



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

CONSULTATION

REGULATORY IMPACT STATEMENT

REVIEW OF
MOTOR VEHICLE DEALERS ACT 1973
AND
MOTOR VEHICLE REPAIRERS ACT 2003

NOVEMBER 2015



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 regulation of motor vehicle dealers and repairers. 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 Consultation Regulatory Impact Statement on the review of laws which apply to motor vehicle dealers and motor vehicle repairers operating in Western Australia. This is a major area of regulation that affects a significant proportion of Western Australians, either as consumers, business owners or employees.

Western Australians are highly reliant on their motor vehicles and spend a considerable proportion of their incomes purchasing and maintaining them. For many people, the purchase of a motor vehicle continues to represent one of the most expensive purchases of their lifetime.

The purpose of the review is to assess the effectiveness of the operation of the *Motor Vehicle Dealers Act 1973* and the *Motor Vehicle Repairers Act 2003*. The Department has already undertaken considerable consultation with key stakeholders and industry members as the initial step in this review process and I would like to thank those who provided their input.

This Consultation Regulatory Impact Statement represents the next phase of the review process and sets out possible options for reform developed after analysing all of the feedback received in response to a discussion paper and online questionnaires released in August 2013. This paper tests those options, sets out some of the pros and cons and seeks further comment on their suitability. The options seek to balance the competing interests of motor vehicle dealers, motor vehicle repairers and consumers, by providing adequate protection for consumers, while ensuring that motor industry members are not overly burdened with unnecessary regulation and red tape.

I encourage everyone with an interest in the motor vehicle dealing and repair industries to take the time to consider this paper and provide feedback on the questions asked. This is your opportunity to have your say in assisting to guide the future decisions about how best to regulate these important industries.

Hon. Michael Mischin MLC
MINISTER FOR COMMERCE

EXECUTIVE SUMMARY

STAGE TWO OF REVIEW – CONSULTATION REGULATORY IMPACT STATEMENT

This paper represents the second stage of the review of the laws applying to motor vehicle dealers and motor vehicle repairers operating in Western Australia and will pave the way for establishing the Government's future policy direction and legislative reform agenda in relation to the regulation of dealers and repairers.

The key focus of this stage of the review is to obtain stakeholder feedback that will be vital to weighing up the costs and benefits of the various options presented in the paper and will ultimately assist in formulating recommendations to the Government in relation to future reforms.

The Government is strongly committed to addressing the regulatory burden for business. In line with this commitment, it wishes to ensure that any proposals for reform are assessed in terms of whether they are in fact required or whether the policy objectives could be achieved through alternative means resulting in lower costs for business and the community.

CONTEXT FOR REVIEW

It is recognised that this area of regulation affects a significant proportion of Western Australians, whether as consumers, employees or business owners. The central aim in conducting this review is to ensure that the laws which regulate the industry remain appropriate and operate in the interests of both consumers and industry.

The *Motor Vehicle Dealers Act 1973* (MVDA), has been in place for several decades and was last reviewed in the late 1990's, with substantial amendments implemented in 2002. It is therefore appropriate to be conducting a review of this legislation at this time. By comparison, the *Motor Vehicle Repairers Act 2003* (MVRA) has only been in place for a relatively short time having become fully operational in 2008 and is now due for review.

Based on input received from stakeholders to date, the legislation appears to be operating reasonably well, however, it is clear that there remains some scope for considering improvements to the regulatory regime.

CONSULTATION

This paper reports on the outcome of earlier consultation with stakeholders which comprised of early meetings with key industry, consumer and government stakeholders together with feedback obtained in response to the discussion paper released in August 2013. In addition, a large number of stakeholders provided responses to online surveys targeting both consumers and industry participants.

OVERVIEW

The following provides an overview of the key parts of this paper.

Part 1: Context and background to the review

The first part of this paper presents:

- An overview of stakeholder consultation.
- Background information including an industry snapshot and the rationale for licensing motor vehicle dealers and repairers.
- An overview of the current legislative framework.
- A summary of the legislative arrangements in place in other jurisdictions.
- Information about the Department's role, including relevant complaints data.
- A discussion about cost recovery.

Part 2: Proposals

The second part of the paper identifies proposals which are considered minor and unlikely to have a negative impact on stakeholders. These proposals include:

- Amending the MVDA to require disclosure in relation to: odometer alteration or replacement; vehicles being repairable write-offs; engine replacement; and prior use of vehicles as taxis, rental or hire vehicles (page 35).
- Amending the definition of camper van in the MVDA to ensure consistency between the definitions of caravan and camper vans and avoid doubt in the interpretation of these terms (page 39).
- Amending the MVRA to remove the need to prescribe qualifications and examinations in the regulations (page 41).
- Amending the MVRA to simplify compliance requirements for mobile repairers (page 47).

Stakeholder comment is being sought in regard to these proposals.

Part 3: Options for reform

The third part of the paper considers a number of issues raised by stakeholders in response to the discussion paper released in 2013 and presents options for reform that require detailed regulatory impact assessment. The following issues are considered:

- Whether the definition of vehicles under the MVDA should be changed to include all terrain vehicles and expanded to include passenger vans with a seating capacity not exceeding 14 persons (page 52)?
- Whether the licensing of motor vehicle salespersons should continue (page 61)?
- Whether the good character and repute criteria for assessing motor vehicle dealer licence applications should be changed (page 73)?
- Whether the sufficient resources criteria used for assessing motor vehicle dealer licence applications should be changed (page 88)?
- Whether the categories of motor vehicle dealer licensing should be changed (page 97)?
- Whether a compensation fund should be introduced under the MVDA (page 121)?

- Whether a cooling off period should be introduced under the MVDA (page 131)?
- Whether the types of repair work covered by the MVRA should be changed (page 147)?
- Whether the good character and repute criteria for assessing motor vehicle repair business licence applications should be changed (page 156)?
- Whether the sufficient resources criteria used for assessing motor vehicle repair business licence applications should be changed (page 170)?
- Whether the definition of a motor vehicle under the MVRA should be changed (page 177)?
- Whether perpetual certification of motor vehicle repairers should continue (page 181)?

For each option identified, there is a description of how it would operate and its potential benefits and disadvantages.

Stakeholders are invited to respond to this part of the paper by identifying:

- preferred options;
- alternative options;
- any additional benefits and disadvantages of particular options; and
- any cost implications of various options.

This input will be crucial in further assessing the various options for reform.

Part 4: Issues not requiring further action

The final part of the paper identifies areas where it is considered that no change is required and the reasons for retaining the current arrangements.

These include:

- Continuing to regulate yard managers under the MVDA (page 190).
- Retention of current arrangements in relation to used car warranties (page 195).
- Continuing to regulate motor vehicle repairers under the MVRA (page 200).
- Opting not to introduce specific consumer guarantees under the MVRA (page 208).

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TERMINOLOGY USED IN THIS PAPER

The following is a summary of key terms used in this paper.

Abbreviation	Meaning
ABS	Australian Bureau of Statistics
ACL	The Australian Consumer Law
ATV	All terrain vehicle
CIAWA	Caravan Industry Association Western Australia (Inc.)
Commissioner	Commissioner for Consumer Protection
CAC	Consumer Advisory Committee
CCLSWA	Consumer Credit Legal Service (Western Australia) Inc.
CAWA	Consumers' Association of Western Australia (Inc.)
CPLA Act	Consumer Protection Legislation Amendment Act 2013
CRIS	Consultation Regulatory Impact Statement
Department	The Consumer Protection Division of the Department of Commerce
IAME	Institute of Automotive Mechanical Engineers
EERC	Economic and Expenditure Reform Committee
ICA	Insurance Council of Australia
MTA	Motor Trade Association of Western Australia

MVDA	<i>Motor Vehicle Dealers Act 1973</i>
MVIAC	Motor Vehicle Industry Advisory Committee
MVRA	<i>Motor Vehicle Repairers Act 2003</i>
MVR Regulations	Motor Vehicle Repairers Regulations 2007
RAC	Royal Automobile Club
Review	The Review of Motor Vehicle Dealers Act 1973 and Motor Vehicle Repairers Act 2003
RTRG	Red Tape Reduction Group
Review	The Review of Motor Vehicle Dealers Act 1973 and Motor Vehicle Repairers Act 2003
SAT	State Administrative Tribunal of Western Australia
SBDC	Small Business Development Corporation
Traffic Act	<i>Traffic Act 1919</i>

INTRODUCTION

The 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 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.

OBJECTIVES FOR REFORM

The policy objective is to achieve a regulatory framework which provides appropriate and adequate protections for consumers whilst maintaining the commercial viability of the motor vehicle dealing and repairing industries. This includes identifying and assessing options to reduce the regulatory burden imposed by the MVDA and MVRA on industry, government and consumers. In establishing its future policy direction and legislative reform, the Government is confident that these changes will result in a greater level of consumer confidence and will enhance the industry's reputation.

PURPOSE OF THE REVIEW

The Department has an ongoing commitment to review legislation administered by the Department. 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 RTRG in its 2009 report.¹ The Review will afford the opportunity to consult broadly with stakeholders in regard to the specific recommendations made by the RTRG.

¹ Red Tape Reduction Group, Government of Western Australia, *Reducing the Burden - Report of the Red Tape Reduction Group*, December 2009.

Also relevant to the Review is the 1 January 2011 commencement of the 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.

REVIEW PROCESS

The Review is being conducted in three stages:

- **Stage 1** saw the release of a discussion paper in August 2013, highlighting key issues and inviting stakeholder input.
- **Stage 2** represents the current stage of the Review. The release of this CRIS is the main focus of this stage of the Review. Stakeholder feedback in response to the CRIS will assist the Government in deciding whether reforms are needed and, if so, the shape of those reforms.
- **Stage 3** represents the next and final stage of the Review. This stage will include the release of a Decision Regulatory Impact Statement addressing the outcome of consultation with stakeholders and making recommendations for reform. The Decision Regulatory Impact Statement will analyse the impacts of the various options and will recommend preferred options for reform.

PURPOSE OF THIS PAPER

The Western Australian Government is committed to a regulatory impact assessment program that considers 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. In developing and reviewing legislation, the potential costs of regulation must be carefully considered and weighed against the potential benefits.

The purpose of this CRIS is to examine those issues being considered as part of this Review within a regulatory impact assessment framework. This paper presents possible options for reform and seeks feedback from stakeholders in relation to the viability of those options. In particular, the Department is seeking feedback as to the potential costs and benefits of the various options that have been presented.

STRUCTURE

The paper is divided into four key parts.

Part 1: Context and background to the Review

Part 1 of the paper provides context and background to the Review and includes information about:

- stakeholder consultation undertaken by the Department to date;
- the rationale for licensing motor vehicle dealers and repairers;
- the current legislative framework;
- legislative arrangements in place in other jurisdictions;

- the Department's role; and
- cost recovery and licensing fees.

Part 2: Proposals

Part 2 of the paper identifies proposals for change which may result in regulatory changes but have been assessed as minor and unlikely to have a significant negative impact on stakeholders. As a consequence, these proposals do not require a full impact assessment.

Stakeholder input is being sought in response to these proposals.

Part 3: Options for reform

Part 3 of the paper presents options for reform in response to a number of key issues raised by stakeholders. It is noted that some of the options identified in this section of the paper may lead to legislative amendments and may also have a significant negative impact on stakeholders.

As a consequence, these matters require a detailed impact assessment prior to the Department making recommendations for reform for consideration by the Government.

Stakeholders are strongly encouraged to provide input in response to the options presented. This input will be crucial to assessing the benefits and costs of the various options and determining which options to recommend.

Part 4: Issues not requiring further action

Part 4 of the paper identifies areas where it is considered that no change is required. The key reasons for recommending no change to current arrangements include:

- existing regulation appears to be operating effectively;
- Government intervention cannot be justified; or
- the issue is outside the scope of the Review.

HOW TO HAVE YOUR SAY

MAKING A SUBMISSION

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

You are welcome to:

- write a short email or letter outlining your views; or
- respond to all the questions or only to those of interest to you in this paper.

WHO ARE YOU?

When making your submission, please let us know if you are an industry member, and if so, which part of the industry you are from.

GUIDING QUESTIONS

This paper highlights a range of proposals and options in response to issues raised by stakeholders. It is not expected that all respondents will consider all proposals and options. Please feel free to focus only on those areas that are important and relevant to you.

We have included questions in Part 2 and Part 3 of the paper. 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 suggest alternative options for addressing matters of concern. It would be helpful if you could include the reasons behind your suggestions as this will help the Department to better understand your viewpoint and will also assist us in identifying the most suitable options for reform. For example, you could couch your suggestion as follows:

“I think that the alternative option ofshould be considered as this would be more effective in addressing this issue for the following reasons.....”

If possible, please provide evidence to support your views, for example by including relevant statistics, examples or case studies. If possible, please provide estimates of any costs associated with specific options, for example compliance costs related to particular proposals. This information will greatly assist the Department in assessing the various options for reform.

WHERE TO SEND SUBMISSIONS

Submissions can be mailed to:

**Review of the regulation of motor vehicle dealers and repairers
Department of Commerce (Consumer Protection Division)
Legislation and Policy Branch
Locked Bag 14
Cloisters Square PO
Perth WA 6850**

Email

Or emailed to: consultations@commerce.wa.gov.au

HOW INPUT WILL BE USED

The information gathered from this stage of the Review will assist in assessing the various options and formulating recommendations for reform for consideration by the Government during the next stage of the Review.

INFORMATION PROVIDED MAY BECOME PUBLIC

After the consultation period concludes, all responses received may be made publicly available on the Department's 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 this 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: **18 December 2015 (Friday)**

NEXT STEPS

Stakeholder feedback in response to this CRIS will assist the Government in deciding whether any reforms are required. Following analysis of stakeholder submissions, a DRIS will be prepared. The DRIS will analyse the impacts of the various options and will be used by the Government to guide its decisions in regard to future reforms. The DRIS will be published via the Department's website once the Government's decision is made public.

REVIEW UPDATES

You can keep up to date with the progress of the Review at www.commerce.wa.gov.au.

PART 1: CONTEXT AND BACKGROUND TO THE REVIEW

CONSULTATION

INITIAL CONSULTATION

In 2012, the Department conducted a series of preliminary consultation meetings with a range of key external stakeholders, including the MTA, IAME, and the RAC. Key government stakeholders including the Department of Transport, Police, the Department of Training and Workforce Development and the SBDC, were also consulted.

The purpose of these meetings was to alert key stakeholders to the Review and to ensure that major issues of concern were identified for inclusion in an initial discussion paper released in August 2013. In addition, MVIAC and CAC 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.

KEY STAKEHOLDERS

Motor Trade Association of Western Australia

The MTA is an industry body that advocates for the automotive industry. The MTA represents the interests of motor vehicle business owners; including dealers, repairers, heavy transport operators and tyre dealers. In Western Australia 1,700 business owners are members of the MTA.

Institute of Automotive Mechanical Engineers

The IAME is an industry association, which has 27,000 members across Australia and New Zealand. Members are people who have the qualifications or skills required to repair and maintain the mechanical systems and components of cars, motorcycles and heavy vehicles. Membership can also be held by organisations or people affiliated with the repair industry. The IAME primarily provides training, technical information, educational services and formal recognition of technical skills.

Caravan Industry Association of Western Australia

The CIAWA is an industry body and advocacy group for caravan park operators, residential lifestyle villages and caravan and recreational vehicle traders and manufacturers. The association has 220 members, of which 130 are caravan park operators.

Insurance Council of Australia

The ICA represents the interests of the Australian general insurance industry and advocates on behalf of the industry. The ICA has 17 member companies, who represent 90 per cent of the total premiums written by private sector general insurers.

Consumer Advisory Committee

The CAC provides advice to the Minister and the Commissioner on the activities and policies of the Department, as they affect consumers and on current and emerging consumer issues. The CAC also undertakes research and educational projects relating to consumers and any other matter referred to it by the Minister or Commissioner.

Consumers' Association of Western Australia

The CAWA is a community organisation run by consumers. It focuses on advocating for the interests of consumers, consumer education and on providing a forum for consumer concerns.

Consumer Credit Legal Service (Western Australia)

CCLSWA is a community legal centre which provides legal advice and representation in the areas of credit, banking and finance. CCLSWA also has an advocacy and education role. Areas dealt with by CCLSWA that are relevant to the motor vehicle sales industry include the Personal Property Security Register, car loans and subject to finance clauses in sales contracts.

Motor Vehicle Industry Advisory Committee

MVIAC provides advice to the Minister and Commissioner on the regulation of the motor vehicle dealing and repair industry in Western Australia; the provision of education, information and advice to consumers and to the motor vehicle dealing and repair industry in Western Australia; and on any matter referred to the committee by the Minister or Commissioner.

Royal Automobile Club

The RAC Group comprises the Royal Automobile Club of Western Australia (Incorporated), RAC Insurance Pty Limited, RAC Travel Services Pty Ltd, RAC Finance Ltd and RAC Security Services Pty Ltd. The RAC provides repair services, road side assistance, driver training, insurance and other financial services. The RAC currently operate nine Auto Service Centres, which offer motor vehicle repair services. Each year the RAC services and repairs more than 50,000 motor vehicles.

The RAC is also an advocate for the interests of motorists in Western Australia, with a focus on issues such as investment in road and public transport systems, road safety and laws to protect road users.

DISCUSSION PAPER AND ONLINE SURVEYS

A discussion paper, *Review of Motor Vehicle Dealers and Repairers Legislation*, was released in August 2013 for a three month period of consultation. The discussion paper highlighted key issues and sought the views of motor vehicle dealers, motor vehicle repairers, and the broader Western Australian community.

The discussion paper represented the initial stage of the Review and was focussed on encouraging stakeholder comment on the main issues of concern and how they might be overcome.

The Department received 15 written submissions in relation to the MVDA and 18 written submissions in relation to the MVRA. A variety of stakeholders made submissions, including motor vehicle dealers, motor vehicle repair businesses, industry associations, consumer associations and auctioneers. Included in the written feedback was a detailed and comprehensive submission from the MTA representing the views and comments of a significant majority of its 1,800-plus member businesses.

Stakeholders also provided input by responding to three online surveys targeting dealers, repairers and consumers. The surveys generated 149 responses from dealers, 476 responses from repairers and 41 responses from consumers.

The feedback from the consultation process has been used in formulating the material and options set out in this paper. Further details about submissions made by stakeholders and responses to the three online surveys are included in discussing specific issues in the following parts of the paper.

BACKGROUND

INDUSTRY SNAPSHOT

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:

- almost 17.2 million vehicles were registered in Australia as at 31 January 2013, of which, around 76 per cent were passenger vehicles. Of the total number of registered vehicles in Australia, a little over 2 million were registered in Western Australia²;
- over the five-year period from 2008 to 2013, Western Australia recorded a 14 per cent increase in the proportion of passenger vehicles in its fleet³; and
- over a million new vehicles were sold in Australia in 2013 (125,798 sold in Western Australia)⁴.

Challenges facing the industry

The industry is facing significant challenges including:

- the effects of the global financial downturn;
- the planned closures of motor vehicle manufacturing plants throughout Australia between now and 2017;
- the shortage of skilled labour;
- difficulties in attracting school leavers into apprenticeships and retaining these people in the industry;
- the retirement of baby boomers from the industry as the population ages;
- the rapid pace of change in vehicle design and technology requiring up-skilling of industry members;
- a proposal emanating from the review of the *Motor Vehicle Standards Act 1989* (Cth) being conducted by the Federal Government, for example, the proposed relaxation of laws to allow consumers to import new cars into Australia;
- consumers purchasing accessories and parts on-line; and
- the increasing popularity of on-line purchasing of motor vehicles.

² Australian Bureau of Statistics 2013, *Motor Vehicle Census, Australia*, cat. no. 9309.0, ABS Canberra, 31 January 2013.

³ Australian Bureau of Statistics 2013, *Motor Vehicle Census, Australia*, cat. no. 9309.0, ABS Canberra, 31 January 2013.

⁴ Australian Bureau of Statistics 2014, *Sales of New Motor Vehicles*, cat. no. 9314.0, ABS Canberra, January 2014.

Consumer expenditure: ABS data

Australians are highly reliant on their motor vehicles for transport, with the latest release of ABS data indicating that 92 per cent of households keep at least one motor vehicle at home.⁵ Further evidence of our reliance on motor vehicles is reflected in ABS data⁶ which indicates that 80 per cent of adults use a private motor vehicle to travel to work or full-time study. Only 14 per cent of adults use public transport.

This reliance on motor vehicle transport translates into significant costs for Australian households, with the latest ABS Household Expenditure Survey indicating that households spend an average of \$193 per week on transport. This represents 18 per cent of total household expenditure on goods and services and 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 CRIS 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)⁷, which includes fees for visits to doctors and specialists; pharmaceuticals; dental; and accident and health insurance.

New vehicle running costs

The RAC's 2014 Vehicle Running Costs Guide⁸ 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 15,000 km 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.

⁵ Australian Bureau of Statistics 2009, *2009 Year Book Australia*, cat. no. ABS, Canberra.

⁶ Australian Bureau of Statistics 2009, *2009 Year Book Australia*, cat. no. ABS, Canberra.

⁷ Australian Bureau of Statistics 2010, *Household Expenditure Survey, Australia, Detailed Expenditure Items, 2009-10* cat. no. 6530.0, ABS, Canberra.

⁸ Royal Automobile Club of Western Australia, 2014 Vehicle Running Costs Guide, Perth viewed 27 November 2014, <http://rac.com.au/Motoring/Motoring-advice/Buying-a-car/Running-costs>.

RATIONALE FOR GOVERNMENT INTERVENTION

Occupational licensing

Occupational licensing seeks to reduce risks to consumers by requiring that goods and services are supplied by suitably skilled and reputable providers. In addition, licensing regimes 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 also benefit consumers by addressing certain market failures such as differences in the level of information known to consumers and industry members. In addition, benefits can also accrue with regard to public safety and crime prevention.

Licensing of dealers

Legislation relating to the selling of motor vehicles has been in place in Western Australia since 1973 to protect the interests of consumers in the consumer market. Prior to the introduction of this legislation, there were serious concerns about backyard selling and dubious sales practices, such as:

- generally deceiving consumers, for example, disguising mechanical defects by using temporary remedies;
- high pressure sales tactics resulting in consumers unwittingly signing contracts;
- failure to disclose important information; and
- odometer tampering.

This led to the introduction of the MVDA, which established a licensing regime that applies to those persons engaged in the business of buying, selling and exchanging motor vehicles in Western Australia. The key reasons at the time for regulating the motor vehicle sales industry and introducing a licensing regime included:

- providing consumer protection;
- redressing the inequality in bargaining power between consumers and dealers; and
- addressing issues of backyard selling and dubious sales practices.

Licensing of repairers

Legislation relating to the repair of motor vehicles was fully implemented in 2008. The MVRA provides for the certification of individual repairers and the licensing of repair businesses. The aim of the MVRA is to protect consumers in their dealings with motor vehicle repairers, as well as to address safety concerns and promote high standards of workmanship.

It is noted that the repair industry was strongly in support of the introduction a licensing regime for repairers, having lobbied successive governments since the early 1990's. The introduction of legislation to regulate repairers represented the culmination of two committees of inquiry and extensive consultation with the motor vehicle industry.

Consumers were also consulted prior to the introduction of the legislation. This consultation comprised: focus groups; in depth phone interviews with consumers based in regional areas; and phone surveys of a representative sample of urban and regional consumers. The research indicated that there was considerable consumer dissatisfaction, with poor quality repairs cited as a major reason for their dissatisfaction. The findings also indicated strong support for the introduction of legislation.

Productivity Commission's perspective

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;
- the costs of obtaining product information are high; and/or
- verification of quality by the consumer or other third parties is difficult.⁹

Disadvantages of regulation

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 choice for consumers and impact on labour mobility.

Ongoing relevance of the MVDA and MVRA

This paper considers whether the arrangements contained in the MVDA and MVRA remain relevant in today's marketplace. Consideration is also being given to whether the legislation appropriately balances the needs of the consumer against those of the motor vehicle sales and repair industries.

WESTERN AUSTRALIA LICENSING AND CERTIFICATION

The Commissioner is the licensing authority for both dealers and repairers. The MVDA and MVRA include certain licensing and certification requirements. Table 1 below identifies the various categories and information about the number of licensees/ certified repairers as at January 2015.

⁹ Productivity Commission 2008, *Review of Australia's Consumer Policy Framework*, Final Report, Canberra, Volume 2 page 93.

Table 1: Number of licences and certificates issued as at January 2015

Category	No. licensed or certified
Motor vehicle dealers - business licence	841
Motor vehicle dealers - sales persons	2,084
Motor vehicle dealers - yard managers	1,239
Motor vehicle repairers - business licence	4,087
Motor vehicle repairers - certificate holder	12,237

CURRENT LEGISLATIVE FRAMEWORK

MOTOR VEHICLE DEALERS ACT 1973

The key purposes of the MVDA are to:

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

Overview of the MVDA

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

- motor vehicle dealer;
- yard manager;
- salesperson; and
- car market operator.

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. These records are required to be kept in order to:

- assist in the investigation of criminal activity;
- provide information for taxation purposes (for example, stamp duty);
- provide information to regulators such as the Department and the Department of Training ; and
- assist in maintenance of records relating to vehicle transfers.

The MVDA also includes a number of information and warranty measures, such as:

- 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 ensure it is 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 SAT.

The following regulations have 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.

MOTOR VEHICLE REPAIRERS ACT 2003

The key purposes of the MVRA are to:

- improve the general standard of repairs conducted on motor vehicles;
- enhance consumer confidence in the motor vehicle repair industry by requiring that repair work be carried out by qualified repairers;
- improve the safety of vehicles on Western Australian roads; and
- assist in law enforcement efforts in relation to vehicle theft and the re-birthing of motor vehicles.

Overview of the MVRA

The MVRA provides that a person who operates 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 a person supervised by a person holding a relevant repairer's certificate.

The MVRA does not set ratios for supervision. 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.

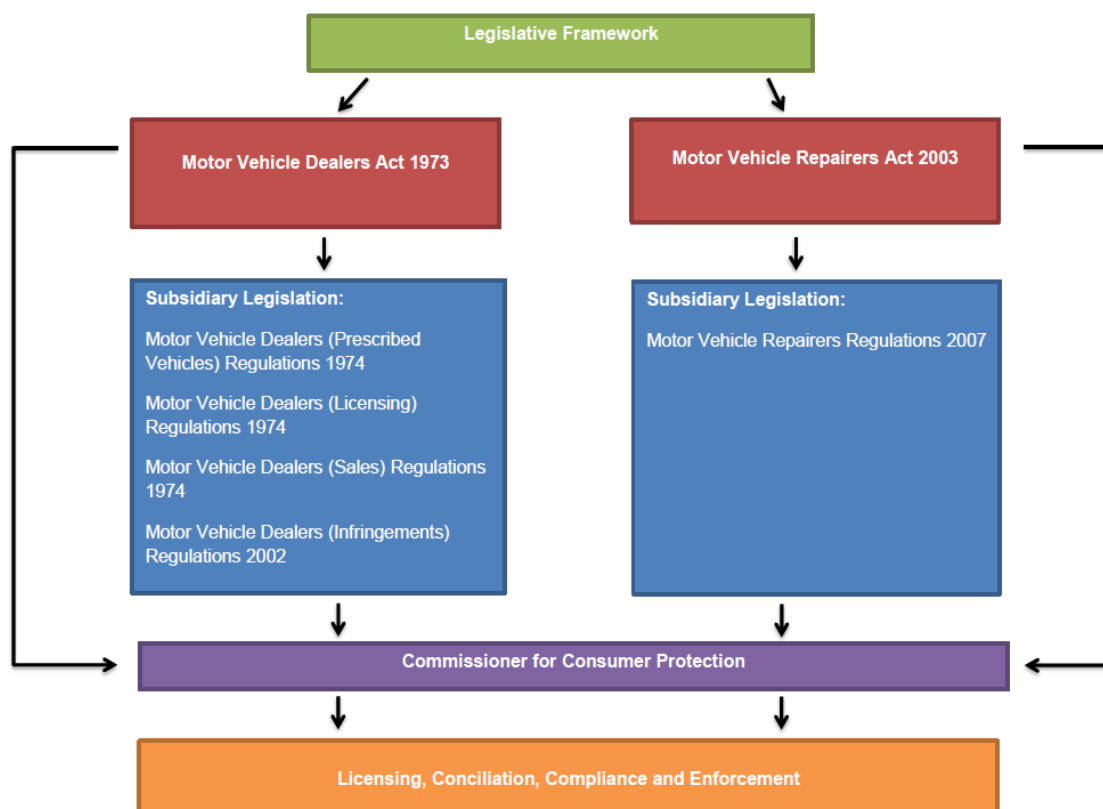
A licensee may only operate from authorised premises. The Commissioner has the capacity under the MVRA to conciliate a dispute between a motor vehicle repairer and an owner of a vehicle. The MVRA also provides for a compensation fund which allows consumers to recover certain losses incurred as a result of repair work that is incomplete or carried out incompetently. The fund is credited with a prescribed percentage of licensing fees.

The MVR Regulations are prescribed under the MVRA.

OVERVIEW OF REGULATORY AND ADMINISTRATIVE ARRANGEMENTS

Both the MVDA and the MVRA are supported by regulations and the Department's administrative policies and procedures. Figure 1 below provides an overview of the current arrangements.

Figure 1: Legislative framework for governing the motor vehicle dealing and repair industries in Western Australia



RECENT RED TAPE REFORMS

Over the past few years, a number of changes have been made to the MVDA and MVRA, as well as to relevant administrative procedures. These have arisen as a consequence of other review processes conducted by the Department. The changes are detailed below for information and background.

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

Application forms

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 reducing the burden on business operators in making licence applications without increasing the risks to consumers.

This resulted in the amendment of application forms (which included the removal of statutory declarations) to improve ease of use for applicants and, where possible, provide for consistency across the various industries licensed by the Department.

Credit history reports

In 2014, the Department commenced undertaking all credit history checks on behalf of applicants for a motor vehicle dealer's licence and applicants for a motor vehicle repair business licence rather than applicants providing this information. A modest increase in licensing fees of \$4 was made to offset this cost to government. It is anticipated that this initiative will lead to a direct cost saving of \$30 for individuals to over \$150 for body corporate applicants every three years, and will result in considerable time saving for all applicants.

Consumer Protection Legislation Amendment Act 2013

Amendments contained in the CPLA Act commenced in November 2014. The CPLA Act primarily included amendments to dispense with unnecessary and out-dated requirements so as to ease regulatory burden on small business, including motor vehicle dealer and repair businesses.

Planning certificates

Previously, both the MVDA and MVRA required 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 were situated. The planning certificate was intended to serve as confirmation that the premises from which the business operated had planning approval for the relevant activity. The CPLA Act amended the MVDA and MVRA to:

- dispense with requirements to provide planning and conditional planning certificates when applying for a licence or adding new premises thereby avoiding unnecessary delays for businesses;
- 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 has the power to revoke an authority for premises if notified by a local government authority that premises do not comply.

Licensing of motor vehicle repair businesses

Previously, the MVRA required motor vehicle repair businesses to be licensed for specific classes of repair work. This was in addition to the requirement that individual repairers must be certified as suitably qualified to carry out work of a particular class. The CPLA Act has streamlined those provisions by removing the requirement for businesses to be licensed for each specific class of repair work they wish to undertake. As a consequence, licensed repair businesses now only need to ensure they employ a repairer with certification for particular classes of repair work to undertake those repairs.

Disciplinary action

The CPLA Act has also amended the MVRA to give the SAT review jurisdiction over decisions or orders of the Commissioner. Previously this jurisdiction rested with the Magistrates Court.

Other reforms

Previously, applicants for a licence were required to undertake a criminal history check by lodging an application through Australia Post. The Commissioner now accepts national police checks from certain Crim-Trac accredited agencies.

The Commissioner also no longer requires licence holders to return their original licence certificates when amendments are made (unless specifically required by the MVRA). For instance, historically, when adding or removing premises, licence holders had to return all previously issued certificates prior to new ones being issued.

Planned reform: online completion of forms and payment

In response to the discussion paper, the SBDC stated that the ability to lodge forms online, with the accompanying licence payment, would save businesses a considerable amount of time. The Department is currently in the process of developing an efficient, user-friendly online application form for a motor vehicle dealer or motor vehicle repairer licence.

AUSTRALIAN CONSUMER LAW

The ACL, which commenced on 1 January 2011, introduced uniform, national consumer protection legislation. The ACL replaced Part V of the *Trade Practices Act 1974* (Cth) and the *Fair Trading Act 1987* (WA) and was 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 ACL¹⁰.

Consumer guarantees

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

- any types 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, although most do not apply if sold by auction.

¹⁰ Intergovernmental Agreement for the ACL - clause 3.2.

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.¹¹ 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.¹²

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.¹³

Under the ACL, services must be delivered with due care and skill, be fit for any disclosed purpose and, if the contract for services does not set a time frame, be completed within a reasonable time.¹⁴

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

The ACL also provides consumers with remedies if goods or services fail to meet a guarantee. The remedy available will depend on whether the failure is minor or major in nature.¹⁵

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.

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.¹⁶

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.

¹¹ ACL – sections 54, 55, 56 and 57.

¹² ACL – section 58.

¹³ ACL – sections 51, 52 and 53.

¹⁴ ACL – sections 60, 61 and 62.

¹⁵ ACL – part 5-4.

¹⁶ ACL – sections 260 and 268.

Other ACL provisions

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

- a provision that a person must not engage in conduct that is misleading or deceptive or likely to mislead or deceive¹⁷ or make false or misleading representations¹⁸;
- a provision that a person must not act unconscionably when selling or supplying goods or services to a consumer¹⁹;
- a prohibition on unfair contract terms in standard form consumer contracts²⁰;
- a provision relating to unsolicited goods or services²¹;
- a requirement that a supplier must provide proof of transaction to consumers (such as a tax invoice)²²; and
- a requirement that a supplier provide an itemised bill for services (on request).²³

¹⁷ ACL – section 18.

¹⁸ ACL – section 29.

¹⁹ ACL – section 21.

²⁰ ACL – section 23.

²¹ ACL – section 40.

²² ACL – section 100.

²³ ACL – section 101.

