

South Australia



**SECOND-HAND VEHICLE DEALERS (COMPENSATION FUND)
AMENDMENT ACT 1999**

No. 21 of 1999

SUMMARY OF PROVISIONS

1. **Short title**
2. **Commencement**
3. **Amendment of Sched. 3—Second-hand Vehicles Compensation Fund**



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ELIZABETHAE II REGINAE

A.D. 1999

No. 21 of 1999

An Act to amend the Second-hand Vehicle Dealers Act 1995.

[Assented to 1 April 1999]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Second-hand Vehicle Dealers (Compensation Fund) Amendment Act 1999*.

(2) The *Second-hand Vehicle Dealers Act 1995* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of Sched. 3—Second-hand Vehicles Compensation Fund

3. Schedule 3 of the principal Act is amended—

(a) by striking out clause 2 and substituting the following clause:

Claim against Fund

2. (1) Subject to subclause (2), if the Magistrates Court, on the application of a person not being a dealer who has—

(a) purchased a second-hand vehicle from a dealer; or

(b) sold a second-hand vehicle to a dealer; or

(c) left a second-hand vehicle in a dealer's possession to be offered for sale by the dealer on behalf of the person,

is satisfied that—

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- (d) the person has a valid unsatisfied claim against the dealer arising out of or in connection with the transaction; and
- (e) the person has no reasonable prospect of recovering the amount of the claim (except under this schedule),

the Court may authorise payment of compensation to that person out of the Fund.

(2) This clause—

- (a) applies to a claim referred to in subclause (1) whether the transaction to which it relates occurred before or after the commencement of this Act;
- (b) applies to a claim relating to a transaction that occurs on or after the commencement of this paragraph only if the dealer was licensed, or the person making the claim reasonably believed the dealer to have been licensed, at the time of the transaction;
- (c) does not apply to a claim arising out of or in connection with—
 - (i) the sale of a second-hand vehicle by auction; or
 - (ii) the sale of a second-hand vehicle negotiated immediately after an auction for the sale of the vehicle was conducted,
if—
 - (iii) the sale was made after the commencement of the *Second-hand Vehicle Dealers (Compensation Fund) Amendment Act 1997*; and
 - (iv) the auctioneer who conducted the auction or negotiated such a sale (as the case may be) was acting as an agent only and was selling the vehicle on behalf of another person who was not a licensed dealer;
- (d) does not apply to a claim prescribed by regulation.

(b) by striking out from clause 3(2)(b) "certified by the Treasurer as having been";

(c) by inserting in clause 5 "to the extent of the payment" after "subrogated";

(d) by inserting after the present contents of clause 5 as amended by this section (now to be designated as subclause (1)) the following subclauses:

(2) If the Commissioner is subrogated to rights arising from an act or omission of a body corporate occurring on or after the commencement of this subclause, the persons who were directors of the body corporate at the time of the act or omission will be jointly and severally liable together with the body corporate for any amount recoverable by the Commissioner from the body corporate in pursuance of those rights.

(3) A director of a body corporate will not have a liability under subclause (2) in respect of an act or omission of the body corporate if the director proves, on the balance of probabilities, that the act or omission occurred without the director's express or implied authority or consent.;

(e) by inserting after the present contents of clause 7 (now to be designated as subclause (1)) the following subclause:

(2) The regulations may provide for the payment or distribution of money remaining in the Fund on the expiry of this schedule and make any other provision that the Governor considers necessary or appropriate in consequence of the expiry of this schedule.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor