

# NORTHERN TERRITORY OF AUSTRALIA

## CONSUMER AFFAIRS AND FAIR TRADING (MOTOR VEHICLE DEALERS) REGULATIONS 1992

As in force at 29 September 2021

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 29 September 2021

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## CONSUMER AFFAIRS AND FAIR TRADING (MOTOR VEHICLE DEALERS) REGULATIONS 1992

### Regulations under the *Consumer Affairs and Fair Trading Act 1990*

#### 1 Citation

These Regulations may be cited as the *Consumer Affairs and Fair Trading (Motor Vehicle Dealers) Regulations 1992*.

#### 2 Commencement

These Regulations shall come into operation on the commencement of Part X, other than section 176, of the *Consumer Affairs and Fair Trading Act 1990*.

#### 3 Interpretation

In these Regulations:

***exempted transaction*** means a transaction exempted under regulation 4.

***dealer's manager*** means a person appointed as dealer's manager in accordance with section 176 of the Act.

***register*** means the Register of Motor Vehicle Dealers kept in accordance with section 155 of the Act.

#### 3A Exclusion of classes of vehicles

For Part 10 of the Act, the following vehicles are not motor vehicles:

- (a) cranes, hoists or conveyors;
- (b) excavators, road graders, road rollers, bulldozers or forklift trucks;
- (c) vehicles that:
  - (i) have attached earthmoving, grading or lifting apparatus similar to that of a vehicle mentioned in paragraph (a); and

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- (ii) are not constructed on a chassis of a type normally used in the construction of a vehicle intended to be used primarily for the carriage of goods or animals;
  - (d) vehicles constructed or adapted for road construction or maintenance such as road sweeping, cleaning or watering;
  - (e) commercial vehicles exceeding 5 tonnes in mass.

#### **4 Exempted transactions**

A transaction between a dealer or an employee of a dealer on unlicensed premises in relation to the sale of a motor vehicle is an exempted transaction under section 129(2) of the Act if:

- (a) the transaction occurs:
  - (i) at the residence of a prospective customer or at the place at which a prospective customer is employed;
  - (ii) the attendance of the dealer or employee of the dealer is at the request of the prospective customer; and
  - (iii) the prospective customer is furnished with a printed card on which is printed the name of the dealer or the name of the employee of the dealer, or both, in letters not less than 2 mm in size, the business name under which the dealer operates and the licence number of the dealer; or
- (b) the transaction occurs at a motor show or demonstration that is approved for the purposes of this paragraph by the Commissioner.

#### **5 Fees**

The fees prescribed in Schedule 1 are payable in relation to the matters specified in that Schedule.

#### **6 Forms**

- (2) The information required to be provided in an approved form is the prescribed information for the purposes of the provisions of the Act or these Regulations, as the case requires, in relation to the approved form.
- (3) An approved form must be completed in accordance with the directions given in the approved form.
- (4) An application required to be made under the Act must be lodged in a completed approved form.

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## **7 Notice of application**

- (1) The details to be set out with respect to an application for a licence in the notice to be published under section 132(5)(b) of the Act are:
  - (a) the name of the applicant or applicants, as the case requires;
  - (b) if the applicant is a corporation, the name of every director of the corporation;
  - (c) the business name under which the applicant proposes to carry on business as a motor vehicle dealer; and
  - (d) the location or locations at which the applicant proposes to carry on business as a motor vehicle dealer.
- (2) Objections to an application shall be made in writing addressed to the Commissioner.
- (3) A notice of objection shall be sent in a sealed envelope marked "Confidential".

## **8 Date of payment of annual licence fee**

- (1) The annual licence fee payable by a licensed dealer shall be paid not later than 31 October in each year.
- (3) The amount prescribed as a penalty for a default for failing to pay the annual licence fee or failing to lodge the annual return in accordance with section 141(1) of the Act is the amount set out in item 14 of Schedule 1.

## **10 Criteria as to material and financial resources**

Subject to sections 136(4) and 137(4) of the Act, the criteria to be taken into account by the Commissioner in assessing the adequacy of the material and financial resources of an applicant are the capacity of the applicant to:

- (b) provide premises of a proper standard for the purposes of carrying on the business of a motor vehicle dealer and include facilities that provide privacy for the transaction of business with customers and prospective customers;
- (c) make adequate provision for the storage of records and documents;
- (d) ensure that the premises on which the business is carried on provide adequate areas for the display of motor vehicles and, where town planning requirements apply, conform with the

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appropriate zoning requirements under the relevant town planning scheme;

- (e) provide, have available, or make satisfactory arrangements for, facilities that will enable the applicant to comply with any obligations imposed on the applicant by the Act and these regulations;
- (f) develop to a proper standard any area proposed to be used for the purposes of carrying on business as a motor vehicle dealer;
- (g) maintain a level of liquidity, profitability and financial stability that is appropriate for the carrying on of a motor vehicle dealer's business of the size proposed by the applicant, as assessed by the Commissioner in accordance with guidelines issued under regulation 10B, having regard to the financial information that is provided in the application by the applicant.

