

# MOTOR TRADES REVIEW

## SUMMARY OF PROPOSED REFORMS



DEPARTMENT OF **FAIR TRADING**  
*NSW Consumer Protection Agency*

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*Final date for submissions: Friday 31 March, 2001.*

## **MOTOR TRADE REVIEW - SUMMARY OF PROPOSALS**

### **BACKGROUND TO REVIEW**

#### **National Competition Policy legislation review process**

The Department of Fair Trading has undertaken a review of the Motor Dealers Act 1974 and the Motor Vehicle Repairs Act 1980 as part of the Government's commitments to review legislation under National Competition Policy.

The 1995 National Competition Principle Agreement establishes principles for the pro-competitive reform of government business enterprises and the removal of restrictions to markets where they are not in the public interest. Accordingly, all legislation, proposed and existing, which restricts the free operation of the market needs to be assessed as to whether those restrictions serve the public interest.

Broadly speaking, the motor trade legislation (ie. the Motor Dealers Act and Motor Vehicle Repairs Act) establishes a barrier to entry for new businesses by imposing licensing requirements.

The original legislation regulating motor dealers and repairers is now over 20 years old. Consumer needs and the motor trades have changed substantially since then. The legislation has been extensively examined and comments made by interested parties during the initial consultation on this review have been considered.

#### **Ongoing consultative process**

The result of these deliberations is a series of proposals that the Government is currently considering. As part of the next stage of the Motor Trade Review, these proposals have been, for the most part, included in exposure draft legislation in respect of which the Government is now seeking public comment.

The closing date for comments on the exposure legislation is 30 March 2001.

### **OVERALL AIMS OF REFORMS BEING CONSIDERED**

Improve consumer protection

Remove unnecessary regulation

Clarify existing legislation

Update legislation

Improve administration

## **PROPOSED REFORMS TO MOTOR DEALERS ACT**

### **IMPROVING CONSUMER PROTECTION**

#### **1. To allow for a cooling off period for certain credit purchasers of motor vehicles**

##### *Current situation*

No current provisions.

##### *Proposal*

It is proposed to amend the Act to enable the purchaser of a motor vehicle, who obtains credit for the purchase of a motor vehicle from the dealer or through a credit provider linked with the dealer, to terminate the contract not later than 1 clear working day after entering into the contract for sale. The cooling off period cannot be waived.

The proposed cooling off period will not apply to sales by dealers to trade owners or sales by auction. Additionally, it will be an offence for a dealer to dispose of a vehicle traded-in as part of the sale during the cooling off period (maximum penalty of 200 penalty units).

If the purchaser terminates the contract of sale during the cooling off period, the dealer will be required to:

- pay the purchaser all money received by the dealer under the contract, less \$250 or 2% of the purchase price, whichever is the lesser; and
- return to the purchaser any motor vehicle given in consideration of the whole or part of the purchase price, for example, a trade-in.

If the purchaser has taken possession of the vehicle and uses the cooling off period, the purchaser will be liable for any damage to the vehicle while it was in their possession.

##### *Rationale*

The proposed cooling off period will assist existing regulatory strategies in protecting against unfair practices in relation to the selling of motor vehicles. Motor vehicle sale contracts which have collateral contracts for credit have been specifically targeted as such transactions are more likely to be subject to high pressure sales negotiations. The proposed provisions are limited to the situation whereby the dealer or a credit provider linked to the dealer, provides the consumer credit in connection with the purchase of the vehicle. The length of the cooling off period should minimise costs to business while giving consumers time to consider the contents of contracts.

## **2. Regulation making power to prescribe non-mandatory model contracts or contract provisions and other documents for motor sales**

### *Current situation*

The current Act contains disclosure provisions which require prescribed notices/documents to be attached to vehicles being offered for sale. However, no disclosure requirements exist in relation to the contract of sale.

