

## MOTOR-VEHICLE DEALERS AMENDMENT BILL

### EXPLANATORY NOTE

THIS Bill amends the Motor-Vehicle Dealers Act 1958

*Clause 1* relates to the Short Title and commencement. This Bill is to come into force on 1 April 1965, which is the commencement of a licensing year.

*Clause 2:* At present an articulated trailer is a motor vehicle for the purposes of the principal Act, but other trailers are not. The effect of the amendments in this clause will be that articulated trailers will cease to be motor vehicles for the purposes of the principal Act.

*Clause 3:* Section 2 (3) of the principal Act provides that where two or more persons carry on business as motor-vehicle dealers, each of them shall be deemed to be a motor-vehicle dealer. *Subclause (1)* of this clause re-enacts the subsection in an amended form in order to make it clear that in such a case each of the parties must hold a licence.

*Subclause (2)* will enable regulations prescribing licence fees to fix reduced fees where persons carry on business in partnership.

*Clause 4:* The effect of this clause will be that an auctioneer will not be a motor-vehicle dealer for the purposes of the principal Act by reason merely of the fact that he sells a motor vehicle by auction on the instructions of a Sheriff of the Supreme Court or a bailiff of a Magistrate's Court or a constable in the execution of a writ of sale or warrant of distress, or on the instructions of the personal representative of the estate of a deceased person if the sale of the motor vehicle forms part of a general realisation by auction of chattels forming part of the estate, or on the instructions of the Official Assignee if the sale of the motor vehicle forms part of a general realisation of the bankrupt's chattels, or on the instructions of the liquidator of a company if the sale of the motor vehicle forms part of a general realisation of the chattels of the company, or on the instructions of a person who has left or is about to leave New Zealand and the sale forms part of a general realisation of that person's chattels in New Zealand.

*Clause 5* increases from £2,000 to £5,000 the amount of the fidelity bond to be given as security by an applicant for a licence or for the renewal of a licence. The amount of the bond to be given by a dealer who deals in motor cycles only is not altered, and will remain at £500.

*Clause 6* re-enacts with some changes the provisions of subsections (3) and (4) of section 5 of the principal Act relating to claims for compensation out of money recovered under fidelity bonds. The changes are—

- (a) Except as mentioned in paragraph (c) of this note, it is made clear that only defaults or omissions of the dealer during the currency of the bond may form the basis of a claim for compensation out of the money so recovered.
- (b) The classes of persons who will be entitled to claim compensation from money so recovered is extended. The clause includes a provision that where a dealer has purchased a motor vehicle (whether as principal or agent) and has paid the purchase price, in whole or in part, by a cheque that is dishonoured on presentation, the vendor will be entitled to be compensated out of money recovered under the bond for any loss sustained.
- (c) A person who, during the currency of the bond, has instructed the dealer to sell a motor vehicle or has sold a motor vehicle to the dealer will be entitled to claim compensation out of the money so recovered for any loss sustained by reason of any default or omission of the dealer occurring after the bond has ceased to be current, or by reason of the dishonouring of any cheque given by the dealer after the bond has ceased to be current, if at the time of the default or omission or of the giving of the cheque no other bond is current in respect of that dealer.
- (d) A person suffering any loss may not include a claim for interest in the amount of his claim, but interest at the rate fixed in respect of judgments in the Supreme Court will be payable on claims established. Interest will be payable from the date the claim is received by the Secretary for Justice until the expiration of the period of six months from the first publication of the notice under section 5 (4) of the principal Act calling upon claimants to lodge their claims.
- (e) A finance corporation that is engaged in financing transactions in relation to the purchase of motor vehicles on hire purchase or conditional sale will not be entitled, in relation to any transaction so financed, to claim against money recovered under the bond.

*Clause 7:* Section 10 (4) of the principal Act includes provisions that no person shall become or act as an officer of a company holding a licence or a responsible employee of a licensed dealer if, had he held a licence, he would be liable to have his licence cancelled on any of the grounds specified in section 25 (1) of the principal Act. The effect of these provisions is that if a person has at any time committed an offence or done any act which would be a ground for cancellation of a motor-vehicle dealer's licence he is permanently disqualified from becoming or acting as such an officer or employee.

This clause omits those provisions, so that the only grounds on which a person will be disqualified from acting as such an officer or employee will be that he is disqualified from obtaining a licence.

*Clause 8* provides that a licensed motor-vehicle dealer may change his principal place of business by notice filed in the Magistrate's Court in which his licence was granted.

