



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

A guide to auditing trust accounts

Motor vehicle dealers

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This booklet contains general information that was current at the time of publication. If you have specific enquiries about matters relating to your situation then you are strongly urged to seek independent professional advice.

This publication is available in other formats on request to assist people with special needs.

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1 INTRODUCTION

Audit requirement of trust accounts

The motor vehicle dealer industry in Western Australia is regulated under the *Motor Vehicle Dealers Act 1973* (the Act). The Department of Mines, Industry Regulation and Safety (the Department) is responsible for the administration of the Act.

Section 32C of the Act requires a motor vehicle dealer to have an open trust account in which to deposit funds before taking any vehicle under a consignment agreement. The dealer must also be permitted to do so in accordance with their Motor Vehicle Dealer's Licence.

Wherever the term 'trust accounts' is used in this publication, it refers to trust accounts opened, maintained and/or closed by motor vehicle dealers licensed under the Act (dealer/s). Trust accounts are defined as accounts where money is received or held by a dealer (this includes any member of a dealer's staff) on behalf of another person in relation to a consignment transaction.

The Act gives the Commissioner for Consumer Protection (the Commissioner) various powers in relation to the audit of trust accounts of dealers. The Consumer Protection Division of the Department (Consumer Protection) supports the Commissioner in this statutory role. Consumer Protection has released this revised version to guide auditors when examining and reporting on trust accounts held by dealers. This guide is intended to help auditors produce high quality reports in the required format.

Related legislation and publications

The Act and the Motor Vehicle Dealers (Sales) Regulations 1979 (the Regulations) impose various other duties and obligations on auditors and these Guidelines are intended to provide assistance to auditors and licensees to achieve compliance with the trust account and audit requirements of the legislation. Regulation 10J of the Regulations requires that auditors must conduct the audit in accordance with accepted auditing practice, including selective testing when the auditor considers it appropriate.

Auditors should read this publication in conjunction with legislation and the Australian Auditing Standards. Legislation relative to the business of motor vehicle dealers are:

- *Motor Vehicle Dealers Act 1973*
- Motor Vehicle Dealers (Sales) Regulations 1974
- *Corporations Act 2001*
- Australian Consumer Law

When auditing dealers' trust accounts, auditors should ensure they have a current copy of each of the above legislations. Appendix C contains links to the full text of the relevant sections.

Please note that the following changes came into effect from 25 September 2021

Recent changes to the Motor Vehicle Dealers (Sales) Regulations 1974, require that from 25 September 2021, auditors of trust accounts held by motor vehicle dealers will need to disclose to the Commissioner if they are in a de-facto relationship with the dealer. Previously, auditors were only required to disclose if there was a close relationship through blood or marriage.

The Commissioner will consider instances of disclosure on a case-by-case basis.

2 Role as Auditor of Trust Accounts

2.1 Appointment of an auditor of trust accounts

As part of the licensing process, persons making an application for a motor vehicle dealer's licence or the holder of a current motor vehicle dealer's licence, who intend to undertake consignment sales, are required to provide notification of this. The dealer may already have a condition placed on their licence restricting them from carrying out consignment selling. In this case, the dealer would need to apply to the Commissioner for approval to carry out consignment sales by completing and lodging the following form:

[Remove consignment sales condition on motor vehicle dealer licence](#)

Where a dealer sells vehicles on consignment, the dealer is required to have a trust account. Regulation 10H(1) of the Regulations provides that at the time of opening a trust account the dealer must appoint an auditor.

Forms for this purpose can be found on the Department's website:

- [Application to open amend close a consignment trust account for motor vehicle dealers](#)
- [Application to appoint an auditor for motor vehicle dealers selling on consignment](#)

Regulation 10H(2) of the Regulations provides for the appointment of an auditor to be continuous, unless the Commissioner approves a subsequent change in the appointment.

Auditor's independence

The Act and Regulations contain certain provisions in relation to the independence of the appointed auditor. Section 32I(1) requires the dealer to ensure that the audit is conducted by a registered company auditor.

A registered company auditor is defined in section 32A as having 'the same meaning as it has in the Corporations Act 2001 of the Commonwealth'.

The *Corporations Act 2001* (Cwth) provides for specific requirements in relation to the independence of registered company auditors. Further guidance in relation to an auditor's independence are provided for in the Auditing Standards issued by the Auditing and Assurance Standards Board, which are given legislative force by the *Corporations Act 2001* (Cwth).

Conflict of interests

Regulation 10L of the Regulations requires auditors to disclose to the Commissioner any factors that may be construed as a conflict of interest. Such factors include any de facto relationship or close relationship between auditors and the dealer based on blood, marriage or any business dealings. The Commissioner will consider all circumstances and make a determination as to whether the close relationship disqualifies the auditor.

The following definitions are used for such relationships.

- De facto relationship means a relationship as defined in section 13A of the *Interpretation Act 1984*. An auditor who enters into a de facto relationship with a dealer must disclose that relationship to the Commissioner.
- Close relationship by blood means where the auditor is related to the dealer by birth. For example, if an auditor is a parent, sibling, half-brother or half-sister, daughter or son, cousin, aunt or uncle, nephew or niece, of the dealer, then this would constitute a close relationship by blood. An auditor with a close blood relationship with a dealer must disclose that relationship to the Commissioner.
- Close relationship by marriage means where the auditor and dealer are married to each other, or one party is married to a person related to the other party by blood (as defined above). For example, if the auditor married the dealer's brother or sister, then this would require disclosure and approval from the Commissioner.

The Commissioner will only consider allowing an auditor who is related to a dealer by blood, marriage or de facto relationship to audit that dealer's trust accounts in exceptional circumstances, such as when the dealer and auditor are in a remote location and the dealer cannot find a suitably qualified auditor locally who is independent from the dealer. Even in such situations the circumstances will be carefully examined before a decision is made on whether to allow the auditor to audit the dealer's trust accounts. Each situation will be individually assessed.

Regulation 10L of the Regulations also require auditors to disclose to the Commissioner any business dealings with dealers. There are a number of different types of business dealings that could constitute a conflict of interests. Some examples of conflicts of interest include:

- acting as the general accountant for the dealer;
- performing any type of taxation or other financial services for the dealer;
- preparing any form of financial documentation (e.g. Business Activity Statements) for the dealer;
- supplying any form of general financial advisory service to the dealer;
- having a financial interest in the dealer's business;
- being a business partner of the dealer, regardless of whether the business interest is related to the motor vehicle dealer industry;
- being an employee of the dealer, whether employed as a licensed person, clerk or servant of the dealer;
- being a partner, clerk or servant of a company in which the dealer has a financial interest; or
- being a partner, clerk or servant of a company or individual that provides a general accounting and/or taxation service to the dealer.

An auditor must disclose to the Commissioner any business dealings he/she has with or through a dealer at any time during the appointment as auditor. The Commissioner may cancel or suspend the right of a person to act as an auditor or revoke their appointment as auditor to a dealer. It is a criminal offence to contravene a requirement to disclose a conflict of interests.

Disclosing a conflict of interests under Regulation 10L of the Regulations is an ongoing requirement prior to the auditor's appointment and throughout the auditor's appointment period, not one that only arises annually when an audit report is submitted to the Commissioner.

Further information on auditor independence can be found in the *Corporations Act 2001*, APES 110 Code of Ethics for Professional Accountants and various Auditing Standards.

2.2 Costs of audits

An auditor that consents to be appointed as a dealer's auditor is required to conduct all audits of the dealer. This includes annual audits and other audits if and when required by the Commissioner, regardless of the dealer's capacity to meet the costs of such audits. When approached by dealers to be the statutorily appointed auditor, auditors are advised to exercise due diligence as to the dealer's financial ability to meet auditing fees.

2.3 Confidentiality of audit information

Regulation 10O of the Regulations provides that:

- (1) An Auditor must not, directly or indirectly, record, disclose or make use of any information obtained in the course of conducting any audit except –
 - (a) for the purpose of performing functions under the Act;
 - (b) as required or allowed by the Act or under another law.
- (2) However the Commissioner may divulge the information to an interested person or to an auditor making a succeeding audit of the dealer's trust account.

2.4 Audit period – financial year

Annual audit

The Act and the Regulations were amended and the changes came into effect from 1 July 2017. Auditing obligations for Motor Vehicle Dealers that sell on consignment, have changed in relation to the audit period and when an audit report is due.

- Section 32A of the Act defines a year as a financial year
- Regulation 10N(2) requires that the auditor must, within three months after the end of each year, deliver to the Commissioner a report of the result of the audit, verified by a statutory declaration of the auditor in an approved form, and deliver a copy of the report so verified to the dealer.

Termination audit

When a trust account is closed, or the dealer no longer holds a valid licence, it is best practice to provide an audit report to the Commissioner within 3 months. However, in any event, an audit report is required as per the annual audit period.

2.5 Auditor's responsibility to deliver audit report

The statutory reporting requirements for auditors of motor vehicle dealers are set out in the Regulations.

