

2016

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TRADERS (LICENSING) BILL 2016

EXPLANATORY STATEMENT

**Presented by
Mr Andrew Barr MLA
Chief Minister**

GENERAL OUTLINE

This explanatory statement relates to the Traders (Licensing) Bill 2016 (the Bill) as presented to the Legislative Assembly. It has been produced to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

Abbreviations

The following abbreviations are used in this Explanatory Statement:

FTA	<i>Fair Trading (Australian Consumer Law) Act 1992</i>
MVR Act	<i>Fair Trading (Motor Vehicle Repair Industry) Act 2010</i>
PB Act	<i>Pawnbrokers Act 1902</i>
SMV Act	<i>Sale of Motor Vehicles Act 1977</i>
SHD Act	<i>Second-hand Dealers Act 1906</i>
SHD Regulation	Second-hand Dealers Regulation 2002

Overview

Red tape reduction is a high priority initiative across the ACT Government. This Bill supports the Government's red tape reduction efforts by establishing a Single Licensing Framework for fair trading law. The new arrangements provided in the Bill enable Access Canberra's redesign of its business processes through the Simpler Business Licensing Initiative. Accordingly, the objective of this Bill is to provide effective and efficient administration for the licensing of traders whilst ensuring such licensing supports regulatory actions in the public interest.

It is intended that the Bill serve as model legislation for existing and future instances of fair trading licensing obligations by allowing for the integration of other fair trade licences in the future.

The amendments

The Bill is a streamlined Act, created through simplifying and consolidating the core licensing provisions from four fair trading Acts. The amendments introduced by the Bill allow for the streamlining of government systems. These changes will make it easier for individuals and businesses in the motor vehicle dealer and repairer, second-hand dealer and pawnbroker industries to apply for and renew their licences. Applicant information will be captured once, stored electronically and reused for subsequent or multiple license applications and renewals, reducing the need for duplication.

Specifically, the proposed amendments standardise the licensing process for the four industries by:

- providing that an individual, partnership, corporation and association may be licensed as one or more traders (including the ability to submit a single application for multiply licences)
- extending the maximum term for new licences and each licence renewal to five years;

- modifying suitability and eligibility requirements (whilst ensuring licensing continues to remain in the public interest, existing requirements can be carried across through a mechanism that is sufficiently adaptable to cater for both standard and customised components);
- continuing to allow for an entity to be exempt from licensing requirements in certain circumstances (e.g. a school fete which sells second-hand goods infrequently or irregularly and other activities that present a low risk to the community);
- allowing for the transfer of a licence (e.g. during the sale of a business);
- allowing for the early renewal of licences (up to 6 months prior to expiry);
- providing a simplified process for licence renewals;
- allowing licensees to renew their licence up to one year after expiry without having to submit a new application form (however, licences are deemed suspended during expiry until renewal); and
- allowing for a temporary licence to be issued following the death of a licensee.

Consumer protection

The Single Licensing Framework facilitated by the Bill aims to provide the community with a single coordinated point of regulation and enforcement delivered through the range of licensing, registration, education and compliance activities undertaken by Access Canberra for the four industries. In addition, the following measures are provided by the Bill to protect consumers and ensure licensing continues to remain in the public interest:

- introducing a public interest test in deciding certain elements of application;
- allowing for a class of corporation to not be eligible to hold a licence or to be eligible on if a stated number or percentage of individuals hold individual licences to ensure the licensing of corporations continues to remain in the public interest;
- allowing a licence to be issued with one or more conditions (where necessary);
- requiring certain information kept on a licence register to be made publicly available for consumer access;
- where the ACAT cancels or suspends a licensee's licence or disqualifies a licensee from applying for a licence, allowing the Commissioner to pass on certain information to the corresponding authority of each State;
- providing general licence-related offences including carrying out a licence activity when not licensed, false or misleading representations and failure to meet a condition of a licence; and
- ensuring an offence committed under the Bill does not make invalid a service contract between a consumer and a person providing a service/ensure a licensee cannot contract out of their obligations.

Operational Acts

The Bill creates the concept of an ‘Operational Act’. Operational Acts are a mechanism to retain existing non-licensing responsibilities and obligations on a person relevant to the trade, or industry addressed by the relevant fair trading Act. The following fair trading Acts are an Operational Act under the Bill:

- the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*;
- the *Pawnbrokers Act 1902*;
- the *Sale of Motor Vehicles Act 1977*; and
- the *Second-hand Dealers Act 1906*.