MOTOR VEHICLE LEGISLATION IN OTHER AUSTRALIAN JURISDICTIONS

There is some variation in the level and scope of regulation of the motor vehicle sales and the motor vehicle repair industry across Australia as shown in Table 2 and Table 3 below:

Table 2: Overview of regulation of motor vehicle dealers across Australia

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Licensing of dealers/traders	✓	✓	✓	✓	✓ ²⁴	✓	✓	✓
Registration/licensing of salespersons				✓				✓
Restrictions on who may be employed as salesperson					✓ ²⁵	✓ ²⁶	✓ ²⁷	
Licensing of yard managers			✓ ²⁸					✓
Licensing/registration of car market operators	✓	✓						✓

Table 3: Overview of regulation of motor vehicle repairers across Australia

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Licensing of persons carrying on business	✓	✓						✓
Certification of tradespersons		✓						✓

²⁴ In South Australia, the licensing requirements apply only in relation to persons dealing in second-hand motor vehicles – *Second-hand Vehicle Dealers Act 1995* (SA) – section 3.

²⁵ In South Australia, 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 - *Second-hand Vehicle Dealers Act 1995* (SA) – section 13A.

²⁶ In Tasmania, 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 – *Motor Vehicle Traders Act 2011* (Tas) – section 28.

²⁷ In Victoria, a licensee must not employ any person in the actual buying, selling or exchanging of cars who has had a claim admitted against the compensation fund, been convicted or found guilty of a serious offence within the last 10 years or is disqualified from being a licensee or being employed in the motor car trade – *Motor Car Traders Act 1986* (Vic) – section 35A.

²⁸ 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 - *Consumer Affairs and Fair Trading Act* (NT) – section 176.

DEPARTMENT'S ROLE

LICENSING AUTHORITY

The MVDA and MVRA are licensing Acts for which the Commissioner is the licensing authority. The following section outlines the Department's role in dealing with consumer issues relevant to the motor vehicle dealer and motor vehicle repair industries. The Department gathers market intelligence data obtained through telephone advice enquiries, formal complaints, conciliation activities and investigation and compliance activities, to identify trends and monitor issues in relation to the motor vehicle industry in Western Australia.

DEPARTMENT'S ACTIVITIES

The Department strives to create a trading environment that appropriately balances the interests of consumers and business. In respect of the motor vehicle dealing and motor vehicle repair industries, the Department 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;
- 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.

MOTOR VEHICLE RELATED ENQUIRIES COMPLAINTS

The Department deals with over 12,000 motor vehicle related matters relevant to the MVDA or MVRA each year. Matters range from providing advice via telephone enquiries, conciliation of disputes, through to compliance initiatives and formal prosecution actions.

The vast majority of motor vehicle related matters raised by consumers do not require formal investigation or compliance action. Where prosecution is necessary, the most common issues relate to unlicensed motor vehicle dealing or unlicensed motor vehicle repairing.

Advice line enquiries

The Department provides a telephone advisory service whereby callers can seek advice about issues of concern. The Department recorded around 137,000 calls to the advice line in 2013-14. Around 9% of all calls to the advice line are motor vehicle related enquiries.

Complaints

The Department 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 the Department each year of which, around 11% are relevant to the MVDA and MVRA.

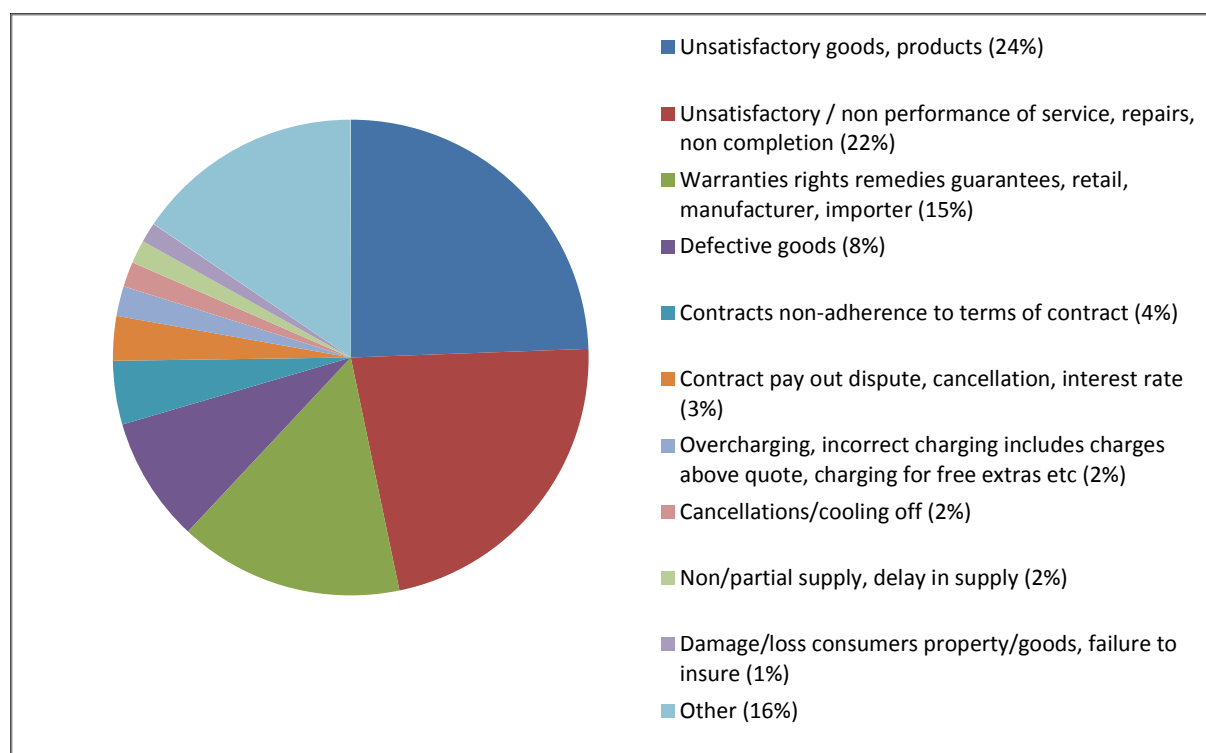
In some cases, the Department finds that businesses have acted appropriately and the complaints do not proceed any further. In other cases, the Department undertakes conciliation between the parties which results in a significant proportion of complaints being successfully settled by agreement between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

Trends: Motor vehicle dealers

Top 10 complaint issues against dealers

Figure 2 below identifies the top 10 complaint issues against dealers for the period 2006 to 2014.

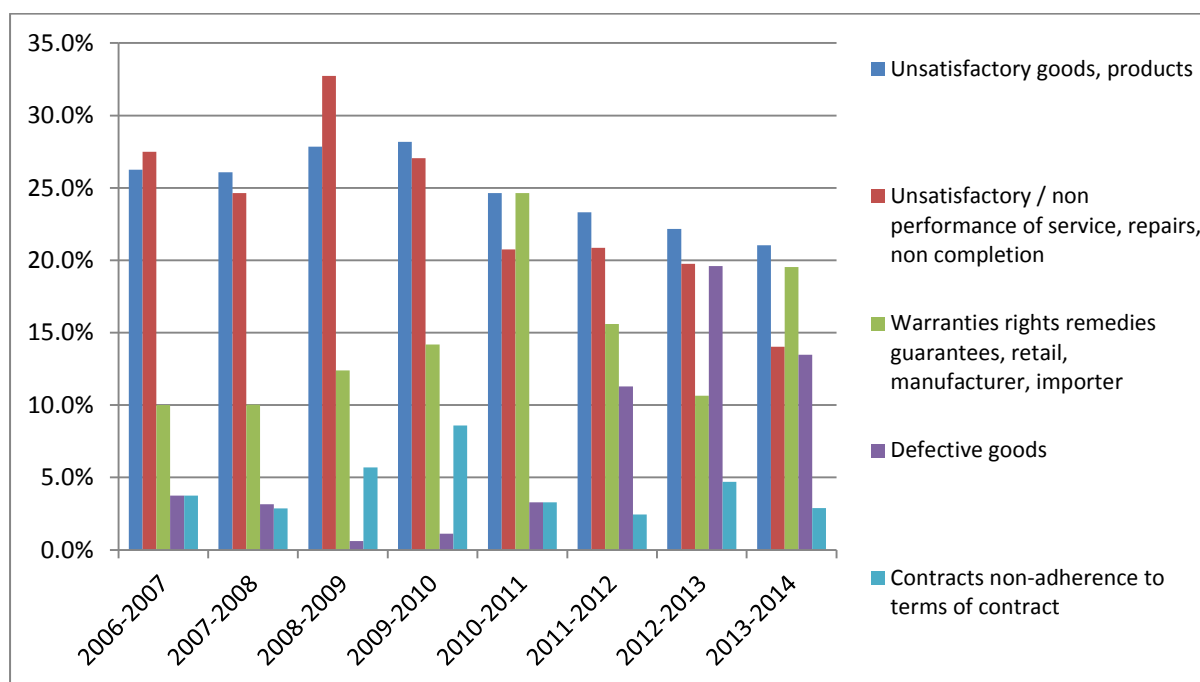
Figure 2: Dealer complaint issues 2006-2014



Nature of dealer complaints

Figure 3 below compares the percentage of yearly dealer complaints regarding each of the top five issues. The relative percentage of complaints regarding unsatisfactory goods, products or services has decreased significantly since the 2008-2009 financial year. At the same time, complaints regarding warranties and defective goods have become more prevalent. (The increase in the number of complaints regarding warranties and defective goods may be related to the commencement of the ACL in January 2011.)

Figure 3: Trends in dealer complaint issues – financial year values 2006-2014



Trends: Motor vehicle repairers

Motor vehicle repairer enquiries pre and post implementation of the legislation

Analysis of data relating specifically to motor vehicle repairers for the period 2006 to 2014 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.

Top 10 complaint issues against repairers

Figure 4 below identifies the top 10 complaint issues against repairers for the period 2006 to 2014.

Figure 4: Repairer complaint issues 2006-2014

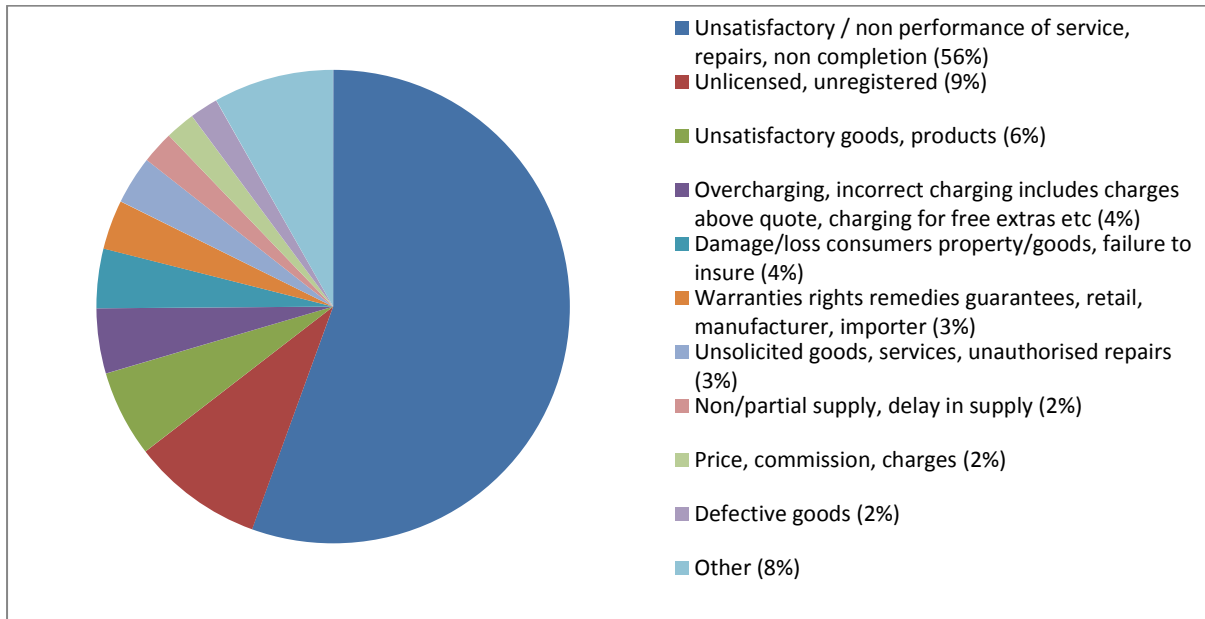
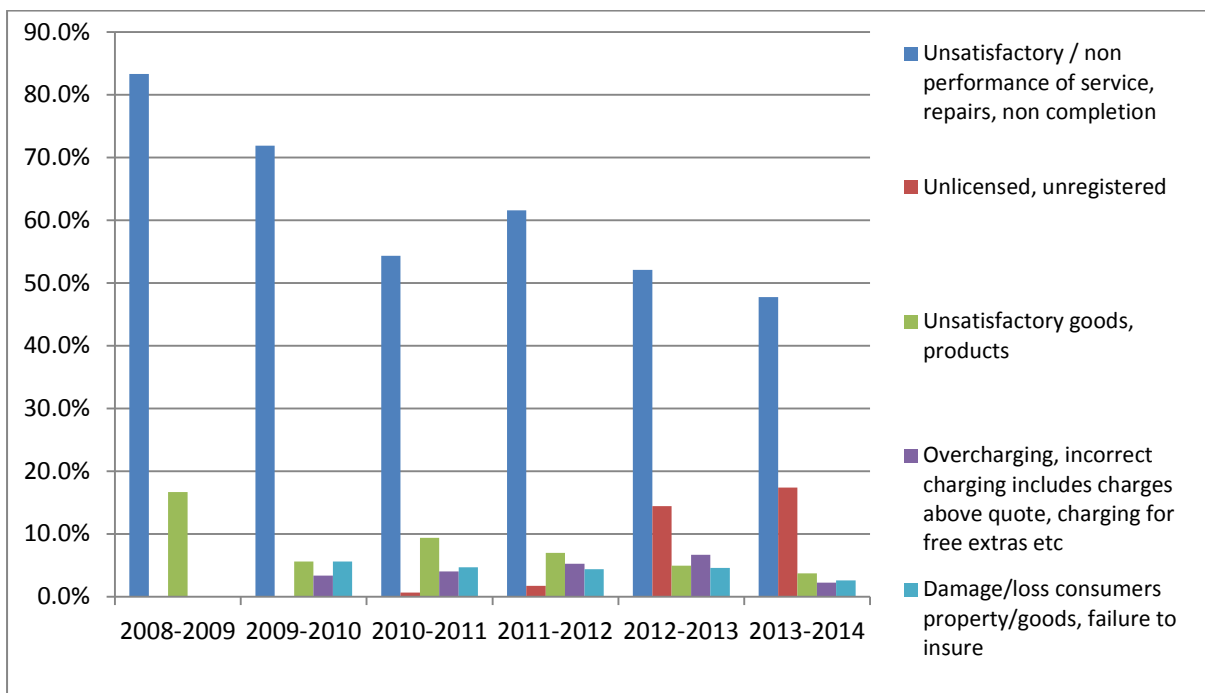


Figure 5 below compares the percentage of yearly vehicle repair complaints regarding each of the top five issues for the years 2008 to 2014. The specific category of unsatisfactory, non-performance of service, repairs, non-completion has consistently been the most common complaint issue, although there appears to have been a fairly steady decline in percentage terms of this category of complaints.

Figure 5: Percentage breakdown of repairer complaint issues 2006-14



LICENSING FEES AND COST RECOVERY

GENERAL REVIEW OF FEES

It was originally intended that the Department would consider licensing fees as part of the current Review but this will instead be undertaken as part of the Department's broader review of fees and charges. It is understood that alternative funding models may also be explored in the future, for example, in relation to dealer fees: transaction based fees linked to motor vehicle transfer fees or fees based on the number of vehicles sold.

The following information will inform the broader review of licensing fees and includes:

- contextual information in relation to cost recovery;
- summarises views expressed by stakeholders; and
- summarises relevant comments made in recent government reports.

Stakeholder input provided in response to the discussion paper will also inform the Department's general review of fees and charges.

BACKGROUND

Meaning of cost recovery

Cost recovery on the part of government refers to charging the non-government sector some or all of the costs of a specific government activity. These activities may include the provision of goods, services or regulation, or a combination of them.

Government policy in relation to cost recovery

The Government's policy in relation to cost recovery is to set fees at a level that reflects the full cost of providing the services. Charging full cost, in the absence of any reason to provide a discounted or free service, is seen as justifiable given the goals of ensuring resources are allocated efficiently and ensuring taxpayers are not required to pay for services which they do not use.

Guidelines to support government policy

All public sector agencies are required²⁹ to accurately determine the cost of their services. Guidelines are published by the Department of Treasury for costing and pricing government services.³⁰ The guidelines set out the following principles (relevant to cost recovery) to be applied in undertaking costing exercises:

- Unless the Government approves otherwise, prices should be set at levels that reflect the full costs of providing the services.

²⁹ Public Sector Commissioner's Circular Costing and Pricing Government Services (2009-12).

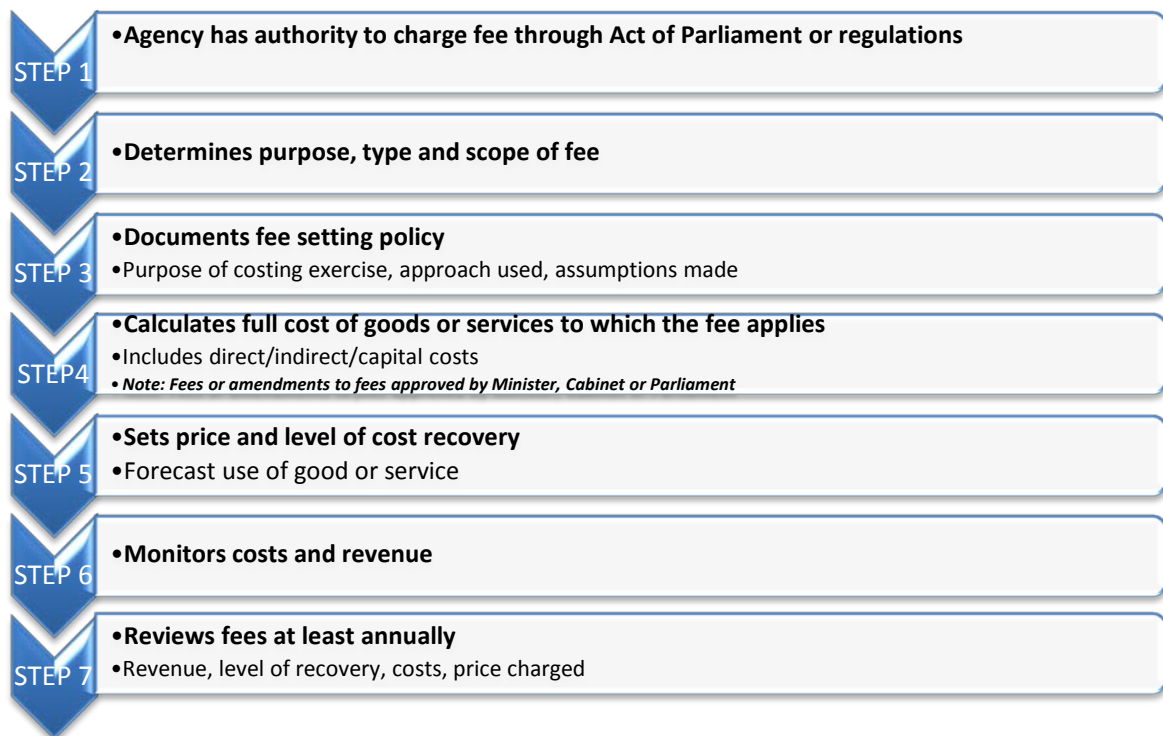
³⁰ Costing and Pricing Government Services: Guidelines for Use by Agencies in the Western Australian Public Sector (April 2007).

- It is the responsibility of each agency to adopt a methodology for establishing costs that reflects as accurately as possible the circumstances in which their services are delivered.
- In determining the full cost of a service, agencies are required to consider all of its components, including direct costs, indirect costs and capital-related costs.

Process for fee setting

Figure 6 below presents an overview of the key steps agencies are expected to follow in setting fees.³¹ It is noted that all fees must be authorised by legislation, either in an Act of Parliament or associated regulations. The term 'fee' is a legal term interpreted to mean 'cost recovery'.

Figure 6: Overview of the key steps to follow in setting fees



ANNUAL REVIEW OF COSTS AND FEES

Department's processes

The Department reviews its costs and fees on an annual basis. Likely cost increases and expected demand for services are taken into consideration. The level of cost recovery expected to be achieved is then determined and included in budget estimates for the following financial year. Budget estimates are presented to the Minister for endorsement prior to being submitted to the Department of Treasury.

³¹ Based on Second Public Sector Performance Report 2010 Report 12 – November 2010.

The Department utilises internal guidelines (based on guidelines issued by the Department of Treasury) in relation to setting fees and charges. This involves assessing the underlying costs associated with providing the services (such as compliance, investigations, enquiries and conciliation).

Minister's role

As part of this budget process, the Department provides the Minister with clear advice in regard to the anticipated level of cost recovery to enable informed decision making in relation to whether to approve the setting of licensing fees at a level that does not reflect full cost recovery. The Minister can approve changes to fees of a routine and non-contentious nature. For example, increases to licensing fees which do not exceed the Consumer Price Index (CPI). It is noted that fees cannot be set above full cost recovery as this would be considered to be a tax.

Economic and Expenditure Reform Committee's role

In the case of proposed fee increases which are non-routine or are of a contentious nature, detailed submissions are required to be provided to the EERC for consideration. The EERC is a standing committee of Cabinet with membership comprising several Ministers. The EERC's key role is to formulate the annual State Budget. In addition, the EERC monitors the delivery of strategic commitments and other matters with major financial and/or economic impacts.

The costing and regulatory impact of all proposals considered by the EERC are evaluated by Treasury before they are submitted to the EERC. Any changes to legislation in relation to fees also require consideration by Cabinet.

COST RECOVERY: DEALERS AND REPAIRERS

Regulatory services

The Department's regulatory services in relation to the motor vehicle industry are partly funded through licensing and certification fees. These funds are used to partially meet the cost of administering the legislation and performing the various functions under the legislation.

These functions include:

- licensing of motor vehicle dealers and repairers;
- assisting consumers to resolve disputes with dealers and repairers;
- investigating complaints against licensees; and
- monitoring and enforcing compliance with the requirements of the legislation.

Original intent

It is noted that the Government's original intention on implementing the MVDA and MVRA was for licensing fees to achieve full cost recovery. Recent increases to licensing fees have been kept within the CPI. For example, increases to fees for 2014-15 reflected the increase to CPI of 2.6 per cent.

Cost recovery: motor vehicle dealing industry

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

The current fees partially meet the administrative costs of processing applications and undertaking conciliation and compliance activities in relation to motor vehicle dealers. Remaining costs are subsidised through the Consolidated Fund.

Cost recovery: motor vehicle repair industry

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.

The current fees partially meet the administrative costs of processing applications and undertaking conciliation and compliance activities in relation to motor vehicle repairers. Remaining costs are subsidised through the Consolidated Fund.

OUTCOME OF STAKEHOLDER CONSULTATION

The discussion paper and online survey targeting industry sought views in regard to whether the current method for determining licensing fees is appropriate. The following provides further detail in regard to the input received both by way of written responses and responses to the industry and consumer online surveys.

Dealer licensing fees

Written submissions

Overall written responses provided by industry supported the continuation of current arrangements for dealer licensing fees.

The following summarises written submissions in relation to dealer licensing fees.

MTA

The MTA recommended that the licensing fee structure remain unchanged as it believes that regulation of this industry is core business for government and should be funded primarily from consolidated revenue.

The MTA provided the following historical context relevant to cost recovery:

- during the 1970s, governments Australia-wide adopted 'consumer protection' measures for the benefit of the community;
- these consumer protection measures became core government business and consistent with that policy shift came the MVDA, which attached consumer protection mechanisms to the regulation of used car dealers; and

- since 1973, governments have always maintained the current level of funding from consolidated revenue.³²

The MTA noted that it had proposed significant changes to the regulation of the industry most of which would result in more cost effective regulation and significantly lower costs for government.

Lastly, the MTA noted that (at the time of lodging their submission) the Government had announced cuts of up to 20 per cent across the public service and understood that the Department was not exempted from these cuts.³³

Pickles Auctions

Pickles Auctions expressed the view that:

- the current method for determining licensing fees is appropriate;
- a model based on number of vehicles sold is not commercially viable for their business; and
- its business is driven by volume on consignment with fixed commissions rather than margin as per other more 'mainstream' dealerships.

Consumers' Association of Western Australia (Inc.)

The CAWA expressed the view that:

- for ease of administration a single fee should apply to all dealers irrespective of size of business and turnover;
- basing licensing fees on the number of vehicles sold may be a more equitable option but felt it would potentially involve additional administration costs; and
- licensing fees at around \$1,500 correspond with the cost of individual membership of any professional association and although a relatively large amount for a small trader, would not be an impost to a larger dealer.

Online survey response (in relation to dealer licensing)

Around half of respondents to the online Motor Vehicle Dealer Industry Survey supported the current method of determining licensing fees.

For those who considered it not to be appropriate, the survey sought views on two alternative methods (one based on the number of vehicles sold and the other based on the number of employees).

The responses to the two suggestions were fairly evenly split, with seven per cent saying it should be based on the number of cars sold, and six per cent saying it should be based on the number of employees.

³² As outlined earlier in this section, the Government has a clear policy which applies to all agencies of achieving full cost recovery in relation to delivering regulatory services.

³³ The Department notes that: there have been some budgetary cuts but these cuts have not resulted in reduced regulatory services relating to motor vehicle dealers and repairers.

Table 4 below summarises the responses to the online Motor Vehicle Dealer Industry Survey³⁴ relevant to dealer licensing fees.

Table 4: Dealer online survey responses in relation to dealer licensing

	Yes	No – should use number of vehicles sold	No – should use number of employees	No – should use another method*	Not specified	Total
Is the current method of determining dealer licensing fees appropriate?	75	11	9	15	39	149

*Note: No alternative methods for determining dealer fees were suggested by respondents.

Repairer licensing fees

Written submissions

The discussion paper sought views in regard to whether the current method for determining licensing fees is appropriate.

Written responses expressed differing views with the MTA supporting retention of the current approach while three submissions (RAC, SBDC and a repair business) expressed concerns in regard to the current approach to setting licensing fees. These three respondents suggested alternative methods for determining repairer licensing fees aimed at ensuring smaller repair businesses were not penalised.

MTA

The MTA supported the continuation of the existing fee structure for licensing repairers and noted that the Government had reduced the Department’s resourcing, and as a consequence, believed that there is no need for changes to licence fees as services would be reduced.

Royal Automobile Club

The RAC believes the current fee structure is not appropriate and suggested that:

- amendments be considered to reduce the number of financial tiers based on the number of individual repairers employed within the business;
- the number of licensing fee levels be reduced to just provide for small, medium and large businesses;
- increments to fees should be consistent; and
- consideration be given to the financial impact of licensing fees on small business.

³⁴ Specific questions relating to this matter were not included in the consumer survey.

A Grade Mechanical Services

A Grade Mechanical Services believes the current fee structure is not appropriate and stated that:

- current fees are seen as grossly unfair as they are skewed against sole traders with sole traders charged comparatively more than larger businesses employing several staff; and
- sole traders would generate considerably fewer consumer complaints as compared to repairers with several employees.

Small Business Development Corporation

The SBDC believes the current fee structure is not appropriate and suggested that:

- a new fee structure should be implemented which does not penalise small operators as compared to larger operators for example, (at the time of making the submission) a business with only one repairer was required to pay \$826 compared to \$264 per repairer for a business which employed seven repairers; and
- a fairer fee structure could be based on a set fee per repairer (\$300 for example) regardless of business size with a cap on the fee threshold.

Online survey response (in relation to repairer licensing)

Just over half of respondents to the online Motor Vehicle Repair Industry Survey supported the current method of determining fees while close to a quarter of respondents were not in support of the current method of determining fees.

Table 5 below summarises the responses to the online Motor Vehicle Repair Industry Survey.³⁵

Table 5: Repairer online survey response in relation to repairer licensing

	Yes (%)	No (%)	Not specified (%)	TOTAL (%)
Is the current method of determining licensing fees appropriate?	260 (55%)	109 (23%)	107 (23%)	476 (101%)³⁶

³⁵ Specific questions relating to this matter were not included in the consumer survey.

³⁶ Rounding has caused the total to be greater than 100%.

RELEVANT GOVERNMENT REPORTS

Red Tape Reduction Group Report

The RTRG was established by the then Treasurer in January 2009 to identify and report on opportunities to reduce the burden of existing State regulation and red tape on business and consumers. The RTRG's 2009 report³⁷ included consideration of the regulation of motor vehicle dealers and repairers and also considered the issue of cost recovery in relation to motor vehicle dealers.³⁸ The RTRG recommended that the motor vehicle dealers licensing fee structure be simplified basing it on a set fee per vehicle sold.³⁹

Auditor General's report

In 2010, the Auditor General examined central government oversight of the setting of fees and charges across the public sector.⁴⁰ The Auditor General also audited a sample of agencies in relation to whether the processes in place ensured appropriate costing of services and setting of fees and charges. The Department's fees in relation to the licensing of motor vehicle dealers and repairers were considered as part of the audit.

The Auditor General noted that the Department had adequate systems in place for costing their services which aligned with Treasury guidelines but concluded that Commerce had not made reasonable efforts to justify the grouping of one of the sampled fees. (Note: grouping is the costing of groups of services, rather than individual services, and then assigning fees to recover the overall cost of the group thus reducing administrative effort.)

The Auditor General noted that this issue would be addressed as part of Department's review of the legislation. In addition, the Auditor General noted that the Department would review the fee framework with the intention of achieving full cost recovery.

³⁷ Reducing the Burden – Report of the Red Tape Reduction Group Government of Western Australia 2009.

³⁸ It is assumed that cost recovery in relation to repairers was not discussed in the report due to the recommendation that repairers be deregulated (Recommendation 9.1).

³⁹ Recommendation 9.5.

⁴⁰ Second Public Sector Performance Report 2010 Report 12 – November 2010.

PART 2: PROPOSALS

This part of the paper identifies proposals for change which are considered minor and unlikely to have a negative impact on stakeholders.

OVERVIEW OF PROPOSALS

The following summarises the proposals under consideration.

Motor vehicle dealer proposals

This section of the paper considers the following in relation to motor vehicle dealers:

- Amending the MVDA to require disclosure in relation to: odometer alteration or replacement; vehicles being repairable write-offs; engine replacement; and prior use of vehicles as taxis, rental or hire vehicles.
- Amending the definition of camper van to ensure consistency between the definitions of caravan and camper vans and avoid doubt in the interpretation of these terms.

Motor vehicle repairer proposals

This section of the paper considers the following in relation to motor vehicle repairers:

- Amending the MVRA to remove the need to prescribe qualifications and examinations in the regulations.
- Amending the MVRA to simplify compliance requirements for mobile repairers.

STAKEHOLDER INPUT BEING SOUGHT

Stakeholders are invited to respond to this part of the paper by: advising whether they support the change being proposed; advising whether any unintended consequences may arise from the proposed change; and identifying the cost implication of the change being proposed.

PROPOSAL TO CHANGE THE DISCLOSURE REQUIREMENTS UNDER THE MVDA

ISSUE

The MVDA requires that a dealer attach a notice to a second-hand vehicle that is offered or displayed for sale. The notice must be in the prescribed form and contain the following particulars⁴¹:

- 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 vehicle identification number (VIN) or chassis number; and
 - whether the obligation to repair defects under section 34 of the MVDA applies to the vehicle.

OBJECTIVE

The aim is to ensure that adequate disclosures are made at the time of purchase to enable consumers to make a fully informed decision about the vehicle they are seeking to purchase and therefore reduce the risk of disputes between dealers and consumers.

OUTCOME OF CONSULTATION

The following information summarises stakeholder input in response to this issue.

Response to online survey

There was strong support for the retention of the existing disclosure requirements. There was also support from 52 per cent of industry respondents for other disclosures being included in the notice to purchasers. The most strongly supported changes in relation to the type of information which should be disclosed were:

- whether the vehicle has been written off (51 per cent);
- whether the odometer has been altered or replaced (37 per cent);
- whether the engine has been replaced (30 per cent); and
- whether the vehicle has been used as a taxi, rental or hire car (29 per cent).

⁴¹ MVDA – section 33.

Written submissions

A total of eight submissions were received, including from the RAC, CAWA and the MTA. A number of suggestions in relation to the disclosure requirements for second-hand vehicles were made. Some of these are briefly discussed below.

The MTA and CAWA consider that the current disclosures are generally adequate but could be improved. The MTA recommended additional disclosures of odometer replacement (provided that the dealer has knowledge of it) and whether a vehicle had been declared a repairable write-off.

The MTA stated that their members have consistently requested the reintroduction of the Notice of Sale (Form 7) due to the information sellers were required to certify as part of the transaction. Prior to its deletion, the form was required to be used when the sale of a second-hand vehicle occurred between dealers, or when a consumer sold or traded-in their vehicle to a dealer. Apart from recording details of the vehicle, seller and purchasing dealer, the document required the seller to certify that the vehicle was unencumbered, did not have outstanding work orders issued by the relevant traffic authority and that all other information (including odometer reading, year of manufacture, engine number etc.) were true and correct.

The CAWA considered it reasonable that dealers be required to disclose to consumers if a vehicle has been written off, used as a taxi or hire car or if it is apparent that a vehicle's odometer or engine has been altered.

The RAC stated that their major concern is the potential introduction of inferior vehicles on to Western Australian roads and stressed the importance for vehicle safety ratings to be made available to all consumers.

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. These details not only help consumers reach an informed decision but factors such as the make and model of the vehicle, year of manufacture, year of first registration, licence expiry date and odometer reading are crucial in determining the sale price of the vehicle. Disclosures also allow for the confirmation of the VIN and chassis number, giving additional peace of mind to purchasers.