Regulation 10N(2) provides:

The auditor must within 3 months after the end of each year —

(a) deliver to the Commissioner a report of the result of the audit, verified by a statutory declaration of the auditor, in an approved form; and

(b) deliver a copy of the report so verified to the dealer.

For the purpose of Regulation 10N(2), Section 32 A of the Act provides that a year, unless otherwise prescribed, means a financial year.

Section 32I(2) of the Act provides that if a dealer did not receive or hold money in a trust account during the year, they are able to submit a statutory declaration to that effect to the Commissioner in lieu of an audit report.

A template of the declaration of no receipt of trust funds is available on the Department's website:

[Declaration of no receipt of trust funds](#)

At any time during the year, the Commissioner may require auditors to provide additional information or carry out a further audit; associated costs of the audit are the responsibility of the dealer.

2.6 Late lodgement of audit reports

In circumstances the Commissioner considers appropriate, the Commissioner may extend the time limit for lodging audit reports, however generally this will only be under exceptional circumstances and where the auditor already has access to the agent's trust account records (Regulation 10I of the Regulations). If an auditor requires an extension to lodge an audit report, it must be made in writing, detailing the exceptional circumstances, and confirming that the auditor has access to the trust account records.

3 Scope of Audit of Trust Accounts

3.1 Guidance for Auditors

While recognising auditors may use selective testing when auditing trust accounts, there are inherent risks with such an approach. If selective testing is used, it is expected that a range of transactions, indicative of a dealer's business, will be examined.

When auditing a dealer's trust accounts, it is essential for the auditor to be aware of:

- the nature of the dealer's business;
- the workings of trust accounts;
- the reporting requirements and statutory obligations placed on trust accounts and on the dealer; and
- the legislation governing dealers in respect of the matters being audited.

The purpose of the audit is to establish whether the dealer has complied with their legislative responsibilities. In such audits, materiality does not apply. This means **every irregularity in a dealer's trust account must be reported to the Commissioner**. Auditors must report all irregularities within their audit reports regardless of whether they were errors made by a dealer or by a dealer's financial institution, if the errors were rectified immediately by the dealer or their financial institution or if the errors had already been reported by the dealer to the Commissioner. Trust account irregularities include but are not limited to overdrawn accounts, dishonoured payments and incorrect deposits or payments made into and out of trust accounts.

When performing an audit, the dealer is required to provide the auditor with all relevant information and documents held by them (regulation 10I of the Regulations). This also applies to relevant documentation held by the dealer's financial institution.

Should an auditor identify a breach of legislation or evidence of criminal activity during an audit, they must inform the Commissioner as soon as practicable. To assist in any investigation or proceedings that may eventuate (e.g. giving evidence in court), appropriate supporting documentary evidence of any breaches of legislation or evidence of criminal activity must be retained by the auditor. For this reason, an auditor should make notes throughout the audit and retain copies of all working papers.

3.2 Documents to provide to the Commissioner

The appointed auditor of a dealer's trust accounts is required to provide to the Commissioner the following documents each year:

- audit report, including any management letters;
- declaration by the auditor regarding their qualification and relationship with the agent;

- declaration by the agent, signed by the auditor, verifying the statement of trust money; and
- a copy of the bank account statement from the financial institution where the trust account is held which covers the audit period.

Regulation 10J, 10K, 10L and 10N

3.3 Important items to consider

When auditing a dealer's trust accounts, the auditor needs to include the following important items in the scope of the audit:

- details of the licence status of the dealer;
- commission paid to the dealer;
- drawing of commission and fees after a transaction has settled;
- the authority for the dealer to perform the service; and
- details of disbursements in accordance with the client's authority

3.4 Licence of the dealer

A motor vehicle dealer licence can be granted to a natural person (individual), a firm (partnership) or a body corporate (company). The entity is referred to as the 'licensed dealer' in the documents to be provided to the Commissioner.

Subject to the agreement between partners, a partnership is dissolved on death or withdrawal of a partner (*Partnership Act 1895*). If a partnership is dissolved, the licence ceases to have effect and the firm is no longer permitted to continue trading and will need to apply for a new licence.

Licence details of dealers can be searched from the Department's website through the Consumer Protection Licence and Registration Search.

[Consumer Protection Licence and Registration Search](#)

If the auditor finds any irregularities relating to the dealer's licence, **the auditor must inform the Commissioner immediately**, as the dealer may be trading unlawfully without a licence.

3.5 Contents of an audit report

The auditor should report on whether the agent has complied with the requirements of section 32H of the Act. Section 32H of the Act requires Dealers to keep full and accurate records of moneys paid into trust accounts, and to ensure that trust accounts are correctly balanced at the end of each month. Dealers must also keep their trust accounts in such a manner that they can be conveniently and properly audited.

Regulation 10K of the Regulations relate to the contents of the documents to be provided to the Commissioner. The auditor must include in their statutory declaration a statement relating to the proper maintenance and recordkeeping of the trust

accounts. The auditor must notify the Commissioner of any matter they believe should be brought to the Commissioner's attention.

Regulation 10K requires the audit report to contain the following information:

10K. Auditors' reports, contents of

An auditor's report must contain a statement as to the following matters —

- (a) whether the trust account has, in the opinion of the auditor, been kept regularly and properly written up;*
- (b) whether the trust account has been ready for examination at the periods appointed by the auditor;*
- (c) whether the dealer has complied with the auditor's requirements;*
- (d) whether the trust account is, or has been during the period of the audit, overdrawn;*
- (e) whether in the opinion of the auditor the trust account is, and has been during the period of the audit, in order or otherwise;*
- (f) any matter or thing in relation to the trust account that should in the opinion of the auditor be communicated to the Department.*

The auditor must therefore provide comment on all of the above factors in the audit report. Further, regulation 10N(2)(a) requires the audit report to be verified by statutory declaration of the auditor.

For examples, refer to Appendix A: Format of Audit Reports and Appendix B: Sample letters and forms.

3.6 Trust account – overdrawing

A dealer may maintain one or more bank accounts to hold monies in trust in respect of consignment sales. Regardless of bank arrangements, funds held for each person must be accounted for separately and be represented by cash in a bank account.

No individual trust account is to be overdrawn and any overdrawing of a trust account should be the subject of a qualified audit report.

Regulation 10G also places an obligation on the financial institution with which the trust account is held to inform the Department of any trust account overdrawing as follows:

10G. Reporting overdrawn accounts

If a dealer's trust account is overdrawn the relevant financial institution must, as soon as is practicable, inform the Department in writing of —

- (a) the name and number of the trust account; and*
- (b) the amount by which the trust account is overdrawn.*

3.7 Qualified audit reports

If an auditor discovers that the trust account or accounts are not kept in such a manner to enable them to be properly audited, identifies issues of non-compliance or discovers any matter which appears to involve dishonesty or a breach of the law on the part of the dealer, or discovers a loss or deficiency of trust moneys, or failure to pay or account for such moneys, or failure to comply with the provisions of the Act and/or Regulations, the facts of these matters must be detailed in the audit report.

3.8 Key legislative provisions

Listed below are key legislative provisions auditors need to be aware of when auditing consignment trust accounts. (See Appendix C for the full text of the legislation).

Description	Legislative Reference
Dealers to be licensed	Section 30(1) of the Act Penalty: \$50 000 and a daily penalty of \$1 000
Requirement for consignment agreements	Section 32B(1) of the Act Penalty: \$5 000
Trust account to be maintained	Section 32C of the Act Penalty: \$5 000
Payments to trust accounts	Section 32D(1)(2)(4) of the Act Penalty: \$5 000
Withdrawals from trust accounts	Section 32E(1) of the Act Penalty: \$5 000
Financial institutions – liabilities and rights	Section 32F of the Act
Payment to consignor	Section 32G of the Act Penalty: \$5 000
Dealers to keep accounts etc	Section 32H of the Act Penalty: \$5 000
Duty of Dealer to have trust accounts audited	Section 32I(1) of the Act Penalty: a fine of \$5 000
Commissioner may order a special audit	Section 32J of the Act Penalty: \$5 000
Trust account titling	Regulation 10C(1) of the Regulations r.14 Penalty: \$2 000 or an infringement notice with a modified penalty of \$200
Duty of Dealer to give the Commissioner certain information about trust account	Regulation 10C(2) of the Regulations r.14 Penalty: \$2 000 or an infringement notice with a modified penalty of \$200
Trust account records	Regulation 10D of the Regulations r.14 Penalty: \$2 000 or an infringement notice with a modified penalty of \$200

