

NEW SOUTH WALES

DRAFT GOVERNMENT BILL

**Motor Dealers and Repairers Amendment
(Statutory Review) Bill 2022**

Explanatory note

Overview of Bill

The object of this Bill is to amend the *Motor Dealers and Repairers Act 2013* (***the Act***) to address recommendations of the Statutory Review of the Act, including to—

- (a) insert a new legislative framework to permit and regulate the online sale of motor vehicles by motor dealers, and
- (b) replace the requirement for motor dealers, motor vehicle recyclers and motor vehicle repairers to maintain separate registers for specified matters with a more general requirement to keep certain records in relation to their business, and
- (c) make changes relating to the dealer guarantee for defective vehicles under the Act and consumer guarantees under the *Australian Consumer Law (NSW)* (***ACL***), and
- (d) make it an offence to possess a device capable of rendering the odometer of a motor vehicle inoperative or inaccurate, and
- (e) make it an offence for a motor vehicle recycler to buy a motor vehicle or motor vehicle part or accessory with cash, and to buy or sell an unidentified motor vehicle, and
- (f) make changes to the period within which a person may make a claim for compensation from the Motor Dealers and Repairers Compensation Fund, and
- (g) increase the maximum monetary penalty for various offences, and
- (h) make other minor and consequential amendments.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Motor Dealers and Repairers Act 2013 No 107

Schedule 1[1] inserts a definition of *required qualifications or experience* and makes consequential amendments.

Schedule 1[2]–[4], [6]–[8], [10], [11], [14] and [22] increase the maximum monetary penalty for various offences. **Schedule 1[5], [9], [12] and [13]** make consequential amendments.

Schedule 1[15] makes it an offence for a motor dealer to fail to display the motor dealer's licence number on all of the motor dealer's websites and on advertising material distributed or displayed by the motor dealer.

Schedule 1[16] requires an applicant for a motor dealer's licence who intends to use a website to offer for sale and sell motor vehicles to include the URL of the website in the application.

Schedule 1[17] requires the applicant to also include, in the application, the addresses of premises intended to be used for storage or as an office and of other premises of a kind prescribed by the regulations.

Schedule 1[18] inserts a note stating it is an offence under the *Crimes Act 1900*, Part 5A to knowingly provide false or misleading information or to knowingly produce documents that are false or misleading in purported compliance with a law of the State.

Schedule 1[19]–[21], when read with the proposed new definition of required qualifications or experience, provide that the Minister may, by order, specify qualifications or experience that a person must hold to be granted a licence under the Act. If the applicant is a body corporate, the officers of the body corporate must hold the required qualifications or experience.

Schedule 1[24] makes it an offence to possess a device capable of rendering the odometer of a motor vehicle inoperative or inaccurate, unless a person is a licensed motor vehicle repairer and repairs or replaces odometers in the course of carrying on business as a motor vehicle repairer.

Schedule 1[25] removes the current exception to the requirement that a person must not offer or display for sale, or sell, by auction a motor vehicle to which a number-plate is attached unless a current inspection report is attached to the vehicle.

Schedule 1[26] inserts proposed Part 4, Division 3A relating to the online sale of motor vehicles, which includes inserting proposed definitions of *online motor dealer* and *online purchaser*. An online motor dealer means a motor dealer who carries on the business of a motor dealer wholly or partly using a website through which the online motor dealer offers for sale and sells motor vehicles. An online purchaser means a purchaser of a motor vehicle from an online motor dealer through the online motor dealer's website. Key provisions include—

- (a) proposed section 66B, which prohibits an online motor dealer from offering for sale or selling a motor vehicle through the online motor dealer's website unless the motor vehicle is of a kind prescribed by the regulations, and
- (b) proposed section 66D, which requires an online motor dealer to give an online purchaser, and a prospective online purchaser, the opportunity to carry out inspections of a motor vehicle at certain points in an online sales transaction and at certain places, and
- (c) proposed section 66E, which places a cap on the deposit that an online purchaser may be required to pay to an online motor dealer before the online purchaser takes possession of a motor vehicle, and
- (d) proposed section 66F, which inserts additional provisions relating to the dealer guarantee for defective vehicles under the Act which will only apply to motor vehicles purchased by online purchasers.

Schedule 1[23] makes a consequential amendment.