### *Proposal*

It is proposed to amend the Act to enable regulations to be made to prescribe model forms of contracts, contract provisions and other documents which may, but are not required to, be used in relation to the sale of motor vehicles and motor vehicle parts and accessories.

### *Rationale*

The aim of this proposal is to assist consumers in making properly informed purchasing decisions by disclosing standard knowable facts at the time of sale. The disclosure of a standard set of key information in model contract provisions (eg. information about commitments that are being made) would assist consumers and reduce the likelihood of subsequent disputes.

## **3. Widen scope of claims against the Motor Dealers Compensation Fund**

### *Current situation*

In general, the Act currently only permits a claim against the Motor Dealers Compensation Fund where there has been a “failure to account” by a dealer. The Act does not cover breaches of contract which are to the detriment of the consumer – eg. where a dealer agrees to pay the proceeds of a trade-in to a consumer by cheque but does not do so and the dealer goes into liquidation.

### *Proposal*

It is proposed to widen the scope of claims which may be made against the Fund to include losses incurred by a person as a result of a breach by a dealer or car market operator of a contract made by that person with the dealer or car market operator (eg. failure to provide the proceeds of a trade-in). The kinds of contractual breach for which a claim may be made will be prescribed in the regulations.

### *Rationale*

To cover situations where consumers have suffered financial loss as a result of breaches of contract by dealers.

## **4. Commercial Vehicle claims on Compensation Fund**

### *Current situation*

At present, loss suffered in relation to commercial vehicles cannot be claimed from the Motor Dealers Compensation Fund. “Commercial vehicles” are classified as exempted vehicles for the purposes of section 40(2) of the Act. “Commercial vehicles”, as defined under the Motor Dealers Regulation, covers “dual cabs” or “crew cabs”. It has been pointed out that such vehicles may be purchased for private, rather than business use.

### *Proposal*

It is proposed to amend the exemption so that claims for loss in relation to vehicles defined as “commercial” under the Act may be permitted where the claimant can substantiate that the vehicle was purchased predominantly for personal use.

### *Rationale*

To provide protection for consumers purchasing “commercial vehicles” for private use.

## **5. Disciplinary action or prosecution not affected by the surrender of a licence**

### *Current situation*

Under the Act a licence holder may surrender his or her licence. At present, the Act provides that disciplinary or prosecution action can only be taken against a current holder of a licence. So, for example, it is not possible to serve a person with a show cause notice or institute proceedings against that person for an offence against the Act, if that person has surrendered his or her licence.

### *Proposal*

It is proposed to amend the Act to provide that such action can be taken even though the person surrenders his or her licence.

It is also proposed to include this provision in the Motor Vehicle Repairs Act.

### *Rationale*

To ensure that persons can not avoid disciplinary or prosecution action by surrendering their licence

## **REMOVING UNNECESSARY REGULATION**

### **1. Removal of business knowledge and experience requirement from licence criteria under Motor Dealers Act**

#### *Current Situation*

The Motor Dealers Act 1974 sets out a number of grounds upon which an application for a dealers licence must be refused. These licensing criteria establish a means of preventing persons from holding a motor dealers licence if they demonstrably pose a risk for consumers.

At present, the grounds for refusing a licence application are that:

- the applicant does not have prescribed qualifications and expertise or experience to carry on a dealers business;
- the applicant is disqualified from holding a license;
- the applicant is an undischarged bankrupt;
- the applicant does not have, or is not likely to continue to have, sufficient financial resources to carry on business; and
- the applicant is in any other way not a fit and proper person to hold a license.

### *Proposal*

It is proposed that the Act be amended to remove the requirement that an applicant for a dealer's licence must have prescribed qualifications and expertise or experience to carry on a dealers business.

### *Rationale*

The current requirement is considered to be arbitrary and not an accurate indicator of consumer risk. However, the other grounds for refusing to grant a licence are considered essential to addressing consumer risk and will therefore be retained.