Manner of accounting for moneys received	Regulation 10E of the Regulations r.14 Penalty: \$2 000 or an infringement notice with a modified penalty of \$200
Dealers with no trust accounts to audit	Regulation 10F of the Regulations r.14 Penalty: \$2 000 or an infringement notice with a modified penalty of \$200
Duty of financial institution with respect to trust account – reporting of overdrawn accounts	Regulation 10G of the Regulations r.14 Penalty: \$2 000 or an infringement notice with a modified penalty of \$200
Appointment of auditors	Regulation 10H of the Regulations r.14 Penalty: \$2 000 or an infringement notice with a modified penalty of \$200
Production of records to auditors	Regulation 10I of the Regulations r.14 Penalty: \$2 000 or an infringement notice with a modified penalty of \$200
Conduct of audits	Regulation 10J of the Regulations r.14 Penalty: \$2 000 or an infringement notice with a modified penalty of \$200
Contents of an audit report	Regulation 10K of the Regulations r.14 Penalty: \$2 000 or an infringement notice with a modified penalty of \$200
Obligation of auditor	Regulation 10L of the Regulations r.14 Penalty: \$2 000 or an infringement notice with a modified penalty of \$200
Cost of auditing	Regulation 10M of the Regulations r.14 Penalty: \$2 000 or an infringement notice with a modified penalty of \$200
When and to whom the auditor must report	Regulation 10N of the Regulations r.14 Penalty: \$2 000 or an infringement notice with a modified penalty of \$200
Transitional audit arrangements	Regulation 10NA of the Regulations r.14 Penalty: \$2 000 or an infringement notice with a modified penalty of \$200
Penalties – A person who contravenes or fails to comply with the provisions of these regulations commits an offence and is liable to a penalty of \$2 000	Regulation 14 of the Regulations Penalty: \$2 000 or an infringement notice with a modified penalty of \$200

4 Trust Accounting Requirements

4.1 Trust accounts

Motor vehicle dealers who deal in consignment sales are required to have at least one account designated as a trust account.

The money in those accounts is not to be used for security or for other purposes other than a purpose authorised by the authority to act, contract or by law.

4.2 Auditing considerations

Dealers need to keep their trust accounts up-to-date, correctly designated and have them audited when required in accordance with section 32I of the Act. Every dealer who accepts a vehicle on consignment is required to maintain one or more trust accounts in accordance with section 32C of the Act.

A dealer must not allow a trust account to be overdrawn, either at the bank, in the agent's records or in a client's trust ledger account. The auditor is required to mention any such instances in the audit report to the Commissioner regardless of the amount that the trust account is overdrawn by, whether it was overdrawn due to an error made by the agent or the agent's authorised financial institution.

4.3 Designation of trust accounts

Regulation 10C of the Regulations requires a dealer to designate their trust accounts in a prescribed manner. The auditor needs to check whether the dealer has applied the correct title/s to the trust account(s).

10C. Information to be given to the Commissioner

(1) When a dealer opens a trust account the dealer must ensure that the name of the trust account includes —

- (a) the full name of the dealer;*
- (b) the dealer's licence number;*
- (c) the trading name (if any); and*
- (d) the words "consignment trust account".*

(2) When a dealer opens or closes a trust account the dealer must, as soon as practicable, inform the Commissioner in writing of the opening or closure of the trust account and, in doing so, must specify —

- (a) the name and number of the trust account; and*
- (b) the name and address of the financial institution with which the trust account is or was maintained.*

To assist auditors, examples of how different types of trust accounts should be designated are provided below.

Examples of titles for typical trust accounts for dealers are shown below.

Sole trader

John James Citizen trading as ABC Motors, MD00000, Consignment Trust Account

Partnership or firm

John James Citizen and Bill Jones trading as ABC Motors, MD00000, Consignment Trust Account

Body corporate

Citizen and Jones Pty Ltd trading as ABC Motors, MD00000, Consignment Trust Account

In recent years issues have arisen in the titling of trust accounts resulting from character limitations with the financial institution systems being unable to include all of the details required in a trust account title (licensee name, business name, TC #, etc.). This is mainly exacerbated where licensees have lengthy names, which are operating as a trustee of a trust in addition to all the other details.

The Act and its Regulations do not recognise trusts as they are not a legal entity. For the purposes of Regulation 10C(1) it expressly requires that an entity's full legal name is prescribed. It's important to note that where the holder is a company (ABC Pty Ltd), the holder may carry on business in its own right, or may do so as a trustee of a trust and in either case, the holder of the licence (and therefore the triennial certificate) is the company.

This is why the Departments system treats this as a ABC Pty Ltd t/as ABC motors and not "ABC Pty Ltd ATF...". Therefore, in this situation the capacity in which the holder subsequently carries on business either in its own right or as a trustee it is not material as trustees are not distinct legal persons in a representative capacity, separate from themselves in their personal capacity.

4.4 What trust documents and records must be maintained

Regulation 10I of the Regulations requires that a dealer and the relevant financial institution must produce to the auditor all books, papers, accounts, documents and securities in any way relating to any trust moneys received by the dealer in their possession, custody or power. It is essential that a dealer keep full and accurate accounts and records of all proceeds received from sales of vehicles under consignment agreement and all payments made by the dealer of or from those proceeds.

Trust documents and records that should be maintained include:

- a record of money received for or on behalf of any other person;
- trust receipt books;
- duplicates of every completed trust account deposit form
- trust account journals
- trust ledgers;
- trust cheque books;
- records of trust money payments;

- bank statements of trust monies;
- trust account reconciliation statements;
- requests for the issue of bank cheques; and
- any other books, accounts or records kept by a dealer relating to trust money.

It is also recommended that back-up copies of computer records be retained offsite. This ensures the dealer has access to the records in the event of error, falsification of records by an employee or physical damage to the system.

4.5 How long must trust records be retained

Regulation 10D(2) requires that when a dealer receives money for or on behalf of any other person in relation to a sale by consignment, they must keep a written record of the money received. All trust records and documents are to be retained for a **minimum period of six years** from the date the money was received and be readily accessible.

4.6 What use is made of the documents and records

Section 32I of the Act requires an annual audit of every dealer's consignment trust account.

An audit is an examination by an independent person of the accounts held by a dealer. Unless the Commissioner approves otherwise, a registered company auditor must conduct the audit. A dealer needs to maintain all documents and records relating to a trust account in a manner that enables them to be conveniently and properly audited by the dealer's auditor and furnish the auditor with all such information and particulars as he or she reasonably requires.

Other duties of dealers relating to audits are discussed in section three.

The documents and records listed at 4.4 above enable the tracking of trust money held by a dealer at any time in order to verify that money has been dealt with in accordance with the Act. The auditor will conduct a sample-based audit of the records when performing the annual audit. As well as the annual audit, the Commissioner may order a special audit of a dealer's trust account records at any time.

4.7 Trust receipts

4.7.1 Trust account records

Regulation 10D requires a dealer who maintains a consignment trust account must ensure that a written record of the trust account is kept. This record must contain all the details of money received by the dealer for a sale by consignment, and may take the form of a duplicate copy of every receipt issued.

4.7.2 Trust receipts

Regulation 10E requires a dealer must provide a receipt for all money received. If money is received directly, a written receipt must be provided.

Where money is received electronically, an electronic receipt may be provided.

Regardless of whether the receipt is hard copy or electronic, all trust receipts show the following information:

- the name of the dealer and the dealer's licence number;
- a number or letter, or a combination of both, in consecutive order that allows the receipt to be uniquely identified;
- the date on which the money was received;
- the name of the person paying the money;
- the amount of money received;
- a brief description of the purpose of the payment; and
- if the receipt is hand-written, the name of the person receiving the money evidenced by the signature of that person.

All receipts should be posted to the cash receipts journal by the next working day.

4.7.3 *Interim receipts*

The use of interim receipts is not encouraged. However, there are certain circumstances when an interim receipt may need to be issued (e.g. when the dealer's printer is out of order). In these situations, a duplicate of the interim receipt should be retained in the records and the interim receipt should be immediately followed by a formal trust receipt cross-referenced to the interim receipt.

When using a manual system to issue interim receipts, cross-referencing information should be included when recording the receipt in the trust ledger and issuing the formal receipt. If a computer system is used, the formal trust receipt should be cross-referenced against the interim receipt in the computer system.

4.7.4 *Trust account withdrawals*

Section 32E of the Act requires a dealer must ensure that deposited funds have cleared before those funds are drawn against. Drawing against a trust ledger account before a deposit has cleared will cause a shortfall in that ledger if the deposit is dishonoured.

At no time should a trust ledger account have a debit balance.

As a matter of best practice, all withdrawals from a trust account should be made by electronic transfer or a trust cheque. Where a trust cheque is used, a dealer must retain the cheque butts and ensure such cheque butts contain all relevant information.

Any withdrawal from a trust account must be in relation to the consignment sale as detailed in the consignment agreement. In particular, a dealer is prohibited from withdrawing money paid into a consignment trust account except for the purpose of:

- Paying an amount owed to the vehicle consignor or a person authorised by the consignor;
- Paying an amount owed to the holder of a security interest in the consigned vehicle;
- Paying an amount owed to the dealer in commission or charges for sale of the consigned vehicle; or
- Paying an amount that is authorised by the Regulations to be paid.