#### **10A      Audit**

- (1) The Commissioner may require the holder of a licence under Part 10 of the Act to obtain an audit, by a registered company auditor within the meaning of the Corporations Act 2001, of the business conducted under the licence.
- (2) The Commissioner may require the audit to be conducted by an auditor specified by the Commissioner.
- (3) The costs of the audit must be borne by the holder of the licence.

#### **10B      Guidelines**

- (1) The Commissioner may issue guidelines in relation to the determination of the financial analysis of the suitability of an applicant for a licence.
- (2) As soon as practicable after making guidelines under subregulation (1), the Commissioner must give notice in the *Gazette* of:
  - (a) the making of the guidelines; and
  - (b) the place where the guidelines are available for viewing or purchase by members of the public or an electronic address at which the guidelines are available for viewing.
- (3) The Commissioner must ensure the guidelines are available for viewing or purchase in accordance with the notice.

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## **11 Requirements for certain contracts and documents**

- (1) An approved form for a contract under section 160 of the Act must include the warning in Schedule 2, clause 1.
- (2) An approved form for a contract under section 165(2)(b) of the Act must include the warning in Schedule 2, clause 2.
- (3) The following must be executed in duplicate and a completed copy given to the purchaser:
  - (a) a contract under section 160 of the Act;
  - (b) a contract under section 165(2)(b) of the Act;
  - (c) a document under section 169(4)(a) of the Act.
- (4) Before a contract or document referred to in subregulation (3)(b) or (c) is signed by the purchaser, the warning set out in the contract must be read to the purchaser by an authorised officer or a police officer.
- (5) A contract or document referred to in subregulation (3)(b) or (c) must be:
  - (a) executed in the presence of the person who read the prescribed warning to the purchaser; and
  - (b) witnessed by the person who read the prescribed warning to the purchaser.

## **12 Dealers managers**

- (1) An application to be approved as a dealer's manager must be made to the Commissioner in the approved form and accompanied by the prescribed fee specified in Schedule 1.
- (2) An applicant for an approval as a dealer's manager shall, if required to do so by the Commissioner, provide the Commissioner with such particulars additional to those included in the application, and with such documents in relation to those particulars, as the Commissioner requires.
- (3) The Commissioner may require the applicant for an approval as a dealer's manager to appear before the Commissioner and to furnish such further information as the Commissioner requires in connection with the application.

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- (4) Where the Commissioner proposes to withhold an approval of an application the Commissioner shall give the applicant a reasonable opportunity to be heard on the matter.
  - (5) The Commissioner must notify the applicant of the approval or of the withholding of an approval not later than 45 days after the date on which a completed approved form has been made to the Commissioner.
  - (6) The Commissioner may seek such information and advice as the Commissioner considers necessary for the purpose of dealing with an application made under this regulation.

### **13        Grounds for withholding approval**

The Commissioner must withhold the approval of a person as a dealer's manager if any of the following grounds are established:

- (a) that the applicant has not attained the age of 18 years;
- (b) that the applicant is disqualified from holding a licence;
- (c) that the applicant is taking the benefit of a law for the relief of bankrupt or insolvent debtors, or is a person whose remuneration is for the time being assigned for the benefit of creditors;
- (d) that the applicant is not likely to carry on business as a manager honestly and fairly;
- (e) that the applicant has, during the period of 10 years immediately preceding the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence (wherever committed) involving fraud, dishonesty or physical violence;
- (g) that the applicant was, at the time that the application was made, the subject of a charge in relation to such an offence;
- (h) that the applicant has at any time been convicted of an offence against this Act, the Regulations or any other enactment administered by the Commissioner.

### **14        Approval of manager**

- (1) An approval of a person as a dealer's manager must be in the approved form.



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- (2) An approval of a person as a dealer's manager may be made subject to such conditions or restrictions as are specified by the Commissioner.