## **2. Licensees under Dealers Act may operate from more than one place of business**

### *Current situation*

The Motor Dealers Act currently requires licensed dealers to have a separate licence for each business site they operate. One of the reasons for this is to ensure proper accountability in relation to stock and traceable parts held at each site. However, this restriction may lead to a single business entity having, for example, to fill out disposal notices when transferring stock between premises.

### *Proposal*

It is proposed to allow a single licence holder to operate a licensed business at multiple business premises.

Applicants for a licence will nominate the place or places at which they intend to carry on business. Licence holders will also be able to, by way of application, add an additional place or vary the place or places at which the licensed business is to operate.

It is anticipated that licence fees will reflect the number of sites under each licence.

This proposal will also be extended to licensees under the Motor Vehicle Repairs Act.

### *Rationale*

The current situation is an unnecessary imposition on business. Issues relating to stock movements can be addressed using record-keeping provisions – there will still need to be separate records kept for sales, stock and parts movements at each licensed site.

## **3. Requirement to keep register at place of business**

### *Current situation*

The Dealers Act provides that the holder of a licence must keep at the place of business in respect of which the licence is granted, a register in the form prescribed by the regulations.

### *Proposal*

It is proposed to amend the Act to provide that if a licence is granted in respect of more than one place of business, a register may be kept at only one of those places of business if the register is kept in a form which allows it to be accessed at all the places at which the business is to be carried on (eg. a linked electronic register).

### *Rationale*

This amendment is aimed at providing greater business flexibility while ensuring that adequate records in relation to sales and stock movements are accessible for inspection by Departmental compliance officers at each business site.

## **IMPROVING ADMINISTRATION**

### **1. Compliance with other legislation**

#### *Current situation*

A notice to show cause may be issued if a licensee is contravening another Act or an instrument made under another Act by carrying on the business at the licensed place of business. There may be administrative checking of council approvals when licence applications are made.

#### *Proposal*

It is proposed to amend the Act to include that an initial application by a licence holder or a subsequent application to vary the place or places at which the licensed business operates may be refused, if the carrying on the business at that place is, for any reason, unlawful.

#### *Rationale*

The purpose of this amendment is to promote compliance with other legislation. It will enable the initial application or application for variation to be refused if, for example, operating the business at that place is contrary to a local government development approval.

### **2. Cost of administering the Motor Dealers Compensation Fund to be paid out of the Fund**

#### *Current situation*

Since 1 July 1996, the Department of Fair Trading has performed the administrative functions of various self-funding entities, for example, the Rental Bond Board. The costs associated with these functions are paid for on an operational basis in relation to activities performed and thereby reduce reliance on Government contributions or Departmental cash reserves. The recovery of administration costs in relation to the Motor Dealers Compensation Fund, funded by licence fees to support warranty and other dealer disputes, would be consistent with this principle.

#### *Proposal*

It is proposed to amend the Act to enable the costs of administering the Motor Dealers Compensation Fund, as certified by the Director-General of the Department of Fair Trading, to be recovered by the Department of Fair Trading from the Fund.



*Rationale*

This proposal will bring the Fund in line with other self-funding entities in the Fair Trading portfolio.

## **CLARIFICATION OF LEGISLATION**

### **1. Requirement to deposit in a trust account an amount equal to the value of any consideration received by the dealer for a consignment sale**

*Current situation*

The Act currently provides that where “money” is received by a dealer from the sale on consignment of a motor vehicle, the dealer must pay the money into a trust account within a prescribed time.

However, there is an anomaly in the trust account provisions relating to trade-ins accepted as part of the consideration for a vehicle sold on consignment. In this regard, doubt exists as to whether a dealer, who sells a vehicle on consignment, has to pay only the cash part into the trust account or whether the monetary value of the trade-in also has to be paid into the trust account.

*Proposal*

It is proposed to amend the Act to provide that a dealer who receives motor vehicles on consignment must deposit in a trust account not only the money received from a sale on consignment, but also an amount equal to the value of any consideration received (such as a trade-in) for the sale.

