



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

# CONSULTATION

DISCUSSION PAPER

## REVIEW OF THE MOTOR VEHICLE DEALERS ACT 1973 *AND MOTOR VEHICLE REPAIRERS ACT 2003*

August 2013



Although every care has been taken to ensure accuracy in the preparation of this paper, the information has been produced as general guidance for persons wishing to make submissions to the review of the *Motor Vehicle Dealers Act 1973* and *Motor Vehicle Repairers Act 2003*. The contents of the paper do not constitute legal advice or legal information and do not constitute Government policy. This paper should not be used as a substitute for a related Act or professional advice.

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## MESSAGE FROM THE MINISTER

### Review of laws affecting motor vehicle dealers and repairers in Western Australia



I am pleased to release this discussion paper which represents an important first step in reviewing laws which apply to motor vehicle dealers and motor vehicle repairers operating in Western Australia. This is a major area of regulation affecting a significant proportion of Western Australians, whether as consumers, business owners or employees. The Government is therefore keen to hear from both consumers and industry participants.

Western Australians are highly reliant on their motor vehicles and spend a considerable proportion of their incomes purchasing and maintaining their motor vehicles. For many people, the purchase of a motor vehicle still remains the second most expensive purchase in their lifetime.

The motor vehicle dealing and repair industries are recognised as significant contributors to the Western Australian economy and, as such, the Government recognises the importance of ensuring the laws which regulate the industry are appropriate and operate in the interests of both consumers and industry.

The *Motor Vehicle Dealers Act 1973* was last reviewed in the late 1990s and is now due for review, particularly given the significant changes impacting the industry in recent years. The review provides a valuable opportunity to look at ways to improve and modernise the legislation to ensure it remains relevant in the current marketplace.

The *Motor Vehicle Repairers Act 2003* is also due for review to ensure it is operating as intended. The Government recognises that there are varying views amongst industry participants about the current regulatory regime. The review provides a vital opportunity to air these views and to work collaboratively to consider options for improvement.

The reduction of red tape is one of the Government's key objectives for all small businesses. The motor vehicle industry is no exception, with the vast majority of participants being small businesses. The review will look to reduce unnecessary regulation and explore ways in which the red tape burden on business can be reduced.

In considering any changes to legislation, the Government is committed to carefully weighing up the advantages and disadvantages of the various options under consideration. This will be the focus of the next stage of consultation with stakeholders.

I am very grateful for the early input of key stakeholders including the Motor Trade Association of WA, Institute of Automotive and Mechanical Engineers, Royal Automobile Club WA, and various government departments which have given generously of their time in identifying issues for consideration as part of the review.

This is an important review which will pave the way for establishing the Government's future policy direction and legislative reform agenda in relation to the regulation of repairers and dealers. I therefore encourage everyone with an interest in the motor vehicle repair and dealer industries to provide input to the review. Your input will assist in guiding future decisions about how to best regulate these industries.

Hon Michael Mischin MLC  
**MINISTER FOR COMMERCE**

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## 1. INTRODUCTION

### 1.1. Background

The *Motor Vehicle Dealers Act 1973* (MVDA) establishes a licensing regime which applies to those persons engaged in the business of buying, selling and exchanging of motor vehicles in Western Australia. The MVDA was introduced with the aim of protecting the interests of consumers in this important sector of the consumer market. The MVDA was last reviewed in the late 1990's with substantial amendments to the MVDA commencing in 2002.

The *Motor Vehicle Repairers Act 2003* (MVRA) provides for the certification of individual repairers and the licensing of repair businesses within prescribed classes of repair work. The MVRA was introduced to protect consumers in their dealings with motor vehicle repairers, to address safety concerns and to promote high standards of workmanship. The MVRA became fully operational in 2008 and is now due for review.

#### *Combined review*

A combined review of the MVDA and the MVRA is being undertaken given the links between the motor vehicle sales and motor vehicle repair industries. In addition, both industries have stakeholders and many issues in common. It is noted that approximately 380 businesses operate as both motor vehicle dealers and repairers.

#### *Purpose of the review*

The Department of Commerce's Consumer Protection Division (Consumer Protection) has an ongoing commitment to review legislation administered by the Department. The Review of Motor Vehicle Dealers and Motor Vehicle Repairers legislation (the Review) will pave the way for establishing the Government's future policy direction and legislative reform agenda in relation to dealers and repairers.

The Review will look at the objectives of the current legislation, assess its effectiveness and make suggestions for improvements. The Review will also look to reduce unnecessary regulation and will explore ways in which the red tape burden on business and consumers can be reduced, including consideration of recommendations emanating from the 2009 report titled: "Reducing the Burden - Report of the Red Tape Reduction Group". The Review will afford the opportunity to consult broadly with stakeholders in regard to the specific recommendations made by the Red Tape Reduction Group.

Also relevant to the review is the 1 January 2011 commencement of the Australian Consumer Law (ACL). The ACL represents the most important reform in the history of Australia's consumer protection system, delivering a general set of consumer protections applicable across Australia and reduced costs of doing business.

Consistent with the Intergovernmental Agreement applicable to the ACL, the Review will consider the impact of the ACL on the motor vehicle industry as well as any issues of inconsistency between the ACL and the MVDA and MVRA.

The primary goal is to achieve a regulatory framework which provides appropriate protections for consumers whilst at the same time maintaining the commercial viability of the motor vehicle sales and repair industries.

### *Review process*

The Review will be conducted in three stages:

- Stage 1: release of this discussion paper highlighting key issues and inviting stakeholder input;
- Stage 2: release of a Consultation Regulatory Impact Statement presenting a range of options for consideration and inviting stakeholder input; and
- Stage 3: preparation and release of a Decision Regulatory Impact Statement addressing the outcome of consultation and making recommendations for reform.

## **1.2. Scope of the review**

This Review is not able to deal with issues outside the scope of the MVDA and the MVRA. For example: the Review will not deal with issues relating to State taxation reporting requirements applicable to motor vehicle dealers; the private sale of motor vehicles; and vehicle registration services provided by the Department of Transport.

## **1.3. Purpose of discussion paper**

This discussion paper represents the first stage of the Review and is focussed on encouraging stakeholder input in regard to key issues of concern and how they might be overcome. Issues of an administrative or technical nature are not included in the discussion paper and will instead be considered during Stage 2 of the Review.

## **1.4. Initial consultation with key stakeholders**

### *Meetings with key stakeholders*

Consumer Protection conducted a series of preliminary consultation meetings with key internal and external stakeholders during the second half of 2012. Stakeholders included:

- Motor Trade Association of WA;
- Institute of Automotive and Mechanical Engineers;
- Royal Automobile Club WA;
- Department of Transport;
- WA Police;
- Department of Training and Workforce Development;
- Small Business Development Corporation; and
- licensing and compliance directorates within Consumer Protection.

The purpose of these meetings was to alert key stakeholders to the Review and to ensure that key issues of concern were identified for inclusion in the discussion paper. In addition, the Motor Vehicle Industry Advisory Committee and the Consumer Advisory Committee were presented with background information in regard to the Review. Both Committees are appointed by the Minister for Commerce for the purpose of providing advice to the Minister.

## 1.5. How to have your say

### *Written submissions or survey*

You are invited to make a submission to the Review. There is no specified format for submissions. You are welcome to:

- write a short letter outlining your views;
- respond to questions included in this paper (a complete set of questions can be found online by visiting [www.commerce.wa.gov.au/consultations](http://www.commerce.wa.gov.au/consultations)); or
- complete a short survey (which can be found online by visiting [www.commerce.wa.gov.au/consultations](http://www.commerce.wa.gov.au/consultations)).

If possible, please provide evidence to support your views, for example by including relevant statistics or case studies. This will greatly assist Consumer Protection in developing suitable options for addressing issues of concern.

### *Guiding questions*

This discussion paper highlights a range of specific issues. We have included questions after each issue as well as some more general questions. A complete set of questions can be found online by visiting [www.commerce.wa.gov.au/consultations](http://www.commerce.wa.gov.au/consultations). These questions are aimed at making it easier to make a submission. Please do not feel constrained by the questions or feel obliged to answer all of the questions.

You are welcome to raise additional issues and to suggest options for overcoming issues of concern. It would be helpful if you could include the reasons behind your suggestions as this will help Consumer Protection to better understand your viewpoint and will also assist us in developing and assessing options for inclusion in the next stage of the review. For example, you could couch your suggestion as follows:

“I think that a motor vehicle dealers’ compensation fund should be introduced  
**because.....”**



### *Where to send submissions*

Submissions can be mailed to: Review of Motor Vehicle Dealers and Repairers Legislation  
Department of Commerce  
(Consumer Protection Division)  
Locked Bag 14  
Cloisters Square PO  
Perth WA 6850

Or emailed to: [consultations@commerce.wa.gov.au](mailto:consultations@commerce.wa.gov.au)

Or made online at: [www.commerce.wa.gov.au/consultations](http://www.commerce.wa.gov.au/consultations)

### *Review updates*

You can keep up to date with the progress of the Review at [www.commerce.wa.gov.au](http://www.commerce.wa.gov.au).

### *How input will be used*

The information gathered from this stage of the Review will form the basis for the next stage of the review process. Your input is crucial as it will assist in identifying issues of concern and developing options for reform for consideration by stakeholders during the next stage of the Review.

### *Information provided may become public*

After the consultation period concludes, all responses received may be publicly available on the Department of Commerce website. Please note that because your feedback forms part of a public consultation process, the Government may quote from your comments in future publications. If you prefer your name to remain confidential, please indicate that in your submission. As submissions made in response to this paper will be subject to freedom of information requests, please do not include any personal or confidential information that you do not wish to become available to the public.

### *Submissions close*

The closing date for submissions is: **Friday 15 November 2013.**

## **1.6. Next Steps**

### *Regulatory Impact Assessment requirements*

The Western Australian Government is committed to a regulatory gatekeeping process aimed at carefully considering the fundamental question of whether regulatory action is required or if policy objectives can be achieved by alternate measures, with lower costs for business and the community.

Government agencies are therefore required to undertake a Regulatory Impact Assessment (RIA) process for all regulatory proposals which could potentially have a negative impact on business, consumers or the economy.

### *Consultation RIS (Stage 2 of the Review)*

The Release of the Consultation Regulatory Impact Statement (Consultation RIS) represents the next stage of the review and is part of the RIA process. The Consultation RIS will:

- outline the policy issues to be addressed;
- explain the objectives for resolving the issues;
- outline options for reform; and
- consider the costs and benefits of each option (advantages/disadvantages).

### *Further opportunity to provide input to the review*

Stakeholder feedback in response to the Consultation RIS will assist the Government in deciding whether reforms are needed and, if so, the shape of those reforms. You are strongly encouraged to provide further input to the Review once the Consultation RIS is released for public consultation.

### *Decision RIS (Stage 3 of the Review)*

Following analysis of submissions to the Consultation RIS, a Decision RIS will be prepared. The Decision RIS will analyse the impacts of the various options and will identify the Government's preferred options for implementation. The Decision RIS will be published via Consumer Protection's website once the Government's decision is made public.

### *Role of the Regulatory Gatekeeping Unit*

The Department of Treasury's Regulatory Gatekeeping Unit is responsible for independently assessing whether the Consultation RIS and the Decision RIS meet specific adequacy criteria, for example, assessing whether there is justification for Government action and ensuring stakeholder concerns regarding preferred options have been addressed.

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## 2. BACKGROUND

### 2.1. Industry snapshot

#### *Automotive industry: important contributor to economy*

The automotive industry contributes significantly to the Australian economy and is a major employer and provider of traineeships and apprenticeships.

The following summarises some key statistics:

- Over 16.7 million vehicles were registered in Australia as at 31 Jan 2012 of which 76% are passenger vehicles (1.97 million registered vehicles in WA)<sup>1</sup>.
- Over a million new vehicles were sold in Australia in 2011-12 (117,564 sold in WA)<sup>2</sup>.
- There was over \$180 billion in turnover across Australia in the automotive sector in 2010-11<sup>3</sup>.
- Over 65,000 businesses were operating in the automotive sector across Australia in 2010-2011<sup>4</sup>.
- Over 299,000 people were employed in the automotive sector across Australia as at June 2011<sup>5</sup>.
- Over 120,000 people were employed across Australia in the automotive repair and manufacturing sectors as at November 2012<sup>6</sup>.
- Over 93,000 people were employed across Australia in the motor vehicle retailing and motor vehicle parts retailing sectors as at November 2012<sup>7</sup>.

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<sup>1</sup> Australian Bureau of Statistics 2012, *Motor Vehicle Census, Australia*, cat. no. 9309.0, ABS Canberra, 31 January 2012.

<sup>2</sup> Australian Bureau of Statistics 2012, *Sales of New Motor Vehicles*, cat. no. 9314.0, ABS Canberra, December 2012.

<sup>3</sup> Australian Bureau of Statistics 2011, *Australian Industry*, cat. no. 8155.0, ABS Canberra.

<sup>4</sup> Australian Bureau of Statistics 2011, *Counts of Australian Businesses Including Entries and Exits, 2010-2011*, cat. no. 8165.0, ABS Canberra.

<sup>5</sup> Australian Bureau of Statistics 2011, *Australian Industry 2010-2011* cat. no. 8155.0, ABS Canberra.

<sup>6</sup> Australian Bureau of Statistics, *Labour Force, Australia, Detailed, Quarterly*, cat. no. 6291.0.55.003, ABS Canberra, November 2012.

<sup>7</sup> Ibid

### *Challenges facing the industry*

The motor vehicle industry is currently facing significant challenges, predominantly externally driven, including:

- the rapid pace of change in vehicle design and technology requiring significant up-skilling;
- manufacturers selling direct to consumers;
- increasing prevalence of on-line purchasing of motor vehicles;
- consumers increasingly purchasing accessories and parts online (thus benefitting from the strong Australian dollar and avoiding GST on goods valued under \$1,000);
- the resources boom and resultant shortage of skilled labour;
- difficulties in attracting school leavers into apprenticeships;
- difficulties in retaining apprentices once qualified;
- the global financial downturn; and
- baby boomers retiring from the industry as the population ages.

### *WA licensing and certification*

The MVDA and MVRA include licensing and certification requirements. The following provides an overview of the various categories as at February 2013.

	<i>No. licensed or certified</i>
<i>Motor vehicle dealers - business licence</i>	<b>810</b>
<i>Motor vehicle - sales persons</i>	<b>2,052</b>
<i>Motor vehicle - yard managers</i>	<b>1,155</b>
<i>Motor vehicle repairers - business licence</i>	<b>3,967</b>
<i>Motor vehicle repairers - certificate holder</i>	<b>10,806</b>

### *Consumer expenditure*

#### *ABS Data: Household Expenditure Survey*

Australians are highly reliant on their motor vehicles for transport with 2009 Australian Bureau of Statistics (ABS) data indicating that 92% of households kept at least one motor vehicle at home<sup>8</sup>. Further evidence of our reliance on motor vehicles is reflected in the ABS's March 2009 data<sup>9</sup> which indicates that 80% of adults used a private motor vehicle to travel to work or full-time study. Only 14% of adults used public transport.

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<sup>8</sup> Australian Bureau of Statistics 2009, *2009 Year Book Australia*, cat. no. ABS, Canberra.

<sup>9</sup> *ibid*

This reliance on motor vehicle transport translates into significant costs for Australian households, with the ABS's 2009-10 Household Expenditure Survey indicating that households spend an average of \$193 per week on transport. This represents 18% of total household expenditure on goods and services. This is the third highest category of expenditure for Australian households behind housing (\$223 per week) and food and non-alcoholic beverages (\$204 per week).

The ABS's broad category of transport comprises a range of sub-categories, for example: motor vehicle purchase; fuel; oils and lubricants; registration; compulsory insurance; vehicle servicing; parking fees; drivers licence fees; driving lessons; road tolls; public transport fares; taxi fares; and air fares. (Note: The category of transport excludes all holiday travel.)

Of relevance to this review are the transport sub-categories of purchasing (deposits for vehicles only) and maintaining and repairing motor vehicles. Average household expenditure on these items is around \$62 per week. Interestingly, this figure is similar to average household expenditure on all medical care and health expenses (\$66 per week)<sup>10</sup>, which includes: fees for visits to doctors and specialists; pharmaceuticals; dental; and accident and health insurance.

#### *New vehicle running costs*

The Royal Automobile Club WA's (RAC) 2012 Vehicle Running Costs Guide<sup>11</sup> provides further evidence of the significant cost to consumers of running their motor vehicles.