*Clause 9:* Section 23 of the principal Act includes provisions that a licensed motor-vehicle dealer must exhibit on his places of business and show on certain documents the fact that he is a licensed motor-vehicle dealer. This clause will make it lawful for that information to be displayed by the use of the letters "L.M.V.D."

*Hon. Mr Hanan*

## MOTOR-VEHICLE DEALERS AMENDMENT

### ANALYSIS

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### A BILL INTITULED

#### An Act to amend the Motor-Vehicle Dealers Act 1958

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,  
5 as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Motor-Vehicle Dealers Amendment Act 1964, and shall be read together with and deemed part of the Motor-Vehicle Dealers Act 1958\* (hereinafter referred to as  
10 the principal Act).

(2) This Act shall come into force on the first day of April, nineteen hundred and sixty-five.

\*1958, No. 112  
Amendment: 1959, No. 76

**2. Meaning of “motor vehicle”**—(1) Section 2 of the principal Act is hereby amended by omitting from the definition of the term “motor vehicle” in subsection (1) the words “and includes a trailer forming part or intended to form part of an articulated vehicle”. 5

(2) Section 2 of the principal Act is hereby further amended by repealing paragraph (f) of the same definition, and substituting the following paragraph:

“(f) A trailer; or”.

**3. Dealers carrying on business in partnership**—(1) Section 2 of the principal Act is hereby further amended by repealing subsection (3), and substituting the following subsection: 10

“(3) Where two or more persons carry on business in partnership as motor-vehicle dealers, each of those persons shall be deemed to be a motor-vehicle dealer, and shall be required to hold a licence accordingly.” 15

(2) Section 34 of the principal Act is hereby amended by adding to subsection (3) the following paragraph:

“(e) Reduced fees in respect of licences issued to two or more persons carrying on business in partnership.” 20

**4. Sales of motor vehicles by auction**—The principal Act is hereby further amended by inserting, after section 2, the following section:

“2A. An auctioneer licensed under the Auctioneers Act 1928 shall not be deemed to be a motor-vehicle dealer for the purposes of this Act by reason merely of the fact that he sells or offers for sale by auction any motor vehicle— 25

“(a) Under instructions from a Sheriff of the Supreme Court in the execution of a writ of sale of that Court or from a bailiff of a Magistrate’s Court or a constable in the execution of a warrant of distress under the Magistrates’ Courts Act 1947 or the Summary Proceedings Act 1957; or 30

“(b) Under instructions from the personal representative of the estate of a deceased person, if the motor vehicle forms part of the assets of the estate and the sale or offering for sale forms part of the general realisation by auction of chattels forming part of the assets of the estate; or 35

“(c) Under instructions from the Official Assignee, if the motor vehicle forms part of the assets of a bankrupt and the sale or offering for sale forms part of the general realisation by auction of the chattels of the bankrupt; or 40

- “(d) Under instructions from the liquidator of a company, if the motor vehicle forms part of the assets of the company and the sale or offering for sale forms part of the general realisation by auction of the chattels of the company; or
- 5 “(e) Under instructions from a person who has left or is about to leave New Zealand, if the motor vehicle belongs to that person and the sale or offering for sale forms part of the general realisation by auction
- 10 of the chattels of that person which are in New Zealand.”

**5. Amount of fidelity bonds**—Section 5 of the principal Act is hereby amended by omitting from subsection (1) and also from subsection (6) the words “two thousand pounds”

15 wherever they occur, and substituting in each case the words “five thousand pounds”.

**6. Claims against money recovered under fidelity bonds**—

(1) Section 5 of the principal Act is hereby further amended by repealing subsections (3) and (4), and substituting the

20 following subsections:

“ (3) Every sum so recovered shall be paid into the Public Account to the credit of the Trust Account established by section 38 of the Public Revenues Act 1953 (as substituted by section 3 of the Public Revenues Amendment Act 1963),

25 and the residue, after the deduction of costs and other expenses, may, with the approval of the Minister of Finance and without further appropriation than this Act, be applied—

30 “(a) In compensating any principal or customer of the motor-vehicle dealer, or other person, for any loss sustained by reason of—

“(i) The defaults or omissions, during the currency of the bond, of the dealer, his servant or agent, and any person with whom he is carrying

35 on in partnership the business of a motor-vehicle dealer, in complying with the provisions of section 19 of this Act (which relates to the duties of a dealer as to accounting for money received as an agent in the course of his business):

40 “(ii) The breach, during the currency of the bond, by the dealer of the warranty as to title and encumbrances implied by section 27 of this Act; and