It is proposed that dealer disclosure requirements be amended to also include:

- whether they have been made aware of, and have been able to confirm, that an odometer has been altered or replaced;
- whether a vehicle has been declared a repairable write-off;
- whether a vehicle's engine has been replaced and the date of replacement; and
- whether a vehicle has been used as a taxi, rental car or hire car.

It is anticipated that this change would result in improved consumer protection, greater consumer confidence in the motor vehicle dealing industry and a reduction in the number of complaints made to dealers and the Department. Obtaining such information by a dealer from a seller is not considered to be a significant additional impost on dealers as it is likely a prudent dealer will seek to obtain such information for their own purposes when they buy or trade-in a vehicle.

This proposal is unlikely to have a significant negative impact on stakeholders.

The following suggestions from stakeholders were considered but, on balance, not supported:

- disclosure of the vehicle safety ratings, as determined by the Australasian New Car Assessment Program, on all new and used cars available for sale through licensed motor vehicle dealers in Western Australia;
- disclosure about whether items not covered by statutory warranty, such as tyres, battery, air-conditioner, reversing cameras, GPS, CD and DVD player and radio, are in good working order; and
- disclosure of an estimated amount of vehicle licence duty.

Information about vehicle safety ratings is relatively accessible through the internet and the Department publishes information on its website about the statutory vehicle warranty that applies to used vehicles, including, items that are not covered. It is considered appropriate, therefore, that at the time of signing the sale contract consumers also need to have exercised a certain level of responsibility by conducting their own due diligence in respect of the vehicle safety ratings and whether certain items within a used vehicle are in working order.

While the Department of Transport and Department of Finance provide stamp duty calculators on their websites, it is considered that disclosures by dealers to consumers about the estimated amount of duty applicable to a vehicle purchase would be problematic. This is because the Department of Transport, when calculating the dutiable value of a used vehicle, takes into account the following factors, which are not available to all prospective purchasers:

- dealer delivery charges for new vehicles⁴²;
- the amount paid to the seller for accessories included in the vehicle prior to delivery to the purchaser or date of registration or transfer; and
- factory rebates provided by the manufacturers for fleet purchasers.⁴³

Although dealers may be able to provide some guidance about stamp duty on a used vehicle, ultimately the responsibility for payment lies with the purchaser and therefore any queries about stamp duty should be for the purchaser to pursue.

The re-instatement of the Notice of Sale (Form 7) is also not supported as it would in the Department's view, record information that is obtainable by dealers from other sources or recorded in other documents that are completed during the sale (or acquisition) process. Apart from not being able to ascertain whether a vehicle may be subject to a work order, all the other information that was required to be provided in the Form 7 is available – for example, dealers are able to access the Personal Properties Securities Register to check if the vehicle has money owing on it or whether it is written-off or stolen.

The Department also understands that through the MTA, a version of the previous Form 7 (known as Form SO7) is available for purchase from the MTA by dealers who may wish to have sellers provide and certify this information when acquiring a vehicle.

⁴² Dealer delivery charges do not apply to used motor vehicles. Furthermore, concession rates of stamp duty apply to certain consumers and these concession rates would be unknown to the dealer.

⁴³ For further information about how vehicle stamp duty is calculated visit the Department of Finance website on www.finance.wa.gov.au.

OTHER JURISDICTIONS

Similar obligations to display vehicle particulars apply in most other jurisdictions. Examples of additional disclosure requirements in other jurisdictions include:

- a statement as to whether the vehicle has been listed on a relevant register as being written-off⁴⁴;
- whether the vehicle has been used as a taxi, rental car or hire car⁴⁵;
- whether the odometer has been altered or replaced or the dealer suspects that this has occurred⁴⁶; and
- whether the vehicle's engine has been replaced and the date of replacement.⁴⁷

PROPOSED CHANGE

It is proposed that the MVDA be amended so that in addition to current disclosures, dealers are required to disclose to consumers:

- whether they have been made aware of, and have been able to confirm, that an odometer has been altered or replaced;
- whether a vehicle has been declared a repairable write-off;
- whether a vehicle's engine has been replaced and the date of replacement; and
- whether a vehicle has been used as a taxi, rental car or hire car.

Question	
Question 1	Do you support the addition of the above items to the disclosure form? Why?
Question 2	What would be the cost implications of making the proposed change?

⁴⁴ NSW and Vic.

⁴⁵ SA.

⁴⁶ NSW, ACT and Qld.

⁴⁷ Qld.

PROPOSAL TO AMEND THE DEFINITION OF CAMPER VAN, CARAVAN AND TRAILER UNDER THE MVDA

ISSUE

For the purposes of the MVDA a camper van is defined as ‘a vehicle specially fitted for camping or touring purposes and which is equipped with sleeping facilities and cooking facilities’.⁴⁸

The term caravan is defined in the Motor Vehicle Dealers (Prescribed Vehicles) Regulations 1974 (WA) as ‘a trailer, including a camper trailer, fitted for human habitation in the course of a journey’.

The term trailer is defined in the same regulations as meaning ‘a vehicle designed to be drawn by a motor vehicle’.

Submissions in response to the 2013 discussion paper suggested that there may be uncertainty among industry participants as to:

- how the words ‘sleeping facilities and cooking facilities’ in the definition of camper van are intended to be interpreted;
- the types of vehicle intended to be captured by the term caravan; and
- the types of trailers intended to be captured under the definition of trailer.

The submissions and proposals for amendments are discussed below.

OBJECTIVE

To ensure that the definition of vehicle for the purposes of the MVDA includes the vehicles it is designed to regulate.

DISCUSSION

Caravans and camper vans

Submissions by the MTA and CIAWA to the discussion paper indicate that there is concern that some suppliers of camper vans are interpreting ‘sleeping facilities and cooking facilities’ in such a way that unless the vehicle has both elements, it is not captured by the MVDA. The MTA and CIAWA are of the view that this does not reflect the original intention of the legislation. The following proposals have been suggested for amending the definition of camper vans.

- replace ‘sleeping facilities and cooking facilities’ with ‘fixed sleeping facilities or fixed cooking facilities’; or
- amend the definition to read ‘camper van includes a motor home and means a self-propelled vehicle fitted for human habitation in the course of a journey’.

It has also been suggested that the definition of caravan be clarified so that ‘fitted for human habitation’ is defined as including ‘sleeping facilities or cooking facilities’ so that a seller cannot avoid the provisions the MVDA by removing one of the facilities from the caravan.

⁴⁸ MVDA – section 5(4).

The proposals put forward would appear to ensure consistency between the definitions of caravan and camper vans and avoid doubt in the interpretation of these terms.

Trailers

The term trailer is used in the meaning of caravan in the Motor Vehicle Dealers (Prescribed Vehicles) Regulations 1974 (WA) and is defined as ‘a vehicle designed to be drawn by a motor vehicle’.

Industry submissions by the MTA and CIAWA have suggested that this definition should be reworded so as to explicitly provide that only trailers fitted with braking systems are covered by the licensing requirements of the MVDA. The rationale given is that a narrower definition would reduce the current uncertainty as to what is and is not a trailer for the purposes of licensing under the MVDA. It would also align the MVDA with the MVRA which excludes ‘box-trailers without brakes’ from the definition of motor vehicle.

As the terms trailer and caravan are interlinked in the MVDA, it is important to ensure that any narrowing of the definition of trailer does not result in confusion as to whether caravans remain covered by the dealer licensing requirements. For example, if the current definition of trailer is amended such that only trailers fitted with braking systems are included, that would mean that caravans not fitted with braking systems (principally those with a gross trailer mass of 750 kg or less) would no longer be subject to the licensing requirements of the MVDA. Arguably, such an outcome would be likely to add to any existing confusion.

PROPOSED CHANGE

That the definition of camper van and caravan be amended to ensure they are consistent and also to remove any uncertainty around the application of MVDA to camper vans or caravans. The amended definition will ensure that it is clear that the MVDA applies to camper vans or caravans that are fitted with sleeping or cooking facilities. The wording of the provisions will be at the discretion of Parliamentary Counsel’s Office, but developed in consultation with key stakeholders.

Question	
Question 1	Do you support the proposed changes to the definition of camper van or caravan?
Question 2	Are there any unintended consequences that you believe may arise with the proposed changes? If so, please provide details.

PROPOSAL IN RELATION TO THE 'SUFFICIENTLY QUALIFIED' CRITERIA FOR REPAIRER CERTIFICATION UNDER THE MVRA

ISSUE

The current requirement to prescribe qualifications in the regulations is not sufficiently responsive to industry and course changes. Prescribing qualifications in the regulations is also costly for government to administer, particularly as amendments are required on a fairly regular basis in order to keep pace with ongoing changes to course codes and qualifications.

OBJECTIVE

To continue to ensure that repairers are 'sufficiently qualified' for the class of repair work for which they are being certified; and that the MVRA keeps pace with industry and vocational course changes.

BACKGROUND

Current requirements

Under the MVRA, an individual is 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 (see page 156 of this paper for further discussion); and
- sufficiently qualified to carry out the relevant class of repair work.

Benefits of certification

Certification is generally seen as cost effective for industry. For example, it removes the need for employers to check the validity of prospective employees' qualifications. Instead, the employer can simply check on-line that the prospective employee is certified via the Department's register of repairers. In addition, qualification requirements are seen as delivering consumer protection benefits by ensuring that work is completed or supervised by persons with adequate qualifications.⁴⁹

Centralisation of the certification process also ensures that a consistent approach is implemented.⁵⁰

Qualifications

Current application requirements include providing certified copies of qualifications and verified information about work experience.

Under the MVRA, a person will be sufficiently qualified⁵¹ if they:

- hold the qualifications prescribed by the regulations for the class of repair work concerned;
or

⁴⁹ *Better Regulation Office Report – Licensing of Selected Occupations*, New South Wales Government, April 2009 – page 36.

⁵⁰ *Better Regulation Office Report – Licensing of Selected Occupations*, New South Wales Government, April 2009 – page 35.

⁵¹ MVRA – section 42.

- have passed the examinations prescribed by the regulations for the class of repair work concerned (Note: no examinations are currently prescribed); or
- hold some other qualifications or have passed some other examinations that the Commissioner determines to be sufficient for the class of repair work concerned; or
- have sufficient other experience that the Commissioner determines to be sufficient for the class of repair work concerned.

The prescribed qualifications for each class of repair work are set out in the Motor Vehicle Repairers Regulations 2007.⁵² The Commissioner has power under section 42 of the MVRA to determine ‘other’ qualifications or examinations sufficient for the class of repair work concerned.

Points system

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.

STAKEHOLDER VIEWS

Overview

As part of the discussion paper stakeholders were invited to provide input in relation to the ‘sufficient qualifications’ criteria which applies to the certification of repairers. The following outlines stakeholder responses.

Written submissions

A total of six written submissions included comments relevant to sufficient qualification requirements for repairers. The submissions indicated broad support for the retention of the certification of repairers, including retention of the criteria in relation to being sufficiently qualified to carry out the relevant class of repair work.

Industry and consumer stakeholders also made a number of suggestions for improving the current system for certifying repairers in respect of being sufficiently qualified.

The following summarises written submissions provided by industry and consumers.

⁵² Regulation 8.

MTA

The MTA noted that:

- Western Australia's well regulated and professional vehicle repair system is founded on a highly skilled workforce with an effective system for assessing those skills;
- the current system is flexible in that it recognises that skills can be obtained by either professional training (apprenticeship and other skill training processes) or through on the job learning;
- the current system recognises the training of migrants;
- where there is doubt in regard to meeting qualification requirements, the system provides a fall back assessment mechanism, in which skills claimed are tested against benchmarks;
- the Automotive Industry Retail, Service and Repair Training Package (AUR12) provides a very effective educational base for the certification system; and
- the current prescriptive approach appears to be redundant.

The MTA supported the existing approach to the recognition of overseas qualifications and noted that the MTA had not received any feedback to the effect that the current approach to recognition of overseas qualifications had caused difficulties for industry.

The MTA strongly supported retention of the current points system, particularly if the certification requirements are amended to remove the character test and/or a renewal process is introduced. Further, the MTA noted that part of the success of this system is the flexibility it provides when recognising skills, developed either through training or on the job.

The MTA made the following suggestions:

- section 42 of the MVRA and the regulations be updated to remove the prescribed training courses and allow the Commissioner alone, to approve training courses for each class of repair work (given that the Commissioner also has the power under Section 42 of the MVRA to approve other courses);
- the Commissioner approve relevant modules identified in the AUR12 Automotive Industry Retail, Service and Repair Training Package, as an approved training course for each of the classes of repair work prescribed under MVRA; and
- the certification system be linked to the trade training system so that all new apprentices in the automotive trades and all trainees completing automotive trade certificates be issued with a repairer's certificate under the MVRA in their relevant class of repair work.

RAC

The RAC noted the inability of overseas tradespeople to apply for certification due to the lack of alignment with international trades certificates (for example, Australia will currently only accept UK trades certificates through the federal immigration program).

The RAC suggested that consideration be given to the development of materials to support internationally qualified repairers gain qualifications in Western Australia, particularly on fulfilling 'points system' criteria.

The RAC supported the removal of the points system that is currently required and noted that future industry requirements may need to include qualifications to allow tradespeople to work on electric and hybrid vehicles with high voltage.

Department of Training and Workforce Development

The DTWD noted that the MVRA contains a table of prescribed qualifications which require regular update and amendment without a clear mechanism for this to occur. The DTWD suggested that this table be replaced with a statement that the prescribed qualification (referred to in section 42 of the MVRA) is the current Industry Training Package and that an appropriate body, (either the Industry Training Council or regulator) will maintain the list of qualifications for certification.

The DTWD, in consultation with the Engineering and Automotive Training Council (ETAC) supported the removal of the points system and argued that the professional association criteria should be removed from the system.

SGIO

The SGIO recommended aligning qualifications to the Auto Skills Australia national training qualifications packages.

IAME

The IAME suggested that persons who hold “acceptable” overseas repairers qualifications should be recognised by the Department for the purpose of mechanical repairers licensing in Western Australia.

The IAME also suggested that the Engineering & Automotive Training Council Inc (EATC) should be the body consulted to make recommendation of specific overseas countries whose qualifications would meet or exceed Australian standards, for example, qualifications such as City of Guilds (England) and Master Technician (Germany) may be recognised as acceptable by EATC as many believe their standards, qualifications and training exceed those in Australia.

CAWA

The CAWA expressed the view that consumers need to have confidence in the licensing assessment system’s capacity to recognise and apportion relevance to overseas trade qualifications and experience.

Other suggestions made by stakeholders

Many of the suggestions made by stakeholders are largely administrative in nature and would not require amendments to the legislation. These suggestions will be further considered by the Department.

Response to online surveys

Industry

Responses to the online Repair Industry Survey indicated a high level of industry satisfaction with the current certification requirements for tradespersons. Table 6 below summarises responses.

Table 6: Repairer online survey responses in relation to certification requirements

	Yes	No	Not specified	Total
Are the current certification requirements for tradespersons appropriate?	379 (80%)	52 (11%)	45 (9%)	476 100.0%

Consumers

Responses to the Consumer Online Survey indicated that of those consumers who specified a preference, there was a significant level of support for the current approach to licensing and certifying repairers. Table 7 below summarises consumer responses.

Table 7: Consumer online survey responses in relation to regulation of repairers

	Repair business to be licensed and tradespersons to be certified (current situation)	Repair business to be licensed and licensee (business owner) to make sure that employees (tradespersons) have the right training and experience to carry out repair work	No licensing of repair businesses and no certification of tradespersons required	Other	Not specified
What level of regulation is necessary for the motor vehicle repair industry?	12 (29%)	6 (15%)	1 (2%)	4 (10%)	18 (44%)

The online survey of consumers also sought information in regard to the nature of difficulties experienced by consumers in their dealings with repairers. Of relevance, 32 per cent of respondents reported that the repair work had not been carried out properly and five per cent of respondents reported that the person repairing the vehicle did not have the right qualifications. (Note: This was a multiple-choice question. Percentages are based on number of respondents (41).)

PROPOSED CHANGE

This proposal, if implemented, would amend section 42 of the MVRA to remove the need to prescribe qualifications and examinations in the regulations. Instead, the MVRA would be amended to allow for qualifications and examinations to be determined and approved by the Commissioner from time to time and published in the Government Gazette.

This approach will deliver considerable benefits including:

- increased flexibility;
- capacity to respond more quickly to industry and course changes;
- increased efficiency in administering the legislation; and
- reduced costs for government.

This proposal is consistent with the current scope and intent of the MVRA in that the Commissioner already has the power and scope to determine ('other') qualifications and examinations.⁵³

⁵³ MVRA – section 42.

In addition, it is noted that this proposal will not change the current assessment process for establishing whether an applicant is sufficiently qualified to carry out the relevant class of repair work.

This proposal is unlikely to have a significant negative impact on stakeholders and is therefore presented as a proposal for consideration and feedback.

Stakeholder views invited

Stakeholders are encouraged to comment on this proposal by responding to the following questions.

Issues for Consideration	
Question 1	Do you support the proposal to remove the need to prescribe qualifications and examinations in the regulations and instead, allow the Commissioner to determine and approve these from time to time?
Question 2	Are there any unintended consequences that you believe may result if this proposal is implemented? If yes, please provide details.

PROPOSAL TO SIMPLIFY COMPLIANCE REQUIREMENTS FOR MOBILE REPAIR PREMISES

ISSUE

Motor vehicle repair businesses must operate from approved premises, including mobile premises and details of these premises have to be provided as part of the business licence application.⁵⁴ Mobile premises include any motor vehicles from which business is carried out. In relation to each mobile premise, the applicant has to advise the Department about the:

- make and model of the vehicle;
- year of manufacture;
- vehicle colour; and
- registration number.

As part of its licence application a repair business must pay an application fee of \$165 and licence fees which are charged on the basis of the number of staff engaged in repair work by the business regardless of the number of premises from which the business operates. Table 8 outlines the fees payable by an applicant for a repair business licence as at April 2015.

Table 8: Repair business licence fees as at April 2015

Business size category	Number of repairers (part-time, full-time, certified, uncertified)	Application fee (not refundable)	TOTAL fee (for three years)
1	1 - 2	\$165	\$863.00
2	3	\$165	\$1138.00
3	4	\$165	\$1380.00
4	5 - 7	\$165	\$1931.00
5	8 - 10	\$165	\$2413.00
6	11 +	\$165	\$2998.00

The Commissioner has to issue a certificate to a licensee for each premises that is included in the business licence.⁵⁵ The licensee must display the certificate in a conspicuous position on the premises to which the certificate applies.

⁵⁴ MVRA – section 57.

⁵⁵ MVRA – section 63.

In relation to mobile premises, repair business licence holders must apply to the Commissioner if:

- there are changes to the information provided about their mobile premises; and
- additional mobile premises are acquired by the business.

As at April 2015, a fee of \$63.80 must also be paid for each of the mobile premises for any alterations or additions to authorised premises.

A key purpose of these requirements around business premises is to provide consumers with identifiers that the repairer with whom they are dealing is appropriately licensed and to assist the Department with compliance and the identification of unlicensed premises and/or repair business activity.

OBJECTIVE

To ensure that the level of regulation that applies to fixed and/or mobile premises is appropriate to meet the compliance objectives of the MVRA without imposing a high regulatory burden and compliance costs on businesses.

OUTCOME OF CONSULTATION

Although this issue was not raised in the 2013 Discussion Paper, feedback from an industry representative was received about the administrative burden imposed on businesses, particularly those with large fleets of mobile repair vans, in meeting notification requirements around mobile premises additions or alterations.

DISCUSSION

As indicated above, applicants for a repairer business licence who operate mobile premises are required to provide details about the mobile premises at the time of the licence application and also when changes occur to the mobile premises. The application to change or add mobile premises imposes an administrative burden on repair businesses and it can generate a significant amount of administration and compliance costs for those with large numbers of mobile premises which are regularly changed. Processing this information also imposes administration costs upon the Department. For the 2013-2014 financial year, approximately 79 changes to mobile premises were processed by the Department. As at March 2015, the Department had processed approximately 106 changes to mobile premises for the 2014-2015 financial year.

Over the last four financial years (1 July 2010 to 30 June 2014), 37 complaints were received by the Department regarding mobile repair and roadside assistance services, as opposed to 1,644 complaints being received against motor vehicle repairers over the same period. Based on the complaints data there do not appear to be any particular concerns being raised about mobile premises and their operation.

Therefore, the Department has assessed the information collected and sought to reduce the level of information which must be disclosed about the mobile premises, while ensuring that sufficient information is provided to continue to provide effective oversight of repair businesses that also utilise mobile premises.

All mobile repair premises must currently display their business certificate in a conspicuous position.⁵⁶ Whilst this requirement assists consumers and the Department to be aware that the mobile repairer is a licensed repair business, it can be somewhat problematic with mobile premises. However, the MVRA also requires that a licensee must cause the business name shown in the business licence and the number of the licence to appear in a conspicuous position on the outside of every authorised premises.⁵⁷

In order to be able to carry out compliance checks, the Commissioner has the power through section 88E of the *Fair Trading Act 2010* (WA) to be able to enter the premises where the business of a regulated person is being carried on. Therefore, as long as the mobile premises continue to be treated as premises where a regulated activity is being conducted under the MVRA, then the Department will continue to be able to conduct compliance checks on the mobile premises.

OTHER JURISDICTIONS

In New South Wales, a repair business can operate from fixed premises or mobile premises. An applicant for a licence is required to specify the place or places of business at which the licence holder will carry on the business of motor vehicle repairer.⁵⁸ Each mobile premises (i.e. motor vehicle) is regarded as a place of business and a fee is payable for each place of business. For a one year licence, the following fees are charged, as at April 2015:

- \$207 application processing fee;
- \$212 for each place of business (each fixed workshop and each mobile workshop is considered a place of business); and
- \$264 compensation fund contribution per place of business (each fixed workshop and each mobile workshop is considered a place of business).

Applicants for a licence are required to provide the registration number of each motor vehicle. The licensee must notify the relevant authority about any additions or deletions to mobile premises or any changes to the registration numbers of the mobile premises. As at April 2015, a fee of \$110 is payable if the licensee subsequently adds additional mobile premises to their business licence. No additional fee is payable to change details of the mobile premises or remove mobile premises from the business licence.

In the Australian Capital Territory, it is an offence to carry on a business as a motor vehicle repairer at particular premises without a licence permitting the business at those premises.⁵⁹ The application for a repairer's licence in the Australian Capital Territory requires the applicant to specify how many mobile premises they will have. However, they do not need to provide any further details about these mobile premises, such as the registration number. The applicant is only required to provide details of fixed premises for the business, which for mobile repairers can be where the repairer is based, rather than where the work will be performed.

⁵⁶ MVRA – section 63(3).

⁵⁷ MVRA – section 108.

⁵⁸ *Motor Dealers and Repairers Act 2013* (NSW) – section 29.

⁵⁹ *Fair Trading (Motor Vehicle Repair Industry) Act 2010* (ACT) – section 8.

PROPOSED CHANGE

It is proposed that the MVRA continue to require that mobile premises be regulated as premises for the purposes of the MVRA. When a person applies for a repair business licence, they will continue to be required to specify whether they will use fixed premises, mobile premises or both. If an applicant will operate from mobile premises, then they will be required to specify a fixed address where the repair business will be based and the number of mobile premises they will use. Even businesses that will operate exclusively from mobile premises will be required to specify a fixed address, which can be used to contact the repair business.

It will no longer be necessary to advise the Commissioner about the make and model of the vehicle, year of manufacture, vehicle colour or registration number. Only changes to the overall number of mobile premises will need to be notified to the Commissioner. A fee will continue to be charged for the addition or reduction in the number of mobile premises used by the business. Each of the mobile premises will still be issued with a certificate that must be displayed in a conspicuous position on or inside the mobile premises. To ensure compliance it will be an offence if a repair business fails to notify the Commissioner of changes in the number of their mobile premises.

ISSUES FOR CONSIDERATION

Question	
Question 1	Do you support the changes to the regulation of mobile premises? Why?
Question 2	Are there any unintended consequences that you think may arise as a result of making the proposed change? Please provide details.

PART 3: OPTIONS FOR REFORM

This part of the paper considers a number of issues raised by stakeholders in response to the discussion paper released in 2013 and presents options for reform that require detailed regulatory impact assessment.

The following information is presented in relation to each of the issues:

- background information;
- where relevant, the approach taken by other jurisdictions;
- a summary of stakeholder input received in response to the discussion paper (includes written submissions and responses to an online survey); and
- options for reform including potential benefits and disadvantages.

OVERVIEW OF ISSUES

The following summarises the issues under consideration.

Motor vehicle dealer issues

This section of the paper considers the following in relation to motor vehicle dealers:

- Whether the definition of motor vehicles under the MVDA should be changed?
- Whether the licensing of motor vehicle salespersons should continue?
- Whether the criteria used for assessing motor vehicle dealer applications should be changed?
- Whether the categories of motor vehicle dealer licensing should be changed?
- Whether a compensation fund should be introduced under the MVDA?
- Whether a cooling off period should be introduced under the MVDA?

Motor vehicle repairer issues

This section of the paper considers the following in relation to motor vehicle repairers:

- Whether the types of repair work covered by the MVRA should be changed?
- Whether the criteria used for assessing motor vehicle repair business licence applications should be changed?
- Whether the definition of a motor vehicle under the MVRA should be changed?
- Whether perpetual certification of motor vehicle repairers should continue?

STAKEHOLDER INPUT BEING SOUGHT

Stakeholders are invited to respond to this part of the paper by: identifying preferred options; suggesting alternative options; identifying any additional benefits and disadvantages of particular options; and identifying any cost implications of the various options.

DEFINITION OF A VEHICLE UNDER THE MVDA

ISSUE

The definition of a vehicle is central to the application of the licensing requirements of the MVDA as it determines the category of person who must hold a licence. For example, a person 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) is required to obtain a dealer's licence.

For the purposes of the licensing requirements in the MVDA, the term vehicle is currently defined as:

- a passenger car or a passenger car derivative; or
- a motor cycle; or
- a camper van; or
- a vehicle of a prescribed type of class. The vehicles prescribed for the purposes of the MVDA are caravans, four wheel drive vehicles, goods vehicles and passenger vans used wholly or principally for the conveyance of persons and sold with a seating capacity not exceeding eight persons.⁶⁰

The 2013 discussion paper canvassed views on whether the current definition of a vehicle should be amended. Submissions received in response to the discussion paper indicated broad satisfaction with the current definition of a vehicle. The MTA in its written submission stated that dealers selling all-terrain vehicles and passenger vans should also be regulated under the MVDA.

In response to the online Motor Vehicle Dealer Industry Survey 23 per cent of respondents stated that other vehicles should be included in the definition of a vehicle. Table 9 below summarises the industry response to the online Motor Vehicle Dealer Industry Survey question about whether vehicles should be added or removed from the definition of vehicle.⁶¹

Table 9: Dealer online survey responses in relation to definition of vehicles under the MVDA

	Yes (%)	No (%)	Not specified (%)	TOTAL (%)
Do you think any other vehicle should be included in the definition of vehicle?	34 (23%)	94 (63%)	21 (14%)	149 (100%)
Do you think any other vehicle should be removed from the definition of vehicle?	8 (5%)	119 (80%)	22 (15%)	149 (100%)

⁶⁰ Motor Vehicle Dealers (Prescribed Vehicles) Regulations 1974 (WA) - regulation 3.

⁶¹ Specific questions relating to this matter were not included in the consumer survey.

OBJECTIVE

The policy issue to be resolved relates to whether the definition of a vehicle, and thereby the scope of the MVDA, should be widened or not. The MVDA was introduced with the objective of protecting the interests of consumers in relation to the purchase of a vehicle. Vehicles continue to constitute one of the more significant purchases that consumers are likely to make, and the maintenance and upkeep is a significant part of household expenditure. In 2009-10, the average Australian household spent \$193 per week on transport representing 16 per cent of total expenditure; \$182 out of the \$192 per week spent on transport related to expenditure on vehicles. Transport was the third biggest expense after housing costs (\$223 per week or 18 per cent) and food and non-alcoholic beverages (\$204 per week or 17 per cent).⁶²

The definition of a vehicle must therefore ensure that it provides a suitable level of protection to consumers in the marketplace.

DISCUSSION – ADDITION OF ALL TERRAIN VEHICLES TO THE DEFINITION OF A VEHICLE

An ATV (often referred to as a quad bike) is a vehicle with three, four, or sometimes six wheels. ATVs are operated in much the same way as motorbikes with a seat designed to be straddled by an operator and a handlebar for steering. It is understood that they continue to be used primarily in business and for agricultural purposes, however, in recent years quad bikes have become increasingly popular for use in recreational activities.

The Federal Chamber of Automotive Industries' Annual Report 2013 records that a total of 21,072 ATVs were sold in Australia in 2013, a decrease of 10.6 per cent on the previous year. A total of 566,454 new passenger cars were sold over the same period. It appears that second-hand ATVs sold in Western Australia generally range in price from \$800 to \$5,000 while new ATVs range in price between \$4,000 and \$20,000.

The industry submission by the MTA suggested that ATVs, including quad bikes should be added to the definition of a vehicle for the licensing purpose of the MVDA. The MTA is of the opinion that while ATVs are predominantly used in off-road applications, they are complex and require a similar skills and knowledge base for dealers and repairers who deal with these vehicles. The CAWA was also supportive of the addition of ATVs to the definition of a vehicle. Their submission stated that this addition should be made to the definition of a vehicle as sales of ATVs, which they consider to be fairly expensive machines, are increasing with the related service requirement. They were also concerned that not enough emphasis was placed upon the tuition of users, with particular regard to safety.

Many licensed motorcycle dealers appear to sell ATVs. However, it is unclear how many businesses, which are currently not required to be licensed as motor vehicle dealers, only sell ATVs. The addition of ATVs for the purposes of the MVDA would therefore have the effect of requiring these businesses to obtain a licence to operate. In addition, any salespeople/yard managers employed by the business would also be required to be licensed. Depending on their business model, for some businesses the requirement to be licensed would be a significant impost. Potentially, it may also mean that some businesses may have to decide whether to continue selling ATVs as part of their business.

⁶² Australian Bureau of Statistic 2011 Household Expenditure Survey.

Application of the ACL to ATVs

Consumer guarantees under the ACL apply to goods or services that:

- cost up to \$40,000;
- cost more than \$40,000 and are of a kind ordinarily acquired for domestic, household or personal use or consumption; or
- a vehicle or trailer primarily used to transport goods on public roads.

Purchasers of ATVs, whether new or used, are covered by the protections and consumer guarantees within the ACL. This means that suppliers have a duty to ensure that such vehicles:

- are of acceptable quality;
- are durable;
- are fit for purpose;
- are acceptable in appearance;
- match their description;
- match any demonstration model; and
- repairs and spare parts are reasonably available.

If a supplier fails to meet any of these guarantees, the ACL provides the consumer with the right to seek certain remedies such as repair, replacement or refund. The ACL applies in addition to any manufacturer's warranty, express warranty or extended warranty, irrespective of whether or not those warranties have expired.

Application of the statutory warranty provisions of the MVDA to ATVs

Most purchasers of ATVs are likely to be protected by the consumer guarantees in the ACL. The consumer warranty provisions under the MVDA only apply to the purchase of certain specified second hand vehicles. Bringing ATVs within the scope of the licensing requirements of the MVDA would not add to the warranty protections as ATVs are currently not regulated or captured by the warranty provisions of the MVDA.⁶³

The table at Appendix B sets out a comparison of the warranty provisions under the MVDA and the consumer guarantees under the ACL. The warranty provisions under the MVDA require 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.⁶⁴ They are targeted at motor vehicles used on roads and the obligations imposed upon motor vehicle dealers by these provisions are well understood within the industry. Being off-road vehicles, the warranty provisions under the MVDA will not add additional protections for purchasers of second-hand ATVs.

⁶³ Motor Vehicle Dealers Exclusion Order 2002 – the warranty provisions under the MVDA do not apply to single ride motor cycles designed for off-road use and multi-wheeled motor cycles (3 or 4 wheelers).

⁶⁴ MVDA – section 34.

The exclusion of certain vehicles for warranty purposes under the MVDA, such as motor cycles and ATVs, which are built for off-road use and not built to carry passengers, recognises the main purpose of the statutory warranty provisions of the MVDA. Allowing ATVs to be covered by the warranty provisions under the MVDA would be inconsistent with the approach currently adopted for off road vehicles under the MVDA.

Safety of ATVs

There are well founded concerns expressed around the safety of ATVs. From 2011 to 2014 there have been 75 ATV related deaths reported across Australia, with 12 of these being of children under the age of 13.⁶⁵

However, the MVDA is not the appropriate legislation to deal with safety concerns associated with the usage of ATVs and its purpose is not to deal with design or safety standards applied to motor vehicles or regulate aspects around driver training for motor vehicles. It is noted that the ACL contains a comprehensive product safety regime which sets out the responsibilities of the Commonwealth, state and territory governments and suppliers. Under the ACL, the Commonwealth Government can regulate consumer goods and product-related services by:

- issuing safety warning notices;
- banning products, either on an interim or permanent basis;
- imposing mandatory safety standards; or
- issuing a compulsory recall notice that requires suppliers to recall a product.

Potential financial implications of adding ATVs to the definition of a vehicle

If an ATV dealer already holds a motor vehicle dealer licence for the sale of other vehicles, such as motorcycles, then the addition of ATVs to the definition of a vehicle should not have a significant financial impact. If however, an ATV dealer is not already a licensed motor vehicle dealer, then as at June 2015, the following additional costs will be imposed:

- dealer licensing fees of either \$1,628 for trading at one premises or \$2,440 for trading at two premises and \$812 for each additional premises for a period of up to three years;
- salesperson licence fee of \$280 for each salesperson for a period of up to three years;
- costs in meeting the licensing criteria, such as satisfying the knowledge requirements for a dealer's licence by completion of the training course conducted by a registered training provider. Currently the MTA charges \$600 for the yard manager and dealer training course and \$600 for the salesperson training course.

Salespeople applying for a salesperson's licence would need to successfully complete a salesperson's training course delivered by a training provider recognised by the Commissioner.

Costs associated with licensing, which are outlined above, may be passed on to consumers in the purchase price of the vehicle.

⁶⁵ Safe Work Australia – QuadWatch, Quad bike fatalities table at <http://www.safeworkaustralia.gov.au/sites/swa/whs-information/agriculture/quad-watch/pages/quad-bike-fatalities#2014>.