Any other purported withdrawal from a consignment trust account by a dealer is unlawful unless the dealer has the prior approval of the Commissioner.

4.8 Cash receipts journal and cash payments journal

All receipts and payments of trust money are to be summarised in the trust account cash journals. The journals are updated each time money is paid into or out of the trust account. The journals also provide a sequential and chronological record of trust account receipts and payments.

If using a computerised system, the procedures and terminology may be different but the same essential information must be recorded. The journals are used to update the trust account ledger and for the preparation of the monthly trust account reconciliation statement. The trust account cash journals must contain sufficient particulars of all receipts, payments and transfers to enable adequate details of the transactions to be posted into the trust account ledger.

The receipts section is prepared from the record of trust account receipts. Each receipt number must be entered in strict numerical sequence. If a receipt is cancelled, the number must still be entered and the word 'cancelled' written beside it. The original copy of any cancelled receipt should be retained for inspection by the dealer's auditor.

4.9 Trust account reconciliation

To ensure the requirements of section 32H(d) of the Act are met, a dealer should complete a trust account reconciliation statement at the close of business each month. This statement reconciles the cash records of the business with respect to consignment sales against the bank records for the consignment trust account. It reconciles the balances of the trust account cash book, the bank trust account statement and the total of the clients' trust account ledgers.

The purpose of the exercise is to match all three totals after taking into account any reconciling items.

The trust account reconciliation must be carried out at the end of each month and include trading as at the close of business of the last day of the month and the

reconciliation must be completed with 10 days from the last day of the month being reconciled.

The completed reconciliation should be noted by the dealer even if there are no funds in the account, and retained and produced to the auditor for the annual audit.

Regular monitoring of trust account transactions and account balances may help prevent the fraudulent transfer of money from a trust account.

Trust reconciliation statements, including related bank statements, must be retained as they form part of the trust account records

5 Consignment contract terms & conditions

When entering into a consignment agreement with a member of the public, all contracts must be in writing and must contain all the below terms and conditions as required by the Regulations.

The agreement should make it clear what the settlement or net return to the person consigning the vehicle (owner) will be.

Under the agreement, a dealer cannot charge the owner for pre-sale repairs unless they have the owner's prior written consent. The dealer must pay for warranty repairs, which cannot be charged back to the consignor (owner).

MOTOR VEHICLE DEALERS (SALES) REGULATIONS 1974

SCHEDULE 4 – VEHICLE CONSIGNMENT CONTRACT

1. FORMATION

1.1 The signing of this Contract by the Owner and the Dealer or a person authorised by the Dealer means an agreement has been made between the Owner and the Dealer for the Vehicle to be sold on the terms and conditions stated in this Contract.

1.2 No agreement is made unless the Owner is provided with a copy of this Contract at the time it is signed by the Owner and Dealer or a person authorised by the Dealer.

1.3 The Owner grants the Dealer exclusive right to sell the Vehicle for the period stated on the Contract.

2. SALE PRICE

2.1 The Dealer may sell the Vehicle for more than the amount agreed to as the Minimum Sale Price for the Vehicle. The Dealer will be entitled to retain any amount in excess of the Minimum Sale Price as Commission.

3. SETTLEMENT

3.1 If the Dealer sells the Vehicle, the Dealer will pay any Total Net Proceeds to the Owner within two business days of receiving payment.

3.2 If the payment for all or part of the Sale Price of the Vehicle has been made by cheque, the payment will not be considered to have been received by the Dealer until the cheque has been honoured.

3.3 The Dealer will not release the Vehicle to the Purchaser until the Purchase Price has been paid in full to the Dealer.

4. OWNERSHIP

4.1 The Owner will retain ownership and property in the Vehicle until such time as the Purchase Price has been paid in full to the Dealer.

5. RESPONSIBILITY FOR REPAIRS

5.1 Subject to Clause 8.1, the Owner will be responsible for the cost of repairing any defects or faults identified prior to the Sale of the Vehicle.

6. VEHICLE DECLARED UNFIT FOR SALE

6.1 The Dealer will give Notice to the Owner if the Vehicle is declared unfit for Sale by any Government Authority.

6.2 The Owner will be responsible for any costs or actions necessary to have the Vehicle declared fit for sale or to remove the Vehicle from the Dealer's premises.

7. PAYMENT FOR REPAIRS

7.1 The Dealer will not carry out any work on the Vehicle without the prior written consent of the Owner. The Owner may authorise the Dealer to deduct the cost of repairs from the Proceeds Payable after the Sale of the Vehicle.

8. DEALER'S RESPONSIBILITY

8.1 The Dealer will not be liable for any loss or damage which may occur to the Vehicle while on Consignment except for:

(a) any theft, loss or damage which may arise out of any negligent act or omission on the part of the Dealer or any person acting on behalf of the Dealer; or

(b) any breach of the *Fair Trading Act 1987* or *Trade Practices Act 1974*, the liability and remedies for which cannot be excluded by agreement.

9. WARRANTY CLAIMS

9.1 The Dealer will be responsible to pay for warranty claims which arise about the quality or fitness of the Vehicle in accordance with the Dealer's statutory responsibility under the *Motor Vehicle Dealers Act 1973*, *Fair Trading Act 1987* or the *Trade Practices Act 1974*.

9.2 The Dealer cannot claim from the Owner any costs arising for such repairs, either directly, or by way of deduction from the Total Net Proceeds retained in a Trust Account.

10. OWNERSHIP AND ENCUMBERANCES

10.1 The Owner declares that the Owner has the right to sell the Vehicle. The Owner will provide the Dealer with a certificate from the Register of Encumbered Vehicles within two (2) business days after signing this Contract.

10.2 If a registered security interest is recorded pursuant to the *Chattel Securities Act 1987* on the Vehicle, the interest must be discharged prior to the Sale of the Vehicle.

10.3 The Owner will give the Dealer all licence and registration documents, owner's manual and service records (if any) relating to the Vehicle within two (2) days after signing this Contract.

11. ENDING THE AGREEMENT

11.1 This Contract can be terminated by either the Dealer or the Owner by giving twenty-four (24) hours Written Notice to the other at any time prior to the sale of the Vehicle.

11.2 The Owner will remove the Vehicle from the Dealer's premises within seven (7) days after termination of the Contract.

11.3 The Owner will pay any monies owed to the Dealer before removing the Vehicle.

11.4 If the Vehicle is not removed, or monies owed are not paid within seven (7) days, the Dealer may return the Vehicle to the Owner's address and recover any expenses incurred during the Consignment.

12. CHANGING THE AGREEMENT

12.1 Any variation of this Contract must be in writing and signed by both the Owner and Dealer or a person authorised by the Dealer.

13. NOTICE

13.1 Any Notice required by this Contract may be given by direct communication, telephone, electronically, fax or post to the addresses and numbers included in this Contract.

13.2 If sent by post, a Notice will be considered to have been received, unless the contrary is shown, at the time when the Notice would have been delivered in the ordinary course of the post.

6 Problem Areas Identified by Consumer Protection

Consumer Protection has identified a number of common problem areas in auditors' reports. Auditors need to be aware of these problem areas to ensure their audit reports meet the requirements of the Act and are prepared in accordance with the auditing guidelines.

6.1 Use of buffer funds by dealers and undrawn commission

The trust ledger is the most important component of the trust accounting system as it summarises all of a dealer's trust account transactions. The trust ledger contains a ledger account for each client showing the details and amounts of money held by the dealer on their clients' behalf.

Consumer Protection is aware some dealers would prefer to maintain a surplus amount within the trust ledger to absorb any inadvertent deficiencies that may arise from dishonoured bank cheques and bank charges. This is commonly known as a 'buffer fund'. A buffer fund sometimes includes undrawn commissions. Dealers must not maintain undrawn commissions in the trust account and these commissions should be deposited into general accounts upon settlement. Auditors should disclose within the audit report instances where the dealer maintained undrawn commissions within the trust account.

The Commissioner holds the view that dealers who utilise buffer funds in their trust accounts may not be conducting their business in accordance with the Act; particularly in relation to sections 32D and 32E of the Act. It is the Commissioner's interpretation of sections 32D and 32E of the Act that, only funds received for or on behalf of others in relation to a consignment sale should be held or received in an agent's trust account.

The use of buffer funds effectively masks any deficiency, disguises overdrawn trust accounts and reduces the likelihood that poor trust account management practices and other errors will be easily identified. **Buffer funds must not be kept in the trust account.** The auditor must request from the financial institution records of all trust accounts identified as holding buffer funds. Should the auditor identify buffer funds being maintained by a dealer, the auditor must disclose this within the audit report.

6.2 Use of suspense accounts to maintain unidentified deposits

Some dealers may utilise suspense accounts (either a trust account held in the bank or trust account ledgers in their accounting software). These suspense accounts are set up to hold and / or receive moneys, usually by electronic funds transfers, for which the dealers cannot determine the purpose of the moneys. For example, when the payer of the moneys fails to provide sufficient reference details as part of their electronic funds transfer, the dealer would hold the moneys within a suspense account until the purpose is determined.