**15 Duration of approval**

Except where it is suspended by or pursuant to these Regulations, an approval of a person as a dealer's manager is valid for a period of 12 months commencing from the date of the approval and continues in force until:

- (a) it is cancelled by, or revoked or surrendered pursuant to these Regulations; or
- (b) the dealer's manager dies.

**16 Powers of Commissioner**

Where any of the grounds specified in regulation 17 exists, the Commissioner has power, subject to and in accordance with these regulations:

- (a) to revoke an approval given under regulation 14;
- (b) to suspend an approval given under regulation 14; or
- (c) to vary any term or condition or restriction specified in the approval.

**17 Grounds for revocation**

The grounds referred to in regulation 16 are:

- (a) that the approval was obtained by means of fraud or misrepresentation; or
- (b) that the dealer's manager is a person who if he or she were an applicant for an approval under regulation 12 would be refused an approval under the grounds for withholding of an approval specified in regulation 13.

**18 Advertisements**

- (1) Any advertisement by a dealer in a newspaper that relates to his or her business as a dealer shall be in letters of not less than 2 mm high.
- (2) A dealer who contravenes subregulation (1) commits an offence and is liable to a penalty not exceeding \$2,000.

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**19            Sales by financiers**

The sale of motor vehicles by a financier for the purpose of:

- (a) disposing of a re-possessed motor vehicle; or
- (b) disposing of a motor vehicle that was previously the subject of a lease or similar financial arrangement whether or not with an option to purchase between the financier and some other person,

is a prescribed purpose for the purposes of section 125(4)(e) of the Act.

**20            Transitional provision**

Paragraph 4(3) of Schedule 3 to the Act shall continue to apply to and in respect of a dealer notwithstanding that the time specified in subparagraph (4) within which subparagraph (3) shall cease to apply to the dealer has expired, and this regulation shall have effect despite subparagraph (4).

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**Schedule 1 Fees**

regulation 5

Revenue units

1.	Application fee for a licence by a natural person (section 132)	400
2.	Application fee for a licence by a corporation (section 132)	400
3.	Grant of a licence (section 138): including one car yard	230
	for each additional car yard	115
4.	Annual fee for a dealer who is a natural person (section 141): including one car yard	230
	for each additional car yard	115
5.	Annual fee for a dealer who is a corporation (section 141): including one car yard	230
	for each additional car yard	115
6.	Variation to licence (section 147 and 152)	115
7.	Replacement of licence (section 154)	55
8.	Extracts from Commissioner's Register (section 156): per examination/extract	10
	yearly subscription	80
9.	Dealer's Dealing Register (section 157): per register	65
10.	Application for approval of dealer's manager (section 176)	55
11.	Certification of dealer's manager (section 176)	20
12.	Variation of Commissioner's approval of dealer's manager (section 176)	10
13.	Variation to Certification (section 176)	20
14.	Penalty for default (section 141(2))	460

## Schedule 2 Warnings

regulation 11

1. This warning is to be read to the purchaser by an officer authorised by the Commissioner, or member of the Police Force of the Northern Territory who is witnessing this contract.

"This is to warn you that you are signing away many of your consumer rights and entitlements to warranty repairs to this vehicle and, should you experience a breakdown or require a repair that under the law the dealer is required to repair or see to, you may have to cover these costs yourself. However, you can still expect the vehicle you are purchasing (the subject of this form) to be fit for its intended purpose, which for example requires the vehicle to be safe and remain registrable under Northern Territory law for a reasonable time after you purchase it. If you experience difficulties with this vehicle or it breaks down after purchase, contact the dealer immediately. Keep this form safe and if you have any further queries regarding this, you are advised to contact Consumer Affairs."

2. This warning is to be read to the purchaser by an officer authorised by the Commissioner, or member of the Police Force of the Northern Territory who is witnessing this contract.

"This is to warn you that the vehicle purchased under this contract may not be fit to drive on a public road and may not be safe to use. Therefore it should not be driven by you from the dealer's yard in its present condition. Using this vehicle on a public road in its present unregistrable condition could place you and others at risk."

