

## MOTOR VEHICLE DEALERS AMENDMENT BILL

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### EXPLANATORY NOTE

#### *General Policy Statement*

The purpose of the Bill is to permit more flexible arrangements in the marketing of new motor vehicles. The Motor Vehicle Dealers Act 1975 (the principal Act) currently provides that licensed motor vehicle dealers can conduct business only from approved or licensed premises. The Act also requires the licensee to “personally” supervise the conduct of the business.

In introducing more flexibility, the Bill makes 2 main changes to the Motor Vehicle Dealers Act 1975 in that—

- (a) It allows a licensee to conduct new motor vehicle business at *any* place (while continuing to require the licensee to have at least 1 licensed place of business); and
- (b) It removes the requirement for the *personal* supervision of the conduct of a licensee’s new motor vehicle business.

The changes allow licensees to adopt more innovative marketing practices to serve the interests of their new motor vehicle customers, while safeguards that protect the interests of customers are maintained. Other regulatory requirements in respect of dealings in new motor vehicles are retained.

The Bill does not affect the existing regulatory regime in respect of dealings in secondhand motor vehicles.

#### *Clause by Clause Analysis*

*Clause 1* relates to the Short Title and commencement. The Bill is to come into force on a date to be appointed by Order in Council. The reason for this is that changes will need to be made to the Motor Vehicle Dealers Regulations 1980.

*Clause 2: Subclause (1)* inserts into section 2 (1) of the principal Act a definition of the term “new motor vehicle business”. That business is such part of the business of a motor vehicle dealer as consists of the business of purchasing, selling, exchanging, or leasing of new motor vehicles (whether as principal or agent); and includes the acceptance of a secondhand motor vehicle in exchange or part-exchange for a new motor vehicle.

*Subclause (2)* amends section 2 (1) of the principal Act by repealing the definition of the term “subsidiary place of business”, and substituting a new definition. The amendments proposed in this Bill mean that where a motor vehicle dealer holds a licence in respect of the motor vehicle dealer’s principal

place of business, any other place at which only new motor vehicle business is carried on will not be a subsidiary place of business for the purposes of the Act.

*Clause 3* amends section 60 of the principal Act (which requires the Registrar of Motor Vehicle Dealers to record certain details in the Register). One of those details is, where the licensee is a company, the name and address of its chief executive officer or the other person who will supervise, manage, and control the conduct of the licensee's business as a motor vehicle dealer at its principal place of business, and the name and address of each of its other officers.

The proposed amendment includes in section 60 (1) (a) (vi) a cross-reference to the requirements in respect of supervision imposed by section 57. That cross-reference recognises that, under the amendment being made to section 57 by *clause 10*, those requirements will no longer apply in relation to the new motor vehicle business of any licensee (including a company licensee).

*Clause 4* amends section 7 of the principal Act.

Under the new *subsection (3A)* (as inserted by *subclause (1)*), a motor vehicle dealer who holds a licence in respect of the motor vehicle dealer's principal place of business will not be required to hold a separate licence in respect of any other place at which only new motor vehicle business is carried on by that motor vehicle dealer.

*Subclause (2)* amends section 7 (5) by including in it a cross-reference to section 57. The amendment is consequential on the amendment made to section 57 by *clause 10*. That clause removes the requirement for personal supervision of the new motor vehicle business of any licensee (including a company licensee).

Under the new *subsection (6A)* (as inserted by *subclause (3)*), it will be a defence (in any prosecution of a person for carrying on business as a motor vehicle dealer at any place in respect of which the person is not licensed) if that person proves—

- (a) That, by virtue of *section 7 (3A)* or *section 7 (4)*, that person was not required to hold a licence in respect of the place to which the prosecution relates; or
- (b) That, in relation to the place to which the prosecution relates, that person was exempted under *section 7 (5)* from the requirement to hold a licence.

*Clause 5* amends section 9 of the principal Act (which relates to the application for a motor vehicle dealer's licence).

Paragraph (d) of subsection (2) of that section (as enacted in 1975) requires every such application to state the address of every place of business from which the applicant proposes to carry on business.

The new *paragraph (d)* now proposed requires the applicant to state the address of the principal place of business of the applicant, and the address of any branch office or subsidiary office.

