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31 July 2015

The Hon. P D Cummins AM
Chairman
Victorian Law Reform Commission

By Email: law.reform@lawreform.vic.gov.au

Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries

The National Motor Vehicle Theft Reduction Council (NMVTRC) is Australia's expert body on vehicle crime. Its member organisations include state and territory police services, the general insurance industry, road agencies, vehicle manufacturers, peak motor trades and motorist organisations.

The concerted efforts of the NMVTRC and its stakeholders have contributed substantially to the nation's strong decline in vehicle theft since the early 2000s. While theft volumes have more than halved over the last five years—

- one in every 150 households still fall victim each year; and
- the Australian community bears the cost of vehicle theft - estimated to be over $680 million per year - through higher insurance premiums and demands on our justice system.

In the NMVTRC's assessment, the primary vehicle crime concern currently facing the nation is the almost 10,500 cars that appear to simply vanish altogether from our roads each year – the surrogate indicator of the level of organised criminal activity seeking to convert stolen vehicles into cash.

The NMVTRC therefore welcomes the Victorian Law Reform Commission's current review and hopes that it can build on our own considerable body of work that has identified clear deficiencies in Victoria's current regulatory systems in respect of the management of the separated vehicle parts and scrap metal markets. These deficiencies have created an almost 'perfect' environment for criminals to ply their trade with little risk of detection or consequence for their conduct.

The NMVTRC estimates that illicit activity in the second-hand goods and scrap metal markets is likely to account for at least half of all profit-motivated thefts[1].

Since 2010, the NMVTRC has undertaken a substantial body of work to—

1. Review the regulatory regimes applicable to related industries nationally and assess the extent to which they reflect *best practice* in modern regulatory design;
2. Audit real-world compliance with existing local laws in Victoria which revealed—
    - a staggering record of non-compliance across the regulatory spectrum with—
        - 7 in 10 either not holding the required authorisation to trade (ie the correct licence or registration) or being non-compliant to some degree with the conditions of their business licence or registration;
        - 9 in 10 not complying with written-off vehicle reporting obligations;

[1] Based on unrecovered stolen vehicle characteristics, including age and value. For more information see the NMVTRC'S missing vehicle 'decision tree' in the 2014 Strategic Plan http://carsafe.com.au/images/stories/NMVTRC_Strat_Plan_2014.pdf.

- 9 in 10 found to be non-compliant to some extent with OHS and environmental protection regulations, with—
    - 1 in 5 referred for extreme safety breaches deemed likely to cause imminent injury; and
    - 1 in 10 referred for extreme environmental breaches causing obvious and ongoing serious pollution to soil and waterways.

- that with many businesses operating almost exclusively on a cash only basis transactions are effectively untraceable, with implications for investigating the chain of vehicle acquisition and disposal (and also raising questions about compliance with taxation);
- that vehicle thieves could launder stolen vehicles through motor wreckers or scrap metal dealers with little or no risk their personal details will be retained; and

2. Develop a set of model laws based on—
    - the consolidation of related laws to address critical omissions and anomalies;
    - performance-based business standards set with peak industry bodies including environmental and OH&S compliance;
    - the adoption of chain of responsibility principles to ensure stolen vehicles or parts are not traded;
    - a broad range of search, seizure and other 'tools' to assure compliance, including the application of commercial offences.

The suite of the NMVTRC's related reports and supporting material is attached.

There are no quick fixes to either criminal infiltration or poor operating standards in the industry. The NMVTRC's view is that the most effective outcomes will be derived from a combination of medium term improvements aimed at optimising the efficiency of existing regulatory regimes and in the longer term, the alignment of theft reduction objectives with reducing the environmental impacts of end-of-life vehicles and improving industry entry and operating standards through proposals such as product stewardship.

We would welcome the opportunity to discuss our observations and proposals in detail with the Commission's advisory committee or senior officers. Should your officers have any queries in relation to these matters, the NMVTRC's Director of Strategy and Programming, Geoff Hughes, would be pleased to assist.

Kind regards

[redacted]

Ray Carroll
Executive Director

Enclosures (5)

REVIEW OF REGULATION OF SEPARATED PARTS MARKETS IN AUSTRALIA

Report Prepared by DLA Piper Australia for the National Motor Vehicle Theft Reduction Council

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Contents

Disclaimer: The purpose of this report is to provide background for the discussion and development of policy. It contains general discussion of legal requirements but is not intended to provide legal advice, and should not be relied on as a source of legal advice in any particular circumstances.

1. Executive Summary

This report examines the legislation that applies to the trade in separated motor vehicle parts throughout Australia.

The report is prepared against a background of growing concern that existing regulatory arrangements are not optimally effective for combatting criminal involvement in the vehicle and vehicle parts trades.

The current regulatory arrangements comprise a multiplicity of legislative schemes regulating motor car traders, vehicle repairers and second hand dealers. While other laws apply to the separated parts trades (including laws relating to written-off vehicles, and general consumer protection and criminal laws), the focus of this report is on the schemes that most closely regulate the conduct of persons carrying on business of buying and selling used vehicle parts.

Most of these schemes are licensing schemes. Persons must hold the appropriate licences in order to carry on the business. To do so they must meet various criteria to show they are fit and proper persons. They must continue to meet those criteria, and comply with licence conditions and other requirements or risk having their licence suspended or cancelled. The basic model is similar in all jurisdictions.

However, the legislation is far from being uniform or consistent. Different schemes have different regulatory objectives. The extent to which they apply to the trade in vehicle parts varies considerably. In some jurisdictions, persons dealing in vehicle parts are regulated as motor traders and in others as general second hand dealers. Licensing criteria differ, as do the conditions and requirements that apply to the conduct of the business. In some jurisdictions the trade in separated parts is subject to stringent and extensive regulatory controls while in others it is effectively unregulated.

In summary, the position in each of the jurisdictions appears to be:

- **New South Wales** is the only jurisdiction with legislation specifically targeting both vehicle repairers and motor traders operating as auto dismantlers and motor vehicle reconstructors.

- **Victoria.** The trade in whole vehicles, including dismantled vehicle shells, is regulated under the motor dealer legislation while the trade in vehicle parts and accessories is regulated under the second hand dealers legislation.

- **Queensland.** Persons who break up or re-assemble vehicles are required to be licensed as motor dealers while suppliers of separated parts are regulated as second hand dealers.

- **South Australia**. Traders in complete and working vehicles are regulated under the motor dealers legislation while those involved in the trade in wrecked vehicles, vehicle shells and vehicle spares are regulated as second hand dealers.

- **Western Australia.** Licensing requirements apply to persons who dismantle whole vehicles and to repairers who purchase separated parts for repair work. Persons who trade solely in separated vehicle parts appear to be unregulated.

- **Tasmania**. Second hand motor dealers are required to be licensed as motor dealers and second-hand dealers. Vehicle dismantlers and parts sellers must notify police under the second-hand dealer legislation.

- **Australian Capital Territory.** Vehicle dismantlers and constructors who sell, buy or exchange separated parts are licensed under motor repairer legislation, but intermediaries in the supply of separated vehicle parts appear to be unregulated.

- **Northern Territory.** Persons trading in whole vehicles are required to hold a motor dealers licence, although motor wreckers appear not to be. Persons who buy, sell or exchange second hand parts are required to hold a second hand dealers licence.

In this report we outline the main elements of the State and Territory schemes, based on a review of the relevant legislation. This analysis indicates that New South Wales has, particularly in its *Motor Dealers Act 1974,* the most robust licensing regime.

Nevertheless, it is possible that the current uneven and inconsistent regulatory coverage is providing opportunities for criminal involvement in the separated parts trades. If that is so, there may be a case for nationally consistent regulatory reform. Further research is needed about the impact of the current patchwork approach, to assess whether there would be net benefits in a national regulatory approach.

The report then considers the legislative mechanisms available to regulatory agencies under the present schemes. It looks at how the different legislative frameworks set out controls over the right to carry on second hand parts related businesses, the powers available for monitoring and overseeing those businesses, the penalties and sanctions available for operating outside the scheme and for breaching scheme requirements and the compliance and enforcement powers available to deal with breaches.

Because the legislative schemes are very diverse, this analysis is necessarily high level. It also tends to focus on the provisions which appear to provide the most effective and robust set of regulatory controls, the majority of which are to be found in NSW legislation.

The final part of the report looks at mechanisms in other regulatory environments that may be able to be adopted or adapted to improve the effectiveness of regulation of the separated parts market. This analysis proceeds from consideration of two key concepts which underpin many contemporary regulatory strategies:

- an *enforcement pyramid* of progressively more severe interventions to enable regulators to take action that responds appropriately and cost effectively to non-compliant behaviour; and

- a *chain of responsibility* liability model, which imposes a legal responsibility on all parties with the motive and/or capacity to influence compliance outcomes.

In this context we describe a range of interventions and orders that may be applied to the regulation of the separated parts market, including civil penalties, administrative improvement and prohibition notices, court based directions and interventions, forfeiture and commercial benefits penalties, prohibition and industry exclusion and directors and officers liability for corporate fault.

The focus of this discussion is on legislative compliance and enforcement measures. However, it must be recognised that these are only a part of an overall compliance framework. Co-operative engagement with the regulated entities, clearly articulated and consistently followed intervention policies and sufficient skilled and properly resourced enforcement personnel are also critical for effective regulation of any business activity.

2. Background

The dismantling and stripping of stolen vehicles and the targeted theft of vehicles for that purpose is an increasingly common and lucrative form of criminal enterprise.

This appears in part to be due to effective measures put in place over the last decade to combat vehicle theft and vehicle rebirthing. These have driven criminal activity into new areas, including into the trade in separated motor vehicle parts.

A NSW Inter-Agency Task Force (ITF) set up in 2010 to examine criminal involvement in the separated parts trade found that 'the trade in stolen vehicle parts continues to be fostered by persons and organisations within the industry who consistently fail to comply with the various acts of parliament, enabling the wide ranging use and disposal of stolen motor vehicles and parts'.

The Task Force suggested that there are a number of deficiencies in the current regulatory approach, including:

- inadequate information gathering and enforcement powers,
- laws which allow principals to avoid responsibility for breaches committed by their agents,
- sanctions that are an insufficient disincentive to serious or systemic non-compliance; and
- evidentiary impediments to effective prosecution.

The Task Force concluded that these factors mean that breaches of the legislation and other criminal conduct are going unpunished.

The National Motor Vehicle Theft Reduction Council's (NMVTRC) 2012-2015 Strategic Plan seeks to, amongst other things, develop a secure system to disrupt the activities of criminals in separated parts markets. A focus of that work is on the modernisation of regulatory regimes to optimise compliance.

In light of the matters raised in the ITF report, the NMTRC decided to commission this report to further consider the legislative and regulatory framework under which persons involved in the second hand parts trade operate throughout Australia.

The purpose of this Report is therefore to outline the features of current State and Territory legislative schemes which regulate the separated vehicle parts market, to identify strengths and weaknesses in the different schemes and to assess the extent to which they reflect 'best practice' regulatory design, particularly in:

- holding accountable persons responsible for non-compliant conduct;
- allowing regulators, police and courts to respond to breaches in an appropriate and flexible way; and
- ensuring that sanctions promote compliance on an enduring basis.

The remainder of this report is as follows:

- Part 3 outlines the laws that apply to the separated parts trade throughout Australia.

- Part 4 compares and contrasts the laws relating to motor vehicle traders, motor vehicle repairers and second hand dealers in each of the States and Territories.

- Part 5 describes the main regulatory tools that are available under that legislation.

- Part 6 looks at some regulatory tools available in other regulatory settings which might be employed to enhance the effectiveness of schemes under which the separated parts market is regulated.

3. Regulatory Framework for Vehicle Dealers and Repairers and Second Hand Dealers

Markets for second hand vehicle parts operate subject to various State and Territory laws that regulate the motor and/second hand goods trades. Some jurisdictions also have regulation that specifically deals with motor vehicle repairers.

The legislation typically requires motor traders and/or second hand dealers to be licensed. Obtaining a licence is subject to some form of character, or 'fit and proper person', test. Police and/or consumer affairs agencies are then given various powers to monitor and investigate the conduct of businesses, and to impose or seek sanctions for improper or unlawful behaviour.

In all schemes, compliance with regulatory requirements, whether imposed as licence conditions or as offences, is maintained through a range of monitoring activities, including audit and inspection of records and business premises. Non-compliance is dealt with mainly through penalties and licence sanctions. In most schemes the ultimate sanction is revocation of the right to operate through licence suspension and cancellation.

However, while the various schemes are all built around a common framework, the legislation is neither uniform nor consistent. Different schemes have different regulatory objectives and the extent to which they apply to the trade in vehicle parts varies considerably. In some jurisdictions the trade in separated parts is subject to stringent and extensive regulatory controls. In others, this trade is effectively unregulated.

3.1 Motor vehicle dealer licensing

All States and Territories have enacted legislation that regulates the trade in second hand motor vehicles ('**motor dealer Acts'**). The motor dealer Acts prohibit a person from carrying on a business of trading in motor vehicles without a licence.[1] Applicants for a licence must meet specified requirements as to fitness and character.

The motor dealer Acts also contain extensive measures to protect purchasers of second hand vehicles. While these vary from jurisdiction to jurisdiction, they include statutory warranties, mandatory cooling-off periods, disclosure requirements and offences directed specifically at sharp practices associated with the second hand vehicles trade, such as odometer tampering. The motor dealer Acts also establish guarantee funds out of which consumers who suffer losses as a result of these sorts of practices can obtain redress.

It therefore appears that the main regulatory purposes of the motor dealer Acts is to protect consumers and to ensure second hand vehicle markets operate efficiently and fairly. This is stated explicitly in some of the legislation. For example:

- The purpose of the Victorian *Motor Car Traders Act 1986* is 'to provide for the regulation of motor car traders and to ensure that licensing is carried out efficiently and equitably and that the rights of those who deal with motor car traders are adequately protected'.[2]

- The main object of the Queensland *Property Agents and Motor Dealers Act 2000* is 'to provide a system for licensing and regulating persons as … motor dealers, that achieves an

[1] *Motor Dealers Act 1974* (NSW) s. 9; *Motor Car Traders Act 1986* (Vic) s. 7; *Property Agents and Motor Dealers Act 2000* (Qld) s. 279; *Second Hand Vehicle Dealers Act 1977* (SA) s. 7*; Motor Vehicle dealers Act 1973* (WA) s. 30; *Sale of Motor Vehicles Act 1977* (ACT) s.7.
[2] *Motor Car Traders Act 1986* (Vic) s. 3.

appropriate balance between the need to regulate for the protection of consumers; and the need to promote freedom of enterprise in the market place'.[3]

In most jurisdictions the motor dealer Act is administered by the agency responsible for consumer affairs and fair trading, with the director on chief executive of that agency acting as the licensing authority.

3.2 Motor vehicle repairer licensing

Three jurisdictions (NSW, WA and the ACT) have enacted legislation that specifically regulates the motor vehicle repair industry ('**motor repair Acts**')[4].

These Acts require persons carrying on business as motor repairers to be licensed. The licensing authority is generally the same body that is responsible for motor car trader licensing.

Licensing criteria vary from jurisdiction to jurisdiction, but generally include a fit and proper test, and specifically exclude a person from holding a licence if they have committed a disqualifying act. Disqualifying acts may include previous breaches of a motor repair Act or of licence conditions, breaches of other consumer or fair trading legislation and breaches of other criminal laws.[5]

Licensing criteria in some jurisdictions also require applicants to demonstrate that they have appropriate qualifications, necessary financial resources to carry on the business and the right to use suitable premises for the purpose of carrying out vehicle repairs.[6]

While none of the motor repair Acts contains an explicit statement of purpose, it appears that each is directed towards protection of consumers by preventing persons unqualified or undesirable persons from carrying on business as vehicle repairers.

Many businesses involved in vehicle repairs are also likely to hold a licence or authorisation to carry out vehicle inspections or tests. Such authorisations are typically issued by the relevant vehicle registration authority, for the purpose of ensuring that registered vehicles comply with roadworthiness and/or other vehicle standards.

3.3 Second hand dealer regulation

All jurisdictions have legislation that regulates dealers in second hand goods ('**second hand dealers Acts**'). The second hand dealers Acts generally do not apply to persons authorised to trade under a motor traders licence.[7] Therefore, if a person is licensed as a motor trader, they would not have to be licensed as a second hand dealer.

Generally, the second hand dealer Acts require second hand dealers and pawnbrokers to be licensed[8]

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[3] *Property Agents and Motor Dealers Act 2000* (Qld) s. 10

[4] *Motor Vehicle Repairs Act 1980 (NSW); Motor Vehicle Repairers Act 2003* (WA)*; Fair Trading (Motor Vehicle Repair Industry) Act 2010* (ACT)

[5] See *Fair Trading (Motor Vehicle Repair Industry) Act 2010* (ACT) s. 11

[6] See *Motor Vehicle Repairs Act 1980* (NSW) s. 18

[7] *Pawnbrokers and Second-hand Dealers Act 1996* (NSW) s. 4; *Second-hand Dealers and Pawnbrokers Act 1989* (Vic) s. 5(2); *Second-hand Dealers and Pawnbrokers Act 2003* (Qld) s. 6(2)(b); *Pawnbrokers and Second-hand Dealers Act 1994* (WA)s. 4; s 6; *Second-hand Dealers Act 1906* (ACT) s. 7; *Consumer Affairs and Fair Trading Act* (NT), s. 245

[8] *Pawnbrokers and Second-hand Dealers Act 1996* (NSW) s. 6; *Second-hand Dealers and Pawnbrokers Act 2003* (Qld) s. 6; *Pawnbrokers and Second-hand Dealers Act 1994* (WA) s 6; *Second-hand Dealers Act 1906* (ACT) s. 7; *Consumer Affairs and Fair Trading Act* (NT), ss. 247 and 248.

or registered[9], or at least to give prior notification to police before carrying on business as a second hand dealer[10].

Generally applicants for a licence must undergo a criminal history check and not have been convicted of a disqualifying offence, or must otherwise meet a 'fit and proper' test.

Second hand dealers are required to maintain records of goods bought and sold, and meet a range of other specific requirements designed to prevent dealings in stolen goods. These vary between jurisdictions, but may include:

- requirements to keep detailed records about second hand goods purchased and sold and to produce those records to police;
- a duty to report suspicious goods;
- obligations to retain goods for a specified period after they are received before on-selling them; or
- procedures for resolving disputes about ownership of second hand goods.

The regulatory purposes of the second hand dealers Acts therefore reflect both consumer protection and law enforcement objectives. This is made explicit in some jurisdictions. For example:

- The purposes of the Victorian *Second Hand Dealers and Pawnbrokers Act 1989* include 'to facilitate and expedite the recovery of stolen goods from second hand dealers and pawnbrokers', and 'to enhance protection consumers dealing with second hand dealers and pawnbrokers'.[11]
- The main objectives of the Queensland *Second-hand Dealers and Pawnbrokers Act 2003* include 'to deter crime in the second hand property market' and to 'help protect consumers from purchasing stolen property'.[12]

There is a discernible difference in emphasis between the regulatory objectives underlying the motor trader and vehicle repairer legislation (ie. consumer protection and market regulation) and those underlying the second hand dealer Acts (ie. crime prevention as well as consumer protection). That difference is potentially significant given, as is discussed below, that the trade in separated parts is, to different degrees (depending on the jurisdiction), subject to both.

3.4 Other relevant laws

There are a number of other legal controls and measures that apply to the trade in vehicle parts. They include:

- General prohibitions on misleading and deceptive conduct and other unlawful practices in the *Competition and Consumer Act 2010* and State and Territory fair trading legislation.

[9] *Second-hand Dealers and Pawnbrokers Act 1989* (Vic) s. 5.
[10] *Second-hand Dealers and Pawnbrokers Act 1996* (SA) s. 7; *Second-hand Dealers and Pawnbrokers Act 1994* (Tas) s 4.
[11] *Second-hand Dealers and Pawnbrokers Act 1989* (Vic) s. 1
[12] *Second-hand Dealers and Pawnbrokers Act 2003* (Qld) s. 3

- Numerous offences under general criminal law targeted specifically at vehicle theft and receiving or handling stolen goods, and legislation providing for confiscation of the proceeds of crime.

- State and Territory roadworthiness and registration requirements, which generally empower registration authorities to suspend, cancel or refuse to transfer the registration of vehicles where the ownership or description of the vehicle is uncertain.[13]

- State and Territory schemes aimed at vehicle rebirthing, under which accident damaged vehicles must be placed on a written-off vehicles register and, depending on the extent of the damage, not re-registered or only re-registered after an inspection has determined that the vehicle bears the same identifiers as the written off vehicle.[14]

- The ability to notify prospective purchasers that a vehicle may be stolen through recording in a vehicle securities register (now the Personal Property Securities Register).

- Laws regulating accident towing services, which typically require accreditation or licensing of tow truck operators.[15]

3.5 Evolution of the regulatory schemes

Most of the regulatory schemes that apply to the trade in separated parts have been in place for some time.

Most jurisdictions' second hand dealer Acts were enacted in the late 1980s and 1990s, and these have not been substantially amended since that time.

The majority of the motor dealer Acts date from the 1970s and 1980s. This period saw extensive reform in consumer protection laws, in which most jurisdictions established separate consumer affairs agencies, enacted general consumer protection statutes and introduced new regulatory schemes for a range of high risk industries. Most of the motor dealer legislation dating from that time has been amended since. The current licensing provisions and the extensive enforcement regime in the New South Wales *Motor Dealers Act 1974* was added in 1985[16]. The enforcement powers of the Victoria *Motor Car Trader's Act 1989* have been progressively strengthened over time, most recently in 2005[17].

Legislation relating to motor trades and second hand dealers was reviewed in most jurisdictions for the purposes of identifying unnecessary regulation pursuant to requirements imposed under the National Competition Policy. Most of those reviews are now more than 10 years old.[18] In any case, the objective of the NCP review process was to identify and remove unjustifiable impediments to business efficiency.

We have not been able to identify any published review that addresses the effectiveness of the

[13] See eg *Road Safety (Vehicles) Regulations 2009* (Vic) reg. 114
[14] See eg *Road Safety Act 1986* (Vic) Division 3 of Part 2
[15] See eg. *Tow Truck Industry Act 1998* (NSW); *Accident Towing Services Act 2006* (Vic)
[16] See: *Motor Dealers (Amendment) Act 1985*
[17] *Fair Trading (Inspectors Powers and Other Amendments) Act 1999*; *Motor Car Traders and Fair Trading Acts (Amendment) Act 2005*
[18] See eg: NSW Department of Fair Trading, *Motor Trades Review, Summary of Proposed Reforms*, February 2001 and Department of Justice (Vic*) National Competition Policy Review of Motor Car Traders Act 1986 and Attendant Regulations,* January 1988

schemes, and in particular their effectiveness or otherwise in dealing with criminal activity, either in the motor trades generally or the separated parts market in particular.[19]

As noted, information provided by the ITF suggests that aspects of the way the New South Wales motor trades laws are drafted and administered need to be improved to enhance its effectiveness in combating criminal involvement in the separated parts market. As will be seen, the unevenness of the legislative requirements between the different jurisdictions suggest that it might be timely to undertake a broad ranging review of the effectiveness of the legislation on an national basis, and empirical research as to its effectiveness in dealing with the trade in stolen vehicles and vehicle parts.

[19] *The exception is the* Queensland Service Delivery and Performance Commission's 2008 Review of *Property Agents and Motor Dealers Act 2000*, which recommended creation of a separate Act for motor dealers and a number of changes to the regulation of used vehicle transactions. It recommended that the suitability of applicants' premises be removed as a criteria for considering a licence application, but otherwise made no recommendations for changes to the scope or application of the motor dealer licensing provisions.

4. Regulation of the Separated Parts Market in each Jurisdiction

Despite the multitude of legislative schemes directed at motor traders and second hand dealers, regulation of the trade in second hand parts is uneven and inconsistent.

In most jurisdictions there are separate legislative schemes dealing with second hand vehicles and other second hand goods. Generally, the motor dealer Acts apply to the trade in complete vehicles while separated vehicle parts would fall under general second hand-dealers legislation, but this is not always the case.

This part explains the different ways in which the regulatory controls in place in the States and Territories impact on separated parts markets, and identifies some regulatory gaps and overlaps.

4.1 New South Wales

The *Motor Dealers Act 1994* creates various classes of licence for dealers, car market operators, financiers and others involved in the second hand vehicle trades.

The *Motor Dealers Act 1994* is the only legislation in any Australian jurisdiction that expressly targets identifiable participants in the separated parts market. It does this by providing specifically for the licensing of auto dismantlers and motor vehicle parts reconstructors.

