



Government of **Western Australia**
Department of Mines, Industry Regulation and Safety



Do I have to fix it?

A dealer's guide to
used car warranty



Contents

Introduction	2
What is the statutory warranty under the <i>Motor Vehicle Dealers Act 1973</i> ?	2
'Unroadworthy'	3
'Unserviceable'	3
What is covered by warranty?	3
Warranty defect list	4
Engine and engine bay	4
Engine	4
Fuel system	4
Cooling system	4
Exhaust	5
Driveline	5
Clutch	5
Gearbox/transmission	5
Automatic transmission	5
Drive shafts/tail shafts	5
Differential	5
Wheels	5
Tyres	6
Brakes, steering and suspension	6
Brakes	6
Handbrake	6
Steering	6
Suspension	6
Body and frame	6
Rust (structural not surface)	6
Doors and windows	7
Electrical system	7
Headlights	7
Parking, indicator, rear stop, high rear stop and reverse lights	7
Other electrical	7
Power accessories	8
Other accessories	8
Interior	8
Instrument panel/dashboard	8
Seats/seat belts	9
Adjustments	9
Motorcycles	9
Length of warranty	10
Types of vehicles covered	10
Vehicles not covered by warranty	11
Displaying vehicle particulars	11
Form 4 – Displayed on vehicles covered by warranty	11
Form 6 – Displayed on vehicles NOT covered by warranty	12
Warranty exemptions and exclusions	12
Can you exclude defects from warranty?	12
Can you waive the statutory warranty?	12
Warranty obligations	13
Carrying out warranty repairs	13
Owner's responsibilities	14
Do you have to supply a courtesy car?	14
Other warranties on second-hand vehicles	14
Do you have to fix accessories/extras?	15
Dealer's responsibility when 'accessorising' vehicles	15
More information	16

Introduction

Most complaints received by the Department of Mines, Industry Regulation and Safety regarding motor vehicles are about warranty repairs. The purpose of this booklet is to help you resolve these complaints before they come to us. Of course, there will be some cases which cannot be solved easily and will require our involvement, but the advantages in resolving complaints independently include:

- time savings;
- increased revenue;
- reduced costs;
- increased goodwill;
- retention of customers; and
- improved staff morale.

Research shows customers will tell up to 20 people if complaints are not fixed quickly but, on average, will recommend your business to 15 friends if they are happy with the service you provide.

This booklet has been produced to provide you with assistance to resolve warranty claims and prevent disputes.

What is the statutory warranty under the *Motor Vehicle Dealers Act 1973*?

The statutory warranty under the *Motor Vehicle Dealers Act 1973* (the Act) is a legal obligation imposed on you as a licensed dealer to fix certain defects which occur in vehicles you have sold.

Section 34 of the Act describes the extent of dealer liability as:

'...(if) a defect which renders or is likely to render the vehicle unroadworthy or unserviceable appears in that vehicle, whether or not that defect existed at the time of sale, the dealer who sold that vehicle shall, at his own expense, repair or make good or cause to be repaired or made good, that defect so as to make the vehicle roadworthy and to place that vehicle in a reasonable condition having regard to its age.'

Dealers often misinterpret this section by asking the question, 'Do I have to fix this fault? I think it's acceptable in a vehicle of this age.'

The question you should ask yourself is: 'Is this defect likely to make the vehicle unserviceable or unroadworthy?'

If the answer is 'yes,' then you must repair it to a serviceable condition having regard to the vehicle's age. For example, you are not required to fit new parts to a 10-year-old vehicle if there are serviceable second-hand parts available.

It is helpful to consider the meanings of crucial terms in the warranty section of the Act.

Where a term is not defined in a piece of legislation, its meaning is generally defined by the context in which it appears and its common usage.

'Unroadworthy'

A vehicle is unroadworthy if it is 'stickered' by the police or an authorised officer of the Department of Transport or the Department of Mines, Industry Regulation and Safety. Stickers can be placed on vehicles when the person inspecting the vehicle believes:

- it requires any repair, adjustment or reconditioning;
- it requires the supply, fitting or removal of any equipment;
- it is in such a condition as to cause danger to any person or damage to any property; or
- it requires any other attention to make it comply with any law relating to the equipment, serviceability or roadworthiness of the vehicle.

In general terms, if the vehicle has a fault which could be 'stickered', then the fault must be rectified by the dealer.