Trader, trader category and trader class

The Bill creates the concept of ‘trader’, ‘trader category’ and ‘trader class’ and allows an entity to be licensed as one or more trader, provided they meet the requirements under the Bill. The following ‘traders’ are recognised by the Bill with definitions for each of these remaining in their respective Operational Act:

- car market operator;
- motor vehicle dealer;
- motor vehicle repairer;
- motor vehicle wholesaler;
- pawnbroker; and
- second-hand dealer.

Decision-making responsibilities

Under the Bill, decision-making responsibilities are structured in the following manner:

- the Commissioner is given powers to issue licences under the Bill;
- the Commissioner retains power to consider complaints, misconduct and disciplinary matters relating to contraventions of an operational Act; and
- reviews and appeals are referred to the ACT Civil and Administrative Tribunal (ACAT) for decision.

Human Rights

While section 37 of the Bill engages with and limits the right to privacy and reputation under section 12 of the *Human Rights Act 2004* (the HRA), section 28 of the HRA allows that rights may be subject to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

In *R v Oakes [1986] 1 SCR 10 [69]-[70]*, Dickson CJ sets two central criteria to satisfy that a limit is reasonable and demonstrably justified in a free and democratic society:

Criteria one - 'the objective, which the measures responsible for a limit on a ... right or freedom are designed to serve, must be 'of sufficient importance to warrant overriding a constitutionally protected right or freedom'. The standard must be high in order to ensure that objectives which are trivial or discordant with the principles integral to a free and democratic society do not gain ... protection. It is necessary, at a minimum, that an objective relate to concerns which are pressing and substantial in a free and democratic society before it can be characterized as sufficiently important.'

The keeping of a register of licences works to allow consumers to search and consider the legitimacy of the trader they are purchasing goods and services from. This works specifically to protect consumer interests in verifying that a provider is appropriately licensed, where fair trading and trades practices protections can be relied upon, as well as where criminal activity is legally guarded against. Consumer protections serve many functions in a democratic society some of which include supporting a sustainable economy, ensuring sufficient quality of goods and services to prevent unacceptable risks of physical and/or economic harm to consumers. This is considered a sufficiently important objective.

Criteria two - 'the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair 'as little as possible' the right or freedom in question. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the ... right or freedom, and the objective which has been identified as of 'sufficient importance'.

Section 37(5) requires that only certain information must be made publicly available. Firstly, this measure directly empowers a consumer with an ability to determine for themselves the legitimacy of a trader they are engaging to provide the consumer with a commercial service. Secondly, the provision only requires a limited type of information to be made available to allow consumers to make an informed decision about the legitimacy of a trader. The information that is made public includes the name/s of the licensee, relevant identifying numbers that can be cross-matched with other relevant national and ACT registers like ASIC, whether there is a condition on a licence (but not stating what the condition is), and whether the licensee has a suspended licence. These specific matters impairs 'as little as possible' the right to privacy and reputation of the licensee in order to achieve the objective to protect consumer interests proportionately, which answers the third element of Dickson CJ's second criteria.

The justifications above sufficiently address sections 28(2)(a) to (d) of the HRA. Concerning section 28(2)(e) of the HRA, there are no less restrictive means reasonably available to achieve the purpose. The mechanism prescribed in section 37 of the Bill is considered the least restrictive means reasonably available because applicants and licensees are informed that certain information they provide will be made public for a stated purpose consistent with the objectives of the Bill.

Concerning any other relevant factors, the provision must be applied without contravening other privacy laws and internal privacy policies, such as the ACT Government's open data policy and standard operating procedures relating to the privacy considerations which must be made before releasing government information and data.

OUTLINE OF THE PROVISIONS

Part 1 Preliminary

This part (sections 1-5) contains standard preliminary matters for the Bill and contains provisions that are standard across all ACT legislation, such as providing for the commencement of the legislation.

Part 2 Important concepts

This part (sections 6-14) defines key concepts used in the Bill.

Part 3 Traders licences

This part (sections 15-38) provides the requirements relating to:

- eligibility and suitability;
- the term and form of licences;
- conditions and exemptions;
- licensing applications, including for a full application, transfer, renewal, late renewal, temporary licence;
- surrender and cancellation of licences;
- a licence register.

Part 4 Occupational discipline and other disciplinary action

This part (sections 39-43) sets out the occupational discipline framework for licences under the Bill. Provisions cover the grounds for occupational discipline, matters concerning applications to ACAT and considerations which ACAT must make in making disciplinary orders.