'Auto dismantlers' are persons who carry on the business of:

- demolishing or dismantling motor vehicles or parts or accessories of motor vehicles;
- buying motor vehicles and substantially demolished motor vehicles and selling substantially demolished or substantially dismantled motor vehicles (whether or not the person also sells parts or accessories of motor vehicles); or
- buying and selling prescribed kinds of parts or accessories of motor vehicles.[20]

'Motor vehicle parts reconstructors' are persons who carry on business of 'purchasing or otherwise acquiring for the purpose of selling or exchanging, or for the purpose of reconstructing and selling, or for the purpose of reconstructing and exchanging, such parts or accessories of motor vehicles as may be prescribed'.[21]

The parts and accessories prescribed for this purpose are:

- ‘major body components (chassis and major body sections, bonnets, boot lids, doors, mudguards, bumper bars and apron panels);
- major car accessories (alloy mag wheels, electronic navigation equipment and audio equipment); and
- major mechanical components (engines and engine blocks, gearboxes and transmissions, instrument clusters and airbags).[22]

[20] *Motor Dealers Act 1974* s. 4
[21] *Motor Dealers Act 1974* s. 4
[22] *Motor Dealers Regulation 2010* (NSW) reg. 4. These terms are defined in section , and include

The *Motor Dealers Act 1974* (NSW*)* therefore applies a licensing requirement to persons involved in stripping down vehicles and reconstructing vehicles, and to the trade in parts between such persons.

As noted, the *Motor Vehicle Repairers Act 1980* establishes a separate regulatory regime for the vehicle repair industry. It requires persons carrying on business as a repairer to hold a licence in respect of the relevant class or repair work.

'Repair work' is defined to include examining, detecting faults in, adjusting, carrying out maintenance on, altering or painting vehicles. The classes of repair work regulated under the Act include various types of mechanical repair, auto electrical, body repairs and panel beating and painting, but does not include dismantling and constructing vehicles.[23]

The *Motor Dealers Act 1974* and *Motor Vehicle Repair Act 1980* are both administered by Fair Trading NSW. The Director-General of the Department of Fair Trading has power to investigate applications for licences or to request the Commissioner of Police to do so.

The *Pawnbrokers and Second-hand Dealers Act 1996* requires dealers in second hand goods to be licensed. However, the Act only applies to prescribed classes of goods. Motor vehicles and parts are not prescribed for this purpose mainly, although 'car accessories' are. Therefore, in New South Wales, the trade in separated parts falls under the regulations that apply to businesses engaged in motor vehicle related trading activities.

4.2 Victoria

Persons who carry on business of trading in motor cars are required to be licensed under the *Motor Car Traders Act 1986.*

Motor car is defined for this purpose as 'a motor vehicle within the meaning of the *Road Safety Act 1986* (whether or not in working condition or complete)'[24].

Therefore, the *Motor Car Traders Act 1986* regulates persons who trade in wrecked vehicles, but not necessarily those who trade only in separated parts. The Act gives no guidance as to the point of distinction between a complete vehicle and a vehicle that is not complete. It is arguable that trading in vehicle bodies stripped of all parts would be regulated under the Act, but trading in parts, even a complete set of parts that would enable the reassembly of a vehicle if applied to a stripped body, would not be.

Ordinary second hand dealers are required to be registered under the *Second Hand Dealers and Pawnbrokers Act 1989.* However, the application of the Act to persons dealing in second hand vehicle parts is somewhat uncertain.[25]

It appears that a licensed motor car trader is not subject to any of the requirements of the *Second Hand Dealers and Pawnbrokers Act 1989* when buying and selling motor vehicles (including incomplete vehicles and body shells) but would be subject to that Act (except the requirement to be registered) if they were buying or selling parts.

[23] *Motor Vehicle Repairs Regulations 2011* (NSW) sched. 11
[24] *Motor Car Traders Act 1986 (Vic) s.3*
[25] Section 4 provides that nothing in the Act applies to a licensed motor car trader buying, selling, exchanging or otherwise dealing in a motor car in accordance with that Act. Section 5 provides that a person who holds a motor car trader's licence may buy, sell, exchange or otherwise deal in second-hand goods that are motor car parts without being registered but must in all other respects comply with this Act

A person who trades in separated parts but who does not hold a motor car traders licence would need to be registered under the *Second Hand Dealers and Pawnbrokers Act 1989*. Trading in 'scrap metal' is exempt.[26]

The position in Victoria would therefore appear to be that the trade in whole vehicles, including dismantled vehicle shells, is regulated under the *Motor Car Traders Act 1986,* while the trade in vehicle parts and accessories is mainly regulated under the *Second Hand Dealers and Pawnbrokers Act 1989.*

Both Acts are administered by Consumer Affairs Victoria, a division of the Department of Justice.

4.3 Queensland

Motor dealers are required to be licensed under the *Property Agents and Motor Dealers Act 2000*. The licensing requirement includes not only persons who carry on business acquiring or selling used motor vehicles but also to those who acquire used motor vehicles, whether or not as complete units, to break up for sale as parts. [27]

However, while the licensing requirement applies to persons who purchase vehicles to break up and sell as parts it appears not to apply to intermediaries or resellers.

Persons who carry on the business of dealing in second hand goods and operators of second hand markets are required to be licensed under the *Second-hand Dealers and Pawnbrokers Act 2003*. However, this requirement does not apply to a motor dealer under the *Property Agents and Motor Dealers Act 2000* 'to the extent that the person may lawfully deal with second-hand property under the person's licence under that Act.'

Therefore, the position in Queensland appears to be that persons engaged in the separated parts market who break up or re-assemble vehicles are required to be licensed under *Property Agents and Motor Dealers Act 2000* while intermediaries in the supply of separated parts are regulated under the *Second-hand Dealers and Pawnbrokers Act 2003*.

Both Acts are administered by the Queensland Office of Fair Trading, a division of the Department of Justice and Attorney-General.

4.4 South Australia

Persons carrying on business of buying and selling second hand vehicles are required to be licensed under the *Second-Hand Vehicle Dealers Act 1995.*[28]

The term 'second-hand vehicle' is defined to mean a 'vehicle that is used or is capable of being used for transportation on land'[29]. This would appear to limit the scope of the Act to vehicles that are capable of operating, and would therefore exclude severely damaged vehicles, written-off vehicles, vehicle shells and vehicle parts.

Other second hand dealers are regulated under the *Second Hand Dealers and Pawnbrokers Act 1996.* That Act does not establish a licensing scheme as such, but rather requires a person wishing to carry on business as a second hand dealer to notify the Chief Commissioner of Police before commencing

[26] *Second Hand Dealers and Pawnbrokers(Exemption) Regulations2008* (Vic) reg. 9(1) schedule
[27] *Property Agents and Motor Dealers Act 2000 (Qld)* s 279
[28] s. 7.
[29] *Second-Hand Vehicle Dealers Act 1995 (SA) s. 3*

to do so. Goods are defined for the purposes of that Act to include 'any form of personal property except intangible property or live animals'. There is no carve out for motor vehicle related goods. However, the requirements in relation to second hand dealers do not apply to businesses that are licensed or exempt from the requirement to be licensed under the *Second-hand Vehicle Dealers Act 1995*.[30]

Thus, the position in South Australia appears to be that traders in complete, working vehicles are regulated under the *Second-hand Vehicle Dealers Act 1995* while those dealing in wrecked vehicles, vehicle shells and vehicle spares are regulated under the *Second Hand Dealers and Pawnbrokers Act 1996.*

The *Second Hand Dealers and Pawnbrokers Act 1996* is administered by police. The *Second Hand Vehicle Dealers Act 1995* is administered by Consumer and Business Services, a statutory office established under the *Fair Trading Act 1987.*

4.5 Western Australia

Western Australia has established separate licensing regimes for motor vehicle repairers, motor vehicle dealers and second hand dealers.

The *Motor Vehicle Dealers Act 1973* prohibits unlicensed dealing by person carrying on any class or description of business of buying or selling vehicles. 'Vehicle' has the same definition in this Act as in the *Road Traffic Act 1974*. That definition clearly refers to whole vehicles. The extent to which it would apply to a wrecked vehicle or vehicle shell is not clear, and it would not include vehicle parts. However, the licensing requirement extends to persons who buy and sell vehicles for the purposes of dismantling and selling off the parts. [31]

The *Motor Vehicle Repairers Act 1973* requires persons carrying on businesses in certain types of vehicle repair work to be licensed. The range of vehicle work covered includes mechanical repairs and servicing, auto electrical, vehicle modification, glazing, panel beating and painting.

The licensing of motor vehicle dealers and repairers is administered by the Department of Commerce.

The *Pawnbrokers and Second-hand Dealers Act 1994* provides for the licensing of second hand dealers. However, the Act does not apply to 'motor vehicles as defined in the *Road Traffic Act 1974* and their parts (including tyres, but not accessories such as radio equipment, roof racks or lights other than those required relevant vehicle standards).[32]

In Western Australia therefore, licensing requirements apply to persons who dismantle whole vehicles and to repairers who purchase separated parts for repair work. However, persons who trade solely in separated vehicle parts appear to be unregulated.

4.6 Tasmania

The *Motor Vehicle Traders Act 2011* requires persons dealing in motor vehicles to be licensed. The extent to which this applies to partially dismantled vehicles and vehicle shells is unclear. It would not apply to a person who deals solely in vehicle parts. Moreover, a person who buys motor

[30] *Second-Hand Dealers and Pawnbrokers Regulations 1998* (SA) reg. 4(4b)(c)
[31] *Motor Vehicle Dealers Act 1973* (WA) s. 5A, *Motor Vehicle Dealers Regulations* 1974 (WA), *sched. 4 item D*
[32] *Pawnbrokers and Second Hand Dealers Regulations 1996* (WA) reg. 5

vehicles for the purposes of dismantling them is deemed not to be dealing in motor vehicles and is not required to be licensed.[33]

Second hand dealers generally are regulated under the *Second-hand Dealers and Pawnbrokers Act 1994.* As in South Australia, that Act does not require licensing of dealers, but requires a person who wants to carry on business as a second hand dealer to give notice to police of their intention to do so.[34] However, the Act also applies to dealers in second hand vehicles, with the effect that persons who deal in second hand dealers would appear to be required to be licensed under both this Act and the *Motor Vehicle Traders Act 2011*.[35] There is provision under section 3(3) of the Act for the Minister to exempt certain classes of persons from its operation, but a search of the Gazettes has disclosed no order exempting the holder of a motor vehicle traders licence from the requirement to also hold a second hand dealers licence.

Therefore, it appears that in Tasmania, second hand motor dealers are required to be licensed under both the *Motor Vehicle Traders Act 2011* and the *Second-hand Dealers and Pawnbrokers Act 1994*. Vehicle dismantlers are not regulated under the *Motor Vehicle Traders Act 2011,* but if they sell vehicle parts they must have notified police under the *Second-hand Dealers and Pawnbrokers Act 1994.*

The *Second-hand Dealers and Pawnbrokers Act 1994* is administered by the police and the *Motor Vehicle Traders Act* 2011is administered by Consumer Affairs and Fair Trading, both being entities within the Department of Justice.

4.7 Australian Capital Territory

The ACT regulates motor car traders under *Sale of Motor Vehicles Act 1977.* That Act applies to persons who buy, sell and exchange motor vehicles as a business but not to businesses consisting exclusively of buying vehicles for the purpose of dismantling or demolishing them.

Vehicle dismantlers are however subject to specific regulation under the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*. That Act requires persons who carry on business as motor vehicle repairers to be licensed. A person carries on business as a motor vehicle repairer if they carry on motor vehicle repair work, which is defined to include a range of work performed on a 'motor vehicle, motor vehicle part or motor vehicle system'. This extends to work that involves 'dismantling or assembling' motor vehicles.[36]

Car parts (other than car radios) are expressly excluded from coverage under the ACT *Second Hand Dealers Act 1906.*[37]

Vehicle dismantlers and constructors who sell, buy or exchange separated parts are licensed under the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*, but intermediaries in the supply of separated vehicle parts are effectively unregulated.

Both Acts are administered by the ACT Department of Regulatory Services.

[33] *Motor Vehicle Dealers Act 2011* (Tas) s. 4(3)(b)
[34] *Second-hand Dealers and Pawnbrokers Act 1994* (Tas) s. 4
[35] The requirement to hold goods for 7 days before selling them does not apply to vehicles (see s. 11(2)(d)).
[36] *Fair Trading (Motor Vehicle Repair Industry) Act 2010* (ACT) s. 6(2)
[37] *Second-hand Dealers Regulations 2002* (ACT), schedule 2.

4.8 Northern Territory

The *Consumer Affairs and Fair Trading Act* establishes licensing schemes for both motor vehicle dealers and other second hand dealers. The Act is administered by the NT Department of Justice.

The motor dealer licensing regime is set out in Part 10 of the Act. It applies to persons who buy, sell or exchange motor vehicles for a business. The scheme applies to motor vehicles 'whether new or used, and whether or not in working condition or complete'[38]. It does not however apply to a person whose business consists exclusively of buying vehicles for the purposes of demolishing or dismantling them.

The general second hand dealer provisions are set out in Part 14. A person who acts as a second-hand dealer must hold a licence. Second-hand motor vehicles are excluded, although motor vehicle parts are not.[39]

The position in the Northern Territory therefore appears to be that persons trading in whole vehicles are required to hold a motor dealers licence. Persons who buy, sell or exchange second hand parts, which would include motor dismantlers who sell the parts, are required to hold a second hand dealers licence.

4.9 Summary

It will be seen that the regulation of the separated parts market is, from a national perspective, uneven and inconsistent. Generally, coverage is split between a jurisdiction's motor dealer Act and its second hand dealer Act. These Acts tend to have different objectives, in some cases use different types of regulatory instruments and in some jurisdictions are administered by different agencies. In summary:

- **New South Wales** is the only jurisdiction with legislation specifically targeting both vehicle repairers and motor traders operating as auto dismantlers and motor vehicle parts reconstructors.

- In **Victoria,** the position appears to be that the trade in whole vehicles, including dismantled vehicle shells, is regulated under the motor dealer legislation while the trade in vehicle parts and accessories is regulated under the second hand dealers legislation.

- In **Queensland,** the position appears to be that persons engaged in the separated parts market who break up or re-assemble vehicles are required to be licensed as motor dealers while suppliers of separated parts are regulated as second hand Dealers.

- In **South Australia**, the position appears to be that traders in complete, working vehicles are regulated under the motor dealers' legislation while those involved in the trade in wrecked vehicles, vehicle shells and vehicle spares are regulated as second hand dealers.

- In **Western Australia**, licensing requirements apply to persons who dismantle whole vehicles and to repairers who purchase separated parts for repair work. Persons who trade solely in separated vehicle parts appear to be unregulated.

- In **Tasmania**, it appears that at the present time second hand motor dealers must be licensed

[38] *Consumer Affairs and Fair Trading Act* (NT) s. 125
[39] *Consumer Affairs and Fair Trading Regulations* (NT) reg. 3 and schedule

both as motor dealers and s*econd-hand dealers*. Parts sellers are only subject to the requirement to notify police under the second-hand dealer Act.

- In the **ACT**, vehicle dismantlers and constructors who sell, buy or exchange separated parts are licensed under the Motor Vehicle Repair Industry Act, but intermediaries in the supply of separated vehicle parts appear to be unregulated.

- In the **Northern Territory** it appears that persons trading in whole vehicles are required to hold a motor dealers licence, although motor dismantlers are not. Persons who buy, sell or exchange second hand parts are required to hold a second hand dealers licence.

This position is summarised in following table.

Table 1: Summary of regulatory coverage

	Vehicle trader	Repairer	Dismantlers	Reconstructors	Parts trader
NSW	MD	MR	MD	MD	SHD
Victoria	MD	-	-	-	SHD
Queensland	MD	-	MD	MD	SHD
SA	MD	-	SHD*	SHD*	SHD
WA	MD	MR	MD	MD	-
Tasmania	MD & SHD	-	SHD?	-	SHD
ACT	MD	MR	MR	MR	-
NT	MD	-	SHD	MD	SHD

MD = Licence under a motor dealers Act
MR = Licence under a motor repairers Act
SHL = Licence under second hand dealers Act (or police notification in SA and Tas)
** = licence required only where trading in whole vehicles.*

5. Regulatory tools under the current schemes

The scope and form of the legislation that regulates separated parts markets varies from jurisdiction to jurisdiction. However, all schemes use a common set of regulatory tools, comprising:

- controls over the right to operate.
- monitoring and oversight tools; and
- powers to intervene and deal with unlawful or unacceptable behaviour.

5.1 Controls over the right to operate

All schemes require market participants to be licensed. Trading without a licence is an offence. Penalties are intended to be a financial disincentive to unlicensed traders.

The licensing and notification requirements that apply to persons carrying on business as motor dealers, repairers and second hand dealers all adopt criteria based on the character, qualifications and conduct of applicants and their fitness and capacity to carry on the business.

These criteria are used both as entry controls and as a basis for sanctioning misconduct. A person must satisfy the requirements before being granted a licence to operate, but the licence can be limited or taken away if the person fails to continue to meet those standards.

A number of similar licensing criteria are common to the motor dealer and motor repairer Acts and the second hand dealer Acts. For example, all schemes specify that:

- only individuals over the age of 18 or corporations are eligible to carry hold the licence;
- partnerships may only be carry on a business if all partners hold the required authorisation;
- licence holders must not be bankrupt or insolvent; and
- the licence holder must be a 'fit and proper person' to carry on the business.

The 'fit and proper' person test is a widely used in a range of regulatory contexts. It is a flexible test which enables the regulator to take into account a wide range of circumstances in determining whether the applicant is suitable. The High Court has observed:

> 'The expression "fit and proper person", standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of "fit and proper" cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.'[40]

[40] *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, per Gaudron and Toohey JJ at 380

Prior criminal offences may sometimes be a basis for determining that person is not fit and proper, but a conviction on its own will not always be enough to satisfy a decision maker that a person is not fit and proper to carry on a particular work activity.[41]

For that reason, the legislation in many jurisdictions clarifies and extends the concept of 'fit and proper person' by specifying other circumstances or offences which disqualify a person from holding the licence.

The New South Wales *Motor Dealers Act 1974* and *Motor Vehicle Repairers Act 1980* are the broadest. Both list a wide range of offences and other conduct which may be the basis for refusing a licence, including where it appears to the licensing authority that the applicant:

- has (as an adult) been found guilty within the preceding 10 years of offences relating to stealing a motor vehicle or receiving or unlawful possession of a vehicle or vehicle part;
- is not a person likely to carry on such a business honestly and fairly; or
- is in any other way not a fit and proper person to hold a licence.[42]

These Acts then specify that in determining whether a person is a fit and proper person the licensing authority may have regard to the fact that the person:

- has, during the preceding 10 years, been convicted of or served a term of imprisonment for an offence involving fraud or dishonesty;
- was, at the time of making the application, bound under a recognisance or facing a charge in relation to such an offence;
- had, at the time of making the application, a charge pending in relation to such an offence; or
- has at any time been convicted of an offence against the Act or regulations or on other Acts administered by the Minister.[43]

Further, these Acts also deem a person not to be fit and proper if the regulator has reasonable grounds to believe, based on information provided by the police, that the person:

- is a member of or regularly associates with one or more members of a declared criminal organisation; and
- the nature and circumstances of that relationship are such 'that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence'.[44]

The New South Wales Acts also allow a licence to be refused on the basis of the applicant's actual or potential criminal associations, including:

- if the applicant would be carrying on business in partnership with another person and the

[41] *Ziems v The Prothonotary of The Supreme Court of New South Wales* (1957) 97 CLR 279 per Taylor J at 302
[42] *Motor Dealers Act 1974* (NSW) s. 12(2)
[43] *Motor Dealers Act 1974* (NSW) s. 12(3)
[44] *Motor Dealers Act 1974 (NSW) s.* 12(3A)

licensing authority would be required to refuse that other person a licence;

- the applicant is a corporation and a 'director or other person concerned in the management of the corporation' meets one of the disqualifying criteria.[45]

By making explicit that a conviction for theft of vehicles or vehicle parts will bar a person from obtaining a licence or be a basis for cancelling a licence, these Acts have broadened what otherwise may have been covered by a fit and proper person test. The NSW Administrative Decisions Tribunal has affirmed a decision to cancel a repairers licence of a person who had been convicted of offences relating to dealing in stolen vehicle parts. The Tribunal found a clear intention in the legislation to restrict the ability of those with specified types of offences to operate within the industry.[46]

The disqualifying criteria in the NSW Acts are the most extensive, and the most clearly focused on crime prevention, of any of the jurisdictions. They set out multiple grounds on which an applicant's criminal conduct or associations would disqualify them from obtaining a licence, and directly target criminal gangs and criminal enterprises.

Most other jurisdictions also treat a conviction for an offence against the Act under which the licence is granted as a disqualifying offence, but there is little consistency as to what other offences will disqualify a person from holding a licence. For example:

- In Victoria, 'disqualifying offence' includes an offence involving 'fraud, dishonesty, drug trafficking or violence punishable by imprisonment for 3 months or more.[47]

- In Queensland, disqualifying offence includes 'an offence involving fraud or dishonesty, an offence involving drug trafficking, an offence involving use or threatened use of violence, an offence of a sexual nature, extortion, arson or unlawful stalking punishable by imprisonment of 3 years or more'.[48]

- In the ACT, 'disqualifying act' includes an 'offence against the Commonwealth *Competition and Consumer Act 2010* or its State or Territory equivalents or an offence against any Commonwealth, State or Territory law punishable by imprisonment for 1 year or more'.[49]

Moreover, the time within which a disqualifying offence must have been committed for it to be a disqualifying offence varies. In Queensland, commission of a serious offence within 5 years of the application is a basis for refusing the licence. In NSW and Victoria the period is 10 years.

By contrast with the New South Wales *Motor Dealers Act 1974* and *Motor Vehicle Repairers Act 1980*, the basis for refusing a right to operate in the legislation of most other jurisdictions is generally neither as detailed nor as far reaching.

In most jurisdictions where the 'fit and proper person' test is used, there is no statutory definition or expansion of the term. Its meaning in any particular context would need to be determined by application of the flexible common law approach noted above.

[45] *Motor Dealers Act 1974* (NSW) s. 12(4)
[46] See *Zaineddine v Department of Services Technology & Administration* [2011] NSWADT 14
[47] *Motor Car Traders Act 1986* (Vic) s. 3 definition of 'serious offence'.
[48] *Property Agents and Motor Dealers Act 2000* (Qld) Dictionary definition of 'serious offence'.
[49] *Fair Trading (Motor Vehicle Repair Industry) Act 2010* (ACT) s. 10

The 'fit and proper person' test is also not used in all relevant legislation. For example, the *Second-hand Dealers and Pawnbrokers Act 1996* (SA) provides for disqualification of the right to carry on business as a second hand dealer only where:

- the person has been convicted of a dishonesty offence or an offence against the Act;
- the person is bankrupt or the director of a company that has been or is being wound up;
- a police officer issues a notice of disqualification on the basis that the dealer has been in possession of stolen goods at least 3 times in 12 months without notifying police.[50]

Generally, legislation applicable to the separated parts trade also includes criteria that are concerned with issues of suitability and capacity other than in relation to criminal conduct or criminal association. For example, the NSW motor dealer and motor repairer Acts also provide that, to be eligible to hold a licence, an applicant must:

- have sufficient financial resources to carry on the business ; or
- have the qualifications or sufficient knowledge or expertise needed to carry on the business.

Again, there is a range of criteria used in the other jurisdictions, including that an applicant must:

- have sufficient knowledge of the relevant Act and regulations;[51]
- have suitable premises ;[52]
- not have previously held a licence that has been suspended or cancelled;[53]
- not be subject to an administration or representation order under guardianship or similar legislation;[54]
- not be the subject of an admitted claim against the guarantee fund ;[55]
- demonstrate that they can comply with the Act and any conditions on the licence;[56] and
- demonstrate that there is adequate management, supervision and control of the business[57].

There is therefore no uniform or consistent set of controls over who may be given the right to carry on a business that would involve supplying, trading in or using separated vehicle parts. A person who does not meet the criteria in New South Wales may well be able to obtain the necessary licence in another jurisdiction.

