



Government of **Western Australia**
Department of **Commerce**
Consumer Protection

Have I got a deal for you

An advertising guide for
WA motor vehicle dealers



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Introduction

The Department of Commerce recognises that advertising plays an important role in the motor vehicle sales industry. Advertising can give one dealer the edge over its competitors and plays a fundamental role in attracting customers. It can mean the difference between a vehicle remaining in the yard or being sold.

Like most businesses, car dealers rely heavily on the power of advertising at all levels - from national campaigns using television, radio and Press, through to the latest in electronic advertising on the internet.

Whatever the level, the community expects advertising to be **fair, responsible and honest**.

Dealers must comply with several laws which regulate their advertising.

- the *Motor Vehicle Dealers Act 1973* (Western Australia) (“the MVDA”);
- the *Fair Trading Act 2010* (Australian Consumer Law) (Western Australia) (“the ACL”); and
- the *National Credit Code 2010* (Commonwealth Law).

This guide is designed to assist dealers with advertising, helping to avoid problems.

Breaches of the law could be expensive for business, not just in fines or damages, but also in loss of goodwill. The Department of Commerce is committed to helping dealers meet their legal obligations by providing specialist knowledge and information. Prosecution is, however, used where businesses are clearly not complying with the law.

Who should read this guide?

As advertisers, dealers need to be aware that they are ultimately responsible for any representations they make. But it's not just dealers!

Advertising agents and other businesses involved in publishing or broadcasting advertisements also have a responsibility to ensure advertisements prepared, or aired, on behalf of their clients, don't contravene the law.

The Guide is just that, 'a guide' - if a question arises over advertising, then the matter may have to be resolved through legal advice or via reference to Consumer Protection.

The information included in this guide should help prevent that situation from arising!

What constitutes unfair advertising

Commonwealth and state law prohibits a dealer from engaging in misleading or deceptive conduct, and from making false or misleading representations. Importantly, a dealer **does not have to intend to deceive** to engage in misleading conduct or make a false representation under Australian law.

What is misleading conduct?

Misleading conduct is an act by a person or company which

- leads another party to draw incorrect inferences or conclusions;
- gives a false impression; and
- conceals important information.

What is a false representation?

A false representation is generally a statement made to another which is factually incorrect or, in which the information provided is materially inaccurate. A statement is materially inaccurate if it misleads, or is likely to mislead, and can be materially inaccurate by simply leaving important information out of the statement.

In other words, an **omission of relevant information can be misleading.**

Who will be reading my advertisement?

An advertiser has an obligation to take into account that the reader of an advertisement may include persons who are not well informed or who may have a poor understanding of the product advertised.

The Courts have clearly endorsed this obligation:

'the advertiser must be assumed to know that the readers will include both the shrewd and the ingenuous, the educated and the uneducated and the experienced and inexperienced in commercial transactions.

He is not entitled to assume that the reader will be able to supply for himself or (often) herself omitted facts or to resolve ambiguities.

*An advertisement may be misleading even though it fails to deceive more wary readers.'*¹

¹ *CRW Pty Ltd v Sneddon (1972) AR 17. Adopted in World Series Cricket Pty Ltd v Parish (1977) 2 TPC 303.*

Consequently a person can be misled by the failure or omission of an advertiser to say something relevant and important about the product advertised.

What is a fair advertisement?

In general terms you need to take care that your promotion and marketing is not likely to mislead or deceive people. You should start by asking yourself two fairly straight-forward questions: 'Is it the truth?' and 'Does the ad convey a truthful impression overall?'

Penalties for false or misleading advertising

The penalty for a breach of the ACL is up to \$220,000 for individual dealers or up to \$1,100,000 if the dealer is a body corporate.

Statutory rules - Creating a compliant advertisement

Giving a truthful overall impression

An advertisement will be compliant with advertising laws if it meets the test of truthfulness and does not attempt to hide or not disclose important information which would otherwise assist the prospective purchaser to make an informed choice.

Consequently, important information should not only be disclosed clearly using language that the reader will understand, but also not be hidden in the fine print. Similarly, any limitations or exclusions in the offer being made should be disclosed and should not be hidden in the fine print.

Pictures of vehicles should show the vehicle advertised and represent the vehicle accurately.

Information that must be included in every dealer's advertisement - complying with the MVDA

All dealers must include the following information in every advertisement:

- the business name of the dealership; and
- the dealer's licence number.

Information that must be included in a dealer's advertisement for each and every second-hand vehicle

The MVDA requires that dealer's advertisements for second-hand vehicles include the following information about each vehicle advertised:

- the cash price;
- the year of manufacture;
- the registration number; and
- the address of the registered premises from which it is being offered for sale.