Based on the RAC's data identifying the running costs for a range of new medium sized vehicles, on average, the running cost is around \$12,000 per year. This figure is based on a medium sized vehicle bought new on finance, travelling 15,000km per year and held for a period of five years.

This amount of \$12,000 takes into account: depreciation; loan interest payments; fuel; tyres; on road costs (includes stamp duty, registration insurance and club membership); repairs and servicing.

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<sup>10</sup> Australian Bureau of Statistics 2010, *Household Expenditure Survey, Australia, Detailed Expenditure Items, 2009-10* cat. no. 6530.0, ABS, Canberra.

<sup>11</sup> Royal Automobile Club WA, 2012 Vehicle Running Costs Guide, Perth viewed 6 March 2013, <<http://rac.com.au/Motoring/Motoring-advice/Buying-a-car/Running-costs.aspx>>

## 2.2. Purpose of licensing motor vehicle dealers and repairers

The legislative regimes established under the MVDA and MVRA impose barriers to entry and a regulatory burden on industry, these can only be justified if a public benefit accrues from regulation.

### *Benefits and costs of occupational licensing*

Occupational licensing can reduce risks to consumers by requiring that work is performed by a suitably skilled and reputable provider. In addition, a licensing regime can:

- impose specific conditions and requirements on licence holders;
- specify the tasks that a licensee can undertake;
- set standards of behaviour or conduct; and
- provide sanctions for breach of requirements.

Licensing schemes can benefit consumers by addressing certain market failures such as asymmetry of information. Benefits can also accrue with regards to public safety and factors such as crime prevention.

The Productivity Commission has noted that, compared to reliance on the general law, licensing can be targeted at identified problems in a specific industry and increase consumer confidence in the operation of the industry. The Productivity Commission states that licensing is most likely to confer net benefits where the potential consumer detriment from making a poor choice is significant and:

- the costs of obtaining product information are high; and/or
- verification of quality by the consumer or other third parties is difficult<sup>12</sup>.

However, licensing also imposes a regulatory burden on business, with compliance costs likely to be passed on to consumers. Licensing schemes can also limit competition, by restricting entry into the market; this can reduce competition and choice for consumers and impact on labour mobility.

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<sup>12</sup> Productivity Commission 2008, *Review of Australia's Consumer Policy Framework*, Final Report, Canberra, Volume 2 page 93.

### *Negative licensing*

Negative licensing is sometimes used as an alternative licensing scheme. Negative licensing means that market entrants are not screened at the entry stage and persons are only prohibited from operating in the industry if problems have been identified. For example, operators might be fined or suspended from trading if they fail to comply with certain obligations.

Negative licensing schemes are generally less costly than occupational licensing schemes as they have lower administrative and ongoing compliance costs and reduced business set up costs. However, the Productivity Commission has stated that such schemes may not be universally appropriate as breaches of legislation usually only come to light after a consumer has suffered detriment and reported it to the regulator.

Thus, negative licensing arrangements may be inappropriate where the potential consumer detriment from inappropriate supplier behaviour is high<sup>13</sup>.

### **2.3. Consumer Protection snapshot**

The following section outlines Consumer Protection's role in dealing with consumer issues relevant to the motor vehicle dealer and motor vehicle repair industries. Market intelligence data is presented in relation to phone contacts, complaints, conciliation, investigation and compliance activities as well as the outcome of these activities where relevant. This information provides a useful insight into the level of consumer complaints relevant to the motor vehicle industry.

#### *Consumer Protection's activities*

Consumer Protection strives to create a trading environment that appropriately balances the interests of consumers and business. In respect of the motor vehicle dealer and motor vehicle repair industries, Consumer Protection undertakes a range of advisory, conciliation, investigation and compliance activities including:

- providing information and advice to consumers and businesses about their rights and responsibilities;
- ensuring appropriate dispute resolution procedures are in place and assisting consumers to resolve disputes with business;
- negotiating the resolution of disputes between consumers and businesses in the motor vehicle industry through conciliation;

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<sup>13</sup> Productivity Commission 2008, *Review of Australia's Consumer Policy Framework*, Final Report, Canberra, Volume 2 page 93.

- providing an advisory and mechanical inspection service through various proactive programs to assist licensed businesses to comply with the law;
- monitoring compliance with legislation and taking appropriate action when there is non-compliance;
- undertaking formal investigations to establish whether there have been breaches of the legislation; and
- initiating prosecution or other enforcement action as appropriate.

#### *Overview of motor vehicle related matters*

Consumer Protection deals with over 12,000 motor vehicle related matters relevant to the MVDA or MVRA each year. These matters range from providing advice via telephone enquiries, conciliation of disputes, through to formal prosecution actions.

The vast majority of motor vehicle related matters raised by consumers do not require formal investigation or compliance action, with only around 3% of all matters (including telephone enquiries) resulting in such action. Where prosecution is necessary, the most common issues relate to unlicensed motor vehicle dealing or unlicensed motor vehicle repairing.

#### *Enquiries to Consumer Protection's advice line*

Consumer Protection provides a telephone advisory service whereby callers can seek advice about issues of concern. Consumer Protection recorded around 136,000 calls to the advice line in 2011-12. Around 8% of all calls to the advice line are motor vehicle related enquiries.

#### *Motor vehicle repairer data pre and post implementation of the legislation*

Analysis of data relating specifically to motor vehicle repairers for the period 2006 to 2012 found that enquiries remained fairly consistent across the years. As such, no conclusion can be drawn in regard to the effect of the commencement of the repairers' legislation on total enquiry volumes.

#### *Complaints*

Consumer Protection plays an important role in dealing with formal complaints made by consumers. In general, consumers are invited to submit a formal complaint in situations where they have attempted to resolve the matter directly with the business, but remain dissatisfied with the outcome.

Around 12,000 written complaints are received by Consumer Protection each year of which, around 11% are relevant to the MVDA and MVRA.



In some cases, Consumer Protection finds that businesses have acted appropriately and the complaints do not proceed any further. In other cases, Consumer Protection undertakes conciliation between the parties which results in a significant proportion of complaints being successfully settled by agreement between the parties. The emphasis of conciliation is on early resolution by negotiating a mutually acceptable settlement, thus avoiding an overly legalistic approach.

The following provides further detail in regard to motor vehicle dealer and motor vehicle repairer matters dealt with by Consumer Protection including a summary of outcomes.

### *Motor vehicle dealer matters*

During 2011-12, Consumer Protection commenced 759 matters in relation to motor vehicle dealers comprising:

- 665 conciliations;
- 59 unlicensed motor vehicle dealing breach actions; and
- 35 general breach actions.

The main outcomes were:

- in 61% of conciliation cases, a positive outcome was achieved in that: agreement was reached between the parties to settle the matter; there was no case to answer; or advice was given which resolved the matter; and
- in 24% of conciliation cases, there was no conciliated result between the parties and referral to the Magistrates Court was suggested as an option for complainants.

Of the 94 motor vehicle dealer compliance and investigation matters dealt with, the main outcomes were:

- in 50% of cases, businesses were provided with an administrative warning, corrective educational advice or a caution;
- in 33% of cases, no action was taken due to insufficient evidence, no offence detected or other reason;
- in 7% of cases, prosecution action was approved; and
- in 1% of cases, a fine/penalty was imposed.

### *Motor vehicle repairer matters*

During 2011-12, Consumer Protection dealt with 600 matters in relation to motor vehicle repairers comprising:

- 390 conciliations;
- 201 unlicensed motor vehicle repairing breach actions; and
- 9 general breach actions.

The main outcomes were:

- in 44% of conciliation cases, a positive outcome was achieved in that: agreement was reached between the parties to settle the matter; it was found that there was no case to answer; or advice was given which resolved the matter; and
- in 33% of conciliation cases, there was no conciliated result and referral to the Magistrates Court was suggested to the consumer as an option for complainants.

Of the 210 motor vehicle repairer compliance and investigation matters dealt with, the main outcomes were:

- in 24% of cases, businesses were provided with an administrative warning, corrective educational advice or a caution;
- in 45% of cases, there was no action taken due to insufficient evidence, no offence detected or other reason;
- in 20% of cases, a licence was applied for or granted;
- in 2% of cases, prosecution action was approved; and
- in 1% of cases, an infringement was imposed.

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### 3. CURRENT LEGISLATIVE FRAMEWORK

#### 3.1. Existing regulation – motor vehicle dealers

##### *Objectives*

The key purposes of the MVDA could be described as seeking to:

- provide essential consumer protections;
- screen for and prevent dishonest and unscrupulous people from operating in the industry;
- improve safety of vehicles to be used on the roads; and
- assist in crime prevention (such as re-birthing of vehicles).

##### *Brief overview of the MVDA*

The MVDA establishes a licensing regime for those persons engaged in the business of buying, selling and exchanging of motor vehicles in Western Australia. The Commissioner for Consumer Protection (Commissioner) is the licensing authority.

The MVDA requires that the following persons hold a licence or registration:

- motor vehicle dealer;
- yard manager;
- salesperson; and
- car market operator<sup>14</sup>.

In addition, the premises from which dealers or car market operators carry on their business must be authorised by the Commissioner.

The MVDA requires dealers and car market operators to keep records of certain transactions in relation to motor vehicles. The purpose of maintaining these records include:

- to assist the police with investigations into stolen vehicles;
- provide information for taxation purposes (for example, stamp duty);
- provide information to regulators such as the Department of Commerce and Department of Transport; and
- assist in maintenance of records relating to vehicle transfers.

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<sup>14</sup> See part 4.2 for a more detailed explanation of the types of licences.

The MVDA also includes a number of consumer protection measures, including;

- a requirement that contracts be in writing and contain prescribed details;
- a requirement that a prescribed notice be attached to a second-hand vehicle setting out key information, such as year of manufacture/registration, odometer reading and dealer details;
- an obligation on the dealer to repair certain defects in second hand vehicles so as to make a vehicle roadworthy and place it in a reasonable condition having regard to its age (commonly referred to as a 'used car warranty' or a 'statutory warranty'); and
- prohibitions on undesirable practices and acts with intent to deceive (such as odometer tampering).

The Commissioner has the capacity to conciliate disputes between a dealer and purchaser and to determine those disputes in certain circumstances. The Commissioner also has the power to institute disciplinary proceedings against a licensee in the State Administrative Tribunal.

The following subsidiary legislation has been prescribed under the MVDA:

- *Motor Vehicle Dealers (Prescribed Vehicles) Regulations 1974;*
- *Motor Vehicle Dealers (Licensing) Regulations 1974;*
- *Motor Vehicle Dealers (Sales) Regulations 1974;* and
- *Motor Vehicle Dealers (Infringements) Regulations 2002.*

### **3.2. Existing regulation – motor vehicle repairers**

#### *Objectives*

One of the key purposes of the MVRA is to improve the general standard of repairs conducted on motor vehicles and enhance consumer confidence in the motor vehicle repair industry by requiring that repair work be carried out by qualified repairers. This in turn maintains the safety of vehicles on Western Australian roads. Regulation of motor vehicle repairers can also assist in law enforcement efforts in relation to vehicle theft and re-birthing of motor vehicles.

#### *Brief overview of the MVRA*

The MVRA provides that a person who carries on a repair business must be licensed and that any motor vehicle repair work can only be carried out by a person holding a repairer's certificate for the particular class of repair work or supervised by such a person. A licensee may only carry on business from authorised premises. The Commissioner is the licensing authority.

The Commissioner has the capacity under the MVRA to conciliate a dispute between a motor vehicle repairer and an owner of a vehicle.

The MVRA also provides for a compensation fund which allows consumers to recover certain losses incurred as a result of repair work that is incomplete or carried out incompetently. The fund is credited with a prescribed percentage of licensing fees.

The *Motor Vehicle Repairers Regulations 2007* are prescribed under the MVRA.

### **3.3. Recent or proposed amendments**

A number of changes to the MVDA and MVRA and to relevant administrative processes have been made recently or will be progressed separately from this review process.

#### *Recent changes*

In 2011, the Motor Vehicle Industry Board was abolished and the Commissioner assumed responsibility as the licensing authority for the motor vehicle industry.

Following the transfer of the licensing function, the Commissioner undertook a review of policies and forms used in the licensing processes for motor vehicle dealers and repairers with a view to streamlining the procedures for licence applications, without increasing the risks to consumers.

This review has resulted in amendment of application forms to improve ease of use for applicants and, where possible, to provide for consistency across the various industries licensed by Consumer Protection.

The MVDA was also amended to include a provision stating that a person who sells or exchanges four or more vehicles in a twelve month period will be taken to be carrying on a business of selling vehicles for the purposes of the MVDA, unless they can prove that they were not carrying on the business of buying or selling vehicles and did not hold themselves out as such<sup>15</sup>.

#### *Proposed changes*

Both the MVDA and MVRA currently require business licence applicants to provide a planning certificate issued by the local government authority in which the premises of the dealer's or repairer's business are situated. The planning certificate is intended to serve as confirmation that the premises from which the business operates has planning approval for the relevant activity. This requirement is considered superfluous given that compliance of premises with planning laws is essentially a local government matter and not a consumer protection matter.

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<sup>15</sup> MVDA – section 5B.

Separate arrangements are currently being made to amend the MVDA and MVRA to:

- dispense with all requirements to provide planning and conditional planning certificates;
- provide that the Commissioner is permitted to authorise premises conditional upon local government requirements being satisfied; and
- make it clear that the requirements of local governments must still be satisfied and that the Commissioner's authorisation to carry on business at premises does not derogate from these requirements.

It is also proposed that the MVRA be amended to allow for disciplinary action under the Act to be commenced in the State Administrative Tribunal.

### **3.4. Regulation in other jurisdictions**

#### *Motor Vehicle Dealers*

There is some variation in the level and scope of regulation of the motor vehicle sales industry across Australia.

All jurisdictions require licensing of motor vehicle dealers or traders. In South Australia, the licensing requirements apply only in relation to persons dealing in second-hand motor vehicles.

Car market operators are required to hold a licence in New South Wales and the Australian Capital Territory.

Salespersons must be registered in Queensland. The criteria for registration are similar to those for licensing in Western Australia; it could therefore be argued that this is a licensing requirement.

Other jurisdictions do not require licensing or registration of salespersons, but impose restrictions on licensees (the dealers) with regards to who may be employed as a salesperson. Penalties apply for failure to comply with these requirements.

In Victoria, a licensee must not employ, in a customer service capacity, any person who has had a claim admitted against the compensation fund, been convicted of a serious offence within the last 10 years or is disqualified from being a licensee or being employed in the motor car trade. An employee must provide a declaration about these matters to the licensee in a prescribed form, together with an up to date police check<sup>16</sup>.

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<sup>16</sup> *Motor Car Traders Act 1986* (Vic) – section 35A.

The South Australian legislation provides that a dealer must not employ a person as a salesperson if the person has been convicted of an indictable offence of dishonesty or in the last 10 years has been convicted of a summary offence of dishonesty or if the person is disqualified or suspended from carrying on an occupation, business or trade under a law of any state or the Commonwealth. It is also an offence for a person to act as a salesperson if they fall within these exclusions<sup>17</sup>.

The Tasmanian legislation provides that a licensee must not employ any person restrained by the court from obtaining a licence or from being employed or otherwise engaged in the business of motor vehicle dealing<sup>18</sup>.

Yard managers are not required to be licensed in any other jurisdictions. However, in the Northern Territory the person in charge of the day to day conduct of a dealer's business at each place of business must be approved by the Commissioner<sup>19</sup>.

### ***Motor Vehicle Repairers***

Motor vehicle repairers are regulated in New South Wales and the Australian Capital Territory.

New South Wales has a similar legislative regime to Western Australia, with a requirement that those persons carrying on business as a motor vehicle repairer hold a licence. Any person carrying out repair work must hold a tradesperson's certificate.

The Australian Capital Territory legislation requires any person carrying on a business as a motor vehicle repairer to hold a licence. Individual tradespersons actually carrying out repair work are not required to be certified.

## **3.5. The Australian Consumer Law**

The Australian Consumer Law (the ACL), which commenced on 1 January 2011, introduced uniform, national consumer protection legislation. The ACL replaced the *Trade Practices Act 1974* (Cth) and the *Fair Trading Act 1987* (WA) and is implemented by the *Competition and Consumer Act 2010* (Cth) and the *Fair Trading Act 2010* (WA).

As part of the implementation of the ACL, all jurisdictions, including Western Australia, signed an Intergovernmental Agreement which requires jurisdictions to review industry specific consumer protection legislation to ensure it is consistent with the ACL<sup>20</sup>.

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<sup>17</sup> *Second-hand Vehicle Dealers Act 1995* (SA) – section 13A.

<sup>18</sup> *Motor Vehicle Traders Act 2011* (Tas) – section 28.

<sup>19</sup> *Consumer Affairs and Fair Trading Act* – section 176.

<sup>20</sup> Intergovernmental Agreement for the Australian Consumer Law - Clause 3.2.

## *Consumer guarantees*

The ACL replaces statutory implied conditions and warranties in consumer transactions with a modern system of consumer guarantees. Consumer guarantees automatically apply to:

- any type of goods and services costing up to \$40,000;
- goods or services costing more than \$40,000 which are normally used for personal, domestic or household purposes; and
- a vehicle or trailer acquired for use in the transportation of goods on public roads, regardless of cost.

Goods and services sold or provided by motor vehicle dealers and motor vehicle repairers are subject to the consumer guarantees in the ACL.

The consumer guarantees provide that all goods must be of acceptable quality, be fit for any disclosed purpose and match any description, sample or demonstration model shown<sup>21</sup>. Repair facilities and spare parts must be reasonably available for a reasonable time, and any express warranty made by a supplier or manufacturer must be complied with<sup>22</sup>.

Goods must come with clear title and without any undisclosed securities or charges attached to them. Consumers also have a right to undisturbed possession of the goods<sup>23</sup>.

Under the ACL services must be delivered with due care and skill, be fit for any disclosed purpose and, if the contract for services doesn't set a time frame, be completed within a reasonable time<sup>24</sup>.

A full list of the consumer guarantees is included at **Appendix A**.

The ACL also provides consumers with remedies if a good or service fails to meet a guarantee. The remedy available will depend on whether the failure is 'minor' or 'major' in nature<sup>25</sup>.

When the failure is minor, the supplier can choose between providing a repair or offering the consumer a replacement or a refund.

If there is a major failure, the consumer can:

- reject the goods or services and either choose a replacement or a refund; or
- keep the contract and get compensation for the difference in value of the goods or services.

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<sup>21</sup> ACL – section 54, 55, 56 and 57.

<sup>22</sup> ACL – section 58.

<sup>23</sup> ACL – sections 51, 52 and 53.

<sup>24</sup> ACL – sections 60, 61 and 62.

<sup>25</sup> ACL – Part 5-4.



A major failure is when:

- a reasonable consumer would not have bought the goods or acquired the services if they had known about the problem;
- the goods or services are substantially unfit for their normal purpose and cannot easily be made fit within a reasonable time;
- the goods are significantly different from the description;
- the goods are substantially unfit for a purpose the consumer told the supplier about and cannot easily be made fit within a reasonable time;
- the consumer told the supplier of a service that they wanted the service for a particular purpose or to achieve a specific result, but the services and any resulting product, do not achieve that purpose or result; and
- the goods are unsafe or the supply of services has created an unsafe situation<sup>26</sup>.

The ACL also allows a consumer to claim for consequential loss incurred as a result of the failure of a supplier to comply with a consumer guarantee.

#### *Other ACL provisions*

Other provisions of the ACL also apply to motor vehicle dealers and repairers. These include:

- a person must not engage in conduct that is misleading or deceptive or likely to mislead or deceive<sup>27</sup> or make false or misleading representations<sup>28</sup>;
- a person must not act unconscionably when selling or supplying goods or services to a consumer<sup>29</sup>;
- a prohibition on unfair contract terms in standard form consumer contracts<sup>30</sup>;
- a provision relating to unsolicited goods or services<sup>31</sup>;
- a requirement that a supplier must provide proof of transaction to consumers (such as a tax invoice)<sup>32</sup>; and
- a requirement that a supplier provide an itemised bill for services (on request)<sup>33</sup>.

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<sup>26</sup> ACL – sections 260 and 268.

<sup>27</sup> ACL – section 18.

<sup>28</sup> ACL - section 29.

<sup>29</sup> ACL – section 21.

<sup>30</sup> ACL – section 23.

<sup>31</sup> ACL – section 40.

<sup>32</sup> ACL - section 100.

<sup>33</sup> ACL - section 101.

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## 4. KEY ISSUES – MOTOR VEHICLE DEALERS

### 4.1. The definition of vehicle

#### *Background*

The general definition of ‘vehicle’ for the purposes of the MVDA includes:

- a passenger car or passenger car derivative; or
- a motor cycle; or
- a camper van; or
- a vehicle of a prescribed type of class<sup>34</sup> (currently includes caravans, four wheel drive vehicles, goods vehicles and passenger vans with a capacity not exceeding eight people<sup>35</sup>).

A person must hold a dealer’s licence if they are carrying on the business of buying or selling those vehicles included in the general definition set out above.

For the purposes of some sections<sup>36</sup>, a broader definition of ‘vehicle’ applies<sup>37</sup>. If a licensed dealer is in possession of a type of vehicle that is included in the broader definition, then that dealer must comply with certain requirements in relation to that vehicle (for example, record keeping requirements).

Some obligations imposed on licensees apply only in relation to second hand vehicles and some, such as the obligation to repair defects, apply only to limited classes of vehicles.

#### *Discussion*

The definition of vehicle is central to the application of the MVDA as it impacts on who must be licensed and what obligations must be complied with under the Act. Consideration needs to be given to whether the current definition of vehicle is appropriate, having regard to the purposes and objectives of the Act. In particular, Consumer Protection will be examining whether the vehicles captured by the current definition are sufficient and whether the definition should be expanded to include other vehicles.

For example, it has been suggested that the general definition of motor vehicle should be extended to also include vehicles such as quad bikes.

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<sup>34</sup> MVDA - Section 5(3).

<sup>35</sup> *Motor Vehicle Dealers (Prescribed Vehicles) Regulations 1974*.

<sup>36</sup> Sections 25, 26, 28, 29 and 27(1), (1a) and (2).

<sup>37</sup> MVDA – Section 5(2) – ‘vehicle’ means a motor vehicle within the meaning given thereto by the *Road Traffic Act 1974* and a trailer, semi-trailer or caravan designed to be attached to a motor vehicle.

If other vehicles are included in the general definition of vehicle, then any person carrying on the business of buying or selling those vehicles would be required to hold a dealer's licence and comply with the MDVA.

***Issues for consideration***

*Issue 4.1(a) Should the definition of 'vehicle' be changed to include any other types of vehicle? If so, which types of vehicles and why?*

*Issue 4.1(b) Should the definition of 'vehicle' be changed to remove any types of vehicle? If so, which types of vehicles and why?*

## **4.2. Who should be licensed?**

### ***Background***

The MVDA requires that the following persons hold a licence or registration:

- motor vehicle dealer – includes someone carrying on the business of buying or selling vehicles, acting as an agent in relation to the buying or selling of vehicles (including selling by auction), acting as a financier and a car hire operator;
- yard manager – someone who is employed or engaged by or on behalf of a dealer to manage or supervise that dealer's business of buying or selling vehicles at one of the dealer's premises;
- salesperson – someone who is employed or engaged by or on behalf of a dealer in the buying or selling of vehicles (other than in the capacity as yard manager); and
- car market operator - someone operating a car market, where second hand vehicles owned by persons other than the car market operator<sup>38</sup> are displayed for sale<sup>39</sup> (but does not include an auction).

As indicated earlier, Western Australia and Queensland<sup>40</sup> are currently the only jurisdictions that licence salespersons. Legislation in Victoria, South Australia and Tasmania prevents a licensed dealer from employing certain people as a salesperson (based on factors such as the person's criminal record and whether they have been suspended or disqualified from holding a licence or operating in the industry)<sup>41</sup>.

Western Australia is the only jurisdiction that licences yard managers; however, the Northern Territory requires that a dealer's manager be approved by the Commissioner.

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<sup>38</sup> Dealers are not able to sell vehicles through car markets.

<sup>39</sup> MVDA - section 5 definitions.

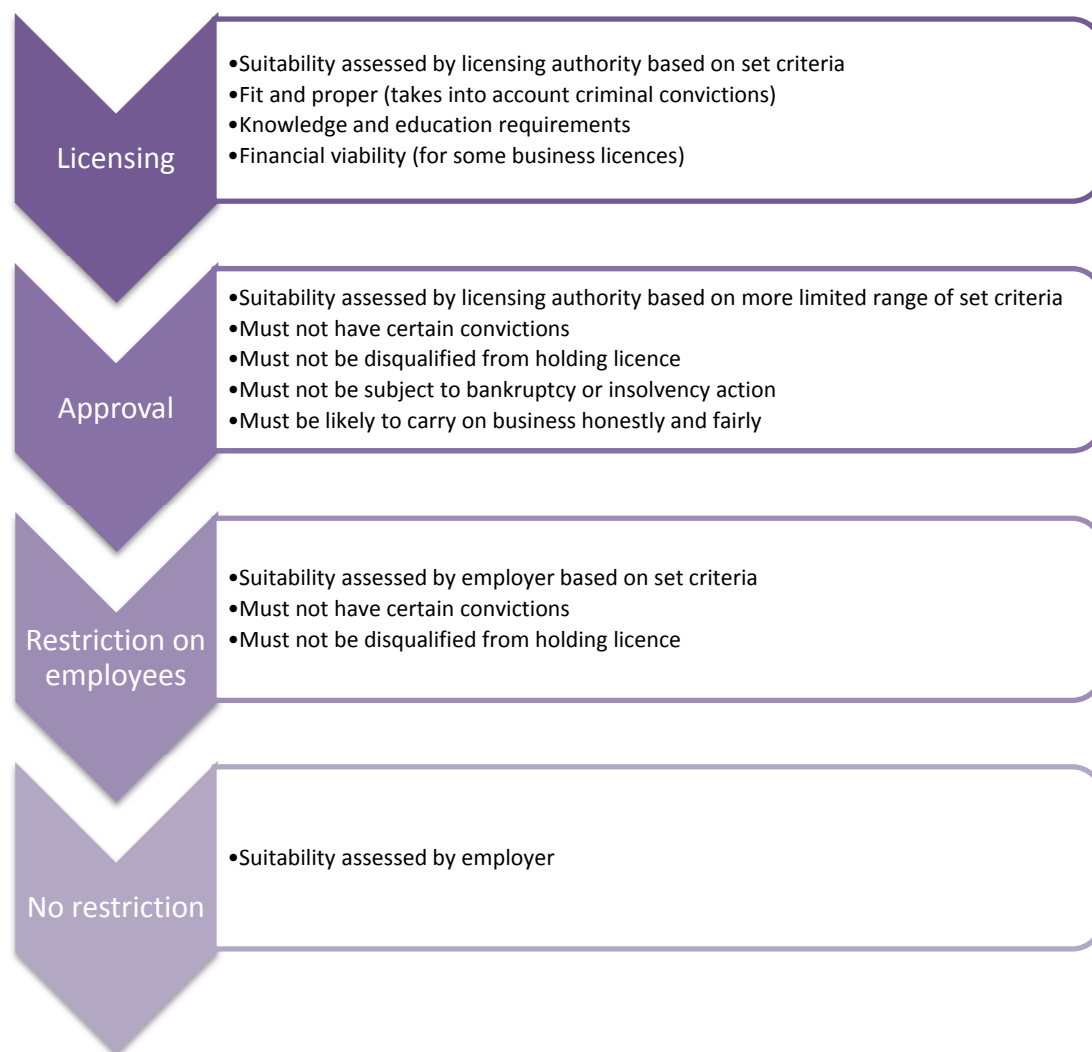
<sup>40</sup> Queensland requires that a salesperson hold a registration certificate.

<sup>41</sup> See Part 3.3 for further detail.

Car market operators are licensed or registered in Western Australia, New South Wales and the Australian Capital Territory.

### Levels of regulation

The following diagram shows the varying levels of regulation in place in the motor vehicle dealing industry across Australia (from the highest level of regulation to the lowest).



The following table summarises the level of regulation of the motor dealing industry across Australia.

	WA	Vic	SA	Tas	Qld	NT	NSW	ACT
<b>Dealer</b>	L	L	L	L	L	L	L	L
<b>Salesperson</b>	L	E	E	E	R	-	-	-
<b>Yard manager</b>	L	E	E	E	-	A	-	-
<b>Car market operator</b>	R	-	-	-	-	-	L	L

L = licensed; R = registered; A = approval required; E = specific restrictions on who may be employed

### *Discussion - Licensing of motor vehicle dealers*

The MVDA provides that different categories of licence may be prescribed for the various types of business undertaken by motor vehicle dealers<sup>42</sup>. The following categories of licence are currently prescribed:

- Category A – buying, selling and auctioning vehicles other than motor cycles, caravans or campervans;
- Category B – buying, selling and auctioning motor cycles;
- Category C – buying, selling and auctioning caravans and campervans;
- Category D – buying any vehicles for the purpose of dismantling them and selling off the parts;
- Category E – acting as an agent to facilitate the selling or purchase of any vehicles on behalf of members of the public; and
- Category F – hiring out vehicles, buying vehicles for hiring out, and selling any vehicles that have been hired out by the dealer<sup>43</sup>.

A dealer may obtain a licence for any combination of the above categories.

It has been suggested that a category of licence for wholesalers should be introduced, for those persons who only deal within the trade.

#### ***Issues for consideration***

*Issue 4.2(a) Are any changes required to the licence categories for motor vehicle dealers? If yes, what changes should be made?*

Conditions or restrictions may be attached to a licence<sup>44</sup>. Standard conditions are imposed in relation to some of the licence categories.

For example, the standard conditions imposed on a category E licence (dealer agent) include requirements that a dealer agent must not hold money on behalf of members of the public who are purchasing a vehicle and must not sign a contract on behalf of either party to the contract.

It has been suggested that a person who is acting as an agent for a purchaser should be able to sign a contract on their behalf and hold funds in order to pay a deposit following successful negotiation with a seller.

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<sup>42</sup> MVDA – section 5A.

<sup>43</sup> *Motor Vehicle Dealers (Licensing) Regulations 1974* – Regulation 8 and Fourth Schedule.

<sup>44</sup> MVDA – section 18A.

Any change of this nature would increase risks to consumers. It might therefore be necessary to introduce different mechanisms for protecting the interests of a purchaser, such as trust account requirements.

***Issues for consideration***

*Issue 4.2(b) Would it be appropriate to have a class of licence which permits a person to enter into a contract for the purchase of a motor vehicle on behalf of a purchaser?*

*Issue 4.2(c) If yes, what safeguards should be put in place to protect the interests of sellers and purchasers who deal with these intermediaries?*

***Discussion – Licensing of financiers as motor vehicle dealers***

A ‘financier’ is defined in the MVDA as a person whose ordinary business is not that of buying or selling vehicles, but who carries on or acts in that business only for one or more of the following purposes:

- hiring, under a hire purchase agreement, of the vehicle bought or sold;
- effectuating a security over a vehicle bought or sold;
- hiring, where the right to purchase the vehicle is not included in that hiring, of the vehicle bought or sold; or
- disposing of vehicles acquired by him in connection with the above purposes<sup>45</sup>.

Currently the definition of ‘dealer’ under the MVDA includes a financier<sup>46</sup>. A financier is therefore required to hold a dealer’s licence. The MVDA also makes provision for a financier to be granted an exemption from the licensing requirements if the financier satisfies the Commissioner that he/she ordinarily disposes of vehicles which he has repossessed directly to licensed dealers<sup>47</sup>.

Currently the majority of financiers obtain an exemption from the licensing requirements under the MVDA. It has been suggested that instead of having to be licensed, financiers should be removed from the definition of dealer under the Act on the basis that financiers be required to dispose of all repossessed vehicles to or through a licensed motor vehicle dealer. If a financier did not wish to dispose of vehicles in this manner, but wanted to sell vehicles on their own behalf, then they would be required to be licensed as a dealer.

In other jurisdictions in Australia, financiers are generally not required to hold a dealer’s licence.

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<sup>45</sup> MVDA – section 5.

<sup>46</sup> MVDA – section 5.

<sup>47</sup> MVDA – section 31.

### ***Issues for consideration***

*Issue 4.2(d) Should the requirement for a financier to hold a motor vehicle dealer's licence be removed? Why?*

*Issue 4.2(e) If licensing of financiers is removed should any other regulatory measures be put in place? What should they be?*

### ***Discussion – Licensing of yard managers and salespersons***

Under the MVDA a dealer is ultimately responsible for actions of its employees<sup>48</sup>, irrespective of whether the employee is licensed as a salesperson or yard manager. The Act provides that where any person employed by a dealer commits an offence, proceedings can also be taken against the dealer in relation to that offence and the dealer may be convicted (unless the dealer proves that he or she had no knowledge of the offence and could not, by the exercise of due diligence, have prevented the commission of the offence)<sup>49</sup>. Proceedings are often commenced against the dealer in relation to offences under the Act, rather than an employee. It is therefore arguable that, given that the dealer is ultimately accountable for the actions of his or her employees, it may not be necessary to licence those employees.