*Rationale*

To ensure the security of the consignor’s interest.

### **2. Auto-dismantlers prevented from making claims on Motor Dealers Compensation Fund**

*Current situation*

Currently, the Act prevents a trade owner from making a claim against the Motor Dealers Compensation Fund. The current definition of “trade owner” in the Act specifically includes “dealers”, but not “auto-dismantlers”. The term “dealer” as used in the Act, implicitly includes “auto-dismantlers”.

*Proposal*

It is therefore proposed to clarify that trade owners include auto-dismantlers for the purposes of the Compensation Fund provisions.

*Rationale*

This proposal will make it clear that auto-dismantlers, like other members of the motor trade, are not eligible to make claims on the Motor Dealers Compensation Fund.

### **3. Display of vehicles off licensed premises**

*Current situation*

Under the Act, licensed dealers may only sell vehicles at the place of business stated on their licence. Section 23 A of the Dealers Act establishes the grounds on which a

dealer may offer or display a motor vehicle for sale away from licensed premises. There have recently been different legal opinions as to the meaning of this section. It is felt that section 23A (2) may be somewhat confusing, especially when considering the legality of "drive days". These are occasions where motor dealers in rural areas rent space in towns where they do not have premises, to display new or demonstrator vehicles.

#### *Proposal*

Section 23A will be clarified so that the Act will permit situations where a licensed dealer brings new cars to the attention of the public and receives offers to enter into an agreement for the sale of vehicles. If more than a representative sample of the vehicles which a licensed dealer usually sells is displayed, an inference may be open that the purpose of the exhibition is to transact sales.

#### *Rationale*

To clarify intent of existing legislation.

## **PROPOSED REFORMS TO MOTOR VEHICLE REPAIRS ACT**

### **MEASURES UNDER CONSIDERATION TO IMPROVE CONSUMER PROTECTION**

#### **1. To establish a system of undertakings for motor vehicle repairers in relation to unjust conduct consistent with those applicable to motor dealers**

##### *Current situation*

The Motor Dealers Act contains a system of undertakings for repeated unjust conduct as an alternative to disciplinary proceedings. The Repairs Act does not contain provisions for a system of undertakings.

##### *Proposal*

It is proposed to insert new provisions in the Act relating to undertakings to remedy unjust conduct similar to those under the Motor Dealers Act.

The provisions will give the Director-General, with the consent of the Minister, the power to request a motor vehicle repairer to execute a deed containing undertakings if it appears to the Director-General that the repairer has, in the course of business, repeatedly engaged in unjust conduct. Undertakings will relate to the discontinuance of the unjust conduct, future conduct and rectification of the consequences of the unjust conduct.

Conduct by a repairer will be considered to be unjust if it is dishonest or unfair, in breach of contract, in contravention of the Motor Vehicle Repairers Act or the regulations or any other Act administered by the Minister for Fair Trading or fails to comply with a condition or restriction of the repairer's licence.

Disciplinary action or an application to the Fair Trading Tribunal may not be taken if a repairer complies with the undertakings. The Fair Trading Tribunal will be empowered, on application of the Director-General, to order a repairer to refrain from

engaging in the unjust conduct. It will be an offence to contravene or fail to comply with an order of the Tribunal, with a maximum penalty of 20 penalty units.

*Rationale*

To establish a range of measures (not just disciplinary action to suspend or cancel a licence) for dealing with offences by repairers.

## **REMOVING UNNECESSARY REGULATION**

### **1. Removal of business equipment requirement as prerequisite for obtaining a licence**

*Current situation*

Currently, the Act provides that MVRIC will not grant a dealers licence unless it is satisfied that the applicant has, among other things, sufficient material resources to carry on business as a repairer in respect of the class of repair work to which the licence application relates. The Act also contains a regulation making power for the purpose of prescribing materials to be used when doing any repair work.