'Unserviceable'

The Concise Oxford Dictionary defines 'serviceable' as:

'of use, useful or usable...durable, suited for rough use or ordinary wear rather than for ornament.'

The most helpful word here is 'usable'. If the defect is not one which makes the vehicle unroadworthy, you must ask the question:

'Does the defect make the car unusable or is it likely to make the car unusable?'

For example, a vehicle may not be considered to be unroadworthy by the police because it has a leaking core plug, however, the defect is likely to make the vehicle unusable, so it must be fixed. One test you could apply to any problem is: 'What will happen if I don't fix it?'

If the result is likely to be a failure which would make the vehicle unusable, the defect should always be fixed.

What is covered by warranty?

To help you determine what is covered we have compiled the following list. This list is to be used as a guide **only** and if you are unsure we recommend you contact Consumer Protection for further assistance.

It should be noted that just because a mechanic calls a repair an 'adjustment', it does not make it exempt from needing to be fixed under warranty. If the adjustment means substantial work, such as power steering box adjustments, you will probably have to fix it.

If you have any questions, don't hesitate to call us. It's better for everyone involved to sort out the problem on the 'shop floor'.

Warranty defect list

This warranty list is to be used as a guide only; Consumer Protection staff will assist you and your customer to resolve claims which are disputed.

COVERED BY WARRANTY – ✓		NOT COVERED BY WARRANTY – NO	
Engine and engine bay			
Engine			
Abnormal noises	✓	Tappet/valve clearance (if adjustable)	NO
Air cleaner (if missing, broken, modified or leaking)	✓	Timing belts (if damaged or cracked)	✓
Air filter element blockage	NO	Timing belts and chains adjustments	NO
Air flow meter and associated ducting	✓	Timing chains – if noisy	✓
Anti-pollution controls (ADR requirement)	✓	Turbo charger (including super charger)	✓
Carburettor (if stalling, surging, racing, leaking)	✓	Fuel system	
Compression (if variation over 20 per cent or excessively low)	✓	Fuel filler cap must be correct for vehicle	✓
Coolant leaks	✓	Fuel filters	NO
Core plug leakage or seepage	✓	Fuel injection systems (all components) includes servicing and cleaning of injectors, injection pump and delivery pump	✓
Cylinder head gasket leakage or seepage	✓	Fuel pump including oil or fuel leaks	✓
Cylinder head cracked or corroded	✓	Fuel vent system and charcoal canister	✓
Distributor (including vacuum unit)	✓	Gas conversion (dual fuel vehicles) – vehicle and all associated components must operate satisfactorily on both petrol and gas. Conversion must comply with all relevant licensing regulations and the gas tank must be within date code.	✓
Engine block cracked or corroded	✓	Leaking, perished, rusted or non-secured fuel lines	✓
Engine failure due to excessive oil sludging	✓	Remote fuel filler cap (unless it can't be opened manually)	NO
Engine management systems, computer and all allied equipment including dash/ instrument panel warning indicators	✓	Tank leakage	✓
Engine mounts (if broken, oil saturated, soft or loose)	✓	Cooling system	
Engine stabiliser bar	✓	Cooling fans (manual and electric including thermo switches – viscous fans must operate efficiently)	✓
Excess oil usage (1 litre/1000km if exhaust smoke emission not excessive)	✓	Core plug leakage or seepage	✓
Excessive piston ring blow-by	✓	Cylinder head gasket leakage or seepage	✓
Excessive oil smoke emission from exhaust	✓	Fan cowling	✓
High tension and spark plug leads breaking down	✓	Fan/drive belt (if cracked, broken, frayed badly or stretched badly – i.e. no adjustment)	✓
Lifters/hydraulic lash adjusters (if excessively noisy)	✓	Leaks (including heater and heater hoses, radiator and radiator hoses, seepage from head gasket)	✓
Oil leaks (if major but not seepage or dampness)	✓		
Oil sludging	✓		
Plugs and points	NO		

Overheating	✓
Radiator	✓
Radiator blockages	✓
Radiator cap and overflow system	✓
Radiator fins fretting (if excessive)	✓
Thermostat and housing	✓
Water pump including excessive bearing noise and/or leakage	✓
Exhaust	
Any gas leak	✓
Catalytic converter	✓
Excessive noise	✓
Exhaust hitting body or other components	✓
Excessive smoke emission from exhaust	✓
Loose baffles (unless causing blockage)	NO
Not secured correctly	✓
<i>(Note: repairs must be replacement or steel welding – putty, bandages not acceptable)</i>	
Driveline	
Clutch	
Clutch adjustment	NO
Clutch not disengaging (gear grate)	✓
Clutch pedal rubber pad (if split, badly worn or missing)	✓
Clutch shudder (if excessive)	✓
Linkage or hydraulic components (including leakage)	✓
Slippage	✓
Throw-out (thrust) bearing	✓
Gearbox/transmission	
Abnormal noises	✓
Hard gear selection	✓
Linkages sloppy	✓
Not holding in gear	✓
Oil leaks	✓
Reverse detent (gate) weak or not working	✓
Synchromesh	✓