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[50] *Second Hand Dealers and Pawnbrokers Act* 1996 (SA) s. 6
[51] *Motor Car Traders Act 1986* (Vic) s. 13 (4)(f)
[52] *Motor Car Traders Act 1986* (Vic) s. 13(4)(h)
[53] *Property Agents and Motor Dealers Act 2000* (Qld) s. 85
[54] *Motor Car Traders Act 1986* (Vic) s. 13(4)(k) and *Second Hand Dealers and Pawnbrokers Act* 1989 (Vic) s.6
[55] *Motor Car Traders Act 1986* (Vic) s. 13(4)(m) and (n); *Property Agents and Motor Dealers Act 2000* (Qld) s. 85
[56] *Consumer Affairs and Fair Trading Act* (NT) s. 259
[57] *Consumer Affairs and Fair Trading Act* (NT) s. 259

It is also clear that a history of criminal behaviour or poor business practice in one jurisdiction cannot always be taken into account if the persona applies for a licence in another jurisdiction. There are likely to be legal and practical reasons for this. In some jurisdictions the ability of the regulator to take prior illegality into account is limited to conduct that contravened the laws of that jurisdiction. It may also be the case (although this has not been the subject of investigation in this review) that a regulator in one jurisdiction has limited access to information about an applicant's prior conduct in another jurisdiction.

5.2 Monitoring and oversight

Monitoring and oversight tools include requirements for keeping records and reporting certain matters to the regulator, and powers for regulators and their authorised officers to monitor, inspect and investigate the operation of the business and the conduct of the licence holder.

The motor dealers Acts, motor repairer Acts and the second-hand dealer Acts all impose record keeping obligations on the licence holder. Generally, these include requirements that:

- licence holder must maintain records or registers of vehicles and other second hand goods bought, sold or exchanged in the course of the business;

- certain records must be made available for inspection and produced on demand to authorised officers and police; and

- licence holders must report certain changes to the regulator, including changes to the way the business is conducted, changes of address and changes in control of the business.

Record keeping requirements differ from jurisdiction to jurisdiction. Their clear purpose is to ensure that an audit trail is created so that regulators can trace the origin and destination of traded goods. They are supported by a range of powers given to police and enforcement officers to inspect, copy and take away records, and obligations on licence holders and other persons present to provide assistance in accessing the records.

However, only NSW imposes specific obligations to keep records relating to separated parts. Under the *Motor Dealers Act 1974*:

- Separate licences are required for different types of licensed business, even where they are operated from the same place of business. Thus, the holder of a dealer's licence who also carries on business as an auto-dismantler or a vehicle reconstructor must keep separate registers in respect of those businesses as well as in respect of their business as a dealer.[58]

- Auto-dismantlers and vehicle reconstructors must record particulars of every vehicle and of certain prescribed parts (major body components, major mechanical components and major accessories as defined) acquired in the course of conducting the business, as well as details of their disposal.[59]

- A dealer who demolishes or dismantles a vehicle must ensure that particulars of vehicles and parts recorded in its dealers register are immediately transferred to the register kept in respect of its auto-dismantler's business.[60]

[58] *Motor Dealers Act 1974 (NSW)* ss. 21(2) and 22EA
[59] *Motor Dealers Act 1974 (NSW)* s. 21(4) and (6)
[60] *Motor Dealers Act 1974 (NSW)* s. 21B

- The licence holder is personally responsible for keeping the register. A register entry can be made by an agent, partner or employee of the licence holder but is presumed to have been made by the licence holder unless the contrary is proved.[61]

Our view is that in New South Wales at least there is a robust legislative framework for whole of life tracing of separated vehicle parts, including dismantling, trading, repair and reconstruction. However, irrespective of how good the framework may appear on paper, in practice it will only be effective if there is a high level of compliance. Given the potential for profit in the separated parts trade, high compliance levels are unlikely to be maintained without intensive and sustained enforcement activity and unless regulators have the capacity and the resources necessary to assess whether complete and up-to-date records are being maintained.

5.3 Penalties and sanctions

Unlicensed trading offence

The effectiveness of any licensing based regulatory regime depends on their being an effective deterrent to persons engaging in the regulated conduct without a licence. Where the regulated conduct has the potential to be highly lucrative, the sanction needs to be both substantial and likely to be applied if it is to be an effective disincentive to operating outside the scheme.

All schemes have offences for unlicensed trading, but the penalties prescribed vary significantly. For example:

- Generally, penalties for unlicensed trading in motor vehicles are much higher than those that apply to ordinary second hand dealers.

- The maximum fines prescribed for unlicensed vehicle trading vary between jurisdictions by up to tenfold.

- Some but not all jurisdictions provide for imprisonment.

- Some legislation prescribes penalties that increase with the number of vehicles sold, or the number of days the offence continues.

- One jurisdiction provides for a penalty that reflects the value of goods traded without a licence.

- Most but not all jurisdictions prescribe higher financial penalties where the offence is committed by a corporation. Generally the maximum penalty for a corporation is five times the maximum penalty for an individual.

The highly inconsistent position can be seen from the following summary.

[61] *Motor Dealers Act 1974 (NSW) s.* 22F

Table 2: Maximum penalties for unlicensed etc trading

	Motor vehicle traders	**Second-hand dealers**
New South Wales	1000 PUs (1st offence) 500 PUs/12 months imprisonment (2nd and subsequent offence)	100 PUs
Victoria	100 PUs + 15% of the sale price per vehicle	100 PUs
Queensland	400 PUs / 2 years	200 PUs
Western Australia	$50,000 + $1,000 per day	$20,000 (corporations) $5,000 / 12 months imprisonment (individuals)
South Australia	$100,000	$2,500
Tasmania	1000 PUs + 50PUs per vehicle (corporations) 200 PUs + 20 PUs per vehicle (individuals)	50 PU + 2 PU per day
Northern Territory	2500PUs (corporation) 500PUs (individual)	2500PUs (corporation) 500PUs (individual)
ACT	50PUs/6 months imprisonment	50PUs/6 months imprisonment

NB. PU=penalty unit. The amount of a penalty unit is fixed by legislation. Penalty units presently range between approximately $110 and $130.

Note that penalties specified in legislation are the maximum penalties a court can impose. As a general rule, courts only impose maximum penalties in the most serious circumstances, including where there are similar prior offences.

Note also that a number of jurisdictions set the penalty for unlicensed motor trading by reference to the number of vehicles sold. This suggests that the offence is not intended to apply, or at least that there would be no effective penalty available for, persons trading in parts rather than whole vehicles.

Given the potentially lucrative opportunities available for operating outside the licensing framework, it would seem doubtful that the current range of penalties for unlicensed trading, particularly those at the lower end of the range, would be an effective deterrent.

Licensing sanctions

Under most licensing schemes, the principle sanction for not compliance with legal requirements or conditions of the licence is suspension or cancellation of the licence.

Most of the legislation applicable to the separated parts trade provides for the cancellation, suspension and/or variation of the licence in the following circumstances:

- Where the licence was improperly obtained, that is, the application was accompanied by fraud or false information, or the applicant was ineligible to hold the licence, or there were other grounds for refusing the licence.

- Where the licence holder is found guilty of a disqualifying offence or other specified offences.

- Where the criteria for obtaining the licence are no longer met (for example the licence holder has become insolvent, or has ceased to be a fit and proper person).

As with the criteria for grant of a licence, the grounds for varying, suspending and cancelling a licence vary between schemes and between jurisdictions.

Again, the broadest grounds are set out in the NSW *Motor Dealer Act 1974* and *Motor Vehicle Repairers Act 1980.* These provide for the Director-General to issue a 'show cause notice' where there are reasonable grounds for believing, among other things, that:

- the licence was improperly obtained or there were grounds for refusal;

- the licence holder may have been convicted of an offence under the Act or under specified legislation relating to second hand trading or motor vehicle use;

- the licence holder may have failed to comply with the Act or regulations or a condition or restriction of the licence;

- the licence holder, within 10 years preceding the grant of the licence, was found guilty of motor vehicle theft, receiving or possession of stolen vehicle parts or an offence involving fraud or dishonesty punishable by imprisonment for 3 months or more;

- there is evidence that the licence holder 'is probably receiving or dealing in stolen goods';

- the business to which the licence relates is being carried on in a dishonest or unfair manner,

- if the person were not the holder of a licence, the Director-General would be required to refuse an application by the person for a licence;

- the licence holder has ceased to carry on the business at the place to which the licence relates for more than a month; or

- the licence holder is, for any other reason, not a fit and proper person to continue to hold a licence.[62]

[62] *Motor Dealers Act 1974* s. 20D

Some form of show cause process is required under all schemes, although this is not always spelt out explicitly. This reflects established principles of procedural fairness,[63] which among other things require that a person should not be subjected to a sanction unless they are first made aware of and have an opportunity to respond to the allegation against them and the factual basis on which it is made.
The process set out in the NSW Acts is that if, having issued a show cause notice and considered any response received, the Director General is satisfied that any of the matters in the show cause notice is established, the Director-General may:

- reprimand the licence holder;
- impose a specified requirement on the licence holder;
- suspend the licence for a period not exceeding 12 months;
- disqualify the licence holder or any person concerned in the direction, management or conduct of the business to which the licence relates from holding a licence or from being concerned in the direction, management or conduct of a business for the carrying on of which a licence is required, either permanently or for such period as the Director-General thinks fit;
- impose a condition or restriction on the licence; and/or
- cancel the licence.[64]

The disciplinary process set out under this and other legislation involves making an administrative decision rather than imposing a criminal sanction. A criminal proceeding takes place in a court and requires proof of the offence 'beyond reasonable doubt'. In making a decision about disciplinary measures, the decision maker must be 'reasonably satisfied' that the relevant criteria are made out, which requires that the matters be proved on the 'balance of probabilities' taking into account the nature and consequences of the facts sought to be proved. Where a decision is likely to have the consequences that a person will be deprived of their ability to conduct a business or earn a livelihood, a very high standard of proof, even one which approaches the 'beyond reasonable doubt' standard, may be applied.[65]

Licensing sanctions are a well-established and potentially effective means of removing criminal elements from a regulated industry. In all jurisdictions, involvement in the stolen parts trade would be a basis for cancelling or suspending a licence on 'fit and proper' or similar grounds. However, the licensing criteria set out in the New South Wales *Motor Dealers Act 1974* provide the broadest basis for applying such sanctions.

Other offences

All schemes set out a range of lesser offences designed to ensure that those operating within the law comply with the regulatory requirements that attach to the licensing scheme. Generally, legislation includes offences for:

- making false or misleading statements in relation to licence applications;
- failing to comply with licence conditions;

[63] Also referred to as 'natural justice'
[64] *Motor Dealers Act 1974* s. 20E(1)
[65] *Briginshaw v Briginshaw* (1938) 60 CLR

- failing to maintain the required documents/registers and making false entries in them;
- failing to report suspicious goods;
- breaches of consumer protection obligations (display of notices, honouring of statutory warranties, odometer offences etc);
- failing to produce records or provide information to authorised officers;
- failing to operate the business from approved premises; and
- failing to notify changes to licence particulars, eg, changes in ownership or control of the licence holder.

Again, there is a wide range in the penalties specified for similar offences in different jurisdictions. Generally, the range of penalties for different conduct varies. For example, maximum penalties for breaches of record keeping requirements for motor dealers are:

- NSW: 20 penalty units.
- Victoria: 50 penalty units, or 100 penalty units for making a false or misleading entry.
- Queensland: 200 penalty units.[66]

We would query whether the penalty levels for this type of offence could be considered to be an effective deterrent.

5.4 Compliance and enforcement powers

Each of the regulatory schemes confers a set of powers on agency officers and/or police to investigate and take action in relation to breaches of licence conditions and other regulatory requirements.

Typically, authorised officers or inspectors are given power to:

- enter business premises without warrant;
- require the production of records, and to inspect, take notes, copies or extracts of records so produced;
- require individuals to provide information, explanations of records and assistance in operating machinery or equipment;
- search for and examine any motor vehicles and parts and accessories of motor vehicles on those premises; and
- to obtain search warrants for entry into private premises or non-licensed premises.

[66] *Second Hand Dealers and Pawnbrokers Act 2003* (Qld) s. 37; *Property Agents and Motor Dealers Act 2000* (Qld) s. 330

These provisions are usually supported by provisions which make it an offence to:

- wilfully delay or obstruct an officer exercising a power;
- refuse or fail to produce, or conceal or attempt to conceal, records or documents that are required to be produced;
- refuse or fail to answer a question or give an explanation relating to such record or documents;
- provide false or misleading information; and
- concealing or attempting to conceal motor vehicles or parts that may searched.

While we have not undertaken a close comparison of the provisions, it appears again that the range of compliance monitoring powers available to authorised officers and police under the New South Wales *Motor Dealers Act 1974* and *Motor Vehicle Repairers Act 1980* are the most comprehensive and wide ranging powers of any jurisdiction. Moreover, under each of these Acts,

- licence holders and their employees are under a duty to report to authorised officers vehicles or parts they suspect of being stolen or unlawfully obtained; and[67]
- enforcement personnel who have reasonable grounds to suspect that a vehicle or vehicle parts in the possession of a licence holder may be stolen may give a notice to the licence holder prohibiting the alteration, disposal or sale of the thing for a period of 14 days.[68]

Specific obligations in relation to property suspected of being stolen are found in some of the second-hand dealer Acts, but not in the motor dealer or motor repair Acts in other jurisdictions.[69] This appears to be a further reflection of the difference between the market regulatory objectives of the motor dealer schemes and the crime prevention objectives of the second hand dealer Acts.

[67] *Motor Dealers Act 1974* (NSW) s. 49; *Motor Vehicle Repairers Act 1980* (NSW) *s.* 77B
[68] *Motor Dealers Act 1974* (NSW) s. 50; *Motor Vehicle Repairers Act 1980* (NSW) *s.* 77C
[69] See eg *Second Hand Dealers and Pawnbrokers Act 1989* (Vic) s. 26; *Second Hand Dealers and Pawnbrokers Act 1994* (Tas) ss. 15, 16; *Second Hand Dealers and Pawnbrokers Act 2003* (Qld) s. 48

6. Options for improving Regulatory Effectiveness

It is clear that the current approach to regulation of the vehicle recycling and separated parts trades is inconsistent and uneven, not only as between the State and Territories, but within each State and Territory as well. Vehicle recyclers and parts traders are subject to a range of different laws. While each is based on a 'licensing' approach, the scope and coverage, objectives, compliance requirements and enforcement frameworks vary significantly from jurisdiction to jurisdiction.

Moreover, the regulatory schemes in some jurisdictions appear to be significantly more robust than in others. The New South Wales legislative scheme, and in particular the *Motor Dealers Act 1974* and *Motor Repairers Act 1980*, provides the broadest coverage of the vehicle recycling and separated parts market of any jurisdiction's legislation, contains arguably the strongest set of entry controls and 'right to operate' sanctions and provides regulators with probably the most extensive set or investigative and compliance powers of any jurisdiction.

It is against this general background that we consider a range of legislative options that might be used to strengthen the various regulatory schemes currently in place.

6.1 Enforcement pyramid

Contemporary regulation theory recognises that regulatory agencies have limited resources and so must deploy those resources as effectively as possible. It advocates a mix of co-operative and penal measures, or incentives and sanctions, as the most cost effective means of achieving regulatory objectives, on the basis that 'legal proceedings are expensive, whereas co-operation between the regulator and regulated is cheap'.[70]

It is now widely accepted that the most effective regulatory strategies are those that are underpinned by an 'enforcement pyramid' consisting of a hierarchy of interventions of increasing levels of severity. These should be available to be deployed by regulatory agencies as appropriate to particular circumstances. Typically informal warnings and persuasion would comprise the base level, to be used in the majority of interventions. For more serious conduct, and for situations where warnings and persuasion are demonstrably ineffective, legally enforceable directions and prohibitions, minor penalties or infringements should be available. Serious criminal offences, and sanctions that affect the 'right to operate' such as suspension or cancellation of a licence would be reserved for the most serious circumstances.

The enforcement pyramid approach, as advanced by Ayres and Braithwaite in the early 1990s, is founded on the assumption that 'Regulators will be able to speak softly when it is known that they carry big sticks. The tougher and more various the sanctions, the greater the success regulators are likely to achieve by proceeding softly. The more those sanctions can be kept in the background, the more regulations can be transacted through moral suasion, the more effective regulation will be.[71]

The enforcement pyramid has become an important design feature in a wide range of regulatory legislation enacted since the mid 1990s, including the Corporations Act and in occupational health

[70] G Gilligan et al, *Research Report: Regulating Directors Duties - How Eeffective are the Civil Penalty Sanctions in the Corporations Law?,* Centre for Corporate Law and Securities Regulation, University of Melbourne 1989, in Comino V, *The challenge of corporate law enforcement in Australia* (2009) 23 Australian Journal of Corporate Law 233

[71] J Ayres and J Braithwaite, *Responsive Regulation, Transcending the Deregulation Debate,* OUP 1992.

and safety, environmental and transport safety legislation. Moreover, many regulatory agencies have adopted compliance and enforcement strategies which reflect the enforcement pyramid approach, by direct authorised officers to low level and 'co-operative' interventions in the first instance, with escalation to enforcement using criminal and 'right to operate' sanctions in progressively more defined and limited circumstances.

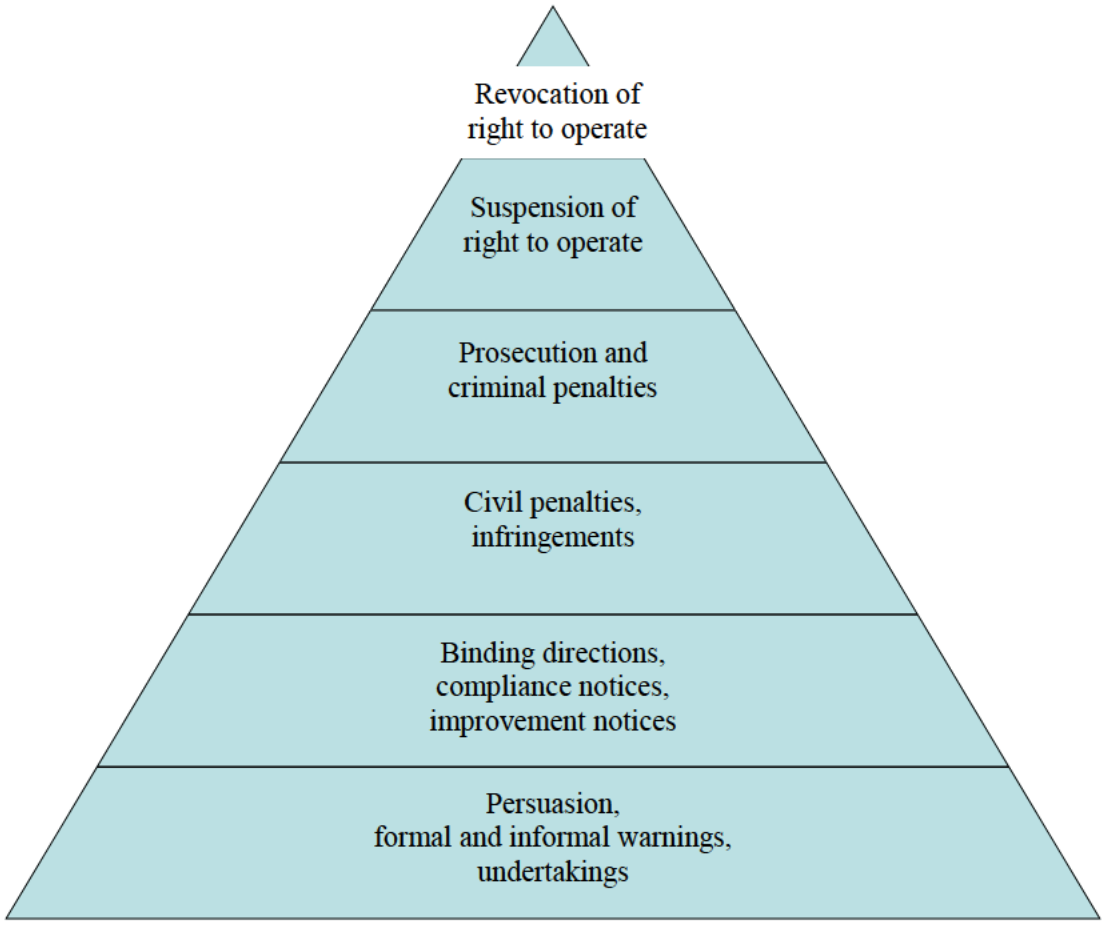

Figure 1: Typical enforcement pyramid[72]

Two comments need to be made in the context of schemes that regulate the separated parts market.

First, the motor dealer Acts and the second hand dealer Acts contain a range of intervention options, from fines and infringements through to sanctions affecting the licence. However, most of the Acts predate the period in which the enforcement pyramid approach started to explicitly influence regulatory design. To the extent to that those Acts make a hierarchy of interventions available, the range is somewhat limited.

[72] Adapted from *Ayres and Braithwaite,* ibid, p 35

Second, strategic regulation theory is based on a set of assumptions about the motivations of both individuals and corporations who engage in business activities. These motivations are not limited to profit maximisation, but include countervailing drivers such as a desire to do what is right, to protect and enhance individual and corporate reputation and to minimise the cost and disruption of adversarial regulatory encounters.[73] The major challenge for regulation of the separated parts market is criminal involvement in the vehicle trades. It is unlikely that lower level and co-operative interventions will be effective in that context. The emphasis must therefore be on sanctions at the 'top end' of the scale, which enable regulators to quickly respond to and deal with non-compliant conduct and to deploy sanctions that are of sufficient deterrent effect to offset the potential gains.

There are a number of features of contemporary enforcement pyramids in the safety, health and environmental areas which potentially meet these requirements. The following is an outline of some of the more common mechanisms.

6.2 Enforceable undertakings

Many Australian consumer protection statutes enable a person who has been found to have contravened regulatory requirements to enter into an enforceable undertaking.

Undertakings are voluntary arrangements, and are typically entered into where there is evidence of a contravention which would be a basis for more intensive investigation, and possibly compulsory intervention (through some form of mandatory compliance notice or proceedings for an offence). Thus enforceable undertakings are measures available at the lower end of the enforcement pyramid.

Typically, legislation will provide that the relevant regulator may accept an undertaking from a person in connection with a possible contravention. Because undertakings are voluntary, they can generally be withdrawn at any time, although withdrawal may trigger other regulatory action. Undertakings are generally made publicly available.

If the person who gave the undertaking fails to comply with its terms, the regulator is usually able to apply to a court to enforce its terms. The undertaking provisions contained in the national consumer laws include orders that the person:

- comply with the undertaking
- pay a penalty representing the amount of any financial benefit that the person has obtained that is reasonably attributable to the breach;
- compensate any other person who has suffered loss, injury or damage as a result of the breach.[74]

These provisions also extend liability for breach of the undertaking to any officer of a body corporate who knowingly authorised or permitted the breach.

6.3 Criminal and civil penalties

Conventional criminal activity has traditionally been dealt with by the criminal law, while misconduct in the course of corporate and business activity has been handled through administrative mechanisms such as licensing, usually backed up by regulatory offences. Such offences tend to

[73] See Comino V, ibid at 239 ff.
[74] See *Australian Consumer Law and Fair Trading Act 2012* (Vic) ss. 198

attract lower level financial penalties and infringements. This is clearly the case for most (but not all) of the motor traders and second hand dealers schemes.

The distinction between *regulatory offences* and *criminal offences* reflects a policy view that criminal offences should be reserved for conduct which is intrinsically immoral. Criminal sanctions are widely considered to be the most effective form of deterrence because a finding of guilt carries the threat of imprisonment, the shame of public prosecution and the stigma and reputational damage of a criminal conviction. These are considered to be significant disincentives to corporate misconduct. Therefore, prosecution of criminal offences is an important regulatory tool in a range of settings, notwithstanding that it is the measure at the apex of most enforcement, and therefore usually a regulatory strategy of last resort.

Criminal prosecution as a regulatory strategy has a number of difficulties. The criminal 'beyond reasonable doubt' standard of proof requires meticulous investigation and comprehensive briefs of evidence to be prepared. A person who is facing a criminal penalty is generally entitled to refuse to answer questions and provide information on the basis of the privilege against self-incrimination. Where an Act imposes a penalty, the legislation will be read strictly and any ambiguity or uncertainty read against the prosecution.[75] In criminal proceedings it is generally impermissible to negotiate an agreed penalty.

Because of these difficulties, corporate and business regulations often make provision for civil penalties (also called pecuniary penalties). Civil penalties can be imposed after a court or tribunal has found on the balance of properties that a person has committed a breach. Criminal sanctions, obviously including imprisonment but also including other sentencing orders and criminal confiscation are not available, although the maximum pecuniary penalty may be relatively high. In some settings it is possible for the regulator and offender to negotiate and agree the amount of pecuniary penalty.

6.4 Compliance directions, improvement notices and prohibition notices

Compliance and improvement notices allow enforcement personnel to give enforceable directions to cease engaging in conduct that contravenes the legislation. Typically, the power to issue such notices is set out in provisions which provide:

- An inspector or authorised officer may issue the notice against a person believed to be committing or to have committed an offence and the offence is likely to continue or be repeated.

- The person to whom the notice is given must take specified action within a specified period to stop the offence from continuing or occurring again.