Only moneys held for or on behalf of others in relation to a consignment sale should be held or received into a dealer's trust account. When a dealer receives moneys for

which they cannot determine the purposes of the moneys, the dealer will need to make the relevant inquiries to identify the purpose.

If the dealer is still unable to identify the moneys received within their trust account and all enquiries and efforts have been exhausted by the dealer, the dealer may need to consider notifying the Department of Treasury, in accordance with the *Unclaimed Money Act 1990*. Section 13(1) of the *Unclaimed Money Act 1990* provides that dealers may pay the unclaimed moneys within their trust account to the Department of Treasury within 2 years after the money has been held. Dealers are advised to liaise with the Department of Treasury for information on their timelines and procedures relating to the payment of unclaimed moneys.

The dealer can still continue to reconcile their trust accounts on a monthly basis, regardless of the unidentified deposit amounts.

The auditor must ensure that they examine all suspense accounts and disclose amounts that have remained in the trust account for a significant period. The auditor must request from the financial institution records of all trust accounts identified as suspense accounts. The auditor must also provide comments within the audit report on all transactions originating and/or emanating from suspense accounts.

6.3 Client's trust ledger account in debit

An agent must not allow a client's trust ledger to be overdrawn. The auditor is required to report any debit balance identified in a client's trust ledger account.

If the debit balance has been dealt with by the Department during the course of the year the auditor is still required to report the matter in the audit report to the Commissioner. To avoid a debit balance the agent should check all the items in the ledger accounts to ensure there are sufficient funds in the account before drawing the funds. The agent should also check the receipts posted to the ledger account are not fictitious.

6.4 Unclaimed moneys in trust account

In accordance with section 8(1) of the *Unclaimed Money Act 1990*, dealers who are in possession of unclaimed money on 31 December of any year must notify the Department of Treasury of this money (in the prescribed manner), not later than 31 January in the succeeding year. In the event that the money (which is notified to the Department of Treasury as unclaimed) is subsequently paid to the rightful owner, the agent must notify the Department of Treasury by 31 July of this payment. The auditor must check that the agent is notifying the Department of Treasury by 31 January of all unclaimed money.

Further information on unclaimed moneys, including timelines and notification forms, for lodging moneys with the Department of Treasury can be found on the following website.

<https://www.wa.gov.au/service/business-support/business-accounting-and-reporting/unclaimed-money>

6.5 Delay in banking of trust money by agents

Section 32D of the Act requires dealers to deposit funds held on behalf of others into their trust account not later than the next day after the day of receipt on which the financial institution is open for business.

When conducting an audit it is important to verify banking times and to report any delays to the Commissioner.

6.6 Reporting overdrawn trust accounts

Regulation 10G of the Regulations requires the financial institution to advise the Commissioner, as soon as practicable, in writing, if a trust account is overdrawn. The Commissioner's view is "as soon as practicable" will mean that the report will be provided within five working days. As a probity check, the auditor is to include details of every instance of debit balances occurring in the agent's trust accounts in their audit report. The audit report should include details of any trust account money overdrawn from the authorised financial institutions.

6.7 Incomplete audits

6.7.1 *Auditors not identifying the licensed entity correctly*

The dealer must have a current licence, and must be trading in accordance with that licence.

6.7.2 *Auditors not identifying and reporting trust account titles correctly*

Auditors must check that trust accounts are correctly designated in accordance with regulation 10C of the Regulations (refer to section 4.3 for examples). The full trust account titles should always be included in the audit report.

6.7.3 *Auditors not checking trust account reconciliations*

Some auditors do not check whether the agent has correctly balanced the trust accounts at the end of each month in accordance with section 68(6) of the REBA Act or section 49(6) of the SA Act. Auditors must check that trust account reconciliations are correctly completed for all trust accounts including separate interest bearing trust accounts, signed and dated by the person in *bona fide* control of the business. References made to 'unreconciled bank deposits' in trust account reconciliations may indicate a deficiency in the trust account funds at the bank and such instances must be reported to the Commissioner.

6.7.4 *Auditors giving insufficient information in qualified audit reports*

The Commissioner requires auditors to provide detailed information whenever a qualified audit report is submitted. The auditor must also retain any evidence in the working papers to support their opinion and, if required, to give evidence in court. Qualified audit reports can indicate a lack of internal controls on the part of the agent or the possibility of defalcation.

6.7.5 *Auditors not reporting long standing ledger accounts with un-presented cheques*

Check that the un-presented cheques have been followed up on a regular basis. Make sure that at the end of each month any un-presented cheque holders have been contacted and reminded to deposit their cheque. Any lost cheques should be cancelled and re-issued.

6.7.6 *Documentation submitted with audit reports not in an approved format*

Section 70(2) and (3) of the REBA Act and section 51(2) and (3) of the SA Act provide the Commissioner with authority to determine the requirements for auditing of trust accounts, including the format of audit reports. Some declarations made by the auditor and agent must be in the form of a statutory declaration. An auditor is required to submit the audit reports to the Commissioner using the approved format. Approved templates are provided in Appendix A and can be downloaded from the Department's website at www.dmirs.wa.gov.au/cp/auditors .

6.7.7 *Management letter not being submitted with the audit report*

The Commissioner requires the auditor to attach to the audit report a copy of any management letter issued to the agent. A copy of the management letter is important as it indicates any weaknesses or suggestions for improvements of the system in place. It also indicates the quality and detail of the audit undertaken.

7 Example of an Audit Checklist

This checklist will assist auditors when auditing trust accounts that have been opened, maintained and/or closed by dealers. The checklist deals with general matters and trust account matters.

Important note: This checklist includes a range of matters auditors should consider when auditing a dealer's trust accounts. Do not treat the checklist as being comprehensive or a replacement for the auditing requirements contained in the *Australian Auditing Standards*.

7.1 PART ONE - GENERAL MATTERS

AUDIT CHECKLIST

Item	Checks to be conducted
Licence of the dealer Section 30 of the Act	<input type="checkbox"/> The dealer is licensed. <input type="checkbox"/> Identify the Yard Manager (where relevant). <input type="checkbox"/> Identify the people who comprise the business. <input type="checkbox"/> Identify the yard manager of any premises maintained.
Dealer premises and advertisements to show name & number. Section 21 of the Act.	<input type="checkbox"/> Check that business name and licence number displayed and of a reasonable size.
Certificate for dealer's authorised premises, issue and display of. Section 23G(3) of the Act.	<input type="checkbox"/> Is the Dealership Certificate of authorised premises displayed in a clearly visible position inside the authorised premises?
Persons to be licensed. Section 31A, 31B and 31C.	<input type="checkbox"/> Do all salespersons, yard managers hold current licence?
Dealer licence, applications for to specify premises etc. Section 20E of the Act.	<input type="checkbox"/> Are all the dealership premises authorised?
Disqualified persons. Section 20D of the Act.	<input type="checkbox"/> Does the dealership employ disqualified persons in any capacity on the authorised premises, or allow disqualified persons to frequent the authorised premises, without the prior consent of the Commissioner?
Any changes to particulars on licence or registration, Commissioner to be notified. Section 23	<input type="checkbox"/> Check that any changes in the composition of the firm or body corporate been approved by the Commissioner 14 days prior to the change.
Register of files Section 32H of the Act, regulation 10D of the Regulations	<input type="checkbox"/> Check that records are properly maintained and can be conveniently and properly audited. <input type="checkbox"/> Check that records are being maintained for a minimum of 6 years.
Dealer engaged in consignment sales? Section 32A	<input type="checkbox"/> Check all paper work with details of trading in in consignment sales.