It does not require the applicant to state the address of any other place.

*Clause 6* amends section 17 (which deals with the effect of a motor vehicle dealer's licence).

Under the proposed new *subsection (1)* such a licence will authorise the licensee during the currency of the licence—

- (a) To carry on the business of a motor vehicle dealer at any place of business that is from time to time endorsed on the licence; and
- (b) To carry on new motor vehicle business anywhere.

*Clause 7* amends section 18 (5) (b) of the principal Act (which relates to the renewal of a motor vehicle dealer's licence). The amendment, like the amendment to section 60, is consequential on the amendment made to section 57 by *clause 10*.

*Clause 8* repeals section 54 of the principal Act (which specifies the places at which a licensed motor vehicle dealer may conduct business), and substitutes a new section.

The new section makes it clear that the existing restrictions on the places at which a motor vehicle dealer may carry on business do not apply in relation to the carrying on of new motor vehicle business.

*Clause 9* amends section 55 of the principal Act (which relates to the display of notices on places of business, etc). The amendment ensures that, while a licensee will continue to be required by that section to exhibit a notice on—

- (a) The licensee's principal place of business; and
- (b) Each branch office of the licensee; and
- (c) Each subsidiary place of business of the licensee,—

the licensee will not be required by that section to exhibit a notice on any other premises at which only new motor vehicle business is carried on by the licensee.

*Clause 10* adds a new *subsection (10)* to section 57 of the principal Act (which relates to the supervision of a licensee's business).

The new *subsection (10)* removes the requirement for personal supervision of the conduct of the new motor vehicle business of any licensee (including a company licensee).

*Clause 11* amends section 118A (2) (b) of the principal Act (which relates to the disciplining of officers and branch managers). The amendment, like the amendments to sections 60, 7 (5), and 18 (5) (b), is consequential on the amendment made to section 57 by *clause 10*.

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*Hon Tony Ryall*

## MOTOR VEHICLE DEALERS AMENDMENT

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### ANALYSIS

Title	7. Renewal of a licence
1. Short Title and commencement	8. Places at which licensee may conduct business
2. Interpretation	9. Licensee to display notice on place of business, etc
3. Registrar to record certain matters in Register	10. Supervision of licensee's business
4. Motor vehicle dealers to be licensed	11. Disciplining of officers and branch managers
5. Application for licence	
6. Effect of licence	

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### A BILL INTITULED

#### **An Act to amend the Motor Vehicle Dealers Act 1975**

BE IT ENACTED by the Parliament of New Zealand as follows:

5     **1. Short Title and commencement**—(1) This Act may be cited as the Motor Vehicle Dealers Amendment Act 1999, and is part of the Motor Vehicle Dealers Act 1975\* (“the principal Act”).

(2) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

10    **2. Interpretation**—(1) Section 2 (1) of the principal Act is amended by inserting, after the definition of the term “new motor vehicle”, the following definition:

15           “‘New motor vehicle business’ means such part of the business of a motor vehicle dealer as consists of the business of purchasing, selling, exchanging, or leasing of new motor vehicles (whether as principal or agent); and includes the acceptance of a secondhand motor vehicle in exchange or part-exchange for a new motor vehicle.”

\*R.S. Vol. 5, p. 749

Amendments: 1982, No. 85; 1985, Nos. 31, 93; 1986, No. 103; 1989, No. 92; 1994, No. 46

(2) Section 2 (1) of the principal Act is amended by repealing the definition of the term “subsidiary place of business”, and substituting the following definition:

“ ‘Subsidiary place of business’, in relation to a licensee, means any place of business (not being a place to which **section 7 (3A)** applies) in respect of which, in accordance with any of the provisions of **section 7 (4)** or **section 7 (5)**, the licensee is not required to hold a licence.”. 5

**3. Registrar to record certain matters in Register—** 10  
Section 6O (1)(a)(vi) of the principal Act is amended by inserting, after the words “and control”, the words “, in accordance with section 57,”.