- Generally, the person may appeal against the notice. The notice must clearly specify the grounds on which it is issued.

- Failure to comply with a notice without reasonable excuse is an offence.

[75] See Pearce D and Geddes R, *Statutory Interpretation in Australia* (5th edtion) pp 297 ff. Note that this principle of interpretation will not be applied so readily in safety legislation, where legislation is more likely to be read in a way which favours its safety objectives.

Prohibition notices and similar emergency powers allow enforcement personnel to give binding directions to individuals and corporations to prevent or mitigate threats to health and safety or to the environment.

These types of interventions are widely available to health and safety[76], environmental[77] and transport[78] regulators.

6.5 Court based intervention powers

The power of a single officer to give a direction on the basis of their suspicion that illegality may be occurring has the potential to significantly interfere with the operation of a business in circumstances which may not be reasonably justifiable. An alternative approach is to make such powers subject to supervision by the courts.

For example, enforcement powers under Victorian consumer protection legislation, which are available for enforcement of the *Motor Car Traders Act 1986*, enable the Director of Fair Trading or any other person to apply to a court for an injunction to restrain a person from engaging in conduct that constitutes:

> '(a) a contravention of any provision of this Act; or
>
> (b) attempting or conspiring to contravene such a provision; or
>
> (c) aiding, abetting, counselling or procuring a person to contravene such a provision; or
>
> (d) inducing or attempting to induce a person, whether by threats, promises or otherwise, to contravene such a provision; or
>
> (e) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision.'

An initial application can be made ex parte (ie without notice to the offender). In addition to being able to order the person to cease engaging in the proscribed conduct, the court can make various orders requiring the person to take positive action, including:

- to institute training programs in relation to compliance;
- to refund money or transfer property;
- to disclose information about the person's business activities or business associates;
- to honour promises made in the course of misleading or deceptive conduct or in a false representation;
- to destroy or dispose of goods used for the purpose of contravention.[79]

[76] See eg: *Work Health and Safety Act 2011* (NSW) ss. 191-194
[77] See eg: Environment Protection Act (Qld) s. 467
[78] See, eg *Transport (Compliance and Miscellaneous) Act 1983* (Vic) s. 228ZZC-228ZZI
[79] See eg: *Australian Consumer Law and Fair Trading Act 2012* (Vic) ss. 201 and 202

Legislation forming part of the national regulatory schemes developed by the National Transport Commission contains 'supervisory intervention' provisions which allow courts to order persons they consider to be a systematic or persistent offenders, to do specified things to reduce offending, including, for example:

- appointing or removing staff to or from particular activities or positions (including compliance related functions) training and supervising staff;
- obtaining expert advice;
- installing equipment, and implementing systems and procedures for, monitoring, compliance, managerial or operational equipment;
- putting in place monitoring, compliance, managerial or operational systems or procedures under the direction of the regulator;
- to furnish compliance reports to the regulator, and to make them public.[80]

6.6 Forfeiture and commercial benefits penalties

Sanctions that are directed towards neutralizing the economic incentives for non-compliant conduct are now widespread. Such measures are based on assumption that persons who engage in any form of commercial activity base decisions about compliance on an assessment of the costs of compliance and the benefits of non-compliance.

All jurisdictions have general proceeds of crime legislation, which enables the confiscation of property and other assets gained as a result of an offence. In addition, a number of regulatory regimes have targeted provisions aimed at neutralizing the economic benefits of offending in particular sectors.

Legislation modeled on the compliance and enforcement framework developed by the National Transport Commission provides for courts to make 'commercial benefits orders' against persons found guilty of transport offences. Typically such orders may require a person to pay a fine of up to three times the *estimated gross commercial* benefit that was *received or receivable* by the person or an associate from the commission of the offence. Such orders may be in addition to, or instead of, any other penalty imposed for the offence.

In estimating the commercial benefit, courts may take into account benefits of any kind, whether monetary or otherwise and any other relevant matters, including (for example, in the transport context, the value of the load). Courts must disregard any costs, expenses or liabilities incurred by the person or by an associate of the person in achieving the benefit.

The New South Wales legislation contains an array of provisions which allows the regulator to trace, seize, restrain and forfeit property of persons convicted of offences under the Act. For example, the *Motor Dealers Act 1974* provides that where a person is convicted of certain offences, a court may, in addition to imposing any other penalty:

- rescind sales made when the person was trading without a licence;
- order the person convicted to pay compensation or to carry out specified work;

[80] See eg draft *Heavy Vehicle National Law*, clauses 527 -533

- order the forfeiture of vehicles; and

- order the person pay a penalty equal to the proceeds derived from the offence. [81]

In order to preserve property for the purpose of making such orders, the Supreme Court can make orders restraining a person from disposing or dealing with specified property when proceedings are taken against the person.[82]

Legislation in other jurisdictions does not contains similarly broad provisions, although it is possible that general sentencing and proceeds of crime legislation in other jurisdictions would give courts the ability to deal with the proceeds of criminal activity.

6.7 Prohibition orders

Another form of order used in contemporary regulation allows courts to effectively prevent a person from carrying on business in a particular sector or role.

Examples of such provisions include:

- A person who is convicted of an offence under the Corporations Act that is punishable by imprisonment for a period of greater than 12 months is automatically disqualified from acting as a director of a company for the same period of time. There is also provision under the Act for ASIC to disqualify a person from managing a corporation for up to 5 years if the person has been an officer of two or more companies that have entered liquidation within the previous seven years. [83]

- The draft Heavy Vehicle National Law which allows the prosecution to apply to the court for an order prohibiting a person whom the court convicts of an offence under the Law, and whom it considers to be a systematic or persistent offender, from having a specified role or responsibility associated with road transport for a specified period of up to one year.[84]

The purpose of the order is to restrict opportunities for the person to commit, or be involved in the commission of, further relevant offences. However, such provisions are only necessary in regulatory settings where the right to carry on business is not controlled through a licensing requirement or similar entry control. They are therefore unlikely to add anything to the entry control mechanisms currently available under vehicle dealer, vehicle repairer and second hand dealer legislation.

6.8 Chain of responsibility

The term 'chain of responsibility' is frequently used to describe an approach to the framing of regulatory laws that involves imposing legal duties on each of the parties in a chain of production or supply who is in a position to influence compliance outcomes.

The term 'chain of responsibility' has been used in the road transport context to describe the relationship between a number of different persons involved in a single transport task. While compliance and enforcement activity in the road transport sector traditionally relied heavily on on-road detection and the use of infringements and prosecutions directed against drivers, chain of

[81] *Motor Dealers Act 1974* (NSW) s. 55B, 55C
[82] *Motor Dealers Act 1974* (NSW) s. 55B
[83] Corporations Act, ss. 206B and 206F.
[84] Clauses 534-538

responsibility based laws sought to impose legal responsibilities on other parties in the chain with the means and incentives to influence on-road compliance.

For example, under the Heavy Vehicle National Law, if the driver of a vehicle commits an overloading offence, the employer of the driver, prime contractor, vehicle operator, consignor of any goods on the vehicle, the packer of the goods and the loader and loading manager of the goods. [85] However each of those parties can avoid liability if they prove that they did not know and could not reasonably have known of the contravention and either they took reasonable steps to prevent the contravention or there were no steps they could reasonably be expected to have taken.[86]

The 'chain of responsibility' approach is widely applied in a range of regulatory settings, including in environmental and occupational health and safety legislation. Some examples are:

Table 3: Chain of responsibility regimes

Occupational Health and Safety Act 2004 (Vic)	**Heavy Vehicles National Law 2010**	**Marine Safety Act 2010 (Vic)**
Employers	Vehicle owners	Port management bodies
Employees	Prime contractors	Commercial vessel operators
Self-employed persons	Drivers	Designers, manufacturers and suppliers of vessels
Persons who control workplaces	Consignors	Designers, manufacturers and suppliers of marine safety equipment
Designers of plant, buildings and structures	Consignees	Marine safety workers
Manufacturers of plant and substances	Packers	Recreational vessel operators
	Loaders and loading managers	

Of all the legislation that applies to the trade in separated vehicle parts, only the NSW *Motor Dealers Act 1974* (NSW) identifies and imposes specific obligations on different parties in the supply chain.[87] It does so by creating separate categories of licence for motor dealers, car market operators, financiers, auto dismantlers vehicle reconstructors and imposing some different obligations on each. For example, auto-dismantlers are subject to specific requirements to surrender number plates of wrecked vehicles to the registration authority, and to mark parts derived from

[85] *Heavy Vehicle National Law* ss. 153-154
[86] *Heavy Vehicle National* Law s. 560
[87] Although it is worth noting that written-off vehicles legislation in some jurisdictions also imposes separate obligations on motor car traders, vehicle wreckers and insurers to report written-off vehicles to the registration authority and to affix notices to written off vehicle in certain circumstances (see eg *Road Safety (Vehicles) Regulations 2009* (Vic), regs. 87-92)

demolished or dismantled vehicles.[88]

These requirements differ from the types of chain of responsibility provisions in contemporary transport safety legislation in that they impose specific but limited obligations on a particular party rather than a general duty to ensure that other parties in the chain comply with their requirements.

6.9 Corporate, directors and officers liability

Legislative provisions that extend the chain of responsibility to directors and senior managers of corporations are now common in a wide range of regulatory settings, including in legislation providing for corporate, consumer, environmental, safety and occupational regulation.

Typically, director and officer liability provisions provide that if a corporation commits a relevant offence, each director and each person concerned in the management of the corporation is deemed to have also committed the offence.

It is generally a defence under such provisions if the director or manager charged establishes that he or she:

- had no knowledge of the actual offence or was not in a position to influence the conduct of the person who actually committed the offence; and
- took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.

A variation in some of the legislation provides that directors, senior managers and/or executive officers are deemed to be guilty of an offence committed by the corporation if they "knowingly" permitted the offence to occur.

Typically these provisions enable prosecutors to bring charges against directors or managers irrespective of whether or not the corporation itself has been proceeded against.

Such provisions are found in legislation relating to motor dealers in all jurisdictions except the ACT, and in the legislation of most jurisdictions relating to vehicle repairers and second hand dealers.[89] Section 54 of the *Motor Dealers Act 1974* (NSW) contains provisions that make directors and senior managers criminally liable for offences committed by bodies corporate. Section 54 provides that where a corporation contravenes the Act or regulations, each person who is a director or is concerned in the management of the corporation is deemed to have committed the offence and liable the same extent as the corporation, unless the person satisfies the court or the tribunal that:

- the corporation contravened the provision without their knowledge;
- they were not in a position to influence the conduct of the corporation in relation to the contravention; or
- they were in a position to influence the conduct of the corporation but used all due diligence to prevent the contravention.

[88] Motor Dealers Act 1974 (NSW) s. 26A

[89] See eg: *Motor Dealers Act 1974 (NSW)* s. 54; *Pawnbrokers and Second-hand dealers Act 1996 (NSW)* s. 40A; *Motor Car Traders Act 1986*, s. 82I and *Australian Consumer Law and Fair Trading Act 2012* (Vic) s 196; *Second-hand Dealers and Pawnbrokers Act 1989* (Vic); s 30; *Property Agents and Motor Dealers Act 2000* (Qld) s. 561; *Second-hand Dealers and Pawnbrokers Act 2003 (Qld)* s. 112; *Second-hand Vehicle Dealers Act 1995 (SA)* s. 47; *Second-hand Dealers and Pawnbrokers Act 1996 (SA)* s. 26; *Motor Vehicle Dealers Act 1973 (WA)* s. 55; *Motor Vehicle Repairers Act 2003 (WA)* s. 110; *Motor Vehicle Traders Act 2011* (Tas) s. 60; *Second-hand Dealers and Pawnbrokers Act 1994* (Tas) s. 22; *Corporate Affairs and Fair Trading Act (NT)* s. 325

The effect of these provisions is to 'lift the corporate veil' by allowing individuals who have control over the conduct of the corporation to be made personally liable to criminal sanctions. Directors and managers liability provisions are widely used in a range of regulatory settings. The prospect of senior personnel facing significant penalties (including penalties of imprisonment) has been considered to be an important driver of corporate compliance.

However, such provisions have been subjected to increasing criticism as unfairly imposing responsibilities on directors and senior officers. In response to this concern, Commonwealth, State and Territory governments, through COAG, embarked in 2009 on a project to harmonise the imposition of personal criminal liability for corporate fault across Australian jurisdictions. All jurisdictions have agreed to review and reform derivative liability principles against a set of principles, agreed by COAG, which aim to ensure that, where derivative liability is considered appropriate, it is imposed in accordance with principles of good corporate governance and criminal justice.

The COAG principles are:

'1. Where a corporation contravenes a statutory requirement, the corporation should be held liable in the first instance.

2. Directors should not be liable for corporate fault as a matter of course or by blanket imposition of liability across an entire Act.

3. A 'designated officer' approach to liability is not suitable for general application.

4. The imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations where:

   - there are compelling public policy reasons for doing so (e.g. in terms of the potential for significant public harm that might be caused by the particular corporate offending);

   - liability of the corporation is not likely on its own to sufficiently promote compliance; and

   - it is reasonable in all the circumstances for the director to be liable having regard to factors including [that] the obligation on the corporation, and in turn the director, is clear, the director has the capacity to influence the conduct of the corporation in relation to the offending; and there are steps that a reasonable director might take to ensure a corporation's compliance with the legislative obligation.

5. Where principle 4 is satisfied and directors' liability is appropriate, directors could be liable where they have encouraged or assisted in the commission of the offence or have been negligent or reckless in relation to the corporation's offending.

6. In addition, in some instances, it may be appropriate to put directors to proof that they have taken reasonable steps to prevent the corporation's offending if they are not to be personally liable.'

Any review or extension of the directors and officers liability provisions in the regulatory schemes relating to the separated parts market would need to be assessed against these principles.

It should also be noted that it is relatively rare for directors to be charged under these types of provisions. Nevertheless, they continue to be used in a wide range of regulatory settings because the threat of direct criminal liability is still widely believed to provide a strong incentive for directors and boards to proactively monitor and manage an organisation's compliance obligations.

National Motor Vehicle Theft Reduction Council

Victorian Inter-Agency Task Force into Compliance with Local Laws and Illicit Export Activity

Task Force Discover – Final Report

September 2014

Prepared by: Victoria Police Crime Command (with Foreword by NMVTRC)

Report outline

Date	September 2014
ISBN	978 1 876704 81 0
Title	Addressing Profit-Motivated Vehicle Theft in Victoria's Motor Wrecking and Scrap Metal Industries
Address	National Motor Vehicle Theft Reduction Council Suite 1, 50-52 Howard Street North Melbourne Victoria 3051
Email	info@carsafe.com.au
Type of report	Technical Working Paper
Objectives	To gather empirical evidence of the level of compliance with local laws in respect of the second-hand parts and metal recycling sector in Victoria and facilitate discussion about reform of related activity.
NMV program	Disrupt Separated Parts Markets
Key milestones	Completed

Abstract

Task Force Discover was an Inter-agency Task Force (ITF) funded by the National Motor Vehicle Theft Reduction Council and led by Victoria Police Crime Command.

Its audit of more than 400 Victorian motor wrecking and scrap metal businesses represents the most comprehensive compliance checking exercise ever undertaken in respect of this sector in Australia. The results reveal a staggering record of non-compliance across the regulatory spectrum with—

- 7 in 10 either not holding the required authorisation to trade (ie the correct licence or registration) or being non-compliant to some degree with the conditions of their business licence or registration;
- 9 in 10 not complying with written-off vehicle reporting obligations;
- 9 in 10 assessed to be non-compliant to some extent with OHS and environmental protection regulations, with—
    - 1 in 5 referred for extreme safety breaches deemed likely to cause imminent injury; and
    - 1 in 10 referred for extreme environmental breaches causing obvious and ongoing serious pollution to soil and waterways.

The ITF also observed that—

- with many businesses operating almost exclusively on a cash only basis transactions are untraceable, which has implications for investigating the chain of vehicle acquisition and disposal, and also raises questions about compliance with taxation; and
- such widespread non-compliance enables vehicle thieves to launder stolen vehicles through motor wreckers or scrap metal dealers with little or no risk their personal details will be retained.

The ITF report clearly demonstrates that the existing law, in respect of the management of separated vehicle parts and vehicle-related scrap, is in need of major reform.

The NMVTRC's reform proposal is set out in the form of a set of model laws that are designed to remove ambiguities and gaps, and deal more effectively with enduring non-compliance. The report includes a link to an exposure draft of those model laws.

Key words Separated parts, profit-motivated theft, second-hand dealing, scrap metal, auto recycling

Foreword

As the re-birthing of whole vehicles becomes progressively harder, the dismantling or stripping of major components becomes increasingly more attractive and less risky for car criminals.

Numerous police investigations across Australia have shown that some of the most serious profit-motivated theft activity is conducted in association with enterprises that on the face of it are part of the automotive trades—including the recycling, end of life scrap and export sectors. In addition, many middle tier businesses that operate in these sectors, whilst not criminal themselves, have such poor business practices and records systems that they can unwittingly facilitate stolen vehicle disposal.

Responsible industry participants are finding it increasingly difficult to remain profitable in the face of unfair competition from growing numbers of operators who have no outward appearance of compliance with regulatory requirements or established industry standards and are calling for greater enforcement action from regulators.

In 2013, at the instigation of the NMVTRC, the Victoria Police agreed to lead an Inter-agency Task Force (ITF) to assess the level of regulatory compliance across the industry in Victoria. With the active cooperation of the Australian Crime Commission, Australian Customs and Border Protection Service, Consumer Affairs Victoria, the Environment Protection Authority and the Victorian WorkCover Authority the ITF has undertaken the most comprehensive assessment of the status of the industry ever undertaken in Australia.

Following eight months of site visits across Victoria, the ITF found a staggering record of non-compliance across the regulatory spectrum with—

- 7 in 10 either not holding the required authorisation to trade (ie the correct licence or registration) or being non-compliant to some degree with the conditions of their business licence or registration;
- 9 in 10 were not complying with written-off vehicle reporting obligations;
- 9 in 10 were assessed to be non-compliant to some extent with OHS and environmental protection regulations, with—
    - 1 in 5 referred for extreme safety breaches deemed likely to cause imminent injury; and
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- such widespread non-compliance enables vehicle thieves to launder stolen vehicles through motor wreckers or scrap metal dealers with little or no risk their personal details will be retained.

There are no quick fixes to either criminal infiltration or poor operating standards in the industry. The most effective outcomes will be derived from a combination of medium term improvements aimed at optimising the efficiency of existing regulatory regimes and in the longer term, the alignment of theft reduction objectives with reducing the environmental impacts of end-of-life vehicles and improving industry entry and operating standards through proposals such as product stewardship.

The ITF report clearly demonstrates that the existing law, in respect of the management of separated vehicle parts and vehicle-related scrap, is in need of major reform.

The NMVTRC's 2013-14 work program indicated that we would build on the previous review of the 'modernity' of related laws, conducted by lawyers DLA Piper in 2012, by developing a proposal for the consolidation of relevant laws to remove ambiguities and gaps, and deal more effectively with enduring non-compliance. An exposure draft of the model law package is now available for comment via this link http://www.carsafe.com.au/modernising-regulatory-regimes

While one of the observations of the ITF report authors is that licensing and registration schemes are ill-equipped to deal with the nature of the illicit trade, the NMVTRC's assessment is that the vast majority of the identified regulatory weaknesses can be addressed via the model law's proposed key features, which are designed to remove ambiguities and gaps, and deal more effectively with enduring non-compliance.

These key features include—

- an accreditation requirement for a person who carries on business as a motor vehicle dealer, motor vehicle recycler (including a metal recycler) or motor vehicle repairer;
- the inclusion of a chain of responsibility model for related parties which requires prescribed persons to—
    - take all reasonable steps to ensure that stolen motor vehicles or parts are not traded by any party in the chain; and
    - report suspicious vehicles or parts, whether in their custody or offered to the person for sale;
- a broad range of search, seize and retention powers for authorised officers—with or without consent;
- a range of regulatory tools for the "Regulator" to promote or assure compliance including the power to publicise breaches or offences;
- the creation of separate commercial and general offences—the former allowing the profit made in an illegal transaction to be taken into account;
- the inclusion of civil penalty orders with daily penalties for continuing non-compliance; and
- improvement and exclusion orders, under which a person may be required to improve their performance or face exclusion from the industry.

The NMVTRC welcomes stakeholder comments on the model law package. In particular, the NMVTRC is interested in stakeholders' views on—

- the likely impact and effectiveness of such reforms if implemented nationally;
- any interdependencies that need to be taken into account in design of related reforms (including the extent to which success relies on national harmonisation or synchronisation, etc)
- the achievability of such a reform program; and
- any perceived constraints or downsides that the NMVTRC should consider.

It is requested that comments be lodged electronically in both PDF and MS Word format via email to info@carsafe.com.au using *Modernising Regulatory Regimes to Optimise Compliance* in the Subject line.

Comments should be forward to reach the NMVTRC by the close of business on **Friday 19 December 2014.**

All comments received will be treated as public documents and may be consolidated with the comments of others, or summarised, and published.

Acknowledgements

The NMVTRC thanks the officers and agencies that contributed to Inter-agency Task Force for their assistance and co-operation in the design and conduct of its operations.

Victoria Police
Australian Crime Commission
Australian Customs and Border Protection Service
Consumer Affairs Victoria
Environment Protection Authority (Victoria)
Victorian WorkCover Authority
VicRoads

Contents

Executive Summary

Background

The inter-agency Task Force Discover was established to examine how the motor wrecking and scrap metal industries may facilitate profit-motivated vehicle theft (PMVT). Led by Victoria Police Crime Command, the Task Force completed a state-wide regulatory audit of motor wreckers and scrap metal dealers to reconcile anecdotal evidence that regulatory non-compliance by these businesses creates opportunities for PMVT. The Task Force aimed to develop an objective understanding of the extent of regulatory compliance among motor wreckers and scrap metal dealers and consider how levels of non-compliance related to unrecovered stolen vehicles in Victoria.

PMVT is a significant problem in Victoria. Data from the National Motor Vehicle Theft Reduction Council demonstrates there were 2,562 unrecovered stolen passenger and light commercial (PLC) vehicles in Victoria in 2013. The number of unrecovered PLC vehicles in Victoria has increased 21 per cent over the last five years due to the ability of vehicle thieves to profit from the growing domestic and international demand for spare parts and scrap metal. This demand has led to an expansion in the motor wrecking and scrap metal industries[1], which now comprise a variety of players displaying an equally diverse range of capital resources, experience and levels of compliance with the law. Vehicle thieves can subsequently exploit the non-compliant tiers of industry to off-load, launder and sell stolen vehicles for the value of their separated parts and left over scrap metal.

Between September 2013 and June 2014, Task Force Discover audited a total of 432 motor wreckers and scrap metal dealers, estimated to represent approximately 90 percent of all operators in Victoria. The Task Force audited all commercial practices supporting the trade in used vehicles, spare parts and scrap metal derived from vehicles in order to:

- collect intelligence on compliant and non-compliant commercial practices;
- complete an authoritative assessment on the overall extent of regulatory compliance and consider implications that levels of non-compliance have for levels of PMVT in Victoria; and
- improve the understanding of issues associated with the motor wrecking and scrap metal industries, including occupational health and safety (OHS) and environmental protection issues.

Key findings

The Task Force Discover audit focused firstly on business licensing with a Motor Car Traders Licence (MCTL), business registration with Second-Hand Dealers Registration (SHDR) and record keeping practices for the trade in vehicles due to the implications that non-compliance in these areas has for PMVT. Secondly the audit focussed on occupational health and safety and environmental protection standards for the trade in parts and scrap due to the implications that non-compliance in these areas has for community harm. Task Force investigators (comprising Victoria Police detectives) made an assessment of the regulatory compliance of each business they attended. Of the 432 motor wreckers and scrap metal dealers audited:

- 302 businesses or 70 per cent were assessed by Task Force investigators as either not holding the required authorisation to trade (i.e. the correct licence or registration) or being non-compliant to some degree with the conditions of their business licence or registration. This non-compliance included:
    - incomplete record keeping on customer identities and vehicle identifiers
    - failing to make notifications to the Written-Off Vehicles Register (WOVR)
    - failing to undertake criminal history checks and background screening of employees, and

[1] *National Motor Vehicle Theft Reduction Council – Strategic Plan 2013-2016*, NMVTRC, p14.