Consideration could be given to introducing a regime similar to that in place in Victoria, South Australia and Tasmania where a dealer is prohibited from employing persons in a customer service capacity if those persons would be unsuitable (based on factors such as criminal record and disqualification from holding an occupational licence).

Under such a regime, protections for consumers would be maintained by preventing unsuitable persons from operating in the industry, while reducing the regulatory burden on industry. Removal of the requirement for salespersons and yard managers to hold a licence would also make it easier for employers to engage staff in a market where it is sometimes difficult to find qualified persons. In addition, waiting periods to apply for and obtain a licence will be removed, thus alleviating any problems arising because an employee cannot undertake certain activities until licensed. For example, currently an employee is not permitted to take a customer for a test drive unless the employee holds a licence under the MVDA.

The onus of checking the suitability of employees would shift from the licensing authority to employers. In Victoria, this is addressed by requiring an employee to provide his or her employer with a police check and a declaration in the prescribed form<sup>50</sup>.

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<sup>48</sup> MVDA - sections 42 and 54.

<sup>49</sup> MVDA - section 54.

<sup>50</sup> The declaration sets out whether the person has had a claim admitted against the compensation fund, whether the person has certain convictions and whether they have been disqualified from holding a licence or being employed in the motor car trading business. See *Motor Car Traders Act 1986* (Vic) – section 35A.

This approach is consistent with the recommendation of the Red Tape Reduction Group (RTRG) that the licensing categories for individuals as motor vehicle sales persons and yard managers should be abolished<sup>51</sup>.

In its report, the RTRG suggests that an alternative method for banning individuals who breach the rules may need to be adopted, possibly through negative licensing arrangements<sup>52</sup>.

A possible disadvantage of a negative licensing regime is that it does not impose any requirements with regards to knowledge or qualifications. Currently, the MVDA requires that an applicant for a yard manager or salespersons licence must satisfy the Commissioner that he or she fully understands certain duties and obligations imposed by the Act. An applicant for a licence meets this requirement by completing the relevant training course. If licensing requirements were removed, the onus would shift to dealers to ensure that employees have a sufficient understanding of the requirements of the Act. Given that a dealer is ultimately responsible for the actions of its employees, it is arguable that they would be doing this in any event. An option to address this issue could be to require that dealers ensure that all salespersons are appropriately trained.

Another option would be to remove all legislative requirements in relation to salespersons and yard managers and simply rely on dealers to assess the suitability of employees. The provisions in the Act which make the dealer responsible for all actions of employees would still apply.

A disadvantage in removing the licensing requirements for yard managers and salespersons is that funding for the advisory, conciliation and compliance functions performed under the MVDA would be reduced, as these functions are partly funded by licensing fees. Consideration may need to be given to restructuring the licensing fee arrangements for dealers if licensing fees are not recovered from yard managers and salespersons.

It should be noted that the functions of yard managers and salespersons are different, with a yard manager assuming responsibility for managing a dealership and ensuring compliance with the Act. Salespersons generally do not sign off on contracts or make trade-in decisions and therefore have a lesser level of responsibility. It may therefore be appropriate to implement different levels of regulation in relation to each of the occupations.

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<sup>51</sup> *Reducing the Burden - Report of the Red Tape Reduction Group*, Government of Western Australia 2009, page 92, Recommendation 9.2.

<sup>52</sup> *Ibid*, page 92.



***Issues for consideration***

*Issue 4.2(f) Should licensing of salespersons be retained? Why?*

*Issue 4.2(g) If no, should other restrictions be imposed in relation to salespersons in place of licensing?*

*Issue 4.2(h) Should licensing of yard managers be retained? Why?*

*Issue 4.2(i) If no, should other restrictions be imposed in relation to yard managers in place of licensing?*

*Issue 4.2(j) If licensing is removed how could industry ensure that salespersons and yard managers understand the requirements of the Act? How could training standards be maintained in the industry?*

*Issue 4.2(k) What would be the potential benefits in changing the requirements in relation to licensing of yard managers and salespersons? What would be the potential costs or risks?*

***Discussion – Licensing or approval of person in control of business***

If the licensing of yard managers and salespersons were repealed, there might be some concern as to how a licensed dealer would effectively supervise employees and ensure that the MVDA is complied with, particularly in relation to large corporate dealerships with a number of premises.

An option to address this issue could be to require an individual who is responsible for running the dealership to be separately licensed (in addition to licensing the actual business entity) similar to the requirements under the *Real Estate and Business Agents Act 1978*. Under that Act, the person in bona fide control of the business must be separately licensed, with the legislation specifying particular responsibilities relating to supervision of employees for the person in bona fide control as distinct from the licensed entity.

This is similar to the role currently undertaken by yard managers; however, the MVDA does not include a specific requirement stating that a yard manager must be employed in relation to each of a dealer's premises.

A similar, but less onerous, model is in place in the Northern Territory where the legislation requires that a licensed dealer shall not carry on business at a place unless there is present and in charge of the day to day conduct at that place either the licensed dealer (if the dealer is an individual) or a person approved by the Commissioner as the dealer's manager<sup>53</sup>. A person must meet certain standards in order to be approved as a dealer's manager, including that they cannot be disqualified from holding a licence, cannot be the subject of bankruptcy or insolvency action, cannot have been convicted of certain offences and must be likely to carry on business as a manager honestly and fairly<sup>54</sup>.

***Issues for consideration***

*Issue 4.2(l) Should the person in control of a dealership be required to be licensed or approved? If so, what should the criteria for approval or licensing be?*

***Discussion – Registration of car market operators***

A car market operator effectively operates a 'venue', where second hand vehicles owned by persons, other than the car market operator, are displayed for sale.

It has been suggested that registration of car market operators is not justified, as the public benefits do not outweigh the regulatory burden imposed by the registration requirements.

Vehicles sold at a car market are considered as being sold by private sale between the owner of the vehicle and the purchaser. This means that the obligation to repair<sup>55</sup> and other consumer rights generally will not apply. However, a car market operator must ensure that sellers display a notice advising as to whether or not title is guaranteed and advising that the statutory obligation to repair defects does not apply to the vehicle<sup>56</sup>. If the notice is not displayed, a car market operator may be liable for losses incurred by virtue of the fact that the vendor has not passed an unencumbered title to the vehicle<sup>57</sup>. Car market operators must also keep a record of vehicles offered for sale at the operator's premises and details of the sale of any vehicles<sup>58</sup>.

A person who is licensed under the MVDA (as a dealer, yard manager or salesperson) cannot be registered as a car market operator<sup>59</sup>.

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<sup>53</sup> *Consumer Affairs and Fair Trading Act (NT)* – section 176.

<sup>54</sup> *Consumer Affairs and Fair Trading (Motor Vehicle Dealers) Regulations (NT)* – Regulation 13.

<sup>55</sup> MVDA - section 34.

<sup>56</sup> MVDA - section 40B.

<sup>57</sup> MVDA - section 40A

<sup>58</sup> MVDA – section 25(2a).

<sup>59</sup> MVDA - section 17D.

Currently there is one car market operator registered in Western Australia. The RTRG has recommended that the registration category for car market operators should be abolished<sup>60</sup>.

Removal of the requirement for car market operators to be registered would reduce the regulatory burden. The risk to consumers in removing registration requirements is likely to be small. The level of risk to consumers in purchasing at a car market is no different to that in relation to sales occurring through forums such as “Gumtree” or “carsales.com.au”. However, the record keeping requirements imposed on car market operators would also be lost, possibly reducing the effectiveness of the legislation in relation to its crime prevention objectives. This record keeping requirement is also important in the event that the car markets are an outlet for unlicensed dealing.

#### ***Issues for consideration***

*Issue 4.2(m) Should registration of car market operators be retained? Why?*

*Issue 4.2(n) If no, should other restrictions be imposed in place of registration?*

### **4.3. General criteria for licensing**

#### ***Background***

In order to be granted a licence as a dealer, yard manager or salesperson a person must satisfy the Commissioner that they are 18 years of age, of good character and repute and a fit and proper person to hold a licence and that they have an appropriate level of knowledge about the requirements of the MVDA. These knowledge requirements are higher for dealers and yard managers than for salespersons.

In order to satisfy the knowledge requirements, an applicant must complete a training course with a registered training provider that is recognised by the Commissioner.

Applicants for a dealer’s licence must also show that they have sufficient material and financial resources to comply with the requirements of the MVDA.

A dealer’s licence may also be granted to a firm or body corporate.

An applicant for a salesperson or yard manager licence must show that they are employed by a licensed dealer or that a licensed dealer is prepared to employ him or her.

Applicants for registration as a car market operator must be at least 18 years of age and provide proof of their identity. The Commissioner may refuse to register an applicant as a car market operator if the Commissioner is satisfied that the applicant has done or omitted to do any thing or engaged in conduct that renders the applicant unfit to be registered.

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<sup>60</sup> *Reducing the Burden - Report of the Red Tape Reduction Group*, Government of Western Australia 2009, page 92, Recommendation 9.2.

The licensing criteria are fairly consistent with those in place in other jurisdictions.

*Discussion – fit and proper and of good character and repute*

An applicant for a licence as a motor vehicle dealer, yard manager or salesperson must satisfy the Commissioner that he or she is a person of good character and repute and a fit and proper person to hold a licence. This requirement has been the subject of recent determinations of the State Administrative Tribunal<sup>61</sup>.

It has been suggested that the legislation could be clarified by specifying the types of matters that can be taken into account in determining whether a person is fit and proper and of good character and repute.

For example, in the Northern Territory and New South Wales, in determining whether a person is fit and proper, the Commissioner may have regard to whether the person has:

- during the last 10 years been found guilty of an offence involving fraud or dishonesty;
- been charged with such an offence at the time of the application; or
- at any time been found guilty of an offence against the Act or any other consumer protection Act<sup>62</sup>.

Legislation in the Australian Capital Territory sets out a test for determining whether a person is suitable to hold a licence. Matters to be taken into account include convictions for certain offences and the circumstances surrounding committing of those offences<sup>63</sup>. Criteria are also set out in the Queensland Act<sup>64</sup> and Tasmanian Act<sup>65</sup>.

In addition to the guidelines for determining whether a person is fit and proper, the New South Wales Act also provides that a licence must be refused if in the last 10 years the applicant has been found guilty of an offence relating to stealing of a motor vehicle or receiving; or unlawful possession of a motor vehicle or parts<sup>66</sup>.

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<sup>61</sup> *Byfield and Commissioner for Consumer Protection* [2012] WASAT 217; *Murphy and Commissioner for Consumer Protection* [2012] WASAT 74.

<sup>62</sup> *Motor Vehicle Dealers Act 1974* (NSW) – section 12; *Consumer Affairs and Fair Trading Act* (NT) – section 136 – the NT Act also refers to offences involving physical violence.

<sup>63</sup> *Sale of Motor Vehicles Act 1977* (ACT) – section 71.

<sup>64</sup> *Property Agents and Motor Dealers Act 2000* (Qld) – section 28.

<sup>65</sup> *Motor Vehicle Traders Act 2011* (Tas) – section 7.

<sup>66</sup> *Motor Vehicle Dealers Act 1974* (NSW) – section 12(2)(i).

Similarly, legislation in Victoria, Queensland, South Australia and Tasmania provides that a licence cannot be granted to a person who has been convicted of a serious offence or a serious offence involving dishonesty within a certain time period<sup>67</sup>.

A disadvantage in specifying the types of offences to be taken into account in determining whether a person is fit and proper is that it may limit the flexibility currently afforded to the Commissioner in assessing licence applicants.

#### ***Issues for consideration***

*Issue 4.3(a) Should the requirement that a person be fit and proper and of good character and repute be clarified by the inclusion in the MVDA of factors to be taken into account by the licensing authority in assessing an applicant's suitability?*

*Issue 4.3(b) Should any types of offences automatically disqualify a person from being able to obtain a licence? If so, what offences?*

#### ***Discussion – sufficient resources***

Concerns have been raised in relation to the requirement that an applicant for a motor vehicle dealer's licence have 'sufficient resources'. This financial viability is assessed at the time of initial application for a licence and upon renewal.

The MVDA defines 'sufficient resources' as meaning:

*sufficient material and financial resources available to the person or persons to enable the requirements of the Act to be complied with, so far as those requirements are necessary for the category of licence applied for, but only so far as the Commissioner considers that those requirements are relevant to the category of licence applied for*<sup>68</sup>.

A number of other jurisdictions also impose a similar requirement on motor vehicle dealers<sup>69</sup>.

In Queensland, South Australia and Tasmania the legislation does not require that a licensee have sufficient resources, however the licensing authorities will take into account whether an applicant is or has been bankrupt or insolvent in determining whether the applicant is suitable to be granted a licence.

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<sup>67</sup> *Motor Car Traders Act 1986* (Vic) - section 13 – the licensing authority may grant a licence to a person with criminal convictions if satisfied that not contrary to the public interest (section 29B) ; *Property Agents and Motor Dealers Act 2000* (Qld) – sections 26 and 27; *Second Hand Dealers Act 1995* (SA) – section 9; *Motor Vehicle Traders Act 2011* (Tas) – section 7.

<sup>68</sup> MVDA - section 15(6).

<sup>69</sup> NSW, ACT, Vic and NT.

A number of difficulties arise in assessing the financial standing of a licence applicant. The process is complex and resource intensive, both for applicants, licensees and the licensing authority.

Since assuming the function of licensing authority, the Commissioner has undertaken a review of the financial assessment requirements imposed on applicants. The previous requirement to provide detailed financial reports has been replaced by a simple statement of net assets and liabilities. A summary of the financial information required at present is at **Appendix B**.

In many instances, businesses are structured to gain maximum tax benefit, which complicates an assessment of the financial position of that business for licensing purposes. It is also understood that new businesses generally require a 'start-up' loan that is not off-set by a strong asset or profit position. In some instances, a legitimate business's level of past lending may mean a negative net asset position.

In addition, assessment of the financial viability at a particular point in time does not necessarily give an indication of the future prospects of the licensee.

The primary purpose in assessing financial viability is to ensure that a motor vehicle dealer can meet its compliance and financial obligations under the MVDA including:

- payment of licensing fees;
- warranty repair obligations<sup>70</sup>;
- ensuring vehicles for sale are roadworthy<sup>71</sup>;
- costs of maintaining premises<sup>72</sup>;
- audit obligations in relation to consignment trust accounts (if applicable)<sup>73</sup>; and
- ensuring that an appropriate compliance framework is in place.

Potential areas of financial risk for a consumer in a transaction with a dealer include: failure to meet the obligation to repair; failure to return a consignment vehicle or pay funds received for a sale on consignment; and failure to return a deposit for a vehicle.

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<sup>70</sup> MVDA – section 34.

<sup>71</sup> MVDA – sections 28 and 29.

<sup>72</sup> MVDA - section 20E.

<sup>73</sup> MVDA – section 32I.

It has been suggested that these obligations could be protected through the use of other mechanisms, such as:

- dealer warranty insurance – which covers the costs of undertaking repairs if a dealer becomes insolvent and is unable to meet its obligations; or
- establishment of a compensation fund – to provide compensation to consumers for various losses incurred as a result of their dealings with a motor vehicle dealer.

Dealer warranty insurance has some limitations with regards to its effectiveness in protecting consumers, as it covers only losses relating to the obligation to repair (or statutory warranty) and is subject to any restrictions imposed by the insurer. Currently dealer warranty insurance is taken out by dealers on a voluntary basis.

A compensation fund would provide broader protection for consumers, but would involve fairly significant administrative costs. The benefits and disadvantages of establishment of a compensation fund are discussed in greater detail in Part 4.4.

It should be noted that there might be a greater risk of claims against a compensation fund if there is no assessment as to the financial viability of licensees.

Some objective criteria in relation to an applicant's financial standing could also be applied, such as whether a person has been bankrupt or the subject of insolvency proceedings and whether a person has been a director of a body corporate that has been wound-up.