Part 5 Offences

This part (sections 44-48) creates various offences which apply if a person is not licensed to carry out a licensed activity (including where the person's licence is suspended, cancelled or expired), and that person carries out that activity or represents that they are licensed to carry out the activity. It also creates an offence for failing to meet a condition of a licence (where one exists) and for failing to return a suspended or cancelled licence.

Specific offences relating to particular trader categories remain in the relevant operational Act.

Part 6 Notification and review of decisions

This part (sections 49-51) establishes which decisions made under the Bill are reviewable and specifies who is entitled to seek a review. It also provides for an external review of specific decisions under the Bill.

Part 7 Miscellaneous

This part (sections 52-55) deals with miscellaneous provisions under the Bill including fees, power to make regulations, operation of the Act with other rights and evidence of licensing.

Part 8 Repeal and consequential amendments

This part (sections 56-57) repeals relevant regulations because they have either been fully carried across to the Bill, or will be carried across to regulations.

Schedule 2 sets out the full suite of consequential amendments that again, are either fully carried across to the Bill, or will be carried across to regulations.

Part 20 Transitional

This part (sections 150-157) provides transitional arrangements to facilitate implementation of the Bill in the Territory.

Note that the large gap in numbering between Part 5 and Part 20 of the Bill reflects drafting convention.

DETAIL OF PROVISIONS

Part 1 – Preliminary

Section 1 Name of Act

This section provides that the name of the proposed legislation is the *Traders (Licensing) Act 2016*.

Section 2 Commencement

This section provides that the legislation will commence 12 months from the day it is enacted or on a day fixed by the Minister by written notice, whichever is the sooner. This is to allow Access Canberra sufficient time to make appropriate preparations, given the legislation requires redesign and implementation of new business processes.

Section 3 Dictionary

This section clarifies that the dictionary at the end of the Bill is part of the Bill.

Section 4 Notes

This section provides that a note at the foot of a provision is explanatory and does not form part of the Act.

Section 5 Offences against Act—application of Criminal Code etc

This section clarifies that other legislation applies in relation to offences against the Bill. As set out in the note to this provision, Chapter 2 of the *Criminal Code* applies to all offences against this Bill.

Part 2 – Important concepts

Section 6 Meaning of *operational Act*

The Bill creates the concept of an ‘Operational Act’. Operational Acts are intended to work in conjunction with the Single Licensing Framework by providing a right for an entity to perform a trade, or run a business that provides a trade if the entity holds a valid licence. This section provides that the following fair trading Acts are an operational Act for the purposes of the Bill:

- the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*;
- the *Pawnbrokers Act 1902*;
- the *Sale of Motor Vehicles Act 1977*; and
- the *Second-hand Dealers Act 1906*.

Section 7 Meaning of *trader*

The Bill creates the concept of ‘trader’ and ‘trader category’. This section provides that the following are ‘traders’ for the purposes of the Bill:

- car market operator;
- motor vehicle dealer;

- motor vehicle repairer;
- motor vehicle wholesaler;
- pawnbroker; and
- second-hand dealer.

An entity is able to be licensed as one or more trader provided they meet the requirements under the Bill.

Section 8 Meaning of *car market operator*

The meaning of 'car market operator' is introduced in the Bill and linked to the original dictionary definition in the SMV Act. The dictionary definition under the SMV Act is unchanged.

Section 9 Meaning of *motor vehicle dealer*

The meaning of 'motor vehicle dealer' is introduced in the Bill is linked to a new dictionary definition of 'dealer' in the SMV Act.

(Section 6A of the SMV Act is repealed and a definition of 'dealer' is instead provided for in the SMV Act dictionary. The meaning of dealer under the SMV Act is unchanged despite the move.)

Section 10 Meaning of *motor vehicle repairer*

This section provides a new definition of 'motor vehicle repairer'. That is, an entity carries on business as a motor vehicle repairer if the entity performs motor vehicle repair work for reward. The meaning of 'motor vehicle repair work' is linked to a new dictionary definition of term under the MVR Act.

(Section 6 of the MVR Act is repealed and a definition of 'motor vehicle repairer' is instead provided for in the SMV Act dictionary. The meaning of 'motor vehicle repairer' under the MVR Act is unchanged despite the move.)

Section 11 Meaning of *motor vehicle wholesaler*

The meaning of 'motor vehicle wholesaler' is introduced in the Bill and linked to the original dictionary definition of 'wholesaler' in the SMV Act. The dictionary definition under the SMV Act is unchanged.

