

MOTOR VEHICLE DEALERS AMENDMENT BILL

AS REPORTED FROM THE COMMERCE COMMITTEE

COMMENTARY

Recommendation

The Commerce Committee has examined the Motor Vehicle Dealers Amendment Bill and recommends that it be passed with the amendments shown in the bill.

Conduct of the examination

The Motor Vehicle Dealers Amendment Bill was referred to the Commerce Committee on 1 June 1999. We received and considered seven submissions from the Motor Vehicle Dealers' Institute (MVDI), the Imported Motor Vehicle Dealers' Association (IMVDA), Motor Industry Association (MIA), Daewoo Automotive New Zealand, the Consumers' Institute, the New Zealand Automobile Association and the Financial Services Federation. We heard four submissions. Hearing of evidence took one hour and twenty minutes and consideration took forty-five minutes. We received advice from the Ministry of Justice.

This commentary sets out the details of our consideration of the bill and the major issues we addressed.

Introduction

The bill aims to permit more flexible arrangements in the marketing of new motor vehicles. The Motor Vehicle Dealers Act 1975 (the Act) currently provides that, subject to very limited exceptions, a licensed motor vehicle dealer may carry on business as a motor vehicle dealer only at the places of business named in the dealer's licence. The Act also requires the licensee to "personally" supervise the conduct of the business.

The bill makes two main changes to the Act.

- It allows a licensee to conduct new motor vehicle business at *any* place, while continuing to require the licensee to have at least one licensed place of business.
- It removes the requirement of *personal* supervision of the conduct of a licensee's new motor vehicle business.

Background

During 1997 Daewoo Automotive New Zealand introduced to New Zealand a new method of selling motor vehicles. The method involved potential customers calling Daewoo on an 0800 number to discuss their particular needs. A Daewoo representative would take a motor vehicle to the customer and the sale could be concluded at the customer's house or office. Daewoo requires that sales are confirmed by senior management in Auckland.

The MVDI raised with Daewoo concerns about its sales method. The MVDI considered that Daewoo's methods contravened the requirements of the Act in two respects.

First, the MVDI said that, although Daewoo only held a licence in Auckland, it was carrying on business as a motor vehicle dealer at locations elsewhere in New Zealand, where it was not licensed to deal. Second, the MVDI alleged that Daewoo's sales at various locations outside Auckland were not adequately supervised.

Daewoo received legal advice that it was still possible to conduct business provided care was taken to ensure that appropriate systems of supervision were put in place and sales were controlled from the Auckland office.

We were advised that Daewoo unsuccessfully applied to the Motor Vehicle Dealers Licensing Board (the Licensing Board) for five branch managers' licences for its territory managers. The MVDI opposed those applications and subsequently instituted disciplinary proceedings against Daewoo before the Licensing Board. On 28 January 1999 the Licensing Board decided to cancel Daewoo's licence. The effect of the decision was to shut down Daewoo's operations in New Zealand.

Daewoo noted in its oral evidence that the MVDI had advised them that there had been no complaints from customers. We are not aware of any customer dissatisfaction. It appears to us that the decision of the MVDI to take disciplinary proceedings against Daewoo before the Licensing Board was not based on evidence of customer dissatisfaction.

Daewoo appealed to the High Court against the decision of the Licensing Board and also initiated proceedings for review. Neither of these proceedings have yet come before the Court.

In the meantime Daewoo, concerned that it was prevented from carrying on its business, sought an interim order from the High Court that the orders made by the Licensing Board be stayed in such a manner as to allow Daewoo to continue trading until the substantial questions had been resolved.

On 8 February 1999 Mr Justice Gallen granted a stay on terms that allow Daewoo in the interim to continue with sales and fleet sales in the Auckland area.

Comment on actions of the Motor Vehicle Dealers' Institute

As the Daewoo case is still before the courts, it is inappropriate for us to comment on whether Daewoo's licence ought to have been cancelled. We note that Daewoo states that, despite the High Court's temporary intervention, the uncertainty as to the proper application of the Act (being uncertainty created by the MVDI's disciplinary proceedings and the Licensing Board's decision)—

- has been sufficient to cause Daewoo to put on hold its plans to invest substantial further amounts of money in New Zealand, and
- has seriously disrupted Daewoo's sales and threatened the jobs of Daewoo's 17 New Zealand staff.

We are surprised that the MVDI chose to apply to have Daewoo's licence cancelled even though no customer complaints about Daewoo's sales methods were received. We understand this is only the second time that a new car dealer's licence has been cancelled.

All of the submissions received, apart from that of the MVDI, supported the bill, although some expressed reservations about legislating to remedy ad hoc problems.

Several submissioners noted their disagreement with the MVDI's press release that claims 2000 jobs will be lost due to the bill. Daewoo and Mitsubishi Motors (who appeared with the MIA) do not believe that the job losses predicted by the MVDI will eventuate. They point out that a number of major new vehicle distributors own and operate their own dealerships (such as Honda with Honda Cars, Mitsubishi with Kirk Motors and Ford with the Ford Retail Network). Mitsubishi stated that it had no intention at this stage to close its dealerships.

The MVDI opposes the bill as it considers that unlicensed sales people will be able to lawfully sell new motor vehicles from their own homes and that most formal dealership outlets selling new motor vehicles could end up being unlicensed. The bill does not change the categories of sales people who can sell new cars. The two categories of sales people already recognised are "registered salesman" and "approved salesman". In addition, the officers of a licensee company (including the Chief Executive Officer) must be approved by the Licensing Board.