OPTIONS – ADDITION OF ATVS TO THE DEFINITION OF A VEHICLE

Option A: No change

Retain the status quo by not adding ATVs to the definition of a vehicle for the purposes of the licensing requirements of the MVDA, relying instead on the provisions of the ACL to protect the interests of purchasers of ATVs. This is currently the Department’s preferred position as there does not appear to be a demonstrated need for the imposition of licensing requirements in this area of vehicle sales activity.

Option B: Amend the definition

Amend the definition of a vehicle in section 5(3) of the MVDA to include ATVs for the purposes of the licensing requirements of the Act.

Benefits and Disadvantages

The benefits and disadvantages of each option for industry, consumers and government are outlined in the table below.

	Potential benefits	Potential disadvantages
Option A – No change	<p>Industry</p> <ul style="list-style-type: none"> • Status quo maintained. • No additional costs or compliance implications. <p>Consumers</p> <ul style="list-style-type: none"> • No cost increase in price of ATVs. <p>Government</p> <ul style="list-style-type: none"> • No impact. 	<p>Industry</p> <ul style="list-style-type: none"> • Possible competitive disadvantage for some licensed motor vehicle dealers who sell ATVs from non-licensed suppliers. <p>Consumers</p> <ul style="list-style-type: none"> • No change. <p>Government</p> <ul style="list-style-type: none"> • No change.
Option B – Amend the definition of vehicle to include ATVs	<p>Industry</p> <ul style="list-style-type: none"> • Evens the playing field for dealers who are already licensed because they sell other regulated vehicles. <p>Consumers</p> <ul style="list-style-type: none"> • Possible increased consumer confidence through licensing of sellers of ATVs. 	<p>Industry</p> <ul style="list-style-type: none"> • Introduces barriers to entry and compliance costs for businesses that were not previously licensed. For example, a small business with one business site and one salesperson may have to incur an additional cost of approximately \$3,108 in order to become licensed for three years.⁶⁶ • Risk that current (non-licensed) participants could leave the

⁶⁶ This calculation assumes that the business was previously unlicensed and due to the proposed regulatory change will need to become a licensed motor vehicle dealer. The business will need to pay a dealer licence fee for one premises of \$1,628, pay a salesperson license fee of \$280, complete a dealer training course for \$600 and complete a salesperson training course for \$600. These fees are current as at June 2015.

	Potential benefits	Potential disadvantages
	<p>Government</p> <ul style="list-style-type: none"> • None discernible. 	<p>marketplace.</p> <p>Consumers</p> <ul style="list-style-type: none"> • May increase cost of ATVs to consumers. <p>Government</p> <ul style="list-style-type: none"> • Additional resources required to administer compliance and expanded licensing function.

QUESTIONS	
Question 1	Which option do you prefer and why?
Question 2	Are there other options to address this issue? Please identify any additional benefits or disadvantages.
Question 3	What are the cost implications of the different options? Please include quantifiable information if possible.

DISCUSSION – THE DEFINITION OF PASSENGER VANS

The Motor Vehicle Dealers (Prescribed Vehicles) Regulations 1974 (WA) currently prescribe ‘passenger vans used wholly or principally for the conveyance of persons and sold with a seating capacity not exceeding eight persons’ as vehicles for the purposes of the MVDA.

The MTA in its submission has suggested that the consumer protection benefits of the MVDA should be expanded to include passenger vehicles with a seating capacity not exceeding 14 persons as:

- they are used by a large number of small businesses and not for profit organisations; and
- they are often acquired by private individuals for camper conversions.

This expansion of the definition would result in vehicles such as the nine seat VW Caravelle, 12 seat Ford Transit bus and the 14 seat Toyota HiAce commuter bus being included within the operation of the MVDA.

The 2014 Motor Vehicle Census issued by the ABS states that as at 31 January 2014, the Western Australia’s Motor Vehicle Register listed 15,322 buses. For the purpose of the census, buses were defined as being passenger vehicles constructed for the carriage of passengers with 10 or more seats, including the driver’s seat. Obviously, some of these buses are likely to be coaches used for public transportation and therefore outside the scope of this discussion. By contrast, a total of 1,539,270 passenger vehicles (i.e. motor vehicles constructed primarily for the carriage of persons and containing up to nine seats, including the driver’s seat) were registered as at 31 January 2014 on the Western Australia’s Motor Vehicle Register.

Expansion of the licensing regime

At present, dealers of vehicles which have a passenger capacity greater than eight people are not required to be licensed under the MVDA. Expanding the definition of passenger vans as suggested would have the effect of requiring these businesses to hold a dealer's licence. It would also mean that under the current requirements of the MVDA any salespeople employed by the business would be required to hold a salesperson's licence.

It is unclear how many businesses sell only larger passenger vans and are not already required to be licensed. However, an expansion of the licensing regime would likely expand the regime to encompass most commercial bus manufacturer sellers. The Department considers that most large passenger van dealers would already be licensed, but would welcome comment on this from industry. Similar issues discussed above regarding the regulation of ATVs are relevant to extending the definition of passenger vans to include vehicles with a seating capacity not exceeding 14 persons. The Department does not perceive a need to expand the licensing provisions to include such vehicles or manufacturer sellers.

Application of the ACL and MVDA

It is noted that the ACL would apply to the purchase of passenger vans with a seating capacity of less than 14 people subject to meeting the qualification thresholds of the ACL (as outlined above).

There is the possibility that some passenger vans with a seating capacity greater than eight people, but less than 14 people, will not be protected by the consumer guarantees of the ACL because of the amount paid and because it is not ordinarily used for domestic, household or personal use. Therefore, regulating the sale of such vehicles within the scope of the MVDA would ensure that the protections of the MVDA become available to purchasers of these vehicles. It would also provide consumers with a certain level of assurance that the business proprietors and salespersons involved in supplying such vehicles have been assessed and approved by the Commissioner. It is noted that there are proposals currently being developed to provide specific coverage for small business issues and disputes within the provisions of the ACL.

OPTIONS – THE DEFINITION OF PASSENGER VANS

Option A: No change

Retain the status quo by not amending the definition of passenger vans to include passenger vehicles with a seating capacity not exceeding 14 persons.

Option B: Amend the definition

Expand the definition of passenger vans to include passenger vehicles with a seating capacity not exceeding 14 persons.

Benefits and Disadvantages

The benefits and disadvantages of each option for industry, consumers and government are outlined in the table below.

	Potential benefits	Potential disadvantages
Option A – No change	<p>Industry</p> <ul style="list-style-type: none"> • Status quo maintained. • No additional costs or compliance implications. <p>Consumers</p> <ul style="list-style-type: none"> • No increase in costs of passenger vans seating nine to 14 people. <p>Government</p> <ul style="list-style-type: none"> • No impact on resources associated with implementing changes to process or legislation. 	<p>Industry</p> <ul style="list-style-type: none"> • Possible competitive disadvantage for some dealers from non-licensed suppliers. <p>Consumer</p> <ul style="list-style-type: none"> • Risk of consumer detriment if ACL does not apply to purchase. <p>Government</p> <ul style="list-style-type: none"> • No change.
Option B – Expand the definition of passenger vans	<p>Industry</p> <ul style="list-style-type: none"> • Evens the playing field for dealers who are already licensed because they sell other regulated vehicles. <p>Consumers</p> <ul style="list-style-type: none"> • Provisions of the MVDA (including the second-hand vehicle warranty provisions) would apply. • Possible increased consumer confidence through licensing of participants selling passenger vans. <p>Government</p> <ul style="list-style-type: none"> • Potential reduced risk of consumer and industry detriment. 	<p>Industry</p> <ul style="list-style-type: none"> • Introduces barriers to entry and compliance costs for businesses that were not previously licensed. For example, a small business with one business site and one salesperson may have to incur an additional cost of approximately \$3,108 in order to become licensed for up to three years.⁶⁷ • Potential risk that current participants could leave the marketplace. <p>Consumers</p> <ul style="list-style-type: none"> • May increase costs associated with passenger van purchases. <p>Government</p> <ul style="list-style-type: none"> • Additional resources required to administer compliance and expanded licensing function.

⁶⁷ This calculation assumes that the business was previously unlicensed and due to the proposed regulatory change it will need to become a licensed motor vehicle dealer. The business will need to pay a dealer licence fee for one premises of \$1,628, pay a salesperson license fee of \$280, complete a dealer training course for \$600 and complete a salesperson training course for \$600. These fees are current as at June 2015.

QUESTIONS

Question 1	Which option do you prefer and why?
Question 2	Are there other options to address this issue? Please identify any additional benefits or disadvantages.
Question 3	What are the cost implications of the different options? Please include quantifiable information if possible.

LICENSING MOTOR VEHICLE DEALER SALESPERSONS UNDER THE MVDA

ISSUE

The policy issue to be resolved relates to whether the licensing of salespersons should continue to apply, and in particular, whether:

- there is an appropriate level of regulatory burden being imposed on prospective salespersons seeking to enter the industry;
- there is an appropriate level of regulatory burden being imposed on motor vehicle dealers; or
- by not licensing salespersons, an unacceptable risk may occur.

OBJECTIVE

To ensure that the criteria, which businesses and salespersons involved in buying, selling and exchanging motor vehicles are required to meet to operate in the industry, are appropriate. This objective supports the purposes of the MVDA, in this instance:

- to provide appropriate consumer protection; and
- to screen for and prevent unfit persons from operating in the industry.

DISCUSSION

Generally, as the first point of contact, salespersons play an important role in the purchase of a motor vehicle. Industry feedback suggests that the current high level of conduct, and relatively low level of dispute, reflects a regulatory model that is working effectively and results in a retail motor vehicle industry that is operating professionally and ethically.

Historical perspective

The licensing of motor vehicle dealers in Western Australia can be traced back to the Traffic Act which was administered by the Commissioner of Police. Although the Traffic Act provided some degree of control over entry into the motor vehicle sales industry, dishonest operators who had their licences cancelled found ways of circumventing the licensing provisions.

The *Used Car Dealers Act 1964* was subsequently introduced with broadened provisions aimed at also licensing dealers' premises and setting minimum standards for those premises. This resulted in a considerable reduction in the incidence of 'backyard' or unlicensed dealing

Following the advent of consumerism in the late 1960's and early 1970's, a Consumer Protection Bureau was established in Western Australia. After only a short period of operation, serious concerns about backyard selling and dubious sales practices highlighted the need for an overhaul of the legislative machinery regulating the motor vehicle sales industry.

It is understood that these practices included:

- generally deceiving consumers, for example, disguising mechanical defects by using temporary remedies;

- high pressure sales tactics resulting in consumers unwittingly signing contracts;
- failure to disclose important information; and
- odometer tampering.

The MVDA was subsequently introduced which extended licensing provisions to both yard managers and salespersons with the aim of providing regulatory control over their activities and to enable screening of persons entering the industry. The key reasons at the time for regulating the motor vehicle sales industry and introducing a licensing regime included:

- providing consumer protection;
- redressing the inequality in bargaining power between consumers and dealers; and
- addressing issues of backyard selling and dubious sales practices.

Improved professionalism

The industry has progressed significantly over the 40 years since the introduction of the MVDA, the used vehicle fleet has improved in terms of quality and reliability meaning there are less disputes about the standard or quality of the vehicles. The value of motor vehicles when measured against disposable income is also becoming less of a burden on household budgets. Lastly, in recent times, motor vehicle dealing businesses are more professionally run.

Dealers responsible for actions of employees

Under the MVDA a dealer is ultimately responsible for the actions of its employees⁶⁸, irrespective of whether the employee is licensed. The MVDA 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 they had no knowledge of the offence and could not, by the exercise of due diligence, have prevented the commission of the offence).⁶⁹

Proceedings are often commenced against the dealer in relation to offences under the MVDA, rather than an employee. It is therefore arguable that, given that the dealer is ultimately accountable for the actions of their employees, it may not be necessary to licence those employees.

Changed legislative environment

It is also important to note that the MVDA was enacted in 1973, prior to the introduction of general consumer protection legislation in Western Australia and nationally. The regulatory environment has therefore 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).

⁶⁸ MVDA - sections 42 and 54.

⁶⁹ MVDA - section 54.

Licensing requirements

For the purposes of the MVDA a salesperson is ‘a person who is employed or engaged by, or on behalf of, a dealer in the buying or selling of motor vehicles other than in the capacity of a yard manager.’ In general, a salesperson will need to obtain a licence from the Commissioner if they wish to:

- buy or sell vehicles on behalf of the dealer;
- complete sales contract documentation; and
- take customers for a test drive.

To qualify for a licence, the salesperson must satisfy the Commissioner that they:

- are over 18 years of age;
- are of good character and repute and a fit and proper person to hold a licence; and
- understand fully the duties and obligations imposed by the MVDA on salespersons and have sufficient knowledge of those imposed on dealers and yard managers.

In order to satisfy these requirements, the applicant must submit with their application form, a National Police Certificate that is no more than three months old, together with evidence that they have successfully completed a motor vehicle salesperson licensing training course approved by the Commissioner. The course contains important information about the various laws that salespersons need to know and apply when they are buying or selling motor vehicles from or to consumers. This includes the MVDA, the ACL and contract law.

The Commissioner has also determined that the applicant must make a declaration as to whether they have:

- been convicted of any offences;
- any legal proceedings pending against them;
- been the subject of any adverse findings by any government board, tribunal or agency;
- been subject to any disciplinary action by a licensing authority; or
- been disqualified from holding an occupational licence or had a licence suspended or cancelled.

The application form must be countersigned by the employing dealer, who is required to confirm their intention to employ the applicant as a salesperson.

Furthermore, in relation to the ‘good character and repute and a fit and proper person’ requirement, the Commissioner may consider and take account of the nature of, for example, any criminal convictions that an applicant has, and where appropriate, seek more information or interview the applicant to obtain further details about the circumstances of the matter in order to determine whether to issue a licence.⁷⁰

⁷⁰ This discretion is not available with regimes such as those in South Australia and Tasmania. The discretion is however available in the regime in Victoria, where pursuant to section 29B of the Motor Car Traders Act 1986 (Vic) a prospective salesperson may apply to the Authority for permission to be employed as an employee of a motor car trader despite having been convicted or been found guilty of a serious offence within the last 10 years. The Authority in considering the application has the discretion to conduct any inquiries it thinks fit and require the applicant to provide any further information that the Authority thinks fit in the manner required by the Authority.

The fee paid to the Commissioner for an application is \$280. The MTA and the IAME both provide training courses for salespersons. The fee for the MTA’s salespersons licensing course is \$550 for members or \$600 for non-members. The IAME charges a fee of \$540 for the salespersons licensing course. These fees are current as at April 2015.

Salespersons’ licences refused on probity grounds

As at January 2015, there were 2,084 licensed salespersons. For the period of 1 July 2011 to 31 December 2014, the Commissioner refused to grant a salesperson licence to nine applicants on the grounds that the applicant was either not of good character and repute or not a fit and proper person to hold a licence. Two of these applicants appealed to the SAT and the Commissioner’s decision was overturned in both instances.

RTRG report

The 2009 RTRG report recommended that the licensing requirement for salespeople be removed and replaced by an alternative system in order to reduce what it saw as unnecessary regulation. Accordingly, the 2013 discussion paper examined the question of whether licensing remains the most appropriate way to regulate the activities of salespeople in the motor vehicle dealer industry.

CONSULTATION FEEDBACK

Overview industry written submissions

The majority of industry submissions, including that of the MTA, strongly supported the retention of the licensing of salespersons; arguing that the existing regulatory model has contributed greatly to the professional and ethical motor vehicle retail market in Western Australia.

Responses to online surveys

Table 10 below summarises the:

- motor vehicle dealer industry stakeholder responses to the online Motor Vehicle Dealer Industry Survey; and
- consumer responses to the Consumer Online Survey, about what level of regulation is necessary for a salesperson.

Table 10: Dealer and consumer online survey responses in relation to regulation of salespersons

What level of regulation do you think is necessary for a Salesperson?	Licensing – licensing authority assesses suitability based on set criteria	Restrictions on entry – employer assesses suitability based on set criteria	No regulation – employer assesses suitability	Not specified/ other	TOTAL
Dealers (%)	64 (43%)	53 (36%)	18 (12%)	14 (9%)	149 (100%)
Consumers (%)	15 (37%)	7 (17%)	2 (5%)	17 (41%)	41 (100%)

Industry views

The majority of industry respondents supported the retention of licensing and sought some flexibility around the employment of salespersons and opportunity to assess their suitability.

Temporary capacity to work without a licence

In its submission, the MTA proposed that dealers be allowed a three month period in which they are able to employ a person as a salesperson prior to that person making an application for a licence. It was also suggested that no restriction should apply to the sales activity that they undertake during this time, other than being closely supervised by a yard manager and completing a salesperson's training course during the three months. Before commencing employment with the dealer, however, the salesperson would have to provide the dealer with a National Police Certificate.

Prior to the Commissioner becoming the licensing authority in 2011, the MVDA contained provisions whereby applicants for a salesperson's licence were able to apply for interim authorisation, prior to the issue of a licence, to operate as a salesperson subject to certain conditions. In most instances, the conditions included that within a specified period the person would undertake and successfully complete an accredited salespersons' training course and work under the supervision of a licensed yard manager. Applicants for an interim authorisation were also required to provide a National Police Certificate at the time of their application.

Restricted class of licence

The MTA has also suggested that a limited or restricted class of licence be created to enable manufacturers' representatives to be employed for one-off events or annual events, such as motor or agricultural shows. Feedback suggests that most dealers with manufacturer franchises attend several such shows a year and that they encounter what they see as unnecessary red tape and costs (meeting training course requirements) as a result of engaging additional licensed sales staff on a temporary basis to attend those shows.

It was suggested restrictions could be placed on the limited class of salespersons' licence which would enable such unlicensed staff to engage in a limited customer service role (under the supervision of a licensed yard manager) but not write-up or sign a sales contract.

Rationale for temporary capacity to work without a licence and restricted class of licence

The rationale behind both of the above proposals is to enable dealers to hire salespersons more readily in times of need (e.g. special events) and to also allow dealers a period of time to assess whether the person is suited to the role. The MTA is of the view that this will then reduce time and costs for dealers and the regulator.

Current situation

At present, applicants who have lodged an application for a salesperson's licence are able to undertake a limited range of activities as a trainee salesperson before a licence is issued.⁷¹ Such activities do not extend to negotiating with customers or writing up contracts for the sale or purchase of vehicles but are limited to (under supervision):

- meeting and greeting customers and surveying or discussing customer needs;

⁷¹ Applicants in this situation have paid the required fee and provided a National Police Certificate, but are likely to be waiting to attend and complete a motor vehicle salesperson licensing training course.

- recording customers' personal details for the purposes of introducing customers to licensed salespersons;
- showing vehicles to customers on the licensed premises of the dealer; and
- taking customers for vehicle demonstration drives in the company of a licensed salesperson.

Background to changes made in 2011

As indicated above, the interim authorisation provisions of the MVDA were repealed in 2011. The effect of this change being that the fundamental purpose of a licensing regime (i.e. that the criteria for a licence are met before a person can operate) is not diminished through a system which, in effect, allowed a person to undertake the duties of a salesperson within the industry without having been deemed suitable.

It is understood the long-standing interim authorisation provisions (previously known as permits) were in place from the commencement of the MVDA. It gave dealers the flexibility to engage salespersons and fill vacant positions and not be disadvantaged by the fact that, at that time, longer processing times for applications applied, including the then Motor Vehicle Industry Board considering and approving all applications for licences at its meetings which generally occurred monthly.

This is not the case today. The Department usually processes applications within 10 working days after receipt of all required information and there is greater availability of training courses, with two providers and access to fortnightly courses.

OTHER JURISDICTIONS

Table 11 below provides a comparative summary of the level of regulation of salespersons across Australia. (Note: **L** = licensed; **R** = registered; **E** = specific restrictions on who may be employed.)

Table 11: level of regulation of salespersons across Australia

	WA	Vic	SA	Tas	Qld	NT	NSW	ACT
Salesperson	L	E	E	E	R	-	-	-

Overview

Western Australia is the only state which requires a motor vehicle salesperson to be licensed. In Victoria, South Australia and Tasmania, the dealer is free to employ or engage whomever they choose, subject to that person meeting certain mandatory criteria. The legislation in Victoria, South Australia and Tasmania prohibits a licensed dealer from employing certain people as salespeople (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). In New South Wales, the Northern Territory and the Australian Capital Territory, there is no regulation governing who may be a salesperson for the purposes of motor vehicle dealing.

Victoria

In Victoria, a licensee must not employ, in a sales capacity, any person who has had a claim admitted against the compensation fund, been convicted of a serious offence (e.g. fraud, dishonesty, drug trafficking or violence, for which a court could apply a sentence of up to three months imprisonment or more) within the last 10 years or is disqualified from being a licensee or being employed in the motor car trade.⁷² An employee must provide a declaration about these matters to the licensee in a prescribed form, together with an up-to-date police check. The employee is also entitled to apply to the Victorian Authority for permission to be employed despite having been convicted or been found guilty of a serious offence within the last 10 years.⁷³

South Australia

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.⁷⁴ It is also an offence for a person to act as a salesperson if they fall within these exclusions.

Tasmania

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.⁷⁵

Benefits of approaches taken by other jurisdictions

Under the regimes outlined above, protections for consumers are maintained by preventing unsuitable persons from operating in the industry, while reducing the regulatory burden on industry. Removal of the requirement for salespersons to hold a licence would also make it easier for employers to engage staff. In addition, waiting periods to apply for and obtain a licence would 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.

OPTIONS

Reducing the regulatory burden

The feedback received in response to the 2013 discussion paper, together with the RTRG report and the Government's stated aim of reducing the regulatory burden for Western Australian business, suggests that some level of deregulation in regard to the licensing of salespeople should be considered, including, considering ways in which dealers may be given more discretion and flexibility around the recruitment of salespersons.

⁷² *Motor Car Traders Act 1986* (Vic) – section 35A.

⁷³ *Motor Car Traders Act 1986* (Vic) – section 29B.

⁷⁴ *Second-hand Vehicle Dealers Act 1995* (SA) – section 13A.

⁷⁵ *Motor Vehicle Traders Act 2011* (Tas) – section 28.

As indicated above, salespersons are usually the first point of contact for consumers when seeking to purchase a motor vehicle. Their actions and representations during the sales process are required to be in keeping with the provisions of the MVDA and the ACL, and bind the dealer in any contract entered into with a consumer.

Salespersons will have made representations about the motor vehicle, its features and accessory options, and in some instances, options for finance and insurance. Salespersons generally complete the required sales documentation, including the contract, although, the final decision maker in the sales process is either the dealer or yard manager, through their acceptance of an offer in a contract. Similarly, it is likely that most decisions arising after the sale relating to warranty issues or complaints will be addressed by the dealer or yard manager.

Under the MVDA, dealers and yard managers can be held responsible for the representations of salespersons and liable for offences committed by them. Individual salespersons can also be independently subject to legal action.

It is evident that salespersons play an important role in the purchase of a motor vehicle, and industry preference to retain the licensing of salespersons, is noted. However, consideration needs to be given to whether the same risks exist for consumers now, as existed when the MVDA was introduced, to justify the continuation of licensing at this level.

It is acknowledged that there may be some increased risk of an unsuitable person working in the industry and therefore some risk that consumer detriment could occur if licensing of salespersons ceased, however, the risk is likely to be low-level given that decision making responsibility in motor vehicle transactions lies with the dealer or yard manager.

Industry currently provides three training courses to support licensing educational requirements.

Overall, it is possible that the absence of salesperson licensing may create an uneven playing field, as reputable dealers will bear the costs of training staff and undertaking pre-employment checks and character assessments while less reputable dealers may not. As a result, a lack of consumer protection awareness may progressively see an erosion of current standards.

Importantly, however, provisions under the MVDA that hold dealers or yard managers accountable for the actions of their salespersons would continue to apply and dealers and yard managers would continue to be licensed and trained. Such provisions should act as an incentive for dealers and yard managers to employ suitable sales staff and encourage their training.

Prescribing offences that prohibit employment

The Department is of the view that if the MVDA was amended to deregulate salesperson's licensing but prescribe offences which would automatically prohibit a person from being employed as a salesperson, provisions similar to those contained in Victoria would need to be included to provide the Commissioner with the discretion to consider mitigating or extenuating circumstances in relation to each individual.

For example, under such provisions, a prospective employee would be able to apply to the Commissioner for permission to be employed despite having been convicted or been found guilty of a prescribed offence. The Commissioner, in considering an application, would be able to make any inquiries or seek advice and obtain any information he or she thinks fit in determining whether to give permission.

Interim authorisations for salespersons

The Department is also of the view that if the licensing of salespersons is retained the interim authorisation provisions should be reinstated to provide certainty to the current trainee salespersons arrangements. Such provisions could be consistent with the arrangements currently in place for trainee salespersons and would provide the flexibility for dealers to engage, assess and train staff in readiness for licensing. In addition, consideration could also be given to introducing further flexibility in these arrangements. For example, by removing the requirement for a licensed salesperson to accompany a trainee salesperson on a test drive with a customer.

The Department considers that having interim authorisations in place would also obviate the need for limited or restricted classes of licence for a person to operate in a sales capacity at one-off or annual events. While such events occur at venues which are not in the usual car yard setting, the activities of staff at such events are largely the same as those that would be undertaken, for example, by a trainee salesperson at a car yard. The Department considers it important, therefore, that sales staff at such events are licensed and aware of their obligations under relevant laws such as the MVDA and ACL. Having the capacity to issue an interim authorisation would enable a person to also operate at annual or one-off events under the supervision of a licensed person while they complete their licence application.

OPTIONS: REGULATION OF SALESPERSONS

Possible options for consideration, including maintaining the status quo are outlined below.

Option A: No change

Under this option, there would be no change. The licensing requirement for salespersons would remain in place and the current licensing processes and requirements would continue to apply.

Option B: Retain the licensing of salespersons and include provisions for the Commissioner to issue interim authorisations to applicants for a salespersons licence.

Under this option, the licensing of salespersons would remain in place and the current licensing processes and requirements would continue to apply. Provisions would be included to give the Commissioner the capacity to issue interim authorisations, with any conditions the Commissioner thinks fit, to enable an applicant for a licence to operate in a trainee salespersons capacity for a specified period.

Option C: Deregulate the licensing of salespersons but require dealers to ensure salespersons attend an accredited training course.

Under this option, the licensing of salespersons would no longer apply. The onus of checking the suitability of employees would shift from the licensing authority to dealers. While salespersons would not be required to be licensed, the legislation would require dealers to ensure a salesperson undertakes an accredited motor vehicle salesperson training course.

Dealers and yard managers will continue to be liable for the representations of their employees and liable for offences against the MVDA committed by employees. Individuals too could be the subject of actions under the ACL.

Option D: Deregulate the licensing of salespersons and prescribe offences that would prohibit a dealer from employing a person convicted of such offences unless prior permission has been given by the Commissioner.

Under this option, the licensing of salespersons would no longer apply and training of salespersons would be the responsibility of individual dealers. Provisions would be included in the legislation to apply to enable potential employees to apply to the Commissioner for permission to be employed despite having been convicted or been found guilty of a prescribed offence.

Dealers and yard managers will continue to be liable for the representations of their employees and liable for offences against the MVDA committed by employees. Individuals too could be the subject of actions under the ACL.

Option E: Full deregulation of the licensing of salespersons.

Under this option, the licensing of salespersons would no longer apply. The onus of checking the suitability of employees would be the responsibility of individual dealers as would the training of salespersons through continuing professional development.

Dealers and yard managers would continue to be liable for the representations of their employees and liable for offences against the MVDA committed by employees. Individuals too could be the subject of actions under the ACL.

Benefits and disadvantages

The benefits and disadvantages of each option for industry, consumers and government are outlined in the table below.

	Potential benefits	Potential disadvantages
Option A: No Change	<p>Industry</p> <ul style="list-style-type: none"> • Status quo maintained. <p>Consumers</p> <ul style="list-style-type: none"> • Maintains consumer confidence. <p>Government</p> <ul style="list-style-type: none"> • No impact on resources associated with implementing changes to process or legislation. 	<p>Industry</p> <ul style="list-style-type: none"> • No increase in flexibility sought by industry. • Barriers to entry and compliance costs maintained. <p>Consumers</p> <ul style="list-style-type: none"> • Compliance costs associated with regulation may be built into pricing. <p>Government</p> <ul style="list-style-type: none"> • Ongoing compliance costs.

	Potential benefits	Potential disadvantages
<p>Option B:</p> <p>Retain the licensing of salespersons and include provisions for the Commissioner to issue interim authorisations to applicants for a salespersons licence</p>	<p>Industry</p> <ul style="list-style-type: none"> • Status quo maintained. • Certainty provided to trainee salespersons arrangements. <p>Consumers</p> <ul style="list-style-type: none"> • Maintains consumer confidence. <p>Government</p> <ul style="list-style-type: none"> • No impact on resources associated with implementing changes to process or legislation. 	<p>Industry</p> <ul style="list-style-type: none"> • No significant increase in flexibility sought by industry. • Barriers to entry and compliance costs maintained. <p>Consumers</p> <ul style="list-style-type: none"> • Compliance costs associated with regulation may be built into pricing. <p>Government</p> <ul style="list-style-type: none"> • Ongoing compliance costs.
<p>Option C:</p> <p>Deregulate the licensing of salespersons but require dealers to ensure salespersons attend an accredited training course</p>	<p>Industry</p> <ul style="list-style-type: none"> • Reduces barriers to entry and some compliance costs for individuals of \$280 per salesperson to obtain a three year licence.⁷⁶ • Full flexibility to manage workforce. <p>Consumers</p> <ul style="list-style-type: none"> • Maintains consumer confidence through compulsory training of salespersons. • Level of dealer accountability retained. <p>Government</p> <ul style="list-style-type: none"> • Reduced licensing administration costs. 	<p>Industry</p> <ul style="list-style-type: none"> • Increased risk of industry detriment if dealers do not screen potential salespeople effectively. <p>Consumers</p> <ul style="list-style-type: none"> • Risk that unfit person operates in industry. <p>Government</p> <ul style="list-style-type: none"> • Ongoing compliance costs without cost recovery through licence fees.
<p>Option D – Deregulate the licensing of salespersons and prescribe offences that would prohibit a dealer from employing a person convicted of such offences unless prior permission has been given by the</p>	<p>Industry</p> <ul style="list-style-type: none"> • Removes barriers to entry and compliance costs for individuals of \$280 per salesperson to obtain a three year licence and \$600 per salesperson to obtain mandatory qualification.⁷⁷ • Flexibility to manage 	<p>Industry</p> <ul style="list-style-type: none"> • Increased risk of industry detriment if dealers do not screen potential salespeople effectively. • Risk that training through professional development may not occur.

⁷⁶The salesperson licence fee is current as at April 2015.

⁷⁷The fees are current as at April 2015.

	Potential benefits	Potential disadvantages
Commissioner	<p>workforce.</p> <p>Consumers</p> <ul style="list-style-type: none"> Dealer accountability retained regarding employment of salespersons. <p>Government</p> <ul style="list-style-type: none"> Reduced licensing administration costs. 	<p>Consumers</p> <ul style="list-style-type: none"> Possible increased risk of consumer detriment through no compulsory training of salespersons. Risk that unfit person operates in industry. <p>Government</p> <ul style="list-style-type: none"> Ongoing compliance costs without cost recovery through licence fees.
Option E – Full deregulation of the licensing of salespersons	<p>Industry</p> <ul style="list-style-type: none"> Removes barriers to entry and compliance costs for individuals of \$280 per salesperson to obtain a three year licence and \$600 per salesperson to obtain mandatory qualification.⁷⁸ Full flexibility for dealer to manage their salespersons workforce. <p>Consumers</p> <ul style="list-style-type: none"> Dealer accountability retained. <p>Government</p> <ul style="list-style-type: none"> Reduced licensing administration costs. 	<p>Industry</p> <ul style="list-style-type: none"> Increased risk of industry detriment if dealers do not screen potential salespeople effectively or maintain training. <p>Consumers</p> <ul style="list-style-type: none"> Possible increased risk of consumer detriment through no compulsory training of salespersons. Risk that unfit person operates in industry. <p>Government</p> <ul style="list-style-type: none"> Ongoing compliance and administration costs without cost recovery.

QUESTIONS

Question 1	Which option do you prefer and why?
Question 2	Are there other options to address this issue? Please identify any additional benefits or disadvantages.
Question 3	What are the cost implications of the different options? Please include quantifiable information if possible?

⁷⁸The fees are current as at April 2015.

GOOD CHARACTER AND REPUTE CRITERIA: MOTOR VEHICLE DEALER BUSINESS LICENSING

ISSUE

An applicant for a motor vehicle dealer's licence must satisfy the Commissioner in relation to a number of criteria set out in the MVDA.

Under consideration for reform are the criteria relating to:

- being a person of good character and repute and a fit and proper person to hold a licence; and
- having sufficient resources to hold a licence.

The policy issue to be resolved relates to whether these two licensing criteria would benefit from being more specific in the legislation, for example, specifying which offences would automatically disqualify an applicant from being granted a licence.

Options for reform in regard to the good character and repute and fit and proper person criteria are discussed in the following section.

STAKEHOLDER VIEWS

In responding to the 2013 discussion paper, there appeared to be little stakeholder support for specifying the types of matters to be taken into account in determining whether a person is of good character and repute and fit and proper. Stakeholders, however, generally supported the concept of specifying matters which would automatically disqualify an applicant from being granted a licence.

In regard to sufficient resources, there appeared to be considerable support amongst stakeholders for retaining these criteria.

More detail in relation to stakeholder views is provided later in this section.

BACKGROUND

Application requirements

Application requirements are in place to assist the Commissioner in determining whether a dealer's licence should be granted. These requirements also apply to each proprietor or director of a company. Application requirements relevant to the criteria of being of good character and repute and fit and proper include:

- providing a National Police Certificate issued within the previous three month period;
- answering a range of 'fitness' questions, for example previous convictions, any legal proceedings, adverse findings by a government board or agency and disciplinary action by a licensing authority; and
- authorising the Commissioner to obtain documents necessary to consider fitness to hold a certificate.