Section 12 Meaning of *pawnbroker*

The meaning of 'pawnbroker' is introduced in the Bill and linked to the original dictionary definition of pawnbroker in the PBA Act. The dictionary definition under the PBA Act is unchanged.

Section 13 Meaning of *second-hand dealer*

The meaning of 'second-hand dealer' is introduced in the Bill and linked to the original dictionary definition of second-hand dealer in the SHD Act. The dictionary definition under the SHD Act is unchanged.

Section 14 Classes of traders

The Bill allows regulations to be created to divide a trader category into further ‘classes’, where necessary. This is to cater for industries with multiple licensing tiers.

Part 3 – Traders licences

Division 3.1 – Preliminary

Section 15 Definitions—pt 3

The Bill introduces the concept of ‘influential person’, which relates to corporations, and is defined in this section. The meaning of influential person is broader than the meaning of ‘relevant person’ for a corporation (provided in the Bill’s dictionary). Specifically, an influential person for a corporation includes a person who may exercise a relevant power in relation to the corporation, a related corporation and an executive officer of a related corporation. The purpose of using the concept of influential person is to cater for circumstances where specific requirements need to be imposed on corporate directors etc.

This section also defines ‘trading address’, ‘trading name’, ‘related corporation’ and ‘relevant power’.

Division 3.2 – About traders licences

Section 16 Licensable entity

This section provides that the following entities may be licensed as a trader under the Bill:

- an individual;
- a partnership;
- a corporation; and
- an association declared and incorporated under the *Associations Incorporation Act 1991*.

Section 17 Eligibility of entity

This section allows regulations to specify the different eligibility requirements that may need to be considered before someone is able to operate in a particular industry. Specifically, it allows that a regulation may provide:

- eligibility requirements (including any relevant qualifications an entity must hold) for an entity to be licensed as a trader; and
- for how an entity can demonstrate it satisfies an eligibility requirement.

Traditional threshold questions (such as, those relating to residency) are not considered under eligibility requirements as they are more relevantly a matter of suitability.

Prescription by regulation is necessary in this Bill because the number of different industries that the Bill applies to, and will apply to in future. Flexibility, adaptability and customisation are necessary to ensure that the licensing of each industry can be sufficiently regulated, with regard given to balancing administrative efficiency with the public interest and other relevant factors relevant for the specific industry. This is one of only two areas (suitability being the other) that require this intervention.

This section also provides that the Minister may declare that a class of corporation is not eligible to hold a licence or is only eligible to hold a licence if a stated number or percentage of individuals hold individual licences to carry out the activity for the corporation. The purpose of this provision is to ensure that entities subject to licensing have threshold credentials to trade in line with community expectations.

Section 18 Suitability of entity

The Bill introduces the concept of suitability in determining whether it would be appropriate to issue a licence to a particular entity. Suitability requirements are likely to vary depending on the particular industry trader category or trader classes (if any) applied for and may include such matters as the character of the entity, the suitability of the premises where the licensed activity is to be carried out and whether the entity is entitled to use such premises.

Prescription by regulation is necessary in this Bill because of the number of different industries that the Bill applies to and will apply to in future. Flexibility, adaptability and customisation are necessary to ensure that the licensing of each industry can be sufficiently regulated, with regard given to balancing administrative efficiency with the public interest and other factors relevant for the specific industry. This is the second of the two areas that require this intervention.

Section 19 Traders licence term and form

This section provides that a licence issued under the Bill may be issued for a period of up to 5 years, replacing the relevant section in the operational Acts. This is in line with red tape reduction actions as it extends the maximum term previously provided to licences issued under their respective Operational Act.

This section also provides that certain pertinent information and key identifiers relating to the licence and the entity (for example, licence number, licensee's name) form part of the licence.

Section 20 Conditions for traders licence

This section provides that the Commissioner may impose one or more conditions when issuing a licence, by regulation or at any other time for a reason prescribed by regulation or if the Commissioner is satisfied on reasonable grounds that it is in the public interest. Licensees are then subject to the conditions placed on their licence.

The purpose of this provision is to enable the licensing of individuals who might not otherwise be able to work in the industry (for example, due to not having the required qualifications or qualifications in full) while maintaining conditions which are necessary or desirable for the protection of consumers and the public, and can be used as an enforcement measure. This would,

for example, allow the licensing of individuals undergoing training or an apprenticeship, subject to certain conditions (where necessary).

A licence is also subject to any condition required under a relevant Operational Act.

