

**Model  
Motor Trade (Accreditation) Act 2014**

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*Discussion Draft 29 September 2014*

**Motor Trade (Accreditation) Act 2014**

**PART 1—PRELIMINARY**

**1. Objects of this Act**

The objects of this Act are—

- (a) to establish a system of accreditation for motor dealers, motor repairers and motor recyclers to ensure that they act with integrity and in a manner that is ethical, timely, transparent and law-abiding;
- (b) to impose obligations on motor dealers, motor repairers, motor recyclers and related businesses to ensure that stolen motor vehicles or parts are not traded by them or other persons in the chain of responsibility;
- (c) provide protections and remedies for consumers who engage in transactions with motor dealers, motor repairers and motor recyclers.

**2. Commencement**

This Act commences on a day to be fixed by proclamation.

**3. Definitions**

In this Act—

- “**accreditation**” means accreditation granted or renewed under section 12.
- “**accredited business**” means an accredited business within the meaning of section 6.
- “**inspector**” means a person appointed under section 78 by the Regulator.
- “**category 1 offence**” means an offence referred to in Part 1 of Schedule 1.
- “**category 2 offence**” means an offence referred to in Part 2 of Schedule 1.
- “**civil penalty provision**” means a the provision which sets out at its foot a pecuniary penalty, other than a penalty indicated by the words “Criminal penalty”.
- “**commercial offence**” means an offence referred to in section 54.
- “**consumer law**” means an Act listed in Schedule 2;
- “**continuous improvement duty**” means the duty set out in section 7.
- “**corresponding authority**” means a person or body having functions corresponding to those of the regulator, under a corresponding law.

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**“corresponding law”** means a law of another jurisdiction in Australia that corresponds to this Act or a provision of this Act.

**“disciplinary event”** means an act, failure or finding referred to in section 31.

**“exclusion order”** means an order made under section 71.

**“manager”** means a manager within the meaning of section 13.

**“minimum standards duty”** means the duty set out in section 8.

**“motor vehicle financier”** means a person, other than a person prescribed for the purposes of this definition, who deals in motor vehicles in connection with—

- (a) the provision of credit within the meaning of the National Credit Code, whether or not that code applies to the provision of that credit;
- (b) the letting of motor vehicles to other persons for periods of three months or more without an option to purchase; or
- (c) any other purpose prescribed for the purposes of this definition.

**“motor vehicle broker”** means a person who negotiates on behalf of other persons for the purchase of motor vehicles by those persons and of advising other persons on the purchase of motor vehicles;

**“motor vehicle dealer”** means a person who deals in motor vehicles on a retail or wholesale basis, but does not include—

- (a) a motor vehicle financier;
- (b) a motor vehicle broker.

**“motor vehicle dealer accreditation”** means accreditation which authorises the holder to carry on business as a motor vehicle dealer.

**“motor vehicle accessory”** means an additional part or fitting intended to be attached to or carried by a motor vehicle for the purpose of enhancing its comfort, appearance or performance, other than a part or fitting prescribed as not being a motor vehicle accessory.

**Example**

A sound, internet or navigation device, an air conditioning unit, spare wheel or tools.

**“motor vehicle part”** includes a motor vehicle accessory.

**“motor vehicle recycler”** means a person who—

- (a) buys or obtains motor vehicles, parts or accessories and demolishing or dismantling them; or
- (b) buys and sells major body and mechanical components of motor vehicles, major car accessories and parts or other prescribed accessories or parts;

**“motor vehicle recycler accreditation”** means accreditation which authorises the holder to carry on business as a motor vehicle recycler.

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“**motor vehicle repairer**” means a motor vehicle repairer within the meaning of section 5;

“**motor vehicle repairer accreditation**” means accreditation which authorises the holder to carry on business as a motor vehicle repairer.

“**nominated manager**” means the person nominated under section 14.

“**party in the chain of responsibility**” has the meaning given to it in section 4.

“**prescribed**” means prescribed by regulations made under this Act.

“**prohibition determination**” means a decision under section 18 that a person is disqualified from applying for accreditation for a certain period.

“**related business**” means the business of—

- (a) a motor vehicle broker; or
- (b) a motor vehicle financier.

“**Regulator**” means [*name of regulator*].

“**relevant court**” means [*name of court*].

#### 4. Parties in the chain of responsibility

For the purposes of this Act, a person is a party in the chain of responsibility if he or she carries on business as a—

- (a) motor vehicle dealer;
- (b) motor vehicle recycler;
- (c) motor vehicle repairer;
- (d) motor vehicle financier;
- (e) motor vehicle broker.

#### 5. Motor vehicle repairer

- (1) Subject to subsections (2) and (3), a person is a motor vehicle repairer if he or she makes repairs to motor vehicles.
- (2) This section does not apply to a person who carries out repair work only—
  - (a) in the course of employment with another person;
  - (b) on the person’s own motor vehicle.
- (3) In this section, *repairs* does not include work which, under the regulations, is not repair work for the purposes of this section.

#### 6. Accredited business

For the purposes of this Act, a person is an accredited business if—

- (a) the person is the owner of the business; and

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- (b) a person (whether or not the same person) is accredited to carry on the business.
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Part 2 — Accreditation

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**PART 2 — ACCREDITATION**

**Division 1 — Continuous improvement and minimum standards**

**7. Continuous improvement**

An accredited person is under a duty to take suitable measures to ensure that the accredited business is continuously improved.

**8. Minimum standards**

- (1) An accredited person is under a duty to ensure that the accredited business achieves and maintains minimum business standards.
- (2) In this section “**minimum business standards**” means—
  - (a) any applicable business standards made under section 23;
  - (b) requirements of this Act relating to complaint handling and record keeping; and
  - (c) standards of business organisation and behaviour which should be achieved and maintained by any business operating in the relevant market.

**Division 2 — Persons who must be accredited**

**9. Motor vehicle dealers, repairers and recyclers must be accredited**

- (1) A person must not carry on the business of a motor vehicle dealer unless the person is accredited to do so.
- (2) A person must not carry on the business of a motor vehicle recycler unless the person is accredited to do so.
- (3) A person must not carry on the business of a motor vehicle repairer unless the person is accredited to do so.
- (4) A person may be granted accreditation to carry on more than one type of business.

**10. Partnerships**

A person is not guilty of an offence against section 9 if the person carries on business in partnership with another person and the other person has the appropriate accreditation.

**11. Corporation**

A corporation may be accredited in accordance with section 14.

**Division 3 — Obtaining accreditation**

**12. Grant, renew or vary accreditation**

- (1) Subject to this Act, the regulator may grant accreditation to a person, or vary, renew, suspend or terminate a person’s accreditation, as—
  - (a) a motor vehicle dealer;

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- (b) a motor vehicle recycler;
- (c) a motor vehicle repairer.
- (2) In performing its functions and exercising its powers under this Act, the regulator must have regard to—
  - (a) the minimum standards objective; and
  - (b) the continuous improvement objective.

#### 13. Application for accreditation

- (1) A person may apply to the regulator for the grant or renewal of accreditation.
- (2) An application for accreditation must—
  - (a) be made in the manner and form determined by the regulator;
  - (b) include the prescribed information;
  - (c) be accompanied by the prescribed fee;
  - (d) include evidence, in accordance with the regulations, that each manager in relation to the application satisfies the requirements for the accreditation applied for.
- (3) In this section, “**manager**” means who is, or after accreditation will be—
  - (a) in the case of a corporation, a director of the corporation;
  - (b) in any case, concerned in the direction, management or conduct of the business.

#### 14. Application by a company

- (1) A corporation that is an applicant for accreditation must nominate a qualified manager who is to be responsible for ensuring that the corporation complies with its duties under this Act.
- (2) If a nominated manager ceases to be associated with an accredited corporation, the corporation must, within 30 days, provide notice in writing to the regulator of another qualified person who is to be responsible for ensuring that the company complies with its duties under this Act.
- (3) On receipt by the regulator of a notice under subsection (2) the person becomes the nominated manager for the corporation.
- (4) The regulator may communicate with and serve notices on a nominated manager in relation to—
  - (a) the application for accreditation for which the person was nominated; and
  - (b) the accreditation for which the person was nominated.
- (5) Service on a nominated manager by the regulator is taken to be service on the corporation.

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- (6) In this section, “**qualified manager**”, in relation to a corporation, means the person who is an officer or employee of the corporation who has primary responsibility for managing the operation of the business.

#### 15. **Mandatory refusal**

The Regulator must refuse an application for accreditation if the applicant, or in the case of a corporation, a responsible person associated with the corporation—

- (a) has been found guilty of a category 1 offence within 10 years before the application is made;
- (b) is subject to a current prohibition determination;
- (c) is subject to a current exclusion order.