In administering the legislation, there is currently some scope for the Commissioner to adjust these application requirements and processes, provided that the broad requirements set out in the MVDA are still met.

An individual applicant for a licence as a motor vehicle dealer must satisfy the Commissioner that they are a person of good character and repute and a fit and proper person to hold a licence.

Similar requirements apply to firms and body corporates. For example, in the case of a body corporate, all individuals involved in the management or conduct of the body corporate are required to be persons of good character and repute and are persons fit to be concerned in the management or control of the business of buying or selling vehicles.

Refusing a dealer's licence on certain grounds

In addition to the powers that the Commissioner has to refuse an application, the Commissioner may refuse to grant or renew a dealer's licence if there are any grounds on which an allegation could be made under section 20(1) of the MVDA. This section sets out allegations the Commissioner may make to the SAT. For example, on the grounds the applicant has:

- contravened or failed to comply with a licence condition; or
- has done or omitted to do anything or engaged in any conduct that renders the person unfit to be the holder or joint holder of a licence or to be concerned in the management or conduct of a body corporate that is a holder or joint holder of a licence.

Explanation of difference between good character and fit and proper

An assessment of whether a person is of good character and repute is different from, but related to, an assessment of whether a person is fit and proper to be the holder of a licence. There is, however, some overlap between good character and fitness, for example, if an applicant is of bad character, they will also usually be unfit to hold a licence.

The expression 'good character and repute' has been held to involve two discrete elements and that while 'good character' does not have a precise meaning, it ordinarily refers to a person's moral qualities (whether known to others or not), as opposed to the estimation in which (fairly or unfairly) the person is held by others, that is, their repute: *Real Estate and Business Agents Supervisory Board v LJW* [2011] WASCA 35 at [28].

The High Court case *Australian Broadcasting Tribunal v Bond*⁷⁹ dealt with considerations of fitness and propriety and good character and repute. Chief Justice Mason explained:

'The question whether a person is fit and proper is one of value judgment. In that process the seriousness or otherwise of particular conduct is a matter for evaluation by the decision maker.

So too is the weight, if any, to be given to matters favouring the person whose fitness and propriety are under consideration.'

⁷⁹ (1990) 170 CLR 321.

Toohey and Gaudron JJ also said:

The expression 'fit and proper person', standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities.

The concept of 'fit and proper' cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur.

The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

Extent of the problem

Given the nature of this issue, quantifying the extent of the problem is not possible as it centres on the question of whether the MVDA provides the regulator with the appropriate level of discretion in decision making in respect of the good character and repute and the fit and proper criteria.

The existing legislation appears to provide sufficient foundation to reject applications when individuals have a criminal history related to trust and dishonesty. At the same time, the lack of prescription of particular matters that would render a person 'unfit' provides flexibility and discretion to have regard to all the factors that might be relevant.

From 1 July 2011 to 24 July 2014, the Commissioner refused one application from a dealer on the grounds that the applicant failed to meet licensing requirements relevant to the criteria of probity. The applicant did not appeal the decision to SAT. It is not possible to know how many people have elected not to make an application, knowing that a national police clearance certificate is required.

Anecdotal evidence

Anecdotal evidence provided by departmental staff indicates that the criteria 'fit and proper' thresholds appear to be working well in terms of preventing unsuitable persons from entering the industry. Major consumer issues relating to poor conduct on the part of dealers occur infrequently.

Departmental staff also, noted that whilst significant work goes into assessing each application, this is necessary as each individual's situations need to be considered on their merit. It was pointed out that without discretion on the regulator's part, individuals could be restricted from working in a regulated industry purely because of their criminal history which may have occurred some time ago and only have marginal relevance. As a result, their prospect of earning a living may be severely impeded.

Qualitative evidence in relation to good character and repute and fit and proper criteria

The criteria of good character and repute and being a fit and proper person to hold a licence has been the subject of recent determinations of the SAT.

Any licensing regime that seeks to allow balanced consideration of issues will have areas of grey and varied perspectives on occasion. This is evident in a 2012 case considered by the SAT in which the view of the Commissioner in determining whether an applicant was of good character and repute and a fit and proper person to hold a licence was viewed differently by the SAT.

In this case, the Commissioner refused an application for a yard manager's licence on the basis that the applicant was not considered of good character and repute, nor a fit and proper person to hold such a licence. This decision took into account:

- prior criminal convictions (between 1997 and 2012);
- pending charges (including a charge of giving false information to the Corruption and Crime Commission); and
- interactions with the regulator which were regarded by the regulator as dishonest.

On reviewing the Commissioner's decision, the SAT found that there was no basis for a finding that the applicant was not of good character and repute and not a fit and proper person to hold a motor vehicle yard manager's licence. The SAT determined that the applicant should be granted a licence, albeit with a number of conditions attached.

In reaching its decision, the SAT:

- gave less weight to the older convictions;
- noted that the more recent convictions and the pending charges, though serious, were unrelated to the applicant's duties as yard manager;
- noted that the applicant's failure to disclose the pending charges could be explained; and
- noted that the conduct which resulted in the allegations of dishonesty could also be explained.

The reasons for the decision pointed to deliberations on the part of Justice Wheeler, in *Tavelli v Johnson*.⁸⁰ In the context of discussing an agent's licence her Honour said:

It must be stressed therefore that there can be no inflexible rules and no policy but that the discretion falls to be exercised anew in the circumstances of each application in the light of the statutory framework.

The SAT's reasons for the decision also followed the approach taken in *Smith v Director-General of Transport*⁸¹ that prior convictions and the significance of those convictions must always be considered in light of all the evidence which is presented, rather than in isolation, with particular regard to the vocation and what duties the vocation entails for which the licence is sought.

In relation to the matter of good repute, the Tribunal gave weight to how the applicant was regarded by people who knew him and did not support the test for repute being based on whether a reasonable member of the public would consider the applicant to be a person of good repute.

⁸⁰ Unreported, WASC, Library No 960693, 25 November 1996.

⁸¹ [2004] WASCA 64 at [36].

Whilst this case related to the licensing of a yard manager rather than a dealer, similar considerations and challenges would apply in the case of dealers, although the bar would most likely be set higher, given their broader scope of responsibilities and potential risks to consumers.

OBJECTIVE

The key objective for considering reforms is to ensure that the licensing criteria relating to probity which apply to businesses involved in buying, selling and exchanging motor vehicles are appropriate in the context of the purposes of the MVDA.

The purposes of the MVDA include:

- providing essential consumer protections;
- screening for and preventing dishonest and unscrupulous people from operating in the industry;
- improving safety of vehicles to be used on the roads; and
- assisting in crime prevention.

OTHER JURISDICTIONS' APPROACH TO FIT AND PROPER AND OF GOOD CHARACTER AND REPUTE CRITERIA

A number of jurisdictions take a more prescriptive approach than Western Australia by legislating the matters to be taken into consideration by the regulator and matters which automatically disqualify a person from obtaining a motor vehicle dealer's licence.

In administering the MVDA, many of the matters legislated for in other jurisdictions are addressed in practice in Western Australia by requiring applicants to answer various questions contained in the application form. These requirements are not, however, specifically enshrined in the legislation.

The following summarises arrangements in place in other Australian jurisdictions.

Northern Territory

In the Northern Territory, 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.⁸²

⁸² *Motor Vehicle Dealers Act 1974* (NSW) – section 12; *Consumer Affairs and Fair Trading Act 1990* (NT) – section 136 –the Northern Territory Act also refers to offences involving physical violence.

Australian Capital Territory, Victoria, Queensland, South Australia and Tasmania

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.⁸³

Criteria for determining whether a person is suitable to hold a licence are also set out in the Queensland Act⁸⁴ and the Tasmanian Act.⁸⁵

Legislation in Victoria⁸⁶, 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.

For example, the Queensland legislation specifies that a person is unsuitable to hold a licence if they have been convicted, in Queensland or elsewhere, within the preceding five years of a serious offence. Serious offences are defined as any of the following offences punishable by three or more years' imprisonment:

- an offence involving fraud or dishonesty;
- an offence involving the trafficking of drugs;
- an offence involving the use or threatened use of violence;
- an offence of a sexual nature;
- extortion;
- arson; or
- unlawful stalking.

New South Wales

Following an extensive review, New South Wales recently strengthened the fit and proper requirements applicable to motor vehicle dealers.

For example⁸⁷, an applicant is not a fit and proper person (with no discretion on the part of the regulator) to be the holder of any licence if the regulator has reasonable grounds to believe from information provided by the Commissioner of Police that the applicant:

- is a member of, or regularly associates with one or more members of, a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*; and

⁸³ *Sale of Motor Vehicles Act 1977* (ACT) – section 71.

⁸⁴ *Motor Dealers and Chattel Auctioneers Act 2014* (Qld) – section 23.

⁸⁵ *Motor Vehicle Traders Act 2011* (Tas) – section 7.

⁸⁶ *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) ; *Motor Dealers and Chattels Auctioneers Act 2014* (Qld).

⁸⁷ *Motor Vehicle Dealers and Repairers Act 2013* (NSW) – section 27.

- the nature and circumstances of the applicant's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the applicant is granted a licence.

In addition, if requested by the regulator, the New South Wales' Commissioner of Police is required to investigate and report on an application for a licence. Presumably, this is aimed at addressing issues around criminal activity.

New South Wales' overall approach appears generally more specific in terms of what is contained within the legislation, with the intention of providing guidance for the regulator and transparency for the community. Compared to the MVDA, the New South Wales' legislation also includes more specific safeguards in relation to organised crime.

The New South Wales' legislation also includes mandatory grounds for refusing licences for example:

- in relation to individuals, not being a fit and proper person to hold a licence, being a controlled member of a declared organisation, being an undischarged bankrupt, having been found guilty in the past 10 years of a motor vehicle stealing offence; and
- in relation to corporations (the director or person involved in the management or person in control), the reputation of the body corporate is such that it is not a fit and proper person to hold a licence, the applicant is not likely to carry on the business honestly and fairly.

The New South Wales' legislation also sets out the matters that may be considered by the regulator in determining whether a person is a fit and proper person to hold a licence including:

- whether the applicant has, in the preceding 10 years, been found guilty of an offence involving fraud or dishonesty (whether in New South Wales or elsewhere);
- whether proceedings for such an offence have been commenced against the applicant but have not been finally determined;
- whether the applicant has been convicted of an offence against this Act or the regulations or another Act administered by the Minister; and
- whether the applicant has failed to pay any contribution or other payment required to be paid by the applicant to the Compensation Fund under the New South Wales Act.

The New South Wales' legislation also gives the regulator the power to reject a licence application on the grounds that a close associate of the licensee who has significant influence over the operation and management of the business is not a fit and proper person.

This is aimed at preventing family members or close business associates from taking over the business and running it on a day-to-day basis, with the previous licensee being a silent partner. As a result, the regulator has the power to prevent former motor vehicle dealers who have broken the law in a serious way from being granted another licence.

DISCRETION IN DECISION MAKING

The MVDA currently provides the Commissioner with considerable discretion in decision making.

Balance between discretion and transparency

Achieving a balance between providing adequate discretion for the regulator and at the same time providing adequate clarity for stakeholders and regulators is an ongoing challenge in formulating legislation.

There are varying views in relation to the merits of providing regulators with extensive discretion in decision making.

Providing less discretion through more specific regulation is often seen as delivering greater transparency, clarity and certainty for stakeholders and regulators alike, but has the disadvantage of being less flexible and thus less responsive to marketplace changes or individual circumstances.

In addition, setting prescriptive criteria limits the degree of discretion afforded the regulator. For example, specifying disqualifying offences may result in unfairly denying deserving applicants the opportunity to a livelihood.

Flexibility, importantly, provides the opportunity to consider issues in context and balance a range of competing issues, for example, new personal circumstances, the opportunity for rehabilitation in circumstances of supervision and monitoring. Discretion allows for the circumstances of each application to be taken into account rather than being constrained by the legislation which in turn limits this discretion. Providing greater discretion also allows more flexibility to respond quickly to changing marketplace circumstances.

Legislation such as the MVDA, which provides regulators with considerable discretion in decision making, is often seen as less rigid as it allows decision makers to consider individual circumstances and the context of the particular role. In practice, exercising this discretion is constrained in that it must be used for the purpose for which it is granted and must constitute a lawful exercise of power.

It is noted that the approach to exercising discretion provided for under the legislation, is broadly consistent with the observations of the Senate Standing Committee on Regulations and Ordinances⁸⁸ in that:

- the decision making power is objectively formulated by way of having processes and procedures in place;
- criteria are identified (the MVDA specifies the general probity criteria); and
- a right of appeal is provided (the MVDA provides for this).

It is important to note that whilst considerable discretion is provided for under the MVDA, procedural checklists are used by departmental staff to assist in assessing applications. These approved procedures ensure that consistent and objective assessments are made.

Decisions to refuse a dealer's licence in complex cases are made by the Commissioner. Routine refusals are delegated to the licensing and registration director. In addition, all decisions are ultimately reviewable by the SAT. There is also scope to appeal decisions of the SAT. The outcomes of such decisions as well as general case law are taken into account in reviewing the Department's processes and procedures for assessing applications.

Assessment of applications disclosing offences

The following summarises the Department's considerations for assessing licence applications where the applicant has convictions listed on their National Police Certificate. Each application is dealt with on a case by case basis. Matters which are taken into account reflect case law in this area, for example:

- the length of time since the last offence;

⁸⁸ 119th Annual Report 2000 to 2001 (pp15-16).

- the nature of the offence (for example, did it involve dishonesty, or was it an offence against a person);
- whether the individual's circumstances have changed since the offence occurred;
- whether the offence is directly relevant to the intended occupation, or occurred during the course of their occupation;
- whether the individual will be a supervisor or will be supervised if the authorisation is granted; and
- The seriousness of the offences.

Applicants are sometimes asked to also provide:

- a written explanation as to the circumstances surrounding the offence/pending charge, including any mitigating factors; and
- their authority for the Commissioner, or delegate, to obtain further information in relation to the application.

If the Commissioner is not satisfied that the individual is a fit and proper person, or a person of good character and repute to hold an authorisation, the applicant is advised accordingly and invited to provide additional information which may address specific concerns. Final decisions to object to or refuse a licence are taken very seriously as it is appreciated that such decisions affect an individual's capacity to earn a living.

Policies and guidelines

The Department does not publish policies or guidelines for determining a person's fitness and propriety on the basis that each case needs to be considered on its own merits.

The Department often takes into consideration mitigating or extenuating circumstances in relation to each individual. It also often depends on the licence type and therefore, how much supervision, control or responsibility the applicant will ultimately exercise.

The Department does, however, provide guidance when applicants query whether or not their application will be refused on the basis of convictions appearing on their National Police Certificate. In these instances, applicants are advised that they should answer all questions within the application truthfully, and to provide as much additional information regarding those convictions as possible so that the Commissioner has enough information to make an informed decision.

Applicants are also formally given an opportunity to provide additional information if a preliminary view is formed that the application should be refused.

STAKEHOLDER VIEWS: GOOD CHARACTER AND REPUTE AND FIT AND PROPER CRITERIA (DEALERS)

The 2013 discussion paper sought stakeholder input in regard to whether the legislation should specify the types of matters to be taken into account in determining whether a person is of good character and repute and fit and proper. There appeared to be little support for specifying the types of matters to be taken into account.

In addition, stakeholders were asked to consider whether any types of offences should automatically disqualify a person from being able to obtain a licence. There appears to be broad support amongst consumer and industry stakeholders for specifying certain types of disqualifying offences, for example, offences involving fraud and dishonesty or the stealing of motor vehicles or parts.

Summary of stakeholder responses

The following suggestions were made by stakeholders in relation to the good character and repute and fit and proper criteria which should be taken into account by the Commissioner in deciding whether to grant a licence.

Note: some of the suggestions made by stakeholders would not require legislative amendments as they relate to how the legislation is administered by the Department rather than the legislation itself.

Comment on legislating factors to be taken into account in granting a licence

The CAC was opposed to amending the legislation to include a list of factors required to be taken into account by the Commissioner in granting a licence. The reasons provided were that it may be limiting and may lead to unintended consequences if the list was lacking in some way.

Comment on automatic disqualification

Written submissions: industry

There was broad industry support in written submissions for automatic disqualification for certain types of offences, particularly those concerning fraud, illegal tampering with vehicle identification or instruments, and the theft of vehicles or parts.

MTA

The MTA identified cardinal offences which it felt should disqualify entry to the industry, including offences that go to the integrity of the industry, for example offences committed against the industry or its customers and involving dishonesty. The MTA is of the view that in these cases, the Commissioner should have no discretion in determining fitness. The MTA noted that a 10 year disqualification period should apply.

Cardinal offences identified by the MTA included:

- offences relating to misuse of trust funds;
- offences relating to tampering with odometers, vehicle identification, vehicle 'ghosting';
- offences relating to misappropriation as a business owner where the person has been imprisoned; and
- offences relating to stealing motor vehicles or parts of motor vehicles.

The MTA has also suggested that:

- the Commissioner should be required to take into account offences for dishonesty where the applicant has been sentenced to a term of imprisonment in the previous 10 years;
- a person should be eligible for a licence if they have not committed an offence involving a non-custodial term for five years; and

- consideration should be given to the concept of a probationary dealer’s licence so that the Commissioner is not immediately obliged to make the current irrevocable determination as to whether a person is fit and proper. This would provide the Commissioner with authority to allow an operation to commence where there might be doubt as to fitness or financial viability and where operational conduct might give a better indication of suitability.

Online survey: Industry responses

Table 12 below summarises industry stakeholder responses to the online Motor Vehicle Dealer Industry Survey questions relating to the issue of automatic disqualification from applying for a motor vehicle dealer’s licence for certain offences.⁸⁹

Table 12: Dealer online survey responses in relation to automatic disqualification

	Yes (%)	No (%)	No view (%)	Not specified (%)	TOTAL (%)
Should any type of offences automatically disqualify a person from being able to obtain a licence?	113 (76%)	24 (16%)	1 (1%)	11 (7%)	149 (100%)

The respondents who stated ‘yes’ to the above question, were then also asked to specify which offences out of the specified offences, should automatically disqualify a person from being able to obtain a licence. Table 13 below summarises the stakeholder responses to this question.⁹⁰

Table 13: Dealer online survey responses in relation types of offences for automatic disqualification

	Fraud or dishonesty	Physical violence	Stolen motor vehicle or parts	Other
Should any type of offences automatically disqualify a person from being able to obtain a licence?	111	74	110	7

Written submissions: consumers

Consumers expressed support for automatic disqualification from obtaining a business licence for certain criminal offences including fraud or dishonesty or the stealing of motor vehicles or parts. There was support for the approach taken by New South Wales in relation to automatic disqualification.

⁸⁹ Specific questions relating to this matter were not included in the consumer survey.

⁹⁰ Please note that the total does not add up to 113 (which is the total number of respondents answering ‘yes’ in Table 12) due to it being a multiple answer question.

Comment on National Police Certificates

Written submissions: consumers

CAWA and CAC

Consumer stakeholders, including the CAWA and the CAC, supported retaining the administrative requirement for all applicants to produce a National Police Certificate.

There was opposition to character test requirements being relaxed to enable applicants to submit a statutory declaration on the renewal of their licences, confirming no change since last application, rather than a National Police Certificate.

Written submissions: industry

MTA

In its written submission, the MTA argued that recently issued National Police Certificates should only be required as part of the application process for new dealer licences. The MTA also suggested that exemptions from the requirement to provide a National Police Certificate should be allowed in prescribed circumstances, for example, a director of a company listed on the Australian Stock Exchange.

In the case of licence renewals, the MTA has suggested that only a statutory declaration be required, to the effect that there have been no changes in the licensee's record. The requirement to obtain a National Police Certificate on renewal is seen as a costly non-productive exercise. It is suggested that the statutory declaration on renewal would be sufficient, as the risk is seen as extremely low.

The suggestion that a statutory declaration should replace a recent police clearance needs to be considered in the context of a recent audit conclusion made by the Auditor General in its report published in February 2015.⁹¹ The report referred to an audit which assessed whether the Department ensures only suitably qualified and reputable people are licensed and registered to work as real estate and settlement agents or sales representatives and if it adequately monitors and enforces compliance with legislation, regulations and codes of conduct.

The report included the following audit conclusion (page ii):

Commerce has suitable arrangements in place to ensure that only appropriately qualified and reputable people are licensed to work as agents or sales representatives. Checks are conducted when agents first apply for a licence and on renewal.

However, legal and practical limitations on the monitoring of agents after they are licensed means that Commerce cannot be certain that agents continue to be of good character during the three years their licence is valid.

Alternatively, support was expressed by the MTA for CrimTrac reporting. CrimTrac is a national information sharing service for police established under an Inter-Governmental Agreement between the Commonwealth and each state and territory.

⁹¹ Regulation of Real Estate Agents and Settlement Agents Report 1 Office of the Auditor General Western Australia.

CIAWA

The CIAWA expressed support for the screening of business licence applicants through use of fit and proper tests, however, the CIAWA believed that some of the existing requirements were seen as relatively onerous without providing any real benefit for the regulation of the industry and the protection of consumers.

OPTIONS RELATING TO GOOD CHARACTER AND REPUTE AND FIT AND PROPER CRITERIA

Four options are under consideration in relation to the good character and repute and fit and proper criteria for considering applications for motor vehicle dealers' licences. The following options range from retaining considerable discretion in decision making through to providing limited discretion on the part of the regulator.

Option A: No change.

This option would mean no changes to the legislation.

Compared to the other options, option A provides maximum discretion and flexibility in decision making on the part of the Commissioner. Under this option, as is currently the case, there would still be scope to make adjustments to the manner in which the legislation is administered providing the broad probity requirements as set out in the MVDA are still met.

Option B: Specify disqualifying offences

Under this option, the legislation would be amended to include certain types of offences which would automatically disqualify a person from being able to obtain a licence. For example, disqualifying a person who has been convicted of a serious offence involving fraud and dishonesty (including illegal tampering with vehicle instruments or identification) or the stealing of motor vehicles or parts within the previous five years.

The Commissioner would still retain a general discretionary power to consider whether an applicant is of good character and repute and a fit and proper person to hold a licence under the MVDA. This would enable the Commissioner to take into account additional issues which may not be listed as automatically disqualifying an applicant.

Alternatively, should retaining some degree of discretion be preferred, the approach taken by the Australian Capital Territory in relation to repair business licensing could be adopted. The Australian Capital Territory legislation⁹² allows for a person who has committed or engaged in a disqualifying act, not to be disqualified, if the regulator is satisfied that, in all the circumstances, it would be reasonable not to regard the person as a disqualified person. For example, the time since the disqualifying act was committed or engaged in; and whether the disqualifying act was an isolated event.

Option C: Specify factors to be taken into account

Under this option, the legislation would be amended to clarify the requirement that a person be of good character and repute and fit and proper. This would be achieved by including factors to be taken into account by the Commissioner in assessing an applicant's suitability.

⁹² Part 2 of the *Fair Trading (Motor Vehicle Repair Industry) Act 2010 (ACT)*.

For example, the individual's criminal history, whether the individual has been convicted of an offence against a relevant Act.

The Commissioner would also be provided with a general power to take into account any other factors that the Commissioner considers relevant to exercising the power to assess good character and repute and fit and proper.

It is noted that many of the above matters are currently taken into account in administering the legislation but are not specified in the MVDA.

Option D: Specify disqualifying offences and factors to be taken into account

Under this option, the legislation would be amended as outlined under both options B and C above.

Benefits and disadvantages

The benefits and disadvantages of each option for industry, consumers and government are outlined in the table below.

	Potential benefits	Potential disadvantages
Option A – No change	<p>Industry</p> <ul style="list-style-type: none"> Status quo maintained. Flexibility to enable entry to industry when specific circumstances justify. <p>Consumers</p> <ul style="list-style-type: none"> Maintains consumer confidence. <p>Government</p> <ul style="list-style-type: none"> No impact on resources associated with implementing changes to legislation. 	<p>Industry</p> <ul style="list-style-type: none"> Concerns regarding lack of transparency not addressed. <p>Consumers</p> <ul style="list-style-type: none"> Current barriers to entry may result in reduced competition. <p>Government</p> <ul style="list-style-type: none"> Decisions more likely to be challenged. (Note: challenges occur infrequently.)
Option B– Specify disqualifying offences	<p>Industry</p> <ul style="list-style-type: none"> Clearer parameters as to who is not eligible. Potential for improved reputation of industry due to transparency around disqualifying offences. <p>Consumers</p> <ul style="list-style-type: none"> Maintains confidence in industry. <p>Government</p> <ul style="list-style-type: none"> Clearer guidance in decision making. Decisions may be less likely to be challenged. (Note: challenges occur infrequently.) 	<p>Industry</p> <ul style="list-style-type: none"> Additional barriers may prevent entry of suitable people to the industry. Reduced capacity on the part of the regulator to take into account circumstances of an applicant may result in fewer successful applicants. Less scope for applicants to successfully challenge decisions not to licence due to offences. <p>Consumers</p> <ul style="list-style-type: none"> Barriers to entry may result in reduced competition.

	Potential benefits	Potential disadvantages
		<p>Government</p> <ul style="list-style-type: none"> • Reduced discretion in decision making • Less flexibility to respond to marketplace changes and individual's circumstances.
Option C– Specify factors to be taken into account	<p>Industry</p> <ul style="list-style-type: none"> • Improved clarity and transparency. • Reputation of industry improved due to a better understanding of how decisions are made. <p>Consumers</p> <ul style="list-style-type: none"> • Potentially increased confidence in industry. <p>Government</p> <ul style="list-style-type: none"> • Increased clarity and transparency around criteria, simplifying decision making. • Retains ability to exclude persons who may pose an unacceptable risk (e.g. involved in criminal activity). • Decisions may be less likely to be challenged. (Note: challenges occur infrequently.) 	<p>Industry</p> <ul style="list-style-type: none"> • Additional barriers may prevent entry of suitable people to the industry. • Potentially less scope to successfully challenge decisions not to grant licence. <p>Consumers</p> <ul style="list-style-type: none"> • Barriers to entry may result in reduced competition. <p>Government</p> <ul style="list-style-type: none"> • Less flexibility to respond to marketplace changes and individual's circumstances.
Option D: Specify 'disqualifying' offences and factors to be taken into account	As above for options B and C.	As above for options B and C.

QUESTIONS

Question 1	Which option do you prefer and why?
Question 2	Are there other options to address this issue? Please identify any additional benefits or disadvantages.
Question 3	What are the cost implications of the different options? Please include quantifiable information if possible?

SUFFICIENT RESOURCES CRITERIA: MOTOR VEHICLE DEALER BUSINESS LICENSING

ISSUE

An applicant for a motor vehicle dealer's licence must satisfy the Commissioner in relation to a number of criteria set out in the MVDA.

Under consideration for reform are the criteria relating to having sufficient resources to hold a licence.

The policy issue to be resolved relates to whether this licensing criteria would benefit from being changed to be more specific or removed.

Options for reform in regard to the sufficient resources criteria are discussed in the following section.

BACKGROUND

Qualitative evidence in relation to sufficient resources criteria

A number of difficulties arise in assessing the financial standing of a licence applicant. 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 (although it may be backed by personal assets for individuals within the business). In some instances, a legitimate business' level of past borrowing 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 or guarantee that financial problems will not arise following the granting of a licence.

Since assuming the function of licensing authority, the Commissioner has undertaken a review of the financial assessment requirements imposed on applicants. Given the difficulties in assessing financial statements in some instances, the previous requirement to provide detailed financial reports has been replaced by a simple statement of net assets and liabilities. In addition, a credit history report is now obtained directly by the regulator.

The reasons for these changes was based on the following:

- credit history reports appeared to be the best indicator of financial difficulty in that they provide details of overdue debts, ongoing legal action etc.;
- financial statements do not always fully disclose the financial backing behind a business; and
- the modified approach was commensurate with risk as the financial statements have not historically shown a clear correlation with propensity for a serious breach. Additionally, failure to provide warranty coverage after dealer closure is rare.

The Commissioner must also be satisfied that an entity applying for a dealer's licence has sufficient material and financial resources to enable it to comply with the requirements of the category of licence sought.

Extent of the problem

Given the nature of this issue, quantifying the extent of the problem is not possible as it centres around the question of whether the sufficient resources criteria needs to be more specific so as to simplify the assessment process.

It is, however, noted that from 1 July 2011 to 31 December 2014, the Commissioner has not refused any applications from dealers on the grounds that the applicant failed to meet the sufficient resources requirement.

It is unknown whether the requirement to declare assets and agree to access credit records has dissuaded applicants.

OBJECTIVE

The key objective for considering reforms is to ensure that the licensing criteria relating to sufficient resources which apply to businesses involved in buying, selling and exchanging motor vehicles are appropriate in the context of the purposes of the MVDA.

This objective supports the purposes of the MVDA which are 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.

BACKGROUND

Application requirements

Application requirements are in place to assist the Commissioner in determining whether a dealer's licence should be granted. A summary of the financial information used to assess applicants in respect of the sufficient resources criteria is presented below.

In administering the legislation, there is currently scope for the Commissioner to adjust these application requirements and attendant processes providing the broad requirements as set out in the MVDA are still met.

Financial viability is assessed at the time of initial application for a licence and upon renewal. In addition, financial viability is assessed when a dealer applies to have the condition prohibiting them from conducting consignment sales removed from their licence.

Summary of financial information required for individuals

The following summarises the requirements which apply to individuals.

- A credit history report is obtained by the Department on behalf of the applicant. The report provides a snapshot of the applicant's credit history and other relevant matters and is equivalent to the report that is available to credit providers. It assists in assessing whether the applicant has sufficient financial resources to enable them to meet their obligations under the Act.
- Applicants are given the opportunity to provide additional information should a negative report be obtained. The report is held by the Department as a confidential document and can only be released to third parties as required under law.
- Applicants are required to answer a range of questions and, where necessary, provide further details about:
 - being a director of a corporation which has been subject to any form of insolvency administration;
 - being in liquidation, under official management or an undischarged bankrupt; and
 - whether they have had their affairs administered under any bankruptcy laws.
- A simple statement of assets and liabilities is required for each person applying as a sole proprietor or partner of a firm.
- A sufficient resources declaration is required, stating that the individual has sufficient financial resources to comply with the requirements of the Act.

Summary of financial information required for entities (partnerships and companies)

The following summarises the requirements which apply to entities.

- A credit history report is obtained by the Department on behalf of the applicant/s.
- Where a company has been registered for less than six months, they must provide sufficient documentary evidence (for example: bank statements, loan documents, letter from accountant etc.) to satisfy the Commissioner that the new company has sufficient financial resources available to it.
- Applicants are required to answer a range of questions and, where necessary provide further details about:
 - being a director of a corporation which has been subject to any form of insolvency administration;
 - being in liquidation, under official management or an undischarged bankrupt; and
 - whether they have had their affairs administered under any bankruptcy laws.
- If the applicant is a partnership, the combined assets and liabilities of the members of that partnership are required. If the applicant is a company, only assets and liabilities owned by that entity and personal assets of company directors are required.
- A sufficient resources declaration is required. Directors/partners must declare on behalf of the entity that they believe it has sufficient financial resources to comply with the requirements of the Act.

Given the concerns around being able to properly assess financial viability, consideration is being given to whether there is a need to assess financial viability and, if so, whether a more objective measure of financial viability should be considered.

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 any agreed costs and commission.

Sale by consignment is a particular area of potential financial risk to consumers, for example, when a dealer fails to pay the funds received from the sale of a vehicle on consignment to the original owner of the vehicle.

Given these risks, a more stringent assessment of the financial viability criteria is undertaken in relation to licensees intending to sell on consignment. The MVDA also contains certain requirements in relation to sale by consignment, including:

- requirements relating to consignment agreements (prescribed terms and conditions)⁹³;
- trust account requirements⁹⁴; and
- payment to the consignor (seller).⁹⁵

Applicants intending to sell vehicles on consignment are required to:

- inform the Commissioner about the details of their trust account;
- provide the name of their registered auditor; and
- provide an agreement to be audited by the Department.

If applicants are not intending to sell by consignment, a condition is imposed on their licences prohibiting the sale of vehicles on consignment. Dealers are required to apply to the Commissioner in the event of wishing to commence selling on consignment. Prior to removing such a condition, an assessment of sufficient financial resources is undertaken by the Department.

Definition of sufficient resources

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.*⁹⁶

Purpose of assessing financial viability

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

- warranty repair obligations⁹⁷;

⁹³ MVDA – section 32B.

⁹⁴ MVDA – sections 32C-32E.

⁹⁵ MVDA – section 32G.

⁹⁶ MVDA – section 15(6).

⁹⁷ MVDA – section 34.

- ensuring vehicles for sale are roadworthy⁹⁸;
- maintaining premises⁹⁹;
- audit obligations in relation to consignment trust accounts (if applicable)¹⁰⁰; 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 where warranty obligations arise;
- failure to return a consignment vehicle or pay funds received for a sale on consignment; and
- failure to return a deposit for a vehicle.

It has been suggested that these obligations could be protected through the use of other mechanisms, such as a dealer warranty scheme, which covers the costs of undertaking repairs if a dealer becomes insolvent and is unable to meet its obligations.

It is noted that in practice, in the event of a dealer notifying the Department that they are ceasing to trade as a dealer (surrendering their dealer's licence), the dealer is asked to nominate a repairer who will undertake any warranty repairs. Cases where warranty associated issues have arisen as a result of a dealership going into liquidation or closing down are rare.

A dealer warranty scheme has some limitations 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 the dealer warranty scheme is obtained by dealers on a voluntary basis.

Some objective criteria in relation to an applicant's financial standing could be included in the MVDA, 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 due to solvency or governance problems.

OTHER JURISDICTIONS' APPROACH TO ASSESSING FINANCIAL VIABILITY

Australian Capital Territory, Victoria and Northern Territory

New South Wales, Australian Capital Territory, Victoria and Northern Territory impose similar requirements on motor vehicle dealers to those applied in Western Australia.

Queensland, South Australia and Tasmania

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.

⁹⁸ MVDA – sections 28 and 29.

⁹⁹ MVDA – section 20E.

¹⁰⁰ MVDA – section 32I.