This section also provides that the Commissioner must give the licensee written notice of the condition. The condition will take effect the latter of the date stated by the Commissioner, five working days after the Commissioner gives the notice or, if the applicant applies to the ACAT for review, five working days after the ACAT makes the decision. This is to ensure the licensee is given sufficient notice of the condition before it is imposed.

Section 21 Exemption from licensing

This section provides that the Commissioner may declare an entity can carry out the activities of a trader without a licence where satisfied it is in the public interest to do so.

The purpose of this provision is to allow an entity to carry out activities of a trader in certain circumstance where it would be overly burdensome or inappropriate for them to be licensed. For example, because the activities are carried out infrequently or irregularly or the activities would otherwise present a low risk to the community and carrying out the activities without a licence would not undermine the purpose of this Act or an operational Act.

A declaration is a notifiable instrument.

This provision replaces the relevant provision in the Operational Acts (where such a provision existed).

Division 3.3 – Licensing and licence management

Section 22 Licence application

This section provides that a licensable entity (as defined in section 16) may apply to the Commissioner for a licence as a trader in one or more trader categories or trader classes.

Accordingly, an application for the licence/s must be in writing, state the applicant's name, trading name and proposed trading address/es and include any information demonstrating eligibility or prescribed by regulation in order for the Commissioner to consider the application.

For an applicant who intends to operate as a mobile operator, for example in a mobile van, the relevant trading address may be the address where notices can be serviced. Trading addresses which are home address cannot be made known publicly (section 37 refers).

Section 23 Licence issue

This section gives the Commissioner the power to issue a licence under the Bill to authorise an entity to carry on business in one or more trader categories, classes or both. The Commissioner must issue or refuse to issue a licence within the decision making period. The 'decision making period' is defined by the Bill's Dictionary as 60 days, or a period prescribed by Regulation.

This section intends to create a single licence for business, which then allows for one or more authorisations for business to conduct activities in the ACT. The underlying principle is that businesses should be able to hold one licence within the ACT.

Before issuing a licence, the Commissioner must be satisfied of the identity of each relevant person relating to the entity that is to be licensed and that the entity meets the eligibility requirements (provided under section 17) along with the suitability requirements provided (by section 18 of the Bill).

Section 24 Transfer application

The section allows a licensee to apply to the Commissioner to transfer a licence in a prescribed trader category or trader class to another entity, as prescribed by regulation. The purpose of this provision is to provide flexibility for circumstances where it would be more practical to transfer a licence than it would for one entity to cancel a licence and another to reapply or it (for example, during the sale of a business).

Accordingly, a transferee must meet the same application requirements as an applicant would for a new licence.

Section 25 Transfer decision

This section outlines decision-making requirements for licence transfer applications. To approve a licence transfer the Commissioner must be satisfied as to the transferee's identity, and that the transferee is both suitable and eligible to hold the licence. The Commissioner may also impose conditions on the licence when it is transferred or at a later date (in accordance with section 20), if necessary and appropriate. A decision on a transfer application must be made within the decision making period (60 days or a period prescribed by Regulation).

Section 26 Renewal application

This section allows a licensee to apply to renew a licence up to six months before the licence expires, with the licence remaining in force until the application is decided. A licensee will need to demonstrate they remain eligible and suitable to be licensed in a trader category or class. The intention of this section is for a renewal application to include *only* that information relevant to a licensee's eligibility and suitability that has not previously been supplied when applying for a new licence.

Section 27 Renewal decision

This section provides the Commissioner must renew or refuse to renew a licence within the decision making period (60 days or a period prescribed by Regulation) but must not renew the licence if the Commissioner has asked the licensee to do a thing (for example, pay a fee, provide information, meet a condition) and the licensee has not yet done that thing.

This section provides a licence may be renewed for up to five years, which is consistent with the maximum allowable term for a new licence. Unless it would otherwise affect a condition imposed on a licence, the renewal starts immediately after the licence would have expired had it not been renewed, so that the licence can carry over without disadvantaging licensees who may be required

to renew their licence several months prior to its expiry (the period between when the renewal application is made and the expiry of the current licence is not lost).

A renewal is subject to any condition required under a relevant operational Act, imposed by the Commissioner when approving the renewal or prescribed by regulation.

Section 28 Late renewal application

The Bill creates a concept of late renewals, a concept not currently provided in any of the four operational Acts addressed by this Bill. Under this section licensees have up to one year after their licence expires to renew their licence without having to submit a new licence application. The licence is nonetheless deemed expired from the day after the expiry date of the licence.