***Issues for consideration***

*Issue 4.3(c) Are the current licensing criteria relating to whether an applicant has sufficient financial resources appropriate? Should the requirement that an applicant have sufficient financial resources be retained?*

*Issue 4.3(d) If the sufficient resources requirement is retained, what factors should the licensing authority take into account in determining whether a person meets this requirement?*

*Issue 4.3(e) If the sufficient resources requirement is not retained, should any other mechanisms be put in place to protect consumers from financial loss? If so, what?*

#### 4.4. Compensation fund

##### *Background*

The MVDA does not provide for a compensation fund for losses incurred by consumers as a result of the actions of motor vehicle dealers. A compensation fund is in place under the MVRA in Western Australia to provide for compensation up to \$6,000 for losses incurred by consumers where a repairer carries out work incompetently or fails to complete work due to insolvency<sup>74</sup>. The fund is credited with a prescribed percentage of licensing and certification fees (currently 1%)<sup>75</sup>.

It should be noted that, to date, no claims have been made against the MVRA compensation fund, this is likely due to the fact that the fund is relatively new and claims may only be made in the event that a consumer has exhausted all other avenues for recovery (such as conciliation, insurance claim or legal action).

A number of other jurisdictions<sup>76</sup> do have compensation funds established under their motor vehicle dealers' legislation. Each Act specifies the matters for which claims may be made against the fund, these include claims for losses incurred due to the failure of a dealer to:

- comply with the Act;
- pass unencumbered title;
- return a deposit or part payment;
- deliver a vehicle;
- deal properly with trust monies; or
- pay the purchase price to a person who sold a vehicle to a dealer.

Claimants generally must seek to recover their losses through other means of legal redress before making a claim against the fund. The funds are generally credited with funds received from licensees (either as a proportion of licensing fees or a separate payment) and in some instances with monies received as penalties or fines under the relevant Act.

By way of example, the current contributions for dealers for compensation funds in some other jurisdictions are as follows:

- New South Wales - \$854 on the grant of a licence and \$125 on renewal (per place of business);
- Australian Capital Territory - \$464 (per place of business); and

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<sup>74</sup> MVRA – Part 9.

<sup>75</sup> MVRA – section 90.

<sup>76</sup> NSW, ACT, Vic, Qld, SA.



- South Australia – motor cycle dealers \$100 (per place of business) and all other dealers \$350 (per place of business).

### *Discussion - general*

A review of the MVDA<sup>77</sup> carried out in the late 1990's considered that a compensation fund should not be established as the likely impost on business and cost to government was difficult to justify for a number of reasons, including:

- the relatively small size of the industry – requiring substantial fees to be paid by dealers to establish a viable fund;
- the ongoing administrative costs and prospect of having to raise funds from different sources to maintain the fund;
- the effectiveness of the (former) Board in monitoring the industry and the warranty insurance scheme; and
- the relatively low market failures by dealers.

To offset some of the risk on consumers in the event of a dealer's insolvency, a warranty insurance scheme is available. Currently it is not compulsory for licensees to hold dealer warranty insurance.

Not all financial risks to consumers are covered by dealer warranty insurance, which focuses on statutory warranties (the obligation to repair a vehicle). A compensation fund would provide protection for consumers in relation to those losses not covered by dealer warranty insurance.

The creation of a compensation fund would provide direct benefits to consumers by providing compensation to those who have suffered loss as a result of the actions of a dealer. However, there are fairly significant costs to both government and industry in establishing and maintaining such a fund. If changes to financial assessment criteria are made, including removal of this requirement, there may be a stronger argument for the introduction of a compensation fund as there may be a higher risk of financial loss for consumers.

### *Discussion – example of compensation fund*

The following information about South Australia's Motor Car Trader Guarantee Fund (South Australia's Guarantee Fund) is provided as an example of the costs and claims associated with compensation schemes which has been in place for some time<sup>78</sup>.

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<sup>77</sup> The Motor Sales Industry Reference group was established in 1996 to conduct a general review of the MVDA. The Reference Group reported in April 1998.

<sup>78</sup> Note: As at 30 June 2012, there were 1,209 licensed second-hand vehicle dealers operating in South Australia. By way of comparison, there are 810 licensed motor vehicle dealers currently operating in WA.

South Australia's Guarantee Fund is regulated by the *Second-hand Vehicle Dealers Act 1995* (SA) to provide compensation for consumers who have an unsatisfied claim against a second-hand motor vehicle dealer in relation to purchase, sale or consignment of a second-hand vehicle. South Australia's Guarantee Fund is administered by the Commissioner for Consumer Affairs.

Claims are heard by the Magistrate's Court and an order of claim is only made if there is no reasonable prospect of recovering the amount of the claim other than from the Fund<sup>79</sup>.

The main source of income is from contributions received from second-hand vehicle dealers.

In 2011-12 the South Australian Guarantee Fund's:

- income totalled \$556,000 including \$311,000 from fees paid by dealers and \$237,000 derived from interest; and
- expenditure totalled around \$180,000 including claims of around \$42,000 and operating costs of \$132,000.

In 2011-12, two second-hand dealers had claims allowed against them totalling \$42,000. By contrast, in 2010-2011 one second-hand dealer had claims allowed totalling \$117,000.

#### *Discussion- NSW largest category of claim*

A recent review conducted by Fair Trading, New South Wales noted that consignment sales represented the largest category of claims on the NSW Motor Vehicle Dealers Contingency Fund<sup>80</sup>.

#### ***Issues for consideration***

*Issue 4.4(a) Is there a need to establish a compensation fund under the MVDA?*

*Issue 4.4(b) What types of claims should a compensation fund cover?*

*Issue 4.4(c) How should a compensation fund be funded?*

*Issue 4.4(d) Are there other ways that the interests of consumers can be protected?*

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<sup>79</sup> Consumer and Business Services (South Australia) 2011-12 Annual Report, Appendix 14.

<sup>80</sup> *Issues Paper – NSW Fair Trading regulation of motor vehicles*, NSW Government, April 2012, Page 16.

#### 4.5. The Australian Consumer Law and the statutory obligation to repair (used car warranty)

##### *Background*

Section 34 of the MVDA requires a motor vehicle dealer to repair or make good, or cause to be repaired or made good, defects in certain second hand vehicles so as to make the vehicle roadworthy and place the vehicle in a reasonable condition having regard to its age. This obligation to repair is often referred to as a 'statutory warranty' or the 'used car warranty'.

The used car warranty applies to second hand motor vehicles with a purchase price of \$4,000 or more and motorcycles with a purchase price of \$3,500 as follows:

Age of car	Kilometres travelled at time of sale	Warranty entitlement
Not more than 10 years	Not more than 150,000	Earlier of 3 months or 5,000km
10 to 12 years	150,000 to 180,000	Earlier of 1 month or 1,500km
More than 12 years	More than 180,000	None

Age of motor cycle	Kilometres travelled at time of sale	Warranty entitlement
Not more than 8 years	Not more than 80,000	Earlier of 3 months or 5,000km
More than 12 years	More than 80,000	None

The warranty does not apply to the following vehicles:

- vehicles constructed primarily to carry goods or materials and having only one row of seats (for example, utes and trucks);
- caravans;
- single rider motor cycles designed for off road use;
- multi-wheeled motor cycles (3 or 4 wheelers); and
- buses (vehicles built to carry more than 9 people)<sup>81</sup>.

The warranty does not apply in relation to a defect:

- arising from any accidental damage occurring after sale;
- arising from misuse or negligence on the part of the driver occurring after sale; and
- occurring in the tyres, battery, radio, tape player or air-conditioning<sup>82</sup>.

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<sup>81</sup> Motor Vehicle Dealers Exclusion Order 2002.

<sup>82</sup> MVDA - section 34B and Motor Vehicle Dealers (Sales) Regulations 1974 – regulation 13 and schedule 3.

The dealer may also exclude certain defects from the obligation to repair by providing a notice in the prescribed form to the purchaser prior to sale that describes the defect or defects and gives an estimate of the repair cost<sup>83</sup>.

The Commissioner may intervene in a dispute between a dealer and a purchaser in relation to the application of the used car warranty provisions and make certain orders in relation to the repair of relevant defects<sup>84</sup>. The parties may also apply to the Magistrates Court for determination of a used car warranty dispute<sup>85</sup>.

In addition to the repair obligations imposed by the MVDA, motor vehicle dealers will also be subject to the requirements of the ACL (see Part 3.5 for a brief overview). In particular, the consumer guarantees operate to protect the interests of purchasers of motor vehicles. **Appendix A** sets out a list of the consumer guarantees under the ACL. Consumers can enforce their rights in relation to the consumer guarantees through the courts.

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<sup>83</sup> MVDA – section 35.

<sup>84</sup> MVDA – sections 36 – 37A.

<sup>85</sup> MVDA – section 38.

The following table sets out a comparison of the warranty provisions under the MVDA and the consumer guarantees under the ACL.

		MVDA	ACL	
<b>Standard to be met</b>		Roadworthy and in reasonable condition having regard to its age.	Of acceptable quality (taking into account nature and price) and reasonably fit for purpose.	
<b>Vehicles covered</b>	New vehicles	x	✓	
	Second hand vehicles	Less than \$4,000 (\$3,500 for motorcycles)	x	✓
		\$4,000 - \$40,000	✓	✓
		More than \$40,000	✓	Applies if: <ul style="list-style-type: none"> <li>ordinarily acquired for personal domestic or household use; or</li> <li>for use principally in transportation of goods on public road</li> </ul>
	Applies regardless of age and distance travelled		x	✓
	Commercial vehicles		Does not apply to vehicles constructed primarily to carry goods or materials and having only one row of seats	Applies if: <ul style="list-style-type: none"> <li>less than \$40,000; or</li> <li>ordinarily acquired for personal domestic or household use; or</li> <li>for use principally in transportation of goods on public road</li> </ul>
	Caravans		x	
	Single rider off road motor cycles		x	
Multi-wheeled motor cycles		x		
Buses		x		
Sale by auction		Applies if vehicle owned by a dealer	Does not apply if auctioneer acts as agent for owner.	
<b>What is covered</b>	Tyres, battery, radio, tape-player, air-conditioning	x	✓	
	Defects can be excluded by dealer	✓	✓	
<b>Duration</b>	Beyond 5,000 km	x	If reasonable in the circumstances.	
	Beyond 3 months	x		
<b>Remedies</b>	Repair	✓	✓	
	Refund	x	For major failure	
	Compensation for difference in value	x	For major failure	
	Compensation for consequential loss	x	✓	

## *Discussion*

The used car warranty provisions were included in the MVDA when it was enacted in 1973; this was prior to the introduction of general consumer protection legislation in Western Australia and nationally. The regulatory environment has changed quite significantly since that time, with greater general protections for consumers included in the ACL and its predecessors, the *Trade Practices Act 1974* (Cth) and the *Fair Trading Act 1987* (WA).

There may be an argument for removing the used car warranty provisions in the MVDA, given that the ACL provides for fairly comprehensive consumer guarantees in relation to consumer goods (including motor vehicles).

An advantage of the MVDA warranty is that it specifies a clear standard to be met in relation to the obligation to repair certain used vehicles. In many instances, a roadworthiness test can determine whether the obligation applies. Consumer Protection has also published guidelines for dealers in relation to the application of the warranty obligations<sup>86</sup>. The MVDA also allows for intervention by the Commissioner in warranty disputes. However, the warranty obligation is limited to certain vehicles based on their purchase price, age and number of kilometres travelled. The obligation also applies only for a limited duration.

The consumer guarantees under the ACL apply more broadly and do not set specified timeframes or distances after which the obligations no longer apply. The ACL therefore provides consumers with additional protections in circumstances where the used car warranty under the MVDA is not applicable. The ACL also specifies a broader range of remedies.

The ACL requirement that a motor vehicle be of 'acceptable quality' means that the vehicle must be what a reasonable consumer would view as:

- fit for all the purposes for which vehicles of that type are commonly supplied;
- acceptable in appearance and finish;
- free from defects;
- safe; and
- durable.

In determining what a reasonable consumer would regard as acceptable, consideration is given to the nature of the vehicle, its price and any statements or representations made by the dealer. The determination of whether a defect in a vehicle breaches the guarantee of acceptable quality will to a large part depend on the circumstances of the purchase; this may be regarded as less certain than the requirements specified under the MVDA.

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<sup>86</sup> *Do I have to fix it? A guide to used car warranty for dealers* – March 2013.

It is possible for the MVDA and ACL to continue to operate concurrently, as has been the case to date and in relation to the former consumer protection legislation, the *Trade Practices Act 1974* (Cth) and the *Fair Trading Act 1987* (WA). Currently a purchaser can choose whether to pursue the remedies available under the ACL or the MVDA. However, there is potential for inconsistency in relation to the remedies available under the Acts for a major failure in relation to a vehicle. Under the ACL in some circumstances, a consumer may reject the vehicle and seek a refund, whereas the MVDA only provides for repair of the vehicle.

One option could be to retain the protections in both Acts and clarify their interaction. For example, in the Northern Territory, the legislation provides that the imposition of the liability to repair does not derogate from the application of the consumer guarantees as to acceptable quality and fitness for purpose in relation to the sale of a motor vehicle by a dealer<sup>87</sup>.

***Issues for consideration***

*Issue 4.5(a) Is it necessary to continue to have specific statutory warranties under the MVDA?*

*Issue 4.5(b) Does the ACL adequately cover all types of vehicles and all conditions currently imposed by the statutory warranty provisions under the MVDA?*

*Issue 4.5(c) Do consumer guarantees under the ACL provide consumers with appropriate avenues for remedies (taking into account the major/minor defect distinction)?*

*Issue 4.5(d) Would removal of statutory warranty provisions in the MVDA reduce any consumer protections?*

*Issue 4.5(e) What information needs to be provided to assist dealers and consumers in understanding the application of the ACL in relation to the sale of motor vehicles?*

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<sup>87</sup> *Consumer Affairs and Fair Trading Act* (NT) – section 168(6)(b).

## 4.6. Disclosure requirements

### *Background*

The MVDA requires that a dealer attach a notice to a second hand vehicle that is offered for display or sale. The notice must be in the prescribed form and contain the following particulars<sup>88</sup>:

- details of the dealer;
- odometer reading;
- cash price of the vehicle;
- year of first registration and year of manufacture of the vehicle;
- licence plate number (or if not licensed the word “unlicensed”); and
- such other particulars as are prescribed, currently these include:
  - the make and model of the vehicle;
  - engine number and VIN or chassis number; and
  - whether the obligation to repair defects under section 34 of the MVDA applies to the vehicle.

If the vehicle is sold, two copies of the notice must be made out and signed by the dealer<sup>89</sup> and the purchaser, with one copy to be provided to the purchaser and one copy to be retained by the dealer<sup>90</sup>.

Similar obligations to display vehicle particulars apply in most other jurisdictions.

### *Discussion*

The obligation to provide details of vehicle particulars, so that they are readily available at the time of purchase, is an important consumer protection measure. The disclosure requirements are being examined as part of this review to ensure that they are adequate and provide information that is relevant to consumers.

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<sup>88</sup> MVDA - section 33.

<sup>89</sup> Or salesperson or yard manager.

<sup>90</sup> MVDA – section 33(7).



Additional information is included in the disclosure requirements in other jurisdictions, for example:

- a statement as to whether the vehicle has been listed on a relevant register as being written off<sup>91</sup>;
- whether the vehicle has been used as a taxi, rental car or hire car<sup>92</sup>;
- whether the odometer has been altered or replaced<sup>93</sup>; and
- whether the vehicle's engine has been replaced and the date of replacement<sup>94</sup>.

It has also been suggested that other material facts, such as whether a vehicle has suffered hail or flood damage, might also be relevant to consumers in making a decision to purchase a vehicle<sup>95</sup>.

***Issues for consideration***

*Issue 4.6(a) Are current disclosure requirements in the prescribed forms sufficient for consumers to make an informed decision to purchase a vehicle?*

*Issue 4.6(b) Should other disclosures be included in the forms? If so, which ones?*

#### **4.7. Cooling off periods**

***Background***

The MVDA does not provide for a cooling off period for contracts for the sale of motor vehicles. Legislation in other jurisdictions provide for a cooling off period, which allows the purchaser to rescind a contract for the purchase of a motor vehicle within a specified period of time.

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<sup>91</sup> NSW and Vic.

<sup>92</sup> SA.

<sup>93</sup> ACT and Qld.

<sup>94</sup> Qld.

<sup>95</sup> *Issues Paper – NSW Fair Trading regulation of motor vehicles*, NSW Government, April 2012 - page 30.

In New South Wales, the cooling off period applies only to contracts with linked finance and extends to 5pm on the following business day<sup>96</sup>. In Victoria and the Australian Capital Territory, a purchaser may terminate an agreement for sale at any time before the end of three clear business days<sup>97</sup>. In Queensland, the cooling off period extends until close of business on the following day<sup>98</sup> and in South Australia it concludes at the end of the second clear business day after the day on which the contract is made<sup>99</sup>.