It is noted that there appears to be no evidence of systemic dealer failure in Queensland, South Australia and Tasmania as a result of regulators not directly assessing whether licensees have sufficient resources.

STAKEHOLDER VIEWS: SUFFICIENT RESOURCES CRITERIA (DEALERS)

In regard to the criteria relating to sufficient resources, industry submissions appeared to support the retention of the financial viability criteria, whereas industry survey responses indicated considerable support for removing the sufficient resources criteria.

The 2013 discussion paper sought stakeholder input in regard to:

- what factors should the licensing authority take into account in determining whether a person meets this requirement (in the event that the sufficient resources requirement is retained); and
- whether any other mechanisms should be put in place to protect consumers from financial loss (in the event that the sufficient resources requirement is not retained).

Overall, there appears to be considerable industry support for retaining the sufficient resources requirement. It is, however, noted that consumer stakeholders did not provide responses to this issue.

The following provides more detail in regard stakeholder responses to this issue.

Input about financial viability assessment

Written submissions provided by industry stakeholders generally supported the retention of the existing financial viability assessment, particularly for first time applicants for a dealer's licence.

One dealer indicated support for removing the sufficient resources criteria.

It is noted that some of the following suggestions made via written submissions would not necessarily require legislative amendments as they relate to how the legislation is administered by the Department rather than the legislation itself.

Comment on renewals

Written submissions: industry

For renewals, it was suggested that a simple statement of assets and liabilities at the time of renewal is all that should be required rather than providing all information currently required. (It is noted that requirements on initial application and renewal have been considerably simplified since consulting with stakeholders).

The MTA is of the view that financial viability should remain at the core of licensing system for dealers, especially those which have warranty or consignment selling obligations. The MTA therefore expressed support for retention of existing financial viability requirements for all applicants for dealers' licences.

The MTA commented that the risk to consumers relates to the dealers' capacity to carry out warranty work (or fund the cost of warranty work) and, in the case of consignment selling, adherence to the requirements for protecting the assets of a consignor.

The CIAWA expressed support for the screening of applicants through use of some form of financial viability test. The CIAWA also noted that it is legitimate that a person or business entering this industry as a dealer should have a solid financial base, however, commented that the interests of consumers are not necessarily affected by a failure in long term viability (except in the case of dealers engaging in consignment selling).

The CIAWA noted that some of the existing requirements are relatively onerous without providing any real benefit for the regulation of the industry and the protection of consumers. (Note: these comments were made prior to recent simplification of financial requirements.)

Online survey: industry responses

Table 14 below summaries industry stakeholder responses to the online Motor Vehicle Dealer Industry Survey question relating to the issue of whether dealers should prove that they have sufficient material or financial resources.¹⁰¹

Table 14: Dealer online survey responses in relation to sufficient resources criteria

	Yes – just on application for a licence (%)	Yes – on application for licence and on renewal (%)	No (%)	No view on this issue (%)	Not specified (%)	TOTAL (%)
Should a dealer be required to prove that they have sufficient material or financial resources on application for a licence and renewal?	40 (27%)	74 (50%)	13 (9%)	10 (7%)	12 (8%)	149 (101%) ¹⁰²

Comment on used vehicle warranty protection scheme

Written submission: industry

In its written submission, the MTA indicated support for inclusion of a provision requiring membership of a used vehicle warranty protection scheme for any dealer selling vehicles to which the MVDA warranty provisions apply. The MTA noted that membership of the scheme could be recognised as an alternative to credit history reports on renewal.

OPTIONS RELATING TO SUFFICIENT RESOURCES CRITERIA

Three options are under consideration relevant to the criteria of having sufficient resources to hold a licence.

¹⁰¹ Specific questions relating to this matter were not included in the consumer survey.

¹⁰² Rounding has caused the total to be greater than 100%.

Option A: No change.

This option would not require changes to the legislation.

Under this option, there would be scope for administrative improvements as long they remained within the scope of the current legislation.

Option B: Objective financial measures

This option would involve amending the legislation to remove the broad requirement that a licensee have sufficient resources and instead to include objective financial measures to determine whether the applicant is suitable to be granted a licence, for example, 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.

Option C: Remove sufficient resources to hold a licence criteria

This option would involve amending the legislation to remove the broad requirement that a licensee have sufficient resources.

Benefits and disadvantages

The benefits and disadvantages of each option for industry, consumers and government are outlined in the table below.

	Potential benefits	Potential disadvantages
Option A – No change	Industry <ul style="list-style-type: none">• Status quo maintained.• Improved assessments can be adopted as procedural changes are made. Consumers <ul style="list-style-type: none">• Maintains consumer confidence. Government <ul style="list-style-type: none">• No impact on resources associated with implementing changes to processes or legislation.	Industry <ul style="list-style-type: none">• Concerns regarding lack of transparency not addressed. Consumers <ul style="list-style-type: none">• Maintains level of risk of dealer being unable to meet obligations. Government <ul style="list-style-type: none">• Ongoing difficulties in objectively assessing licence applicants against sufficient resources criteria.• Risk of consumers criticising regulator if relied on assessment of financial viability.
Option B– Introduce objective financial measures	Industry <ul style="list-style-type: none">• Improved clarity and transparency around sufficient resources criteria and how they are applied.• Potentially reduced compliance costs.	Industry <ul style="list-style-type: none">• Additional barriers/less discretion in decision making may prevent entry of suitable people to the industry. Consumers <ul style="list-style-type: none">• Barriers to entry may reduce competition.

	Potential benefits	Potential disadvantages
	<p>Consumers</p> <ul style="list-style-type: none"> Maintained consumer confidence. <p>Government</p> <ul style="list-style-type: none"> Simplified decision making. Increased exposure to risk in event of consumer losses due to financial issues not able to be identified. 	<ul style="list-style-type: none"> Potentially reduced confidence in industry as financial checks are more limited and may result in more financial collapses. <p>Government</p> <ul style="list-style-type: none"> Less flexibility in assessing sufficient financial resources.
Option C– Remove sufficient resources criteria.	<p>Industry</p> <ul style="list-style-type: none"> Potentially reduced compliance costs. Reduced barriers to entry to the industry. <p>Consumers</p> <ul style="list-style-type: none"> Reduced compliance costs to industry potentially passed on to consumers. <p>Government</p> <ul style="list-style-type: none"> Simplified decision making. 	<p>Industry</p> <ul style="list-style-type: none"> Potential for reduced confidence in industry in the event of business failures. <p>Consumers</p> <ul style="list-style-type: none"> Reduced confidence in industry due to removal of financial checks which may result in increased number of financial collapses. <p>Government</p> <ul style="list-style-type: none"> Increased exposure to risk in event of consumer losses due to financial collapses.

Question	
Question 1	Which option do you prefer and why?
Question 2	Are there other options to address this issue? Please identify any additional benefits or disadvantages.
Question 3	What are the cost implications of the different options? Please include quantifiable information if possible?

MOTOR VEHICLE DEALERS LICENSING – CATEGORIES OF LICENCES

ISSUE

The policy issue to be resolved is whether the scope of the licensing scheme in the MVDA remains appropriate.

OBJECTIVE

To ensure that the current categories of licensing for motor vehicle dealers are appropriate for today's marketplace and are sufficiently flexible to cater for any changes that may occur in the market in coming years.

DISCUSSION

The MVDA provides that different categories of licence may be prescribed for the various types of business undertaken by motor vehicle dealers.¹⁰³ 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 and auctioning any vehicles that have been hired out by the dealer.¹⁰⁴

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

As at February 2015, 841 dealers are licensed under the MVDA and of these 518 hold licences across multiple categories. Table 15 below sets out how many licences are held across the various categories.

¹⁰³ MVDA – section 5A.

¹⁰⁴ Motor Vehicle Dealers (Licensing) Regulations 1974 (WA) – regulation 8 and Fourth Schedule.

Table 15: Number of licences held across the various categories as at February 2015

Category	Number of licensees
Category A	651
Category B	386
Category C	365
Category D	149
Category E	116
Category F	130

The current business classifications and licensing categories for motor vehicle dealers commenced in 2002 following a National Competition Policy review and general fair trading review of the MVDA. Prior to the 2002 changes, the definition of dealer for the purposes of the licensing requirements in the MVDA was much broader and referred simply to the activities of: buying, selling and auctioning vehicles; buying vehicles for the purposes of wrecking; and acting as a financier.

The rationale for moving to a system of differential licensing by creating classes of business and categories of dealer's licence was that it:

- provided for easier identification and prescription of the types of business for which a dealer's licence is required; and
- enabled the licensing authority to keep pace with industry changes as they evolved.¹⁰⁵

STAKEHOLDER VIEWS

The 2013 discussion paper discussed the advantages and disadvantages of a licensing scheme for motor vehicle dealers and asked whether any changes were required to be made to the current categories of dealer licence.

Written Submissions

The written responses to the 2013 discussion paper indicated that there is strong still support for the differential system of dealer licensing.

Consumers' Association of Western Australia

The CAWA submission praised the protection afforded to Western Australian consumers through licensing and registration, even though many consumers are unaware that they are protected.

Caravan Industry Association Western Australia

CIAWA submission advocated for the removal of the current exemption from the operation of the MVDA of recreational vehicle hire operators. CIAWA expressed concern that this exemption creates a safety risk for both tourists and other road users in Western Australia.

¹⁰⁵ See the Explanatory Memorandum for the Motor Vehicle Dealers Amendment Bill 2001, introduced into Parliament on 7 November 2011 (Bill No. 72) at page 5.

In relation to consignment selling, CIAWA advocated that recreational vehicle dealers engaging in consignment selling be granted a separate class of licence for which qualification requirements and financial viability assessment process is more stringently applied.

Smith Broughton

Smith Broughton advocated for the removal of licence categories due to the many and varied business structures and types of business operations.

MTA

The MTA's submission advocated for changes to be made to the licensing categories so that they are defined more by reference to the business activity rather than to the type of vehicle involved. It was suggested that this was a more logical approach and more appropriate for the modern marketplace.

It was further argued by the MTA that this would better reflect the fact that different knowledge is required for different types of businesses. For example, a dealer selling vehicles will have different knowledge from a dealer dismantling vehicles. Consequently, the MTA expressed the view that a system of aligning the various categories of dealer licence more closely to business activity (rather than to the type of vehicle) would allow for greater flexibility by enabling different training requirements and licensing criteria to be developed depending on the type of licence sought and the knowledge required.

The importance of flexibility in the licensing process is acknowledged. However, in terms of the licensing criteria, the MVDA only sets out the broad principles. The discretion to decide the steps the applicant must take in order to satisfy those principles – including any training requirements – lays with the Commissioner. Accordingly, the flexibility to develop different training requirements and licensing criteria is already available under the MVDA and is not dependent on how the various classes of dealer licence are differentiated. Nevertheless, it is possible that the changes to the categorisation of the classes of dealer licences may make it easier to classify different training programmes and apply them to the appropriate group.

Currently, dealers applying for their initial dealer's licence are required to establish that they have satisfied the knowledge requirements of the MVDA by showing they have successfully completed the Dealer/yard manager Licence Requirements Course. Upon an application for renewal of the dealer licence, the Commissioner only requires the motor vehicle dealer to pay the appropriate application fee, provide a National Police Certificate and provide a brief financial statement in support of their application. The knowledge requirement is satisfied by that initial completion of the Dealer/Yard Manager Licence Requirements Course, which contains important information about the laws that apply to dealers/yard managers when they are buying or selling motor vehicles from or to consumers. This includes the MVDA, the ACL, consumer credit laws and contract law.

The alternative licence categories suggested by the MTA are as follows:

- Suggested category 1 - retail buying and selling of motor vehicles other than goods vehicles.
- Suggested category 2 - buying and selling goods vehicles or other commercial vehicles.
- Suggested category 3 - wholesale buying and selling of motor vehicles.
- Suggested category 4 - auctioning motor vehicles (including via online auctions).
- Suggested category 5 - buying vehicles for the purpose of dismantling them and selling off the parts.
- Suggested category 6 - retail buying and selling of non-motorised vehicles (such as caravans and camper trailers).

- Suggested category 7 - consignment selling of motor vehicles.
- Suggested category 8 - acting as a broker or agent for the buying and selling of motor vehicles on behalf of members of the public.
- Suggested category 9 – car hire operators.

Apart from suggested category 7, which is a new category, all the other categories cover activities that are currently regulated in some form. The suggested category 3 (wholesale buying and selling of motor vehicles), is not explicitly identified under the MVDA as a separate category, but dealers are required to advise the Department within their application form whether they will operate on a retail or wholesale level. Table 16 below shows the overlap between the existing categories and the suggested new categories:

Table 16: Existing categories and the suggested new categories

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	Category F: hiring out vehicles, buying vehicles for hiring out, and selling and auctioning any vehicles that have been hired out by the dealer
Suggested category 1	Suggested category 1	Suggested category 1			
Suggested category 2	Suggested category 2	Suggested category 2			
Suggested category 3	Suggested category 3	Suggested category 3			
Suggested category 4	Suggested category 4	Suggested category 4			
			Suggested category 5		
		Suggested category 6			
				Suggested category 8	
					Suggested category 9

The MTA's suggested categories 1, 2, 3 and 6 contain new terms such as 'retail', 'commercial vehicles', 'wholesale' and 'non-motorised vehicle' (such as caravans and camper trailers) which do not currently appear in the MVDA. These terms would need to be defined in order for the categories to operate effectively.

CATEGORIES OF DEALER LICENCES

Suggested Categories 1 and 3 – retail and wholesale buying and selling

At present, the MVDA does not distinguish between retail buying/selling of vehicles and wholesale buying/selling of vehicles. Consequently, wholesalers - like retailers - must apply for a category A, category B, and/or category C dealer's licence, depending on the type of vehicle(s) they are dealing in.

To be granted a licence, wholesalers must also meet the same criteria as retailers. This means that they must satisfy the Commissioner that they are a fit and proper person to hold a licence, have sufficient financial resources and have sufficient knowledge of the MVDA (these licensing criteria are discussed in detail earlier in the CRIS). Likewise, wholesalers must also advise the Commissioner of the location of their premises.

However, the dealer licence application form gives wholesalers the opportunity to request a 'wholesale only' licence. The term, wholesale only, does not appear in the MVDA but is an administrative term defined on the application form as meaning, *'selling vehicles only to persons or entities that are motor vehicle dealers or motor vehicle trade-owners, but may include the acquisition of vehicles from any source.'*

The application form makes it clear that conditions will be applied to wholesale only licences. The following conditions tend to be imposed on wholesale only licences:

- the wholesaler is only permitted to sell vehicles to licensed dealers;
- a wholesaler who operates from a home office is not permitted to store vehicles at the authorised premises; and
- the wholesaler is not permitted to engage in consignment sales.

The licensing criteria, process and application fee are exactly the same for wholesalers as for retailers. As there has been no suggestion that this should be changed, it could be argued that there is little, if anything, to be gained by creating a stand-alone category of licence for wholesalers. Furthermore, as at February 2015, it appears that 27 licence holders could be classified as being wholesale only dealers.

Given that the application form already differentiates between wholesale and retail selling by enabling people to apply for a wholesale only licence with strict conditions, it may be appropriate to formalise this by creating two separate categories in the legislation.

The MTA submission also indicates that there is a concern that the use of the word 'wholesale' in a business name has the potential to be confusing to the public as it creates an expectation that they are purchasing a vehicle cheaper than they would through a retail seller. For this reason, the MTA suggests that:

- the use of the word 'wholesale' in a dealer's trading name be restricted to those with a wholesale licence; and

- a dealer with both a retail and wholesale business must be required to operate each business from separate premises i.e. physically separate fenced yards or separate buildings.

Suggested Category 7 – consignment selling of motor vehicles

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 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 access 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. 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.

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 seller. Currently, more stringent assessment of the financial viability criteria is undertaken by the Commissioner in relation to licensees intending to sell on consignment. Consequently, applicants for a dealer's licence must declare on the application form whether they will be accepting vehicles for sale on consignment.

Applicants who will be undertaking this type of transaction are required to provide details of their designated trust account and the name of their registered auditor. They must also have their trust accounts audited regularly and submit them to the Department for checking.

Selling by consignment is already covered in existing categories A, B and C. The introduction of a separate, stand-alone category for this type of activity would have no practical impact for dealers or the regulator but would serve to acknowledge the specialised nature of this type of transaction.

Suggested Category 8 - dealer agents

Under the current provisions of the MVDA, dealers acting as an agent to facilitate the purchase or sale of vehicles on behalf of members of the public must apply for a category E dealer's licence. Section 18A of the MVDA provides for the Commissioner, when granting a licence, to attach any conditions or restrictions to the licence. A number of conditions are placed on category E licences to ensure that the holder acts properly as an agent and not as a de facto dealer with a licence to sell cars to the public.

As part of those conditions, a dealer agent is prevented from holding money on behalf of clients and is not permitted to sign a contract on behalf of either party to the contract.

Stakeholder views: written submissions

The 2013 discussion paper asked for comments on whether those conditions should be lifted and, if so, whether other protective measures should be implemented to reduce the risks to consumers.

Only the MTA provided a written response to this issue. The MTA proposed that the term agent be changed to broker to better reflect the nature of the activities performed. Support was also expressed by the MTA for a lifting of the conditions relating to the signing of contracts and the holding of monies on behalf of clients, subject to:

- a requirement that the content of agreements between brokers and clients be prescribed in the regulations (similar to the way in which agreements for consignment sales are already prescribed in the regulations). The purpose of the agreement would be to ensure that the extent of the broker's authority is clearly defined and any fees or commissions being received by the broker are clearly disclosed;
- a dealer holding a broker category of licence being precluded from holding any other category of licence, other than dismantling; and
- a requirement that monies held on behalf of clients be held in a trust account, the operation of which is regulated under the MVDA.

Due to the broad power under s18A to impose conditions or restrictions to the licence, changes can be made administratively, without amending the current legislation. However, the changes proposed by the MTA would require amendments to the MVDA.

Suggested Category 9 - car hire operators

A car hire operator is defined in the MVDA as *'a person who carries on the business of hiring vehicles, where the right to purchase is not included in that hiring'*.¹⁰⁶ Car hire operators who meet this definition are required to hold a category F dealer's licence. However, the Commissioner may grant an exemption if satisfied that:

- the buying or selling of vehicles does not comprise a significant part of the business of the car hire operator; and
- the vehicles bought in the course of the car hire business are ordinarily disposed of directly to licensed dealers.¹⁰⁷

Stakeholder Views

This issue was not specifically addressed in the 2013 discussion paper but was raised within written industry submissions by the MTA and CIAWA.

Written Submissions – MTA and CIAWA

The particular concern raised within the MTA and CIAWA submissions related to the safety implications arising from the increasing use of second-hand vehicles in car hire operations. Specifically, the submissions expressed concern about the fact that the Department's automotive engineers have no power under the MVDA to enter a car hire operator's premises to carry out safety inspections of vehicles if the operator has been granted an exemption.

It was proposed in the submissions that this be addressed by narrowing the scope for car hire operators to be exempted from the licensing requirements of the MVDA. In particular, it was argued that exemptions should only be granted in cases where the Commissioner is satisfied that the hiring of vehicles (as opposed to the buying and selling of vehicles) does not comprise a significant part of the car hire operator's business. While this would not necessarily have any impact on the wording or nature of existing category F licences, it would have the effect of bringing the majority of car hire operators within the scope of the MVDA licensing scheme.

¹⁰⁶ MVDA – section 5.

¹⁰⁷ MVDA – section 31(1).

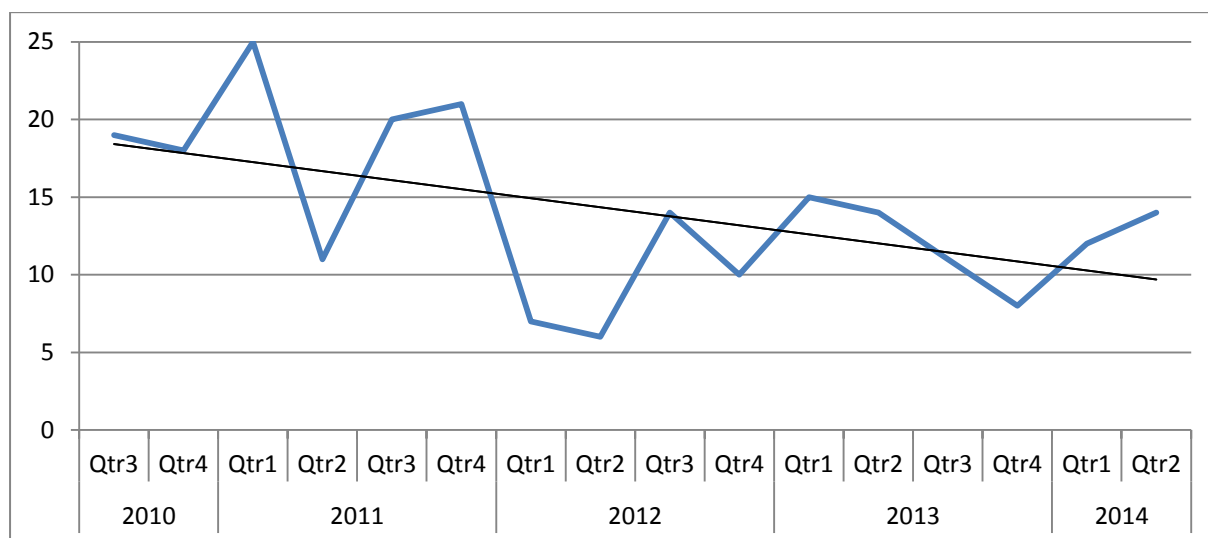
Discussion

In the last financial year (1 July 2014 to 30 June 2015), 31 car hire operators had been granted exemptions from the licensing requirements of the MVDA. Of these 31 car hire operator exemptions, 15 exemptions were to new applicants and 16 were renewals of previous exemptions. Extending the MVDA licensing scheme to the car hire industry would increase the scope of the MVDA and impose increased compliance costs on all car hire operators. For instance as at January 2015, a licence to trade at one premises costs \$1,628 for a three year period.

Anyone who falls within the MVDA licensing scheme also becomes subject to inspection by the Department's automotive engineers and any unsafe vehicles can be declared unfit for sale and an order can be made requiring the owner of the vehicle to remedy the defect.¹⁰⁸

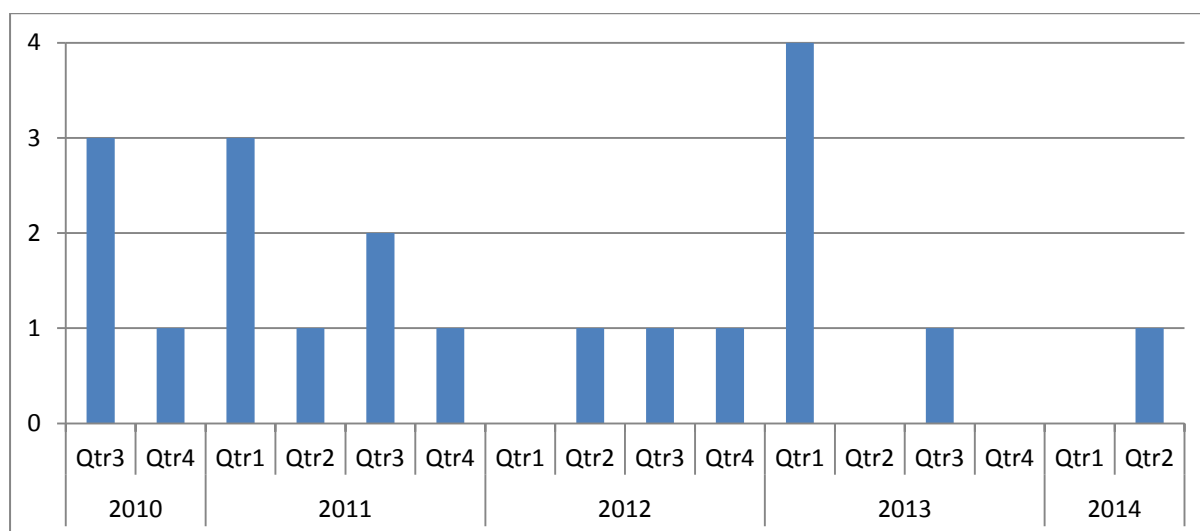
In the past four financial years (1 July 2010 to 30 June 2014) the Department has received 225 complaints in which either the respondent was an exempt car hire operator or the complaint was concerned with motor vehicle leasing or motor vehicle hire services. Of these complaints, 20 were concerned with safety issues, roadworthiness, breakdowns or a similar event.

Figure 7: Car hire related complaints by quarter



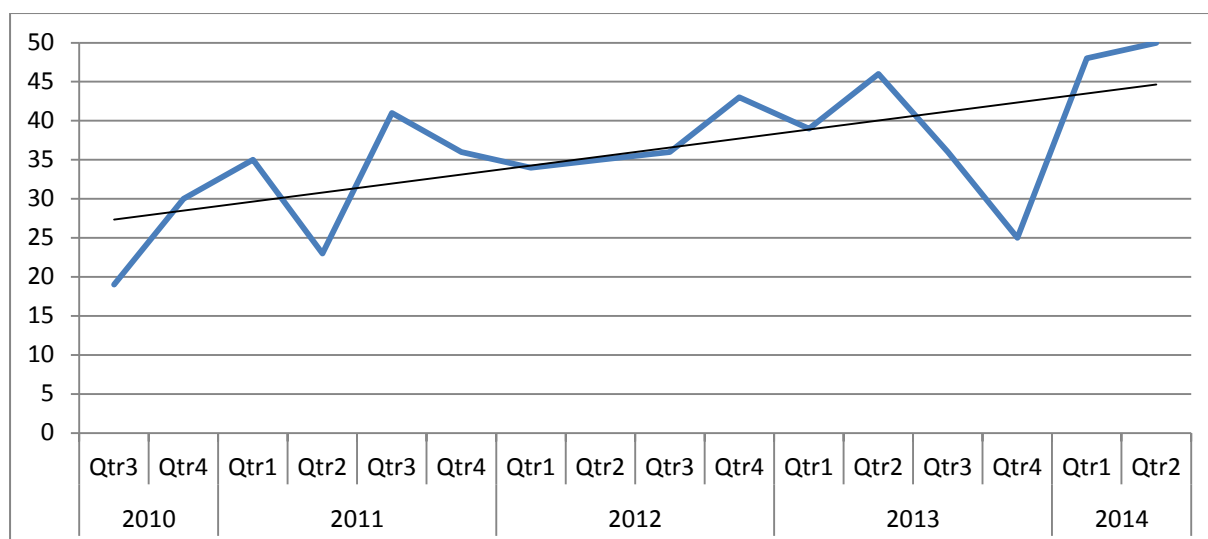
¹⁰⁸ MVDA – section 28(2).

Figure 8: Car hire vehicle safety complaints by quarter



By comparison, in the same period, 576 complaints were received against dealers with Category F licences. Of these complaints, 41 related to motor vehicle leasing or motor vehicle hire services. This suggests that for most dealers with Category F licences, hiring of cars is a minor business focus.

Figure 9: Complaints against dealers with Category F licences by quarter



In considering the exemption provisions that apply to this category of licence, it is important to take into account the effect of the ACL on the car hire industry. Under the ACL, car hire businesses must comply with a number of consumer guarantees, including that the rental vehicle must be of acceptable quality. The test for acceptable quality is whether a reasonable consumer, fully aware of a motor vehicle's condition (including any defects), would find it:

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

Car hire operators are bound by the requirements of the ACL and therefore already have a duty under that legislation to ensure the safety of every vehicle they hire out. However, there are no powers under the ACL which would allow the Department's automotive engineers to inspect these vehicles without a complaint.

The core objective of the MVDA is to establish a licensing regime for people engaged in the business of buying, selling and exchanging motor vehicles in Western Australia in order to:

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

Requiring car hire operators to comply with the provisions of the MVDA, even where they do not engage in any actual buying, selling or exchanging of motor vehicles to consumers does not fully align with the core objective of the MVDA. There is an important safety issue, which needs to be dealt with, in relation to the safety of second-hand vehicles. However, the MVDA is not considered to be the correct mechanism for resolving this issue.

There are other mechanisms already available which are designed to ensure that vehicles on the road comply with safety standards. For instance the *Road Traffic Act 1974 (WA)* allows any licenced vehicle found to be un-roadworthy to be issued with a compliance notice by specified individuals and these vehicles must then be examined at a Vehicle Examination Centre. In addition, the Department of Transport requires hire vehicles to be specifically licensed as hire cars and to be covered by a particular type of third party (personal injury) insurance.

Furthermore, consideration should be given to whether instead of having to be licenced, car hire operators should be removed from the definition of dealer under the MVDA on the basis that car hire operators dispose of all vehicles to or through a licensed motor vehicle dealer. If a car hire operator wished to sell vehicles directly to the public, then they would be required to be licensed as a dealer. In other jurisdictions, car hire operators are not required to hold a dealer's licence, unless they sell their vehicles directly to the public.

Wreckers – buying vehicles for the purpose of dismantling them and selling off the parts

Wreckers have always been captured within the provisions of the MVDA. By requiring wrecking businesses to hold a motor vehicle dealer's licence and keep a record of every transaction entered into, in the course of dealing at their premises, it is possible to track vehicles and deter individuals from selling stolen cars or parts to wreckers.

Increasingly, scrap metal recyclers are purchasing vehicles (along with a variety of other goods) for the purposes of crushing and recycling the vehicles for scrap metal, rather than for the purpose of recovering parts for resale.

Scrap metal recyclers tend not to be licensed under the MVDA as their ordinary business is not that of buying vehicles and they do not on sell recovered parts. It is unclear how many recyclers are now also operating in this area. Further consideration needs to be given to whether the MVDA should explicitly exclude for licensing purposes scrap metal recyclers of cars, who do not recover parts to on sell to the public.

Other jurisdictions in Australia licence motor vehicle wreckers in the following manner:

	NSW	Vic	Qld	SA	ACT	NT
Do wreckers, who obtain vehicles in order to dismantle them and sell off parts, need to be licensed?	Yes	Yes	Yes	Yes, but only if they also sell second-hand vehicles, including vehicles that cannot be driven because they are in need of minor mechanical or other repairs.	No	No

Financiers

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 or her in connection with the above purposes.¹⁰⁹

Currently the definition of dealer under the MVDA includes a financier.¹¹⁰ A financier is therefore required to hold a dealer's licence. However, 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.¹¹¹ Over the last financial year (1 July 2014 to 30 June 2015), six financier exemptions have been granted. Of these six financier exemptions, two exemptions were to new applicants and four exemptions were renewals of previous exemptions.

It should be noted that financiers are also required to obtain a credit licence pursuant to the *National Consumer Credit Protection Act 2009* (Cth).

The 2013 discussion paper asked whether the requirement for financiers to be licensed should be removed in favour of a simpler requirement that financiers must dispose of any repossessed vehicles to or through a licensed motor vehicle dealer. Financiers not wishing to dispose of vehicles in this manner would be required to be licensed as a dealer in their own right.

¹⁰⁹ MVDA – section 5.

¹¹⁰ MVDA – section 5.

¹¹¹ MVDA – section 31.

The written submissions by the MTA and the RAC indicated support for this proposal on the basis that it would simplify the licensing process and reduce costs both for financiers and the licensing authority.

For the four financial years, 1 July 2010 to 30 June 2014, six complaints were lodged with the Department against traders with a motor vehicle financier exemption. Of these, only one complaint was about the purchase of a motor vehicle. The current licensing system is not able to identify which licensed dealers also provide first party finance services. Therefore, we are unable to provide a comparison about how many complaints the Department has received against dealers in relation to their operation as a financier.

Auctioneers

Auctioneers are required to be licensed under the *Auction Sales Act 1973 (WA)*.¹¹² Licensing under this Act is the responsibility of the Magistrates Court. A licensee for an auctioneer's licence must satisfy the magistrate who considers the application that they are a fit and proper person to hold a licence.¹¹³

Auctioneers of motor vehicle are also required to obtain a dealer's licence pursuant to the MVDA, unless they satisfy the requirements of an exemption from the MVDA.¹¹⁴ Auctioneers can be exempted by the Commissioner from compliance with the MVDA provided the selling of motor vehicles does not constitute a significant part of an auctioneer's business.

For the purposes of the MVDA, the definition of trade owner means any person who acquires a vehicle for the purposes of reselling that vehicle, or for the purposes of the hiring of a vehicle, where the right to purchase that vehicle is not included that hiring.¹¹⁵ Therefore, licensed dealers, finance companies and hire car companies would be considered trade owners.

Licensed dealer auctioneers who sell motor vehicles on behalf of trade owners do not need to comply with the requirements of the consignment provisions under the MVDA.¹¹⁶

However, auctioneers who sell motor vehicles on behalf of private owners must comply with the requirements of the consignment provisions under the MVDA.¹¹⁷ A consignment sale is where a 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 of the owner, less any agreed costs and commission. Sale by consignment is an area of potential financial risk to consumers, for example, when a dealer fails to pay the funds received from the sale of a vehicle on consignment to the original owner of the vehicle.

Given these risks, a more stringent assessment of the financial viability criteria is undertaken in relation to dealers selling on consignment. The MVDA also contains certain requirements in relation to sale by consignment, including:

- requirements relating to consignment agreements (prescribed terms and conditions),¹¹⁸
- trust account requirements;¹¹⁹ and

¹¹² *Auction Sales Act 1973 (WA)* – section 6.

¹¹³ *Auction Sales Act 1973 (WA)* – section 17(6).

¹¹⁴ MVDA – section 31.

¹¹⁵ MVDA – section 5.

¹¹⁶ MVDA – section 32A.

¹¹⁷ MVDA – section 32A.

¹¹⁸ MVDA – section 32B.

¹¹⁹ MVDA – sections 32C – 32E.

- requirements relating to payments to the consignor (seller).¹²⁰

Issue

From time to time licensed dealer auctioneers may be engaged to dispose of a vehicle fleet owned by a business or corporation, for example, a mining company. Under the MVDA, dealer auctioneers in this situation must comply with the abovementioned consignment selling requirements. A question has been raised whether there is the need for such requirements to apply, on the basis that dealer auctioneers in this situation are not dealing with an individual consumer, but instead are entering into a commercial arrangement with a corporate entity.