<p>Consignment trust account open? Section 32C of the Act; Regulation 10B</p>	<p><input type="checkbox"/> Check that consignment trust account is open with authorised financial institution.</p> <p><input type="checkbox"/> Check that consignment trust account is designated in the prescribed manner.</p>
<p>Dealer informed Commissioner of open and closed consignment trust accounts. Regulation 10C(2)</p>	<p><input type="checkbox"/> Check name and number of the consignment trust account.</p> <p><input type="checkbox"/> Check the name and address of the financial institution with which the trust account is or was maintained.</p>
<p>Dealer appointed Auditor at time of applying for a licence. Section 32A and 32I of the Act; Regulation 10H</p>	<p><input type="checkbox"/> Ensure that appointed auditor details are consistent with DMIRS records</p>
<p>Does dealer keep a record of the consignment trust account? Regulation 10D(3)</p>	<p><input type="checkbox"/> is it in written form?;</p> <p><input type="checkbox"/> Kept for a period of not less than 6 years from the date on which the money is received; and</p> <p><input type="checkbox"/> Is it readily available?</p>
<p>Agreements between dealer and consignors to sell vehicles in place. Section 32B of the Act; Regulation 13A</p>	<p><input type="checkbox"/> Are they in writing?</p> <p><input type="checkbox"/> Do they contain the prescribed particulars, terms & conditions?</p>
<p>Does dealer provide copy of consignment agreement to consignor immediately after signing it? Section 32B(3) of the Act</p>	<p><input type="checkbox"/> Check for evidence that a copy of the consignment agreement has been provided to consignor.</p>
<p>Consignment Contracts for sale of vehicles by dealer, form and content of. Section 42A(2) of the Act.</p>	<p><input type="checkbox"/> Are the consignment agreements between the dealer and consignor (excluding auctions) provided in writing and signed by all relevant parties.</p>
<p>Prescribed requirements for vehicle sale agreements (Schedule 5) Regulation 13B</p>	<p><input type="checkbox"/> Do agreements contain the prescribed particulars, terms and conditions?</p>
<p>Summary of receipts and disbursements Regulation 10E of the Regulations</p>	<p><input type="checkbox"/> Check that full and accurate records of receipts and payments are maintained. A summary of receipts and disbursements on each file assists in the auditing function.</p> <p><input type="checkbox"/> The dealer can also ensure any expenses incurred are recouped. The balance outstanding on the file summary should reconcile to the amount held in trust for the principal.</p>
<p>Security of documents</p>	<p><input type="checkbox"/> Ensure the dealer maintains adequate security over documents and data. (How secure are the dealer's records from fire, theft, etc.? Does the dealer do regular computer back-ups and where are the back-ups kept?)</p>

<p>Does Dealer provide a written receipt to persons from whom money is received and does it contain the prescribed information? Regulation 10E(3).</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Check dealer name and dealers licence number. <input type="checkbox"/> Check that a number or letter, or a combination of both in consecutive order that allows the receipt to be uniquely identified. <input type="checkbox"/> Check the date money is received. <input type="checkbox"/> Check the name of the person paying. <input type="checkbox"/> Check the amount of money received. <input type="checkbox"/> Check that a brief description of the purpose of the payment has been applied to the receipt. <input type="checkbox"/> If the receipt is hand-written, the name of the person receiving the money is evidenced by the signature of the person.
<p><input type="checkbox"/></p>	<p><input type="checkbox"/></p>
<p>Verification of identity of Vehicle owners – dealers due diligence obligations</p>	<p><input type="checkbox"/> Conduct a sample check to ensure dealers fulfil their due diligence obligations. Has the dealer made all reasonable efforts to verify the identity of the person who claims to be, or act for the person selling the vehicle (i.e. has the seller been verified as the lawful owner of the vehicle or as having the legal authority to deal with the vehicle on behalf of the lawful owner)? If the agent has become aware of any fact material to a transaction has the agent promptly communicated that fact to any person who may be affected by it?</p>

7.2 PART TWO - TRUST ACCOUNTING

AUDIT CHECKLIST

Item	Checks to be conducted
<p>All trust accounts audited</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Obtain independent confirmation from the dealer's financial institution by way of a bank confirmation letter for all trust accounts held by the dealer at any time during the audit period. <input type="checkbox"/> All trust accounts need to be examined.
<p>Title of trust account</p>	<p><input type="checkbox"/> Check trust accounts are titled in accordance with the Act and the Regulations. Regulation 10C(1)</p>
<p>Receipt journals and payment journals</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Check all receipts and payments are posted to the journals. Section 32H(a)(c) of the Act. <input type="checkbox"/> Check appropriate details are recorded and correct. Section 32H(a)(c) of the Act. <input type="checkbox"/> Check all receipts and payments are posted to the receipts and payments journals as soon as practicable. Section 32H(a)(c) of the Act.

Transfer journal	<input type="checkbox"/> Check backdated entries. Section 32H(a)(c) of the Act. <input type="checkbox"/> Check transfers between the principal's ledger accounts. Section 32H(a)(c) of the Act. <input type="checkbox"/> Check journals have proper narrations. Section 32H(a)(c) of the Act.
Suspense accounts and buffer funds	<input type="checkbox"/> Request from financial institutions records of all trust accounts identified as suspense and/or buffer. Section 32H(a)(c) of the Act. <input type="checkbox"/> Examine all trust accounts and ledger accounts identified as suspense and/or buffer. Section 32H(a)(c) of the Act. <input type="checkbox"/> Check that Department of Treasury is notified of all unclaimed moneys by 31 January each year. <input type="checkbox"/> Check that the dealer has made all inquiries and efforts to identify the purposes of all deposits within their trust accounts. If the funds cannot be identified, the agent has notified the Department of Treasury accordingly.
Housekeeping	<input type="checkbox"/> Check outstanding credit balances in the dealer's accounts are followed-up. Section 32H(a)(c)(d) of the Act. <input type="checkbox"/> Check unpresented cheques have been followed-up on a regular basis. Make sure unpresented cheque holders have been contacted and reminded to deposit their cheque at the end of each month. Any lost cheques should be cancelled and reissued. Section 32H(a)(c)(d) of the Act. <input type="checkbox"/> Check that dealers notify the Department within five business days of opening or closing a general trust account. <input type="checkbox"/> Check that all trust account receipts are titled in accordance with regulation 10C of the Regulations. <input type="checkbox"/> Check that the computer accounting software used by the agent complies with the Acts and Regulations. <input type="checkbox"/> Check the internal controls and procedures of the dealer to ensure that they comply with the Act and Regulation, including adequate supervision of the dealership by the Yard Manager, proper separation of duties relating to trust account transactions and the maintenance of records relating to trust account transactions.
Banking / trust deposit forms	<input type="checkbox"/> Check receipts are banked by the next working day. Section 32H(b) of the Act. <input type="checkbox"/> Check money received is banked in the same form as it is received (e.g. that cash is not substituted by a cheque). Section 32D(1) of the Act <input type="checkbox"/> Check daily receipts reconcile to the daily banking deposit. Section 32H(d) of the Act. <input type="checkbox"/> Check daily banking to the bank statement. Section 32H(d) of the Act. <input type="checkbox"/> Identify and report deposits from agent's own funds/staff (e.g. cheques issued from the agent's general account). Section 32D(4) of the Act. <input type="checkbox"/> Check for trust accounts that have been closed during the audit year. Regulation 10C(2). <input type="checkbox"/> Check for unusual items.
Accounting controls	<input type="checkbox"/> Check the Yard Manager understands the accounting

		systems and the controls in place. Section 15(6) and 16(1)(c) of the Act.
Trust ledger accounts	<input type="checkbox"/> Check that separate ledgers are maintained for each owner. <input type="checkbox"/> Check all ledger accounts with unusual transaction patterns. Section 32H(a) of the Act. <input type="checkbox"/> Check ledger accounts for debit balances and obtain an explanation and report to Consumer Protection. Section 32E of the Act and Regulation 10K(f). <input type="checkbox"/> Check transactions are posted in chronological order. Section 32H(c). <input type="checkbox"/> Check payments made to the dealer that do not relate to commission. Section 32H(1) of the Act. <input type="checkbox"/> Review the trust account ledgers for all trust accounts that have remained dormant during the audit period. Section 32H(a) of the Act.	
Trust receipts	<input type="checkbox"/> Check receipt details include the name of the licence holder and any business name used by that holder as recorded by ASIC. Regulation 10E. <input type="checkbox"/> Check receipts are banked by the next working day. Section 32D(1) of the Act. <input type="checkbox"/> Check receipts to the bank deposit book/record. Section 32H(a) of the Act. <input type="checkbox"/> Check receipts are entered in the books of account by the next working day. Section 32H(b) of the Act. <input type="checkbox"/> Check receipts to the general ledger and principal's ledger. Section 32(a)(c). <input type="checkbox"/> Check the sequence of receipt numbers issued. Sight any cancelled receipts. Regulation 10E. <input type="checkbox"/> Check for backdated or post-dated receipts and any alterations. Section 32H(a) of the Act. <input type="checkbox"/> Check for adequate narrations on receipts to identify the payment. Section 32H(a) of the Act. <input type="checkbox"/> Ensure the dealer maintains adequate control over receipts and the issuing of receipts, e.g. the use of a register of trust account receipt forms. (What controls are there over the issue of receipts? Who issues receipts and are they stored securely?) <input type="checkbox"/> Check for unusual deposits/receipts. Section 32H(a). <input type="checkbox"/> If an interim receipt is issued, verify that an official receipt is subsequently issued. Regulation 10E(g).	
Cheques or payments	<input type="checkbox"/> Verify cheque particulars include the same title details as the trust account. Regulation 10C(1). <input type="checkbox"/> Verify cheques are entered in the books of account by the next working day. Section 32H(b) of the Act. <input type="checkbox"/> Check disbursements entered into the principal's trust ledger account to the bank account in the trust ledger. Section 32H(b)(d) of the Act. <input type="checkbox"/> Verify sufficient funds were in the principal's trust ledger account to meet the payment when cheques were drawn. Section 32E of the Act. <input type="checkbox"/> Check disbursements to the owner's ledger and general	

ledger.