Automatic transmission	
Drive faults – including abnormal change patterns	✓
Fluid leaks	✓
Gear indicator quadrant must line up with correct indicator position and quadrant light to operate	✓
Linkages	✓
Routine servicing	NO
Torque converter	✓
Drive shafts/tail shafts	
All components including centre bearings	✓
CV boots (if cracked or leaking)	✓
CV joints (if noisy or excessively worn)	✓
Shaft balance vibration (if excessive)	✓
Viscous couplings	✓
Differential	
Axles	✓
Bearings	✓
Bearing seals (front and rear)	✓
Differential (if abnormal noise)	✓
Oil leaks	✓
Period whine	NO
Pinion backlash (if excessive)	✓
Wheel bearings (front and rear but not adjustment)	✓
Wheels	
Cracked	✓
Hubs and bearings	✓
Spoke type (if missing, broken or loose)	✓
Studs stripped or nuts missing	✓
Wheel balance	NO
Wheel alignment	NO
Wheel alignment after steering/suspension repairs	✓
<i>(Note: wheel alignment must be able to be adjusted to manufacturer's specifications)</i>	

Tyres	
Damage or wear (excluded under MVDA)	NO
Spare wheel and tyre	NO
<i>(Note: tyres must all be the same diameter and width, must meet ADR requirements and be speed and load rated to the vehicle.)</i>	
Brakes, steering and suspension	
Brakes	
Adjustment only	NO
Anti-lock braking systems	✓
Brake causing vehicle to pull one side	✓
Brake pedal pulsation (if excessive)	✓
Brake pedal rubber pad (if split, badly worn or missing)	✓
Calipers (if seized, sticking or leaking)	✓
De-dusting	NO
Disc/rotor and drum thickness (to be within manufacturer's specifications)	✓
Disc/rotor scoring (if not excessive or disc/rotor not undersize)	NO
Foot brake adjustment	NO
Glazed pads	NO
Lines and hoses (if cracked, perished, rusted, unsecured or leaking)	✓
Master cylinder leakage or failure	✓
Pad or lining material (if 80% worn by end of warranty period. To be measured on material thickness)	✓
Squealing	NO
Vacuum or power booster	✓
Wheel cylinders (if seized, sticking or leaking)	✓
Handbrake	
Adjustment	NO
Cable (if binding frayed or not secured)	✓
Must operate efficiently	✓
Ratchet or button faults	✓
Steering	
Steering wheel	✓
Four-wheel steering	✓
Power steering pump, drive belt and hoses	✓
Shaft play	✓

Steering boots and rubbers (if badly split)	✓
Steering box (if abnormal play)	✓
Steering box adjustment (if manual)	NO
Steering box adjustment (if power)	✓
Steering box oil leaks	✓
Steering idler (if excessive movement)	✓
Steering lock	✓
Steering rack (internal leaks and boots)	✓
Steering tie rod ends (if excessive movement)	✓
Steering wheel (if cracked through)	✓
Steering wheel cover (excessive lateral movement only)	✓
Steering wheel height and reach adjustment must be secure	✓
<i>(Note: modified steering wheels must comply with ADR and Road Traffic (Vehicle Standard) Rules and Regulations.)</i>	
Suspension	
Adjustable height or ride suspension	✓
Ball joints (if movement exceeds manufacturer's specifications)	✓
Ball joint boots (if badly split)	✓
McPherson struts (if leaking or broken)	✓
Rebound rubbers	✓
Shock absorbers/McPherson struts must operate reasonably efficiently	✓
Springs (if vehicle lowered beyond manufacturer's specifications)	✓
Springs sagging (if more than 25mm (1') variation between sides)	✓
Stabiliser/anti-roll bars	✓
Torsion bar	✓
Body and frame	
Rust (structural not surface)	
Bonnet (except around hinge and catch area)	NO
Boot floor	✓
Boot lid	NO
Bulk heads (fire wall)	✓