Stakeholder views: written submissions

Smith Broughton, in its written submission noted that the consignment selling requirements under the MVDA for auctioneers, who make a significant number of consignment sales, mainly between incorporated buyers and sellers is excessive in comparison to the benefit, or potential benefits achieved. Smith Broughton are also of the view that the extension of the MVDA into what would normally be considered “business or commercial transactions” rather than a consumer transaction has added to the costs of doing business but provided little additional protection for members of the public.

In its written submission, Dodd & Dodd Pty Ltd (trading as Ross’s Sales & Auctions) stated that areas of the MVDA covering consignment sales need to be reviewed and the following changes should be made:

- auctioneer’s selling vehicles on consignment should be allowed to run one trust account that covers both motor vehicles and non-motor vehicle sales;
- mandatory use of prescribed consignment contract terms and conditions should be relaxed where a binding agreement is in place between the auctioneer and the consignee (it would be anticipated that the consignee would be an entity operating under a valid ABN); and
- the rules relating to the timing of payments to consignees holding a valid ABN are relaxed.

A core objective of the MVDA is to license a person engaged in the business of buying, selling and exchanging motor vehicles in Western Australia in order to provide protections for consumers buying or selling vehicles from dealers. Consideration is being given as to whether it remains appropriate to extend the protections afforded under the MVDA through the consignment provisions to businesses who own their own motor vehicle fleet (e.g. mining companies) and dispose of it through licensed auctioneers.

OTHER JURISDICTIONS – CATEGORIES OF DEALER LICENCES

Only Queensland and the Australian Capital Territory appear to have categories of dealer’s licences. Queensland has the following categories of motor dealer licences for individuals and corporations¹²¹:

- Motor dealer licence;
- Motor dealer wrecker licence; and
- Motor dealer broker licence.

¹²⁰ MVDA – section 32G.

¹²¹ *Motor Dealers and Chattels Auctioneers Act 2014* (Qld) – section 17 requires an applicant to state the category of licence being applied for. The application form sets out the different categories of licence available.

The Australian Capital Territory has the following categories of dealer licences¹²²:

- Dealer;
- Wholesaler; and
- Car Market Operator.

The remaining jurisdictions do not create categories within a motor vehicle dealer's licence.

New South Wales¹²³, Northern Territory¹²⁴, Victoria¹²⁵, Australian Capital Territory¹²⁶, Tasmania¹²⁷ and South Australia¹²⁸ all exclude financiers from the definition of motor dealers.

OPTIONS – LICENCE CATEGORIES

The following paragraphs set out the various options for addressing the issues arising from the responses to the 2013 discussion paper regarding the licence categories.

Option A – Make no changes to the existing categories of dealer licence and retain the status quo

Under this option, existing categories A to F (as set out in regulation 8 and the Fourth Schedule of the Motor Vehicle Dealers (Licensing) Regulations 1974 (WA) would remain as they are.

Option B – Replace existing categories A to F with categories 1 to 9 suggested by the MTA

Under this option, the nine new categories of licence suggested (as listed earlier in this section) would replace existing categories A to F.

Option C – Replace the existing categories A to F with three general categories of licences

Under this option, the existing categories A to F would be replaced with the following three general categories of dealer licence:

- Category A – Motor Dealer licence: this category would include the activities of buying, selling and auctioning vehicles. This category would include consignment sellers.
- Category B – Motor Dealer Wrecker licence: this category would include the activities of buying any vehicles for the purpose of dismantling them and selling off the parts.
- Category C – Motor Dealer Agent or Broker licence: this category would include the activities of acting as a broker or agent for the buying and selling of motor vehicles on behalf of members of the public.

¹²² *Sale of Motor Vehicles Act 1977* (ACT) – sections 7, 7A and 7B.

¹²³ *Motor Dealers and Repairers Act 2013* (NSW) – section 5, definition of motor dealers.

¹²⁴ *Consumer Affairs and Fair Trading Act* (NT) – section 125(1), definition of 'dealer'.

¹²⁵ *Motor Car Traders Act 1986* (Vic) – section 3(3) and definition of 'special traders'.

¹²⁶ *Sale of Motor Vehicles Act 1977* (ACT) – section 6A.

¹²⁷ *Motor Vehicle Traders Act 2011* (Tas) – section 4(3).

¹²⁸ *Second-hand Vehicle Dealers Act 1995* (SA) – section 7(2).

Impact Analysis:

	Potential benefits	Potential disadvantages
Option A – Make no changes to the existing categories of dealer licence and retain status quo	Industry <ul style="list-style-type: none"> Processes not changed – status quo maintained. One standard training programme across-the-board for all licence holders. Consumers <ul style="list-style-type: none"> Maintain consumer confidence. Government <ul style="list-style-type: none"> No impact on resources associated with implementing changes to processes or legislation. 	Industry <ul style="list-style-type: none"> Categories of licence not reflective of type of business activity. Consumers <ul style="list-style-type: none"> No change. Government <ul style="list-style-type: none"> Ongoing compliance and administration costs.
Option B – Replace existing categories A to F with suggested categories 1 to 9	Industry <ul style="list-style-type: none"> Categories of licence better reflect type of business activity. Tailored training course requirements for different categories of licences can be developed. Consumers <ul style="list-style-type: none"> Maintains consumer confidence. Government <ul style="list-style-type: none"> None discernible. 	Industry <ul style="list-style-type: none"> Increases categories of dealer licences. Risk that increases in compliance and administration costs will occur. Risk that new dealer compliance costs may increase as they may have to complete more than one course if they elect to operate under more than one category. Access to tailored training courses may not be available as frequently as the current courses are available. Consumers <ul style="list-style-type: none"> Risk that compliance costs associated with changes to regulations may be built into pricing. Government <ul style="list-style-type: none"> Potential impact on resources associated with implementing changes to process or legislation. Ongoing compliance costs.
Option C – Replace the	Industry <ul style="list-style-type: none"> Streamlines categories of dealer 	Industry <ul style="list-style-type: none"> Categories of licence not

	Potential benefits	Potential disadvantages
existing categories A to F with three general categories of licences	<p>licences.</p> <ul style="list-style-type: none"> Reduces complexity. <p>Consumer</p> <ul style="list-style-type: none"> Maintains consumer confidence. <p>Government</p> <ul style="list-style-type: none"> Reduces licensing administration costs. 	<p>reflective of type of business activity.</p> <p>Consumer</p> <ul style="list-style-type: none"> None discernible. <p>Government</p> <ul style="list-style-type: none"> None discernible.

Questions	
Question 1	Which option do you prefer and why?
Question 2	Are there other options to address this issue? Please identify any additional benefits or disadvantages.
Question 3	What are the cost implications of the different options? Please include quantifiable information if possible.
Question 4	Should the MVDA expressly outline that recyclers who acquire motor vehicles for scrap purposes and do not dismantle them in order to sell off parts of the vehicle are excluded from the operation of the MVDA?

OPTIONS – DEALER AGENTS

In relation to the condition or restrictions imposed upon a category E, dealer agent licence, there are two options:

Option A – No change

This option would not require changes to the legislation. Dealer agents would continue to be prevented from holding money on behalf of clients and not be permitted to sign a contract on behalf of either party to the contract.

Option B – Allow dealer agents to act for clients

Under this option, the conditions which are imposed upon a dealer agent licence would be amended to remove the prohibition against the signing of contracts by dealer agents and the holding of monies on behalf of clients. New conditions, the operation of which would be regulated by the MVDA, would be introduced requiring monies to be held in trust accounts. The MVDA would also be amended to introduce a requirement whereby the core requirements of the agreement between a dealer agent and clients would be prescribed in the regulations.

This option would require an administrative change whereby some of the current conditions or restrictions upon dealer agent licences are replaced with conditions stating:

- a requirement that the content of agreements between agents and clients be prescribed in the regulations. This agreement would continue to require a dealer agent to disclose any fees, commissions, or remuneration that they will receive (or the manner in which it will be calculated) from the buying or selling of a vehicle on behalf of the client; and
- a requirement that monies held on behalf of clients be held in trust account, the operation of which will be regulated under the MVDA.

A dealer agent licence would still continue to have conditions or restrictions imposed upon it stating:

- that a dealer holding an agent category of licence would be precluded from holding any other category of licence, other than dismantling to avoid conflicts of interest;
- that the dealer agent must not advertise another licensed dealer's stock;
- that the dealer agent must not buy, hold or sell vehicle stock under the dealer agent licence; and
- that the dealer agent, in advertisements on behalf of members of the public, must disclose if the advertised vehicle is privately owned.

Impact analysis:

	Potential benefits	Potential disadvantages
Option A – No change	Industry <ul style="list-style-type: none">• Status quo maintained. Consumers <ul style="list-style-type: none">• Maintain consumer confidence.	Industry <ul style="list-style-type: none">• Restrictions on how dealer agents operate will remain in place. Consumers <ul style="list-style-type: none">• Compliance costs associated with regulation may be built into pricing.

	Potential benefits	Potential disadvantages
	<p>Government</p> <ul style="list-style-type: none"> No impact on resources associated with implementing changes to process or legislation. 	<p>Government</p> <ul style="list-style-type: none"> Ongoing compliance costs.
Option B – Amend the conditions or restrictions imposed upon dealer agents	<p>Industry</p> <ul style="list-style-type: none"> More flexibility in how dealer agents will be able to operate their businesses. <p>Consumer</p> <ul style="list-style-type: none"> One standard agreement will be used by dealer agents. Increased convenience as dealer agents will be able to arrange for signing of contracts on behalf of consumers. <p>Government</p> <ul style="list-style-type: none"> Maintains regulation of dealer agent transactions. 	<p>Industry</p> <ul style="list-style-type: none"> Increased compliance requirements associated with contracts and trust accounts. <p>Consumer</p> <ul style="list-style-type: none"> Compliance costs associated with maintaining trust accounts may be built into pricing. Greater risk of loss with funds being held with an intermediary. <p>Government</p> <ul style="list-style-type: none"> Increased compliance costs.

Questions

Question 1	Which option do you prefer and why?
Question 2	Are there other options to address this issue? Please identify any additional benefits or disadvantages.
Question 3	What are the cost implications of the different options? Please include quantifiable information if possible.

OPTIONS – CAR HIRE OPERATORS

In relation to the requirement for car hire operators to hold a motor vehicle dealer’s licence, there are two options.

Option A – No changes - retain the status quo

Under this option, car hire operators will continue to be required to hold a motor vehicle dealer’s licence unless they have applied for and been granted an exemption from the requirements of the MVDA on the basis that: the buying or selling of vehicles does not comprise a significant part of the business of the car hire operator; and the vehicles bought in the course of the car hire business are ordinarily disposed of directly to licensed dealers.

Option B – Continue to allow car hire operators to be exempt from the provisions of the MVDA. However, a new inspection power will be introduced for the Department’s automotive engineers.

Retain the requirements of option A and amend the MVDA to provide for the Department’s automotive engineers to be able to enter the premises of a car hire operator (licensed or exempted) in order to inspect vehicles and issue a notice for the owner of the vehicle to remedy any defects identified.

Option C – Exclude car hire operators from licensing requirements

Under this option, car hire operators would not need to obtain a motor vehicle dealers licence or seek an exemption from the provisions of the MVDA, if they dispose of any vehicles to or through a licensed motor vehicle dealer.

Impact analysis:

	Potential benefits	Potential disadvantages
Option A – Retain the status quo	Industry <ul style="list-style-type: none"> Status quo maintained. Consumer <ul style="list-style-type: none"> Maintains consumer confidence. Government <ul style="list-style-type: none"> No impact on resources associated with implementing changes to process or legislation. 	Industry <ul style="list-style-type: none"> Compliance costs maintained but those costs are minimal if an exemption is sought. Consumer <ul style="list-style-type: none"> No change. Government <ul style="list-style-type: none"> Ongoing compliance and administration costs.
Option B – Introduce new inspection powers for the Department’s	Industry <ul style="list-style-type: none"> None discernible. 	Industry <ul style="list-style-type: none"> Increased compliance costs¹²⁹ associated with new inspection powers.

¹²⁹ It is not possible to quantify the potential increase in compliance costs that may be imposed on industry due to the new inspection powers.

	Potential benefits	Potential disadvantages
automotive engineers	<p>Consumer</p> <ul style="list-style-type: none"> Maintains consumer confidence. <p>Government</p> <ul style="list-style-type: none"> None discernible. 	<p>Consumer</p> <ul style="list-style-type: none"> No change. <p>Government</p> <ul style="list-style-type: none"> Increased compliance costs associated with larger numbers of inspection sites.
Option C – Exclude car hire operators from the requirement to hold a motor vehicle dealer’s licence	<p>Industry</p> <ul style="list-style-type: none"> Reduction in compliance requirements and costs for car hire operators of either \$133.50 for an exemption from compliance with the MVDA or \$1,628 for a three year licence to trade.¹³⁰ <p>Consumer</p> <ul style="list-style-type: none"> No change. <p>Government</p> <ul style="list-style-type: none"> Reduced licensing administration costs. 	<p>Industry</p> <ul style="list-style-type: none"> None discernible. <p>Consumer</p> <ul style="list-style-type: none"> Possible loss of consumer confidence. <p>Government</p> <ul style="list-style-type: none"> None discernible.

Questions	
Question 1	Which option do you prefer and why?
Question 2	Are there other options to address this issue? Please identify any additional benefits or disadvantages.
Question 3	What are the cost implications of the different options? Please include quantifiable information if possible.

¹³⁰ Fees are current as at June 2015.

OPTIONS - FINANCIERS

In relation to the requirement for financiers to hold a motor vehicle dealer's licence, there are two options.

Option A – Make no changes and retain the status quo

Under this option, financiers will continue to be required to hold a motor vehicle dealer's licence.

Option B – Exclude financiers from licensing requirements

Under this option, financiers would not need to obtain a motor vehicle dealers licence or seek an exemption from the provisions of the MVDA, if they dispose of any repossessed vehicles to or through a licensed motor vehicle dealer.

Impact analysis:

	Potential benefits	Potential disadvantages
Option A – Retain the status quo	Industry <ul style="list-style-type: none"> Status quo maintained. Consumer <ul style="list-style-type: none"> Maintains consumer confidence. Government <ul style="list-style-type: none"> No impact on resources associated with implementing changes to process or legislation. 	Industry <ul style="list-style-type: none"> Compliance costs maintained. Consumer <ul style="list-style-type: none"> None discernible. Government <ul style="list-style-type: none"> Ongoing compliance and administration costs.
Option B – Exclude financiers from the requirement to hold a motor vehicle dealer's licence	Industry <ul style="list-style-type: none"> Reduced compliance cost to financiers of either \$133.50 for an exemption from compliance with the MVDA or \$1,628 for a three year licence to trade.¹³¹ Consumer <ul style="list-style-type: none"> No change. Government <ul style="list-style-type: none"> Reduced licensing administration costs. 	Industry <ul style="list-style-type: none"> None discernible. Consumer <ul style="list-style-type: none"> Possible loss of consumer confidence. Government <ul style="list-style-type: none"> None discernible.

¹³¹ Fees are current as at June 2015.

Questions	
Question 1	Which option do you prefer and why?
Question 2	Are there other options to address this issue? Please identify any additional benefits or disadvantages.
Question 3	What are the cost implications of the different options? Please include quantifiable information if possible.

OPTIONS – AUCTIONEERS

The following paragraphs set out two options for addressing the issue of whether it is appropriate to extend the protections afforded under the MVDA through the consignment provisions to businesses who own their own motor vehicle fleet (e.g. mining companies) and dispose of it through licensed auctioneers.

Option A – No changes - retain the status quo

Under this option, auctioneers who are required to obtain a dealer licence under the MVDA and auction vehicles for private owners (excluding trade owners) will continue to be subject to the consignment provisions under the MVDA.

Option B – Exclude auction sales made on behalf of private corporate fleet owners, such as mining companies etc. from the consignment provisions under the MVDA.

Amend the provisions of the MVDA, so that consignment sales made by auctioneers on behalf private corporate fleet owners, such as mining companies etc. would be excluded from the operation of the consignment provisions (i.e. having to: use prescribed terms and conditions in an agreement for the consignment sale of a vehicle; or operate a specific trust account). The consignment provisions would continue to apply to all other sales made by licensed auctioneers of motor vehicles on behalf of private (consumer) owned vehicles.

Benefits and Disadvantages

The benefits and disadvantages of each option for industry, consumers and government are outlined in the table below:

	Potential benefits	Potential disadvantages
Option A – No change	<p>Industry</p> <ul style="list-style-type: none"> Status quo maintained. <p>Consumers</p> <ul style="list-style-type: none"> No change. <p>Government</p> <ul style="list-style-type: none"> No impact on resources associated with implementing changes to process or legislation. 	<p>Industry</p> <ul style="list-style-type: none"> Compliance costs maintained for licensed auctioneers selling motor vehicles on behalf of corporate sellers. <p>Consumer</p> <ul style="list-style-type: none"> No change. <p>Government</p> <ul style="list-style-type: none"> Ongoing compliance and administration costs.
Option B – Exclude auction sales made on behalf of private corporate fleet owners from the operation of the MVDA.	<p>Industry</p> <ul style="list-style-type: none"> Reduced compliance costs for licensed dealer auctioneers. <p>Consumer</p> <ul style="list-style-type: none"> No change, as the consignment provisions will continue to apply to consumers using licensed auctioneers to sell motor 	<p>Industry</p> <ul style="list-style-type: none"> None discernible. <p>Consumer</p> <ul style="list-style-type: none"> None discernible. <p>Government</p> <ul style="list-style-type: none"> None discernible.

	Potential benefits	Potential disadvantages
	<p>vehicles.</p> <p>Government</p> <ul style="list-style-type: none"> • Better aligns core consumer protection objectives of MVDA. • Reduced compliance and administration costs. 	

Questions	
Question 1	Which option do you prefer and why?
Question 2	Are there other options to address this issue? Please identify any additional benefits or disadvantages.
Question 3	What are the cost implications of the different options? Please include quantifiable information if possible.

COMPENSATION FUND UNDER THE MVDA

ISSUE

The MVDA currently does not provide for a compensation fund for losses incurred by consumers as a result of the actions of motor vehicle dealers.¹³² The policy issue to be resolved relates to whether consumers are suffering detriment as a result of the actions of motor vehicle dealers and whether a compensation fund would resolve the detriment.

OBJECTIVE

To determine whether there is a need to establish a fund under the MVDA in order to compensate consumers from certain losses as a result of the actions of motor vehicle dealers.

BACKGROUND

Current consumer protection provisions

The ACL applies to vehicles sold by motor vehicle dealers and it imposes minimum standards of quality on dealers of vehicles. These quality standards ensure that consumers who buy seriously defective vehicles can seek redress from the dealer and have the defect fixed, regardless of whether they had been given a written warranty. Consumer guarantees require vehicles sold to:

- be of acceptable quality;
- be fit for the purposes for which they were acquired;
- correspond to any description attached to the goods prior to the sale; and
- correspond to any sample of the goods that was offered to the consumer prior to the sale.

The ACL operates alongside the MVDA and supplements the consumer protection measures in place under the MVDA, such as:

- a financial assessment process is applied to licence applications and renewals to ensure that the applicants have sufficient resources to comply with the requirements of the MVDA; and
- the second-hand car warranty provisions which require a dealer to repair all defects which make or are likely to make a car un-roadworthy.

The warranty provisions apply to:

- used passenger cars with a purchase price of \$4,000 or more, provided the car is not more than 12 years old nor has travelled more than 180,000 km at the time of sale; and
- used motor cycles with a purchase price of \$3,500 or more, provided the motor cycle is not more than 8 years old nor travelled more than 80,000 km at the time of sale.

¹³² A Motor Vehicle Repair Industry Compensation fund has been established through section 90 of the MVRA. It provides for compensation of up to \$6,000 for losses incurred by consumers where a repairer carries out work incompetently or fails to complete work due to insolvency. The fund is credited with a prescribed percentage of licensing and certification fees (currently 1 per cent).

Most dealers will respond to approaches by consumers or the Department seeking to enforce these rights. Some dealers also opt to take out a form of warranty insurance (which is discussed below).

Dealer warranty scheme

The MTA currently operates an industry dealer warranty scheme. The scheme is not a formal insurance product and is designed to offset some of the risks to consumers in the event of a dealer's insolvency. However, the dealer warranty scheme has some limitations to its effectiveness in protecting consumers, as it covers only losses relating to the obligation to repair (under statutory warranty) and is subject to any restrictions imposed by the scheme manager.

The Department understands that two claims have been made in the past five years in relation to the dealer warranty scheme offered by the MTA. The dealer warranty scheme is available to dealers at a cost of \$80 per year and as at March 2015, around 130 dealers were members.

Last resort

Generally, compensation funds are funds of last resort, meaning that a person is required to take various steps, as indicated by the CCLSWA in its submission, before being able to lodge a claim. For example, such steps in relation to dealers may include:

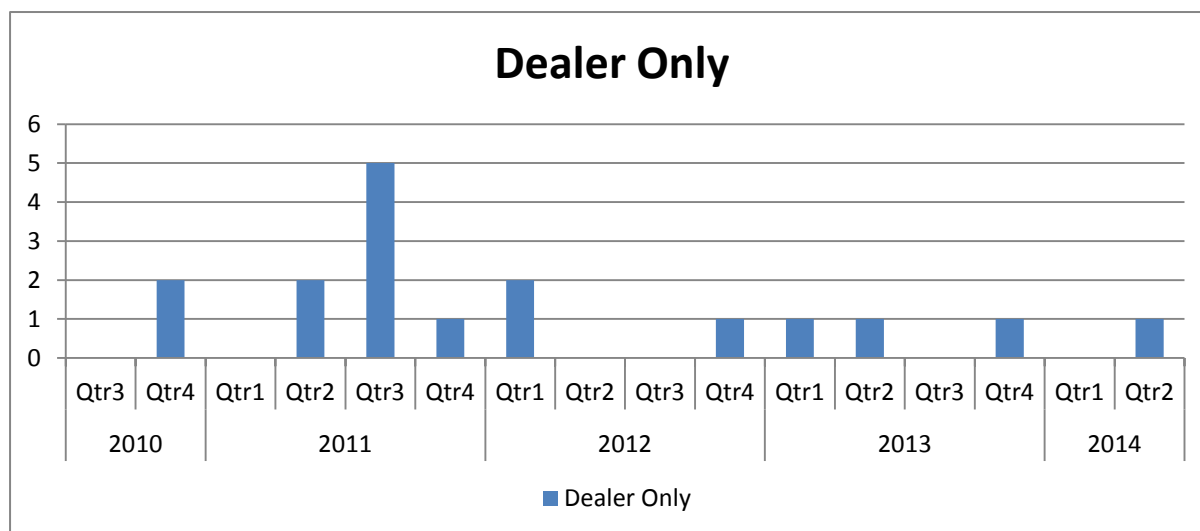
- approaching the dealer about the issue and seeking to resolve it through negotiation;
- pursuing a claim in the Magistrates Court if an agreement cannot be reached with the dealer about the issue; and
- if the determination is in the consumer's favour, then the consumer seeking to enforce the determination against the dealer.

If the consumer is unable to enforce the determination against the dealer because the dealer is insolvent or unable to pay a claim, then only at this time would a consumer be able to lodge a claim against the compensation fund.

Relevant complaints

Over the period 1 July 2010 to 30 June 2014, 17 complaints were lodged with the Department against motor vehicle dealers that had closed, gone into liquidation, could not be located or were subject to similar events. It should also be noted that there was a spike in the complaints level, with five of these complaints being received in the third quarter of 2011 due to the financial closure of a single dealer. Only one complaint resulted in any redress being achieved and in 15 cases (88 per cent) the Department did not attempt to conciliate as the trader was insolvent or could not be located.

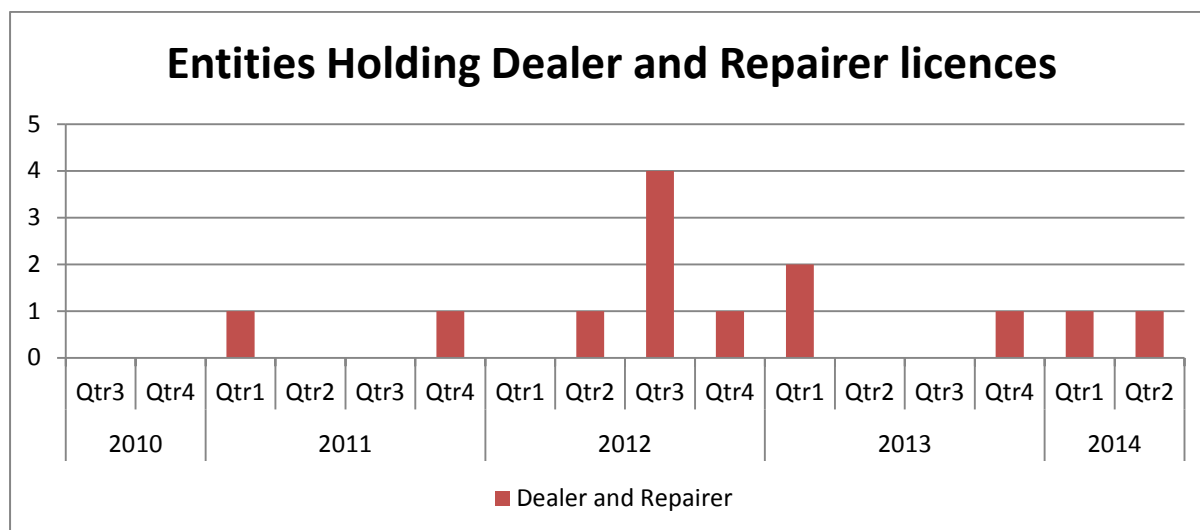
Figure 10a: Closure complaints for dealers only



A single entity can also hold both a repairer’s and dealer’s licence. There were 13 complaints made against such entities during the period 1 July 2010 to 30 June 2014.

The MVRA provides for a motor vehicle repair industry compensation fund, which allows owners of motor vehicles, who have suffered a loss as a result of a licensed repairer becoming insolvent, to claim compensation from the fund. However, the fund will only compensate consumers if they have attempted to resolve any claim or made a reasonable attempt to exercise their legal rights to recover their losses. Only one successful claim has been made against the repairer’s compensation fund since its inception. This claim was lodged in December 2014 and arose due to the repairer going into liquidation.

Figure 10b: Closure complaints for entities holding dealer and repairer licences



These numbers are small when considered in relation to the overall number of complaints against dealers and single entities who hold both a dealers and repairers licence regarding warranty repair obligations. Over the same period, 364 complaints were made against licensed dealers and an additional 653 complaints were made against licensees who held both a dealer’s and repairer’s licence.

OTHER JURISDICTIONS

Most other jurisdictions¹³³ have compensation funds established under their motor vehicle dealers' legislation. Table 17 below provides a snapshot of the current features of the compensation funds in New South Wales, Australian Capital Territory, South Australia and Victoria as at January 2015.

Table 17: Features of compensation funds in other jurisdictions

	NSW	ACT	SA	Vic
When can a consumer lodge a claim?	<p>Consumers can lodge a claim if they have incurred a loss when buying or selling a motor vehicle through a licensed dealer. Claims can also be made against a dealer who is no longer trading. Claims can relate to:</p> <ul style="list-style-type: none"> • a dealer's failure to meet warranty obligations; • a dealer selling an encumbered vehicle to a consumer, e.g. stolen vehicle; • failure of a dealer to repay or return a deposit; • failure of a dealer to pass on sale proceeds for a vehicle sold on the consumer's behalf; or 	<p>A person other than a trader owner who suffers a loss in connection with a motor vehicle can make a claim. The loss must arise from a licensed vehicle dealer failing to comply with the requirements of the <i>Sale of Motor Vehicles Act 1977</i> (ACT), or from a licensed motor vehicle dealer failing to pass unencumbered title to the vehicle.</p>	<p>Consumers can make a claim against the fund if a second-hand motor vehicle dealer defaults in their obligations to the consumer in relation to the:</p> <ul style="list-style-type: none"> • purchase of a second-hand vehicle; • sale of a second-hand vehicle to a dealer; • payment by the consumer to the dealer of amount of the purchase of a vehicle, which is then rescinded; or • sale of a second-hand vehicle on consignment by a dealer. 	<p>Consumers can make claims on purchases of motor cars, motor bikes and commercial vehicles. A claim can be made if a motor car trader does not:</p> <ul style="list-style-type: none"> • comply with warranty provisions (this does not apply to motorbikes or commercial vehicles); • transfer a clear title to the car; • pay part or all of the purchase price to a consumer (or somebody acting on a consumer's behalf) if the consumer has sold them a car; • pass on transfer, registration fees or stamp duty to VicRoads; • provide a roadworthy certificate or other documents necessary for the motor car to be registered;

¹³³ New South Wales, Australian Capital Territory, Victoria, Queensland, South Australia.

	NSW	ACT	SA	Vic
	<ul style="list-style-type: none"> • repair work that was not competently done. 			<ul style="list-style-type: none"> • pass on money paid as a premium or purchase price for an insurance policy or warranty; • satisfy a court order or an order from the Victorian Civil and Administrative Tribunal; • refund the purchase price or a deposit following cancellation of a contract; or • deliver the motor car after receiving payment of the purchase price. <p>A claim can also be made if a motor car trader engages in:</p> <ul style="list-style-type: none"> • consignment selling; • odometer tampering; • disposal of a motor car given as a trade-in before expiration of a cooling off period.
Is it a fund of last resort?	Yes	Yes	Yes	No

	NSW	ACT	SA	Vic
What is the contribution dealers have to make to the compensation fund?	\$898 on the grant of a one year licence and \$131 on renewal (per place of business).	\$0 for a one year licence or renewal of a licence (per place of business) for the 2014-15 financial year. ¹³⁴ By contrast, in the 2013-14 financial year \$477 was payable for a one year licence or renewal of a licence (per place of business).	\$350 per premises annually by all licensed dealers of second-hand vehicles and \$100 per premises annually by all licensed dealers of second-hand vehicles consisting only of motorcycles.	Money for the Motor Car Traders Guarantee Fund comes from motor car traders' licensing fees, and penalties paid for breaches of the <i>Motor Car Traders Act 1986</i> (Vic). An initial application fee of \$845.20 and a first annual licence fee of \$1,509.80 is payable to obtain a motor car trader licence. Subsequently, an annual statement must be lodged and an annual fee of \$1,525.10 is payable.
What is the time frame for consumers lodging a claim?	Within 12 months after the loss is incurred or the claimant becomes aware of the loss. There is discretion to allow claims outside the 12 month period to proceed.	Within 6 months of the applicant becoming aware of the loss. There is discretion to allow claims outside the 6 months period to proceed.	None specified.	None specified, but the motor car traders' claims committee can refuse a claim if it considers that there has been an unreasonable delay in making the claim.
Payments made from the compensation fund for the period of 1 July 2013 to 30 June 2014.	\$567,621 was paid from the compensation fund.	\$0 was paid from the compensation fund.	\$24,000 was paid from the compensation fund.	\$664,750 was paid from the compensation fund.

¹³⁴ A determination was made that contributions were not required to be paid in 2014-15 financial year following consideration of the cash balance of this fund and the low level of claims in recent years.

STAKEHOLDER VIEWS

In the written submissions received in response to the 2013 discussion paper, four respondents commented on this issue. Only the CAWA supported the introduction of a compensation fund, saying that it was a better consumer protection method than the dealer warranty scheme¹³⁵ and associated dealings with the scheme operator.

The MTA indicated that they did not support the introduction of a compensation fund because the current arrangements were considered sufficient to safeguard the interests of consumers. The possibility of requiring dealers to join the dealer warranty scheme as an alternative to establishing a compensation fund was also raised.

The CCLSWA was also opposed to the creation of a compensation fund on the grounds that consumers would only be able to access the fund after they had exhausted all reasonable prospects of recovering the amount of their claim other than from the fund.

Table 18 below shows the responses received from dealers and consumers in relation to the issues of whether a compensation fund should be introduced.

Table 18: Dealer and consumer online survey responses in relation to establishing a compensation fund

Is there a need to establish a compensation fund under the MVDA?	Dealer responses (%)	Consumer responses (%)
Yes	41 (27%)	15 (37%)
No	80 (54%)	10 (24%)
Not specified	28 (19%)	16 (39%)
TOTAL	149 (100%)	41 (100%)

ESTABLISHMENT OF A COMPENSATION FUND – ISSUES

The creation of a compensation fund would provide direct benefits to some consumers by providing compensation to those who have suffered loss as a result of the actions of a dealer. However, it would be a fund of last resort and consumers would first be required to establish that they had exhausted all reasonable prospects of recovering the amount of their claim other than from the compensation fund. As outlined above, consumers would have to take a number of steps before they could lodge a claim against the fund.

There are likely to be significant costs to both government and industry in establishing and maintaining such a fund and invariably these will be reflected in additional costs to consumers. There would be increased costs for dealers who will have to contribute funds to a compensation fund. There is a risk that substantial fees may need to be paid to establish a viable fund. As a consequence, any decision to establish a fund would need to clearly demonstrate that:

¹³⁵ The dealer warranty scheme is not a formal insurance product. It is an industry scheme operated by the MTA, which covers losses relating to the obligation to repair (under the statutory warranty) and is subject to any restrictions imposed by the scheme manager.

- there is a need to supplement the consumer protection measures already in place under the MVDA and ACL; and, if so,
- the costs associated with establishing the compensation fund are sufficiently outweighed by the benefits such a fund would offer.

In response to the Consumer Online Survey, 15 per cent of consumers indicated that they had suffered a financial loss as a result of the actions of a motor vehicle dealer.

Based on the experience in New South Wales, there is also a risk that consignment selling will represent the largest category of sales paid out from the compensation fund.¹³⁶ In its submission the MTA noted that consignment selling does not take place on a large scale in Western Australia and therefore it would be unfair to ask the broader industry to fund a scheme that may only be required in relation to a minority of participants. In the past four financial years (1 July 2010 to 30 June 2014), 69 complaints were lodged with the Department regarding consignment sales and/or motor vehicle dealer trust accounts. In 52 cases the complaint resulted from internal monitoring of trust account data, with the complainant being the Commissioner.

OPTIONS

Option A: No change

Under this option, there would be no change and a compensation fund would not be established.