“(b) In compensating any person from whom the motor-vehicle dealer has purchased a motor vehicle (whether as principal or agent) for any loss sustained by reason of any cheque given, during the currency of the bond, by the dealer, or by any person with whom he is carrying on in partnership the business of a motor-vehicle dealer, in payment or part payment of the purchase price having been dishonoured on presentation; and 5

“(c) In refunding to the surety or sureties any balance left after payment of that compensation and any interest payable thereon under subsection (4D) of this section. 10

“(4) Where—

“(a) During the currency of any bond under this section the motor-vehicle dealer has been instructed by any person to sell a motor vehicle on his behalf or any person has sold a motor vehicle to the dealer; and 15

“(b) That person has suffered any loss by reason of any default or omission or breach of warranty occurring, or by reason of the dishonouring of any cheque given, after the bond has ceased to be current; and 20

“(c) That person would be entitled to compensation under subsection (3) of this section if the default or omission or breach had occurred or, as the case may be, the cheque had been given during the currency of the bond; and 25

“(d) No other bond under this section is current in respect of the dealer at the time of the default or omission or breach or giving of the cheque,— 30

the provisions of subsection (3) of this section shall apply as if the default or omission or breach had occurred or, as the case may be, the cheque had been given during the currency of the bond. 35

“(4A) Except as provided in subsection (4D) of this section, no person shall be entitled under this section to claim out of any sum recovered under any bond any interest on the amount of any loss sustained by him. 40

“(4B) Notwithstanding anything in subsection (3) of this section, no body corporate which is engaged in financing transactions in relation to the purchase of motor vehicles on hire-purchase terms or conditional sale shall be entitled, in relation to any transaction so financed, to claim compensation out of any sum recovered under a bond under this section. 45

“(4c) Where any claim is received by the Secretary for Justice from any person claiming compensation out of any sum recovered under a bond under this section, the Secretary shall cause a notice to be published in such one or more newspapers as he deems sufficient calling upon all persons desiring to claim compensation for any loss sustained by reason of any of the matters specified in paragraph (a) or paragraph (b) of subsection (3) of this section to establish their claims to the satisfaction of the Secretary (whether by judgment against the dealer or otherwise) within six months after the date of the first advertisement of the notice; and the Secretary shall not apply any sum so recovered in compensating any person until the expiration of the said period of six months.

“(4d) Where any such claim is established to the satisfaction of the Secretary for Justice, there shall be payable to the claimant out of the money recovered under the bond interest on the amount of the claim so established from the date on which the claim is received by the Secretary for Justice until the expiration of the period of six months specified in subsection (4c) of this section at the rate for the time being payable in respect of judgments entered in the Supreme Court.”

(2) The principal Act is hereby further amended—

(a) By inserting in subsection (5) of section 5, after the words “claims in full”, the words “and any interest payable thereon under subsection (4d) of this section”:

(b) By adding to paragraph (c) of the form of bond in the Schedule the word “and”:

(c) By inserting in the same form, after paragraph (c), the following paragraph:

“(d) Always when purchasing a motor vehicle (whether as principal or agent), in any case where payment of the purchase price or any part thereof is made by cheque drawn by the licensee or any partner of the licensee, makes that payment by cheque which is duly honoured on presentation,—”.

(3) Every fidelity bond in existence at the date of the commencement of this Act shall have effect as if there had been inserted therein, after paragraph (c), a paragraph in the form of paragraph (d) as set out in paragraph (c) of subsection (2) of this section.

(4) The Motor Vehicle Dealers Amendment Act 1959 is hereby repealed.

**7. Disqualification of officers and employees of motor-vehicle dealers**—Section 10 of the principal Act is hereby amended by omitting from subsection (4) the words “or who, if he held a motor-vehicle dealer’s licence, would be liable to have his licence cancelled on any of the grounds specified in subsection one of section twenty-five of this Act”.

**8. Notice of change of principal place of business**—Section 12 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) A licensed motor-vehicle dealer may, by notice in writing filed in the Magistrate’s Court in which his licence was granted accompanied by such fee (if any) in respect of that notice as may be prescribed, change his principal place of business.”

**9. Notice by dealers on place of business, etc.**—Section 23 of the principal Act is hereby amended by adding the following subsection:

“(3) It shall be deemed a sufficient compliance with the provisions of this section requiring the holder of a licence to exhibit on any place or show on any document the fact that he is licensed as a motor-vehicle dealer if he exhibits on that place or shows on that document the letters ‘L.M.V.D.’.”