Schedule 1[29] provides that a motor dealer must, for the purposes of the dealer guarantee for defective vehicles, either arrange for the repair or replacement of a defective vehicle, at the motor dealer's own cost, or refund the purchase price paid by the person having the benefit of the dealer guarantee. **Schedule 1[31]** provides that a person who has already enforced certain consumer guarantees under the ACL may not, if the consumer guarantees are fully complied with, also take action against the motor dealer under the dealer guarantee in relation to a matter that has been dealt with under the consumer guarantees. **Schedule 1[27], [28], [30] and [36]** make consequential amendments.

Schedule 1[32] and [33] make amendments to existing provisions relating to dealer-financed purchases of motor vehicles as a consequence of the new provisions relating to the online sale of motor vehicles.

Schedule 1[34] makes it an offence for a motor vehicle recycler to buy a motor vehicle or motor vehicle part or accessory with cash, by cheque payable to cash or in kind with goods and services. It is also an offence for a motor vehicle recycler to buy or sell a motor vehicle if the vehicle's unique identifier, within the meaning of the *Crimes Act 1900*, section 154E, has been removed, obliterated, defaced or altered, unless the motor vehicle recycler has received written authorisation from a police officer to buy or sell the vehicle.

Schedule 1[35] replaces the requirement for the holder of a motor dealer's licence, a motor vehicle recycler's licence or a motor vehicle repairer's licence to maintain separate registers for specified matters relating to the holder's business, with the requirement that the holders of those licences instead maintain certain records in relation to their business. The Minister may, by order, specify the records required to be kept, including the form of the records. The regulations may also make provision regarding the records required to be kept. **Schedule 1[38]–[41] and [44]** make consequential amendments. In particular, **Schedule 1[41]** recasts an existing evidentiary provision relating to registers to apply instead to records and **Schedule 1[44]** recasts an existing offence relating to false and misleading information in registers to apply instead to records.

Schedule 1[36], in addition to the consequential amendment referred to above, enables the Secretary to serve a rectification order on a motor dealer if the Secretary is satisfied that an act, matter or thing done or required to be done by the motor dealer to comply with a consumer guarantee under the ACL has not been done or is incomplete or defective. The motor dealer may be required under the rectification order to take steps to ensure the act, matter or thing is completed or the defect is rectified. **Schedule 1[37]** makes a consequential amendment.

Schedule 1[42] increases the period within which a person who has incurred certain losses in connection with a motor vehicle may make a claim for compensation from the Motor Dealers and Repairers Compensation Fund. A claim may be made within 18 months, instead of 12 months, after the loss is incurred or the claimant becomes aware of the loss. **Schedule 1[43]** provides that a claim may also be made within 12 months of the claimant obtaining a judgment or order of a court in relation to the loss, if the judgment or order has not been paid and was obtained 18 months after the loss was incurred or the claimant became aware of the loss.

Schedule 1[45] inserts a regulation-making power to regulate the sale of motor vehicles by online motor dealers.

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**Motor Dealers and Repairers Amendment
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**Motor Dealers and Repairers Amendment
(Statutory Review) Bill 2022**

No , 2021

A Bill for

An Act to amend the *Motor Dealers and Repairers Act 2013* to give effect to the recommendations of a statutory review of that Act; and for other purposes.

public consultation draft

Motor Dealers and Repairers Amendment (Statutory Review) Bill 2022 [NSW]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Motor Dealers and Repairers Amendment (Statutory Review) Act 2022*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Motor Dealers and Repairers Act 2013 No 107

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

consumer guarantee—see section 67.

online motor dealer—see section 66A.

online purchaser—see section 66A.

required qualifications or experience means the qualifications, experience or other criteria specified by the Minister by order published in the Gazette in relation to—

- (a) an applicant for a licence, or
- (b) if the applicant is a body corporate—the officers of the body corporate.

[2] Section 15 Repair work must be done by licensed motor vehicle repairers

Insert at the end of section 15(1), before the note—

Maximum penalty—50 penalty units.

[3] Section 15(1A)

Insert at the end of the subsection, before the note—

Maximum penalty—

- (a) for an individual—50 penalty units, or
- (b) for a body corporate—250 penalty units.

[4] Section 15(2)

Insert at the end of the subsection—

Maximum penalty—50 penalty units.

[5] Section 15

Omit the penalty provision.

[6] Section 16 Repair work must be done by holder of tradesperson's certificate

Insert at the end of section 16(1), before the note—

Maximum penalty—50 penalty units.

[7] Section 16(1A)

Insert at the end of the subsection, before the note—

Maximum penalty—

- (a) for an individual—50 penalty units, or
- (b) for a body corporate—250 penalty units.

