



Motor Vehicle Sales Amendment Act 2010

Public Act 2010 No 112
Date of assent 7 September 2010
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Motor Vehicle Sales Amendment Act 2010.
- 2 Commencement**
This Act comes into force on 1 October 2010.
- 3 Principal Act amended**
This Act amends the Motor Vehicle Sales Act 2003.

Part 1

Amendments to principal Act

4 Interpretation

Section 6(1) is amended by inserting the following definition in its appropriate alphabetical order:

“**licensed car wrecker** means a person who is a licensed secondhand dealer (under the Secondhand Dealers and Pawnbrokers Act 2004) who buys, in the course of that person’s business as a secondhand dealer, any motor vehicle for wrecking or dismantling by that person”.

5 Meaning of motor vehicle trader

Section 7(b)(i) is repealed.

6 Who is not treated as motor vehicle trader

(1) Section 9(1) is amended by inserting the following paragraph after paragraph (e):

“(ea) a car market operator; or”.

(2) Section 9(1) is amended by repealing paragraph (f) and substituting the following paragraph:

“(f) a licensed car wrecker; or”.

(3) Section 9(2) is amended by omitting “who is not a car market operator”.

7 New section 14 substituted

Section 14 is repealed and the following section substituted:

“14 Particulars about used motor vehicle must be displayed

“(1) A motor vehicle trader who offers or displays a used motor vehicle for sale, or causes or permits a used motor vehicle to be offered or displayed for sale, must ensure that a notice containing the particulars set out in section 15(1) is attached to the vehicle in a prominent position.

“(1A) If a motor vehicle is offered or displayed for sale by a motor vehicle trader through a car market operator’s facility (as referred to in paragraph (a)(ii) of the definition of car market operator in section 6(1)), the motor vehicle trader complies with

the obligation in subsection (1) if the notice is readily accessible (for instance, by a hyperlink) from—

“(a) the place where the motor vehicle is offered or displayed for sale; and

“(b) the place through which, or by means of which, the contract for sale may be completed.

“(2) A car market operator must take reasonable steps to ensure that a motor vehicle trader offering or displaying a used motor vehicle for sale through the car market operator complies with the motor vehicle trader’s obligation in subsection (1).

“(3) Subsections (1) and (2) do not apply if a used motor vehicle is offered or displayed for sale—

“(a) by a motor vehicle trader registered under this Act; and

“(b) exclusively to other motor vehicle traders registered under this Act, or to licensed car wreckers, or to both.”

8 Written acknowledgement that buyer has received copy of notice must be obtained

Section 16 is amended by adding the following subsection:

“(3) Subsection (2) does not apply if the sale of the used motor vehicle is to—

“(a) a motor vehicle trader registered under this Act; or

“(b) a licensed car wrecker.”

9 Renewal of registration

Section 39 is amended by repealing subsection (2) and substituting the following subsections:

“(1A) The application for renewal must—

“(a) set out (with any necessary modifications) all the information specified in section 32(1) and (2)(a); and

“(b) be accompanied by the prescribed fee (which is the same as the fee for registration under section 31(2)(b), unless a separate fee is prescribed); and

“(c) be accompanied by the levy imposed under section 143 (if any); and

“(d) include a certificate that confirms the matters identified in subsection (1B) and is signed by,—

- “(i) if the application is made by an individual, that person; or
 - “(ii) if the application is made by a company, any person concerned in the management of the company.
- “(1B) The certificate to be included in the application must confirm—
- “(a) that the applicant or, in the case of an applicant that is a company, every person concerned in the management of the company is not disqualified from registration as a motor vehicle trader in his or her own right; and
 - “(b) that the contents of the application are true and accurate.
- “(1C) The application for renewal may be accompanied by a statutory declaration of the kind referred to in section 40A(3)(b), made by a person concerned in the management of the company, if the person has previously supplied only a certificate under section 40A(4).
- “(2) Sections 33 to 38 apply to an application for renewal of registration as if the application were an application for registration, except that—
- “(a) an application for renewal is properly completed if it complies with subsections (1A) and (1B) of this section rather than with section 34(2); and
 - “(b) if the Registrar accepts the application, he or she must provide the applicant with written notice of the date on which the renewal of registration takes effect, instead of providing the things listed in section 36(b).”

10 New heading inserted

The following heading is inserted above section 40:

“Obligation to notify Registrar of changes”.

11 Obligation to notify Registrar of change in circumstances

Section 40(2)(a)(i) is amended by omitting “sections 31 and 32” and substituting “section 31, 32, or 39”.