**4. Motor vehicle dealers to be licensed—**(1) Section 7 of the principal Act is amended by repealing subsections (3) and (4), and substituting the following subsections: 15

“(3) Subject to **subsections (3A) to (5)**, where a motor vehicle dealer carries on business as such at more than 1 place, a separate licence is required in respect of each such place of business. 20

“(3A) A motor vehicle dealer who holds a licence in respect of the motor vehicle dealer’s principal place of business is not required to hold a separate licence in respect of any other place at which only new motor vehicle business is carried on by that motor vehicle dealer. 25

“(4) A separate licence is not required by a motor vehicle dealer in respect of any place of business situated within a radius of 5 kilometres from any other place of business in respect of which that motor vehicle dealer holds a licence.”

(2) Section 7 (5) of the principal Act is amended by inserting, after the words “and control”, the words “, in accordance with section 57,”. 30

(3) Section 7 of the principal Act is amended by repealing subsection (6), and substituting the following subsections:

“(6) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 who carries on business as a motor vehicle dealer at any place in respect of which that person is not licensed. 35

“(6A) It is a defence in any prosecution for an offence against **subsection (6)** if the defendant proves— 40

“(a) That, by virtue of **subsection (3A)** or **subsection (4)**, the defendant was not required to hold a licence in

respect of the place to which the prosecution relates;  
or

5 “(b) That, in relation to the place to which the prosecution relates, the defendant was exempted under **subsection (5)** from the requirement to hold a licence.”

**5. Application for licence**—Section 9 (2) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

10 “(d) The address of the principal place of business of the applicant, and the address of any branch office or subsidiary office.”

**6. Effect of licence**—Section 17 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

15 “(1) A licence authorises the licensee during the currency of the licence—

“(a) To carry on the business of a motor vehicle dealer at any place of business that is from time to time endorsed on the licence; and

20 “(b) To carry on new motor vehicle business anywhere.”

**7. Renewal of a licence**—Section 18 (5) (b) of the principal Act is amended by inserting, after the word “controlled” the words “, in accordance with section 57,”.

**8. Places at which licensee may conduct business**—

25 (1) The principal Act is amended by repealing section 54, and substituting the following section:

“54. (1) No licensee may carry on business as a motor vehicle dealer at any place of business other than—

30 “(a) The licensee’s principal place of business; or

“(b) A branch office; or

“(c) A subsidiary place of business.

“(2) Nothing in **subsection (1)** prevents a licensee from—

“(a) Carrying on new motor vehicle business anywhere; or

35 “(b) Purchasing, or carrying on negotiations to purchase, any motor vehicle at any place other than the licensee’s principal place of business or a branch office or a subsidiary place of business; or

40 “(c) In the ordinary course of the licensee’s business as a motor vehicle dealer, using the services of an auctioneer or selling any motor vehicle at any agricultural and pastoral show, trade fair, or other

agricultural, industrial, or commercial exhibition held wholly or partly for trade purposes.

“(3) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 who, being a licensee, carries on business as a motor vehicle dealer in contravention of **subsection (1).**” 5

(2) Section 19 of the Motor Vehicle Dealers Amendment Act 1976 and section 3 (2)(e) of the Motor Vehicle Dealers Amendment Act 1979 are consequentially repealed.

**9. Licensee to display notice on place of business, etc—** 10

(1) Section 55 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) Every licensee must, in accordance with this section, display and keep displayed in a prominent place on—

“(a) The licensee’s principal place of business; and 15

“(b) Each branch office of the licensee; and

“(c) Each subsidiary place of business of the licensee,—

so as to be easily read from outside the place of business, a notice of the name or style under which the licensee carries on business as a motor vehicle dealer (being the name or style approved by the Board under section 16), and of the fact that the licensee is a licensed motor vehicle dealer.” 20

(2) The Motor Vehicle Dealers Amendment Act 1979 is consequentially amended by repealing so much of the Schedule as relates to section 55 (1) of the principal Act. 25

**10. Supervision of licensee’s business—**Section 57 is amended by adding the following subsection:

“(10) Nothing in subsections (1) to (3) applies in relation to the new motor vehicle business of any licensee (including a company licensee).” 30

**11. Disciplining of officers and branch managers—**

Section 118A (2)(b) is amended by inserting, after the words “and control”, the words “, in accordance with section 57,”.