[8] Section 16(2)

Insert at the end of the subsection—

Maximum penalty—50 penalty units.

[9] Section 16

Omit the penalty provision.

[10] Sections 17, 47(2), 48(1), 49, 57(1), 58(1), 59, 63(3), 64, 83(1), 89(1), 90, 91, 92(1), 94, 95(1), 97–99, 103(4) and 184

Omit “20 penalty units” wherever occurring in the penalty provisions.

Insert instead “50 penalty units”.

[11] Section 18 Transfer or loan of tradesperson’s certificate

Insert at the end of section 18(1)—

Maximum penalty—50 penalty units.

[12] Section 18(2)

Insert at the end of the subsection—

Maximum penalty—20 penalty units.

[13] Section 18

Omit the penalty provision.

[14] Section 19 Production of licences and certificates

Omit “10 penalty units” from the penalty provision. Insert instead “20 penalty units”.

[15] Section 19A

Insert after section 19—

19A Licence number must appear on website and advertising

- (1) A motor dealer must ensure the motor dealer’s licence number is displayed—
 - (a) on the website of the motor dealer, and
 - (b) on all advertising material distributed or displayed by the motor dealer.
- (2) The motor dealer’s licence number must—
 - (a) be displayed in a reasonably prominent position on the website and advertising material, and
 - (b) be clearly legible, and
 - (c) be identified as the licence number of the motor dealer.
- (3) In this section—

licence number means the unique identifier referred to in the *Licensing and Registration (Uniform Procedures) Act 2002*, section 20.

Maximum penalty—20 penalty units.

[16] Section 20B Application for licence to carry on business at premises

Insert after section 20B(2)(a)—

- (a1) for an application for a motor dealer’s licence where the applicant intends to be an online motor dealer—the URL of the website the applicant intends to use for the purpose of carrying on the business to be authorised by the licence,

[17] Section 20B(4A)

Insert after section 20B(4)—

- (4A) If an applicant for a motor dealer's licence intends to be an online motor dealer, the applicant must include the addresses of the following premises under subsection 20B(2)(a)—
- (a) premises intended for storage, including the storage of motor vehicles or records, and
 - (b) premises intended for use as an office, and
 - (c) premises of a kind prescribed by the regulations.

[18] Section 20B, note

Insert at the end of the section—

Note— It is an offence under the *Crimes Act 1900*, Part 5A to knowingly provide false or misleading information or to knowingly produce documents that are false or misleading in purported compliance with a law of the State.

[19] Section 25 Grounds for refusal—licences other than tradespersons' certificates

Omit section 25(2)(e). Insert instead—

- (e) that the applicant does not have the required qualifications or experience for the licence,

[20] Section 25(3)(b)

Omit the paragraph. Insert instead—

- (b) the officers of the body corporate do not have the required qualifications or experience for the licence,

[21] Section 26 Mandatory grounds for refusal—tradespersons' certificates

Omit section 26(2).

[22] Section 47 Offences

Omit “20 penalty units” from the penalty provision to section 47(1).

Insert instead “200 penalty units”.

[23] Section 48 Motor vehicles must be sold at licensed premises

Omit section 48(5). Insert instead—

(5) Exception—online motor dealers

A person is not guilty of an offence against this section if a motor vehicle is displayed for sale at another place if—

- (a) the person is an online motor dealer, and
- (b) the place is a place to which section 66D(1)(b) applies.

[24] Section 53

Omit the section. Insert instead—

53 Devices to facilitate odometer tampering

- (1) A person must not possess a device capable of rendering the odometer of a motor vehicle inoperative or inaccurate.
- (2) A person must not fit to a motor vehicle a device capable of rendering the odometer of the motor vehicle inoperative or inaccurate.

- (3) It is a defence in proceedings for an offence under subsection (1) if the defendant—
- (i) holds a motor vehicle repairer's licence, and
 - (ii) undertakes repairs or replacements of the odometer of motor vehicles in the course of carrying on business as a motor vehicle repairer.
- Maximum penalty—200 penalty units.

[25] Section 57 Sale at auction with number-plates

Omit section 57(2).

[26] Part 4, Division 3A

Insert after Division 3—

Division 3A Online motor dealer sales

66A Definitions

In this Division—

online motor dealer means a motor dealer who carries on the business of a motor dealer wholly or partly using a website through which the online motor dealer offers for sale and sells motor vehicles.

online purchaser means a purchaser of a motor vehicle from an online motor dealer through a website used by the online motor dealer to offer for sale and sell motor vehicles.