In some instances, the cooling off period does not apply to a purchase by a corporation<sup>100</sup>, sales by auction<sup>101</sup>, sales by consignment<sup>102</sup> or sales to another dealer<sup>103</sup>.

In some jurisdictions, the cooling off period may be waived by the purchaser<sup>104</sup> or ends if the purchaser takes physical possession of the vehicle<sup>105</sup>. In all cases, the purchaser must pay a specified amount to the dealer on termination of the contract. For example, \$100 or 1% of the purchase price, whichever is the greater<sup>106</sup>.

### *Discussion*

A cooling off period is a safeguard which gives a consumer the opportunity to change their mind in relation to a contract for purchase. Like any other purchase, a contract to purchase a motor vehicle may be made impulsively and without consideration of all relevant factors. High pressure sales techniques might also result in consumers entering into contracts that they later regret. This could have a significant negative impact on consumers given the high costs involved in purchasing a motor vehicle and the fact that a large proportion of purchasers obtain finance in order to purchase a vehicle.

A cooling off period addresses the information asymmetry that exists in the market to some degree, by providing buyers with the opportunity to properly consider the terms and conditions of the contract for sale. The cooling off period also gives consumers an opportunity to determine whether they will in fact be in a position to discharge their financial obligations in relation to the purchase of the vehicle.

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<sup>96</sup> *Motor Dealers Act 1974* (NSW) – section 29CA.

<sup>97</sup> *Sale of Motor Vehicles Act 1977* (ACT) – section 25B; *Motor Car Traders Act 1986* (Vic) – section 43.

<sup>98</sup> *Property Agents and Motor Dealers Act 2000* (Qld) – section 297.

<sup>99</sup> *Second-hand Vehicle Dealers Act 1995* (SA) – section 3.

<sup>100</sup> ACT, Vic, Qld, SA.

<sup>101</sup> ACT, Qld.

<sup>102</sup> Qld.

<sup>103</sup> ACT, Vic.

<sup>104</sup> ACT, Vic.

<sup>105</sup> SA.

<sup>106</sup> *Sale of Motor Vehicles Act 1977* (ACT) – section 25B.

Imposition of a cooling off period imposes an additional administrative burden on dealers and in some instances might result in the loss of a potential sale. Financial losses to dealers are addressed to some degree by the requirement for purchasers to make a payment to the dealer on cancellation of the contract.

***Issues for consideration***

*Issue 4.7(a) Should a cooling off period be included in the MVDA? If so, should it apply to all transactions or only certain types of transactions (e.g. those with linked finance)?*

*Issue 4.7(b) What would be an appropriate length of time for a cooling off period?*

*Issue 4.7(c) Should the purchaser be required to make a payment to the dealer if the purchaser terminates the contract during the cooling off period? What amount should the payment be?*

**4.8. Consignment sales**

A consignment sale is where a private seller engages a licensed motor vehicle dealer to sell their vehicle. The dealer undertakes the transaction on behalf of the owner and pays any money earned from the sale to the owner, less the any agreed costs and commission.

Undertaking sales by consignment involves minimal upfront costs for the dealer, making it a more viable option for those who lack financial resources to purchase stock. Consignment selling is also a way for owners to sell a vehicle if they do not want to, or find it difficult, to sell it themselves (for example fly-in fly-out workers). Consignment selling is sometimes used by owners of fleets of vehicles, such as mining companies, to sell a number of vehicles over a period of time.

The Act contains certain requirements in relation to sale by consignment, including:

- requirements relating to consignment agreements (prescribed terms and conditions)<sup>107</sup>;
- trust account requirements<sup>108</sup>; and
- payment to the consignor (seller)<sup>109</sup>.

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<sup>107</sup> MVDA – section 32B.

<sup>108</sup> MVDA – sections 32C-32E.

<sup>109</sup> MVDA – section 32G.

## *Discussion*

Sale by consignment is an area where there is a potential risk to consumers, for example, when a dealer fails to pay the funds from the sale of a vehicle to the original owner of the vehicle. Currently, more stringent assessment of the financial viability criteria is undertaken in relation to licensees intending to sell on consignment.

Concerns have been raised about the application of consignment agreement provisions to sale of motor vehicles by auctioneers (for example, where an auctioneer enters into a periodic agreement with a mining company to sell a number of vehicles). Consideration may need to be given to distinguishing a commercial consignment agreement from a single service consignment agreement.

### ***Issues for consideration***

*Issue 4.8(a) Are the provisions relating to sales by consignment operating efficiently? If not, what changes need to be made?*

*Issue 4.8(b) Are the prescribed terms and conditions for consignment agreements appropriate for all types of consignment sale? For example, are different provisions required for ongoing commercial arrangements in relation to the sale of fleet vehicles?*

## **4.9. E-commerce**

Online sales of vehicles by both private sellers and dealers now represent an increasing proportion of the market.

Consideration needs to be given to whether the current legislative provisions are appropriate and provide adequate consumer protection for the online car sales market.

### ***Issues for consideration***

*Issue 4.9 Are there any inconsistencies between the legislation, modern sales methods and the way consumers transact? Are any changes to the legislation required in order to address issues with online sales?*

## **4.10. Licensing fees**

### ***Background***

Licensing fees are payable on application for a licence and on renewal. The fees for salespersons and yard managers are set as a single fee. The licensing fee for a motor vehicle dealer is determined based on the number of premises operated by the dealer.

As at 1 July 2012, the licensing fee for a dealer's licence was \$1,554 for single premises and an additional \$777 in respect of each further premises. A similar fee structure is in place for car market operators.

Licensing fees partially meet the administrative costs of processing applications and undertaking conciliation and compliance activities in relation to motor vehicle dealers.

### *Discussion*

The current fee structure does not take into account the size of the dealer's business, which means that the large dealerships pay the same fees as much smaller operations. The RTRG has recommended that the motor vehicle dealers licensing fee structure should be simplified, and recommended that it should be based on a set fee per vehicle sold<sup>110</sup>.

Determination of licensing fees based on the number of vehicles sold might be considered more equitable. However, a change to such a fee structure could present significant administrative difficulties with regards to verification of the number of vehicles sold. Concerns have also been raised as to how fees would be calculated for a new business seeking to be granted a dealer's licence.

Another possible option could be to determine fees based on the number of employees. This fee structure is applied under the MVRA in calculating the licensing fee for a repairer's business licence.

#### ***Issues for consideration***

*Issue 4.10 Is the current method for determining licensing fees appropriate? If not, what would be a more appropriate method for determining licensing fees?*

#### **4.11. Other issues**

You are welcome to raise additional issues in relation to the regulation of motor vehicle dealers and to suggest options for improving regulation. It would be helpful if you could include the reasons behind your suggestions as this will help Consumer Protection to better understand your viewpoint and will also assist us in developing and assessing options for inclusion in the next stage of the review.

#### ***Issues for consideration***

*Issue 4.11 Are there any other issues in relation to the regulation of motor vehicle dealers that should be considered as part of this review? What evidence is there of a problem? How can the issue or problem be resolved?*

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<sup>110</sup> *Reducing the Burden - Report of the Red Tape Reduction Group*, Government of Western Australia 2009, page 93, Recommendation 9.5.

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## 5. KEY ISSUES – MOTOR VEHICLE REPAIRERS

### 5.1. Is a licensing regime appropriate for motor vehicle repairers?

#### *Background*

Western Australia, the Australian Capital Territory and New South Wales are the only jurisdictions that regulate motor vehicle repairers.

New South Wales has a similar legislative regime to Western Australia, with a requirement that those persons carrying on business as a motor vehicle repairer hold a licence. In New South Wales, any person carrying out repair work must hold a tradesperson's certificate<sup>111</sup>.

The Australian Capital Territory legislation requires any person carrying on a business as a motor vehicle repairer to hold a licence. Individual tradespersons actually carrying out repair work are not required to be certified.

#### *Discussion*

The risk to consumers associated with motor vehicle repairs is relatively high as:

- there are a high number of transactions as repair services are used by many consumers each year;
- the quality of repair work (including parts used) is difficult for most consumers to assess; and
- dishonest conduct or inadequate repairs can have significant consequences, both financially and in terms of safety<sup>112</sup>.

The objective of the MVRA is to limit the operation of backyard repairers and reduce risk to the public by ensuring that repair work carried out on vehicles is performed by persons qualified to do that work. This is of more importance as the technology and materials used in modern cars has become increasingly complex, resulting in a need for greater skills, training and specialised equipment.

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<sup>111</sup> In Western Australia, some work can be carried out under the supervision of a certificate holder.

<sup>112</sup> *Better Regulation Office Report – Licensing of Selected Occupations*, New South Wales Government, April 2009 – page 33.

Some concerns have been raised about the administrative burden imposed by the licensing requirements of the MVRA<sup>113</sup>, with the RTRG suggesting that it may be more appropriate for the motor vehicle repairers industry to self-regulate<sup>114</sup>. The RTRG has therefore recommended that the MVRA be repealed and a negative licensing arrangement introduced, with a punitive framework<sup>115</sup>. This recommendation needs to be assessed against the possible risk to consumers in removing regulation of motor vehicle repairers.

In 2009, the New South Wales Better Regulation Office assessed the licensing regime established under the *Motor Vehicle Repairs Act 1980 (NSW)* and concluded that licensing should be retained, as it imposed a low level of regulatory burden on motor vehicle repairers in return for continued consumer protection, road safety and crime prevention benefits. The Better Regulation Office was of the view that licensing should not apply to the fitting of accessories which do not affect the performance, safety or security of a vehicle<sup>116</sup>.

The Office of Better Regulation identified the following benefits of licensing:

- consumer protection – ensuring that work is completed by persons with adequate qualifications and to a sufficient standard, also prevents inappropriate persons from operating in industry (fit and proper requirements);
- vehicle fleet safety – licensing protects the safety and roadworthiness of the State’s vehicle fleet by requiring that all work be carried out by appropriately certified tradespersons;
- crime prevention – licensing scheme attempts to stop criminals from establishing repair businesses by restricting who may be granted a licence and also helps detect illegal activities by requiring licensees to report if they suspect that vehicles, parts or accessories may be stolen, in addition the powers given to police to enter premises and inspect records are seen as important crime prevention tools;
- increasing level of trust and confidence in industry; and
- ability to take disciplinary action to remove unsuitable persons from industry<sup>117</sup>.

In the absence of licensing, general consumer protection legislation would protect consumers to some degree in relation to the quality of the work carried out, however the ability to prevent unsuitable persons from operating in the industry would be limited and the crime prevention mechanisms would be lost. Advisory, conciliation and compliance functions are funded to some degree by licensing fees.

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<sup>113</sup> *Reducing the Burden - Report of the Red Tape Reduction Group*, Government of Western Australia 2009, pages 88-89.

<sup>114</sup> *Ibid* – page 89.

<sup>115</sup> *Ibid* – page 90 - Recommendation 9.1.

<sup>116</sup> *Better Regulation Office Report – Licensing of Selected Occupations*, New South Wales Government, April 2009 – page 36.

<sup>117</sup> *Ibid* – pages 32-36.

In addition, a compensation fund is established under the MVRA to provide additional protections to consumers in the event of loss incurred as a result of dealing with a repairer. As noted in part 4.4, to date, no claims have been made against this compensation fund, however, evidence of the number of claims made under compensation or fidelity funds in relation to other occupational areas<sup>118</sup> indicate that such a fund is a valuable consumer protection mechanism.

An option that would reduce the regulatory burden on industry to some degree, but still maintain consumer protection is to retain licensing of repair businesses, with a requirement that the licensee ensure that repair work is carried out by an appropriately qualified tradesperson. The requirement for individual repairers to hold certificates could then be repealed. The onus would shift to repair businesses to check an employee's qualifications to ensure that the employee is suitably skilled.

This option was considered by the Better Regulation Office (NSW), which concluded that certification is a cost effective way to signal the skills of a tradesperson. The tradesperson is required to submit his or her qualifications to the regulator (rather than the employer) and must pay a relatively small fee – but these costs are balanced by the need to be certified only once rather than providing information each time they commence work with a new employer. Certification removes the need for employers to check the validity of an employee's qualifications, which would be more burdensome than simply checking that they are certified. Centralisation of the process ensures that a consistent approach is implemented<sup>119</sup>.

***Issues for consideration***

*Issue 5.1(a) Should licensing of motor vehicle repair businesses be retained in Western Australia? Why?*

*Issue 5.1(b) Should certification of individual repairers be retained in Western Australia? Why?*

*Issue 5.1(c) What other options for regulation of the motor vehicle repair industry would be appropriate for Western Australia?*

*Issue 5.1(d) What would be the potential benefits in changing the requirements in relation to regulation of the motor vehicle repair industry? What would be the potential costs or risks?*

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<sup>118</sup> Such as real estate agents and settlement agents in Western Australia and motor vehicle dealers in other jurisdictions.

<sup>119</sup> *Better Regulation Office Report – Licensing of Selected Occupations*, New South Wales Government, April 2009 – page 35.



## 5.2. What types of repair work should be covered by the Act?

### *Background*

The MVRA provides that certain kinds of repair work may be prescribed as repair work to which the Act applies. There are currently 30 classes of repair work prescribed for the purposes of the Act<sup>120</sup> a list of the classes of repair work is set out in **Appendix C**.

### *Discussion*

Some industry participants suggest other occupations within the industry should be subject to licensing requirements for reasons of consumer protection, public safety or crime prevention. For example, motor vehicle insurance assessors.

It has also been suggested that some types of repair work could be deregulated as they may not present the same level of risk to the public as other types of vehicle repair work, for example, the fitting of non-essential vehicle accessories, such as audio systems.

It has also been proposed that the number of classes of licence could be reduced by amalgamating classes.

### ***Issues for consideration***

*Issue 5.2(a) Are there repair classes for which licensing requirements could be removed because the work does not involve significant safety, consumer protection or crime prevention risks?*

*Issue 5.2(b) Are there repair classes which should be subject to licensing requirements for reasons of consumer protection, public safety or crime prevention?*

*Issue 5.2(c) Should the number of repair classes be reduced by amalgamating classes? If so, which ones?*

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<sup>120</sup> *Motor Vehicle Repairers Regulations 2007* – Regulation 5. 30 classes of repair work are prescribed for business licences (including auto gas work). 29 classes are prescribed for individual certification, as auto gas work certification is undertaken by Energy Safety.

### 5.3. What is a motor vehicle?

#### *Background*

The MVRA applies in relation to repair work carried out on motor vehicles. For the purposes of the MVRA a motor vehicle is:

*a vehicle that is propelled wholly or partly by —*

- (a) any volatile spirit, steam, gas, oil or electricity; or*
- (b) any other means apart from human or animal power;*

*and includes a trailer, but does not include —*

- (c) a vehicle that is constructed or adapted —*
  - (i) for use on a railway or tramway; or*
  - (ii) principally for use in primary production; or*
  - (iii) otherwise for use in a manner that does not involve the carriage of persons or goods over public roads; or*
- (d) anything that is excluded from this definition by the regulations<sup>121</sup>.*

The following are currently excluded from the definition of motor vehicle:

- a box-trailer without brakes;
- a vintage vehicle;
- a power assisted pedal cycle; and
- an exempt motorised wheelchair<sup>122</sup>.

#### *Discussion*

It has been suggested that vintage vehicles should not be excluded from the definition of motor vehicles. It is understood that the original intention for this exclusion was based on the view that this segment of the market was very narrow and not considered mainstream. The exclusion also accommodated the less formal arrangements often in place between vintage club members to assist one another with repair and restoration work.

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<sup>121</sup> MVRA - section 3(1).

<sup>122</sup> *Motor Vehicle Repairers Regulations 2007* – regulation 4.

Proponents for including vintage vehicles in the definition of motor vehicles argue that:

- the exemption fails to provide a level playing field as licensed businesses undertaking repairs on vintage vehicles as part of their business are competing in the marketplace with unlicensed repairers;
- there is the potential for unsafe repairs being carried out on vintage vehicles by unlicensed repairers; and
- consumers spend considerable sums on repairing vintage vehicles and should therefore be afforded adequate protections.

***Issues for consideration***

*Issue 5.3 Are the exclusions from the definition of motor vehicle in the MVRA appropriate? Why?*

#### **5.4. Criteria for business licence**

***Background***

An applicant for a repairers licence must satisfy the Commissioner that they are 18 years of age, of good character and repute and a fit and proper person to hold a licence and that they have sufficient material, manpower and financial resources (including necessary equipment) to carry on the relevant class of repair business<sup>123</sup>.

