



ANNO TRICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1986

No. 116 of 1986

An Act to amend the Second-hand Motor Vehicles Act, 1983.

[Assented to 18 December 1986]

The Parliament of South Australia enacts as follows:

Short title.

1. (1) This Act may be cited as the "Second-hand Motor Vehicles Act Amendment Act (No. 2), 1986".

(2) The Second-hand Motor Vehicles Act, 1983, is in this Act referred to as "the principal Act".

Commencement.

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation or a day to be fixed by subsequent proclamation.

Amendment of
s. 5—
Interpretation.

3. Section 5 of the principal Act is amended by striking out subsection (2).

Repeal of s. 6 and
substitution of
new section.

4. Section 6 of the principal Act is repealed and the following section is substituted:

Application of
this Act.

6. (1) Where a dealer sells a second-hand vehicle to a credit provider on the understanding that it will be sold or let on hire to a third person and the vehicle is in fact sold or let on hire to the third person then—

(a) section 19 does not apply in relation to the sale by the dealer;

but

(b) for the purposes of all other provisions of this Act, the dealer shall be presumed to have sold the vehicle to the third person.

(2) The Governor may, by regulation, exempt (conditionally or unconditionally)—

- (a) a specified vehicle or class of vehicles;
 - (b) a specified person or class of persons;
 - or
 - (c) a specified transaction or class of transactions,
- from this Act or a specified provision of this Act.

5. Section 9 of the principal Act is amended by striking out paragraph (a) of subsection (2) and substituting the following paragraph:

Amendment of
s. 9—
Dealer must be
licensed.

(a) a licensed credit provider—

(i) whose business as a dealer is incidental to the credit business;

and

(ii) who, in carrying on business as a dealer, observes any requirements imposed by regulation for the purposes of this paragraph;.

6. Section 10 of the principal Act is amended by striking out subsection (9) and substituting the following subsections:

Amendment of
s. 10—
Application for a
licence.

(9) The Tribunal shall, subject to this Act, grant a licence to an applicant if the Tribunal is satisfied that—

(a) (i) in the case of an applicant who is a natural person—

(A) the applicant is of or over the age of 18 years;

(B) the applicant is a fit and proper person to hold a licence;

and

(C) the applicant has sufficient knowledge and experience for the purpose of properly carrying on the business of a licensed dealer;

(ii) in the case of an applicant that is a body corporate—

(A) every person who is, in the opinion of the Tribunal, in a position to control or influence substantially the affairs of the body corporate is a fit and proper person to exercise such control or influence in respect of a body corporate that is a licensed dealer;

and

(B) the persons who are to direct and manage the business to be conducted in pursuance of the licence have (collectively) sufficient knowledge and experience for the purpose of properly carrying on the business of a licensed dealer;

(b) that the applicant has made suitable arrangements to fulfil the obligations that may arise under this Act;

and

(c) that the applicant has sufficient financial resources to carry on business in a proper manner under the licence.

(10) A licence may be granted under this section on such conditions as the Tribunal thinks fit.

(11) If the financial resources, or the knowledge and experience, of an applicant who is a natural person are in the Tribunal's opinion insufficient to justify granting a licence to the applicant under subsection (9), the Tribunal may nevertheless grant a licence to the applicant but on the condition that the licensee will not carry on business as a dealer except in partnership with some other licensed dealer approved by the Tribunal.

(12) Where the Tribunal grants a licence, the licence does not come into force until the prescribed licence fee is paid.

Insertion of new
s. 11a.

7. The following heading and section are inserted after section 11 of the principal Act:

DIVISION IA—CONDITIONS OF LICENCE

Conditions of
licence.

11a. (1) A licence is subject to any conditions attached to the licence—

(a) on the grant of the licence;

or

(b) in disciplinary proceedings under this Act.

(2) The Tribunal may, on the application of the licensee, vary or revoke conditions of a licence.

Amendment of
s. 12—
Registration of
dealer's business
premises.

8. Section 12 of the principal Act is amended—

(a) by striking out from subsection (1) 'A' and substituting 'Subject to this section, a';

and

(b) by inserting after subsection (3) the following subsection:

(3a) The Tribunal may, on the application of a licensee, permit the licensee on a day, or over a period, specified by the Tribunal, to carry on business as a dealer at a place (other than the registered premises of the licensee) specified by the Tribunal.

Amendment of
s. 14—
Tribunal may
exercise
disciplinary
powers.