66B Motor vehicles that may be sold online

An online motor dealer must not offer for sale or sell a motor vehicle, through the website used by the online motor dealer, unless the motor vehicle is of a kind prescribed by the regulations.

Maximum penalty—1,000 penalty units or, in the case of a second or subsequent offence, 1,000 penalty units or imprisonment for 12 months, or both.

66C Disclosure requirements

- (1) An online motor dealer must, before entering into a contract of sale for a motor vehicle with an online purchaser, provide the prospective online purchaser with a disclosure document in the approved form.
- (2) A provision of this Act which includes a requirement for a current inspection report, dealer's notice or other document to be attached to a motor vehicle is taken to have been satisfied by an online motor dealer if the report, notice or document is available to be viewed on the website used by the online motor dealer to offer for sale and sell motor vehicles.

66D Opportunities to inspect motor vehicles

- (1) Before an online purchaser purchases a motor vehicle, the online motor dealer must give the prospective online purchaser the opportunity to carry out an inspection of the motor vehicle at—
 - (a) the place at which the motor vehicle is ordinarily stored, or
 - (b) a place agreed by the prospective online purchaser and the online motor dealer.

- (2) An online motor dealer must give an online purchaser the opportunity to carry out an inspection of a motor vehicle purchased by the online purchaser—
 - (a) on the delivery of the motor vehicle to the online purchaser, or
 - (b) on the collection of the motor vehicle by the online purchaser.
- (3) The regulations may make provision regarding—
 - (a) places at which motor vehicles may be made available for inspection or collection, and
 - (b) requirements relating to the safety of online purchasers and prospective online purchasers while at those places.

66E Payment of purchase price—maximum deposit

- (1) An online motor dealer must not require an online purchaser to pay more than the relevant percentage of the purchase price of a motor vehicle before the online purchaser takes possession of the motor vehicle.
- (2) In this section—
relevant percentage, of a purchase price of a motor vehicle, means the percentage prescribed by the regulations for the purposes of this definition.

66F Online motor dealers to collect and remedy defective vehicles

- (1) This section applies to a motor vehicle that—
 - (a) is purchased by an online purchaser, and
 - (b) is, or is suspected by an online purchaser to be, a defective vehicle.
- (2) The online motor dealer must, if requested by an online purchaser, arrange for a motor vehicle—
 - (a) to be collected from the online purchaser for the purpose of—
 - (i) assessing liability for the dealer guarantee for the motor vehicle, or
 - (ii) complying with the dealer guarantee for the motor vehicle, and
 - (b) to be delivered to an online purchaser following the completion of an action referred to in paragraph (a).
- (3) The motor vehicle must be collected from, or delivered to, the online purchaser within the period prescribed in the regulations, if any.
- (4) If the motor vehicle is a defective vehicle, the online motor dealer must pay for the costs of collecting from, and delivering the motor vehicle to, the online purchaser.
- (5) The online motor dealer is liable for all loss of or damage to the motor vehicle that occurs between the collection of the motor vehicle from the online purchaser and the delivery of the motor vehicle to the online purchaser.
- (6) Subsection (5) applies whether the loss or damage occurred while the motor vehicle was in the possession of the online motor dealer or an employee or other person associated with the online motor dealer.
- (7) An online motor dealer is not liable under subsection (5) if the online motor dealer proves that the motor dealer took all reasonably practicable measures to prevent the loss or damage.
- (8) In this section—
defective vehicle has the same meaning as in Part 4, Division 4.

[27] Section 67 Definitions

Insert in alphabetical order in section 67(1)—

consumer guarantee means a guarantee that applies under the *Australian Consumer Law (NSW)*, Part 3-2, sections 54–57.

[28] Section 67(1), definition of “defective vehicle”

Omit “guarantee (a *consumer guarantee*) that applies under sections 54–57 of Part 3-2 of the *Australian Consumer Law (NSW)*.”

Insert instead “consumer guarantee”.

[29] Section 68 Dealer guarantee for defective vehicles

Omit section 68(1). Insert instead—

(1) Dealer guarantee

If a motor vehicle sold by a motor dealer is a defective vehicle, the motor dealer must—

- (a) arrange for the repair of the motor vehicle, at the motor dealer’s own expense, so as to place the motor vehicle in a reasonable condition having regard to its age, or
- (b) replace the motor vehicle, at the motor dealer’s own expense, with another motor vehicle of the same type and of similar value as the motor vehicle if it did not have the condition or defect that causes it to be a defective vehicle, or
- (c) refund the purchase price paid for the motor vehicle by the person having the benefit of the dealer guarantee.