12 New section 40A inserted

The following section is inserted after section 40:

“40A Obligation to notify Registrar if new person concerned in management of company

- “(1) This section applies if—
- “(a) a person becomes concerned in the management of a company that is registered under this Act as a motor vehicle trader; and
 - “(b) the person was not concerned in the management of the company at the time the company last applied for registration or renewal of registration under this Act.
- “(2) Within 30 working days of the person becoming concerned in the management of the company, the motor vehicle trader must notify the Registrar that a new person has become concerned in the management of the company.
- “(3) The notification must be in writing and must—
- “(a) set out the full name, residential address, date of birth, and occupation of the new person; and
 - “(b) include a statutory declaration by the new person that states that he or she is not disqualified from registration as a motor vehicle trader in his or her own right; and
 - “(c) include the prescribed fee (if any) for notification under this section.
- “(4) If the new person ordinarily spends fewer than 300 days each calendar year in New Zealand, the notification need not include the statutory declaration required by subsection (3)(b), but must instead include a certificate signed by the new person stating that he or she is not disqualified from registration as a motor vehicle trader in his or her own right.
- “(5) The option referred to in subsection (4) is not available if there are already 3 people concerned in the management of the company who have taken advantage of that option and have not since supplied a statutory declaration of the kind referred to in subsection (3)(b).”

13 When Registrar must cancel registration

Section 42 is amended by inserting the following subsection after subsection (1A):

- “(1B) The Registrar must cancel the registration of a motor vehicle trader that is a company if the Registrar is satisfied that any

person concerned in the management of the company is disqualified from registration under this Act.”

14 Persons banned from participating in business of motor vehicle trading

- (1) Section 68(1)(a) is amended by repealing subparagraph (vi) and substituting the following subparagraphs:

“(vi) making a false statutory declaration, giving a false certificate, or providing false or misleading information, as set out in section 107:

“(vii) failing to notify the Registrar when a new person becomes concerned in the management of a company, as set out in section 108A:”.

- (2) Section 68(1)(c) is amended by omitting “a person who, while registered as a motor vehicle trader under this Act,—” and substituting “a motor vehicle trader, or a person who has at any time within the previous 5 years been a motor vehicle trader, who—”.

15 Adjudicator to submit annual report

- (1) Section 87(1) is amended by adding “within 3 months after 30 June in each year”.

- (2) Section 87 is amended by repealing subsection (3) and substituting the following subsection:

“(3) Within 28 days of receiving an adjudicator’s annual report, the Minister—

“(a) must make it available, free of charge, on an Internet site that is publicly accessible at all reasonable times; and

“(b) may also make it publicly available in whatever other ways he or she considers appropriate.”

16 Jurisdiction of Disputes Tribunal

- (1) Section 89(1)(a) is amended by repealing subparagraph (iii) and substituting the following subparagraphs:

“(iii) the Consumer Guarantees Act 1993:

“(iv) the Contractual Remedies Act 1979; and”.

- (2) Section 89(1)(b) is amended by repealing subparagraph (iii) and substituting the following subparagraphs:
- “(iii) in the case of proceedings under the Consumer Guarantees Act 1993, section 39 or 47 of that Act; or
 - “(iv) in the case of proceedings under the Contractual Remedies Act 1979, section 9 of that Act.”

17 Limits on jurisdiction of Disputes Tribunals

Section 90(1)(b) is amended by omitting “\$50,000” and substituting “\$100,000”.

18 New heading and section 94 substituted

The heading above section 94 and section 94 are repealed and the following heading and section substituted:

“Notice of decisions

“94 Decisions to be publicly available

- “(1) Every decision of the Disputes Tribunal on an application or claim must be made publicly available as soon as practicable after the last date on which any appeal against the decision may be lodged.
- “(2) The ways in which decisions are made publicly available must include making a copy of the decision available, free of charge, on an Internet site that is publicly accessible at all reasonable times.
- “(3) If a decision is appealed, a statement to the effect that the decision has been appealed must be included with the copy of the decision that is made publicly available.”

19 Failure to take reasonable steps to ensure compliance with section 14(2) an offence

- (1) The heading to section 102 is amended by omitting “**to take reasonable steps to ensure compliance**” and substituting “**by car market operator to comply**”.
- (2) Section 102 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) A car market operator commits an offence if the car market operator, contrary to section 14(2), fails to take reasonable

steps to ensure that a motor vehicle trader who sells any used motor vehicle through the car market operator complies with the motor vehicle trader's obligations under section 14(1)."

20 New heading and section 107 substituted

The heading above section 107 and section 107 are repealed and the following heading and section substituted:

“Offences relating to registration and notification to Registrar

“107 Offence of providing false declarations, etc

“(1) A person commits an offence if the person—

“(a) makes a false statutory declaration or certificate under any of sections 31, 32, or 40A, knowing it to be false; or

“(b) gives a false certificate in an application under section 39 for renewal of registration, knowing it to be false; or

“(c) for the purpose of applying for registration or renewal of registration, or of notifying the Registrar of changes under section 40 or 40A, supplies the Registrar with any false or misleading information, knowing it to be false or misleading.