9. Section 14 of the principal Act is amended—

(a) by striking out paragraph (c) of subsection (6) and substituting the following paragraph:

(c) where the respondent is a licensee, it may—

(i) attach conditions to the licence;

(ii) suspend the licence or a registration in the licensee's name for a specified period, until the fulfilment of stipulated conditions or until further order;

or

(iii) cancel the licence or a registration in the licensee's name;;

and

(b) by striking out subsection (10) and substituting the following subsection:

(10) There is proper cause for disciplinary action against a respondent if—

(a) the respondent—

- (i) is guilty of an offence against this Act;
- (ii) has in the course of carrying on, or being employed or otherwise engaged in, the business of a dealer committed an offence against any other Act or law, or acted negligently, fraudulently or unfairly;

(b) the respondent is a licensee and—

- (i) obtained the licence improperly;
- (ii) has failed to comply with an order of the Tribunal;
- (iii) has failed to comply with a condition of the licence;
- (iv) has insufficient financial resources properly to carry on business as a dealer;
- (v) has failed to fulfil with proper expedition obligations to a purchaser of a second-hand vehicle;
- (vi) has not maintained satisfactory arrangements for the fulfilment of obligations under this Act;

or

- (vii) has ceased to be a fit and proper person to hold a licence;

(c) the respondent is a licensee and registered premises of the licensee have ceased to be suitable for carrying on business as a dealer;

(d) the respondent is a body corporate that holds a licence and—

- (i) a person who is in a position to control or substantially influence the affairs of the body corporate is not or has ceased to be a fit and proper person to exercise such control or influence in respect of a body corporate that holds a licence;

or

- (ii) the knowledge or experience of those responsible to direct and manage the business conducted in pursuance of the licence is not sufficient for that purpose.

Amendment of
s. 28—
Second-hand
Vehicles
Compensation
Fund.

10. Section 28 of the principal Act is amended—

(a) by inserting the following paragraph immediately before paragraph (a) of subsection (2):

(aa) any fines recovered in pursuance of orders made by the Tribunal in disciplinary proceedings under this Act;;

(b) by inserting in paragraph (b) of subsection (3) “(including expenses incurred in insuring the Fund against possible claims)” after “administering the Fund”;

(c) by striking out “and” between paragraphs (b) and (c) of subsection (3);

and

(d) by inserting after paragraph (c) of subsection (3) the following word and paragraph:

and

(d) any amount certified by the Commissioner to have been paid into the Fund in consequence of a mistake of fact, or law, or mixed fact and law.

Statute Law
Revision
amendments.

11. The principal Act is amended as shown in the schedule.

SCHEDULE

The principal Act is amended as follows:

Section Amended	How Amended
Section 4	Section 4 is repealed.
Section 5— Definition of "auctioneer" Definition of "place of repair"	Delete "his". Delete "that he is liable to" and substitute "for".
Section 7 (1)	Delete "shall be in addition to and shall not derogate from" and substitute "are in addition to and do not derogate from".
Section 7 (2)	Delete "shall" and substitute "do".
Section 8	Delete "shall be responsible, subject to the control and directions of the Minister," and substitute "is, subject to the control and direction of the Minister, responsible".
Section 9 (1)	Delete this subsection and substitute: (1) A person shall not— (a) carry on business as a dealer; or (b) hold himself or herself out as a dealer, unless that person is a licensee. Penalty: \$5 000.
Section 10 (5)	Delete "within which objections must be lodged" and substitute "for lodging objections".
Section 10 (7)	Delete "upon the Commissioner or the Commissioner of Police, as the case may be" and substitute "on the objector".
Section 11 (3)	Delete "his" and substitute "the".
Section 11 (4)	Delete "his" and substitute "the". Delete "he" and substitute "the licensee".
Section 11 (7)	Delete "his" and substitute "the".
Section 11 (8)	Delete "and while the unlicensed person is carrying on business in accordance with the conditions imposed by the Tribunal he shall" and substitute "and the unlicensed person while carrying on business in accordance with the conditions imposed by the Tribunal, shall".
Section 12 (1)	Delete "his" and substitute "the licensee's".
Section 12 (5)	Delete "that he has ceased to carry on business" and substitute "of the cessation of business".
Section 13 (1)	Delete "his" and substitute "the licensee's".
Section 18 (4)	Delete "it shall be a defence for the defendant to prove that having made a proper examination of the vehicle and having made reasonable inquiries he complied with the requirements of the subsection to the best of his knowledge, information and belief" and substitute "it is a defence to prove that the defendant having made reasonable inquiries and a proper examination of the vehicle complied with the requirements of the subsection to the best of the defendant's knowledge, information and belief".
Section 18 (6)	Delete "his" and substitute "that person's".
Section 19 (2)	Delete "shall not be" and substitute "is not".
Section 19 (3)	Delete this subsection and substitute: (3) Where a contract referred to in subsection (1) does not comply with that subsection, the dealer is guilty of an offence. Penalty: \$1 000.
Section 19 (4)	Delete "his".
Section 19 (4) (b)	Delete "his".