- Verify cheque details against the bank statement. Section 32H(a) of the Act.
- Check that signatories to the electronic funds transfers and cheques are current and authorised individuals within an agency.
- Ensure the dealer maintains adequate control over cheques.
- What controls are there over the issue of cheques?
Who issues cheques and are the cheques stored securely?
- Check the Yard Manager signs all cheques or alternatively, there are adequate internal controls in place.
- Check there is appropriate supporting documentation for the issue of the cheque.
- Check the sequence of cheque numbers issued. Sight any cancelled cheques.
- Ensure cheques recorded on the principal's files are issued for the same amount.
- Check payee on duplicate cheque or computer records against the principal's files. Section 32H(a) of the Act.
- Check for unusual payment types. Section 32H(a) of the Act.
- Check payment where narration is inadequate. Section 32H(a) of the Act.
- Check post-dated and backdated cheques. Section 32H(a) of the Act.
- Check for alterations made to cheques.
- Verify unpresented cheques. Outstanding cheques should not be older than 12 months. Where this occurs, follow-up action should be taken by the dealer. See the 'Housekeeping' checklist item above for more information.

Reconciliations

- Check the trust account is reconciled on a monthly basis to the last business day of the month. Section 32H(d) of the Act.
- It is Consumer Protection policy that reconciliations are performed within ten working days after the end of the month. The reconciliation must include the bank account, cash book, and trust ledger accounts. Regulation 10J(b).
- Check the Yard Manager verifies and signs the monthly trust account reconciliation.
Check if a 'Confirmation Letter' is required.
A 'Confirmation Letter' is not required if the auditor has sighted the original bank statement for the end of the year and the reported balance of the trust account is in order.
- The auditor must ensure all trust accounts are included in the audit report provided to Consumer Protection. This includes trust accounts that have been closed during the year.
- Check outstanding balances on the principal's trust ledgers. (Follow-up action should be taken by the agent.). Section 32H(a)(d) of the Act.
- Check adjustments are not continuously carried forward in

reconciliations.

This indicates a problem in the trust account. If there is a shortfall there may have been a defalcation or if there is an outstanding surplus this can lead to a future defalcation.

- Check any adjusting entries or balancing items.
- Check that large and unusual reconciling items have been followed-up appropriately.
- Check bank statements for continuity, for unusual entries, and whether they show a debit balance at any time during the year.
- Verify cheques issued to the bank statement.
- Check direct debits and credits.
- Check for consistency in the bank statement balance.
- Check for consistency in total receipts received during the month.
- Check the financial institution has not credited interest to the trust account.
- Check bank or government charges have not been debited from the trust account.

7.3 Questions to be completed before the audit report is submitted

Any incomplete or inaccurate reports may be returned to the auditor, causing delays in lodgement. Please ensure each of the following items is checked before the audit report is submitted.

1. Is the audit year correct and identical on all documents?

2. Is the licensed dealer's name correct?

3. Is the licensed dealer's name identical on all documents?

4. Is the trading name correct?

5. Is the business address correct?

6. Has the business moved in the previous year?

7. Is the licence current?

8. Has the correct licence number been used?

9. Are the details of the Yard Manager correct?

10. Are the details of all staff correct?

11. Are the declarations in the correct format?

12. Are attached declarations correctly witnessed?

13. Has a copy of the management letter been attached?

14. If the agency has lodged audit reports previously, is the auditor the same auditor who previously lodged the prior year audit?

15. If the agency has changed its auditor, has the Change of Auditor Request form been completed by the agent, the former auditor and the new auditor, and has been approved by the Commissioner?

8 Frequently Asked Questions

These are some common questions asked by auditors of trust accounts.

What is the procedure if a dealer wants to change their auditor?

Dealers appoint their trust account auditors at the time of opening a trust account. This appointment is continuous unless a dealer obtains written approval from the Commissioner to change their auditor. Dealers wishing to change their auditor must apply to the Commissioner by submitting the Change of Auditor Request form. The dealer must give reasons for the need to change, obtain agreement from their current auditor to relinquish their statutory responsibility and obtain consent of the nominated replacement auditor.

Each application will be considered on its merits. A Change of Auditor Request form can be downloaded from [Change of auditor request - Motor vehicle dealers](#).

What is the format of a final audit?

The format is the same as the annual audit. The auditor should refer to it as a termination audit and record the termination audit period.

What should an auditor do if the final audit is due and there is still money held in the trust account?

Regardless of any money still in the trust account, the auditor must deliver the final audit report to the Commissioner by the annual audit due date within the financial year of audit. The trust account is not required to have a nil balance for the final audit report to be prepared.

If a final audit is conducted, what should happen with any trust funds not disbursed by the finalisation date?

The auditor should ensure money is paid by the agent to the rightful recipients as soon as possible. Unclaimed money may be dealt with under the *Unclaimed Money Act 1990* as at 31 December each year.

Can a dealer maintain additional funds to act as a 'buffer' in the trust account?

Under no circumstances should extra funds be kept in the trust account. Buffer funds cannot be used to offset bank fees or for any other reason. Dealers should clear their commission or fees to their general account at least weekly. Consumer Protection strongly recommends against the practice of retaining commissions and management fees in the trust account.

Can a dealer offset a debit balance in a client trust ledger account against a credit balance in another ledger account?

Each client's trust ledger account is maintained as a trust account and should not go into debit balance. A debit balance in a client trust ledger account cannot be offset against a credit balance in another ledger account (e.g. the agent's fee account).

Does an auditor have to notify the Commissioner if they believe a conflict of interest has arisen between themselves and the dealer?

Yes. In all such cases the Commissioner must be notified. A decision will then be made as to whether the agent needs to seek a replacement auditor.

What are the components of a valid reconciliation?

There are three components of valid trust account reconciliations, which are:

- bank statement balance;
- trust account balance; and
- total of client balances in the trust ledger.

The bank statement balance is the starting point and when the reconciliation is completed the balance shown as the trust account balance should be equivalent to the total funds held in the trust ledger.

When should trust account reconciliations be performed?

Trust accounts must be correctly reconciled to the last day of each month. It is the Commissioner's view that trust accounts are reconciled within ten working days after the end of the month. Trust account reconciliations must still be performed even during public holiday periods.

Is a dealer required to sign their trust account reconciliation?

Yes. The Commissioner regards the agent in *bona fide* control/licensee as the appropriate person to sign. They are responsible for the reconciliation being done and for its accuracy.

Should cheques and receipts be numbered sequentially?

Yes. The dealer should keep details of cheques and receipts with their monthly reconciliations or in an audit file to ensure that an auditor can verify the sequence.

What happens if the business structure of a dealership changes (i.e. a sole trader becoming a partnership or corporate body, or the business of a corporate body is taken over by another corporate body)?

If the entity changes, then a new licence needs to be obtained for the new entity. The dealer is then required to finalise all existing trust accounts of the old entity and open new accounts in the name of the new entity. The dealer will need to maintain proper records relating to any transfer of funds from the old trust accounts to the new trust accounts. The dealer will also need to arrange a final audit (termination) of the trust account of the old entity up to the date that the trust account is closed.

Is an audit required when a business changes its name?

An additional audit is not required if a business changes its name but the entity remains the same. The designation of all bank accounts must be changed to reflect the new business name. The new business name must be endorsed on the triennial certificate.

What should an auditor do if fraud, theft or misappropriation from a trust account is indicated?

The auditor should immediately notify the Commissioner of the circumstances of the missing money.

What are the most common forms of misappropriation encountered by auditors of trust accounts?

Consumer Protection has identified the following common methods used to misappropriate trust money:

- kiting (whereby an overstatement of cash in a particular bank account is created by cash transfers between bank accounts);
- ghost accounts (keeping another set of books outside the trust account);
- manipulating of the balance of trust accounts;
- issuing fake receipts; and
- pre-drawn commissions.

When a dealer banks trust money, can the dealer replace cash received for a real estate transaction with a cheque?

No. Money received in a consignment trust account transaction is required to be banked in the same form as it is received. For example, a dealer cannot replace cash from a daily banking transaction with a trust cheque or personal cheque to provide a cash refund.

Can a dealer pay accounts by credit card on their clients' behalf?

It is the Commissioner's view that agents ought not pay their clients' creditors by credit card and then reimburse themselves from the trust account unless they have consent from their client to do so. Without consent, the recouping of moneys from the trust account would be an unauthorised withdrawal and the agent would therefore breach section 32E of the Act.

Should trust accounts that have been closed during the year be included in the audit?

Yes. Trust accounts closed during the course of a year should be audited at the end of the year.

Is an audit required where a dealer's business is sold?

Where the business sold is a sole trader or a partnership the answer is yes. In respect to the company the answer is no as the company has perpetual succession. Therefore, an audit can be completed either for part year up to date of sale and signed by dealer principal for that period and part year to end of financial year and signed by the new dealer principal.