#### 16. **Discretionary refusal: offences**

- (1) The Regulator may refuse an application for accreditation if it is aware that an applicant, or an applicant’s nominated manager—
- (a) has been found guilty of a category 2 offence; or
  - (b) is the subject of a charge for a category 1 offence or a category 2 offence that has not been finally disposed of at the time of considering the application.
- (2) In making a decision under subsection (1), the Regulator must have regard to—
- (a) the nature and gravity of the offence and its relevance to the activities in respect of which accreditation is sought;
  - (b) the period of time since the offence was committed;
  - (c) whether a finding of guilt or conviction was recorded;
  - (d) the sentence (if any) imposed for the offence;
  - (e) the age of the person when the offence was committed;
  - (f) the behaviour of the person since committing the offence;
  - (g) the likelihood of the person committing another such offence;
  - (h) any information given by the applicant or nominated manager; and
  - (i) any other matter that the regulator considers relevant.

#### 17. **Discretionary refusal: other grounds**

- (1) The regulator may refuse an application for accreditation if it believes on reasonable grounds that—
- (a) the applicant has contravened a business or service standard applicable to an accreditation held, or previously held, by the applicant under this Act;
  - (b) the applicant has contravened a condition, restriction or other limitation imposed on an accreditation held, or previously held, by the applicant under this Act; or

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- (c) the applicant, or a relevant person in relation to the applicant, has contravened a provision of this Act or regulations made under this Act.
- (2) Nothing in this section limits the discretion of the Regulator to approve or refuse an application for accreditation.

#### **18. Refusal of application**

- (1) If the Regulator decides to refuse to an application for the issue or renewal of accreditation—
  - (a) the Regulator must notify the applicant of the decision and the reasons for it;
  - (b) the Regulator may determine that the applicant is disqualified from applying for accreditation under this Division for a specified period.
- (2) A prohibition order is current from the day it is notified to the applicant until the expiry of the specified period.

#### **19. Duration of accreditation**

- (1) Accreditation remains in force for three years or the shorter period specified by the Regulator, and may be renewed.
- (2) The period of accreditation must be specified in the certificate of accreditation.

#### **20. Limitations and conditions applying to accreditation**

- (1) In accrediting an applicant, the regulator may impose limitations and conditions which it considers to be appropriate.
- (2) Without limiting subsection (1), the regulator may—
  - (a) impose conditions on the accreditation that are not inconsistent with this Act or the regulations;
  - (b) restrict the scope of the accreditation.
- (3) An accreditation is also subject to any limitations or conditions set out in the regulations as in force from time to time that apply to the accreditation.

#### **21. Offence to fail to comply with conditions**

An accredited person must comply with any limitations or conditions applying to the accreditation.

Penalty: 20 penalty units.

#### **Division 4 — Responsibilities of accredited persons**

#### **22. Accreditation cannot be transferred**

- (1) Accreditation—
  - (a) is personal to the accredited person;

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- (b) is not capable of being transferred or assigned to another person or otherwise dealt with by the accredited person;
  - (c) does not vest by operation of law in any other person.
- (2) A purported transfer, assignment or lease of an accreditation and any purported dealing with an accreditation by the person who holds it is of no effect.
- (3) An accredited person must not purport to transfer or assign the accreditation to any other person or otherwise purport to deal with it.

#### 23. Business standards

- (1) The Minister may, by notice published in the Government Gazette, give notice of proposed business standards to be met by all accredited persons or by a specified class, or specified classes, of accredited persons.
- (2) The notice must—
- (a) state the reasons for, and the objectives of, the proposed standards;
  - (b) specify where a copy of the proposed standards can be obtained; and
  - (c) invite public comment or submissions during the period (being not less than 30 days from publication of the notice) specified in the notice.
- (3) After considering any public comment or submissions made within the specified time, the Minister may publish the business standards, with any additions, amendments or deletions which the Minister considers appropriate.
- (4) Business standards may specify standards in relation to:
- (a) compliance with applicable legislation;
  - (b) business capability;
  - (c) information and records management;
  - (d) financial viability;
  - (e) customer service;
  - (f) procedures to be followed in respect of vehicles, or vehicle parts, which may be stolen or illegally obtained;
  - (g) dealings with industry participants, customers and government;
  - (h) complaint handling;
  - (i) any other matter which the Minister considers to be appropriate.

#### 24. Certain persons not to be employed as manager

- (1) Subject to subsection (2), an accredited person must not employ in a relevant position a person who the party knows—
- (a) has had a claim admitted against the [*consumer protection fund*];

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- (b) is or was a partner or director of, or a person concerned in the management of, a partnership or body corporate that has had a claim admitted against the [*consumer protection fund*] in relation to an act or omission that occurred at the time the person was a partner or director of, or a person concerned in the management of, the partnership or body corporate;
  - (c) has, within the last ten years, been convicted or been found guilty of a category 1 offence (whether or not a conviction was recorded);
  - (d) has, within the last ten years, been convicted or been found guilty of a category 2 offence (whether or not a conviction was recorded) (unless the person has obtained permission under section subsection (3));
  - (e) is the subject of a current prohibition determination or exclusion order.
- (2) In this section “**relevant position**” means a position in a business operated by the accredited person (whether or not an accredited business)—
- (a) as a manager;
  - (b) in the case of employment by a motor vehicle trader, motor vehicle broker or motor vehicle repairer, in a customer service capacity.
- (3) The Regulator may, on application, grant permission for a person to be employed in a relevant position despite the fact that he or she has been convicted or found guilty of a category 2 offence within the last ten years.

#### 25. Complaint records

- (1) An accredited person must—
- (a) record and maintain information about complaints relating to the business;
  - (b) if requested by the Regulator, provide information to the regulator about complaints and their handling.

#### 26. Keeping records

An accredited person must keep prescribed records in relation to—

- (a) the accredited business;
- (b) motor vehicles and motor vehicle parts acquired or disposed of.

Penalty: 30 penalty units.

#### 27. Steps to be taken to ensure accuracy of records

An accredited person, and a person who is required by this Act to be accredited, must take such steps as are reasonable in the circumstances to ensure that —

- (a) records which it is required to keep under this Act are accurate, up-to-date and complete; and
- (b) information which it provides to the regulator is accurate, up-to-date and complete.

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**Division 5 — Audit**

**28. Self-audit**

- (1) An accredited person must ensure that regular audits are conducted by an independent person to determine whether the record-keeping responsibilities imposed by this Act are being complied with.
- (2) If required by the regulator, an accredited person must —
  - (a) ensure that an independent person is engaged to determine whether the record-keeping responsibilities imposed by this Act are being complied with; and
  - (b) ensure that a copy of the report of the independent person is provided to the regulator.

**29. Audit by regulator**

- (1) The regulator may conduct an audit of—
  - (a) the compliance by an accredited person of the person's compliance with obligation imposed by this Act;
  - (b) the conduct of the affairs of an accredited business, including—
    - (i) transactions;
    - (ii) record-keeping; and
    - (iii) the conduct of persons which is, or may be, relevant to affairs of the accredited business.
- (2) The regulator may, in writing, appoint a suitably qualified person to conduct an audit under this section, either generally or in relation to a particular audit.
- (3) An audit may be conducted whether or not an audit has been conducted or required under section 28.
- (4) The report of an audit—
  - (a) is to be provided to the accredited person concerned;
  - (b) may be provided by the regulator to a corresponding authority; and
  - (c) may be taken into account in connection with any disciplinary proceeding taken against the accredited person, a director or other person in relation to accreditation under this Act.

**30. Investigation powers relating to audits**

- (1) The regulator may require an accredited person subject of an audit under section 29, or an employee or associate of the accredited business, to—
  - (a) provide—
    - (i) a full written explanation of the person's, or the business', conduct; and

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- (ii) any other information or documents;
    - (b) verify any explanation, information or documents which have been provided by the person to the regulator.
  - (2) For the purposes of an audit under section 29, the regulator may require any other person having control of documents relating to an accredited business to give to the regulator—
    - (a) access to documents relating to the accredited business that the regulator reasonably requires; and
    - (b) information relating to the accredited business that the regulator reasonably requires, verified in the manner specified in the requirement.
  - (3) A requirement under subsection (1) or (2) must be in writing, and must allow at least 14 days to comply.
  - (4) A person who is subject to a requirement under subsection (1) or (2) must comply with the requirement within the allowed time.
- Penalty:** 50 penalty units.

