around inspection and maximum deposits and additional protections for online purchasers when a motor vehicle is defective. These changes attempt to balance the innovation of industry with the need to provide adequate consumer protections.

Online motor dealers will still be required to maintain a council approved physical location for the storage and inspection (both by regulators and consumers) and will be subject to the current conditions regarding record keeping and disclosure obligations.

It is envisaged that current motor dealers will continue to operate without any required changes to their licence requirements, however if they wish to add an online end-to-end sales model to their dealership then the new requirements will apply.

Administration

To streamline administrative work for dealers and future proof vehicle sales, repairers and recyclers, the Bill seeks to amend the wording of S.100 of the Act. Based on stakeholder feedback and the Statutory Review, amendments are proposed to remove the requirement to maintain physical registers. Instead moving to a requirement that ensures particulars required by the Regulation are captured in a flexible system that can meet the needs of authorised officers in ensuring compliance with the legislation.

Q1. Do the current amendments adequately recognise new online and emerging business models in the industry?

Q2. If you are currently operating a dealership from a fixed location, are you considering in the future to also make available the option for on-line purchasing?

Q3. For online purchasing, how should vehicle returns be handled?

3.2 Easing burden on businesses

The Bill seeks an amendment to S.66(c)(2) to allow for dealer's notices to be presented electronically to either a consumer inspecting a second-hand vehicle or to an authorised officer conducting investigations related to said vehicle. Currently, a dealer's notice must be physically displayed on a vehicle at the point-of-sale. The amendment will allow for electronic versions of the notice to be provided to consumers or investigators (as is legally required). This amendment opens the possibility of expanding the way dealers carry out their business by catering for the digital world and automation. The amendment would enable the Act to be more flexible in its compliance requirements and enable information to be obtained/provided electronically, for example by way of a QR code.

Q4. Would you support efforts to streamline the record-keeping process through digitalisation (online recording) for prescribed parts and dealer notices? Do these amendments fulfil this objective?

3.3 Protecting businesses and customers

a) Cashless transactions to help prevent fraud

The Bill proposes that elements of the *Scrap Metal Act 2016* be incorporated into the *Motor Vehicle and Repairers Act 2013* (the Act) to address inconsistencies between the

scrap metal laws and the vehicle recycling provisions within the Act. The Statutory Review recommended the introduction of cashless transactions for recyclers in-line with the requirements under the Scrap Metal Act. The inclusion of cashless transactions would allow for greater enforcement and auditability of scrap metal dealers to prevent the theft and disposal of stolen vehicles and other parts.

The Bill will also include a newly implemented offence for anyone who advertises to pay in cash for scrap metal. The creation of the offence will provide a level of consumer protection and will be an important addition when incorporating the cashless transactions scheme into the Act. By enforcing cashless transactions for recyclers, such as EFPOS or cheque, the Bill would remove the ability to pass on stolen parts for cash payments and ensure records could be maintained of transactions. This would benefit legitimate businesses in the recycling industry and protect consumers.

The Bill will remove S.57(2) of the Act that currently allows for exceptions/alternatives to the requirement to provide a current inspection report at a sale at auction. The Statutory Review noted that a consumer's decision-making process was greatly influenced by having ready access to the inspection report when choosing to purchase a vehicle. To ensure that consumer protections are in place and enable consumers to make informed decisions, section 57(2) is being proposed to be removed. The inspection report gives the consumer important facts that may affect the future registration, insurance or performance of the vehicle. Non-disclosure of material facts is already one of the most common complaints consumers bring to NSW Fair Trading about vehicles they have purchased.

b) Strengthening consumer guarantees

The Bill proposes to amend sections 67,68, 77 and 113 to better align the current dealer guarantees under the Act, with consumer guarantees under Australian Consumer Law (ACL).

The remedies available under current dealer guarantees are proposed to be brought into line with those for the consumer guarantees. There will be more remedy options for the consumer, including obtaining a refund or a replacement vehicle where there is a defective

vehicle. This is in addition to the current remedy of having the vehicle repaired. Authorised officers will be able to be issued a Rectification Order, where there is a breach of a consumer guarantee. The alignment of the dealer and consumer guarantees should reduce confusion for dealers over the operation of the two frameworks, without reducing consumer protections.

c) Motor dealer protections and national reforms

The Review noted that there is an imbalance in bargaining power between motor dealers and manufacturers and that national reforms to the Australian Consumer Law's Unfair Contract Terms (ACL UCT) provisions and the Commonwealth Franchising Code of Conduct (the Franchising Code) were underway. Since the Review was tabled, significant improvements in the protections under the Franchising Code have been introduced for motor dealers, particularly in the instance of a manufacturer's withdrawal from the market.

At the time of drafting this Bill, reforms to the UCTs at the Commonwealth had not been passed. The UCT protections under the Act are modelled on the ACL UCTs, so any proposed amendments to the protections under Part 6 of the Act should be made to be consistent with the ACL. Therefore, it was deemed prudent to wait until the ACL UCT reform had been passed before amending Part 6 of the Act

Q5. Does the proposed Bill adequately protect manufacturers and dealers?