Doors (except around hinge and catch area)	NO
Fenders	NO
Floor pan	✓
Quarter panel (exterior)	NO
Quarter panel (interior)	✓
Roof and door pillars	✓
Rocker panels	✓
Sub-frame/chassis	✓
Wagon rear doors (except around hinge and catch area)	NO
Window frames	✓
<i>(Note: all rust repairs should be done by steel plating and full perimeter steel welding (not bronzed). No jagged edges from lower panels.)</i>	
Doors and windows	
<i>(Note: all passenger doors must open and shut from inside and outside.)</i> Bonnet or boot stays/struts	✓
Bonnet lock and safety catch	✓
Central locking (but must be able to unlock and lock doors to secure vehicle. This includes boot and rear hatch doors)	NO
Child-proof rear door locks (but must be able to disengage)	NO
Electric and winding windows (must wind up and down)	✓
Front windscreen (unless cracks or chips in driver's vision at time of purchase)	NO
Quarter windows	NO
Keys/remote/transponder (no obligation to provide spares)	✓
Rear door stays/struts	✓
Rear window demister	NO
Sliding windows	✓
Wagon rear door	✓
Wagon rear window	✓
Water leaks (unless likely to damage electrical components)	NO
Windscreen washers (front only)	✓
Windscreen wiper blades	NO

Windscreen wipers (front only) must work on at least two speeds, where fitted, but not including intermittent speed	✓
Windscreen wipers and washers (rear)	NO
<i>(Note: WINDSCREEN REPAIRS. Some windscreen cracks can be repaired by a poly-resin filler. The Department of Transport has advised this method is acceptable providing the crack is not more than 150mm (6 inches) long and repairs are done only on a laminated screen. The repair is not acceptable if the driver's vision is still impaired.)</i>	
Electrical system	
Headlights	
Direction adjustment (but must be able to be adjusted)	NO
Globe (non-LED)	NO
Globe (LED – no inoperative single LED's allowed)	✓
Lens	NO
Reflectors	✓
Sealed beams	NO
Spot/foglights/driving lights	NO
Switch	✓
Wiring	✓
Parking, indicator, rear stop, high rear stop and reverse lights	
Globe (non-LED)	NO
Globe (LED – no inoperative single LED's allowed)	✓
Lens (if discoloured)	✓
Reflectors	✓
Switch	✓
Wiring	✓
Other electrical	
Alternator	✓
Audible warning chime	NO
Battery (excluded under MVDA)	NO
Battery cable and terminals (if damaged)	✓
Battery must be secured	✓
Brake warning lights	✓
Coil	✓
Demister/fan (front only)	✓

Distributor (including vacuum unit)	✓
Electric windows (all must wind up and down)	✓
Electronic distributor	✓
Engine management system, computers and all allied equipment	✓
Fan belt (if cracked, broken, frayed badly or stretched badly, i.e. no adjustment)	✓
Gear indicator quadrant light	✓
Hazard lights	NO
Headlight washers and wipers	NO
High tension and spark plug leads breaking down	✓
Horn (must work efficiently)	✓
Ignition key/remote/transponder (no obligation to provide spares)	✓
Ignition switch and steering lock	✓
Immobiliser (if fitted at the time of purchase)	✓
Instrument panel/dash switches and lights	✓
Rear view external mirrors (if missing or unable to adjust manually)	✓
Regulator	✓
Starter motor	✓
Trailer wiring and connector	NO
Windscreen washers (front only)	✓
Windscreen wipers (front only)	✓
Wiring harness	✓
Power accessories	
Aerials	NO
Brakes	✓
Electric windows (all must wind up and down)	✓
Rear view external mirrors (if missing or unable to adjust manually)	✓
Seats (driver's side)	✓
Steering (drive belt)	✓
Steering (oil leaks)	✓
Steering (operation and adjustment)	✓