#### Division 6 — Disciplinary action

### 31. When regulator may take disciplinary action

- (1) The Regulator may take disciplinary action against an accredited person if satisfied that the accredited person or the nominated manager—
  - (a) has contravened, or is likely to contravene—
    - (i) a provision of this Act, regulations made under this Act or a consumer law;
    - (ii) a condition of accreditation;
    - (iii) a business standard applicable to the person's accreditation;
  - (b) has not taken suitable measures, despite warning, to ensure that the accredited business—
    - (i) achieves and maintains minimum business standards;
    - (ii) is continuously improved;
  - (c) has failed to comply with an enforceable undertaking;
  - (d) has been found guilty of a category 3 offence;
  - (e) it appears to the regulator that the person is probably receiving or dealing in stolen vehicle or parts;
  - (g) the accreditation may have been improperly obtained or there may have been grounds for refusing to grant it;
  - (h) in the case of a motor vehicle dealer, motor vehicle repairer or motor vehicle recycler, an additional grounds set out in section 32 applies.

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- (2) Disciplinary action must not be commenced against a formerly accredited person more than 12 months after the person last ceased to be accredited.

#### 32. Additional grounds for disciplinary action

- (1) For the purposes of section 31, additional grounds for a motor vehicle dealer, motor vehicle repairer or motor vehicle recycler are—
- (a) the accredited business has not been conducted in accordance with the requirements of applicable legislation;
  - (b) the accredited business has been carried on in a dishonest or unfair manner;
  - (c) the person has not, for a period of one month or more, carried on business at a place specified in the certificate of accreditation;
  - (d) [New South Wales] in the case of a motor vehicle dealer or motor vehicle recycler, the person has contravened section 73(1) or (3) of the *Road Transport Act 2013* or statutory rules made under Part 4.5 of that Act;
  - (e) [New South Wales] in the case of a motor vehicle repairer, the person has contravened or is likely to contravene section 98 of the *Road Transport Act 2013* or statutory rules made under Part 4.5 of that Act;
  - (f) in the case of a motor dealer—
    - (i) there has been undue delay, or unreasonable refusal, on the part of the person in paying, applying or accounting for trust money; or
    - (ii) there is a deficiency in a trust account maintained under this Act;
  - (g) the person has failed to comply with a rectification order made against the person under Part 3 of this Act;
  - (h) the person is contravening another law by carrying on business at a place specified in the certificate of accreditation as being the place where the accredited business is to be operated;
  - (i) in the case of a body corporate—
    - (i) the body corporate is being wound up, is a body corporate in respect of which a receiver or other controller has been appointed, or has entered into a compromise or scheme of arrangement with its creditors; or
    - (ii) the body corporate may, for any other reason, be unable or to meet its liabilities.

#### 33. Show cause notice

- (1) The Regulator may issue a show cause notice if it considers that, under section 31, there may be grounds for taking disciplinary action.
- (2) A show cause notice must—
- (a) be in writing; and

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- (b) require the accredited person or nominated person to show cause, within the period specified in the notice (being not less than 14 days after the notice is given), why disciplinary action should not be taken against the person.
- (3) The period specified in a show cause notice must be not less than 14 days after the notice is given.
- (4) The person to whom a show cause notice is given may, within the period allowed by the notice, make oral or written submissions to the regulator.
- (5) The Regulator must take into consideration any submissions made under subsection (4) before taking disciplinary action.

#### **34. Power to suspend licence when show cause notice given**

- (1) After a show cause notice is given to an accredited person, the Regulator may by notice in writing to the person suspend the person's accreditation pending a determination by the regulator whether to take disciplinary action.
- (2) The suspension must not be for a period of more than 60 days after the show cause notice is given.
- (3) The Regulator is not required to give a person an opportunity to be heard before taking action against the person under this section.
- (4) The Regulator may revoke a suspension under this section at any time by notice in writing to the person.

#### **35. Inquiries and investigations**

The Regulator may, if the Regulator thinks fit, conduct inquiries and carry out investigations in relation to the matters to which a show cause notice relates and the submissions, if any, made by or on behalf of the person to whom the show cause notice relates.

#### **36. Regulator may take disciplinary action**

- (1) If the Regulator believes that there are grounds for taking disciplinary action against a person, it may—
  - (a) reprimand the person,
  - (b) direct the person to take specified action within a specified time in connection with the conduct of the accredited business;
  - (c) require the person to give an enforceable undertaking;
  - (d) suspend the person's accreditation for a period not exceeding the unexpired term of the accreditation,
  - (e) impose conditions on the person's accreditation;
  - (f) require the person to make a contribution to the [Compensation Fund] of a specified amount or indemnify the Fund to the extent of a specified amount, in the event of a particular contingency arising from the person's activities,

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#### **37. Enforceable undertaking**

- (1) The Regulator may accept a written undertaking given by a person in respect of—
  - (a) a matter in relation to which the regulator has a power or function under this Act;
  - (b) a matter relating to a contravention of any consumer law.
- (2) The person may, with the consent of the Regulator, vary or withdraw an undertaking at any time.
- (3) The Regulator may, with the consent of the person who gave the undertaking, apply at any time to the relevant court for an order directing the person to comply with the undertaking.
- (4) On an application under subsection (3), the relevant court may by order direct the person who gave the undertaking to comply with the undertaking.

#### **Division 7 — Variation and termination of accreditation**

#### **38. Accredited person found guilty of an offence**

- (1) If the regulator becomes aware that an accredited person, a nominated manager or a relevant person has been found guilty of a category 1 offence, the regulator must cancel the accreditation.
- (2) If the regulator becomes aware that an accredited person, a nominated manager or a relevant person has been found guilty of a category 2 offence, the regulator may cancel the accreditation.

#### **39. Regulator may vary, revoke or impose new conditions**

- (1) The Regulator may at any time, on the Regulator's own initiative or on the written application of the accredited person—
  - (a) vary or revoke a condition, restriction or other limitation imposed by the regulator on an accreditation;
  - (b) impose a new condition, restriction or limitation on an accreditation;
  - (c) subject to subsection (2), revoke a person's accreditation.
- (2) The Regulator must not revoke a person's accreditation on the ground of failure to comply with business standards unless—
  - (a) the Regulator has first provided the accreditation person with opportunity to rectify the non-compliance;
  - (b) by reason of the person's repeated failure to comply with business standards the Regulator believes that failure will continue to occur.
- (3) The Regulator must not take action under subsection (1) on its own initiative unless it has—
  - (a) notified the accredited person, in writing, of the action that it proposes to take and the reasons for it;

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- (b) invited the accredited person to make a submission in writing about the proposed action within a specified period, being not less than 21 days after the date of the notice; and
- (c) considered any submission made by the accredited person within the specified period.

**40. Surrender of accreditation**

- (1) An accredited person may surrender his or her accreditation by giving the certificate of accreditation to the regulator with a notice in writing that the accreditation is surrendered.
  - (2) If the certificate of accreditation has been lost or destroyed, it is sufficient if the notice in writing sets out that fact.
  - (3) The surrender of accreditation after the issue of a notice under section 39(3) does not affect the taking of any disciplinary action by the Regulator, and for that purpose, the accreditation is taken not to have been surrendered.
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Part 3 — Consumer Protection

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**PART 3 — CONSUMER PROTECTION**

**41. [insert consumer protection provisions here]**

*This Part to make provision for consumer protection, including—*

- *rectification order, where a motor car dealer has failed to make good a vehicle as required by a guarantee (see cross reference in clause 32);*
  - *administration of the Fund, including exclusion of persons who have had a claim admitted and lifting of the exclusion;*
  - *agreements for sale or repair and their terms.*
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Part 4 —Steps to Eliminate Trade in Stolen Vehicles and Parts

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**PART 4 —STEPS TO ELIMINATE TRADE IN STOLEN VEHICLES AND PARTS**

**Division 1 — Chain of Responsibility**

**42. Duty of parties in the chain of responsibility**

- (1) A person who is a party in the chain of responsibility must take all reasonable steps to ensure that a stolen motor vehicles or parts are not traded by—
- (a) that person;
  - (b) any other party in the chain of responsibility;
  - (c) an employee of that person or of any other person in the chain of responsibility;
  - (d) a sub-contractor of a person referred to in paragraph (a), (b) or (c).

Penalty: 30 penalty units.

- (2) A person charged with an offence under subsection (1) does not have the benefit of the mistake of fact defence.
- (3) For the purposes of subsection (1)—
- (a) it is relevant to consider the business practices of the person’s accredited business;
  - (b) it is evidence that an accredited person took all the reasonable steps required by that subsection if the person—
    - (i) complied with the requirement of the person’s accreditation; or
    - (ii) complied with the requirements of a corresponding law relating to business practices.
- (4) In a prosecution for an offence under subsection (1), it is not necessary to prove that any particular trade of a stolen vehicle or part occurred, would or may have occurred.
- (5) In this section, “**business practices**” includes—
- (a) the operating policies and procedures of a business; and
  - (b) the human resource and contract management arrangements of a business; and
  - (c) arrangements for ensuring the integrity of business transactions.