[30] Section 77 Effect on Australian Consumer Law remedies

Omit “is made good or repaired”. Insert instead “has been dealt with”.

[31] Section 77(2)

Insert at the end of the section—

- (2) A person who has enforced a consumer guarantee in relation to the condition of or a defect in a motor vehicle is not, if the consumer guarantee is fully complied with, entitled to take action against the motor dealer under the dealer guarantee under this Division in relation to an aspect of the motor vehicle that has been dealt with under the consumer guarantee.

[32] Section 80 Cooling off period for dealer-financed purchases

Insert at the end of section 80(b)—

, or

- (c) for a motor vehicle purchased by an online purchaser, at 5pm on the next day.

[33] Section 86 Return of motor vehicles

Insert at the end of the section—

- (2) An online purchaser of a motor vehicle is not required to return a motor vehicle as required by this Division, but must permit the collection of the motor vehicle.

[34] Sections 99A and 99B

Insert after section 99—

99A Requirement for cashless transactions

A motor vehicle recycler must not, in the course of carrying on a business of a motor vehicle recycler, buy a motor vehicle or a motor vehicle part or accessory—

- (a) with cash, or
- (b) by cheque payable to cash, or
- (c) in kind with goods or services.

Maximum penalty—100 penalty units.

99B Prohibitions on buying or disposing of unidentified vehicles

- (1) A motor vehicle recycler must not, other than with the written authorisation of a police officer, buy a motor vehicle if the unique identifier for the motor vehicle has been removed, obliterated, defaced or altered (an ***unidentified vehicle***).
- (2) A motor vehicle recycler who receives or is in possession of an unidentified vehicle must not sell or dispose of the unidentified vehicle other than with the written authorisation of a police officer.
- (3) In this section—

unique identifier, in relation to a motor vehicle, has the same meaning as in the *Crimes Act 1900*, section 154E.

Maximum penalty—100 penalty units.

[35] Section 100

Omit the section. Insert instead—

100 Records must be kept by motor dealers, motor vehicle recyclers and motor vehicle repairers

- (1) The holder of a motor dealer's licence, a motor vehicle recycler's licence or a motor vehicle repairer's licence must keep or cause to be kept records in relation to the holder's business.
- (2) The Minister may, by order, specify the records required to be kept under this section, including the form of the records.
- (3) The order must be published on the NSW Fair Trading website.
- (4) The regulations may also make provision regarding records required to be kept under this section, including the form of the records.
- (5) In this section—

NSW Fair Trading website means the website with the URL www.fairtrading.nsw.gov.au.

Maximum penalty—50 penalty units.

[36] Section 113 Secretary may make rectification order

Omit section 113(1)(a). Insert instead—

- (a) that an act, matter or thing done or required to be done by or on behalf of a motor dealer to comply with a dealer guarantee has not been done or is incomplete or defective, or

- (a1) that an act, matter or thing done or required to be done by or on behalf of a motor dealer to comply with a consumer guarantee has not been done or is incomplete or defective, or

[37] Section 113(1)

Omit “the work”. Insert instead “the act, matter or thing or work”.

[38] Section 151 Powers of entry, inspection etc

Omit section 151(2)(b) and (4).

[39] Section 151(2)(c)

Insert “including in electronic form,” after “extracts from,”.

[40] Section 151(2)(c) and (d)

Omit “(including registers)” wherever occurring.

[41] Section 162

Omit the section. Insert instead—

162 Evidence as to entries in records

A record required to be kept under this Act is evidence in proceedings in all courts and before all persons and bodies authorised by law to receive evidence—

- (a) of the matters required under this Act to be included in the record, and
- (b) of the matters otherwise contained in the record.

[42] Section 169 Making of claims

Omit “12 months” from section 169(3)(a). Insert instead “18 months”.

[43] Section 169(3)(a1)

Insert after section 169(3)(a)—

- (a1) within 12 months of the claimant obtaining a judgment or order of a court in relation to the loss if—
 - (i) the judgment or order was obtained within 18 months after the loss was incurred or the claimant became aware of the loss, and
 - (ii) the judgment or order has not been paid, or

[44] Section 183

Omit the section. Insert instead—

183 False or misleading records

A person must not include information in a record required to be kept under this Act knowing it to be false or misleading in a material particular.

Maximum penalty—50 penalty units.

[45] Section 186 Regulations

Insert after section 186(2)(e)—

- (e1) regulating the sale of motor vehicles by online motor dealers,