SCHEDULE—*continued*

Section Amended	How Amended
Section 19 (5)	Delete "provided to the purchaser for his retention" and substitute "given to the purchaser for retention".
Section 19 (6)	Delete "provided to the purchaser for his retention" and substitute "given or sent to the purchaser for retention".
Section 19 (7)	Delete "by the auctioneer on his own behalf" and substitute "on the auctioneer's own behalf".
Section 20	Delete "provided to the purchaser for his retention" and substitute "given to the purchaser for retention".
Section 22 (2) (b)	Delete "his" and substitute "the auctioneer's".
Section 22 (2) (l) (ii)	Delete "his" and substitute "the auctioneer's".
Section 22 (3)	Delete "it shall be a defence for the defendant to prove that having made a proper examination of the vehicle and having made reasonable inquiries he complied with the requirements of the subsection to the best of his knowledge, information and belief" and substitute "it is a defence to prove that the defendant having made reasonable inquiries and a proper examination of the vehicle complied with the requirements of the subsection to the best of the defendant's knowledge, information and belief".
Section 22 (4)	Delete "his" and substitute "the auctioneer's".
Section 22 (5)	Delete "his" and substitute "that person's".
Section 23	Delete "are provided to the purchaser for his retention" and substitute "are given to the purchaser for retention".
Section 25 (5) (a)	Delete "his" and substitute "the". Delete "he" and substitute "the dealer".
Section 25 (5) (b)	Delete "his" and substitute "the purchaser's".
Section 26 (1)	After "he" insert "or she".
Section 26 (6)	Delete "the provisions of".
Section 26 (6) (d)	Delete "he" and substitute "the dealer".
Section 28 (4)	Delete "such amount as he may specify" and substitute "an amount specified by the Minister".
Section 29 (1)	Delete "he" and substitute "the licensee".
Section 29 (2)	Delete "his" and substitute "the".
Section 33 (1)	Delete "shall be" and substitute "is".
Section 33 (2)	Delete "on him by this Act if he" and substitute "by this Act if the person". Delete "to the person".
Section 33 (3) (b)	Delete "satisfied himself" and substitute "is satisfied".
Section 33 (4)	Delete this subsection and substitute: (4) Where a dealer purports to exclude, limit or modify any of the rights conferred by this Act, the dealer is guilty of an offence. Penalty: \$5 000.
Section 33 (7)	Delete "shall be" and substitute "is".
Section 34 (2)	After "he" insert "or she".
Section 34 (5)	Delete "shall be" and substitute "is". Delete "by him" from paragraphs (a) and (b).
Section 36	Delete "his".
Section 37	Delete "incurred by him arising by virtue of this Act in relation to that vehicle shall be void" and substitute "arising by virtue of this Act in relation to that vehicle is void".

SCHEDULE—*continued*

Section Amended	How Amended
Section 38	Delete "cause his officers to investigate and report upon" and substitute "have an investigation made and report prepared on".
Section 39 (3)	Delete "his".
Section 40 (1) (b) and (c)	Delete these paragraphs and substitute: (b) posted in an envelope addressed to the person's last known address or, in the case of a licensee, the licensee's address for service; or (c) in the case of a licensee, left for the licensee at the licensee's address for service.
Section 42	Delete "he" and substitute "the licensee".
Section 44	Delete this section and substitute: 44. Where a body corporate is guilty of an offence against this Act, a member of the governing body of the body corporate is also guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the member could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the body corporate.
Section 45 (1) (b)	Delete "he is convicted" and substitute "a conviction is recorded".
Section 47 (3)	Delete "that he has consented" and substitute "the Minister's consent".

Vicarious liability
for offences by
body corporate.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor

includes incidental operations for the management and disposal of waste, but does not include *in situ* leaching carried on in the course of mining radioactive ores;

- (e) by striking out the definition of “mining”, “mining tenement” and “the Minister of Mines” and substituting the following definitions:

“the Mines Minister” means the Minister for the time being responsible for the administration of the Mining Act, 1971:

“mining”, in relation to radioactive ores, means operations (including exploratory operations) for the extraction of such ores, and includes—

(a) incidental operations for the removal and storage of such ores;

(b) incidental operations for the management and disposal of waste;

and

(c) *in situ* leaching,

but does not include surface excavating that does not intersect radioactive ores, surface drilling or geophysical prospecting:

“mining licence” means a licence authorizing the carrying out of operations for the mining or milling of radioactive ores;

and

- (f) by striking out the definition of “prescribed mining tenement”.

4. Section 12 of the principal Act is amended by striking out paragraph (b).

Amendment of
s. 12—
Functions of the
Radiation
Protection
Committee.

5. Section 17 of the principal Act is amended—

Amendment of
s. 17—
Powers of
authorized
officers.

- (a) by striking out subsections (2) and (3) and substituting the following subsections:

(2) An authorized officer shall not exercise a power conferred by subsection (1) (a) or (b) except—

(a) in pursuance of a warrant issued by a justice;

(b) in relation to premises or a vehicle used in the course of—

(i) a business, operation or activity carried on in pursuance of an authority;

or

(ii) mining or prospecting operations;

or

(c) in a case in which the authorized officer has reasonable grounds to believe that urgent action is required.