    - failing to publicly display business licensing or registration details.
- 199 businesses or 46 per cent were assessed as not holding the required authorisation to trade and of these:
    - 112 businesses operated without a MCTL or SHDR, but were assessed as requiring a MCTL
    - 12 businesses operated without a MCTL or SHDR, but were assessed as requiring a SHDR
    - 75 businesses traded only with a SHDR, but were assessed as requiring a MCTL.
- 398 businesses or 92 per cent did not submit notifications to the WOVR.
- 390 businesses or 90 per cent were assessed to be non-compliant to some degree with OHS and environmental protection regulations
    - 82 businesses or almost 20 per cent were referred for safety breaches deemed likely to cause injury; and
    - 41 businesses or 9 per cent were referred for moderate environmental breaches causing obvious and ongoing serious pollution to soil and waterways.

Key observations of the current regulatory regime

The regulatory regime that covers Victoria's motor wrecking and scrap metal industries is provided for in the *Motor Car Traders Act 1986* (MCTA), the *Second Hand Dealers and Pawnbrokers Act 1989* (SHDPA) and related regulations. This regime was conceived to regulate the trade in whole vehicles through business licensing (i.e. a MCTL) under the MCTA and the trade in second-hand goods through business registration (i.e. SHDR) under the SHDPA. Licensing and registration schemes for the trade in whole vehicles and second-hand goods are ill-suited to also regulate the trade in separated parts and scrap metal sourced from vehicles because:

- they are intended to support consumer protection outcomes and are not designed to detect vehicle crime, prevent the disposal of stolen vehicles or prioritise environmental and workplace safety hazards;
- their traditional enforcement targets are motor car traders and second-hand dealers, not motor wreckers and scrap metal dealers; and
- the current regulatory regime provides limited sanction for motor wreckers and scrap metal dealers who fail to familiarise themselves with the law and implement a compliant trading regime.

Motor wreckers and scrap metal dealers can exploit the regulatory regime, leading to non-compliant or criminal practices, because:

- the MCTA and the SHDPA do not define a motor wrecker or scrap metal dealer because the Acts are not intended to regulate motor wreckers or scrap metal dealers unless these businesses undertake trading that corresponds with motor car traders or second-hand dealers;
- there is limited guidance as to when a whole vehicle under the MCTA stops being a vehicle and becomes separated parts relevant to the SHDPA;
- the MCTA requires an objective assessment as to when a whole vehicle ceases to be a vehicle, which in practice may cause confusion and be difficult for motor wreckers or scrap metal dealers to undertake correctly;
- ferrous and non-ferrous scrap metal (excluding goods containing copper, gold or silver) are exempt from the application of the SHDPA, leading to confusion among scrap metal dealers as to their regulatory responsibilities[2]; and
- neither the MCTA nor the SHDPA prescribe how motor wreckers and scrap metal dealers should pay the public when acquiring vehicles, making cash-in-hand payments the norm.

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[2] Only scrap metal dealers that trade exclusively in scrap (that does not contain copper, gold or silver) and do not conduct trade in vehicle components are exempt from being registered as a second-hand dealer.

Implications of non-compliance for PMVT, wider criminality and community harm

The motor wrecking and scrap metal industries in Victoria largely operate within the cash economy. Cash transactions with vehicles are untraceable and unaccountable, which has implications for investigating the chain of vehicle acquisition and disposal and also raises questions about compliance with taxation.

Motor wreckers and scrap metal dealers can, deliberately or unwittingly, facilitate PMVT through non-compliance with business licensing, business registration and record keeping regulations. A lack of record keeping enables vehicle thieves to launder stolen vehicles through motor wreckers or scrap metal dealers with little or no risk their personal details will be retained, while the non-recording of vehicle identification numbers (VINs) results in the loss of data needed to investigate vehicle theft, trace stolen property and notify the WOVR.

A lack of WOVR notification means VINs and vehicle identifiers retain a clear title and are highly suitable for use in re-birthing activity. Alternatively, the VIN and the chassis of a stripped vehicle may be retained and diverted into false upgrading. In both cases, the vehicle's clear title makes re-registration logistically easier and allows the vehicle to forgo WOVR identity and safety inspections.

Trading without a business licence under the MCTA or business registration under the SHDPA can restrict the ability of enforcement authorities to inspect suspect businesses. Enforcement authorities have powers of entry and inspection under the MCTA and SHDPA in relation to motor wreckers and scrap metal dealers that hold a specific business licence or registration. Unlicensed or unregistered trading limits the statutory powers of enforcement authorities to oversight business practices or to prevent them from trading without resorting to court action. A motor wrecker or scrap metal dealer could therefore choose to operate unlicensed or unregistered in order to deliberately isolate themselves from government scrutiny and hide illicit activity.

Non-compliance with business licensing, business registration and record keeping regulations is associated with wider non-compliant business practices that result in safety hazards and environmental pollution at worksites that can harm employees, consumers, surrounding ecosystems and the wider community. Task Force Discover found that a majority of motor wreckers and scrap metal dealers processed vehicles and parts in a manner that allowed fuels and oils to pollute soil, drains and waterways. The subsequent storage and stacking of vehicle bodies and parts was hazardous and at risk of movement, falling or collapse. Many motor wrecker and scrap metal dealer employees were deemed to be insufficiently trained in the safe use of machinery and poorly equipped with personal safety gear. The Task Force referred the extreme cases of OHS and environmental non-compliance to enforcement authorities.

Recommendation

A policy working party comprising representatives of the Task Force Discover partner agencies be formed to examine the issues outlined in this report. The working party should develop responses and assess options, both regulatory and non-regulatory, to deter and prevent PMVT and other issues of concern identified in the motor wrecking and scrap metal industries.

Task Force Discover: Concept of Operations

1. Background

In partnership with the National Motor Vehicle Theft Reduction Council, the inter-agency Task Force Discover was established to assess how profit-motivated vehicle theft (PMVT) may occur within Victoria's motor wrecking and scrap metal industries. Rates of PMVT in Victoria have remained consistent in the long-term (see Figure 6) and increased over the short-term (see Figure 7) due to the ability of vehicle thieves to adapt to the tighter regulation of written-off vehicles. This has seen a decreased incidence of traditional vehicle re-birthing and an increased preference for the use, sale and export of stolen vehicles and parts sourced from stolen vehicles through motor wreckers[3] [4] and scrap metal dealers[5] [6].

Led by Victoria Police Crime Command, Task Force Discover completed a state-wide regulatory audit of the motor wrecking and scrap metal industries to reconcile anecdotal evidence that regulatory non-compliance by motor wreckers and scrap metal dealers facilitates PMVT. Between September 2013 and June 2014, Task Force investigators (comprising Victoria Police detectives) audited a total of 432 motor wreckers and scrap metal dealers, estimated to represent approximately 90 percent of all operators in Victoria. The Task Force audited all commercial practices supporting the trade in used vehicles, spare parts and scrap metal derived from vehicles in order to:

- collect intelligence on compliant and non-compliant commercial practices;
- complete an authoritative assessment on the overall extent of regulatory compliance and consider implications that levels of non-compliance has for levels of PMVT in Victoria;
- improve the understanding of issues associated with the motor wrecking and scrap metal industries, including occupational health and safety (OHS) and environmental protection issues;
- better understand vulnerabilities in the current regulatory regime;
- better understand the roles and responsibilities of enforcement agencies;
- improve partnerships between Task Force agencies to address future concerns within the motor wrecking and scrap metal industries; and
- identify strategic opportunities for the investigation and prosecution of non-compliance and criminality within the motor wrecking and scrap metal industries.

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[3] According to the Road Safety Act 1986, a motor wrecker carries on the business of a) demolishing or dismantling motor vehicles or parts of, or accessories for, motor vehicles; or b) buying motor vehicles and substantially demolished or dismantled motor vehicles and selling substantially demolished or dismantled motor vehicles. See *Road Safety Act 1986 - Section 16B*, viewed 9 May 2014, <_www.austlii.edu.au/cgi-bin/sinodisp/au/legis/vic/consol_act/rsa1986125/s16b.html?stem=0&synonyms=0&query=wrecker>

[4] Task Force Discover observed that motor wreckers in Victoria may also sell scrap metal and repair motor vehicles for re-sale.

[5] There is no definition of a scrap metal dealer in Victorian legislation. For this report, Task Force Discover has put together a definition with reference to the UK's Scrap Metal Dealers Act 2013, <_www.legislation.gov.uk/ukpga/2013/10/contents>.

[6] With reference to the UK Scrap Metal Dealers Act 2013, a scrap metal dealer a) carries on a business that consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought, or; b) carries on a business as a motor salvage operator, which consist wholly or partly in recovering salvageable parts from motor vehicles for re-use or sale and subsequently selling or otherwise disposing of the rest of the vehicle for scrap, or; c) buys written-off vehicles for repair and re-sale in addition to activities in a) and b).

2. The Task Force Discover Audit

Task Force Discover undertook an initial intelligence assessment using a combination of existing intelligence holdings from participating agencies, business licensing and registration records, export records, advertising sources and industry consultation to determine a profile of motor wreckers and scrap metal dealers operating in Victoria. This was followed by a programme of both targeted and random regulatory audits by Task Force investigators to determine levels of compliance with:

- appropriate business licensing or registration for the trading undertaken, including exports;
- appropriate record keeping;
- notifications to the Written-Off Vehicles Register (WOVR);
- criminal history checks of business employees;
- checks of vehicle identification numbers (VINs) against stolen vehicle data;
- OHS standards; and
- environmental protection standards.

Task Force Discover developed a compliance checklist and evidence collection template to incorporate all Task Force data requirements and intelligence gaps. These were used to document observations and statistical evidence collected during the state-wide audit, which encountered a variety of industry players from those that demonstrated good practice, to those that were significantly non-compliant and those found to be engaging in criminal activity. Task Force investigators made an assessment of the regulatory compliance of each business they attended.

Determining compliance levels with regulatory requirements is important because:

- motor wreckers and scrap metal dealers wittingly and unwittingly facilitate PMVT through non-compliance with business licensing, business registration and record keeping regulations;
- unlicensed and unregistered trading can impede the statutory rights of the Victorian Government to investigate and prosecute criminal behaviour, while non-compliant record keeping hinders the tracing of stolen property and prevents notifications to the WOVR;
- motor wreckers and scrap metal dealers with criminal intent can use unlicensed or unregistered trading and lax record keeping to avoid scrutiny from law enforcement, hide their complicity in the receipt and processing of stolen vehicles and make criminal associations difficult to detect[7] (see Case Study: Operation Neoplastic); and
- legitimate motor wreckers and scrap metal dealers may unintentionally but carelessly facilitate profit making with stolen vehicles through poor attention to detail and non-compliant business practices that vehicle thieves can exploit[8].

Furthermore, regulatory non-compliance with business licensing, business registration and record keeping requirements is associated with wider non-compliant business practices that result in OHS hazards and pollution at motor wreckers and scrap metal dealers because:

- the physical safety of employees and consumers is placed at risk by the inappropriate processing and storage of vehicle bodies, engines, fuel tanks, panels and separated parts; and
- the surrounding environment including soil, waterways and air can be polluted by the inappropriate use, handling and storage of vehicle fuels, oils, fluids and other waste.

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[7] *National Motor Vehicle Theft Reduction Council – Strategic Plan 2013-2016*, NMVTRC, p13.

[8] *National Motor Vehicle Theft Reduction Council – Strategic Plan 2013-2016*, NMVTRC, p13.

The Existing Regulatory Framework for the Motor Wrecking and Scrap Metal Industries

The regulatory regime that covers Victoria's motor wrecking and scrap metal industries was conceived to regulate the trade in whole vehicles and in second-hand goods, not separated parts and scrap metal. This regime is ill-suited to also regulate the trade in separated parts and scrap metal because:

- its traditional enforcement targets are motor car traders and second-hand dealers, not motor wreckers and scrap metal dealers;
- it is intended to support consumer protection outcomes and is not designed to detect vehicle crime, prevent the disposal of stolen vehicles or prioritise environmental and workplace safety hazards; and
- it provides limited sanction for motor wreckers and scrap metal dealers who fail to familiarise themselves with the law and implement a compliant trading regime

3. Motor Car Traders Act 1986

The *Motor Car Traders Act 1986*[9] (MCTA) regulates the trade in vehicles in Victoria and provides for the licensing of motor car traders with a Motor Car Traders Licence (MCTL). The MCTA is administered and enforced by Consumer Affairs Victoria (CAV). Victoria Police and CAV both have power to bring proceedings for offences under the MCTA but Victoria Police are not afforded any powers of entry and inspection under the Act.

The objective of the MCTA is to create an efficient and equitable licensing scheme in order to protect the rights of consumers and provide a level of confidence in the conduct of those licensed. A person carrying on the business of buying, selling or exchanging motor cars requires a MCTL. Any motor wrecker or scrap metal dealer that acquires vehicles from the general public deemed to be motor cars under the MCTA requires a MCTL, regardless of whether the vehicle's intended end-use is to be re-sold intact, dismantled for parts or crushed for scrap metal.

A strategic focus of CAV is to prevent unlicensed persons from carrying on the business of selling or offering to sell vehicles to the public. As a consumer-focussed Act, the MCTA is best suited to regulating the activities within the vehicle trade that may cause consumer detriment and is not well suited to detecting and responding to criminal activity such as PMVT.

The MCTA does not specifically define a motor wrecker or scrap metal dealer but the definition of a 'motor car' provides some guidance as to the treatment of these traders under the legislation. A motor car is defined under the MCTA as a vehicle within the meaning of the *Road Safety Act 1986*[10] (whether or not in working condition or complete) but does not include:

- an engine constructed for use as a motor tractor;
- a vehicle so constructed that its engine is used to drive or operate an agricultural implement forming an integral part of the motor vehicle; or
- an exempt vehicle (see Figure 2); or
- a vehicle that is not, and is not intended to be, used on a highway i.e. a vehicle not originally constructed to be used on a highway and/or a vehicle that (at the point of acquisition by a motor wrecker or scrap metal dealer) is beyond reasonable repair or restoration and in a condition that prevents it from operation on a highway.

For incomplete or damaged vehicles, the relevant consideration is likely to be whether a motor car is 'intended to be used on a highway.' This is an objective test that considers the characteristics of

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[9] *Motor Car Traders Act 1986*, viewed 16 April 2014,

<_www.austlii.edu.au/au/legis/vic/consol_act/mcta1986194/index.html#s3>

[10] *Road Safety Act 1986 – Section 3*

<_www.austlii.edu.au/au/legis/vic/consol_act/rsa1986125/s3.html>

the vehicle itself. A vehicle is intended to be used on a highway if a reasonable person with full knowledge of its characteristics and design says it would be used on a road. Task Force Discover investigators assessed that 88 per cent of audited motor wreckers and scrap metal dealers source at least part of their inventory from whole vehicles purchased from the general public and further assessed that a majority of these vehicles were motor cars as defined under the MCTA.

This means that a salvaged or damaged vehicle that a reasonable person would consider to be beyond restoration or repair – and therefore not capable of being returned to the road – can no longer be said to be a motor car within the meaning of the MCTA. This will be a matter of fact and degree in each case. Written off or damaged vehicles that can be repaired or restored may still be considered motor vehicles unless they are exempt transactions.

4. Second-Hand-Dealers and Pawnbrokers Act 1989

Scrap dealers and motor wreckers who do not require a licence under the MCTA may still be required to be registered as a second-hand dealer under the *Second-Hand Dealers and Pawnbrokers Act 1989*[11] (SHDPA) i.e. hold a Second-Hand Dealers Registration (SHDR).

The SHDPA is administered by CAV and enforced by Victoria Police. As with the MCTA, the SHDPA has a consumer focus demonstrated by its stated purpose to enhance the protection of consumers dealing with second-hand dealers and pawnbrokers. It also plays a role in addressing criminality and theft by expediting the recovery of stolen property from these businesses.

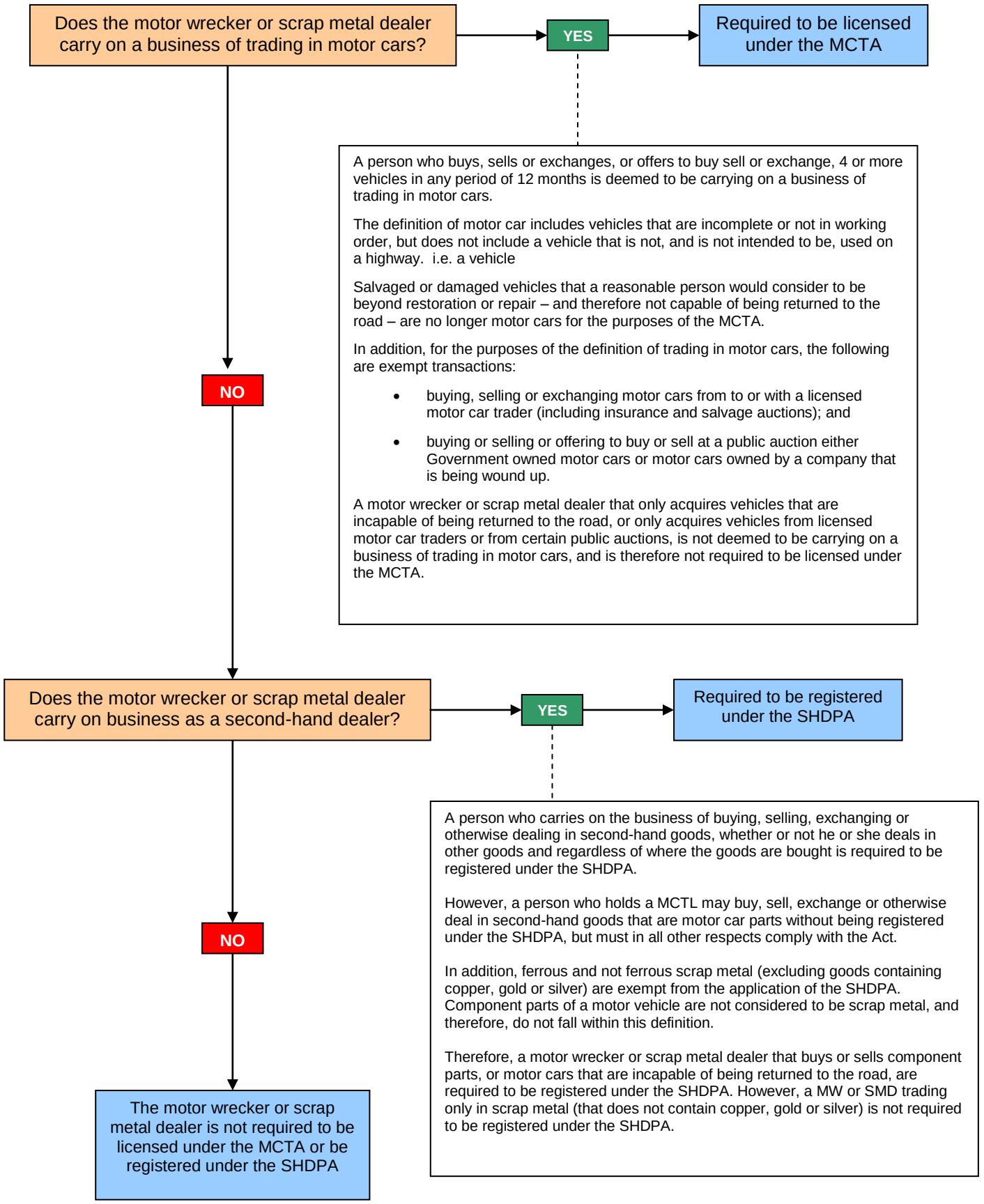
'Second-hand goods' are defined broadly as any goods that have been worn or otherwise used. This definition encompasses used vehicle parts for the purposes of the spare parts trade undertaken by motor wreckers and scrap metal dealers. There are two exemptions from the requirement to be registered under the SHDPA that are relevant to scrap metal dealers and motor wreckers for the trade in separated parts:

- section 5(2) of the SHDPA provides that a person holding a MCTL is not required to be registered as a second-hand dealer, but must in all other respects comply with the provisions SHDPA; and
- under Regulation 9 of the *Second-Hand Dealers and Pawnbrokers (Exemption) Regulations 2008*, ferrous and non-ferrous scrap metal (excluding goods containing copper, gold or silver) are exempt from the application of the SHDPA. This means scrap metal dealers that trade exclusively in scrap (that does not contain copper, gold or silver) and do not conduct trade in vehicle components are exempt from being registered as a second-hand dealer.

[11] *Second-Hand Dealers and Pawnbrokers Act 1989*, viewed 16 April 2014

<_www.austlii.edu.au/au/legis/vic/consol_act/sdapa1989302/>

4.1 Figure 1: Licensing under the MCTA and registration under the SHDPA[12]



[12] Provided by Consumer Affairs Victoria

4.2 Figure 2: Conditions where a business may trade without a licence or registration

A motor wrecker or scrap metal dealer may trade legitimately without a MCTL or without registration under the SHDPA when it:
• does not buy, sell, or exchange motor vehicles with the general public; and • acquires vehicles and/or separated parts exclusively through licensed traders and/or certain auction houses (including insurance and salvage auctions) and/or importations from overseas suppliers; and • does not buy, sell, exchange or otherwise deal in motor vehicle parts with the general public.

5. Record keeping requirements for the trade in vehicles and spare parts

Motor car traders are required to keep a number of records under the *Motor Car Traders Regulations 2008*[13]. These records provide CAV or Victoria Police with a means of tracing a vehicle's ownership history should the need arise, which in turn assists in theft prevention and the recovery of stolen vehicles.

Traders are required to keep a dealings book, which lists the acquisition and disposal details of a motor car. These details include information to identify the vehicle (such as the VIN) and the name and address of the person to whom the vehicle was acquired from or sold to. Sufficient details to identify the vehicle are also required to be included in forms when a motor car is advertised for sale and in the agreement of sale.

Similarly, per the *Second-Hand Dealers and Pawnbrokers Regulations 2008*[14], second-hand dealers must also keep accurate and complete records of every transaction by which they receive second-hand goods. The information required includes an accurate description of the goods acquired and the name and address of the person from whom the goods were received.

6. Road Safety (Vehicles) Regulations 2009 and the WOVR

The Road Safety (Vehicles) Regulations 2009[15] are enforced by VicRoads and outline the obligations of various parties, including motor wreckers. The Regulations apply regardless of whether a business is licensed under the MCTA, registered under the SHDPA or trades outside both Acts and, in relation to written-off vehicles, require:

- notifications to the WOVR from motor wreckers and motor car traders[16] while making no specific reference to scrap metal dealers; and
- the WOVR to be notified of the VIN of any vehicle that is up to 15 years old, is not already recorded on the WOVR and is dismantled to the point of becoming a write-off.

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[13] *Motor Car Traders Regulations 2008 – Regulation 8*, viewed 16 April 2014, <_www.austlii.edu.au/au/legis/vic/consol_reg/mctr2008303/s8.html>

[14] *Second-Hand Dealers and Pawnbrokers Regulations 2008*, <_www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt5.nsf/DDE300B846EED9C7CA257616000A3571/BB69EB9AD8D16388CA257761003F9309/$FILE/08-140sr002.pdf>

[15] *Road Safety (Vehicles) Regulations 2009*, viewed 16 April 2014, <_www.austlii.edu.au/au/legis/vic/consol_reg/rsr2009309/index.html>

[16] *Road Safety (Vehicles) Regulations 2009 – Regulation 88-89*, viewed 16 April 2014, <_www.austlii.edu.au/au/legis/vic/consol_reg/rsr2009309/>

7. OHS and environmental protection

Motor wreckers and scrap metal dealers must abide by OHS and environmental protection regulations per figures four and five below:

7.1 Figure 3: OHS regulations

Act	Function enforced by the Victorian WorkCover Authority (VWA)	Explanatory notes specific to motor wreckers and scrap metal dealers
Occupational Health and Safety Act 2004[17]	promotes the health and safety of persons present at worksites and seeks to eliminate health and safety risks at their source within the workplace	• key activities under the Act include: o the storage and handling of vehicles and vehicle bodies o the use of shredding or crushing equipment or vehicle baling machines o the use, handling and storage of tools and machinery for the cutting and dismantling of chassis, panels, engines and fuel tanks
Dangerous Goods Act 1985[18]	promotes the safe use and storage of dangerous goods	• dangerous goods relevant to the processing and dismantling of vehicles include: o fuels o batteries o gas (LPG)
Accident Compensation (WorkCover Insurance) Act 1993[19] and the Accident Compensation Act 1985[20]	to reduce the incidence of injury and disease in the workplace and make provision for the rehabilitation, compensation and return to work of affected employees	• the Accident Compensation (WorkCover Insurance) Act 1993 Act mandates compulsory insurance for employers under WorkCover policies • the Accident Compensation Act 1985 provides for a fully-funded scheme to compensate injured employees

[17] *Occupational Health and Safety Act 2004*, viewed 16 April 2014, <_www.austlii.edu.au/au/legis/vic/consol_act/ohasa2004273/>

[18] *Dangerous Goods Act 1985*, viewed 16 April, <_www.austlii.edu.au/au/legis/vic/consol_act/dga1985171/>

[19] *Accident Compensation (WorkCover Insurance) Act 1993*, <_viewed 16 April 2014, www.austlii.edu.au/au/legis/vic/consol_act/acia1993420/>

[20] *Accident Compensation Act 1985*, viewed 16 April 2014, <_www.austlii.edu.au/au/legis/vic/consol_act/aca1985204/>

7.2 Figure 4: Environmental protection regulations

Act	Function enforced by the Environment Protection Authority (EPA) Victoria	Explanatory notes specific to motor wreckers and scrap metal dealers
Environment Protection Act 1970[21]	• EPA seeks to protect the environment through the principles of: ○ the integration of economic, social and environmental consideration ○ shared responsibility ○ product stewardship ○ application of the waste hierarchy	• key activities under the Act include: ○ the manner and location in which vehicles are processed ○ the manner and location in which vehicle parts are stored ○ the treatment and storage of vehicle fluids and gases ○ the treatment, recycling or disposal of batteries

[21] *Environment Protection Act*, viewed 23 May 2014, <_www.austlii.edu.au/au/legis/vic/consol_act/epa1970284/>

PMVT: Overview of the Problem

8. Defining PMVT

The National Motor Vehicle Theft Reduction Council defines vehicle theft as either short term theft or profit-motivated theft depending on the probable end use of a stolen vehicle.