**43. Prohibited contracts**

- (1) A person must not enter into a contract with a party in the chain of responsibility that the person knows, or reasonably ought to know, would encourage or require the party in the supply chain to trade in stolen vehicles or parts.

Penalty: 30 penalty units.

**44. What constitutes reasonable steps**

- (1) This section applies if—

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- (a) a provision of this Part requires a person to take all reasonable steps to ensure that an industry participant trade in stolen motor vehicles or parts; or
  - (b) a person intends to rely on the reasonable steps defence.
- (2) The person is to be regarded as having taken all reasonable steps to prevent the trade if the person, at least annually and after each event that indicated that there may be trade in stolen motor vehicles or parts by an industry participant—
- (a) identified and assessed—
    - (i) the risk of unlawful trade by an industry participant; and
    - (ii) the measures the person may take to eliminate the risk or, if it is not reasonably possible to eliminate the risk, to minimise the risk;
  - (b) took the measures identified and assessed under paragraph (a)(ii);
  - (c) documented the actions the person took under this subsection to prevent the act or omission that led to the contravention.
- (3) This section does not limit the circumstances in which the court may consider the person to have taken reasonable steps to prevent the act or omission that led to the contravention.
- (4) A person is not required to keep a document under subsection (2)(e) for longer than three years.

#### 45. Reasonable steps defence

If a provision of this Part states that a person has the benefit of the reasonable steps defence, it is a defence to a charge for an offence against that provision if the person charged proves that—

- (a) the person did not know, and could not reasonably be expected to have known, of the contravention concerned; and
- (b) either—
  - (i) the person took all reasonable steps to prevent the contravention; or
  - (ii) there were no steps the person could reasonably be expected to have taken to prevent the contravention.

#### 46. Acts or omissions constituting reasonable steps

- (1) In deciding whether things done or omitted to be done by a person constitute all reasonable steps, regard may be had to the following—
- (a) the circumstances of the alleged offence, including any risk category for the contravention constituting the offence;
  - (b) the measures available and the measures taken for any or all of the following—
    - (i) to exercise supervision or control over others involved in activities leading to the contravention;

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- (ii) to include compliance assurance conditions in relevant commercial arrangements with other industry participants;
- (iii) to provide information, instruction, training and supervision to employees to enable compliance with relevant laws;
- (iv) to maintain equipment and work systems to enable compliance with relevant laws;
- (v) to address and remedy similar compliance problems that may have happened in the past;
- (c) the personal expertise and experience that the person charged had or ought to have had or that an agent or employee of the person charged had or ought to have had;
- (d) the nature of the activity to which the contravention relates;
- (e) the risks to safety associated with the nature of the activity;
- (f) the likelihood of the risks to safety referred to in paragraph (e);
- (g) the degree of harm likely to result from the risks to safety referred to in paragraph (e) arising;
- (h) the measures available and measures taken—
  - (i) to prevent, eliminate or minimise the likelihood of a potential contravention happening; or
  - (ii) to eliminate or minimise the likelihood of a risk to safety arising from a potential contravention; or
  - (iii) to manage, minimise or eliminate a risk to safety arising from a potential contravention;
- (i) the costs of measures referred to in paragraph (h);
- (j) any accreditation scheme, expert opinion, guidelines, standards or other knowledge about preventing or managing exposure to unlawful trade in motor vehicles or parts.

#### **47. Inclusion of reasonable diligence**

If a person intends to rely on the reasonable steps defence, the taking of all reasonable steps includes the exercise of reasonable diligence.

#### **48. Compliance with industry code of practice**

- (1) This section applies for deciding whether a person charged with an offence under this Part in relation to a transaction in a stolen motor vehicle or parts took all reasonable steps to prevent the contravention.
- (2) If the person proves that the person complied with all relevant standards and procedures, including, for example, a registered industry code of practice and the spirit

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of the code, in relation to matters to which the offence relates, that is evidence that the person took all reasonable steps to prevent the contravention.

- (3) Subsection (2) does not apply unless the person charged has given written notice of the intention to prove the matters referred to in that subsection to the prosecution.
- (4) The notice must be—
  - (a) signed by the person; and
  - (b) given at least 28 days before the day fixed for the hearing of the charge.

**49. Exclusion of mistake of fact defence**

- (1) This section applies if a provision of this Part states that a person does not have the benefit of the mistake of fact defence for an offence.
- (2) It is not a defence to a charge for the offence for the person to prove that, at or before the time of the conduct constituting the offence, the person was under a mistaken but honest and reasonable belief about facts which, had they existed, would have meant that the conduct would not have constituted an offence.

**Division 2 — Specific obligations relating to stolen vehicles and parts**

**50. Obligation to report suspicious vehicle or part**

An accredited person or an employee of an accredited business, must, without unreasonable delay, inform the Regulator if he or she suspects for any reason that any of the following may have been stolen or unlawfully obtained—

- (a) a motor vehicle, motor vehicle part or anything else that is in the custody of the accredited person or employee;
- (b) a motor vehicle, motor vehicle part or anything else that is offered to the accredited person or employee for sale.

Penalty: 30 penalty units.

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Part 5 —Offences

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**PART 5 —OFFENCES**

**Division 1— Liability of directors, partners, employers and others**

**51. Liability of directors, partners, employers and others**

- (1) If a body corporate commits an offence under this Act, each director of the body corporate, and each person concerned in the management of the body corporate, is deemed to have also committed the offence.
- (2) If a person who is a partner in a partnership commits an offence under this Act in the course of the activities of the partnership, each other person who is a partner in the partnership, and each other person concerned in the management of the partnership, is deemed to have also committed the offence.
- (3) If a person who is concerned in the management of an unincorporated association commits an offence under this Act in the course of the activities of the unincorporated association, each other person concerned in the management of the unincorporated association is deemed to have also committed the offence.
- (4) If an employee commits an offence under this Act in the course of employment, the employer is deemed to have also committed the offence.
- (5) It is a defence to a charge for an offence arising under subsection (4) if the person charged establishes that he or she—
  - (a) had no knowledge of the actual offence; and
  - (b) took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.
- (6) It is a defence to a charge for an offence arising under subsection (1), (2) or (3) if the person charged establishes that—
  - (a) he or she was not in a position to influence the conduct of the person who actually committed the offence in relation to the commission of the offence; or
  - (b) he or she, being in such a position, took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.
- (7) A person may be proceeded against in relation to, and be found guilty of, an offence arising under this section whether or not the person who actually committed the offence has been proceeded against in relation to, or been found guilty of, the offence.
- (8) However, if at the time that a charge for an offence arising under this section is heard no person has been found guilty of the offence which gave rise to the charge, in determining the charge regard must be had to any defences available to any relevant person with respect to the offence which gave rise to the charge.
- (9) A person who is found guilty of an offence arising under this section is liable to the penalty for that offence.

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Part 5 — Offences

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**Division 2 — Publicising offences**

**52. Regulator may publicise offences**

- (1) The Regulator may publicise, in any way he or she thinks appropriate, an offence against this Act for which a person has been convicted.
- (2) This Division does not:
  - (a) limit the Regulator’s powers to publicise an offence against this Act;
  - (b) prevent anyone else from publicising an offence against this Act; or
  - (c) affect any obligation (however imposed) on anyone to publicise an offence against this Act.

**Division 3 — Infringement notices**

**53. Infringement notices**

- (1) The regulations may provide for a person who is alleged to have committed an offence against this Act to pay a penalty to the Regulator as an alternative to prosecution or proceedings for a civil penalty order.
- (2) The penalty must not exceed one fifth of the maximum fine that a court could impose on the person as a penalty for that offence or that contravention.

**Division 4 — Commercial Offences**

**54. Application of this Division**

- (1) This Division applies only to commercial offences.
- (2) For the purposes of this Division a “**commercial offence**” is an offence which—
  - (a) is committed by a person who —
    - (i) is, or who under this Act is required to be, accredited under this Act; or
    - (ii) carries on an associated business; and
  - (b) involves trade (whether by that person or another person) in stolen motor vehicles or unlawfully obtained vehicle parts.
- (3) An offence is a commercial offence whether or not—
  - (a) it is proved the person engaged in trade involving any particular vehicle or part or more than one motor vehicle or part;
  - (b) the offence was committed under this Act.

**55. Double jeopardy not to occur**

Nothing in this Division is intended to have the effect of making a person liable to conviction more than once in relation to particular conduct that constitutes a commercial offence.