For the period between the expiry of the licence and when the late renewal decision is made, the licence is deemed to have been suspended although in force and licensees who continue to operate during this period will be committing an offence or offences under Part 5 of the Bill. However, licenses will still remain in force for the purposes of consumer protection to avoid any doubt around the continuing application of insurance and service contracts.

Should a late renewal applicant or former licensee (during the grace period) operate while their license is suspended, the Territory cannot then be held vicariously or otherwise liable for the licensee's unlawful actions.

Late renewal application requirements are consistent with renewal application requirements.

Section 28(4) is intended to be read down to cover the period leading up to when an actual application is made.

Section 29 Late renewal decision

This section relates to a renewal application for a licence which is submitted the day after the expiry date of the licence. The decision-making period (60 days or a period prescribed by Regulation) and the provision for the Commissioner to not renew the licence if the Commissioner has asked the licensee to do a thing (for example, pay a fee, provide information, meet a condition) and the licensee has not yet done that thing are consistent with standard renewal decisions. However, rather than the renewal starting immediately after the licence would have expired had it not been renewed, it starts on the day the decision is made (provided it does not affect a condition imposed on the licence).

Section 30 Temporary licence following death of licensee

The section provides that an eligible personal legal representative may apply to the Commissioner for authorisation to carry on the business of a deceased licensee for a period of up to six months. The purpose of this provision is to assist the personal legal representative to sort out matters relating to the business operations related to the licence following the death of the licensee.

An application for the authorisation must be made within 28 days after the death of the licensee (or a longer period agreed by the Commissioner) and be accompanied by relevant information supporting the applicant's eligibility for the authorisation and licence.

Eligibility and suitability requirements must be met before the authorisation can be issued.

Section 31 Amendment of licence

This section allows the Commissioner to amend a licence to reflect a change in the licensee's name, trading name or trading address or condition that applies to the licence or at any other time (including at the request of the licensee) the Commissioner believes an amendment is necessary.

Section 32 Commissioner may request more information

This section provides that the Commissioner may request the applicant to provide further information that is reasonably needed to decide the application or a request to amend a licence. The commissioner is then given the power to refuse to consider an application further if the applicant refuses to comply with a requirement in the request. The purpose of this provision is to ensure that an applicant is given the opportunity to provide further information supporting why they, the influential person, partnership, corporation or association should be granted a licence rather than the Commissioner simply refusing to grant a licence based on the limited information initially provided in the application.

This section applies in relation to an application for the issue, transfer, renewal or late renewal of a licence.

Section 33 Issue of copy of licence

This section allows the Commissioner to issue a copy of a licence to a licensed trader if satisfied the licence is in force and has been lost or destroyed.

Section 34 Surrender of licence

This section provides that a licensee may voluntarily surrender their licence before the licence expires by giving the Commissioner a written statement and the physical licence (should one exist). After receiving the written statement, the licence will be cancelled on the day stated by the Commissioner, which the licensee will be notified of.

Section 35 Surrender of licence during suspension

This section provides that if a licensee's licence is suspended under the Bill, the licensee must return their licence to the commissioner for the period of suspension. The licence is then to be returned to the licensee within 10 business days after the end of the suspension.

This section does not restrict or limit Access Canberra's ability to develop processes that allow for the surrender of an individual suspended trader category or class licence, where the licensee holds multiple licences. This process may for example, allow an electronic licence or physical licence to be amended to reflect that one or some of the licences the licensee holds is surrendered.

Section 36 Cancellation of licence issued by mistake

This section provides that, where a licence was issued by mistake, the Commissioner may cancel the licence. The licence is taken to be cancelled on a day stated by the Commissioner, which the former licensee will be notified of.

Division 3.4 – Licence register

Section 37 Licence register

This section provides that the Commissioner must keep a register of licences. The register may include information about licences provided under the Act or any other information the Commissioner considers appropriate, may be kept in any form, including electronically and kept in one or more parts.

The Commissioner must make certain information about a licensee and a licensee's licence in the register available for public inspection. Such information includes to the licensee's trading name and that relating to conditions, suspension, licence expiry and any information prescribed by regulation. The purpose of making certain information publically available is to provide information about traders that is necessary or desirable for the protection of consumers and the public (for example, information confirming that an entity is currently licensed).

Section 38 Correcting register and keeping it up-to-date

This section allows the Commissioner to correct a mistake, error or omission in the register and change a detail included in the register to keep it up-to-date.

Part 4 – Occupational discipline and other disciplinary action

Section 39 Meaning of *licensee*—pt 4

This section provides that a licensee includes a former licensee for the purposes of occupational discipline and other disciplinary action. The purpose of this is to ensure that if a ground for occupational discipline applies to a former licensee if the ground applied to the licensee while licensed. This also allows the Commissioner to give the corresponding authority of each State certain information about a former licensee.