Q6. Should inspection reports be provided to consumers purchasing a vehicle prior to an auction?

3.4 Deterring unethical behaviour in the industry

Adequate compliance and enforcement powers not only discourage illegal activity but increase consumer confidence in the industry and the vehicles they are purchasing and driving. Based on stakeholder responses as part of the Statutory Review, the Bill proposes amendments that increase penalties to ensure consistency and that the deterrent outweighs the perceived benefit, such as the financial gain of committing an offence. For a complete overview of the proposed amendments to penalties and offences, please see the table below.

Q7. Do the updated penalties provide sufficient deterrence to unlawful behaviour and practices?

3.4.1 Penalty Table

Section	Sub-Section	Section Title	Current Offense Provision	Current Penalty Unit and Maximum Penalty	Current PIN (Penalty Infringement Notice) amount \$	Proposed Penalty Unit and Maximum Penalty	Proposed PIN
11		Unlicensed motor dealers	Yes	1,000 units Max Penalty \$110,000	\$5,500	No change	\$10,000
12		Unlicensed motor vehicle repairers	Yes	1,000 units Max Penalty \$110,000	\$5,500	No change	\$10,000
13		Unlicensed motor vehicle recyclers	Yes	1,000 units Max Penalty \$110,000	\$5,500	No change	\$10,000

15	1	Repair work must be done by licensed motor vehicle repairers	Yes	20 units Max Penalty \$2,200	\$550	50 units Max Penalty \$5,500	\$550
15	1A	Repair work must be done by a licenced motor vehicle repairer	Yes	Max Penalty \$2,200	No PIN	50 Units Max Penalty for sole trader \$5,500 and \$27,500 for a corporation	\$5,500
15	2	Repair work must be done by a licenced motor vehicle repairer	Yes	Max Penalty \$2,200	No PIN	50 Units Max Penalty \$5,500	No PIN
16	1	Repair work must be done by holder of tradesperson's certificate	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$2,200	\$550
16	1A	Repair work must be done by holder of tradesperson's certificate	Yes	Max Penalty \$2,200	No PIN	Max Penalty for sole trader \$5,500 and \$27,500 for a corporation	No PIN
16	2	Repair work must be done by holder of tradesperson's certificate	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
17		Holding out	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
18	1	Transfer or loan of tradesperson's certificate	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
18	2	Transfer or loan of tradesperson's certificate	Yes	20 units Max Penalty \$2,200	\$330	No change	No change
19		Production of licences and certificates	Yes	10 units Max Penalty \$1,100	\$330	20 units Max Penalty \$2,200	\$550
47	1	Offences	Yes	20 units Max Penalty \$2,200	\$330	200 units Max Penalty \$22,000	\$5,500
47	2	Offences	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550

48	1	Motor vehicles must be sold at licensed premises	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
49		Failure to disclose being motor dealer	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
57	1	Sale at auction with numberplates	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
58	1	Other sales with numberplates	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
59		Sales of motor vehicles without numberplates attached	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
63	2	Sale notices for second-hand motor vehicles	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
63	3	Sale notices for second-hand motor vehicles	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
64		Sale notices for demonstrator motor vehicles and other second-hand vehicles	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
83	1	Motor dealer may not dispose of trade-in during cooling off period	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
89	1	Motor dealer must notify consignment sales	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
90		Trust account to be established	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
91		Payment of consignment sale amounts to trust account	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
92	1	Application of money in dealer's trust account	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550

94		Period for accounting to consignor	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
95	1	Audit of dealer's trust account	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
97		Numberplates on motor vehicles acquired by motor vehicle recyclers	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
98		Sale of motor vehicles by motor vehicle recyclers	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
99		Certain parts or accessories to be marked	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
99(A)		Requirement for cashless transactions	No	None	None	100 units Max Penalty \$11,000	\$550
99(B)		Prohibitions on buying or disposing of unidentified motor vehicles	No	None	None	100 units Max Penalty \$11,000	\$550
100		Registers must be kept by motor dealers, motor vehicle recyclers and motor vehicle repairers	Yes	20 units Max Penalty \$2,200	\$550	50 units Max Penalty \$5,500	\$550
103	4	Motor vehicle brokers' obligations	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550
155(a)		Obstruction and other related offences	Yes	20 units Max Penalty \$2,200	\$330	No Change	\$550
155(d)		Obstruction and other related offences	Yes	20 units Max Penalty \$2,200	\$330	No Change	\$550
183		False or misleading records	Yes	20 Units Max Penalty \$2,200	No PIN	50 units Max Penalty \$5,500	No PIN
184		Tender of documents for signature	Yes	20 units Max Penalty \$2,200	\$330	50 units Max Penalty \$5,500	\$550

4. Other Considerations

The NSW Government understands that the effective implementation of these new requirements and obligations requires collaboration with the motor vehicle industry. It is important that we understand how the proposed laws will impact both consumers and industry. If there are any other elements of the proposed reforms, which are not captured within the questions for feedback here that you wish to provide comment on please include this feedback/comments in your submission.