The original justification for the inclusion of this business equipment requirement was to ensure that repairers have the correct equipment to carry out repairs.

*Proposal*

It is proposed that the Act be amended to remove this requirement.

*Rationale*

The current prescription of equipment increases repair costs, stifles innovation and adds to the cost of entry into the repairers market, thus making it harder for new, smaller scale operations to compete with established repairers.

This requirement imposes a uniform standard of “quality” on the repairs market when there are different standards according to the car being repaired and the expectations of consumers.

In addition, it is considered that repairers are capable of determining the kind of equipment they use to carry out repairs. The new training package for the motor trades emphasises competency-based training. This training covers the use of equipment. Equipment requirements should be quite adequately determined at a workplace level without regulatory intervention.

Repairers can also use the differences in their repair equipment as a marketing tool to different sectors of the market.

No other trades licensed in the Fair Trading portfolio have equipment prescribed. Occupational health and safety matters will, of course, continue to be regulated by the relevant occupational health and safety legislation.

Other existing licensing criteria will continue to apply. These include requirements:

- To be 18 years old or above;
- To be a fit and proper person;
- To have sufficient manpower and financial resources.

## **2. Allowing licensees to operate from more than one place of business, rather than having a separate licence for each premise**

### *Current situation*

Repairers must have a separate licence for each premise. The current Act only permits a single licence where business premises are in close proximity. One of the reasons for this is to ensure proper accountability in relation to traceable parts held at each site. However, this record-keeping can be addressed without requiring separate licences.

### *Proposal*

As with motor dealers, applicants for a repairers licence will nominate the place or places at which the applicant intends to carry on business on the licence application form. Accordingly, a single licence will be able to relate to more than one place of business. Licensees will be able to, by way of application, add an additional place at which the licensed business will be able to operate.

It is anticipated that licence fees will reflect the number of sites under each licence.

### *Rationale*

The current situation is an unnecessary imposition on business. Issues relating to stock movements can be addressed using record-keeping provisions – there will still need to be separate records kept for parts movements at each licensed site.

## **UPDATING LEGISLATION**

### **1. Revision of repair work categories**

#### *Current situation*

The Act currently includes 13 classes of repair work for which repairers' licences and tradespersons' certificates are granted. These categories, which include those of motor mechanic, panel beater and auto-electrician, have been in place for many years.

An Automotive Retail Services and Repair Training Package was endorsed in 1999 as part of the National Training Framework. This training package contains categories of trades and callings for the motor vehicle repair industry which are different to those under the current Act. The new scheme also includes provisions for multiple entry and exit points, choice of elective subjects and recognition of prior learning.

The existing licensing categories under the Act are not consistent with the national training package and the scope of repair work to be performed.

#### *Proposal*

It is proposed to review and revise repair certification categories to more adequately reflect national training developments. All necessary revised certification requirements will be placed in regulations made under the Act.

#### *Rationale*

Current regulation of motor repair tradespeople does not reflect industry practice or national training standards and needs to be updated.

## IMPROVING ADMINISTRATION

### **1. Transfer of responsibility for the regulation of motor vehicle repairers to the Department of Fair Trading**

#### *Current situation*

The Motor Vehicle Repairs Act is administered by the Motor Vehicle Repairs Industry Council (MVRIC). The functions of MVRIC were originally to administer the licensing scheme for motor repairers; promote standards and education in the repair industry and advise the Minister on these matters; resolve disputes and to undertake disciplinary action against licensees. However, many of these original functions have already been transferred, duplicate other existing mechanisms or could be performed more efficiently elsewhere. In particular:

- the dispute resolution function has now been transferred to the Motor Vehicle Division of the Fair Trading Tribunal;
- the provision of advice to the Minister on motor trade issues is being undertaken by the Motor Trade Advisory Council (MTAC). The membership of MTAC includes constituent interests represented on MVRIC.