Other accessories	
Air conditioner	NO
Central locking (but must be able to open and lock doors manually to secure vehicle)	NO
Cruise control (but must not interfere with operation of the vehicle)	NO
Radio/cassettes or compact disc players	NO
Sun roof	NO
Convertible Roof (but must be able to be operated manually)	NO
Cigarette lighters	NO
Sun visors (interior)	✓
Reverse camera/sensors	NO
Satellite navigation/GPS systems	NO
DVD Players	NO
<i>(Note: if any of the above items are advertised as a feature, they must work satisfactorily at the time of sale.)</i>	
Interior	
Instrument panel/dashboard	
Air bag management systems	✓
Amp/volt gauge (if no light fitted)	✓
Amp/volt light	✓
Audible warning chimes	NO
Courtesy light	NO
Econometer (vacuum gauge)	NO
Fuel gauge	NO
Gear selector-quadrant lighting	✓
Glove box	NO
Heater demister and fan (front) – ADR 15	✓
Instrument lights	✓
Odometer/trip meter	NO
Oil gauge	✓
Oil light	✓
Other instruments	NO
Rear view mirrors (must be able to adjust)	✓
Speedometer	✓
Tachometer	NO

Temperature gauge	✓
Temperature light	✓
Trip computer	NO
Seats/seat belts	
Any trim damage	NO
Retractable seat belts	✓
Seat belts (new belts only to be fitted)	✓
Seats (adjusters)	✓
Seats (driver's side power adjuster)	✓
Seats (if collapsed or have protruding springs)	✓
Seats (if mountings loose or broken)	✓
Adjustments	
Air cleaner (if missing, broken, modified or leaking)	✓
Air filter element blockage	NO
Anti-pollution controls (ADR requirement)	✓
Automatic transmission servicing	NO
Brakes	NO
Brakes – auto adjuster (should operate if fitted)	✓
Carburettor (if stalling, surging, racing or leaking)	✓
Clutch	NO
Distributor (including vacuum unit)	✓
Door adjustments	NO
Electronic distributor	✓
Engine management systems, computer and all allied equipment including dash/instrument panel warning indicators	✓
Fan belt	NO
Fuel injection systems (all components), includes servicing and cleaning of injectors, injection pump and delivery pump	✓
Handbrake adjuster must operate	✓
Headlight direction	NO
High tension plug leads breaking down	✓
Plugs and points	NO

Steering box (if manual)	NO
Steering box (if power)	✓
Tappet/valve clearance (if adjustable)	NO
Tuning (unless fuel injected)	NO
Wheel alignment	NO
Wheel alignment (after steering/suspension repairs)	✓
Wheel balance	NO
Wheel bearings	NO
Motorcycles	
The items stated below relate specifically to motorcycles and are in addition to the other warranty items listed.	
Drive shaft, chain or belt (rear)	✓
Drive chain or belt adjustment	NO
Engine drive chain (primary chain)	✓
Front and rear suspension (complete unit)	✓
Front brake and clutch control cables (if broken, badly worn or frayed)	✓
Gear level rubber (if split, badly worn or missing)	✓
Rear brake pedal rubber (if split, badly worn or missing)	✓
Steering damper (where factory fitted)	✓

Length of warranty

Under the Act, the length of the warranty period depends upon the purchase price of the vehicle, its age and the number of kilometres it has travelled at the time of sale.

In the case of motor vehicles, the minimum purchase price for which a warranty applies is \$4,000. For motorcycles, the minimum purchase price for which a warranty applies is \$3,500.

The following table outlines the statutory warranty provisions which apply to vehicles based on their age and the number of kilometres travelled at the time of sale. The age is calculated to the end of the compliance plate date month. If only a month and year are shown on the compliance plate, the age is taken from the first day of the next month.

Age of car	Km travelled at time of sale	Warranty entitlement
Not more than 10 yrs	Not more than 150,000	3 months or 5,000 km (whichever happens first)
Between 10 – 12 yrs	Between 150,000 and 180,000	1 month or 1,500 km (whichever happens first)
More than 12 yrs	More than 180,000	Nil

Age of motorcycle	Km travelled at time of sale	Warranty entitlement
Not more than 8 yrs	Not more than 80,000	3 months or 5,000 km (whichever happens first)
More than 8 yrs	More than 80,000	Nil

The warranty periods do not include any time where you have possession of the vehicle for warranty repairs. For example, if you keep the vehicle for two weeks to do warranty repairs, the warranty is extended by two weeks. It is in your best interests to conduct repairs as soon as possible.

If a fault is brought to your attention during the warranty period and the same fault is still evident, or becomes evident, within a reasonable period after warranty, it is generally your responsibility to fix it.