Section 40 Meaning of *ground for occupational discipline*—pt 4

This section sets out the grounds for occupational discipline in relation to the licensee. These grounds apply to a former licensee if the ground applied to the licensee while licensed.

Section 41 Application to ACAT for occupational discipline

This section provides that, where appropriate, the Commissioner may apply to the ACAT for an occupational discipline order in relation to the licensee.

Section 42 Considerations before making occupational discipline orders

This section outlines the considerations the ACAT must make before making an occupational discipline order in relation to a licensee, without limiting the matters the ACAT must consider in relation to the licensee. These include such fundamental considerations as degrees of responsibility and consequence, maintenance of and public confidence in the regulatory system, and public protection.

Section 43 Information about cancellations etc to be given to corresponding authorities

This section provides that where the ACAT cancels or suspends a licensee's licence or disqualifies a licensee from applying for a licence, the Commissioner may give the corresponding authority of each State certain information about the licensee and the cancellation/suspension/disqualification. The purpose of this provision is to allow the Commissioner to provide certain information to other jurisdictions for the purposes of interjurisdictional enforcement, compliance and licensing, where relevant and appropriate, without breaching the Territory's privacy principles.

Part 5 – Offences

Section 44 Meaning of *licensed*—pt 5

This section clarifies that a licensee does not hold a valid licence for the purposes of Part 5 of the Bill if their licence is suspended, cancelled or expired.

Section 45 Carrying out licensed activity when not licensed

This section provides that it is an offence to carry out a licensed activity without a valid licence or to carry out a licensed activity at a premises without a valid licence authorising the person to carry out the licensed activity at that location and broadly captures situations where the person's licence is suspended, cancelled or expired.

This section does not apply to an entity the Commissioner has exempted from holding a licence in accordance with section 21 of the Bill.

Section 46 False or misleading representations

This section provides that a person commits an offence if they represent that they are licensed to carry out a licensed activity when they are not. This is also intended to cover circumstances where a person represents they are licensed even though the person's licence has been suspended, cancelled or expired.

This section does not apply to an entity the Commissioner has exempted from holding a licence in accordance with section 21 of the Bill.

Section 47 Failure to meet condition of licence

This section provides that a person who is licensed to carry out a licensed activity commits an offence if their licence is subject to a condition and the person carries out the licensed activity in a way that fails to comply with that condition.

This section does not apply to an entity the Commissioner has exempted from holding a licence in accordance with section 21 of the Bill.

Section 48 Failure to surrender licence

This section provides that a person commits an offence if the person's licence is cancelled or suspended and they fail to surrender the licence to the Commissioner within seven days of the cancellation or suspension.

Part 6 – Notification and review of decisions

Section 49 Meaning of *reviewable decision*—pt 6

This section provides that the following decisions made under the Bill that are reviewable:

- imposition of a condition (subsection 20(2));
- exemption from holding a licence (subsection 21(1));
- refusal to issue a licence (subsection 23(1)(b));
- refusal to approve the transfer of a licence (subsection 25(1)(b));
- imposition of a condition on transfer (subsection 25(3));
- refusal to renew a licence (subsection 27(1)(b));
- refusal to renew a licence (late renewal) (subsection 29(1)(b));
- refusal to authorise temporary licence (subsection 30(4));
- refusal to amend licence (subsection 31(2)); and
- refusal to further consider an application (subsection 32(3)).

Section 50 Reviewable decision notices

This section provides that if a person makes a reviewable decision, the following entities must be advised that the decision is reviewable:

- imposition of a condition – the applicant for the licence and the licensee;
- exemption from holding a licence – the relevant person;
- refusal to issue a licence – the applicant for the licence;
- refusal to approve the transfer of a licence – the licensee and the transferee;
- imposition of a condition on transfer – transferee;
- refusal to renew a licence – the licensee;
- refusal to renew a licence (late renewal) – the licensee;
- refusal to authorise temporary licence – eligible personal legal representative;
- refusal to amend licence – the licensee; and
- refusal to further consider an application – the applicant for the licence, the licensee and the transferee.