#### *Proposal*

It is proposed to amend the Motor Vehicle Repairs Act 1974 to transfer the administrative responsibility for the regulation of motor vehicle repairers to the Director-General of the Department of Fair Trading.

#### *Rationale*

The Department of Fair Trading, with its Statewide network of Fair Trading Centres, will have the resources to service the State more effectively than MVRIC.

The proposed administrative transfer will result in more cost-effective consumer protection, enabling consumers and repairers to access the extensive resources of the Department.

### **2. Prescribe in the regulations qualifications required as a prerequisite to the grant of a tradesperson's certificate**

#### *Current situation*

The Repairs Act provides that a person can not be granted a trade certificate unless the person, among other things, has such qualifications or has passed such examinations as may be prescribed in the regulations or other qualifications or experience or has passed such examinations as may be determined by MVRIC.

However, at present, the regulations do not prescribe any qualifications or examinations as a prerequisite to the grant of a tradesperson's certificate. Rather, these qualifications are determined administratively by MVRIC. This current situation does not provide for sufficient public scrutiny of the standards required to obtain a trade certificate.

#### *Proposal*

It is proposed that the qualifications acceptable for the granting of a trade certificate be prescribed in the regulations.

### *Rationale*

To ensure an adequate level of transparency and accountability in relation to the qualifications required for the granting of a trade certificate.

### **3. To make aspects of the licensing scheme for motor vehicle repairers consistent with the licensing scheme for motor dealers**

With the proposed transfer of the administrative responsibility for the regulation of motor vehicle repairers to the Department of Fair Trading, the opportunity has been taken to harmonise, where appropriate, the licensing requirements under the Act and Motor Dealers Act.

Accordingly, it is proposed to amend the Act so that:

- provisions relating to the granting of licences to body corporates and authorising licence holders to carry on businesses in partnership with specified persons will reflect equivalent provisions under the Motor Dealers Act (eg. requiring details of the date and place of incorporation);
- the Director-General of the Department of Fair Trading will be given the power to investigate applications for licences or to request the Commissioner of Police to investigate an application for a licence – no such details are currently in the Act;
- a licence will be able to authorise a motor vehicle repairer to carry on business under names that are in addition to, or in substitution for, the name of the holder. It will be an offence for a person to carry on, or advertise that the person is willing to carry on, the licensed business under names not authorised by the licence. The maximum penalty for the offence will be 20 penalty units (currently one penalty unit equals \$110);
- licence holders under the Act will be required to pay an annual licence fee and lodge an annual statement. The annual statement covers matters relating to criminal convictions and business solvency. There is currently no requirement for repairers to lodge such a statement. The Director-General will be required to cancel the licence of a person who fails to pay the annual fee or lodge the annual statement after being given 14 days notice to do so. It will be an offence to knowingly give false information regarding an annual statement or accompanying documents. The maximum penalty for the offence will be 20 penalty units;
- licensed repairers carrying on business in partnership will be required to indicate in the licence application the name of the business partner. Business partners will also be assessed to determine whether they are fit and proper persons. Under the current Act, partners may, but are not required to hold a joint licence;
- licence applicants, before the application is granted or refused, will be required to notify the Department of Fair Trading of changes to any details on the application within 14 days of the change. The current Act does not include this specific requirement;
- the Act sets out the criteria to be taken into account for the purpose of determining whether an applicant for a licence is a fit and proper person. While the current Act uses the term “fit and proper”, the term is not defined. The criteria will include whether the applicant has been convicted of an offence involving fraud or dishonesty in the last 10 years or whether the applicant has been convicted of an offence against the Act or another Act which is administered by the Minister for Fair Trading;