“(2) The penalty on conviction for an offence against this section is set out in section 118.”

21 New section 108A inserted

The following section is inserted after section 108:

“108A Offence to fail to notify Registrar when new person concerned in management of company

“(1) A motor vehicle trader that is a company and is registered under this Act commits an offence if the motor vehicle trader fails, without reasonable excuse, to notify the Registrar that a new person has become concerned in the management of the company, as required by section 40A.

“(2) The penalty on conviction for an offence against this section is set out in section 116.”

22 Penalties for infringement offences

- (1) Section 116(2)(a) is amended by omitting “consumer” and substituting “motor vehicle trader”.
- (2) Section 116(2) is amended by inserting the following paragraph after paragraph (f):
 - “(fa) section 108A (which relates to failing to notify the Registrar when a new person is concerned in the management of a company):”.

23 Penalties for other offences

Section 118(2) is amended by repealing paragraphs (f) and (g) and substituting the following paragraph:

“(f) section 107 (which relates to making false declarations, etc).”

24 Schedule 1 amended

- (1) Clause 7(1) is amended by inserting “join the person as a party and” after “he or she may”.
- (2) Clause 7(2) is amended by inserting the following paragraph before paragraph (a):
 - “(aa) a statement that the person is joined as a party to the proceedings, and a statement that costs may be awarded against the person, as a party, if he or she fails to attend the hearing:”.
- (3) Clause 7 is amended by adding the following subclause:
 - “(4) A person who is joined as a party under this clause is not to be treated as a party for the purposes of section 90(1)(a).”
- (4) Clause 14(1) is amended by repealing paragraph (b) and substituting the following paragraph:
 - “(b) any party, after receiving notice of a hearing, fails to attend the hearing without good cause.”
- (5) Clause 14(2)(a) is amended by inserting “all, or any part of,” after “to the Crown”.
- (6) Clause 14(2)(b) is amended by inserting “all, or any part of,” after “to another party”.
- (7) Clause 15(1) is amended by omitting “Either” and substituting “Any”.

Part 2

Consequential amendments

25 Consequential amendments to regulations

The Consumer Information Standards (Used Motor Vehicles) Regulations 2008 are consequentially amended in the manner set out in the Schedule.

Schedule

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Consequential amendments**Consumer Information Standards (Used Motor Vehicles)****Regulations 2008 (SR 2008/112)**

Definition of **supplier** in regulation 3(1): repeal.

Regulation 4(1): revoke and substitute:

“(1) These regulations apply to a used motor vehicle that is offered or displayed for sale by a motor vehicle trader, whether or not the motor vehicle trader is acting—

“(a) as an agent for another person; or

“(b) through a car market operator.”

Regulation 4(2): add “or to licensed car wreckers”.

Regulation 6(4): revoke and substitute:

“(4) The consumer information notice must be attached to, or displayed in relation to, the used motor vehicle to which it relates by the motor vehicle trader, whether or not the motor vehicle trader is acting—

“(a) as an agent for another person; or

“(b) through a car market operator.”

Regulation 7(3): omit “supplier” in each place where it appears and substitute in each case “motor vehicle trader”.

New regulation 10: insert after regulation 9:

“10 Consumer information notices that refer to supplier

For a period of 2 years from the date of commencement of the Motor Vehicle Sales Amendment Act 2010, a consumer information notice is not to be treated as breaching these regulations solely on the ground that it refers to a ‘supplier’ rather than to a ‘trader’.”

Schedule 1: omit “supplier” in each place where it appears and substitute in each case “trader”.

Schedule 2: omit “supplier” in each place where it appears and substitute in each case “motor vehicle trader”.

Schedule 2: omit “supplier’s” in each place where it appears and substitute in each case “motor vehicle trader’s”.

**Consumer Information Standards (Used Motor Vehicles)
Regulations 2008 (SR 2008/112)—continued**

Schedule 2: omit “suppliers” and substitute “motor vehicle traders”.

Schedule 2: omit both paragraphs under the heading *Motor vehicle trader registration number* and substitute:

“The motor vehicle trader must state the registration number or other unique identifier given to the motor vehicle trader upon registration.”

Legislative history

26 May 2009	Introduction (Bill 39–1)
30 June 2009	First reading and referral to Commerce Committee
14 December 2009	Reported from Commerce Committee (Bill 39–2)
22 June 2010	Second reading
24 August 2010	Committee of the whole House, third reading
7 September 2010	Royal assent

This Act is administered by the Ministry of Economic Development.