Stolen vehicles that are recovered are defined as short term thefts. These are often committed for joyrides or to assist in the perpetration of another crime, after which they are discarded and later found albeit damaged or in poor condition. Stolen and not recovered (SNR) vehicles are synonymous with PMVT[22] [23]. These vehicles are used to generate cash via the sale of the whole vehicle or of its parts and chassis. They are typically dismantled, stripped, shredded, re-birthed and/or exported meaning they are unlikely to be found or traced by law enforcement.

In Victoria as in other Australian jurisdictions, PMVT is traditionally associated with vehicle re-birthing committed with the identity of written-off vehicles[24]. From 2002, the viability and practicality of traditional re-birthing went into steady decline following the introduction of nationally agreed principles for the management of written-off vehicles. This included reforms to the National Exchange of Vehicle and Driver Information System (NEVDIS), which initiated cross-jurisdictional access to all written-off vehicle identities through a national WOVR. Additionally, state and territory jurisdictions leveraged the national resources of NEVDIS and developed rigorous local criteria for the operation of repairable written-off vehicles on their public roads. This included identity and safety inspections for all vehicles on the WOVR presented for re-registration[25] [26].

The National Motor Vehicle Theft Reduction Council contends that the 2002 reforms shut-down the supply of written-off vehicles into re-birthing activity and thereby deterred the theft of vehicles for re-identification. The reforms then proceeded to displace PMVT from highly regulated written-off vehicles to businesses in the motor wrecking and scrap metal industries. Contemporary PMVT is now less about the value of whole stolen vehicles and is more focused on the value of parts and scrap metal sourced from stolen vehicles and the value of legitimately owned vehicles repaired or upgraded with stolen parts.

According to the National Motor Vehicle Theft Reduction Council, the demand for quality used vehicle parts and components has grown exponentially in recent years leading to an increase in the establishment of motor wreckers and scrap metal dealers[27]. The motor wrecking and scrap metal industries are therefore comprised of businesses with varying degrees of capital resources

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[22] Although synonymous with PMVT, SNR rates are not definitive. This is because SNR rates indiscriminately capture all stolen vehicles remaining unrecovered – not all of which will have been stolen for profit making. They also automatically exclude all recovered stolen vehicles – some of which will have been stolen for the value of specific parts that are taken before the rest of the vehicle is dumped.

[23] Non profit-motivated scenarios causing a vehicle to remain unrecovered include vehicles involved in short term theft that are dumped in remote locations such as waterways and bushland in which they are never found. Vehicles can also be falsely reported stolen by owners who deliberately hide or destroy their vehicles in order to make fraudulent insurance claims.

[24] This corresponds with a traditional view of re-birthing, in which the identity of a stolen vehicle is swapped for the identity of a written-off vehicle. Some Australian jurisdictions, such as New South Wales, now use a broader definition of vehicle re-birthing encompassing the repair and upgrading of a legitimate vehicle with stolen parts, in which case the repaired or upgraded vehicle retains its original identity.

[25] The inspection process for the re-registration of a write-off requires a vehicle identification and VIN check, documented evidence of repair that may include photographs or a crash repair diary, receipts for all major replacement parts to prove their commercial or retail origin and the VIN of any donor vehicle from which used parts have been obtained.

[26] See for example VIC Roads 2014, *Keeping a crash repair diary*, State Government of Victoria, viewed 12 May 2014, <_www.vicroads.vic.gov.au/Home/Registration/WhatHasToBeRegistered/Written-off+Vehicles/Repairingavehicle.htm> and VIC Roads 2014, *Why you need a Vehicle Identity Validation (VIV) inspection*, State Government of Victoria, viewed 12 May 2014, <_www.vicroads.vic.gov.au/Home/Registration/WhatHasToBeRegistered/Written-off+Vehicles/TheVehicleIdentityValidationVIV inspection.htm>

[27] *National Motor Vehicle Theft Reduction Council – Strategic Plan 2013-2016*, NMVTRC, p14.

and industry experience, which correspondingly sees varying levels of regulatory compliance (see Industry Testimonial 1).

8.1 Industry Testimonial 1:

Perspectives from Total Auto Recyclers Pty. Ltd.

Most developed nations have addressed issues around end of life motor vehicles and have developed schemes to account for their disposal and to manage the environmental impact of recycling activities.

In comparison, no Australian state government has yet legislated to manage the end of a vehicle's life in accordance with global best practice. In the absence of a responsible management scheme, conduct around vehicle disposal here has developed into a free for all open market, hosting a range of unacceptable practices and illicit activities, all of which have consequences for the broader community. This includes environmental pollution, unsafe workplaces, vehicle theft, illegal exports and a flourishing cash economy that facilitates tax evasion, welfare fraud and money laundering.

With minimal barriers to entry, dismantling vehicles for parts and scrap metal value is particularly attractive to new migrants from less developed countries. Subsequently, many ethnic communities have become involved in the industry and have developed export networks through which they conduct transactions with untraceable cash transactions.

Most of these new entrepreneurs have not set out to deliberately engage in non-compliant behaviours and criminal activity is not fundamental to their enterprises. Rather, they have simply been able to go about business as they have been accustomed to in their countries of origin because we have an unregulated system. They enjoy significant financial advantage over legitimate businesses through their cash economies, leading some mainstream businesses to similarly take up non-compliant behaviours in order to remain competitive.

Of particular concern to legitimate businesses is evidence that they are now handling a smaller proportion of end of life vehicles than non-compliant operators, whose operations are growing rapidly.

9. The extent and resilience of PMVT in Victoria

Rates of PMVT have remained stable around Victoria even as the regulatory environment has shut down avenues for vehicle re-birthing with both statutory and repairable write-offs. This stability is significant given that it indicates a resilient, enduring and adaptive criminal activity designed to convert stolen vehicles into cash[28]. A comparison of Victoria's annual rates of passenger and light commercial vehicle[29] (PLC) theft between 2001 and 2013 (see Figure 6) shows vehicle theft was at a record high in 2001 with almost 32,000 short term PLC thefts and more than 4,200 SNR PLC vehicles recorded state-wide[30]. By 2013 there were 2,562 SNR PLC vehicles in Victoria, representing only a 39 per cent decrease from 2001[31]. This contrasts with the rates of short term theft, which had decreased 77 per cent to 7,273 PLC vehicles in the same period.[32]

9.1 Figure 5: Short term and profit-motivated PLC vehicle thefts in Victoria 2001 – 2013, adjusted[33] [34]

Between 2009 and 2013, SNR PLC vehicles in Victoria increased 21 per cent (see Figure 7)[35]. Task Force Discover believes that rates of PMVT in Victoria have remained consistent in the long-term (see Figure 6) and increased over the short-term (see Figure 7) because vehicle thieves can exploit the lax commercial practices or deliberate non-compliance of motor wreckers and scrap metal dealers to off-load, launder and sell stolen property.

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[28] *National Motor Vehicle Theft Reduction Council – Strategic Plan 2013-2016*, NMVTRC, p5.

[29] The National Motor Vehicle Theft Reduction Council defines PLC vehicles as small, medium and large passenger vehicles, sports cars, SUVs, people movers, light commercial utilities, light commercial vans and motor homes.

[30] National Motor Vehicle Theft Reduction Council

[31] Ibid

[32] Ibid; the progressive reduction in short-term thefts is attributed to the introduction of engine immobilising technology from 2001.

[33] Ibid

[34] This data has been adjusted for the number of missing vehicles that are expected to be recovered up to a year after the close of the data period. This adjustment has the effect of moving a percentage of vehicles from the profit-motivated category to the short term category.

[35] National Motor Vehicle Theft Reduction Council

9.2 Figure 6: Profit-motivated PLC vehicle theft in Australia, 2009 to 2013

State or Territory	Number of Profit-Motivated Thefts (number of SNR PLC vehicles) by State and Percent of Total Vehicle Theft Within that Jurisdiction									
	2009		2010		2011		2012		2013	
NSW	5431	28.5%	5368	30.7%	5129	29.8%	4970	30.6%	4144	30.1%
VIC	2119	18.6%	2187	21.1%	2152	21.2%	2623	23.7%	2562	25.6%
QLD	1294	17.9%	1309	19.1%	1741	21.3%	1875	18.5%	1804	19.8%
SA	663	15.6%	661	17.8%	748	20.1%	762	21.5%	703	24.7%
WA	583	12.8%	489	13.8%	652	13.1%	919	16.0%	888	16.7%
ACT	388	19.8%	363	24.6%	130	18.3%	202	22.2%	124	21.5%
TAS	95	7.1%	125	7.8%	128	8.6%	116	9.6%	122	12.3%
NT	62	8.9%	51	6.0%	45	7.8%	62	7.2%	71	9.4%
Total for Australia	**10,635**	**21.1%**	**10,553**	**23.0%**	**10,725**	**22.8%**	**11,529**	**23.2%**	**10,418**	**24.0%**

Between 2009 and 2013 an average of 2,330 vehicles were stolen annually in Victoria for profit-making purposes (see Figure 7). Naturally, not every motor wrecker or scrap metal dealer in the state is complicit in or involved with PMVT and not all vehicles stolen for profit will be processed through the separated parts and scrap markets. This means law enforcement is faced with the significant challenge of finding stolen vehicles dispersed randomly in unknown proportions among an unknown number of businesses in a variety of metropolitan and regional locations. It is therefore impractical to expect SNR vehicles could be recovered in Victoria through *ad hoc* or incidental state-wide inspections of motor wreckers and scrap metal dealers, especially given the rapid turnover of vehicle stocks per established industry practice. Furthermore, according to Task Force Discover investigators, businesses complicit in vehicle theft will dismantle, sell, or export stolen vehicles and crush leftover components for scrap metal in a matter of hours, ensuring an even shorter window of opportunity to detect and seize the physical evidence of theft.

It is therefore Task Force Discover's position that best practice regulation, and not greater industry monitoring or inspections alone, is the key to inhibiting PMVT in the motor wrecking and scrap metal industries. Best practice regulation in tandem with effective enforcement will tighten business accountability at the point vehicles enter and exit motor wreckers and scrap metal dealers as profitable commodities. Best practice regulation will subsequently prove a catalyst for the uptake of wider compliant behaviours by not only deterring vehicle crime but also promoting commercial practices that minimise community harm from injury and pollution in the workplace.

10. The expansion of the illicit separated parts market

The net value of a vehicle's parts has been estimated at two to three times greater than the value of a whole vehicle[36]. The difficulty of re-birthing and the value inherent in quality used parts has subsequently led the separated parts market to become a driver for PMVT as evidenced by the current high proportion of older, low value SNR vehicles in Victoria. In 2012, 86 per cent of all SNR PLC vehicles in Victoria were more than 11 years old, 74 per cent were worth less than $10,000 and 56 per cent were worth less than $5,000[37]. This indicates a criminal preference for vehicles that, due to age and condition, have little demand on the used vehicle market and instead retain value in their parts and components. Task Force Discover investigators note that vehicle thieves can also profit from the domestic sale or export of stolen parts from newer vehicles that are scarce or otherwise command high retail prices (see Case Study: Operation Neoplastic).

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[36] Longman M 2006, 'The problem of auto theft', in Stauffer E and Bonfanti M.S. (Eds.), *Forensic Investigation of Stolen-Recovered and Other Crime-Related Vehicles*, Oxford: Elsevier, p3.

[37] National Motor Vehicle Theft Reduction Council

Vehicle thieves can exploit the fact that there is no NEVDIS-equivalent national parts register and, even if there was, most vehicle parts have no markers or identifiers making stolen parts difficult to trace and identify. It is telling that a practical and cost-effective vehicle parts identification technology is no closer to development than it was a decade ago[38], demonstrating the ongoing challenges for law enforcement in tracing the provenance of vehicle parts and highlighting the opportunities this presents to launder stolen vehicle parts into legitimate written-off, end-of-life or damaged vehicles.

11. Export Markets: A driver for PMVT

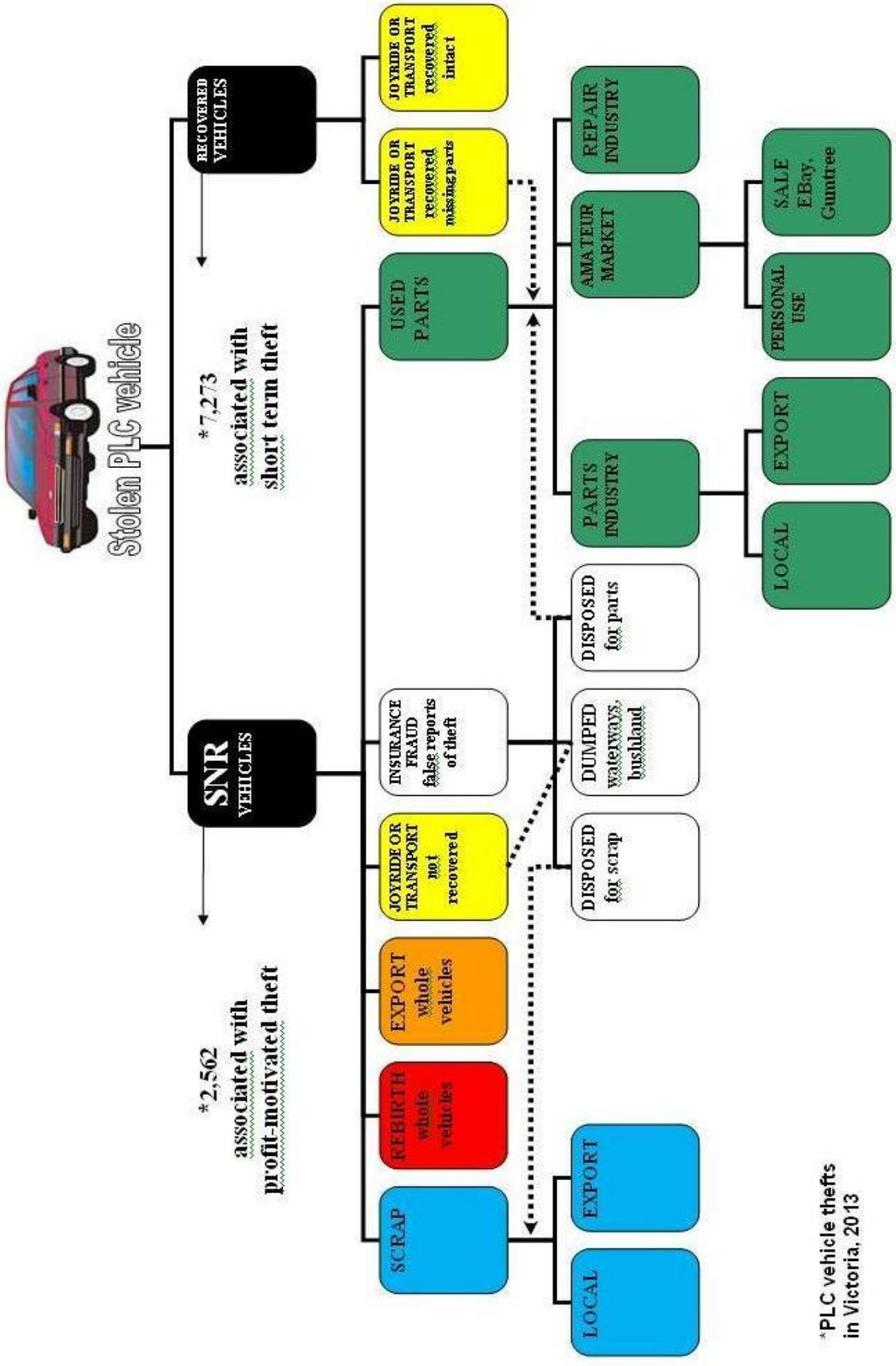
Task Force Discover notes that opportunities exist to export stolen property undetected due to the burden in monitoring outgoing shipping cargo. While the Australian Customs and Border Protection Service (ACBPS) has worked closely with Victoria Police to disrupt the export of stolen vehicles and parts in the past[39], the ability of Victoria Police and the ACBS to intercept stolen vehicles at the border is entirely intelligence-led. The logistical challenges involved in detecting, unpacking and inspecting suspect shipping containers makes *ad hoc* inspections prohibitive. Instead, the inspections that do occur are highly targeted and are based on the collection of intelligence that indicates the attempted export of stolen property. This means only a limited amount of outgoing export cargo can be cross-checked with export declarations.

According to Task Force Discover investigators, stolen vehicle parts that have high demand on the separated parts market include engines, gear boxes and body panels. An as yet unknown proportion of parts stolen in Victoria will be destined for export markets in the Middle East, Africa and the Subcontinent via familial connections that some vehicle thieves are believed to maintain overseas (see Case Study: Operation Neoplastic). Exported vehicles may be stolen to order, with evidence that vehicle thieves in Victoria have been provided with shopping lists of vehicles and parts by criminal associates based offshore. Investigators believe it possible that stolen vehicles and stolen parts are exported from Australia under the guise of generic spare parts, scrap metal or innocuous household items.

[38] *National Motor Vehicle Theft Reduction Council – Strategic Plan 2013-2016*, NMVTRC, p12.

[39] Intelligence Support to Operations Victoria, Australian Customs and Border Protection Service

11.1 Figure 7: Pathways for a stolen PLC vehicle



Case Study in PMVT: Operation Neoplastic

Task Force Discover's disruption of a motor wrecker allegedly exporting stolen vehicles.

12. Identification of the accused motor wrecker

Task Force Discover analysed customs data for the export of vehicle parts and scrap metal from Victoria. Analysis of the data indicated that between May 2013 and April 2014 a motor wrecking business in Campbellfield had exported 11 containers of vehicle parts and accessories to Kuwait and Lebanon with a gross weight of 163 tonnes and a 'free on board' value of $394,113. Between December 2012 and April 2013, the same operators under a different business name had exported an additional five containers to the same destinations, with a gross weight of 79 tonnes and a 'free on board' value of $75,204.

The motor wrecking business had not been visited during the audit phase of Task Force Discover due to the fact the business deliberately maintained a low profile. It did not advertise for the purchase of vehicles from the public and it did not operate a shop front for the local sale of vehicles or used parts. Instead, in addition to exporting, the business engaged in domestic online trading by selling parts through eBay and by selling vehicles through the carsales.com.au website. Physical inspection of the business revealed that the signage on the front of the premises was from the previous occupants and bore no relationship to motor wrecking.

13. Task Force Discover Audit

On Monday 7 April 2014 Victoria Police visited the business under Task Force Discover and established that the business was trading without a MCTL. The business owner claimed to acquire mostly Toyota sedans and four wheel drives from insurance and salvage auctions.

As part of the audit, a number of vehicles and half-cuts of vehicles on the premises were checked. It was established that two Toyota Prados were stolen vehicles, with one having been stolen in the previous 24 hours and the other having been stolen sometime in the previous four days.

14. Victoria Police investigation

A search warrant for the business premises was obtained and executed late in the afternoon of 7 April 2014. The subsequent search of the premises revealed a further five stolen vehicles and a substantial amount of property was seized including vehicle log books, a Toyota key code reader, a number of blank Toyota keys, on-board diagnostic readers, an eTag and three bull bars two of which had winches attached.

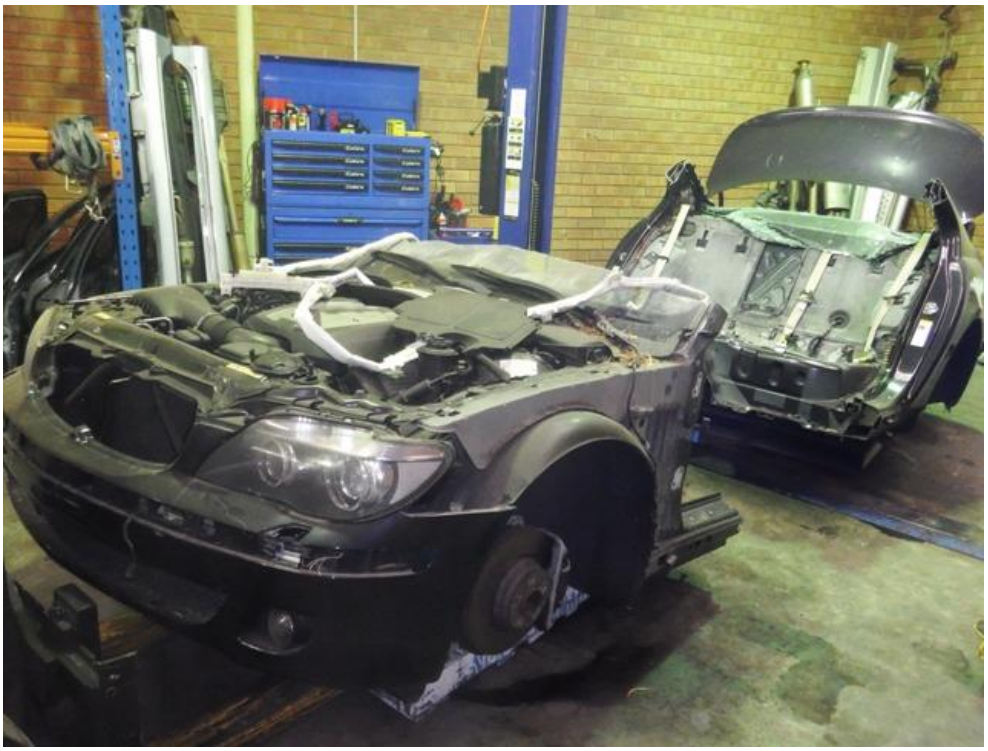
Victoria Police identified an additional 27 stolen vehicles, comprising 18 vehicles traced through the confiscated log books, two vehicles were identified from the winches on the bull bars, one vehicle was identified from the confiscated eTag, five vehicles were identified through additional personal property found in the stolen vehicles and one vehicle was identified through examination of a build plate remaining from a dismantled vehicle.

As at 30 July 2014, a total of 70 stolen vehicles had been identified with a total insured value of approximately $2 million, which represents 8 per cent of the total value of all profit-motivated thefts in Victoria in 2013[40]. This matter is currently before the Victorian courts and as at July 2014 the accused had not been convicted of these alleged offences.

[40] The total estimated value of all profit-motivated thefts in Victoria in 2013 was $24,929,739; sourced from the National Motor Vehicle Theft Reduction Council.

14.1 Figure 8: Stolen Toyota Prado in the process of being stripped

14.2 Figure 9: Front and rear cut of stolen BMW 740 sedan



14.3 Figure 10: Bull bar with winch attached from a stolen Toyota Prado

14.4 Figure 11: Section of sill and 'B' pillar from a stolen Toyota RAV4, build plate attached

Audit Results

The Task Force Discover audit uncovered widespread non-compliance across a range of regulatory obligations. The main identified areas of non-compliance were with respect to: business licensing and business registration; record-keeping and WOVR notifications; and OHS and environmental protection regulations.

In order to assess compliance with regulatory requirements for the trade in vehicles, parts and scrap, Task Force Discover investigators first assessed if an audited motor wrecker or scrap metal dealer conducted trading with the general public, including the acquisition of vehicles from the public. Task Force investigators documented that motor wreckers and scrap metal dealers acquired vehicles from the general public as well as from insurance and salvage auctions in a range of conditions. The investigators then assessed the condition and status of vehicles found at audited businesses according to the definition of a motor car in the MCTA.

15. Compliance with business licensing and registration

Of the 432 motor wreckers and scrap metal recyclers audited by Task Force Discover, 199 businesses or 46 per cent were assessed to be holding the wrong licence or registration or to be trading without a licence or registration when required to do so. The licensing arrangements of all audited businesses are provided in Appendix A.