Types of vehicles covered

For the purpose of the warranty provisions of the Act, a 'vehicle' includes:

- a **'passenger car'** – a vehicle constructed principally for the conveyance of people;
- a **'passenger car derivative'** – a vehicle of the same make as a factory-produced passenger car, in which the forward part of the body and most of the mechanical equipment are the same as those in a passenger car, such as station wagons and dual-cab utes;
- a **'motorcycle'** – a self-propelled vehicle that has two wheels or, where a sidecar is attached, has three wheels;
- a **'camper van'** – a vehicle specially fitted for camping or touring purposes and equipped with both sleeping and cooking facilities; or
- vehicles prescribed by the regulations associated with the Act.

Vehicles not covered by warranty

Vehicles excluded from the statutory warranty provisions are:

- buses and vehicles licensed to carry more than nine passengers, including the driver;
- caravans built to be towed by a motor vehicle;
- single rider motorcycles built for off-road use;
- multi-wheeled open motor vehicles e.g. quad bikes; and
- motor vehicles built to carry goods or materials used in trade, business or industry and having only one row of forward facing seats.*

*** This means station wagons and dual cabs do attract a statutory warranty, but most utes and panel vans do not attract a statutory warranty, unless they have more than one row of seats.**

Displaying vehicle particulars

When you offer or display a second-hand vehicle for sale, you must attach the appropriate notice containing the required particulars of the vehicle, e.g. odometer reading, year of manufacture and cash price.

You have the choice of displaying the vehicle particulars by using:

- a plastic vehicle particulars card;
- a paper Form 4 for vehicles covered by statutory warranty; or
- a paper Form 6 for vehicles **not** covered by statutory warranty.

Where you choose to use a plastic vehicle particulars card you will be required to state whether or not the vehicle is covered by the statutory warranty. You will also be required to complete a paper version of a Form 4 or Form 6 at the time of sale, and provide the purchaser with a copy.

The notice must be attached to the vehicle and clearly visible. In the case of a motor vehicle, the notice should be placed inside the vehicle where it can clearly be read through the windscreen. In the case of a motorcycle, or a vehicle without a windscreen, the notice must be attached to the vehicle in such a way and place as to cause the particulars to be clearly visible to a person standing near the vehicle.

Form 4 – Displayed on vehicles covered by warranty

Where you offer or display a vehicle for sale covered by the statutory warranty, a Form 4 must be displayed on that vehicle. The Form 4 comes in two versions, one for motor vehicles and one for motorcycles.

The front of each version contains the same information which explains why the vehicle is covered by the statutory warranty and identifies the vehicle particulars such as price, year of manufacture, and odometer reading.

The back of each form differs as one contains a quick guide to the main warranty items for motor vehicles and the other for motorcycles.

The requirements for completion of the Form 4 at the time of sale remain the same for both versions. Two copies must be completed and signed by both the purchaser and yourself. One copy is then given to the purchaser and the other must be retained by you for at least 2 years.

Form 6 – Displayed on vehicles NOT covered by warranty

Where you offer or display a vehicle for sale not covered by the statutory warranty, you will be required to display a Form 6 on that vehicle.

The front of the Form 6 contains the same vehicle particulars as the Form 4 and informs the purchaser the vehicle is not covered by the statutory warranty.

The back of the form explains why the vehicle is not covered by the statutory warranty together with advice about the purchaser's rights under the *Fair Trading Act 2010* (which forms a part of the Australian Consumer Law).

The requirements for completion of the Form 6 at the time of sale are the same as the Form 4. Two copies must be completed and signed by both the purchaser and yourself. One copy is then given to the purchaser and the other must be retained by you for at least 2 years.

The Form 6 is the only notice which **must** be displayed on all vehicles which are not covered by the statutory warranty.

Warranty exemptions and exclusions

Can you exclude defects from warranty?

If you do not want to repair a particular defect in a vehicle which is covered by the statutory warranty, it can be excluded from the warranty, but only if the following requirements are met:

- A detailed description of the defect and a fair estimate of the cost to repair must be noted on a 'Notice of Defects Excluded from Warranty' (Form 5).
- The Form 5 **must** be placed on the vehicle before the time of sale so it can be clearly read through the windscreen.
- The Form 5 **must** be signed by the purchaser at, or before, the time of sale, and a copy must be given to the purchaser at the time of sale.

If the purchaser is not given a copy, or the form is not signed or was not placed on the vehicle prior to the sale, it has no effect.

If you do not fully describe the defect, the notice will have no effect. For example, it would not be reasonable to state 'engine' as the defect and state \$800 as the cost of repairs. You must describe the actual defect e.g. 'excessive exhaust smoke – piston rings require replacement' together with the cost of repairs.

If the estimated cost of repairs on the notice turns out to be less than the fair cost of the repairs, the purchaser is entitled to claim the difference in cost from you.