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#### **56. Commercial benefits penalty order**

- (1) This section applies if a court finds a person guilty of a commercial offence.
- (2) On the application of the prosecutor or of the Regulator, the court may order the person to pay, as a fine, an amount not exceeding three times the amount estimated by the court to be the gross commercial benefit that—
  - (a) was received or receivable, by the person or an associate of the person, from the commission of the offence; and
  - (b) in the case of a transaction or series of transactions that was interrupted or was not commissioned because of action taken by an inspector or member of the police force, would have been received or receivable, by the person or an associate of the person, from the commission of the offence had the transaction or series of transactions taken place.
- (3) In estimating gross commercial benefit, the court may take into consideration—
  - (a) benefits of any kind, whether or not monetary;
  - (b) subject to subsection (4), anything else that it considers to be relevant.
- (4) In estimating gross commercial benefit the court must not take into consideration any costs, expenses or liabilities incurred by the person or an associate of the person.
- (5) Nothing in this section prevents the court from ordering payment of amount that is less than the amount calculated under subsection (2).
- (6) The court may make an order under this section in addition to, or instead of, any other penalty it may impose on the person in respect of the offence.

#### **57. Supervisory intervention orders**

- (1) This section applies if—
  - (a) a court finds a person guilty of a commercial offence; and
  - (b) the court considers the person to be a person who systematically or persistently commits commercial offences.
- (2) On the application of the prosecutor or of the Regulator, the court may order the person (at the person's own expense, and for a specified period not exceeding one year) to do all of any of the following—
  - (a) to do specified things that the court considers will reduce the number of commercial offences that the person commits, including (for example)—
    - (i) appointing or removing staff to or from particular activities or positions;
    - (ii) training and supervising staff;
    - (iii) obtaining expert advice as to how to avoid committing the offences;
    - (iv) installing monitoring, compliance managerial or operational equipment;

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- (v) implementing monitoring, compliance, managerial or operational practices, systems or procedures;
- (b) to conduct specified monitoring, compliance, managerial or operational practices, systems or procedures subject to the direction of the regulator or a person nominated by the regulator;
- (c) to furnish compliance reports to the regulator;
- (d) to appoint a person to have responsibility for—
  - (i) assisting the person to avoid committing commercial offences;
  - (ii) monitoring the person's performance in not committing commercial offences and in complying with the requirements of the order; and
  - (iii) furnishing compliance reports to the regulator.
- (3) The court may specify matters that are to be dealt with in compliance reports and the form, manner and frequency in which compliance reports are to be prepared and furnished.
- (4) The court may require that compliance reports or aspects of compliance reports be made public, and may specify the form, manner and frequency in which they are to be made public.
- (5) The court may make an order only if it is satisfied that the order is capable of reducing the number of commercial offences the person commits, having regard to—
  - (a) the person's ability or willingness to comply with relevant laws;
  - (b) the relevant commercial offences which the person has been found guilty, or in respect of which infringement notices have been issued and not withdrawn; and
  - (c) any other offences or matters that the court considers to be relevant to the conduct of the person in connection with the motor trade.
- (6) The court may direct that any other penalty or sanction imposed for the offence by the court is suspended until the court determines that there has been substantial failure to comply with the order.

#### Division 5 — Civil Penalty Orders

##### 58. Application for order

- (1) The Regulator may apply to a relevant court for an order that a person, who is alleged to have contravened a civil penalty provision, pay to the Regulator a pecuniary penalty.
- (2) The Regulator must make the application within four years after the alleged contravention.

##### 59. Court may order person to pay pecuniary penalty

- (1) If the relevant court is satisfied that the person has contravened the civil penalty provision, the court may order the person to pay a pecuniary penalty, in accordance with section 60.

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- (2) An order under this section is a civil penalty order.

#### **60. Pecuniary penalty**

- (1) A pecuniary penalty must not exceed—
- (a) if the person is a body corporate, five times the pecuniary penalty specified for the civil penalty provision; and
  - (b) in any other case, the pecuniary penalty specified for the civil penalty provision.
- (2) In determining the pecuniary penalty, the relevant court may take into account all relevant matters, including—
- (a) the nature and extent of the contravention;
  - (b) the nature and extent of any loss or damage resulting from contravention;
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by a court to have engaged in any similar conduct.

#### **61. Civil enforcement of penalty**

- (1) A pecuniary penalty is a debt payable to the Regulator.
- (2) The Regulator may enforce a civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person.

#### **62. Conduct contravening more than one civil penalty provision**

If conduct constitutes a contravention of two or more civil penalty provisions—

- (a) proceedings may be instituted under this Part against a person in relation to the contravention of one or more of those provisions;
- (b) the person is not liable to more than one pecuniary penalty under this Part in relation to the same conduct.

#### **63. Multiple contraventions**

- (1) A relevant court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.
- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

#### **64. Proceedings may be heard together**

A relevant court may direct that two or more proceedings for civil penalty orders are to be heard together.

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**65. Civil evidence and procedure rules for civil penalty orders**

A relevant court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

**66. Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

**Division 6 — Civil proceedings and criminal proceedings**

**67. Civil proceedings after criminal proceedings**

A relevant court may not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

**68. Criminal proceedings during civil proceedings**

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if criminal proceedings are commenced or have already been commenced against the person for an offence which is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) If the person is not found to have committed the offence, the proceedings may be resumed.
- (3) If the person is found to have committed the offence—
  - (a) the civil proceedings are dismissed;
  - (b) costs must not be awarded in relation to the civil proceedings.

**69. Criminal proceedings after civil proceedings**

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person in relation to the contravention.

**70. Evidence given in civil proceedings not admissible in criminal proceedings**

- (1) Evidence of information given, or evidence of production of documents by an individual, is not admissible in criminal proceedings against the individual if—
  - (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and

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- (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) Subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

#### **Division 7 — Exclusion order**

##### **71. Circumstances in which an exclusion order may be made**

A court may make an exclusion order if—

- (a) the court finds that the person has committed an offence against this Act, or is a responsible person of a body corporate which has committed an offence against this Act;
- (b) on application by the Regulator.

##### **72. Criteria for making an exclusion order**

In deciding whether to make an exclusion order, and in determining the duration of an exclusion order, a court must take into consideration—

- (a) the circumstances and gravity of the offence or the behaviour giving rise to the application by the Regulator;
- (b) any submissions or evidence presented by the person in relation to the proposed order.

##### **73. Making of an exclusion order**

- (1) An exclusion order must specify—
  - (a) the person to whom the order applies;
  - (b) the commencement and duration of the order.
- (2) An exclusion order has effect according to its terms.

#### **Division 8 — Miscellaneous**

##### **74. Ancillary contravention of civil penalty provisions**

- (1) A person must not—
  - (a) attempt to contravene a civil penalty provision;
  - (b) aid, abet, counsel or procure a contravention of a civil penalty provision;
  - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision;
  - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (e) conspire with others to effect a contravention of a civil penalty provision.

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- (2) Section 77 does not apply to subsection (1) of this section.

Note

Section 77 provides that a person's state of mind does not need to be proven in relation to a civil penalty provision.

- (3) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened that provision.

**75. Continuing contraventions of civil penalty provisions**

- (1) If a civil penalty provision requires something to be done within a particular period, or before a particular time, the obligation continues until it is done (even if the period has expired or the time has passed).
- (2) A person who contravenes a civil penalty provision that requires something to be done within a particular period, or before a particular time, commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

**76. Mistake of fact**

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if—
- (a) at or before the time of the conduct constituting the contravention, the person:
- (i) considered whether or not facts existed; and
- (ii) was under a mistaken but reasonable belief about those facts; and
- (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if—
- (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
- (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

**77. State of mind**

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision, it is not necessary to prove the person's intention, knowledge, recklessness, negligence or any other state of mind.
- (2) This section does not affect the operation of section 76.

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**PART 6 — ENFORCEMENT**

**Division 1— Inspectors**

**78. Appointment of inspectors**

- (1) The Regulator may, by instrument in writing, appoint as an inspector—
  - (a) an officer or employee of the Regulator;
  - (b) an officer or employee of an agency of a State or Territory.
- (2) The Regulator must not appoint an officer or employee of an agency of a State or Territory as an inspector without the agreement of the State or Territory.
- (3) In exercising his or her powers or performing his or her functions an inspector must comply with any direction of the Regulator.
- (4) The Regulator must not appoint a person as an inspector unless the Regulator is satisfied that the person is appropriately qualified or has successfully completed appropriate training.

**79. Inspector's identification**

- (1) The Regulator must issue identification to each inspector.
- (2) Identification must contain a photograph of the inspector to whom it is issued.

**80. Production of identification**

- (1) An inspector must produce his or her identification for inspection—
  - (a) before exercising a power under this Part; and
  - (b) at any time during the exercise of a power under this Part, if asked to do so.

Penalty: 10 penalty units.

- (2) Subsection (1) does not apply to—
  - (a) a requirement made by post; or
  - (b) the exercise of a power under section 87.