Section 51 Applications for review

The section provides that if a reviewable decision is made the following people and any other person whose interests are affected by the decision may apply to the ACAT for a review:

- imposition of a condition – the applicant for the licence and the licensee;
- exemption from holding a licence – the relevant person;

- refusal to issue a licence – the applicant for the licence;
- refusal to approve the transfer of a licence – the licensee and the transferee;
- imposition of a condition on transfer – transferee;
- refusal to renew a licence – the licensee;
- refusal to renew a licence (late renewal) – the licensee;
- refusal to authorise temporary licence – eligible personal legal representative;
- refusal to amend licence – the licensee; and
- refusal to further consider an application – the applicant for the licence, the licensee and the transferee.

Part 7 – Miscellaneous

Section 52 Determination of fees

This section provides that the Minister may determine fees for this Bill and that a determination is a disallowable instrument.

Section 53 Regulation-making power

This section sets out regulation making powers for the Bill. Subsection 42(2) provides that a regulation may make further provision in relation to:

- licences;
- the keeping of a register; and
- the supervision of licensees' activities.

Accordingly, a regulation may create an offence provision with a maximum penalty unit of up to 10 penalty units and adopt an Australian Standard, if relevant and appropriate.

Section 54 Operation of Act with other rights etc.

This section provides that a licensee cannot contract out of their obligations under the Bill and ensures that consumer rights are protected.

Section 55 Evidence of licensing

This section allows the Commissioner to provide a document confirming the period or periods an entity was licensed under this Bill. In turn, this document would confirm any period during which an entity did not hold a valid licence (e.g. a period during which the licence was suspended or otherwise invalid).

Part 8 – Repeals and consequential amendments

Section 56 Repeal of Sale of Motor Vehicle Regulation 1977

This section repeals the Sale of Motor Vehicles Regulation 1977. The regulation is repealed given that its only purpose was to specify additional information to be contained in applications for licences which is either captured by this Bill or no longer required in the interests of reducing red tape.

Section 57 Legislation amended—sch2

This section provides that the Bill amends the following pieces of legislation:

- *Fair Trading (Australian Consumer Law) Act 1992*;
- *Fair Trading (Motor Vehicle Repair Industry) Act 2010*;
- *Pawnbrokers Act 1902*;
- *Sale of Motor Vehicles Act 1977*;
- *Second-hand Dealers Act 1906*; and
- *Second-hand Dealers Regulation 2002*.

Part 20 – Transitional

Section 150 Definitions—pt 20

This section provides definitions for ‘commencement day’ and ‘operational Act licence’ for a trader category for the purposes of Part 20.

Section 151 Current trader remains licensed

This section provides that if a person was licensed under a relevant Operational Act before the Bill commences, they will continue to be licensed under the Bill. The original expiry date and any conditions imposed on the licence will still apply. If, before the Bill commences, licensing requirements under the Operational Act are different to those under the Bill, existing licensees will not need to satisfy the new requirements in order for their existing licence to be carried over. This is to ensure that existing licensees who have no history of non-compliance are not disadvantaged simply through the introduction of the Bill.

Section 152 Applications under operational Act

This section provides that if, before the Bill commences, a person made an application under a relevant Operational Act for a new licence or the transfer or renewal of an existing licence, and the application had not been decided when the Bill commences, it can continue to be progressed as if it were made under the Bill. This also applies to an application for a temporary licence under the SMV Act which is allowed in particular circumstances following the death of a licensee.

Section 153 Application by former licensee

This section allows a former licensee to renew their licence if the licence expired not more than 18 months before the Bill commences and the licence was issued under a relevant operational Act. In such circumstances an application for a licence (under section 22 of the Bill) will be taken as a late renewal of the former licence.

Section 154 Occupational discipline

This section provides that if, before this Bill commences, an application was made to the ACAT in relation to occupational discipline for a trader or former trader under an Operational Act, the application will continue to be progressed as if it were made under the Bill. However, the grounds for which an occupational discipline order can be made will be those which were stated in the Operational Act (before the Bill commenced) and not the Bill.

Section 155 Review of decision

This section provides that if, before this Bill commences, an application was made to the ACAT for the review of a reviewable decision under an Operational Act, that application will be continued to be progressed as if it were made under the Bill. Accordingly, an application relating to a reviewable decision listed in an Operational Act but not in Schedule 1 of this Bill will be progressed as if the reviewable decision is listed in Schedule 1 of the Bill.

Section 156 Transitional regulations

This section provides that a regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

The section also provides that a regulation may modify this part of the Bill relating to transitional arrangements if, the Executive opinion, this part does not already adequately or appropriately deal with the matter.

Section 157 Expiry—pt 20

The section provides that this Part of the Bill relating to transitional arrangements expires two years after the Bill (Act) commences.