Task Force Discover's audit results for the 432 motor wreckers and scrap metal dealers reveal that:

- 217 businesses (50 per cent) traded with a MCTL and of these,
    - 164 had a MCTL and no registration under the SHDPA[41]
    - 53 possessed both a MCTL and registration
    - 198 acquired whole vehicles from the general public
    - 98 undertook the *ad hoc* sale of whole vehicles to the general public
- 83 businesses (19 per cent) traded with only registration under the SHDPA and of these,
    - 8 were assessed to meet the conditions for trading solely with registration
    - 75 were assessed as being required to hold a MCTL
    - 73 acquired whole vehicles from the general public
    - 10 undertook the *ad hoc* sale of whole vehicles to the general public
- 132 businesses (31 per cent) traded without a licence or registration and of these,
    - 12 were assessed to require registration under the SHDPA
    - 112 were assessed as being required to hold a MCTL
    - 7 were assessed as not being required to hold either a MCTL or to be registered
    - 107 acquired whole vehicles from the general public
    - 24 undertook the *ad hoc* sale of whole vehicles to the general public

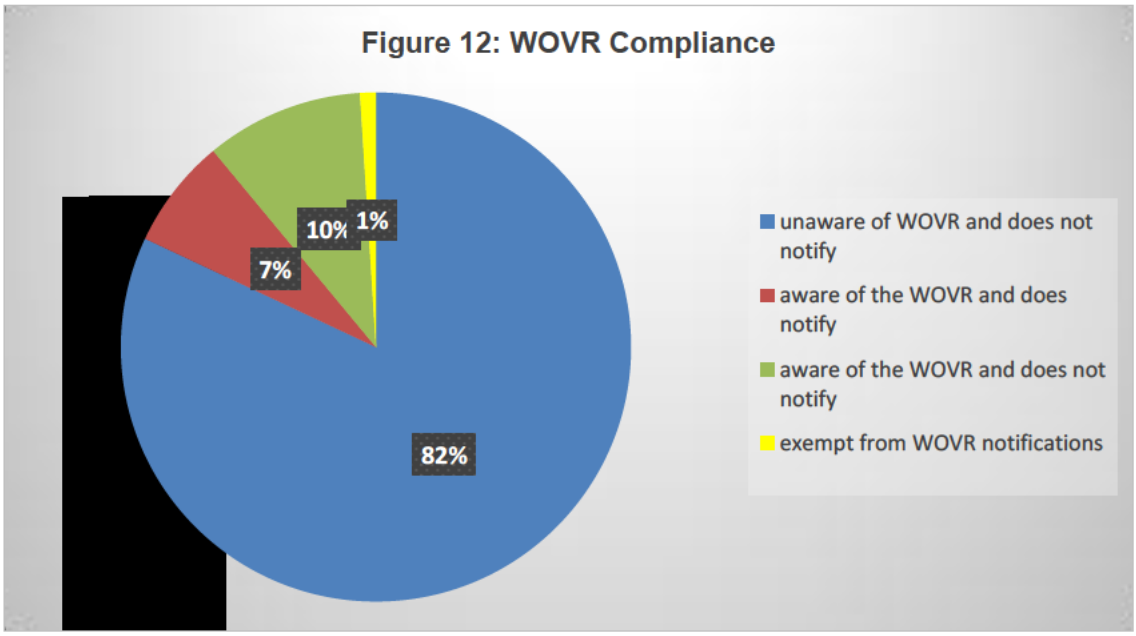
The Task Force Discover audit results show that 88 per cent of audited motor wreckers and scrap metal dealers source at least part of their inventory from whole vehicles purchased from the general public. Task Force investigators assessed that a majority of these vehicles were motor cars as defined under the MCTA and therefore a majority of the audited motor wreckers and scrap metal dealers were assessed as being required to hold a MCTL. Motor wreckers or scrap metal dealers that can trade solely under the SHDPA are in the minority while rarer still are trading conditions that would allow them to trade without any licence or registration.

[41] Licensed motor car traders are not required to be registered under the SHDPA, but must in all other respects comply with that Act.

16. Compliance with record keeping and WOVR notifications

Task Force Discover found widespread non-compliance with record-keeping and WOVR notification requirements. The audit results on record keeping and the use of dealings books for the 432 motor wreckers and scrap metal dealers reveal that:

- 132 businesses undertook retail vehicle sales to the general public and of these
    - 90 kept motor car trading records and 42 had no records;
- 321 businesses traded in recycled vehicle parts to the general public and of these
    - 170 kept second hand trading records and 151 had no records;
- 78 businesses traded exclusively in scrap metal and of these
    - 49 kept vehicle acquisition and disposal records and *29 had no records
    - *2 of these businesses acquired vehicles exclusively from auctions or wholesale channels and were exempt from business licencing provisions;
- 353 businesses claimed to be unaware of WOVR reporting requirements and did not notify VicRoads of relevant vehicles;
- only 28 businesses were aware of WOVR reporting requirements and notified VicRoads of relevant vehicles;
- 45 businesses were aware of WOVR reporting requirements but did not provide notifications to VicRoads; and
- only 6 businesses dealt exclusively in vehicles that were older than 15 years and were exempt from notifying the WOVR.



17. Compliance with OHS regulations

Task Force Discover audits identified 82 motor wreckers and scrap metal dealers that required improvements to workplace health and safety. These cases concerned extensive numbers of vehicle bodies, engines and parts that were stacked or stored together in a hazardous manner so as to pose a high risk of collapse onto persons present at worksites. Separate to these cases, the Task Force found that general compliance with worksite safety conditions was poor and estimated that 90 percent of businesses were non-compliant to some degree.

According to VWA, issues of non-compliance prevalent among motor wreckers and scrap metal dealers are:

- lack of subscription to WorkCover insurance policies;
- under-reporting of workplace health and safety incidents and accidents;
- poorly stored and stacked vehicle bodies, panels, engines and parts;
- lack of training and induction in the safe use of machinery and plant equipment such as forklifts;
- electrical hazards from flexible electrical leads, fixed wiring and fixtures;
- hazardous floor and ground conditions risking slips and falls;
- fuels and oils stored inappropriately near ignition sources; and
- lack of personal protective equipment such as glasses, gloves, boots and acoustic earmuffs.

18. Compliance with environmental protection regulations

Task Force Discover audits identified 41 motor wreckers and scrap metal dealers at the moderate end of environmental non-compliance, representing 9.5 per cent of all audited businesses, which will be referred to EPA for follow-up. These cases concerned vehicles being processed on open ground causing the leakage of vehicle oils and fluids into the soil of unsealed work areas and into stormwater drains. Separate to these cases, the Task Force found that general compliance with provisions for environmental protection was poor and estimated that 90 percent of businesses were non-compliant to some degree.

According to EPA, issues of low-level non-compliance is prevalent among motor wreckers and scrap metal dealers resulting in the potential contamination of air, land, soil, groundwater and waterways. This occurs because:

- vehicle dismantling work is conducted on a non-sealed surface;
- vehicles are drained of coolants, fuels, brake fluids and engine, transmission and differential oils on a non-sealed surface or in a non-bunded area;
- vehicle parts containing fluids, liquids or oils (including batteries, radiators, oil filters and engines) are stored on a non-sealed surface or non-bunded area;
- waste water from vehicle processing and cleaning is not disposed of through an oil water separator or through the sewer via a trade waste agreement;
- waste water containing vehicle fluids, liquids or oils enters stormwater drains or is allowed contact with the soil;
- reclaimed refrigerants from air-conditioning units leak or are released into the air; and
- vehicle tyres and batteries are not recycled.

Case Studies in OHS and Environmental Protection Compliance

The following case studies demonstrate the varying levels of compliance that Task Force Discover found with OHS and environmental protection regulations.

19. Substantially compliant motor wrecker trading in recycled parts with a MCTL, Victoria Police Western Region

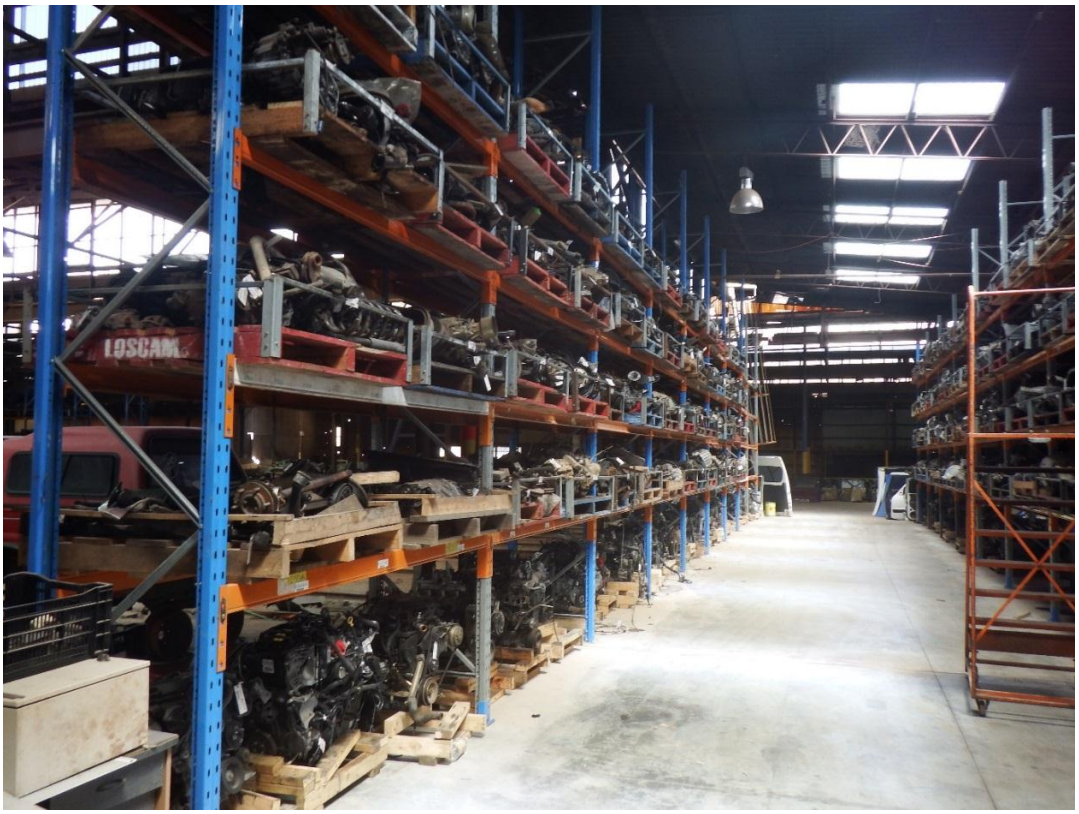
No OHS or environmental concerns were apparent. For all vehicles acquired this motor wrecker:

- took copies of photo identification such as drivers licence for vehicles acquired from the public;
- completed PPSR checks and vehicle disposal forms;
- took photos of VINs, compliance plates and bodies;
- notified the WOVR of VINs from relevant dismantled and scrapped vehicles;
- assigned stock numbers to vehicles and bar codes were attached to parts;
- stored vehicle bodies undercover and parts securely on shelves; and
- had excellent record keeping with the electronic system ‘Aden’, which holds invoice records and can trace the storage location of all parts tagged and shelved.

19.1 Figure 13: Substantially compliant worksite, vehicles processed indoors on a sealed surface

19.2 Figure 14: Substantially compliant worksite, vehicles processed indoors on a sealed surface

19.3 Figure 15: Substantially compliant worksite with stable storage and shelving



19.4 Figure 16: Substantially compliant worksite with stable storage and shelving

20. Mostly compliant motor wrecker trading in scrap and the export of recycled parts with a MCTL, Victoria Police North West Metro Region

Task Force Discover identified the following OHS and environmental issues:

- combined inside and outside storage of vehicle bodies and engines, with shelving for parts appearing mostly secure with some possible instability; and
- minor potential safety issues identified in the storage of gas cylinders and vehicle bodies, some of which were observed stacked on top of each other

For all vehicles acquired this motor wrecker:

- completed vehicle disposal forms for most but not all vehicles;
- did not notify the WOVR of relevant dismantled or scrapped vehicles; and
- had good record keeping with the electronic system 'Pinnacle'.

20.1 Figure 17: Mostly compliant worksite, external shelving and stacking of gas cylinders assessed to be problematic

20.2 Figure 18: Mostly compliant worksite

20.3 Figure 19: Mostly compliant worksite, storage bins are in a bunded area but bins are too full and parts are stacked too high

20.4 Figure 20: Mostly compliant worksite, the storage and disposal of vehicle waste matter assessed to be problematic

21. Substantially non-compliant motor wrecker trading in the export of recycled parts and scrap with a MCTL, Victoria Police North West Metro Region

Task Force Discover identified the following OHS and environmental issues:

- car bodies and parts were stacked too high; and
- substantial oil and vehicle fluid leaks were apparent and were not contained;

For all vehicles acquired this motor wrecker:

- maintained a dealings book that was apparently kept off-site so record keeping could not be confirmed, which was in contravention of the MCTA; and
- did not notify the WOVR of relevant dismantled and scrapped vehicles.

21.1 Figure 21: Substantially non-compliant worksite, vehicle bodies stacked on top of unsecured parts and engines with fluids on ground

21.2 Figure 22: Substantially non-compliant worksite, oils and fuels on ground create a slip hazard

21.3 Figure 23: Substantially non-compliant worksite, vehicle bodies stacked unsafely

21.4 Figure 24: Substantially non-compliant worksite, vehicle bodies stacked unsafely

22. Completely non-compliant motor wrecker trading in recycled parts and scrap with no business licence or registration, Victoria Police North West Metro Region

Task Force Discover identified the following OHS and environmental issues:

- vehicle bodies and parts stacked and stored unsafely and haphazardly;
- engines, parts, panels and other components littered the workshop floor creating safety hazards;
- oil leaks were apparent on the workshop floor creating slip hazards; and
- oils, lubricants, coolants and fuel leaking into the soil via an unsealed pit outside

For all vehicles acquired this motor wrecker:

- operated completely unlicensed;
- acquired vehicles from and sold vehicles to the general public;
- kept minimal records comprising invoices only;
- did not notify the WOVR of relevant dismantled and scrapped vehicles; and
- was completely non-compliant with conditions required by the MCTA.

22.1 Figure 25: Completely non-compliant worksite, engines and vehicles stacked close to public road and median strip, possible risk to pedestrian and road users if vehicle fluids leak

22.2 Figure 26: Completely non-compliant worksite, vehicle bodies stacked unsafely

22.3 Figure 27: Completely non-compliant worksite engines stored on worksite floor, lack of bins or storage containers

22.4 Figure 28: Completely non-compliant worksite oils, fuels and other vehicle fluids leaking into unsealed pit

Causes of Non-Compliance and Implications for PMVT

23. Non-Compliance with business licensing and registration requirements

The results of the Task Force Discover audit suggest there is significant confusion within the motor wrecking and scrap metal industries as to whether a MCTL or registration under the SHPDA, if any, is required to conduct trading activities. Some traders, including those involved in PMVT, may deliberately exploit this confusion to avoid complying with licencing or registration requirements and thereby frustrating the ability of regulators to oversee their activities. The Task Force identified the following aspects of the MCTA and the SHDPA that may be sources of confusion and are vulnerable to criminal exploitation within the motor wrecking and scrap metal industries:

No definition of a 'motor wrecker' or 'scrap metal dealer'

The MCTA and the SHDPA function to create an equitable business licensing scheme over motor car traders, second-hand dealers and pawn brokers – that is to say, the Acts offer no definition of a motor wrecker or scrap metal dealer. The MCTA and the SHDPA are not intended to regulate motor wreckers or scrap metal dealers unless these businesses undertake trading that corresponds with motor car traders or second-hand dealers. This therefore places the onus on wreckers and scrappers to self-assess which business model[42] their operations align with and apply for the relevant business licence or registration. When operations seem to straddle both the motor car trade and second-hand dealing within the one business, it is not inconceivable that wreckers or scrappers may mistakenly choose the wrong trading instrument.

'Motor wrecker' is defined in the *Road Safety Act 1986*[43] and this definition is sufficiently broad so as to capture the activities of a scrap metal dealer; however, this Act is concerned with road safety as opposed to the regulation of the motor wrecking and scrap metal industries.

The lack of a definition of scrap metal dealing under Victorian law creates ambiguity that may create confusion for scrap metal dealers attempting to self-assess their own business model for licensing or registration purposes. Rogue businesses notionally calling themselves scrap metal dealers might exploit ambiguity in the law to cherry-pick business licencing that best conceals non-compliance and criminality (see Case Study: Operation Neoplastic).

Lack of clarity between whole vehicles and separated parts

The Acts define 'motor cars' and 'second-hand goods' broadly but provide only limited guidance as to the point when trading with a whole vehicle acquired from the public (requiring a MCTL) ceases to be a vehicle and becomes separated parts (requiring registration under the SHDPA). The definition of 'motor car' under the MCTA includes vehicles whether or not they are in working condition or complete, but does not include a vehicle that is not, and is not intended to be, used on a highway. Under the MCTA, vehicles that are salvaged or damaged beyond restoration or repair can cease to be motor cars and can therefore be traded with registration under the SHPDA.

A wrecker or scrapper that purchases separated parts and not whole vehicles from the public can undertake this activity solely with registration under the SHDPA; however, it is understood that few motor wreckers or scrap metal dealers are willing to purchase parts already separated from vehicles due to uncertainty regarding origin and quality. Parts dealers who acquire whole vehicles are only required to hold a MCTL if these vehicles are capable of being returned to the road.

It can be complex for motor wreckers and scrap metal dealers to correctly assess the condition and status of the vehicles they trade with and then align their vehicle inventories with the relevant legislation. The lack of a clear legal distinction between motor cars and separated parts can therefore make it difficult for businesses to assess which licence or registration they require. Task

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[42] Whether they are a motor car trader or second hand dealer; pawn broking will not be relevant to the separated parts and scrap markets.

[43] *Road Safety Act 1986 - Section 16B*, viewed 9 May 2014, <_www.austlii.edu.au/cgi-bin/sinodisp/au/legis/vic/consol_act/rsa1986125/ s16b.html?stem=0&synonyms=0&query=wrecker>

Force Discover found that many motor wreckers and scrap metal dealers acquiring whole vehicles from the general public without a MCTL considered the transaction to represent the trade in separated parts and components per the SHDPA, despite the vehicle's intact nature when acquired. These businesses therefore claimed exemption from the MCTA and if they believed they were dealing exclusively in scrap they also claimed exemption from the SHDPA (see below – the exemption of scrap metal is limited and does not apply to a business buying and selling car parts). Rogue traders can also attempt to exploit ambiguity in the law by spuriously claiming they did not believe that the vehicles they traded fell under the definition of a motor car.

Scrap metal exemption

The classification of ferrous and non-ferrous scrap metal as an exempt good under the SHDPA appears to create confusion among some traders. This exemption can be relied on if they only deal in scrap metal from vehicles and not any other component parts and the metal does not contain copper, gold or silver. Task Force Discover found that 36 per cent of scrap metal dealers processing whole vehicles sold used vehicle parts taken from the scrapping process. The Task Force also found many of these scrap metal dealers claimed exemption from the SHDPA based on their business name alone even though their trading included used vehicle parts. Some of these same scrappers also claimed exemption from the MCTA (per the above) and traded completely unlicensed and unregistered. It would appear therefore that there is potential for this exemption to be claimed falsely by businesses intent on avoiding the scrutiny of regulators.

Enforcement issues

CAV and Victoria Police are imbued with powers of entry, inspection and enforcement for their respective Acts only when suspect commercial entities are specifically licensed with a MCTL or registered under the SHDPA. Unlicensed or unregistered trading limits the statutory powers of enforcement authorities to oversight business practices or to prevent them from trading without resorting to court action. A motor wrecker or scrap metal dealer could therefore choose to operate without a licence or registration in order to deliberately isolate themselves from government scrutiny and hide illicit activity.

Neither CAV nor Victoria Police retain any statutory powers of entry over the 132 unlicensed and unregistered motor wreckers and scrap metal dealers identified by Task Force Discover. Under the MCTA, either CAV or the Victoria Police could seek to prosecute an unlicensed and unregistered business for non-compliance, but a prosecution could only succeed with sufficient evidence. In such scenarios, it is possible Victoria Police would be granted physical access to an unlicensed business, but this would be due to the persuasion of a policing presence alone given they would also be bereft of statutory powers of entry. If a business refused Victoria Police access then they would be left to rely on powers of entry through warrant, which could only be procured with sufficient evidence of criminal activity and this would be lacking unless evidence was collected separate to the physical inspection of the suspect business.

This imposes obvious limitations on Victoria Police's visibility of motor wreckers and scrap metal dealers beyond businesses trading solely under the SHDPA. Victoria Police acknowledges that, hitherto, its limited statutory authority over motor wreckers and scrap metal dealers has meant investigations into vehicle theft have rarely involved these businesses. Instead, its visibility of PMVT opportunities within the separated parts and scrap markets has been incidental and contingent on occasions when a motor wrecker or scrap metal dealer is implicated in separate criminal activity such as assault, illicit drugs or homicide.

Task Force Discover found only 83 motor wreckers and scrap metal dealers conducting transactions solely under the SHDPA, representing 19 per cent (the smallest proportion) of all audited businesses. Task Force investigators assessed that 75 of these businesses or 90 per cent were engaged in unauthorised trading and in need of a MCTL. The proportion of businesses Victoria Police will have statutory authority over will continue to grow even smaller when/if these businesses obtain a MCTL and let their registration under the SHDPA lapse.

24. Non-Compliance with record keeping

The audit found widespread non-compliance with record-keeping requirements under the MCTA and SHDPA. Non-compliance with record keeping hinders investigations because vehicle thieves can launder stolen vehicles through motor wreckers or scrap metal dealers with little or no risk their personal details will be recorded. Stolen vehicles are then stripped for parts and crushed for scrap metal, leaving little traceable data. If VINs and vehicle identifiers are not recorded the crucial evidence needed for the investigation of vehicle theft is effectively destroyed.

A related issue is that the MCTA, the SHDPA and their associated Regulations do not prescribe or regulate the manner in which motor wreckers and scrap metal dealers facilitate payments to the public for vehicles. Cash-in-hand payments are subsequently the norm within Victoria's motor wrecking and scrap metal industries. This practice, when combined with the generally poor record-keeping standards identified in the audit, makes it difficult to trace the chain of vehicle acquisition and disposal (see Industry Testimonial 2). It also has implications for tax fraud.

Task Force Discover notes that the *Scrap Metal Dealers Act 2013* (United Kingdom) makes it an offence for dealers to pay cash for scrap metal. It would be worth considering this, and other similar legislation in any regulatory review.

24.1 Industry Testimonial 2:

Perspectives from SIMS Metal Management

Each country that we operate in globally experiences the issues that Task Force Discover is investigating and has approached the problem via different strategies.

The most successful strategy has undoubtedly come about through legislation that prohibits the payment of cash for scrap metal of any kind including vehicle bodies. This legislation was introduced into the UK in 2013 following a multi-jurisdictional task force that recommended prohibiting cash-in-hand payments for vehicles and scrap.

In Australia, legislation varies between states regarding the purchasing of scrap and there appears to be little to no enforcement of this legislation.

It is the view of SIMS Metal Management, particularly in light of the success of the legislation in the UK, that prohibiting cash payments for scrap metal and vehicle bodies in Australia would have similar success in reducing criminal activity. SIMS understands that the UK legislation was accompanied by rigorous enforcement, with non-compliant businesses either heavily fined or forced to close.

25. Non-Compliance with WOVR notifications

While VicRoads makes available a range of information to vehicle wrecking representative groups regarding the statutory obligations of their members to the WOVR, there is no guarantee that this information will be studied or implemented. The Task Force Discover audit found 82 per cent of motor wreckers claim (or feign) ignorance of WOVR notifications. The Task Force considers the provisions of the Road Safety (Vehicles) Regulations 2009 to be problematic for compliance because the Regulations:

- reference only motor wreckers and motor car traders, thereby exempting scrap metal dealers. Businesses calling themselves scrap metal dealers might argue that the Regulations absolve them of responsibilities to the WOVR. Task Force Discover notes, however, that sourcing scrap metal from a whole vehicle will involve some form of wrecking activity and also notes some scrap metal dealers will acquire vehicles from the public and undertake the *ad hoc* sale of vehicles in line with the activities of a motor car trader; and

- prescribe unequal obligations on those who notify the WOVR and on those who maintain it. Regulations 87-89 advise insurers, self-insurers, motor wreckers and motor car traders that they “must” provide written-off vehicle data to VicRoads[44]. Regulation 93 then advises that VicRoads “must” enter this data into the WOVR when it is from insurers and self-insurers, but only “may” enter this data when it is from motor wreckers and motor car traders[45]. VicRoads policy is to record all WOVR notifications it receives; however, motor wreckers may not feel compelled to make notifications to VicRoads if the Regulations lead them to believe incorporation of data into the WOVR is only irregular or otherwise not guaranteed.