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## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

### 2 LIST OF LEGISLATION

***Consumer Affairs and Fair Trading (Motor Vehicle Dealers) Regulations (SL No. 68, 1992)***

Notified	9 December 1992
Commenced	14 December 1992 (r 2, s 2 <i>Consumer Affairs and Fair Trading Act 1990</i> (Act No. 49, 1990) and <i>Gaz</i> G49, 9 December 1992, p 6)

***Amendment of Motor Vehicle Dealers Regulations (SL No. 7, 1993)***

Notified	12 May 1993
Commenced	12 May 1993

***Amendment of Motor Vehicle Dealers Regulations (SL No. 10, 1993)***

Notified	9 June 1993
Commenced	9 June 1993

***Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)***

Assent date	29 June 2001
Commenced	15 July 2001 (s 2, s 2 <i>Corporations Act 2001</i> and <i>Cth Gaz</i> S285, 13 July 2001)

***Statute Law Revision Act (Act No. 12, 2003)***

Assent date	18 March 2003
Commenced	18 March 2003

***Amendments of Motor Vehicle Dealers Regulations (SL No. 17, 2004)***

Notified	9 June 2004
Commenced	9 June 2004

***Statute Law Revision Act 2005 (Act No. 44, 2005)***

Assent date	14 December 2005
Commenced	14 December 2005

**Consumer Affairs and Fair Trading Amendment Regulations 2006 (SL No. 15, 2006)**

Notified	31 May 2006
Commenced	1 July 2006 (r 2, s 2 <i>Consumer Affairs and Fair Trading Amendment Act 2002</i> (Act No. 41, 2002) and Gaz G20, 17 May 2006, p 6)

**Consumer Affairs and Fair Trading Amendment Regulations (No. 2) 2006 (SL No. 35, 2006)**

Notified	8 November 2006
Commenced	1 January 2011 (r 2, s 2 <i>Consumer Affairs and Fair Trading Amendment Act 2006</i> (Act No. 23, 2006), s 2 <i>Consumer Affairs and Fair Trading Amendment (National Uniform Legislation) Act 2010</i> (Act No. 41, 2010) and Gaz S71, 20 December 2010)

**Amending Legislation****Consumer Affairs and Fair Trading Amendment (National Uniform Legislation) Act 2010 (Act No. 41, 2010)**

Assent date	8 December 2010
Commenced	1 January 2011 (Gaz S71, 20 December 2010)

**Fees and Charges Amendment Regulations 2009 (SL No. 34, 2009)**

Notified	14 December 2009
Commenced	1 January 2010 (r 2)

**Consumer Affairs and Fair Trading Amendment (National Uniform Legislation) Act 2010 (Act No. 41, 2010)**

Assent date	December 2010
Commenced	1 January 2011 (Gaz S71, 20 December 2010)

**Business Names (National Uniform Legislation) Implementation Act 2012 (Act No. 8, 2012)**

Assent date	27 April 2012
Commenced	pts 3 and 4: 28 May 2012 (Cth proclamation F2012L00891: 19 April 2012); rem: 27 April 2012 (s 2)

**Statute Law Revision Act 2018 (Act No. 10, 2018)**

Assent date	23 May 2018
Commenced	20 June 2018 (Gaz S41, 20 June 2018)

**Statute Law Amendment (Territory Economic Reconstruction) Act 2021 (Act No. 19, 2021)**

Assent date	31 August 2021
Commenced	pt 6: 2 October 2021; rem: 29 September 2021 (Gaz G39, 29 September 2021, p 1)

**3****GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22 of 2018) to: rr 1, 2 and 9 and sch 3.

## 4 LIST OF AMENDMENTS

r 1	amd No. 17, 2004, r 2
r 3	amd Act No. 19, 2021, s 28
r 3A	ins No. 35, 2006, r 7
r 6	amd Act No. 19, 2021, s 29
r 7	amd No. 15, 2006, r 4
r 8	amd Act No. 12, 2003; No. 17, 2004, r 3; Act No. 19, 2021, s 30
r 9	amd No. 17, 2004, r 4; No. 35, 2006, r 8 rep Act No. 19, 2021, s 31
r 10	amd No. 17, 2004, r 5
rr 10A – 10B	ins No. 17, 2004, r 6
r 11	amd No. 17, 2004, r 9 sub Act No. 19, 2021 s 32
r 12	amd No. 17, 2004, r 9; Act No. 19, 2021 s 33
r 13	amd No. 17, 2004, r 7
r 14	amd Act No. 19, 2021, s 34
r 15	amd No. 17, 2004, r 9
r 17	amd No. 17, 2004, r 9
r 20	ins No. 10, 1993
sch 1	amd No. 34, 2009, r 10; Act No. 19, 2021, s 35
sch 2	sub Act No. 19, 2021, s 36
sch 3	amd No. 7, 1993; Act No. 17, 2001; Act No. 12, 2003; No. 17, 2004, r 8; Act No. 44, 2005; Act No. 41, 2010, s 27; Act No. 8, 2012, s 30; Act No. 10, 2018, s 6 rep Act No. 19, 2021, s 36