There is no requirement that the holder of a business licence demonstrate that they have the skills required to carry out repair work (this is addressed through the certification of individual repairers). A repairer's licence may also be granted to a firm<sup>124</sup> or body corporate<sup>125</sup>.

***Discussion***

As discussed in Part 4.3 in relation to motor vehicle dealers, a number of difficulties arise in assessing the financial standing of a licence applicant. The process is complex and resource intensive, both for applicants or licensees and the licensing authority.

Applicants are required to provide credit history reports and information about whether the applicant has been the subject of any bankruptcy or insolvency proceedings.

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<sup>123</sup> MVRA – section 16. See section 12 for definition of 'sufficient resources'.

<sup>124</sup> MVRA – section 18.

<sup>125</sup> MVRA – section 20.

It could be argued that it is not necessary to assess the financial standing of a repairer because the financial obligations of a repairer under the Act are not significant. The Motor Repair Industry Compensation Account provides some level of protection for consumers who suffer loss if a licensee carries out repair work incompetently or fails to complete repair work as a result of insolvency<sup>126</sup>.

As discussed in Part 4.3 in relation to motor vehicle dealers the legislative requirement that a person demonstrate that they are of good character and repute and a fit and proper person to hold a licence may require clarification.

***Issues for consideration***

*Issue 5.4(a) Are the criteria for a business licence appropriate?*

*Issue 5.4(b) Should the requirement that a person be fit and proper and of good character and repute be clarified by the inclusion in the MVRA of factors to be taken into account by the licensing authority in assessing an applicant's suitability?*

*Issue 5.4(c) Should any types of offences should automatically disqualify a person from being able to obtain a licence? If so, which offences?*

*Issue 5.4(d) Are the current licensing criteria relating to whether an applicant has sufficient financial resources appropriate? Should the requirement that an applicant have sufficient financial resources be retained?*

*Issue 5.4(e) If the sufficient resources requirement is retained, what factors should the licensing authority take into account in determining whether a person meets this requirement?*

*Issue 5.4(f) If the sufficient resources requirement is not retained, should any other mechanisms be put in place to protect consumers from financial loss? If so, what?*

**5.5. Criteria for repairer's certificate**

***Background***

An individual will be granted a repairer's certificate for a particular class of repair work if the repairer satisfies the Commissioner that he or she is a fit person to hold a certificate and is sufficiently qualified to carry out the relevant class of repair work.

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<sup>126</sup> Claims may be made up to a maximum of \$6,000 – see MVRA section 92.

A person will be 'sufficiently qualified' if they hold the prescribed qualifications, have passed the prescribed examinations or have sufficient other qualifications or experience that the Commissioner determines to be sufficient for the class of repair work concerned<sup>127</sup>.

The prescribed qualifications for each class of repair work are set out in the *Motor Vehicle Repairers Regulations 2007*<sup>128</sup>.

A 'points system' is used to determine a person's qualification for each class of repair work. Any combination of the following can be used to obtain the relevant number of points for each class of repair work:

- formal Australian qualification and/or trade certificate;
- relevant and recent motor vehicle repair work experience;
- membership of a relevant professional industry body;
- business references;
- certification test; and
- overseas qualification and experience.

### *Discussion*

The Department of Training and Workforce Development has advised that following the implementation of the MVRA, there did not appear to be a spike in demand for relevant training programs. This is most likely due to the 'points system' delivering a certain degree of flexibility particularly for those repairers with considerable experience rather than formal qualifications.

Concerns have, however, been raised about the flexibility of the certification criteria, particularly with regards to assessment of persons with overseas qualifications. It has also been suggested that some tradespeople have been deterred from applying for certification due to the complexity of the certification requirements.

The points system was introduced to accommodate those persons working in the industry at the time that the MVRA was enacted who did not have formal qualifications, but did have relevant experience, so that those persons could transition into the licensing regime. It has been suggested that, given that five years have now elapsed since the certification requirements commenced, it may now not be necessary for the points system to continue and that suitability should be assessed based on relevant trade qualifications. Any change of this nature would reduce the flexibility of the certification system.

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<sup>127</sup> MVRA – section 42.

<sup>128</sup> Regulation 8.

### ***Issues for consideration***

- Issue 5.5(a) Are the certification requirements for motor vehicle repairers appropriate?*
- Issue 5.5(b) Have the certification requirements deterred persons from obtaining repairer's certificates? How?*
- Issue 5.5(c) Are any amendments required to the prescribed qualifications for the various repair classes?*
- Issue 5.5(d) Are the criteria flexible enough to recognise appropriate overseas qualifications and future industry developments?*
- Issue 5.5(e) Is it appropriate to continue to apply the 'points system' and take account of industry experience as part of the certification requirements? Why?*

## **5.6. Persons working under supervision**

### ***Background***

The MVRA provides that a licensed repairer<sup>129</sup> must not permit any person to carry out repair work unless the person:

- holds a certificate for the particular class or repair work; or
- carries out the repair work under the supervision of a person who holds a repairer's certificate for that class of repair work<sup>130</sup>.

### ***Discussion***

The MVRA provides that a person under whose supervision repair work is being carried out is required to exercise effective oversight and control of the carrying out of the work, but need not be continuously present while it is being carried out.

The legislation does not set ratios for supervision, in order to allow for sufficient flexibility in relation to the different types of repair work carried out in the industry. The former Motor Vehicle Industry Board, in consultation with stakeholders, determined that a ratio of one certified repairer to every three uncertified repairers (for each place of business) was appropriate to ensure the quality and consistency of repair work. Consumer Protection has continued to apply this ratio.

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<sup>129</sup> or a dealer carrying out repair work for the purposes of section 34 of the MVDA.

<sup>130</sup> MVRA – section 39.

***Issues for consideration***

*Issue 5.6 Is the way the Act applies to people working under supervision of a certified repairer operating effectively? If not, what evidence is there that change is required and how should the legislation be changed to address any issues?*

**5.7. No renewal of repairer’s certificate required**

***Background***

At present, a repairer’s certificate does not have a specified duration, but continues in force until it is either surrendered or the holder is disqualified. By comparison, a repairer’s licence has a duration of three years and must be renewed at the expiry of each three year period.

***Discussion***

Concerns have been raised about the issue of perpetual certificates. The renewal process is considered important in ensuring that the integrity of the register is maintained and that any changes in the circumstances of a repairer can be taken into account. For example, a person might no longer be considered fit and proper to hold a certificate.

The MVRA does require a certified repairer to notify the Commissioner of any change in address<sup>131</sup> or of any serious criminal convictions<sup>132</sup>. However, these requirements do not address all changes in the circumstances of a certificate holder, for example, whether they are still working in the industry. A renewal requirement might be considered a more effective mechanism for maintaining the integrity of the register.

However, additional administrative costs will be incurred by industry and government if a renewal process is introduced.

***Issues for consideration***

*Issue 5.7(a) Should repairer’s certificates be issued for a limited duration and require renewal? Why?*

*Issue 5.7(b) If yes, what should the duration of a certificate be?*

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<sup>131</sup> MVRA – section 48.

<sup>132</sup> MVRA – section 69 - requires the holder of a repairer’s certificate to notify the Commissioner of any convictions for an offence with a maximum penalty of more than 2 years imprisonment or \$8,000 or more.

## 5.8. Impact of the Australian Consumer Law

The MVRA does not include any specific obligations in relation to the standard of work performed by repairers. However, disciplinary action may be taken against the holder of a repairer's certificate if they are considered not competent to carry out the class of repair work to which their certificate relates<sup>133</sup>.

The consumer guarantees under the ACL in relation to the provision of services apply to motor vehicle repair work that costs up to \$40,000 or costs more than \$40,000 if normally acquired for personal, household or domestic purposes.

A repairer must guarantee that the repair services:

- are provided with due care and skill<sup>134</sup>;
- are reasonably fit for any specified purpose<sup>135</sup>; and
- will be provided within a reasonable period of time<sup>136</sup>.

This means that a repairer must ensure that they use an acceptable level of skill or technical knowledge when providing the services and take all necessary care to avoid loss or damage.

Other provisions of the ACL are also relevant to the supply of motor vehicle repair services. The ACL provides that it is unlawful to request payment for unsolicited goods or services<sup>137</sup>, this means that a motor vehicle repairer cannot charge a consumer for work that was not requested by the consumer. For example, if a consumer arranges for a repairer to replace the tyres on a car and the repairer also replaces the brake pads (without the agreement of the consumer), the replacement of the brake pads would be 'unsolicited' and the consumer would not be required to pay for that work.

The ACL also requires a supplier to give proof of a transaction to consumers for goods or services valued at \$75 or more (or on request if less than \$75). The proof of transaction must set out the details of the supplier, date of supply, details of the goods or services and the price<sup>138</sup>.

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<sup>133</sup> MVRA – section 68 – disciplinary action may also be taken if a person is considered unfit to hold a licence or certificate under the MVRA or if a person has contravened a provision of the MVRA or a condition of their licence.

<sup>134</sup> ACL - section 60.

<sup>135</sup> ACL - section 61.

<sup>136</sup> ACL - section 62. See also section 36(4) of the ACL which provides that if a person accepts payment for goods or services that they must be provided within the time specified or a within reasonable period of time (if no time is specified).

<sup>137</sup> ACL – section 40.

<sup>138</sup> ACL - section 100.



A consumer can also request that a supplier provide an itemised bill that shows how the price was calculated, the number of labour hours and hourly rate, and a list of materials charged and the amount charged for them. A supplier must give the consumer the itemised bill within 7 days of the request<sup>139</sup>.

### ***Issues for consideration***

*Issue 5.8(a) Are the consumer guarantees in the ACL sufficient in relation to repair work?*

*Issue 5.8(b) Are any other requirements in relation to the standard of repair work necessary? What should the requirements be?*

## **5.9. Improved disclosure or information to consumers**

### ***Background***

The MVRA does not currently include any specific disclosure requirements in relation to motor vehicle repair work. The MVRA does provide that regulations may make provision for the manner and form in which:

- licensees are to quote for repair work; and
- repair work is to be authorised by the vehicle owner<sup>140</sup>.

However, at present, no regulations make provision for these matters.

In the Australian Capital Territory, the *Fair Trading (Motor Vehicle Repair Industry) Act 2010* provides that before performing any repair work or diagnostic work for a person that the repairer must provide the person with:

- an estimate of the cost of work if it is expected to cost more than \$150 (in writing if requested)<sup>141</sup>; and
- an information sheet about motor vehicle repair work<sup>142</sup> (approved by the ACT Commissioner).

Before performing any work or using parts not agreed to in the original estimate the repairer must explain why the additional work or part is required, give details of the costs and obtain the authorisation of the person to go ahead with the additional work<sup>143</sup>.

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<sup>139</sup> ACL – section 101.

<sup>140</sup> MVRA - section 114.

<sup>141</sup> *Fair Trading (Motor Vehicle Repair Industry) Act 2010* (ACT) – section 23.

<sup>142</sup> *Ibid* – section 27.

<sup>143</sup> *Ibid* – section 24.

The Australian Capital Territory legislation also includes the following additional consumer protection measures as conditions of a repairer's licence:

- repair work must be completed in a reasonable time<sup>144</sup>;
- the repairer must offer the person any part that was replaced as part of the work<sup>145</sup>; and
- the repairer must give to the person a signed copy of any warranty or guarantee relating to workmanship, parts or service provided by the repairer<sup>146</sup>.

Some of these protections are also dealt with in the ACL, for example, through the ACL it is a requirement that goods or services be provided within a reasonable period of time<sup>147</sup> and the prohibition in the ACL on charging for unsolicited goods or services<sup>148</sup>.

### *Discussion*

The provision of additional information to consumers would have clear benefits for consumers by ensuring that they are fully informed about potential costs of repair work before the work commences. It is acknowledged that the provision of information to consumers is already standard practice for many operators in the repair industry.

The requirement to provide additional information would impose additional costs on industry; however, these costs might be outweighed by a decrease in the number of disputes over the cost of repair work.

#### ***Issues for consideration***

*Issue 5.9(a) What information is currently provided to consumers in relation to repair work?*

*Issue 5.9(b) Should consumers be provided with improved information regarding repair work (for example, fact sheets or written estimates before work carried out)? What information should be provided? What would the costs be in providing this information?*

*Issue 5.9(c) Should any other consumer protection measures be included in the MVRA? What should they be?*

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<sup>144</sup> Ibid – section 25.

<sup>145</sup> Ibid – section 26.

<sup>146</sup> Ibid – section 28.

<sup>147</sup> ACL – sections 62 and 36(4).

<sup>148</sup> ACL – section 40.

### 5.10. Licensing fees

Licensing fees are payable on application for a business licence and on renewal. A one off registration fee is payable for a repairer's certificate. The fee for a repair business licence is determined based on the number of repairers employed by the licensee.

As at 1 July 2012, licensing fees for a repair business licence were as follows<sup>149</sup>:

Number of repairers	Licensing fee (includes \$155 application fee)
1-2	\$826
3	\$1,090
4	\$1,323
5-7	\$1,852
8-10	\$2,316
11+	\$2,878

#### ***Issues for consideration***

*Issue 5.10 Is the current method for determining licensing fees appropriate? If not, what would be a more appropriate method for determining licensing fees?*

### 5.11. Other issues

You are welcome to raise additional issues in relation to the regulation of motor vehicle repairers and to suggest options for improving the legislation. It would be helpful if you could include the reasons behind your suggestions as this will help Consumer Protection to better understand your viewpoint and will also assist us in developing and assessing options for inclusion in the next stage of the review.

#### ***Issues for consideration***

*Issue 5.11 Are there any other issues in relation to the regulation of motor vehicle repairers that should be considered as part of this review? What evidence is there of a problem? How can the issue or problem be resolved?*

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<sup>149</sup> Motor Vehicle Repairers Regulations 2007 – regulation 7A.

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## 6. KEY ISSUES – CROSS INDUSTRY

### 6.1. Consolidation of the Acts

#### *Background*

Some industry participants operate in both the motor vehicle dealer and motor vehicle repairer sectors of industry. There have been some calls for consolidation of the legislation in order to streamline processes and reduce red tape.

As at February 2013 there were 810 licensed motor vehicle dealers and 3,967 licensed motor vehicle repairers in Western Australia. There are 380 entities which hold both a motor vehicle repairer's licence and motor vehicle dealer's licence.

#### *Discussion*

Both the MVDA and MVRA regulate the activities of participants in the motor vehicle industry and share the common objectives of consumer protection, improved safety and crime prevention.

The Commissioner is the licensing authority under both Acts and a number of licensing criteria in relation to the business licenses issued under each Act are the same (fit and proper, good character and repute and sufficient resources), although assessment of the criteria might vary depending on the type of licence applied for.

The Commissioner also performs conciliation and compliance functions under both Acts.

The obligations imposed on licensees or certificate holders under the Acts are quite different given that the MVDA relates to the sale of goods, whereas the MVRA regulates service providers. The MVRA provides for a compensation fund, but such a fund does not exist in relation to motor vehicle dealers. These different requirements may need to be retained if the legislation were consolidated, possibly resulting in a more cumbersome Act.

A key concern of those industry participants operating in both the motor vehicle dealer and repairer industries relates to the duplication of the licensing processes. An alternative to consolidating the legislation would be to provide for a single application process in relation to both licences. For this type of arrangement to operate effectively it would be necessary to amend the legislation to allow for alignment of renewal dates and to implement a consistent approach in relation to the licensing criteria.

#### ***Issues for consideration***

*Issue 6.1(a) Would it be appropriate to consolidate the motor vehicle dealers and motor vehicle repairers' legislation? Why?*

*Issue 6.1(b) Should the legislation be changed to allow for a single application or renewal process to be introduced for both repairer and dealer businesses?*

## 6.2. Release or exchange of information

It has been suggested that provisions be included in the MVDA and MVRA to allow for the exchange of information about licensees with other regulatory authorities. This may be of particular importance in relation to the crime prevention objectives of the legislation.

By way of example, the *Road Traffic Act 1974* has recently been amended to provide for the exchange of information between the Director General under that Act and the Commissioner for Police and other authorities<sup>150</sup>. The information that has been provided can only be used by the other party for appropriate purposes.

### ***Issues for consideration***

*Issue 6.2      What safeguards are necessary to protect the interests of licensees in relation to the exchange of information?*

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<sup>150</sup> See sections 8 to 12.