There are many pitfalls in attempting to exclude warranty defects. You must be accurate in your paperwork or you may leave yourself open to carry out the repairs anyway.

This type of exclusion is not used very often because of the problems which may occur.

Can you waive the statutory warranty?

Neither you nor the purchaser can actually waive any rights given under the Act, including the statutory warranty, without the prior consent of the Commissioner for Consumer Protection (the Commissioner).

A statutory warranty may be waived if you follow a few simple rules:

- The purchaser must make an application to the Commissioner through the Automotive, Marine and Trading Hours Branch of Consumer Protection **before** the vehicle is sold.

- An application may be made in person, by fax or email and must include:
 - ▶ a completed application for warranty waiver form;
 - ▶ a copy of the contract to buy the vehicle;
 - ▶ a copy of a completed Form 4; and
 - ▶ a detailed independent mechanical report on the vehicle's condition.

When a warranty waiver application is assessed we look at factors such as whether:

- the purchaser has received a genuine price reduction for the vehicle in return for waiving the warranty;
- the purchaser accepts the mechanical inspection is thorough, fair, accurate and highlights all defects;
- the likely cost of repairs for warranty defects which are disclosed in the mechanical report is substantially less than the discount offered, with sufficient discount left to justify waiving the warranty;
- the purchaser fully understands the effect of the rights they are being asked to give up; and
- the purchaser understands those rights under the *Fair Trading Act 2010* which cannot be waived.

Staff of the Automotive, Marine and Trading Hours Branch will generally waive the warranty if satisfied these conditions have been met. The warranty is not waived until the application is endorsed by Consumer Protection and you receive a copy of the Department of Mines, Industry Regulation and Safety approval, normally within 24 hours.

You should not deliver the vehicle to the purchaser until the warranty is waived.

If an application is not accepted nor approved by us, the purchaser cannot waive the warranty. We have had cases where a dealer has reduced the price of a vehicle and the purchaser has agreed to waive the warranty. However, as it was a deal done between the dealer and purchaser without approval from the Commissioner, the warranty still stood.

Further, you could be leaving yourself open to possible prosecution action for trying to avoid a provision of the Act.

The requirements of the Act will override any agreement between the two parties.

Warranty obligations

Carrying out warranty repairs

When a customer returns a vehicle for warranty repairs it is in your best interests to carry them out as soon as possible. As mentioned previously, the time you have the vehicle for warranty repairs is added to the warranty period.

If you hold the vehicle for longer than is considered normal for a particular repair, your customer may be able to claim damages from you to cover such expenses as hire cars or taxi's.

It is not a requirement of the Act for a customer to return the vehicle to you for warranty repairs. However, we tell them to always contact you first about carrying out warranty repairs. If they get it fixed elsewhere you may only have to pay what it would have cost you to repair the defects. If vehicles go back to you two or three times for the same repair, customers may exercise their right to take the vehicle elsewhere and claim the full cost of repairs from you.

It could cost you more money in the long run if you do not make sure repairs are carried out properly in the first place.

Remember, the Commissioner is able to apply to the State Administrative Tribunal to disqualify a dealer from holding or obtaining a licence if they find a dealer has not carried out warranty obligations with 'due expedition' (as quickly as possible).

When you have a customer's car it is always a good idea to keep the person informed of what is happening. If there are going to be delays it is best to say so, instead of allowing the customer to come to collect a car which is not ready.

When returning the car it is advisable to tell the customer what has been done or give them an itemised list. This can avoid disputes later if a customer complains that you did not fix a particular defect during warranty.

Owner's responsibilities

If the owner lives close to your business and the vehicle is driveable they should return it to you. If, however, the vehicle is undriveable, you should arrange to have the vehicle returned to your premises.

If a customer requires warranty repairs and does not live near your business you have two options:

1. you can arrange for a repairer in the area where the owner lives to fix the vehicle. It is your responsibility to pay the repairer; or
2. you can arrange for the vehicle to be transported to your premises, repaired and returned to the customer. This should be at no cost to the customer.

Do you have to supply a courtesy car?

A 'courtesy car' is a courtesy to the customer. When repairing a customer's vehicle you are under no obligation to provide a courtesy (or loan) car. However, doing this may improve the image of your business and enhance customer goodwill.

If you have to hold a customer's car for longer than anticipated it may be a good idea to arrange a loan car. This will reduce the likelihood of the person claiming damages from you for any delays.