9 Appendix A: Format of Audit Reports

Auditors are to conduct audits in accordance with accepted auditing practice and, in addition, the Commissioner for Consumer Protection may impose additional requirements such as the nature of audit reports. The following pages show the templates/formats of audit reports that auditors should use for Motor Vehicle Dealers.

The templates consist of:

- a covering letter from the auditor to the Commissioner for Consumer Protection for an audit report;
- a declaration by the auditor (regulation 10L of the Regulations); and
- a statutory declaration by the auditor (regulation 10K of the Regulations).

Witnessing statutory declarations

The prescribed audit formats need to be supported by a statutory declaration, where required, and signed by an authorised witness. Professions listed as authorised witnesses by the *Oaths, Affidavits and Statutory Declarations Act 2005* are available by visiting the Department of the Attorney General's website at http://www.courts.dotag.wa.gov.au/_manifest/stat_dec.jmf or calling (08) 9264 1600.

10 Appendix B: Sample letters and forms

B1. Example of an Auditor's Covering Letter for an Audit Report

EXAMPLE ONLY

Your ref:

Our ref:

Enquiries:

Date:

Commissioner for Consumer Protection
Department of Mines, Industry Regulation and Safety
Locked Bag 14
Cloisters Square
PERTH WA 6850

Dear Sir/Madam

RE: AUDIT OF TRUST ACCOUNT – [name of licensed dealer]*

Please find enclosed documents in relation to the consignment trust account audit of the abovementioned dealer for the audit period commencing..... **(insert date)** and ended **(insert date)**..

Enclosed are:

1. Audit Report verified by Statutory Declaration;
2. Declaration by Auditor;
4. A copy of management letters (if one has been issued); and
5. Bank Account Statement

Yours faithfully

..... **[signature]**

* The name of the dealer is stated on the dealer's licence.

B2. Example of Declaration by Auditor

EXAMPLE ONLY	
DECLARATION BY AUDITOR	
<i>MOTOR VEHICLE DEALERS ACT 1973 and</i>	
MOTOR VEHICLE DEALERS (SALES) REGULATIONS 1974 (Regulation 10L)	
Name of auditor*:	
Registered number of auditor:	
Address of auditor:	
Email address of auditor:	
<p>I, the above named, do solemnly and sincerely declare that:</p> <p>1. I am a registered company auditor within the meaning of Part 9.2 of the <i>Corporations Act 2001</i> (Cwlth).</p> <p>2. In accordance with the <i>Motor Vehicle Dealers Act 1973</i>, I have, with the assistance of my staff audited the trust account(s) of:</p>	
Name of agent**:	
Business name of agent	
Registered address of agent:	
Email address of agent:	
For the year ended:	
<p>3. I am not a motor vehicle dealer carrying on business as such, nor am I a director, partner, clerk or servant of the above named motor vehicle dealer or any other motor vehicle dealer actually in practice.</p> <p>4. I am not related by blood or marriage or in a de facto relationship with the above named motor vehicle dealer nor have I had any business dealings with that dealer during my appointment as the dealer's auditor.</p> <p>Declared at (place) thisday of 20.....</p> <p>..... (signature)</p>	

* An auditor must be registered as an auditor under Part 9.2 of the *Corporations Act 2001* (Cwlth) and/or has been approved by the Commissioner for Consumer Protection.

** The name of the dealer is stated on the dealer's licence.

B3. Example of statutory Declaration by Auditor

Note: If the audit report is qualified, full details must be provided to the Commissioner in the audit report.

STATUTORY DECLARATION BY AUDITOR	
MOTOR VEHICLE DEALERS ACT 1973	
MOTOR VEHICLE DEALERS (SALES) REGULATIONS 1974	
Name of auditor:	
Registered number of auditor:	
Registered address of auditor:	
Email address of auditor:	
I, the above named auditor, sincerely declare that:	
1. In accordance with the <i>Motor Vehicle Dealers Act 1973</i> and the <i>Motor Vehicle Dealers (Sales) Regulations 1974</i> , I have with the assistance of my staff audited the trust account of:	
Name of licensed agent*:	
Business name of agent:	
Registered address of agent:	
Email address of agent:	
For the year ended:	
2. The audit of the above mentioned dealer's trust account(s) has been completed for the above year ended (insert date) in accordance with regulation 10K and 10N of the <i>Motor Vehicle Dealers (Sales) Regulations 1974</i> and that in my opinion:	
(a) the trust account(s) have been kept regularly and properly written up;	
(b) the trust account(s) were ready for examination at the periods appointed by me;	
(c) the dealer has complied with all my requirements as auditor;	
(d) during the audit period the trust account had not been overdrawn	
(e) the trust account(s) are and have been in order during the audit period; and	
(f) there is no other matter in relation to the trust account(s) that should, in my opinion, be communicated to the Commissioner for Consumer Protection.	
This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.	
This declaration is made under the <i>Oaths, Affidavits and Statutory Declarations Act 2005</i> at (place) on (date) by	
.....(signature of person making the declaration)	
in the presence of(signature of authorised witness***)	
.....	
(name and qualification of authorised witness)	

* An auditor must be registered as an auditor under Part 9.2 of the *Corporations Act 2001* (Cwth) and/or has been approved by the Commissioner for Consumer Protection.

** The name of the dealer is stated on the dealer's licence.

*** Authorised person under the *Oaths, Affidavits and Statutory Declarations Act 2005*

11 Appendix C: References

The full text of the relevant statutes and Regulations mentioned in this publication can be found at the following links.

Relevant Links

Motor Vehicle Dealers Act 1973

https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a525.html

Motor Vehicle Dealers (Sales) Regulations 1974

https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s4650.html

Australian Consumer Law

<https://consumer.gov.au/australian-consumer-law/legislation>

Corporations Act 2001 (Cwlth) - section 1280

<https://www.legislation.gov.au/Details/C2019C00216>

Interpretation Act 1984

https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_460_homepage.html

Partnership Act 1895

https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a577.html

Unclaimed Money Act 1990

https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a839.html

12 Glossary

Approved	Approved by the Commissioner for Consumer Protection
Auditor	A person appointed under the <i>Motor Vehicle Dealers Act 1973</i> to audit the trust accounts of Dealers.
Authorised financial institution	A bank or other body that is prescribed or that belongs to a class of bodies that is prescribed.
Banker	The manager, or other officer, for the time being in charge of the office of a bank or other body in which any account of a dealer is kept.
Business day	A day that is not a Saturday, Sunday or public holiday.
Buying or selling	In relation to vehicles, includes acting as agent for persons in connection with the buying or selling of vehicles;
Commissioner	Commissioner for Consumer Protection
Consignment Agreement	An agreement under which a dealer agrees (a) to sell a vehicle (including by auction) for a person who is not a dealer or a trade owner; or a person acting as an agent of a dealer or a trade owner; and (b) to pay the proceeds of sale after the deduction of any agreed commission and charges to, or partly to, each of the following – any person authorised by the consignor; any person holding a security interest in the vehicle.
Consignor	A person for who a dealer agrees to sell a vehicle under a consignment agreement.
Dealer	(a) A person who carries on any class or description of business of: (i) buying or selling vehicles; or (ii) acting as agent for other persons in relation to the buying or selling of vehicles, (including a business of selling vehicles by auction) that is prescribed by regulations referred to in section 5A; or (b) a financier; or (c) a car hire operator;
Dealer's licence	A vehicle dealers' licence granted under section 15 of the <i>Motor Vehicle Dealers Act 1973</i> .
Defalcation by a licensee	Includes criminal or fraudulent conduct: (a) of a licensee; or (b) of any one or more of the servants or Dealers of the licensee; or (c) of a person who is a partner in the business of the licensee; or (d) where the licensee is a firm and a body corporate is a partner in the firm or where the licensee is a body corporate, of any one or more of the directors, officers, servants, or Dealers of the body corporate, in the course of the business of the licensee and from which arises pecuniary loss or loss of property to any other person.
Department	The Department of Mines, Industry Regulation and Safety
Licence	A vehicle dealers' licence granted under section 15 of the <i>Motor Vehicle Dealers Act 1973</i> .
Licensee	A person licensed under the <i>Motor Vehicle Dealers Act 1973</i> .
Sell	In relation to a vehicle, includes the entering into as owner of a hire-purchase agreement and a disposal of any interest in that

	vehicle, but does not include the hiring of that vehicle where a right to purchase the vehicle is not included in that hiring, and the expressions sale and sold should be construed accordingly.
Trust account	Account where money is received for consignment sales, as required under section 32C of the MD Act.
Year	A period of 12 months commencing on 1 July and ending on 30 June the following year

**Department of Mines, Industry Regulation and Safety
Consumer Protection**

**Gordon Stephenson House
Level 2 (reception), 140 William Street
Perth, Western Australia (weekdays 8.30 am – 4.30 pm)**

Post: Locked Bag 14, Cloisters Square WA 6850

Enquiries about auditing trust accounts:

Email: audits@dmirs.wa.gov.au

Phone: 08 6552 9538

Website: www.dmirs.wa.gov.au



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