- the Director General will be able to impose conditions or restrictions on a licence or tradesperson's certificate and will also be able to vary or revoke such conditions and restrictions – these conditions are currently imposed by the MVRIC;
- it will be an offence to provide false or misleading information in a licence application. The maximum penalty for the offence will be 20 penalty units. The current penalty for making false and misleading statements under the Act (s57) is 5 penalty units. It will be an offence to transfer, attempt to transfer or lend a licence to another person to use the licence. In addition, a person must not attempt to obtain the transfer to the person of a licence or attempt to borrow or use a licence of which the person is not the holder. The maximum penalty for these offences will be 20 penalty units;
- disciplinary action or prosecution will not be affected by the surrender of a licence or trades certificate;
- the provision in the Act which provides for the refund of fees by MVRIC on withdrawing an application for a trade certificate is omitted;
- references to master licences under the Business Licenses Act are removed, as that licensing scheme is no longer in operation;
- licence applications are to be made in the form approved by the Director-General rather than the Minister for Fair Trading;
- a penalty is imposed for a second or subsequent licensing offence of a maximum of 500 penalty units or 12 months imprisonment or both.

#### **4. To make the disciplinary provisions applicable to motor vehicle repairers consistent with those applicable to motor dealers**

##### *Current situation*

Complaints may be made to MVRIC, which may then issue a show cause notice to a licensee and hold an inquiry for the holder to show cause. Procedures for the inquiry are formal and involve personal appearances, representations and the hearing of evidence.

A licensee may be suspended by MVRIC following an investigation and hearing by MVRIC or the licence may be cancelled and the former holder disqualified permanently or for a set period. Any such decision may be appealed in the Local Court.

Certification for tradespersons may be also be suspended or cancelled.

With the proposed transfer of the administrative responsibility for the regulation of motor vehicle repairers to the Department of Fair Trading, the opportunity has been taken to harmonise, where appropriate, the enforcement requirements under the Act and Motor Dealers Act.

##### *Proposal*

- the Director-General will be able to issue a notice to show cause to a licence or certificate holder on becoming aware that a reasonable ground for taking action against the licence or certificate holder exists. Grounds for show cause action are similar to existing grounds in the Repairs Act, with some amendments to take into

account proposals under consideration (eg. removal of prescribed equipment requirements) and include:

- the licence holder has carried on the business of a repairer in such a manner that the repair work done has been below usual trade standards or that the business has been carried out in a dishonest or unfair manner;
  - the certificate holder is not competent to do repair work of the class to which the certificate relates;
  - the licence or certificate holder has been convicted of an offence against the Act or regulations or another Act administered by the Minister for Fair Trading.
  - upon being issued with a show cause notice, the holder of the licence or certificate and a partner of the holder or a director or officer of a corporate holder has the right to make submissions and give evidence. The Director-General may conduct such inquiries and make such investigations as the Director-General thinks fit;
  - action which may be taken against a licence/certificate holder, if the Director-General is satisfied that reasonable grounds exist, will include reprimanding the holder, requiring the holder to comply with a requirement specified by the Director-General, suspending or cancelling the licence or certificate, disqualifying the person from holding a licence or being concerned in the direction, management or conduct of a licensed business and imposing a condition or restriction on the licence or certificate.
  - it will be an offence if a repairer:
    - fails to comply with a requirement specified by the Director-General;
    - fails to return a suspended or cancelled licence or certificate; or
    - is involved in the direction, management or conduct of a business while disqualified.
- The maximum penalty for these offences will be 20 penalty units.
- an applicant will have the right to appeal to the Administrative Decisions Tribunal against a decision by the Director General
    - to refuse an application for a licence or certificate;
    - to amend the licence;
    - to cancel or suspend a licence or certificate,
    - to impose or vary a condition or restriction on a licence or certificate;
    - to impose a disqualification.

#### *Rationale*

Consistent with administrative transfer to DFT.

### **5. To enable penalty notices to be issued for certain offences under the Motor Vehicle Repairs Act**

#### *Current situation*

With the proposed transfer of the administrative responsibility for the regulation of motor vehicle repairers to the Department of Fair Trading, the opportunity will be taken to bring the Act into line with the Motor Dealers Act in relation to the issuing of penalty notices. There are currently no provisions under the Act for the issuing of penalty notices.