If you give a customer a loan vehicle make sure they are aware of any insurance requirements which apply. You should make sure the customer reads, understands and signs a document which outlines their rights and responsibilities for the loan car. Doing this can help avoid disputes.

Other warranties on second-hand vehicles

Fair Trading Act 2010

When someone buys a vehicle from you which is not covered by the statutory warranty under the Act, the purchaser does have some protection under the *Fair Trading Act 2010*.

The *Fair Trading Act 2010* requires a dealer selling a vehicle to ensure the vehicle matches any description given and it is of 'acceptable quality'. This means it must be fit for the purpose for which a vehicle of that nature is normally used. The amount of money paid for the vehicle is taken into account when determining acceptable quality.

For example, even though a vehicle is not covered by the statutory warranty under the Act, a purchaser is entitled to expect you to repair any major defects that were present at the time of sale which prevent the vehicle from being used in the normal way. This also applies to anything that makes it unsafe to drive (e.g. faulty brakes, faulty steering or major structural rust).

The requirement of acceptable quality does **not** apply to defects specifically drawn to the purchaser's attention before the contract of sale is made or, if the purchaser examines the vehicle before the contract is made, for defects the examination should have revealed.

The same rules would apply with vehicles which are exempted under the Act. If you sell an exempted vehicle which develops a serious defect shortly after you sold it, the customer may have a claim under the *Fair Trading Act 2010*. Each case must be viewed separately.

Australian Consumer Law

All vehicles come with additional guarantees under the Australian Consumer Law.

Purchasers are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. A major failure will occur where the vehicle:

- has a problem that would have stopped someone from buying it if they'd known about it;
- has multiple minor problems that, when taken as a whole, would have stopped someone from buying it if they'd known about them;
- is significantly different from the description given by you;
- is substantially unfit for its purpose and can't easily be fixed within a reasonable time; or
- is unsafe.

Purchasers are also entitled to have a vehicle repaired or replaced if it fails to be of acceptable quality and the failure does not amount to a major failure.

Do you have to fix accessories/extras?

Generally you do not have to fix accessories or extras.

However, the *Fair Trading Act 2010* states a person shall not engage in conduct which is misleading or deceptive or is likely to mislead or deceive. So, in some cases you may be obliged to rectify faults with accessories.

For example, if a vehicle is advertised as air-conditioned or having Bluetooth, it is expected these accessories will work at the time of sale. If they don't, the customer may have some claim on you for repairs.

Dealer's responsibility when 'accessorising' vehicles

Dealers should be conscious of their responsibilities if 'accessorising' or 'modifying' vehicles before offering it for sale.

Some of the modifications involve the fitting of after-market exhaust systems, tyres and/or rims. The tyres and rims can often be larger or lower profile than the recommendations of the manufacturer and lowers the vehicle's ride height. This is done to make the vehicle more appealing to perspective buyers with the practice being applied to both new and second-hand vehicles.

However, many of these modifications are actually non-compliant (illegal) because they do not comply with the manufacturer's specifications or the Australian Design Rules (ADR).

ADRs apply to the construction of vehicles which are to be licensed for road use. They apply to manufacturers of vehicles and under state law, vehicles must remain compliant with those rules if used on public roads.

In Western Australia, a vehicle's Gross Combined Mass (GCM) cannot be increased beyond what the original manufacturer has specified. GCM is the total permissible weight a vehicle plus the trailer or caravan being towed can be. A modified vehicle may not be legally allowed to tow a caravan or boat that takes you above the manufacturer's GCM.

Under the Australian Consumer Law goods supplied in the course of business must be of acceptable quality, which means they must be fit for the purpose for which they are supplied.

Dealers fitting non-compliant accessories to a licensed road vehicle would therefore have an obligation to rectify any faults or non-compliant components provided with the vehicle at the time of sale.

This could include having the vehicle modifications 'engineer approved' and noted as 'passed' by the Department of Transport. You may also incur the cost of returning the vehicle to a legal condition, as well as compensating your customer for the associated drop in the vehicles value.

Consumer Protection does not interfere with your right to supply or fit the non-standard, after-market accessories. However you are required to know if the modifications will make the vehicle non-compliant.

The illegal modification could also cause problems for you as the selling dealer when it comes to any manufacturer's warranty issues, or more significantly, serious insurance implications.

More information

For advice about your responsibilities or any other matter relating to the sale or repair of motor vehicles, please contact Consumer Protection.

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