**81. Retention of suspicious goods**

- (1) An inspector who has reasonable grounds for believing that a motor vehicle, motor vehicle part, or anything else that is in the possession of an accredited business has been stolen or is unlawfully obtained may issue a non-disposal notice to the accredited business.
- (2) A “**non-disposal notice**” is a notice that prohibits the accredited person, for a period of 14 days after the notice is given, from altering the form of the thing, selling or otherwise disposing of it in any way or parting with possession of it.

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- (3) A relevant court may, on application by an inspector, order that the effect of a non-disposal notice be extended for a further period of up to 28 days. More than one application may be made under this subsection.
- (4) An accredited person, or an employee of an accredited person, must not contravene a notice given under this section.

Penalty: 100 penalty units.

#### **Division 2—Requirement to produce information**

##### **82. Inspector may seek court order**

- (1) If an inspector believes on reasonable grounds that a person may have contravened this Act or the regulations, the inspector may apply to the Magistrates' Court for an order requiring any person at a time and place specified by the inspector—
  - (a) to answer orally or in writing any questions put by an inspector in relation to the alleged contravention;
  - (b) to supply orally or in writing information required by an inspector in relation to the alleged contravention;
  - (c) to produce to an inspector specified documents or documents of a specified class relating to the alleged contravention.
- (2) An application under subsection (1) must be made with the written approval of the Regulator.
- (3) The Magistrates' Court may make the order if the court is satisfied that there are reasonable grounds to believe that a person may have contravened this Act or the regulations.
- (4) An order must state a day, not later than 28 days after the making of the order, on which the order ceases to have effect.

##### **83. Inspection of documents under court order**

- (1) If any documents are produced to an inspector under an order made under section 82, the inspector may—
  - (a) inspect the documents or authorise a person to inspect the documents;
  - (b) make copies of or take extracts of the documents;
  - (c) seize the documents;
  - (d) secure any seized documents against interference;
  - (e) retain possession of the documents in accordance with this Part.
- (2) An inspector may only seize documents under subsection (1)(c) if the inspector considers the documents necessary for the purpose of obtaining evidence for the purpose of any proceedings against any person under this Act or the regulations or any other Consumer Act or the regulations under that Act.

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**Division 3—Entry and search of premises with consent**

**84. Entry and search with consent**

- (1) If an inspector believes on reasonable grounds that a person has contravened this Act or the regulations, the inspector, with the consent of the occupier of premises, may—
  - (a) enter and search the premises; and
  - (b) exercise a power referred to in subsection (2) and (3) at the premises.
- (2) An inspector may—
  - (a) seize anything the inspector finds on the premises if the inspector believes on reasonable grounds the thing is connected with the alleged contravention;
  - (b) examine, take and keep samples of any goods the inspector finds on the premises if the inspector believes on reasonable grounds the goods are connected with the alleged contravention;
  - (c) in the case of any document on the premises, do any of the following in relation to the document, if the inspector believes on reasonable grounds the document is connected with the alleged contravention—
    - (i) require the document to be produced for examination;
    - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts;
    - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document.
- (3) An inspector may make any still or moving image or audio-visual recording if the inspector believes on reasonable grounds it is necessary to do so for the purpose of establishing the alleged contravention.

**85. Notice before entry and search**

An inspector must not enter and search any premises under section 84 unless, before the occupier consents to the entry and search, the inspector has—

- (a) produced his or her identification for inspection; and
- (b) informed the occupier—
  - (i) of the purpose of the search; and
  - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of any thing found during the search; and
  - (iii) that the occupier may refuse to give consent to the taking of any sample of goods or any copy or extract from a document found on the premises during the search; and
  - (iv) that any thing seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.

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**86. Acknowledgement of consent to entry and search**

- (1) If an occupier of premises consents to the entry and search of the premises by an inspector under section 84, the inspector must, before entering the premises, ask the occupier to sign an acknowledgment stating—
  - (a) that the occupier has been informed—
    - (i) of the purpose of the search;
    - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of anything found during the search; and
    - (iii) that the occupier may refuse to give consent to the taking of any sample of goods or any copy or extract from a document found on the premises during the search; and
    - (iv) that anything seized or taken during the search with the consent of the occupier may be used in evidence in proceedings; and
  - (b) that the occupier has consented to the entry and search; and
  - (c) the date and time that the occupier consented.
- (2) If an occupier of premises consents to the seizure or taking of anything during a search of the premises by the inspector, the inspector must, before seizing or taking the thing, ask the occupier to sign an acknowledgement stating—
  - (a) that the occupier has consented to the seizure or taking of the thing; and
  - (b) the date and time that the occupier consented.
- (3) An inspector must give a copy of a signed acknowledgement to the occupier before leaving the premises.
- (4) If, in any proceeding, a signed acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or the taking of the thing.

**Division 4 — Entry and search of premises without consent**

**87. Entry of premises open to the public**

An inspector may enter and inspect any part of a premises that is, at the time of the entry and inspection, open to the public.

**88. Emergency entry**

- (1) An inspector may enter and search any premises at any time, if the inspector believes on reasonable grounds that there is evidence of goods being supplied from the premises which are—
  - (a) dangerous if used; or
  - (b) which are being supplied in contravention of an interim ban or permanent ban.

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- (2) An inspector may enter and search premises under subsection (1) with the assistance of—
  - (a) another inspector;
  - (b) a member of the police force; or
  - (c) any other person necessary to provide technical assistance to the inspector.
- (3) If an inspector finds goods which may be stolen, the inspector may prohibit the removal of the goods by notice—
  - (a) given to the occupier of the premises or the person who has or may reasonably be presumed to have control over the business conducted on the premises; or
  - (b) affixed to the goods.
- (5) A notice under subsection (3) ceases to have effect at the end of 72 hours after the notice is given or affixed under that subsection, whichever is the earlier.
- (6) A person must not remove goods from premises in contravention of a notice under this section.

Penalty: 100 penalty units.

#### **89. Entry without consent or warrant**

- (1) For the purpose of monitoring compliance with this Act or the regulations, or an order made by a court or tribunal under this Act or the regulations, an inspector may enter and search any premises at which the inspector believes on reasonable grounds—
  - (a) a person is conducting a business or supplying goods or services; or
  - (b) a person is keeping a record or document that—
    - (i) is required to be kept by this Act or the regulations; or
    - (ii) may show whether or not this Act or the regulations are being complied with.
- (2) An inspector who enters and searches premises under subsection (1) may—
  - (a) examine anything found on the premises;
  - (b) seize anything found on the premises or secure anything found on the premises against interference, if the inspector believes on reasonable grounds that the thing is connected with a contravention of this Act or the regulations;
  - (c) take and keep samples of anything found on the premises, if the inspector believes on reasonable grounds that the thing is connected with a contravention of this Act or the regulations;
  - (d) examine and test any equipment found on the premises that is of a kind used in connection with the supply of goods or services;
  - (e) in the case of any document on the premises, do all or any of the following—
    - (i) require the document to be produced for examination;

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- (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts;
  - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;
  - (f) make any still or moving image or audio-visual recording;
  - (g) bring any equipment onto the premises that the inspector believes on reasonable grounds is necessary for the examination or processing of things (including documents) found at the premises in order to determine whether they are things that may be seized under this section.
- (3) A power under subsection (1)—
- (a) must not be exercised in any part of the premises that is used for residential purposes; and
  - (b) must be exercised between the hours of 9 a.m. to 5 p.m., or when the premises are open for business.
- (4) If an inspector exercises a power of entry under this section without the owner or occupier being present the inspector, on leaving the premises, must leave a notice setting out—
- (a) the time of entry;
  - (b) the purpose of entry; and
  - (c) a description of things done while on the premises; and
  - (d) the time of departure; and
  - (e) the procedure for contacting the Regulator for further details of the entry.

#### **90. Use or seizure of electronic equipment at premises**

- (1) An inspector may, operate, or require the occupier of premises or an employee of the occupier to operate, equipment found at premises during a search.
- (2) If the inspector believes on reasonable grounds that a disc, tape or other storage device at the premises contains, stores or is otherwise used in the transmission of information that is relevant to determine whether this Act or the regulations have been complied with, the inspector may—
  - (a) put the information in a documentary form and seize the documents so produced; or
  - (b) copy the information to another disc, tape or other storage device and remove that disc, tape or storage device from the premises; or
  - (c) if it is not practicable to put the information in a documentary form or to copy the information, seize the disc, tape or other storage device and the equipment that enables the information to be accessed.

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**Division 5—Entry and search of premises with warrant**

**91. Search warrants**

- (1) A relevant court may, on application by an inspector, issue a search warrant in relation to particular premises.
- (2) An application under subsection (1) must not be made unless the inspector—
  - (a) believes on reasonable grounds that there is evidence on the premises that a person may have contravened this Act or the regulations; and
  - (b) has the written approval of the Regulator.