Even when vehicles are demolished and cease to physically exist, a lack of WOVR notification means VINs and vehicle identifiers retain a clear title and are highly suitable for use in re-birthing activity. Alternatively, the VIN and the chassis of a stripped vehicle may be retained and diverted into false upgrading. In both cases, the vehicle’s clear title makes re-registration logistically easier and allows the vehicle to forgo WOVR identity and safety inspections.

26. Non-Compliance with OHS and environmental protection regulations

The audit found that non-compliance with business licensing and record keeping regulations is associated with wider non-compliant business practices that result in safety hazards and environmental pollution at worksites that can harm employees, consumers, surrounding ecosystems and the wider community.

Task Force Discover found that a majority of motor wreckers and scrap metal dealers processed vehicles and parts in a manner that allowed fuels and oils to pollute soil, drains and waterways. The subsequent storage and stacking of vehicle bodies and parts was hazardous and at risk of movement, falling or collapse. Many motor wrecker and scrap metal dealer employees were deemed to be insufficiently trained in the safe use of machinery and poorly equipped with personal safety gear. Task Force Discover referred these cases of OHS and environmental non-compliance to enforcement authorities.

27. The costs of compliance

Task Force Discover notes that motor wreckers or scrap metal dealers that do not comply with regulatory requirements do not incur the associated compliance costs. This lowers the operating costs of non-compliant businesses and allows them to obtain an unfair commercial advantage by undercutting compliant businesses (see Industry Testimonial 3). This can weaken the motivation for legitimate businesses to remain compliant in the face of unfair competition and therefore increase overall rates of non-compliance.

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[44] *Road Safety (Vehicles) Regulations 2009 – Regulations 87-89*, viewed 16 April 2014, <_www.austlii.edu.au/au/legis/vic/consol_reg/rsr2009309/>

[45] *Road Safety (Vehicles) Regulations 2009 – Regulation 93*, viewed 16 April 2014, <_www.austlii.edu.au/au/legis/vic/consol_reg/rsr2009309/>

27.1 Industry Testimonial 3:

Perspectives from OneSteel Recycling

Competition is healthy and we encourage it; however it must be on a level playing field. OneSteel Recycling has invested millions of dollars in our facilities, our equipment and most importantly in training our people to ensure we run a legitimate, viable, sustainable and compliant business. The people that are flagrantly flouting Victoria Police, the Environment Protection Authority and Australian Taxation Office rules are not compliant and in the process run a lower cost operation that undercuts our legitimate business.

We encourage fit for purpose regulation of the recycling and like industries; however regulation must be hand-in-hand with enforcement. There is no point regulating the legitimate operators to see the illegitimate ones prosper due to non-enforcement of the set rules. This is applicable to Victoria Police, the Environment Protection Authority, Work Safe Victoria and Australian Taxation Office enforcement – and it must be continual otherwise the shonky operators will only reappear.

Appendix A

28. Appendix A – Tables

28.1 Figure 29: Trading scenarios observed through Task Force Discover when a motor wrecker or scrap metal dealer only acquires vehicles from insurance or salvage auctions

Number of businesses found per trading scenario arranged by licensing and registration				
a motor wrecker or scrap metal dealer only acquires vehicles from insurance and salvage auctions and then:	*Licence or registration appropriate for scenario*[46]	*Businesses found with appropriate licence or registration*	*Businesses found without appropriate licence or registration*	***Total number of businesses (out of 432)***
- repairs and sells vehicles to the public	MCTL	0	2	**2**
- sells scrap metal to licensed domestic wholesalers or for export	NONE	1	0	**1**
- sells parts to the public - sells scrap metal to licensed domestic wholesalers or for export	SHDR or MCTL	18	9	**27**
- exports parts - sells scrap metal to licensed domestic wholesalers or for export	NONE	1	0	**1**
- sells whole vehicles and parts to the public - sells scrap metal to licensed domestic wholesalers or for export	MCTL	6	3	**9**
- exports whole vehicles and parts - sells scrap metal to licensed domestic wholesalers or for export	NONE	4	0	**4**
- exports whole vehicles and parts - sells parts to the public - sells scrap metal to licensed domestic wholesalers or for export	SHDR or MCTL	2	3	**5**
- exports parts - sells parts to the public - sells scrap metal to licensed domestic wholesalers or for export	SHDR or MCTL	0	1	**1**
- exports parts - sells whole vehicles and parts to the public - sells scrap metal to licensed domestic wholesalers or for export	MCTL	0	1	**1**
		TOTAL	TOTAL	**TOTAL**
		32	19	**51**

[46] When appropriate licensing or registration is "NONE", businesses holding no licence or registration have been assessed as holding the appropriate licence / registration.

28.2 Figure 30: Trading scenarios observed through Task Force Discover when a motor wrecker or scrap metal dealer only acquires vehicles from the public

Number of businesses found per trading scenario arranged by licensing and registration				
a motor wrecker or scrap metal dealer only acquires vehicles from the public and then:	*Licence or registration appropriate for scenario*	*Businesses found with appropriate licence or registration*	*Businesses found without appropriate licence or registration*	***Total number of businesses (out of 432)***
- sells parts to the public	MCTL	2	6	**8**
- sells scrap to licensed domestic wholesalers or for export	MCTL	24	47	**71**
- exports whole vehicles and parts	MCTL	1	1	**2**
- exports parts - sells whole vehicles to the public	MCTL	0	1	**1**
- exports parts - sells scrap to licensed domestic wholesalers or for export	MCTL	0	3	**3**
- sells parts to the public - sells scrap to licensed domestic wholesalers or for export	MCTL	14	42	**56**
- sells whole vehicles to the public - sells scrap to licensed domestic wholesalers or for export	MCTL	3	6	**9**
- sells whole vehicles and parts to the public - sells scrap to licensed domestic wholesalers or for export	MCTL	14	5	**19**
- sells whole vehicles to licensed domestic wholesalers - sells scrap to licensed domestic wholesalers or for export	MCTL	2	0	**2**
- exports parts - sells whole vehicles and parts to the public - sells scrap to licensed domestic wholesalers or for export	MCTL	5	0	**5**
		TOTAL	TOTAL	**TOTAL**
		65	111	**176**

28.3 Figure 31: Trading scenarios observed through Task Force Discover when a motor wrecker or scrap metal dealer acquires vehicles from the public and from insurance or salvage auctions

Number of businesses found per trading scenario arranged by licensing and registration				
a motor wrecker or scrap metal dealer acquires vehicles from the public and from insurance or salvage auctions and then:	*Licence or registration appropriate for scenario*	*Businesses found with appropriate licence or registration*	*Businesses found without appropriate licence or registration*	***Total number of businesses (out of 432)***
- sells parts to the public	MCTL	1	3	**4**
- sells scrap metal to licensed domestic wholesalers or for export	MCTL	0	4	**4**
- sells whole vehicles and parts to the public	MCTL	2	0	**2**
- sells parts to the public - sells scrap to licensed domestic wholesalers or for export	MCTL	49	39	**88**
- sells whole vehicles and parts to the public - sells scrap to licensed domestic wholesalers or for export	MCTL	61	14	**75**
- exports parts - sells scrap metal to licensed domestic wholesalers or for export	MCTL	5	2	**7**
- exports whole vehicles and parts - sells scrap to licensed domestic wholesalers or for export	MCTL	1	2	**3**
- exports whole vehicles and parts - sells whole vehicles and parts to the public - sells scrap to licensed domestic wholesalers or for export	MCTL	1	1	**2**
- exports parts - sells parts to the public - sells scrap to licensed domestic wholesalers or for export	MCTL	7	0	**7**
- exports parts - sells whole vehicles and parts to the public - sells scrap to licensed domestic wholesalers or for export	MCTL	0	1	**1**
- exports whole vehicles and parts - sells parts to the public - sells scrap to licensed domestic wholesalers or for export	MCTL	2	0	**2**
		TOTAL	TOTAL	**TOTAL**
		129	66	**195**

28.4 Figure 32: Other trading scenarios observed through Task Force Discover

Number of businesses found per trading scenario arranged by licensing and registration				
a motor wrecker or scrap metal dealer:	*Licence or registration appropriate for scenario*[47]	*Businesses found with appropriate licence or registration*	*Businesses found without appropriate licence or registration*	***Total number of businesses (out of 432)***
• acquires parts and scrap from motor wreckers trading with a MCTL and then - exports parts and scrap	NONE	1	0	**1**
• acquires parts from overseas suppliers and then - exports parts	NONE	1	0	**1**
• acquires vehicles and parts from overseas suppliers and then - sells whole vehicles and parts to the public	MCTL	2	2	**4**
• acquires vehicles from insurance or salvage auctions and from a motor wrecker or scrap metal trader trading with a MCTL and then - exports parts	NONE	1	0	**1**
• acquires vehicles from a motor wrecker or scrap metal trader trading with a MCTL and then - sells scrap to licensed domestic wholesalers or for export	NONE	2	0	**2**
• acquires vehicles from a motor wrecker or scrap metal dealer trading with a MCTL and then - sells parts to the public - sells scrap to licensed domestic wholesalers or for export	SHDR	0	1	**1**
		TOTAL	TOTAL	**TOTAL**
		7	3	**10**

[47] When appropriate licensing or registration is "NONE", businesses holding no licence or registration have been assessed as holding the appropriate licence / registration.

National Motor Vehicle
Theft Reduction Council

Modernising Regulatory Regimes to Optimise Compliance

Overview of draft model laws to consolidate motor car trading and second-hand dealing provisions and establish better compliance tools

Background

The report of the Victorian Inter-Agency Task Force (ITF) into compliance with local laws clearly demonstrates that the existing law, in respect of the management of separated vehicle parts and vehicle-related scrap, is in need of major reform.

The NMVTRC's 2013-14 work program indicated that we would build on the previous review of the 'modernity' of related laws, conducted by lawyers DLA Piper in 2012, by developing a proposal for the consolidation of relevant laws (under the LMCT Law of each jurisdiction) to remove ambiguities and gaps, and deal more effectively with enduring non-compliance.

The NMVTRC subsequently engaged Duncan Lawyers (Duncans) to develop an 'exposure draft' of a set of consolidated model provisions to illustrate the approach. The company principal, Campbell Duncan, is a former Victorian Parliamentary Counsel and internationally recognised expert in regulatory system design.

Key features of the model law

Duncans has prepared a model Act and Regulations using a working title of the *Motor Trade (Accreditation) Act*. The major features of the package are—

- the introduction of an accreditation requirement for a person who carries on business as a motor vehicle dealer, motor vehicle recycler (including a metal recycler) or motor vehicle repairer;
- the inclusion of a chain of responsibility model for related parties which requires prescribed persons to—
    - take all reasonable steps to ensure that stolen motor vehicles or parts are not traded by any party in the chain; and
    - report suspicious vehicles or parts, whether in their custody or offered to the person for sale;
- a broad range of search, seize and retention powers for authorised officers—with or without consent;
- a range of regulatory tools for the "Regulator" to promote or assure compliance including the power to publicise breaches or offences;
- the creation of separate commercial and general offences—the former allowing the profit made in an illegal transaction to be taken into account;
- the inclusion of civil penalty orders with daily penalties for continuing non-compliance; and
- improvement and exclusion orders, under which a person may be required to improve their performance or face exclusion from the industry.

The proposed accreditation system has three components—industry entry, maintenance of accreditation and termination of accreditation. For industry entry, the key issues are competence and specific criminal history.

Two categories of criminal offence are set out in the model Act. A conviction for a Category 1 offence, eg an offence involving theft, fraud or dishonesty would disqualify a person for ten years.

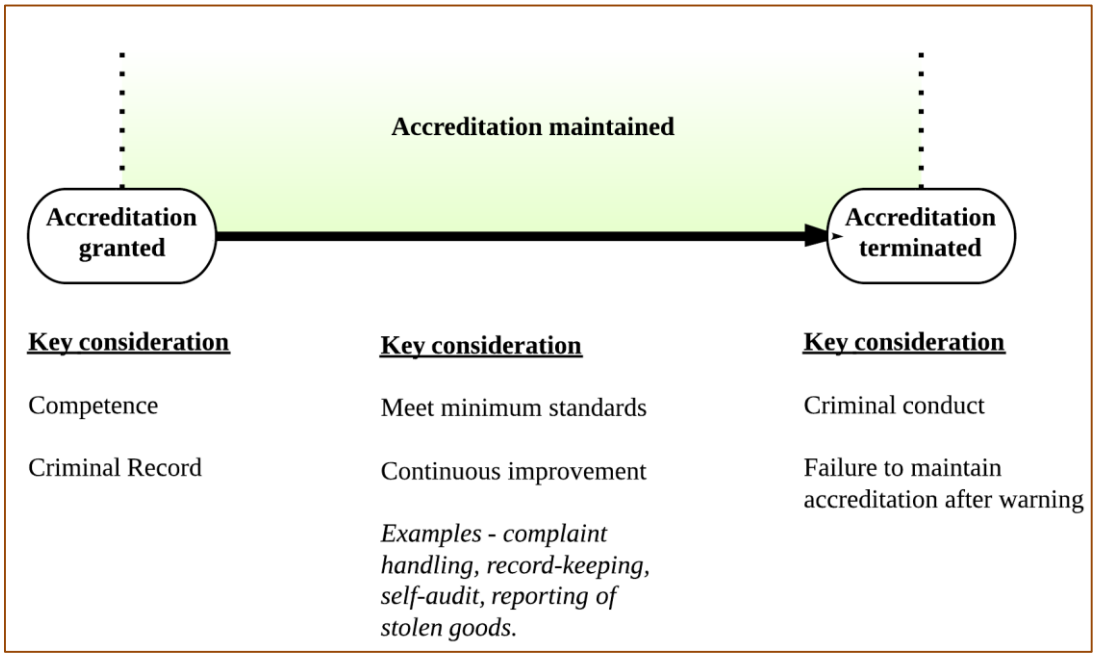
For maintenance of accreditation the principal requirements are adherence to minimum standards and a commitment to continuous improvement. The continuous improvement concept is central to the objective of accreditation—accreditation is intended to encourage industry participants to continuously improve their business practices, and not engage in a 'race to the bottom' in an attempt to reduce cost by meeting only minimum requirements.

In order to maintain accreditation industry participants would be required to observe requirements about record keeping, complaint handling and self-audit.

The model Act provides for the setting of business standards by the responsible Minister, dealing with issues such as financial stability and customer service. The flexibility which this offers (that is, standards can be set and modified without need to amend the Act) will enable industry standards to be refined and improved over time.

An accredited person's accreditation is subject to termination on grounds of criminal conduct (including breach of the Act) or failure to maintain accreditation after warning, for example in relation to self-audit or record-keeping.

The following graphic illustrates the three components of accreditation.



Importantly, the package provides the flexibility for the addition of appropriate local consumer protection elements, the identity of the Regulator, etc so as to optimise compatibility with differing regulators and administrative considerations.

Related reading—

Victorian Inter-Agency Task Force into Compliance with Local Laws and Illicit Export Activity (Task Force Discover – Final Report, NMVTRC September 2014).

Review of Regulation of Separated Parts Markets In Australia Report (DLA Piper Australia for the NMVTRC, February 2013).

Model
Motor Trade (Accreditation) Act 2014

TABLE OF PROVISIONS

Section *Page*

MODEL ACT

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.

"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.

"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

(b) a person (whether or not the same person) is accredited to carry on the business.

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;

(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.

(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

(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;

(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*];

(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.

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

(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.

(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

(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 is 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,

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;

(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.

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.*

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—

(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;

(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

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.

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.

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.

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;

(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.

(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.

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

(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.

(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.

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.

(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.

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.

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.

(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;

(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.

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

(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.

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.

(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.

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—

(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

(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

(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:

(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.

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.

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.

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.

(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.

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.

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.

SCHEDULE 2

Consumer Laws

List of relevant consumer laws.

Model
Motor Trade (Accreditation) Regulations 2014

TABLE OF PROVISIONS

MODEL REGULATIONS

Discussion Draft 29 September 2014

Motor Trade (Accreditation) Act 2014

Motor Trade (Accreditation) Regulations 2014

PART 1—PRELIMINARY

1. Objective

The objective of these Regulations is to prescribe requirements for the purposes of the *Motor Trade (Accreditation) Act 2014*.

2. Authorising Provisions

These Regulations are made under section 128 of the *Motor Trade (Accreditation) Act 2014.*

3. Definitions

In these Regulations—

"Act" means the *Motor Trade (Accreditation) Act* 2014.

"register" means a motor vehicle dealers register, a motor vehicle recyclers register or a motor vehicle repairers register.

———————————

PART 2 — ACCREDITATION RECORDS

4. When certificate of accreditation must be returned

(1) If a certificate of accreditation issued to an accredited person becomes illegible or is altered or defaced, the accredited person must return the certificate to the Regulator within seven days of becoming aware that the certificate has become illegible or has been altered or defaced.

Penalty: 10 penalty units.

(2) If the address of the accredited person, as described on the certificate of accreditation, changes or requires amendment, the licence holder, within 7 days of changing address or of becoming aware of a required amendment, must—

(a) notify the Regulator of the change of address or the required amendment; and

(b) return the certificate to the Regulator.

Penalty: 10 penalty units.

PART 3 — REGISTERS

5. Prescribed records

The registers referred to in this Part are prescribed records for the purposes of section 26 of the Act.

6. Motor vehicle dealer's register

An accredited motor vehicle dealer must keep a motor vehicle repairer's register which—

(a) contains the information provided for in the form in Schedule 1;

(b) complies with the requirements of this Part.

Penalty: 30 penalty units.

7. Motor vehicle recycler's register

An accredited motor vehicle recycler must keep a motor vehicle repairer's register which—

(a) contains the information provided for in the form in Schedule 1;

(b) complies with the requirements of this Part.

Penalty: 30 penalty units.

8. Motor vehicle repairer's register

An accredited motor vehicle repairer must keep a motor vehicle repairer's register which—

(a) contains the information provided for in the form in Schedule 1;

(b) complies with the requirements of this Part.

Penalty: 30 penalty units.

9. Persons who carry on multiple businesses

A person who carries on more than one business must, if this Division applies to more than one business, comply with this Division in respect of each business.

10. Form of register

A register may be kept in writing or electronically.

11. Registers kept in writing

(1) A register that is kept in writing must be kept in a book or a series of books that complies with the following requirements—

(a) each book must consist of pages permanently bound together;

(b) each book must bear on its front cover a number corresponding to its number in the series (such as, Book 1, Book 2 and so on);

(c) each book must be used for the purposes of one kind of register and for no other purpose.

(2) Each page in a register must be in the form prescribed for the register and must consist of white paper of a size not less than standard A4 (297 millimetres by 210 millimetres).

(3) A register is not in the prescribed form unless it is clearly legible, contains no erasures and is not torn, defaced or otherwise mutilated.

(4) This clause does not prohibit matter in the register from being altered by deleting particulars in such a manner (for example, by means of a line through them) as to leave the deleted particulars decipherable.

(5) In any register, each entry must be consecutively numbered and legibly printed or written in black ink.

12. Registers kept electronically

A register that is kept by means of data processing equipment must be kept by means of software that ensures that—

(a) the information in the register—

(i) is capable of being displayed and printed, on demand, at each place of where the accredited business, or business which is required to be accredited, is conducted;

(ii) when it is so displayed or printed, each page in the register is in the form prescribed for the register, and

(iii) includes the date on which each record in the register was made, and

(b) in the event that any information in the register is amended or deleted, a record is kept—

(i) of the information in the form in which it was before it was amended or deleted, and

(ii) of the date of each occasion on which the information was amended or deleted.

13. Completion of registers

(1) An accredited person must ensure that—

(a) all information that is required to be entered in the register in relation to any transaction or event is entered within one business day after the transaction or event occurs, and

(b) no information is entered in the register otherwise than by a person authorised by the licensee.

Penalty: 20 penalty units.

(2) A person who keeps a register electronically must ensure that—

(a) that all information that is required to be entered in the register in relation to any transaction or event is entered within one business day after the transaction or event occurs;

(b) no information is entered in the register otherwise than by a person authorised by the licensee, and

(c) that the information in the register is backed up at intervals of no more than one week.

Penalty: 20 penalty units.

(3) The particulars to be included in a register in response to the expression "how acquired" are the particulars of the way in which the possession of the motor vehicle, part or accessory concerned was acquired, that is, whether it was acquired by way of consignment, exchange, purchase, trade-in or otherwise (including, if otherwise, details of the method of acquisition).

(4) If particulars for a motor vehicle are not available until the vehicle is sold, those particulars must be inserted at the time of sale.

(5) Abbreviations may be used in a register as set out in the table at the foot of this subregulation.

Abbreviation	**Expression signified by the abbreviation**
AB	airbag
APR	front apron panel
BL	boot lid
BON	bonnet
BUF	front bumper bar
BUR	rear bumper bar
CH	chassis
DLF	left front door
DLR	left rear door
DRF	right front door
DRR	right rear door
E	engine
GL	left front mudguard
GR	right front mudguard
HD	hatchback door
IC	instrument cluster
MBS	major body section

Abbreviation	Expression signified by the abbreviation
MW	alloy "mag" wheels
N/A	not available.
T/G	transmission or gearbox

14. Retention of registers

(1) A person who is required to keep a register—

(a) must retain the register (together with all copies of records that have been printed out and verified in relation to the register) for at least 6 years after the date on which the last entry was made in it, and

(b) if required to do so by an inspector before the expiration of the period referred to in paragraph (a), must produce the register for inspection by the inspector.

Penalty: 20 penalty units.

(2) In the case of a register kept electronically, it is sufficient compliance with subregulation (1) (b) if the person makes available to the inspector—

(a) a computer terminal by means of which the inspector can view the information contained in the register, and

(b) a print-out of the information contained in the register.

15. Entries in the register

The accredited person must ensure that an entry required to be made in the register is made within one day after relevant transaction occurs.

Penalty: 20 penalty units.

PART 4 — CONSUMER PROTECTION NOTICES

[Provision here for:

- *sale notices, including retention of sale notices;*
- *prescribed forms.]*

PART 5 — INFRINGEMENT NOTICES

16. Infringements

(1) For the purposes of section 51 of the Act—

(a) the offences set out in column 2 of the Table in Schedule 2 are prescribed to be offences for which infringement notices may be served;

(b) the penalty prescribed in respect of each offence is the amount specified in column 4 of the Table in Schedule 4 opposite the prescribed offence set out in column 2 of that Table.

(2) A description of an offence set out in column 3 of the Table in Schedule 4 opposite an infringement offence set out in column 2 is provided for convenience of reference only and is not to be taken to affect the nature or elements of the offence to which the description refers or the operation of these Regulations.

SCHEDULE 1

Motor Vehicle Dealer's Register

[insert form]

Motor Vehicle Recycler's Register

[insert form]

Motor Vehicle Repairer's Register

[insert form]

SCHEDULE 2

Infringements

In this Schedule—

MTA means Motor Trade (Accreditation) Act 2014

MTR means Motor Trade (Accreditation) Regulations 2014

Column 1	*Column 2*	*Column 3*	*Column 4*	*Column 5*
Item No.	*Prescribed infringement offence*	*Description of infringement offence*	*Infringement Penalty*	*Code*
1	Section 21 of MTA	Fail to comply with conditions	4 penalty units	
2	Section 26 of MTA	Fail to keep prescribed records	6 penalty units	
3	Section 30 of MTA	Fail to comply with requirement of inspector	10 penalty units	
4	Section 81 of MTA	Fail to comply with non-disposal notice	20 penalty units	
5	Section 88 of MTA	Remove goods in contravention of notice	20 penalty units	
6	Section 96 of MTA	Sell, lease, transfer or deal with goods to which an embargo notice applies	20 penalty units	
7	Section 116 of MTA	Fail to take remedial action	20 penalty units	
8	Regulation 4(1) or (2) of MTR	Fail to return certificate of accreditation	2 penalty units	
9	Regulation 6, 7 or 8 of the MTR	Fail to keep a register	6 penalty units	

Schedule 2

Column 1	*Column 2*	*Column 3*	*Column 4*	*Column 5*
Item No.	*Prescribed infringement offence*	*Description of infringement offence*	*Infringement Penalty*	*Code*
10	Regulation 13 of the MTR	Fail to ensure that register is complete	4 penalty units	
11	Regulation 14 of MTR	Fail to retain register	4 penalty units	
12	Regulation 15 of MTR	Fail to ensure that register entries are made within one day after transaction	4 penalty units	