#### *Proposal*

It is proposed to amend the Repairs Act so as to enable penalty notices to be issued for certain offences against the Act which are prescribed in the regulations.



### *Rationale*

The use of penalty notices allows offenders to have a breach dealt with without the need to attend court if they so choose. It does not take away a person's right to have the matter determined by a court. If the alleged offender does not wish to have the matter dealt with by a court he or she may pay the penalty. Where the penalty is paid no further proceedings may be taken in respect of the alleged offence. Payment of the penalty does not constitute an admission of liability or prejudice any civil claim or proceedings relating to the same occurrence. The amount of the penalty is prescribed in the regulations and cannot exceed the maximum amount which can be imposed by the court.

## **6. Changes to provisions relating to proceedings under the Act**

### *Current situation*

The Repairs Act currently has proceedings for offences against the Act heard by a Local Court.

With the transfer of the administrative responsibility for the regulation of motor vehicle repairers to the Department of Fair Trading, the opportunity will be taken to make the provisions relating to proceedings for offences against the Act more consistent with the equivalent provisions contained in the Motor Dealers Act.

### *Proposal*

It is proposed to amend the Act to enable proceedings for offences to be taken before the Supreme Court in its summary jurisdiction and limit the penalty that may be imposed by a Local Court for an offence to the lesser of 50 penalty units or the maximum penalty for the offence.

### *Rationale*

Consistency with administrative transfer to DFT.

## **7. To make penalty levels more consistent with the Motor Dealers Act**

With the proposed transfer of the administrative responsibility for the regulation of motor vehicle repairers to the Department of Fair Trading, the opportunity will be taken to bring penalty levels for a number of offences under the Act in line with penalty levels for equivalent offences under the Motor Dealers Act. Accordingly, the Act will be amended to increase the maximum penalty a court can impose for a person:

- carrying on the business of a repairer without a licence or at an unlicensed place from 20 penalty units to 500;
- obstructing an inspector in exercising his/her powers under the Act or regulation from 5 penalty units to 20;
- providing false or misleading statements in an application for a trades certificate from 5 penalty units to 20; and
- holding out that they are a holder of a certificate if that person is not a holder of a certificate from 2 penalty units to 20.

### *Rationale*

The abovementioned offences are equivalent and should be subject to the same penalties.

## **8. Changes to the Motor Vehicle Repairs Contingency Fund to make it more consistent with the Motor Dealers Compensation Fund**

### *Current situation*

The Repairs Act establishes a Contingency Fund financed by licence fees. Claims to the value of \$3,000 relating to a loss incurred because repair work was not done competently may be made.

With the proposed transfer of the administrative responsibility for the regulation of motor vehicle repairers to the Department of Fair Trading, the Motor Vehicle Repairs Contingency Fund will be administered by the Department of Fair Trading. The opportunity will also be taken to make the Motor Vehicle Repairs Contingency Fund more administratively consistent with the Motor Dealers Compensation Fund.

### *Proposal*

It is proposed to amend the Act to enable the amount of the costs of administering the Motor Dealers Compensation Fund, as certified by the Director-General of the Department of Fair Trading, to be paid out of the Fund, in addition to the amounts currently payable out of the fund.

It is also proposed to remove the current upper limit of \$3000 on claims against the Fund for losses in connection with motor vehicle repair work. The Director-General takes over the claimant's rights against a repairer once the claimant has been compensated from the Fund. The Director-General will also be able to take action to recover and return to the Fund the amount paid out in compensation.

### *Rationale*

As noted in the proposed changes to the Motor Dealers Act, since 1 July 1996, the Department of Fair Trading has performed the administrative functions of various self-funding entities. The costs associated with these functions are paid for on an operational basis in relation to activities performed and thereby reduce reliance on Government contributions or Departmental cash reserves. The recovery of administration costs in relation to the Motor Vehicle Contingency Fund would be consistent with this principle.