**92. Form and content of search warrants**

- (1) A search warrant issued under section 91 may authorise the inspector named in the warrant to enter premises specified in the warrant, if necessary by force, and do any of the following—
  - (a) if the inspector believes on reasonable grounds that a thing, or thing of a particular kind, named or described in the warrant is connected with the alleged contravention—
    - (i) search for the thing;
    - (ii) seize the thing;
    - (iii) secure the thing against interference;
    - (iv) examine, inspect and take and keep samples of the thing;
  - (b) in the case of any document, or document of a particular kind, named or described in the warrant, if the inspector believes on reasonable grounds that the document is connected with the alleged contravention—
    - (i) require the document to be produced for inspection;
    - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts;
    - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;
  - (c) make any still or moving image or audio-visual recording of any thing of a particular kind named or described in the warrant, if the inspector believes on reasonable grounds that it is connected with the alleged contravention.
- (2) A search warrant issued may authorise, in addition to an inspector, any other person named or otherwise identified in the warrant to execute the warrant.
- (3) A search warrant issued must state—
  - (a) the purpose for which the search is required and the nature of the alleged contravention; and
  - (b) any conditions to which the warrant is subject; and

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- (c) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.

#### **93. Announcement before entry**

- (1) On executing a search warrant the inspector named in the warrant—
  - (a) must announce that he or she is authorised by the warrant to enter the premises; and
  - (b) if the inspector has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—
  - (a) the safety of any person; or
  - (b) that the effective execution of the search warrant is not frustrated.

#### **94. Details of warrant to be given to occupier**

- (1) If the occupier is present at premises where a search warrant is being executed, the inspector must—
  - (a) identify himself or herself to the occupier; and
  - (b) give to the occupier a copy of the warrant.
- (2) If the occupier is not present at premises where a search warrant is being executed, the inspector must—
  - (a) identify himself or herself to a person at the premises; and
  - (b) give to the person a copy of the warrant.

#### **95. Seizure of things not mentioned in the warrant**

A search warrant issued under section 91 authorises an inspector named in the warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize or take a sample of anything which is not of the kind described in the warrant if—

- (a) the inspector believes on reasonable grounds that the thing—
  - (i) is of a kind which could have been included in a search warrant issued under this Part; or
  - (ii) will afford evidence about the contravention of this Act; and
- (b) in the case of the seizure of a thing, the inspector believes on reasonable grounds that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of this Act.

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**Division 6—Embargo notices**

**96. Embargo notices**

- (1) An inspector executing a search warrant authorising the seizure of anything may issue an embargo notice, if the thing cannot, or cannot readily, be physically seized and removed.
- (2) An embargo notice must be issued—
  - (a) by serving a copy of the notice on the occupier; or
  - (b) if that person cannot be located after all reasonable steps have been taken to do so, by affixing a copy of the notice to the thing in a prominent position.
- (3) A person who knows that an embargo notice relates to a thing must not, without the written consent of the inspector who issued the embargo notice, sell, lease, transfer or otherwise deal with the thing or any part of it.  
Penalty: 100 penalty units.
- (4) It is a defence to a prosecution for an offence against subsection (3) to prove that the accused moved the thing or the part of the thing for the purpose of protecting and preserving it.
- (5) A sale, lease, transfer or other dealing with a thing in contravention of this section is void.

**97. Monitoring compliance with embargo notices**

For the purpose of enabling compliance with section 96 to be monitored, on application by an inspector, relevant court may make—

- (a) an order requiring the owner of the thing to which an embargo notice relates, or the occupier of the premises where the thing is kept or required under the notice to be kept, to answer questions or produce documents at a time and place specified by the inspector; and
- (b) any other order incidental to or necessary for monitoring compliance with section 96.

**98. Search warrants in relation to embargo notices**

- (1) If a thing is subject to an embargo notice, the relevant court, on application by an inspector, may issue a search warrant permitting entry to the premises where the thing is kept or required to be kept for the purpose of monitoring compliance with the notice.

**Division 7—Documents**

**99. Copies of seized documents**

- (1) If an inspector retains possession of a document seized from a person under this Part, the inspector must give the person, within 21 days after the seizure, a copy of the document certified as correct by the inspector.

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- (2) A copy of a document certified under subsection (1) is to be received in all courts and tribunals to be evidence of equal validity to the original.

**100. Retention and return of seized documents or things**

- (1) If an inspector seizes a document or other thing under this Part, the inspector must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document or thing seized has not been returned within three months after it was seized, the inspector must take reasonable steps to return it unless—
- (a) proceedings for the purpose for which the document or thing was retained have commenced within that three month period and those proceedings (including any appeal) have not been completed;
  - (b) the court makes an order extending the period during which the document or thing may be retained; or
  - (c) a court makes an order permitting the destruction of the thing.
- (3) This section does not apply to a sample taken by an inspector in the exercise of a power under this Part.

**Division 8—Offences relating to inspection**

**101. Refusal or failure to comply with requirement**

A person must not, without reasonable excuse, refuse or fail to comply with a requirement of the Regulator or an inspector under this Part.

Penalty: 60 penalty units.

**102. Protection against self-incrimination**

- (1) Subject to subsection (2), it is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Part, if the giving of the information or the doing of that other thing would tend to incriminate the person.
- (2) It is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce by or under this Part, if the production of the document would tend to incriminate the person.

**103. Offence to hinder or obstruct inspector**

A person must not, without reasonable excuse, hinder or obstruct an inspector who is exercising a power under this Part.

Penalty: 60 penalty units.

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**104. Offence to impersonate an inspector**

A person who is not an inspector must not, in any way, hold himself or herself out to be an inspector.

Penalty: 60 penalty units.

**Division 9 —Miscellaneous**

**105. Entry to be reported to the Regulator**

- (1) If an inspector exercises a power of entry under this Part, the inspector must report the exercise of the power to the Regulator within seven days after the entry.
- (2) The report must include all relevant details of the entry including—
  - (a) the time and place of the entry;
  - (b) the purpose of the entry;
  - (c) a description of things done while on the premises, including details of things seized, samples taken, copies made and extracts taken; and
  - (d) the time of departure.

**106. Requirement to assist inspector during entry**

To the extent that it is reasonably necessary to determine compliance with this Act or the regulations, an inspector exercising a power of entry under this Part who produces his or her identification for inspection by the occupier of the premises or an agent or employee of the occupier may require that person—

- (a) to give information to the inspector, orally or in writing; and
- (b) to produce documents to the inspector; and
- (c) to give reasonable assistance to the inspector.

**107. Register of exercise of powers of entry**

The Regulator must keep a register containing the particulars of all matters reported to the Regulator under section 105.

**108. Complaints**

- (1) Any person may complain to the regulator about the exercise of a power by an inspector under this Part.
- (2) The Regulator must—
  - (a) investigate any complaint made to the Regulator; and
  - (b) provide a written report to the complainant on the results of the investigation.

**109. Service of documents**

- (1) A written requirement by an inspector under this Part may be—

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- (a) given personally or sent by registered post to a person at the last known place of business, employment or residence of the person; or
  - (b) in the case of a body corporate, given personally or sent by post at the registered office of the body corporate.
- (2) A person who provides a document or information in response to a requirement of an inspector under this Part may send that document or information to the Regulator by registered post.

**110. Confidentiality**

- (1) An inspector must not disclose to any other person, whether directly or indirectly, any information obtained by the inspector in carrying out his or her functions under this Part.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply to the disclosure of information—
- (a) to the extent necessary to carry out the inspector's functions under this Act;
  - (b) to a court or tribunal in the course of legal proceedings;
  - (c) pursuant to an order of a court or tribunal;
  - (d) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or Territory or of the Commonwealth;
  - (f) with the written authority of the regulator; or
  - (g) with the written authority of the person to whom the information relates.

**111. Copies of seized documents**

- (1) If an inspector retains possession of a document taken or seized from a person under this Division, the inspector must give the person, within 21 days of the seizure, a copy of the document certified as correct by the inspector.
- (2) A copy of a document certified under subsection (1) shall be received in all courts and tribunals to be evidence of equal validity to the original.

**112. Retention and return of seized documents or things**

- (1) If an inspector seizes a document or other thing under this Division, the inspector must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document or thing seized has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—
- (a) proceedings for the purpose for which the document or thing was retained have commenced but are not completed (including any period for appeal and determination of any appeal); or

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- (b) a relevant court makes an order under this section extending the period during which the document or thing may be retained.
- (3) A relevant court, on application by an inspector, may extend the period during which a document or thing may be regained.

#### **113. Requirement to assist inspector during entry**

- (1) For the purpose of determining compliance with this Act or the regulations, an inspector exercising a power of entry under this Division who produces his or her identity card for inspection by the occupier of the premises or an agent or employee of the occupier may require that person—
  - (a) to give information to the inspector, orally or in writing;
  - (b) to produce documents to the inspector; and
  - (c) to give reasonable assistance to the inspector.
- (2) A person must not refuse or fail, without reasonable excuse, to comply with a requirement of an inspector under this section.