## Appendix A

### Consumer Guarantees under the Australian Consumer Law

#### Goods:

- suppliers and manufacturers guarantee that goods are of acceptable quality when sold to a consumer (goods must be safe, durable and free from defects, acceptable in appearance and finish and do all the things that the goods are ordinarily used for, taking into account the nature and price of the goods, and any statement made about them on packaging or labelling);
- a supplier guarantees that goods will be reasonably fit for any purpose the consumer or supplier specified;
- suppliers and manufacturers guarantee that their description of goods (for example, in a catalogue or television commercial) is accurate;
- a supplier guarantees that goods will match any sample or demonstration model and any description provided;
- suppliers and manufacturers guarantee that the goods will satisfy any extra promises made about them (express warranties);
- a supplier guarantees they have the right to sell the goods (clear title), unless they alerted the consumer before the sale that they had 'limited title';
- a supplier guarantees that no one will try to repossess or take back goods, or prevent the consumer using the goods, except in certain circumstances;
- a supplier guarantees that goods are free of any hidden securities or charges and will remain so, except in certain circumstances; and
- manufacturers or importers guarantee they will take reasonable steps to provide spare parts and repair facilities for a reasonable time after purchase.

#### Services:

- must be provided with due care and skill;
- must be fit for any disclosed purpose; and
- must be provided in a reasonable time where not time is agreed.

## Appendix B

### Summary of financial information required from licence applicants under the MVDA

- Credit history report:
  - a credit history report that is no more than three months old is required for each applicant – i.e. an individual report for sole proprietors or a report for the credit history of the trading company;
  - if a business is trading under a partnership model, a credit history report that is not more than three months old is required for each partner; or
  - companies that are less than six months old at the time that they apply will need to provide documentary evidence that the company has sufficient financial resources available to it to comply with the requirements of the Act.
- Statement of assets and liabilities:
  - a statement of personal assets and liabilities must be submitted from each person applying as a sole proprietor or partner of a firm; or
  - a statement of assets and liabilities of the company from each company applicant.
- Statement in relation to the entity:
  - applicants must declare that they believe that the entity has sufficient financial resources to enable it to comply with the requirements of the Act.
- Advice as to whether the applicant intends to sell vehicles on consignment.
- Advice as to whether the applicant intends to take out dealer warranty insurance.
- Details as to whether the entity or any person, partner or director:
  - is in liquidation;
  - is under official management;
  - is an undischarged bankrupt;
  - is having affairs administered under bankruptcy law; and
  - has, within the last 5 years, been a director of a corporation which was the subject of any form of insolvency administration.

## Appendix C

### Classes of repair work

Classes of repair work prescribed for the purposes of the MVRA	
1	<p><b>Air conditioning work</b></p> <p>Any work required to install, service, repair, overhaul, remove or retrofit an air conditioning system in a heavy vehicle or light vehicle.</p>
2 A	<p><b>Autogas work</b> (business licence only)</p> <p>Any work required to do any of the following —</p> <ul style="list-style-type: none"> <li>(a) to service, repair, overhaul or modify a gas fuel system that is, was, or may be, fitted to a heavy vehicle or light vehicle;</li> <li>(b) to convert a fuel system in a heavy vehicle or light vehicle to a gas fuel system or to a system that consists partly of a gas fuel system;</li> <li>(c) to convert a fuel system that consists partly of a gas fuel system — <ul style="list-style-type: none"> <li>i. to a fuel system that is not a gas fuel system; or</li> <li>ii. to a gas fuel system.</li> </ul> </li> </ul>
2	<p><b>Body building work</b></p> <ul style="list-style-type: none"> <li>(a) any work required to do any of the following: <ul style="list-style-type: none"> <li>i. to fabricate or modify a body of a motor vehicle to fit the vehicle's chassis;</li> <li>ii. to fit the chassis of a motor vehicle with a fabricated or modified body;</li> </ul> </li> <li>(b) but does not include any of the following: <ul style="list-style-type: none"> <li>i. realigning the chassis of a motor vehicle;</li> <li>ii. realigning, repairing, preparing for painting or painting a panel, frame or other component of the body of a motor vehicle;</li> <li>iii. installing or removing any glass in the body of a motor vehicle, other than installing or removing any moveable glass, if required.</li> </ul> </li> </ul>
3	<p><b>Brake work</b></p> <p>Any work required to service, repair, overhaul or modify a braking system that is, was, or may be, fitted to a motor vehicle.</p>
4	<p><b>Cooling system work</b></p> <p>Any work required to service, repair, overhaul or modify a cooling system that is, was, or may be, fitted to a motor vehicle.</p>
5	<p><b>Cylinder head reconditioning work</b></p> <p>Any work required to overhaul a cylinder head of an engine that is, was, or may be, fitted to a motor vehicle.</p>
6	<p><b>Diesel fitting work</b></p> <p>Any work required to do any of the following —</p> <ul style="list-style-type: none"> <li>(a) to service, repair, overhaul or modify any of the following that is, was, or may be, fitted to a heavy vehicle or light vehicle — <ul style="list-style-type: none"> <li>i. a diesel fuel system;</li> <li>ii. a diesel engine;</li> </ul> </li> <li>(b) to service, repair, overhaul or modify any of the following that is, was, or may be, fitted to a heavy vehicle or light vehicle propelled by a diesel engine — <ul style="list-style-type: none"> <li>i. an air induction system;</li> <li>ii. an ignition system;</li> <li>iii. an engine management system;</li> <li>iv. a cooling system;</li> <li>v. a hydraulic system;</li> </ul> </li> </ul>



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	(c) to do any of the following in respect of a heavy vehicle or light vehicle propelled by a diesel engine — <ul style="list-style-type: none"> <li>i. to fabricate, service, repair or modify the exhaust system;</li> <li>ii. to repair or replace a rim, tyre or tube;</li> <li>iii. to balance a wheel.</li> </ul>
7	<b>Diesel fuel and engine work</b> Any work required to do any of the following — <ul style="list-style-type: none"> <li>(a) to service, repair, overhaul or modify a diesel fuel system that is, was, or may be, fitted to a heavy vehicle or light vehicle;</li> <li>(b) to service or repair a diesel engine that is, was, or may be, fitted to a heavy vehicle or light vehicle;</li> <li>(c) to service or repair any of the following that is, was, or may be, fitted to a heavy vehicle or light vehicle propelled by a diesel engine — <ul style="list-style-type: none"> <li>i. an air induction system;</li> <li>ii. an ignition system;</li> <li>iii. an engine management system.</li> </ul> </li> </ul>
8	<b>Driveline servicing and repair work</b> Any work required to service or repair a driveline that is, was, or may be, fitted to a motor vehicle.
9	<b>Driveline work</b> Any work required to service, repair, overhaul or modify a driveline that is, was, or may be, fitted to a motor vehicle.
10	<b>Electrical accessory fitting work</b> Any work required to install or remove an electrical accessory to a motor vehicle.
11	<b>Electrical work</b> Any work required to install, service, repair, overhaul or remove any of the following in a motor vehicle — <ul style="list-style-type: none"> <li>(a) any electrical equipment or system (including any electrical accessory and any electrical component associated with any other prescribed accessory);</li> <li>(b) any electrical part of any other thing or system.</li> </ul>
12	<b>Engine reconditioning work</b> Any work required to overhaul an engine (including a cylinder head of an engine) that is, was, or may be, fitted to a motor vehicle.
13	<b>Exhaust system work</b> Any work required to fabricate, service, repair or modify the exhaust system in a motor vehicle.
14	<b>Glazing work</b> Any work required to install, repair or remove a windscreen or other glass in the body of a motor vehicle.
15	<b>Heavy vehicle servicing work</b> Any work required to do any of the following — <ul style="list-style-type: none"> <li>(a) in respect of a heavy vehicle to which paragraph (b) does not apply, to carry out minor electrical servicing or to service any of the following — <ul style="list-style-type: none"> <li>i. the fuel system;</li> <li>ii. the air induction system;</li> <li>iii. the engine;</li> <li>iv. the ignition system;</li> <li>v. the engine management system;</li> <li>vi. the cooling system;</li> <li>vii. the driveline;</li> <li>viii. electronic drive management system;</li> <li>ix. the braking system;</li> <li>x. the steering system;</li> </ul> </li> </ul>

<b>Classes of repair work prescribed for the purposes of the MVRA</b>	
	<ul style="list-style-type: none"> <li>xi. the suspension system;</li> <li>xii. a wheel assembly;</li> <li>xiii. any hydraulic system;</li> </ul> <p>(b) in respect of a heavy vehicle during an emergency breakdown —</p> <ul style="list-style-type: none"> <li>i. to diagnose the cause of the breakdown;</li> <li>ii. to carry out emergency servicing or repair on a thing diagnosed as the cause or possible cause of the breakdown.</li> </ul>
16	<p><b>Heavy vehicle work</b></p> <p>Any work required to do any of the following in respect of a heavy vehicle —</p> <p>(a) to service, repair, overhaul or modify any of the following —</p> <ul style="list-style-type: none"> <li>i. the fuel system;</li> <li>ii. the air induction system;</li> <li>iii. the engine;</li> <li>iv. the ignition system;</li> <li>v. the engine management system;</li> <li>vi. the cooling system;</li> <li>vii. the driveline;</li> <li>viii. any electronic drive management system;</li> <li>ix. the braking system;</li> <li>x. the steering system;</li> <li>xi. the suspension system;</li> </ul> <p>(b) to fabricate, service, repair or modify the exhaust system;</p> <p>(c) to service, repair or replace a wheel assembly;</p> <p>(d) to balance a wheel or align the wheels;</p> <p>(e) to service or repair any hydraulic system;</p> <p>(f) to carry out minor electrical servicing or minor electrical repair; and</p> <p>(g) to install or remove a prescribed accessory.</p>
17	<p><b>Light vehicle servicing work</b></p> <p>Any work required to do any of the following —</p> <p>(a) in respect of a light vehicle to which paragraph (b) does not apply, to carry out minor electrical servicing or to service any of the following —</p> <ul style="list-style-type: none"> <li>i. the fuel system;</li> <li>ii. the air induction system;</li> <li>iii. the engine;</li> <li>iv. the ignition system;</li> <li>v. the engine management system;</li> <li>vi. the cooling system;</li> <li>vii. the driveline;</li> <li>viii. any electronic drive management system;</li> <li>ix. the braking system;</li> <li>x. the steering system;</li> <li>xi. the suspension system;</li> <li>xii. a wheel assembly;</li> <li>xiii. any hydraulic system;</li> </ul> <p>(b) in respect of a light vehicle during an emergency breakdown —</p> <ul style="list-style-type: none"> <li>i. to diagnose the cause of the breakdown;</li> <li>ii. to carry out emergency servicing or repair on a thing diagnosed as the cause or possible cause of the breakdown.</li> </ul>

<b>Classes of repair work prescribed for the purposes of the MVRA</b>	
18	<p><b>Light vehicle work</b></p> <p>Any work required to do any of the following in respect of a light vehicle —</p> <p>(a) to service, repair, overhaul or modify any of the following —</p> <ul style="list-style-type: none"> <li>i. the fuel system;</li> <li>ii. the air induction system;</li> <li>iii. the engine;</li> <li>iv. the ignition system;</li> <li>v. the engine management system;</li> <li>vi. the cooling system;</li> <li>vii. the driveline;</li> <li>viii. any electronic drive management system;</li> <li>ix. the braking system;</li> <li>x. the steering system;</li> <li>xi. the suspension system;</li> </ul> <p>(b) to fabricate, service, repair or modify the exhaust system;</p> <p>(c) to service, repair or replace a wheel assembly;</p> <p>(d) to balance a wheel or align the wheels;</p> <p>(e) to service or repair any hydraulic system;</p> <p>(f) to carry out minor electrical servicing or minor electrical repair; and</p> <p>(g) to install or remove a prescribed accessory.</p>
19	<p><b>Mechanical accessory fitting</b></p> <p>Means any work required to install or remove a mechanical accessory to a motor vehicle.</p> <p><b>mechanical accessory —</b></p> <p>(a) means an off the shelf accessory that is designed to be fitted to a motor vehicle principally by way of mechanical connection (whether or not the fitting also requires any electrical connection), such as a towbar, protection bar, sunroof, roof-rack, wheel-chair lift or winch; and</p> <p>(b) includes any electrical component associated with the accessory.</p>
20	<p><b>Motor cycle servicing work</b></p> <p>Any work required to do any of the following —</p> <p>(a) in respect of a motor cycle to which paragraph (b) does not apply, to carry out minor electrical servicing or to service any of the following —</p> <ul style="list-style-type: none"> <li>i. the fuel system;</li> <li>ii. the air induction system;</li> <li>iii. the engine;</li> <li>iv. the ignition system;</li> <li>v. the engine management system;</li> <li>vi. any cooling system;</li> <li>vii. the driveline;</li> <li>viii. any electronic drive management system;</li> <li>ix. the braking system;</li> <li>x. the steering system;</li> <li>xi. the suspension system;</li> <li>xii. a wheel assembly.</li> </ul> <p>(b) in respect of a motor cycle during an emergency breakdown —</p> <ul style="list-style-type: none"> <li>i. to diagnose the cause of the breakdown; and</li> <li>ii. to carry out emergency servicing or repair on a thing diagnosed as the cause or possible cause of the breakdown.</li> </ul>
21	<p><b>Motor cycle work</b></p>

<b>Classes of repair work prescribed for the purposes of the MVRA</b>	
	<p>Any work required to do any of the following in respect of a motor cycle —</p> <p>(a) to service, repair, overhaul or modify any of the following —</p> <ul style="list-style-type: none"> <li>i. the fuel system;</li> <li>ii. the air induction system;</li> <li>iii. the engine;</li> <li>iv. the ignition system;</li> <li>v. the engine management system;</li> <li>vi. any cooling system;</li> <li>vii. the driveline;</li> <li>viii. any electronic drive management system;</li> <li>ix. the braking system;</li> <li>x. the steering system;</li> <li>xi. the suspension system;</li> </ul> <p>(b) to fabricate, service, repair or modify the exhaust system;</p> <p>(c) to service, repair or replace a wheel assembly;</p> <p>(d) to balance a wheel or align the wheels;</p> <p>(e) to carry out minor electrical servicing or minor electrical repair;</p> <p>(f) to install or remove a prescribed accessory; and</p> <p>(g) to realign the chassis.</p>
22	<p><b>Painting work</b></p> <p>(a) any work required to prepare for painting or to paint a panel, frame or other component of the body of a motor vehicle, otherwise than in the course of manufacturing the vehicle;</p> <p>(b) but does not include any of the following —</p> <ul style="list-style-type: none"> <li>i. realigning the chassis of a motor vehicle;</li> <li>ii. realigning or repairing a panel, frame or other component of the body of a motor vehicle;</li> <li>iii. installing or removing any glass in the body of a motor vehicle, other than installing or removing any moveable glass, if required.</li> </ul>
23	<p><b>Panel beating work</b></p> <p>(a) any work required to do any of the following —</p> <ul style="list-style-type: none"> <li>i. to realign the chassis of a motor vehicle;</li> <li>ii. to realign or repair a panel, frame or other component of the body of a motor vehicle;</li> </ul> <p>(b) but does not include installing, repairing or removing any glass (other than installing or removing any moveable glass) in the body of a motor vehicle.</p>
24	<p><b>Steering, suspension and wheel aligning work</b></p> <p>Any work required to do any of the following in respect of a motor vehicle —</p> <p>(a) to service or repair the steering system or suspension system; or</p> <p>(b) to balance a wheel or align the wheels;</p>
25	<p><b>Transmission work</b></p> <p>Any work required to service, repair, overhaul or modify any of the following that is, was, or may be, fitted to a heavy vehicle or light vehicle —</p> <p>(a) a transmission;</p> <p>(b) a final drive assembly the differential of which is integrated with a transmission; or</p> <p>(c) an electronic drive management system.</p>
26	<p><b>Trimming work</b></p> <p>Any work required to fabricate, repair or replace a seat or any interior lining or floor covering in a motor vehicle.</p>
27	<p><b>Tyre fitting (heavy) work</b></p>

<b>Classes of repair work prescribed for the purposes of the MVRA</b>	
	Any work required to do any of the following in respect of a heavy vehicle — (a) to repair or replace a rim, tyre or tube; or (b) to balance a wheel.
28	<b>Tyre fitting (light) work</b> Any work required to do any of the following in respect of a light vehicle or motor cycle — (a) to repair or replace a rim, tyre or tube; or (b) to balance a wheel.
29	<b>Underbody work</b> Any work required to do any of the following in respect of a light vehicle — (a) to service or repair any of the following — i. the braking system; ii. the steering system; iii. the suspension system; (b) to fabricate, service, repair or modify the exhaust system.



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