When advertising unlicensed vehicles, in lieu of the registration number you should state "unlicensed". We also recommend that you include the applicable stock number from the dealers register (Form 1).

Guidelines for price advertising

Component price representations

While a dealer can still use component pricing, section 48 of the ACL requires you to provide consumers with a **single figure for the total price**, at least as prominently as the most prominent component. This means that a consumer should be able to easily identify the total cost of a vehicle at least as easily as they may identify a component or part of that total.

For example a dealer may offer “\$3000 *minimum trade-in*,” and advertise a cash price calculated after the trade-in allowance is applied. In that case the dealer must also advertise the cash price, equally prominently, before the trade-in allowance is applied.

Advertising discount prices

A discount price claim must accurately reflect a comparison between the most recent price and the current discounted price for that vehicle. If not, it is likely to mislead or deceive consumers.

The ‘most recent price’ used in the comparison should be the price at which the vehicle was available for a reasonable period of time before the discount offer commenced, and not just a price that has been inflated to make a subsequent sale price seem more attractive. The discount offer should be a genuine price decrease. ‘Mark up to mark down’ is a dangerous procedure, risking substantial fines under the ACL.

New Vehicles (Dealer delivery costs)

The cash price of a new vehicle does not have to be stated in an advertisement.

If a dealer states any price information (including a delivery charge) it is also necessary that a single total purchase price be included prominently in the advertisement. The single price must be just as prominent as any other price information.

A manufacturer’s advertisement does not have to include the dealer delivery charge and will therefore normally quote a recommended retail price (RRP).

The Department understands this may sometimes cause confusion. But keep in mind that, as it is the dealer who passes the dealer delivery cost on to the purchaser, it is only dealer advertisements that must include the actual cost.

If, however, a manufacturer advertises on behalf of one dealer only and states the cash price, then the cost of that dealer’s delivery charge must be included in the cash price.

Government Charges

New vehicle dealers should advertise an all inclusive single price (including licence and stamp duty) because it is standard practice that a new vehicle is purchased already licensed in the purchaser's name.

Second hand dealers do not have to advertise that Government levies such as licence transfer and stamp duty are in addition to the price, provided that it is not an all-inclusive offer (eg 'drive-away no more to pay') because those fees and charges are payable to a third party after purchase.

'Drive Away No More to Pay'

The statement 'drive away no more to pay' creates the impression that a person who buys a vehicle will have to pay no more than the cash price stated to be able to legally drive the vehicle out of the dealership.

If you use terms such as 'drive away' or 'drive away price' the cash price must include any applicable fees, including dealer delivery and licence fees.



Guidelines for use of disclaimers and fine print

Use of disclaimers in the fine print

Disclaimers, qualifications or fine print may be used to clarify what the main offer does or does not include.

They should only be used to clarify the meaning or intent of a statement and not to correct a misleading impression created by the more prominent aspects of the advertisement.

To be effective, a disclaimer must be prominent, placed in close proximity to the main representation, clear in meaning and address the issue being clarified. If not, the overall effect of the advertisement may be misleading and deceptive, and likely to breach the ACL.

Customers may view the extensive use of fine print as an attempt by the advertiser to hide something important. They may also not take the time to consider it because of difficulty in reading, so it may be counterproductive to use it.

However, it is legitimate to use 'fine print' or other qualifications in advertisements if it is a statement which will not alter the overall impression of the advertisement. For example, where a price of "\$29 990*" is given and the asterisk is used to clarify a related qualification, the asterisked information should be clearly linked and be inserted close to this main price—*"*Price applies until 31 December 2012."*

Fine print may also be used to reduce a business's compliance costs, such as in complying with the statutory requirement to disclose a dealer licence number.

The Courts have also said that the size of the print is just as important as the description itself in the qualifying words of an advertisement.

The question of whether fine print is sufficiently prominent is a matter of judgment and depends on the size, location and detail of the fine print in relation to the headline advertisement.

Non-disclosure – omitting important information

What is left unsaid in an advertisement can also give a misleading impression. For instance, an advertisement which states 'air conditioning, power steering' but fails to inform the reader that these are at extra cost to the stated price or that they do not operate, would clearly be misleading.



Guidelines for vehicle description

Pictorial representation of vehicles

A motor vehicle shown pictorially in an advertisement should be the same model and have the same visible accessories and price as the vehicle offered for sale at the dealership. If not, it is likely to mislead or deceive.

The phrase 'picture for illustrative purposes only' (or other similar expressions) accompanying a pictorial representation that is not the same as the vehicle on offer can mislead consumers in some circumstances. The misleading or deceptive feature of the advertisement is unlikely to be removed by a disclaimer.