Penalty: 60 penalty units.

#### **114. Offence to give false or misleading information**

A person must not—

- (a) give information to an inspector that the person believes to be false or misleading in any material particular; or
- (b) produce a document to an inspector that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 30 penalty units.

#### **115. Powers of court if requirement to produce information not complied with**

- (1) If the Regulator is satisfied that a person has, without reasonable excuse, failed to comply with a requirement of an inspector, the Regulator may certify that failure to a court.
- (2) If the regulator certifies under subsection (1), the court may order the person to comply with the requirement within the period specified by the court.

### **Division 10 — Remedial action**

#### **116. Remedial action**

- (1) This section applies if the Regulator—
  - (a) suspects, on reasonable grounds, that a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute:
    - (i) an offence against this Act; or

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- (ii) a contravention of a civil penalty provision; and
    - (b) is satisfied that it would be in the public interest to give the person a notice under this section.
  - (2) The Regulator may give the person a written notice requiring the person, within a specified period, to take specified action directed toward—
    - (a) remedying the conduct; or
    - (b) ensuring that the person does not engage, or continue to engage, in such conduct in the future.
  - (3) A person contravenes this subsection if the person is subject to a requirement under subsection (2) and the person fails to comply with the requirement.
- Penalty: 100 penalty units.

#### Division 11 — Injunction

##### 117. Injunctions

- (1) If a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute, an offence against this Act or a contravention of a civil penalty provision, the relevant court may, on the application of the Regulator, grant an injunction—
  - (a) restraining the person from engaging in the conduct; or
  - (b) requiring the person to do an act or thing.
- (2) On an application, the Court may, if it thinks it appropriate, grant an injunction by consent of all parties to the proceedings, whether or not the Court is satisfied that the person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute, an offence against this Act or a contravention of a civil penalty provision.
- (3) The Court may, if it thinks it desirable, grant an interim injunction pending its determination of an application.
- (4) The Court is not to require the Regulator or anyone else, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (5) The Court may discharge or vary an injunction it has granted.
- (6) The power to grant or vary an injunction restraining a person from engaging in conduct may be exercised:
  - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in such conduct; and
  - (b) whether or not the person has previously engaged in such conduct.
- (7) The power to grant or vary an injunction requiring a person to do an act or thing may be exercised:

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- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
- (b) whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

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Part 7 —Review of decisions

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**PART 7 —REVIEW OF DECISIONS**

**118. Internal review**

- (1) A person affected by a decision to refuse, cancel or suspend accreditation or to impose conditions or limitation on accreditation may apply in writing to the Regulator for an internal review of the decision.
- (2) An application for internal review must be made within 30 days after the day on which the decision first came to the notice of the applicant, or within such further period (if any) as the Regulator, either before or after the end of that period, allows.
- (3) The Regulator must, on receiving an application review the reviewable decision and—
  - (a) make a decision affirming, varying or revoking the reviewable decision; and
  - (b) if the decision is revoked—make such other decision as the Regulator thinks appropriate.

**119. Review of decisions**

- (1) Application may be made to the [*relevant Tribunal*] for review of a decision made following internal review under section 118.
- (2) An application under subsection (1) may be made only by the affected person concerned.

**120. Annual report**

- (1) The Regulator must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report on the performance of the Regulator's functions and the exercise of the Regulator's powers during the year.
- (2) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of the day on which the report is given to the Minister.

**121. Extension of time**

- (1) The Regulator, on the application of an inspector or a member of the police force, or on his or her own initiative, may extend any time limit fixed by this Act for taking any action.
- (2) The Regulator may extend time under this section even if an application was not made until after the end of the time appointed or fixed for taking the action.
- (3) This section does not apply to any time limit applying to the taking of any proceeding before the relevant court.

**122. Certificates**

- (1) A certificate signed or purporting to be signed by the Regulator and certifying as to any matter relating to the register of accredited persons is evidence of that matter.

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Part 8— Administration

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**PART 8— ADMINISTRATION**

**123. The Regulator**

*[insert any necessary provision about appointment of the Regulator]*

**124. Functions of the Regulator**

The Regulator has the following functions:

- (a) to administer this Act and the Regulations;
- (b) to provide information and advice in relation to regulation of the motor trade;
- (c) to undertake or commission research in relation to achievement of the objectives of this Act;
- (d) to monitor and enforce compliance with the accreditation scheme established by this Act;
- (e) such other functions as are conferred on the Regulator by this Act or any other law.

**125. Powers of the Regulator**

Subject to this Act, the Regulator has power to do all things necessary or convenient to be done for or in connection with the performance of the Regulator's functions.

**126. Arrangements with other agencies**

The Regulator may make an arrangement with an agency for the services of officers or employees of the agency to be made available to assist the Regulator in the performance of the functions or duties, or the exercise of the powers, of the Regulator.

**127. Delegation**

- (1) The Regulator may, by writing, delegate powers or functions under this Act, the regulations or a corresponding law to—
  - (a) an officer or employee of the Regulator;
  - (b) an officer or employee of an agency of a State or Territory.
- (3) However, the Regulator must not delegate a power or function, under subsection (1) or (2), to an officer or employee of an agency of a State or Territory without the agreement of the State or Territory.
- (4) A delegate of the Regulator is, in the exercise of the delegate's delegated powers and functions, subject to the Regulator's directions.

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Part 9 — Miscellaneous

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**PART 9 — MISCELLANEOUS**

**Division 1—Regulations**

**128. Power to make regulations**

- (1) The [*regulation-making authority*] may make regulations for the purposes of this Act.
- (2) Without limiting subsection (1), regulations may be made for or with respect to—
  - (a) records to be kept by accredited persons and by persons who are required to be accredited;
  - (b) infringement notices.

**Division 2—Evidentiary provisions**

**129. Certificate**

A certificate purporting to be issued by the Registrar is evidence of its contents if it states—

- (a) that a person is, or on a specified date (or during a specified period) was, or was not, an accredited person;
- (b) any other fact, matter or circumstance extracted from Regulator’s records.

**130. Simplified procedure concerning proof that person traded in motor cars**

- (1) In a proceedings arising under this Act, a statement by a person appearing on behalf of the regulatory or by inspector that—
  - (a) an address, telephone number or post office box number is a person’s address, telephone number or post office box number is evidence of that fact;
  - (b) that a person was registered in relation to a business name on a specified date is evidence of that fact;
  - (c) that an advertisement (or invitation to treat) for the purchase, sale or exchange of a motor car contained—
    - (i) the name, address, telephone number or post office box number of the person charged or an agent of the person charged; or
    - (ii) a business name in relation to which the person charged or an agent of the person charged is registered—is evidence that the person charged offered to buy, sell or exchange the motor car (as the case may be);
  - (d) that such an advertisement (or invitation to treat) was published is evidence that the advertisement (or invitation) was published;
  - (e) that such an advertisement (or invitation to treat) was published on a specified date is evidence that the advertisement (or invitation) was published on that date.

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- (2) Nothing in this section prevents the asking of any question concerning the basis on which a statement was made under this section.

**131. Service of notices**

- (1) A notice under this Act or the regulations is given if it is in writing and is—
- (a) served personally;
  - (b) posted or delivered by courier to —
    - (i) the person’s last known place of residence or business; or
    - (ii) at the address shown on the Regulator’s records as the person’s postal address on the date of posting;
  - (d) in the case of an accredited person, emailed to the email account recorded in the Regulator’s records.
- (2) A notice is deemed to have been received—
- (a) if sent to an address within Australia, on the third working day after it was sent;
  - (b) if sent to an address outside Australia, on the seventh working day after it was sent;
  - (c) if delivered by courier, on the date recorded in the courier’s records as the date of delivery;
  - (d) if sent by email, 24 hours after the time it was sent.
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Part 10 —Revocations and Transitional Provisions

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**PART 10 —REVOCATIONS AND TRANSITIONAL PROVISIONS**

**132. Repeals**

The [name of earlier legislation dealing with Motor Dealers] is repealed.

**133. Transitional provisions**

- (1) In this section “**repealed Act**” means [name of earlier legislation dealing with Motor Dealers] the [A person who holds a licence issued under the [repealed Act] is deemed to have been accredited under this Act.
  - (2) A person who was licenced under the repealed Act if accreditation is deemed to have been accredited under this Act.
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Schedule 1

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**SCHEDULE 1**

**Part 1 — Category 1 Offences**

Theft

Any other offence involving fraud or dishonesty

**Part 2 — Category 2 Offences**

Any other offence, other than a minor traffic offence.

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Schedule 2

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**SCHEDULE 2**

**Consumer Laws**

*List of relevant consumer laws.*

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