Some of the submissioners strongly stated that they wished to distance themselves from the MVDI's opposition to the bill. These submissioners included the MIA and substantial dealers who are members of both the MIA and the MVDI. This is in contrast to the submission of the MVDI, which claims that an overwhelming majority of the 183 respondents (of 2186 members) to a survey conducted by the MVDI opposed the bill. It contends that 93 percent of the franchise (new) dealer respondents oppose the bill.

We wish to express our grave dissatisfaction that the MVDI did not appear before us to speak to its submission. In view of the considerable importance of this bill to the industry, consumers and the MVDI's members, and considering the MVDI's duties and responsibilities under the Act, we would have expected an appearance before us.

An appearance was even more appropriate as the bill was introduced in response to the cancellation of Daewoo's licence as a result of disciplinary proceedings taken by the MVDI. Although the MVDI would not have been able to discuss the Daewoo case as it is before the court, we consider that the MVDI should, in the usual way, have appeared before us to speak in support of its submission.

Daewoo notes that this bill does not, of itself, resolve the current impasse with the MVDI and the Licensing Board. Daewoo is still operating on only a temporary licence that restricts sales to the Auckland area. This bill is not retrospective and does not reverse the decision of the Licensing Board to cancel Daewoo's licence. We note that Daewoo expressed the hope that the bill means that the MVDI will no longer feel that it is a reasonable use of its powers to seek to close Daewoo's operations on a temporary or permanent basis.

Other sales conducted away from dealers' premises and without personal supervision

We received evidence that fleet sales and Internet sales are conducted in the same manner as the sales conducted by Daewoo.

Imports of motor vehicles purchased over the Internet are permitted by parallel importing legislation. Such sales are conducted away from dealers' premises and without personal supervision.

Fleet sales, we heard, usually involve the customer viewing a demonstration vehicle (often at the customer's work place) and concluding the sale at a place away from the dealer's premises, such as the customer's office. Daewoo reported that about 60 percent of its sales were fleet sales, and 40 percent to ordinary consumers.

Some submissioners consider that, if the High Court upholds the cancellation of Daewoo's licence, the lawfulness of the present method of conducting fleet sales may be in doubt.

Definition of "new motor vehicle business"

The bill inserts into the Act a definition of the term "new motor vehicle business". The new definition allows for the situation in which a dealer accepts a secondhand motor vehicle in exchange or part-exchange for a new motor vehicle.

We were concerned that a new motor vehicle business would be able to accept a secondhand car as a trade-in, in Invercargill for example, but have to get it to the company's licensed place of business in Auckland in order to sell it.

The IMVDA submitted that the bill introduces distortions into the market place because new car franchise holders, who typically sell trade-ins, will be disadvantaged. They will have to carry the costs associated with having separate licences for each place of business at which trade-ins are offered for sale.

We understand that it is likely that a new motor vehicle business would make arrangements with local licensed dealers or use auctions to sell off trade-ins. We are satisfied that no amendments to the bill are required to address this situation.

Exclusion of secondhand motor vehicles from the bill

We discussed whether secondhand motor vehicles ought to be included in this bill. Submissions pointed out that a company selling new and used motor vehicles would be able to sell only new motor vehicles away from the places of business named in its licence. This may mean that consumers calling an 0800 number will have to view and test drive some (used) motor vehicles by going to the company's motor vehicle yard whilst other (new) motor vehicles can be taken to the consumer.

The MVDI submits that the distinction between dealing in new and secondhand motor vehicles is not significant in relation to granting motor vehicle dealer licences under the Act (or the Motor Vehicle Dealers Bill currently before us) but would become highly significant under this bill.

On the other hand, it was argued that limiting the bill to new motor vehicles was appropriate because new motor vehicles are less likely to be the subject of consumer complaints. New motor vehicles are usually backed by service deals, a brand name, and both the dealer and manufacturer can be approached to rectify wrongs.

We will consider the above concerns when we work through the Motor Vehicle Dealers Bill currently before us.

Need for total reform

All the submissioners noted their desire that regulation of the motor vehicle industry be reviewed. Many took the opportunity to argue for abolition of the Act. We share the view that the regulation of the motor vehicle industry needs to

be reviewed but consider that further work must be done before we can complete consideration of the Motor Vehicle Dealers Bill.

Two changes to bill recommended

The IMVDA made a submission in relation to the definition of the term “new motor vehicle business”. That definition is defined to include the “acceptance” of a secondhand motor vehicle in exchange or part exchange for a new motor vehicle.

The IMVDA stated that in reality a vehicle traded-in on a new vehicle is “purchased” rather than accepted. It recommended that the word “acceptance” be replaced by the word “purchase”.

We consider that both the word “purchase” and the word “acceptance” should be used as a trade-in may be either “purchased” or “accepted in exchange or part-exchange”.

We also consider that the definition would be improved by the use of the well-accepted word “trade-in”. A trade-in could be something other than a secondhand motor vehicle.

All three words, namely “purchased”, “accepted” and “trade-in” are used in the Motor Vehicle Dealers Regulations 1980.

We recommend that the definition of the term “new motor vehicle business” be amended accordingly.

In clause 10, the term “licensee company” was inadvertently transposed as “company licensee”. We recommend that this be corrected.

These are the only changes we recommend.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon Tony Ryall

MOTOR VEHICLE DEALERS AMENDMENT

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	

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) purchase or acceptance of a trade-in in connection with the purchase of 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.”.

3. Registrar to record certain matters in Register— Section 60 (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:

“(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.

“(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.

“(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,”.

(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.

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

“(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

“(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.”

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

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“(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:

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“(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

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“(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—

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(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—

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

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“(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

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“(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

“(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

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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* licensee company).” 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,”.