When a second-hand motor vehicle is depicted, but a wider range of vehicles is on offer, at least one of the vehicles available for sale should be the same model and have the same visible accessories and price as the vehicle in the advertisement. If it is not possible for a photograph of the actual second-hand motor vehicle to be used in an advertisement, it is appropriate to use a representation of the same make and model of vehicle, with a prominent disclaimer.

When an advertisement relates to a range of models, but only one model is pictured, then the advertised price must relate to the price of the pictured vehicle.

Manufacturer advertisements showing models not available in Australia accompanied by the disclaimer 'not the

Australian model' may risk misleading consumers, particularly if a RRP accompanies the advertisement and the model for sale in Australia differs substantially in quality or external features from the vehicle shown in the advertisement.

Demonstration Vehicles

'Demo' vehicles should be clearly identified in advertisements. As demonstration vehicles have been licensed, the registration number, year of manufacture, cash price and dealer's details should be stated.

Care should be taken when stating amounts that are claimed as being savings off the new car price. Wording such as '*\$3000 cheaper than new car price,*' is acceptable. Keep in mind that any claimed savings must be able to be substantiated.

Cab Chassis

Similarly, if an advertisement for a truck or utility shows a tray (or similar) fitted to the chassis, then the cost of the tray must be included in the cash price of the vehicle. If a photo or vision shows the cab and chassis only, the advertisement should clearly state that the cost of a tray is extra.

Manufacturer advertisements depicting a tray or other visible accessories such as driving lights or tow bars should include a clear statement advising that they are extra.

All similar forms of advertising should follow this same principle.

General guidelines

Duration of Advertised Offer

If you do not specify a period in an advertisement for which the offer applies, it will depend on the wording and the overall context of the advertisement as to what would be considered a 'reasonable period.'

The medium in which the advertisement appears is also taken into account. For instance, if no duration is specified, a small 'strip ad' would be considered to have a shorter publication duration than a full page advertisement. Similarly, a daily newspaper would have a shorter duration than a weekly publication.

To avoid confusion, the Department suggests that you specify the time period for any special offers, and ensure that all sales staff are aware of the promotion. Make sure that any forms or signage on vehicles are changed to reflect a special price or offer.

Making Comparisons

Care needs to be taken when making comparisons between vehicles. It is important to ensure that any comparisons are made with like vehicles. For example, comparing prices and models, or the performance of one vehicle to another, could be misleading if the advertisement compares a top of the range model vehicle with a base model, which is clearly not in the same class.

The same care should be taken when using the results of tests or surveys to make claims about a vehicle, or when using such data to compare one vehicle to another.

Whatever the situation, you must be able to substantiate any claims which are made in this form of advertising.

Factory Cash Back Offers

These are rebate payments made by the manufacturer, to the purchaser, after the purchase of a vehicle. Dealers should not advertise a vehicle which incorporates the factory cash back amount in the cash price. This is misleading, as it falsely lowers the cash price of the vehicle.

Where a vehicle is subject to a factory cash back offer, the advertisement should clearly identify that the purchaser will receive a separate rebate after buying the vehicle. Effectively this is component pricing and the total single cash price must be shown just as prominently.



Offering Gifts or Prizes

It is an offence to offer gifts, prizes or other free items in a promotion if you do not intend to provide them as offered. If you advertise in this way you must, at the time of advertising, have a reasonable expectation of being able to provide the items as advertised. This includes gifts or prizes being supplied by another party.

Payment without Supply

Accepting payment for goods or services when you are unable to supply them or intend to supply goods or services materially different from the original order, is misleading and deceptive conduct.

Finance and Credit

The ACL does not apply to financial products or services but aspects of the ACL are reflected in the *Australian Securities and Investments Commission Act 2001*.

The National Credit Code which regulates the provision and advertising of credit, is now administered by the Australian Securities and Investments Commission (ASIC).

For detailed information and advice on financial products or services and national consumer credit legislation, the ASIC customer enquiry centre should be contacted on **1300 300 630**.

However the basic rules for advertising credit have not changed.

The principle rule for advertising credit terms, taken from the National Credit Code is that an advertisement which advertises credit need not contain an annual percentage rate.

However, if the advertisement states the amount of any repayment (instalment), it must disclose the interest rate. If that interest rate is expressed as an annual percentage rate, the advertisement must also disclose a comparison interest rate, calculated in accordance with the National Credit Code.

If the advertisement contains an annual percentage rate and credit fees and charges are payable, the advertisement must also:

- state that fees and charges are payable; or
- specify the amount of the fees and charges payable; or
- specify the amount of some of the fees and charges payable and state that other fees and charges are payable.

It is an offence to make a false or misleading representation about the credit contract or anything relating to it. If a borrower loses any money as a result of a false or misleading representation, you may be liable to refund this money.

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If you require an interpreter, call the Translating and Interpreting Service (TIS) on 131 450 and ask for connection to 1300 30 40 54.

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