Option B: Establish a compensation fund

Under this option, a compensation fund would be established. Claims could be made against the fund for insolvency or bankruptcy of a dealer.

The fund would cover claims against all types of motor vehicle dealers, including dealers who sell on consignment. Claimants would need to seek to recover their losses through other means of legal redress before making a claim against the fund. The fund would generally be credited with funds received from licensees (either as a proportion of licensing fees or a separate payment).

If the establishment of a compensation fund is supported, further consultation will be undertaken in respect of issues such as fees, level of compensation, scope of the fund, time limits for making claims etc.

Benefits and Disadvantages

The benefits and disadvantages of each option for industry, consumers and government are outlined in the table below.

	Potential benefits	Potential disadvantages
Option A – No change	Industry <ul style="list-style-type: none"> • Status quo maintained. • No need to contribute funds to a compensation fund. 	Industry <ul style="list-style-type: none"> • No change.

¹³⁶ *Issues Paper – NSW Fair Trading regulation of motor vehicles*, NSW Government, April 2012, page 16.

	Potential benefits	Potential disadvantages
	<p>Consumers</p> <ul style="list-style-type: none"> Existing consumer rights available under the ACL and MVDA in relation to financial loss suffered by consumers due to actions of a dealer. <p>Government</p> <ul style="list-style-type: none"> No impact on resources associated with implementing changes to process or legislation. 	<p>Consumer</p> <ul style="list-style-type: none"> Consumers who suffer a financial loss due to dealer becoming bankrupt or insolvent would have no recourse to compensation. <p>Government</p> <ul style="list-style-type: none"> No change.
Option B – Establish a compensation fund	<p>Industry</p> <ul style="list-style-type: none"> None discernible. <p>Consumer</p> <ul style="list-style-type: none"> Provides compensation to consumers who suffer financial loss due to a dealer becoming insolvent or bankrupt. Improves consumer confidence in the industry. <p>Government</p> <ul style="list-style-type: none"> Possible reduced risk of consumer complaints. 	<p>Industry</p> <ul style="list-style-type: none"> Increased costs for second hand vehicle dealers estimated at approximately \$350 per year per place of business.¹³⁷ Risk that majority of dealers will be funding a scheme to protect minority of dealers, such as dealers who engage in consignment sales. <p>Consumer</p> <ul style="list-style-type: none"> Potential increase in the cost of motor vehicles. Consumers can only seek to recover their losses in a limited set of circumstances. <p>Government</p> <ul style="list-style-type: none"> Additional resources required to set up and manage the compensation fund estimated at \$92,400 per year.¹³⁸

Questions	
Question 1	Which option do you prefer and why?
Question 2	Are there other options to address this issue? Please identify any additional benefits or disadvantages.

¹³⁷ This figure is based on the contribution to the compensation fund paid by dealers in South Australia under the *Second-hand Vehicle Dealers Act 1995 (SA)*.

¹³⁸ This figure is based on the cost of administering the South Australia's compensation scheme of \$132,000 per year adjusted to reflect the lower number of second-hand vehicle dealers operating in Western Australia.

Question 3	What type of claims should the compensation fund cover? Should the claims be broader than outlined in option B?
Question 4	Under option B, should dealers be required to contribute different amounts, depending on their risk profile? For instance, should consignment sellers be charged a higher contribution?
Question 5	What are the cost implications of the different options? Please include quantifiable information if possible.

COOLING OFF PERIODS AND MOTOR VEHICLE PURCHASES

ISSUE

Consumers purchasing motor vehicles from Western Australian dealers do not currently have access to cooling off periods in which to reconsider their decisions and, if need be, opt to rescind their contracts with minimal financial impact.

The policy issue to be resolved relates to whether the MVDA should be amended to provide for cooling off periods.

CURRENT SITUATION

When consumers in Western Australia sign a contract to buy a motor vehicle, they may be entering into a binding agreement that is legally enforceable. There are limited circumstances when a consumer can end their contract without being required to pay liquidated damages to the dealer for not proceeding with the contract.

Terminating contracts to purchase a motor vehicle

The MVDA does not currently provide for cooling off periods. If a purchaser changes their mind about a vehicle purchase and wants to terminate their contract, the dealer may be entitled to seek pre-estimated liquidated damages from the purchaser.

Contract terms and conditions

The MVDA¹³⁹ includes a requirement that a contract or agreement for the sale of a motor vehicle must contain prescribed particulars, terms and conditions. These prescribed requirements are set out in a Schedule to the Regulations referred to as the 'Vehicle Sale, Contract Terms and Conditions'.¹⁴⁰

Purchaser's right to terminate contract

The Schedule to the Regulations sets out the purchaser's right to terminate the contract.¹⁴¹ The purchaser may terminate the contract if the dealer has breached any of the obligations imposed on the dealer by the contract, for example, the motor vehicle is not delivered by the delivery date agreed in the contract or perhaps some other condition included in the contract by the purchaser which is not able to be met.

If the contract is validly terminated by the purchaser, the dealer must immediately refund any deposit paid and return any trade-in vehicle to the purchaser. If the trade-in vehicle has been sold, the cash equivalent of the trade-in vehicle value determined at the commencement of the contract must be refunded to the purchaser.

¹³⁹ MVDA – section 42A.

¹⁴⁰ Motor Vehicle Dealers (Sales) Regulations 1974, Schedule 5.

¹⁴¹ Motor Vehicle Dealers (Sales) Regulations 1974, Schedule 5.

Dealer's right to terminate contract

The Regulations set out the dealer's right to terminate the contract.¹⁴² A dealer may terminate a contract if the purchaser has breached any of the obligations imposed on the purchaser by the contract.

If the contract is validly terminated by the dealer, the dealer may seek an amount up to, but not exceeding, 15 per cent of the total purchase price of the vehicle as pre-estimated liquidated damages.

It is understood that in terminating contracts, dealers frequently apply the maximum 15 per cent as pre-estimated liquidated damages rather than assessing the estimated loss incurred and charging the purchaser that amount.

The issue of pre-estimated liquidated damages is further discussed later in this section.

SAFEGUARD FOR CONSUMERS

A cooling off period is a safeguard designed to give consumers time to consider their purchase and the terms of the contract.

Cooling off periods can be of particular assistance to certain groups of vulnerable consumers, such as:

- consumers from non-English speaking backgrounds, who may rely heavily upon the advice of salespersons in entering into contracts; and
- young consumers, who may not have any prior experience in purchasing motor vehicles.

Cooling off periods can be useful in countering short-sighted or emotion driven decisions. They can also be useful in discouraging high-pressure sales techniques, for example, situations where salespersons create the impression that:

- unless the contract is first signed by the consumer, the offer cannot be presented to the sales manager for consideration; or
- signing of the contract is only for the purposes of establishing whether or not finance can be secured (finance might subsequently be secured on terms which are unacceptable to the consumer but the consumer is still held to the contract due to having signed the contract).

EXTENT OF THE PROBLEM

Quantifying the extent of the problem is difficult as many instances where a cooling off period may have assisted consumers cannot be readily identified. The following qualitative and quantitative evidence may assist in determining whether the introduction of a cooling off period would result in benefits for consumers.

¹⁴² Motor Vehicle Dealers (Sales) Regulations 1974, Schedule 5.

Qualitative evidence relevant to cooling off periods

Anecdotal evidence indicates that there appears to be an increase in the number of complaints regarding contractual disputes from consumers from a non-English speaking background. The common issue relates to consumers not understanding their rights. In addition, in many instances, these consumers do not appear to be aware that they are signing a contract which is binding.

Examples

The following describes situations relevant to vulnerable consumers which may have benefited from the availability of a cooling off period.

Consumers with a very basic understanding of the English language and limited income enter into contracts to purchase motor vehicles which include finance arranged by the dealer.

Consumers may be unaware that the contracts they have signed include a number of extras which have significantly increased the final price of the motor vehicles being purchased. These extras can include insurance, paint protection, trim protection, window tinting or extended warranty. These extras are often included in the financed amount for the vehicle. Some consumers may also feel pressured to purchase these extras at the time they enter into the contract.

On realising that the repayment requirements are beyond what they can afford, these consumers often seek to return the vehicles and cancel the contracts. In many cases, dealers are not willing to cancel the contracts. The vehicles are often subsequently repossessed because the purchasers are not able to afford the repayments.

Current redress options

Depending on the particular circumstances, consumers may be able to access their rights under the ACL as a means of cancelling the contract. For example, consumers may take civil action against the dealer in situations where they believe the salesperson had:

- engaged in conduct that was unconscionable;
- engaged in misleading or deceptive conduct; or
- made false and misleading representations.

Such action would, however, take time and would also incur extra costs for the consumers involved. If a right to a cooling off period had been available, these consumers may have been able to cancel the contract of sale without needing to go to the expense of pursuing civil action. Similarly, depending on the details of the cases, the Department may be able to pursue matters on behalf of consumers, for example, citing undesirable practices on the part of the salesperson under the MVDA.¹⁴³

If cooling off periods were in place, poor conduct on the part of dealers and their staff may not come to the attention of the Department as these consumers would have been able to cancel their contracts. Further, the cost to the Department and consumers of pursuing such cases would be avoided.

¹⁴³ MVDA – section 41.

Quantitative evidence relevant to cooling off periods

The following section presents quantitative evidence in relation to formal complaints and phone enquiries received by the Department which are relevant to cooling off periods for the period 1 November 2011 to 30 June 2015.

Formal complaints and phone enquiries

Between 1 November 2011 and 30 June 2015, 33 formal complaints were received regarding change of mind or cooling off periods for contracts to purchase motor vehicles. Complaint numbers have remained low, averaging around 0.6 complaints per month. Redress totalling \$15,516 was obtained for consumers for the period 1 November 2011 and 30 June 2015.

A total of 865 phone enquiries relevant to cooling off periods were received by the Department for the same period. This represents an average of around 20 enquiries per month.

Analysis of formal complaints

It is noted that all but one of the complaints were lodged against licensed motor vehicle dealers. The top three reasons for consumers wishing to cancel their contracts related to change of mind; concerns about the cost of finance or non-approval of finance; and concerns around vehicles not being fit for purpose or being misrepresented.

Table 19 below identifies the key complaint issues relevant to cooling off periods for the period 1 November 2011 to 30 June 2015.

Table 19: Key complaint issues relevant to cooling off periods

Complaint issue	Number
Change of mind / reason not specified	13
Finance not approved / cost of finance	11
Fit for purpose / misrepresentation	5
Unaware signing contract	2
Extended warranty	1
Extras	1

Analysis of telephone enquiries

Of the 865 telephone enquiries received by the Department for the period 1 November 2011 and 30 June 2015, in relation to cancelling their contracts to purchase a motor vehicle, the main reasons for wishing to cancel were:

- the preferred credit provider rejecting an application for finance;
- the cost of the loan repayments was considered too high or unaffordable; and
- not wanting to proceed with additional items included in the contract, for example, extended warranties or optional extras.

The number of phone enquiries in relation to cooling off periods is 26 times higher than the number of complaints received for the same period. Whilst the number of phone enquiries is considerably higher than the number of complaints received, the number of phone enquiries is considered low in the context of the number of motor vehicles sold by dealers each year.¹⁴⁴ It is noted that consumers contacting the Department for advice about their rights to cancel their contracts would be unlikely to lodge formal complaints given they would be advised that cooling off periods do not apply in Western Australia.

OBJECTIVE

In considering the introduction of cooling off periods, the key objective is to ensure that any proposals for reform are consistent with the purposes of the MVDA. The most relevant purpose relates to ensuring essential consumer protections are provided.

BACKGROUND

Cooling off periods

Cooling off periods are defined periods of time which give one or more parties involved in a decision to purchase goods or services the opportunity to reverse their decision and cancel the agreement.

As with many purchases, a contract to purchase a motor vehicle may be made impulsively and without consideration of all relevant factors. High pressure sales techniques may also result in consumers entering into contracts that they later regret. This could have a significant negative impact on consumers given the relatively high costs of purchasing motor vehicles and the fact that a large proportion of purchasers obtain finance in order to purchase a vehicle.

A cooling off period is seen as a safeguard which gives a consumer the opportunity to change their mind in relation to a contract for purchase. Cooling off periods often address the information asymmetry¹⁴⁵ 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.

A 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 vehicles.

Cooling off periods may impose additional costs on dealers, for example, the costs due to delayed transactions, administrative and compliance costs and the cost associated with loss of potential sales.

Financial losses to dealers as a result of cooling off periods are addressed to some degree by requirements in place in several jurisdictions whereby purchasers are required to make a payment to dealers on cancellation of the contract.

¹⁴⁴ New cars sales alone accounted for over 125,000 motor vehicles sold in Western Australia in 2013.

¹⁴⁵ Information asymmetry is a situation in which one party in a transaction has more or superior information compared to another. This often happens in transactions where the seller knows more than the buyer, although the reverse can happen.

Pre-estimated liquidated damages and retention of deposits

The Department is aware of concerns that pressure can sometimes be placed on consumers to pay the maximum 15 per cent of the total purchase price as pre-estimated liquidated damages if a contract is being terminated due to the purchaser breaching obligations under the contract (for example, not paying the balance owed due to change of mind).

It is a well-established principle of law that liquidated damages must be a genuine pre-estimate at the time the contract was entered into of the loss that a party is likely to suffer as a result of the contract not proceeding. Otherwise, the amount charged will be considered a penalty and not be enforced.¹⁴⁶

The Department is aware of many cases where it appears that dealers have not actually suffered a loss, or if they have, it is well below the 15 per cent being claimed from consumers.

In receiving complaints about this issue, the Department requests that dealers justify their losses as part of the conciliation process. The Department explains to dealers that they will need to justify their losses in court should the matter be pursued. In a large number of cases, dealers settle for a lesser amount.

The Department is considering whether the information presented in the standard contract relating to pre-estimated liquidated damages should be further clarified so that both parties have a better understanding of how pre-estimated damages should be calculated.

It is noted that no other jurisdiction includes direct reference in relevant legislation to pre-estimated liquidated damages. In the case of Victoria, the Regulations¹⁴⁷ list the particulars, terms and conditions for the sale of a used vehicle. The conditions¹⁴⁸ do not refer specifically to pre-estimated liquidated damages.

The conditions do, however, provide that if the contract is terminated by the seller due to a breach by the purchaser, the purchaser must forfeit to the seller the amount stated in the agreement provided that amount does not exceed five per cent of the total purchase price. (This condition applies if outside the requirements of cooling off period.¹⁴⁹)

Consumers in other jurisdictions would most likely need to rely on the common law principles relating to liquidated damages in terminating and/or rescinding contracts to purchase motor vehicles.

Complaints

In the period, 1 November 2011 to 30 June 2015, the Department received 25 complaints about motor vehicle dealers seeking the maximum pre-estimate of liquidated damages (15 per cent) when a contract to purchase a motor vehicle was cancelled.

¹⁴⁶ Lord Dunedin in *Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd* [1915] AC 79 at 86-7 stated ‘...the essence of liquidated damages is a genuine covenanted pre-estimate of damage...It will be held to be a penalty if the sum stipulated for is extravagant and unconscionable in comparison with the greatest loss that could conceivably be proved to have followed from the breach.’ The High Court in *Ringrow Pty Ltd v BP Australia Pty Ltd* [2005] HCA 71 at [32] then went on to state ‘the propounded penalty must be judged “extravagant and unconscionable in amount”. It is not enough that it should be lacking in proportion. It must be “out of all proportion”’.

¹⁴⁷ *Motor Car Traders Regulations 2008* (Vic) - Schedule 3.

¹⁴⁸ Clause 5(1)(a) of the contract.

¹⁴⁹ *Motor Car Traders Act 1986* (Vic) - Section 43.

Also of relevance to this issue are complaints received by the Department in relation to deposits being retained by the dealer, often in cases where the contract was subject to finance, mechanical inspection or some other condition permitting cancellation.

In the period 1 November 2011 to 30 June 2015, the Department received 45 complaints in relation to deposits retained by dealers. It is noted that in some cases, retained deposits may represent amounts exceeding pre-estimated liquidated damages.

Whilst the number of complaints relevant to liquidated damages and retention of deposits by dealers is not particularly high, it is assumed that many consumers would not lodge complaints with the Department due to a general lack of awareness of their rights in this area.

Research into cooling off periods

Qualitative and quantitative research

Consumers Affairs Victoria¹⁵⁰ has undertaken comprehensive research on cooling off periods. It surveyed 1,500 consumers and held in depth interviews with consumers who had purchased goods or services to which cooling off rights applied. In addition, in depth interviews were conducted with business owners operating in industries where cooling off periods apply.

The research noted that cooling off periods are seen as appropriate in reducing consumer detriment if:

- they address the issues of concern;
- regulatory costs are not excessive; and
- the overall design of cooling off periods is likely to result in benefits which outweigh the costs.

The research found that over a two year period, eight per cent of those surveyed had exercised their cooling off rights within categories and timeframes to which cooling off legislation applied. Of the eight per cent, the majority related to gas and electricity contracts (59 per cent), followed by landline phone contracts (12 per cent) and mobile phone contracts (seven per cent).

The majority of purchases by consumers who exercised their cooling off rights were made as a result of a telemarketing call (50 per cent), followed by door-to-door sales (30 per cent). Used motor vehicles (bought through a licensed dealer) comprised three per cent of purchases where consumers exercised their cooling off rights.¹⁵¹

The reasons consumers gave for exercising their cooling off rights included:

- finding out it was not a good deal (53 per cent);
- feeling misled by the salesperson or the company, or the product or service was not adequately described at the time of purchase (35 per cent); and
- perceived sales pressure (12 per cent).

The research found that cooling off periods have an important role in used car purchases largely because of the pressure related to large financial commitments. The research noted that this pressure is compounded by many factors, including:

¹⁵⁰ Consumer Affairs Victoria 2009, *Cooling off periods in Victoria: their use, nature, cost and implications* (Research paper No. 15, 15 January 2009).

¹⁵¹ At the time the research was conducted cooling off periods only existed in relation to used cars. Subsequently, cooling off periods were extended to the purchase of new cars in Victoria through the *Motor Car Traders Amendment Act 2008* (Vic).

- the fact that for most people, these are infrequent purchases, and therefore they may be unfamiliar with the purchase process; and
- consumers may be driven by an emotional desire to own a particular car.

Costs for dealers

The cost to used car dealers of consumers exercising their cooling off period tends to be time spent on the sale and preparation of the vehicle. For some used car dealers, it can also have impact via the cost of holding stock, as cars tend to depreciate in value. If a sale falls through, another buyer may not come along for several months.

Waivers

In Victoria, consumers have the option to waive their rights to a cooling off period in the event that the consumer wishes to take possession of their vehicle before the end of the cooling off period. The use of waivers varied considerably, from rarely (typical in regional areas) through to 30 to 40 per cent of purchases.

The research paper expressed concern that some traders may put pressure on consumers to waive their rights, rendering the cooling off period ineffective. Similarly, if the waiver was simply included in the paperwork, the consumer may disregard it and automatically sign it at the same time they sign all the other forms. The survey also indicated that consumers are often not informed that they are waiving their rights until they are picking up their car.

COUNTER ARGUMENTS TO COOLING OFF PERIODS

Cooling off periods may be more suited to unsolicited purchases

Cooling off periods may represent a more appropriate consumer protection measure for unsolicited purchases such as, door to door sales, cold caller phone sales and salespeople approaching consumers in shopping centres (temporary sales stands). By comparison, motor vehicle purchases are generally a planned purchase, often based on considerable research on the part of consumers.

In addition, it is noted that in practice, many consumers in other jurisdictions waive their rights to a cooling off period by taking possession of their motor vehicles. As a consequence, a cooling off period may not overcome the issue of impulse buying on the part of consumers.

Potential for increased costs to be passed on to consumers

The imposition of a cooling off period would add additional regulatory burden on motor vehicle dealers and may result in lost sales with these costs likely to be passed on to consumers.

For example, a dealer would not be able to sell a vehicle to an interested potential purchaser during the time that it is subject to a cooling off period. In the event of the sale not going ahead, another potential purchaser may, for a range of reasons, no longer be interested in purchasing the vehicle.

To offset this cost, jurisdictions with cooling off periods require consumers to compensate dealers by paying a specified amount to the dealer on termination of the contract. The amounts payable in other jurisdictions across Australia is outlined in Table 22 below.

Information to guide purchasers is readily available

Consumers are in a very strong position to analyse and compare prices and suitability of vehicles as well as the availability of finance via the internet. For example, there are various motor vehicle sales websites which enable consumers to thoroughly research the marketplace and to browse detailed information about the type of vehicle they are looking for prior to moving to the next step of entering into negotiations for the purchase of a vehicle.

Standard terms and conditions in contracts

The introduction of standard prescribed terms and conditions in contracts in 2002 was seen as an alternative consumer protection measure to introducing cooling off periods. It is also noted that the standard industry contract distributed by the MTA, which is widely used in the marketplace, includes a prominent warning to purchasers indicating that the contract is legally binding and that no cooling off periods apply.

STAKEHOLDER VIEWS: COOLING OFF PERIODS

Overview

The discussion paper invited stakeholders to comment on whether cooling off periods should be included in the MVDA. Stakeholders were also asked if a cooling off period was included:

- what types of transactions it should cover;
- what would be an appropriate length of time for the cooling off period; and
- whether the purchaser should be required to make a payment to the dealer if the purchaser terminates the contract during this period.

While consumers are generally in support of cooling off periods, industry is strongly opposed.

Five written submissions were received; two opposed the introduction of a cooling period while two submissions supported the proposal. One submission raised concerns about contract terms in relation to pre-estimated liquidated damages.

The Consumer Advisory Committee provided comment on issues associated with cooling off periods and the ACL. It did not have a settled position.

A total of 190 responses (comprising 149 industry responses and 41 consumer responses) were received to the online surveys. Survey responses reflected little support amongst industry for the introduction of cooling off periods but strong support amongst consumers.

Written submissions

MTA

The MTA did not support the introduction of cooling off periods stating that there was little evidence which supports the view that they are required. The MTA is of the view that the MVDA currently provides sufficient protections for consumers in relation to termination of contracts to purchase motor vehicles.

Pickles Auctions

Pickles Auctions did not support the introduction of a cooling off period. Pickles Auctions argued that a cooling off period is not necessary as many offer to purchase contracts include a condition of being subject to finance (in effect in some cases providing an opportunity for the consumer to withdraw from the contract).

Consumers' Association of Western Australia (Inc.)

The CAWA supported the introduction of a three day cooling off period on all motor vehicle transactions as it would allow consumers the opportunity to give full thought and consideration to any contractual and financial concerns.

The CAWA also noted that this would be particularly useful at the lower end of the market where vulnerable younger consumers may succumb to high pressure sales tactics.

Consumer Credit Legal Service (Western Australia) Inc.

The CCLSWA advocated for the introduction of a three business day cooling off period for all transactions regardless of whether they were linked to finance.

The following summarises the CCLSWA's views:

- inclusion of a cooling off period would substantially reduce the number of motor vehicle sales related consumer complaints received by the CCLSWA;
- no payment on the part of the purchaser should be required if the purchaser elected to rescind the agreement under this provision; and
- a cooling off period would be consistent with section 134 of the National Credit Code.

The CCLSWA also suggested that as an alternative to a cooling off period, the MVDA could provide for pre-estimated damages payable to dealers upon termination of a contract to be reduced from the current 15 per cent of the purchase price to five per cent of the purchase price.

Mr Andrew Lynn (Lawyer)

Mr Lynn raised concerns relevant to the issue of pre-estimated liquidated damages. Mr Lynn cited three occasions involving clients with limited English where he believed the terms of the contract were unfair and unconscionable.

In particular, he referred to a provision in the contracts (generally printed on the reverse of the contract) which required purchasers in breach to forfeit an amount equivalent to 15 per cent of the value of the contract as a pre-estimate of damages. Mr Lynn noted that this provision appeared to be common to standard form documents used by major car yards.

Mr Lynn is of the view that inclusion of such a clause represents a form of penalty rather than a genuine pre-estimate of liquidated damages. Mr Lynn was also concerned that purchasers were not being informed of the impact of such clauses prior to being asked to sign such contracts.

Mr Lynn also noted that he was reluctant to take these matters further due to his clients' limited income, particularly given the amount in question would be consumed by legal fees.

Consumer Advisory Committee

CAC is appointed by the Minister for Commerce for the purpose of providing advice to the Minister and the Commissioner.

The CAC commented on issues surrounding the use of cooling off periods but did not take a position.

Issues raised by the CAC included:

- cooling off periods can be a useful mechanism to protect vulnerable consumers;
- cooling off periods can create a false sense of security for the purchaser and lead to them not doing enough due diligence before deciding;
- cooling off periods can remove responsibility from consumers to take ownership of their decisions;
- other laws are in place (for example the ACL) which deal with high pressure sales tactics making cooling-off periods unnecessary;
- cooling off periods have the potential to be abused by purchasers opting to use them as a tactic for trading one dealer off against another;
- many issues may only come to the fore after the cooling off period has expired;
- costs resulting from of a lost opportunity to sell a motor vehicle for the duration of the cooling off period may result in these costs being passed on to consumers; and
- educating consumers on the use of conditional terms contracts may represent a better option for addressing concerns.

Online surveys

There was very little industry support for the introduction of a cooling off period with only 11 per cent of industry respondents indicating support.

Consumer responses to the Consumer Online Survey indicated that of those consumers who specified a preference, there was a significant level of support for the introduction of a cooling off period.

Most respondents who supported cooling off periods believed it should apply to all types of contracts and not just to those contracts linked to finance. Table 20 and Table 21 below present a summary of industry and consumer responses to the online survey questions.

Table 20: Dealer and consumer online survey responses to cooling off periods

Should a cooling off period apply to contracts for the sale of motor vehicles by dealers?	Yes	No.	Not specified	Total
Industry	16 11%	97 65%	36 24%	149 100%
Consumers	21 51%	3 7%	17 42%	41 100%

Table 21: Dealer and consumer online survey responses to nature of cooling off period contracts

If a cooling off period is introduced, should it apply to all contracts or only those with linked finance?	All contracts	Contracts with linked finance only	Not specified	Total
Industry	39 26%	41 27%	69 47%	149 100%
Consumers	23 56%	1 2%	17 42%	41 100%

OTHER JURISDICTIONS

Table 22 below summarises cooling off arrangements in other jurisdictions (as at May 2015). It is noted that Tasmania, Northern Territory and Western Australia do not have cooling off periods in place.

Table 22: Cooling off arrangements in other Australian jurisdictions

Jurisdiction	Cooling off period	Amount paid on termination of contract
NSW	<p>Only applies to contracts with linked finance and extends to p.m. on the following business day.¹⁵²</p> <p>Note: Linked finance refers to purchases where the dealership:</p> <ul style="list-style-type: none"> • arranges the loan for the car, or • supplies application forms for, or a referral to, a credit provider. 	<p>\$250 or two per cent of the purchase price whichever is the lesser amount.¹⁵³</p>

¹⁵² *Motor Dealers Act 1974 (NSW)* – section 29CA.

¹⁵³ *Motor Dealers and Repairers Act 2013 (NSW)* – section 85.

Jurisdiction	Cooling off period	Amount paid on termination of contract
Vic and ACT	Extends to the end of three clear business days ¹⁵⁴ for all purchases.	\$100 or one per cent of the purchase amount, whichever is the greater amount ¹⁵⁵ for used cars. \$400 or 2% of the purchase price, whichever is the greater, for new cars. ¹⁵⁶
Qld	Applies only to second hand vehicles and extends until close of business on the following day for all purchases. ¹⁵⁷	Non-refundable deposit not to exceed \$100. ¹⁵⁸
SA	Applies only to second hand vehicles and extends to the end of the second clear business day after the day on which the contract is made. ¹⁵⁹	Two per cent of the contract price or \$100 whichever is the lesser amount. ¹⁶⁰

OPTIONS RELATING TO COOLING OFF PERIODS

Four options are under consideration relevant to cooling off periods.

Option A: No change.

This option would not require changes to the legislation.

Under this option, current arrangements would remain in place whereby cooling off periods are not provided for under the MVDA.

Option B: Reduction in maximum level of pre-estimated liquidated damages

This option would involve amending the regulations to reduce the maximum percentage consumers can be charged in pre-estimated liquidated damages for terminating their contracts from the current 15 per cent to a lesser percentage.

Option C: Introduce a cooling off period for linked finance contracts

This option would involve amending the legislation to provide for a cooling off period only where finance is linked to the contract to purchase a vehicle.

¹⁵⁴ *Sale of Motor Vehicles Act 1977* (ACT) – section 25B; *Motor Car Traders Act 1986* (Vic) – section 43.

¹⁵⁵ *Sale of Motor Vehicles Act 1977*(ACT) section 25B(4) *Motor Car Traders Act 1986* (Vic) – section 43(4).

¹⁵⁶ *Motor Car Traders Act 1986* (Vic) – section 43(4)(a)(ii).

¹⁵⁷ *Property Agents and Motor Dealers Act 2000* (Qld) – section 297.

¹⁵⁸ *Motor Dealers and Chattel Auctioneers Act 2014* (Qld) – section 106.

¹⁵⁹ *Second-hand Vehicle Dealers Act 1995* (SA) – section 3.

¹⁶⁰ *Second-hand Vehicle Dealers Act 1995* (SA) – Section 18B(7).

Option D: Introduce cooling off periods for motor vehicle purchases

This option would involve amending the legislation to provide for a cooling off period in all instances where a consumer purchases a motor vehicle.

Further consultation in regard to the details of this option

If the establishment of a cooling off period is supported (refer options C and D above), further consultation will be undertaken in respect to how cooling off periods will operate. Key issues that would need to be considered include:

- the motor vehicle purchases to be covered by cooling off periods (i.e., whether to exclude consignment sales, new vehicles, second hand vehicles and whether to limit cooling off periods to vehicle purchases by individuals);
- the length of the cooling off period (for example, three business days);
- the amount to be paid to the dealer on termination of the contract (for example, \$250 or two per cent of the total purchase price whichever is the lesser); and
- whether consumers should be able to waive their rights to a cooling off period in certain circumstances (for example on taking physical possession of the motor vehicle).

Benefits and disadvantages

The benefits and disadvantages of each option for industry, consumers and government are outlined in the table below.

	Potential benefits	Potential disadvantages
Option A – No change	<p>Industry</p> <ul style="list-style-type: none"> • Status quo maintained. <p>Consumers</p> <ul style="list-style-type: none"> • No change. <p>Government</p> <ul style="list-style-type: none"> • No impact on resources associated with implementing changes to processes or legislation. 	<p>Industry</p> <ul style="list-style-type: none"> • No change. <p>Consumers</p> <ul style="list-style-type: none"> • Limited scope to terminate contracts without incurring considerable cost. • No scope to reverse decisions made under pressure or in haste without incurring significant cost. <p>Government</p> <ul style="list-style-type: none"> • Ongoing complaints regarding cancelling contracts.
Option B– Reduce maximum charged for liquidated damages	<p>Industry</p> <ul style="list-style-type: none"> • None discernible. <p>Consumers</p> <ul style="list-style-type: none"> • Reduced financial impact on termination of contract. 	<p>Industry</p> <ul style="list-style-type: none"> • Maximum pre-estimate of liquidated damages may not fully cover dealer losses. <p>Consumers</p> <ul style="list-style-type: none"> • Reduced pre-estimate of liquidated

	Potential benefits	Potential disadvantages
	<p>Government</p> <ul style="list-style-type: none"> Reduced complaints about pre-estimated liquidated damages. 	<p>damages may still reflect considerable financial burden for consumers.</p> <p>Government</p> <ul style="list-style-type: none"> No change.
<p>Option C–</p> <p>Cooling off period to apply to motor vehicle purchases with linked finance</p>	<p>Industry</p> <ul style="list-style-type: none"> Limits potential loss of sales to those with linked finance. <p>Consumers</p> <ul style="list-style-type: none"> Scope for consumer to rescind contract if assessed as unaffordable with little or no penalty. Opportunity to reconsider purchase away from sales pressure and to compare alternative credit arrangements to those offered by the dealer. Reduced consumer detriment as cooling off periods can deter misleading and deceptive sales tactics. The cost to consumers in pursuing cases under the ACL would be avoided. <p>Government</p> <ul style="list-style-type: none"> Reduced complaints related to the cancelling of purchase contracts. 	<p>Industry</p> <ul style="list-style-type: none"> Increased costs (for example, lost commissions, holding stock not available for sale, delays in completing transactions and loss of sales opportunities during the cooling off period if the consumer decides not to buy the vehicle). <p>Consumers</p> <ul style="list-style-type: none"> Increased dealer costs may be passed on to consumers in the form of higher prices. Non-reporting of undesirable sales practices may mask systemic issues due to consumers exercising right to terminate contract under cooling off period rather than lodging complaints. Increased risk of consumer signing multiple contracts at different dealers and failing to terminate contract/s during cooling off period. <p>Government</p> <ul style="list-style-type: none"> Poor conduct on the part of dealers and their staff may not come to the attention of Government as affected consumers would have been able to cancel their contracts during the cooling off period.
<p>Option D–</p> <p>Cooling off period to apply to motor vehicle</p>	<p>Industry</p> <ul style="list-style-type: none"> May improve industry reputation by reducing consumer complaints about high pressure and misleading and deceptive sales 	<p>Industry</p> <ul style="list-style-type: none"> Increased compliance costs (for example, lost commissions, holding stock not available for sale, delays in completing transactions and loss of

	Potential benefits	Potential disadvantages
purchases	<p>tactics.</p> <p>Consumers</p> <ul style="list-style-type: none"> • Reduced consumer detriment by giving consumers more time to consider their choice or gather information on whether the agreement they entered into is in their best interests. • The cost to consumers in pursuing cases under the ACL would be avoided. • Reduction in misleading and deceptive sales tactics. <p>Government</p> <ul style="list-style-type: none"> • Reduced complaints related to the cancelling of purchase contracts. 	<p>sales opportunities during the cooling off period if the consumer decides not to buy the vehicle).</p> <p>Consumers</p> <ul style="list-style-type: none"> • Increased dealer costs may be passed on to consumers in the form of higher prices. • Non-reporting of undesirable sales practices may mask systemic issues due to consumers exercising right to terminate contract under cooling off period rather than lodging complaints. • Increased risk of consumer signing multiple contracts at different dealers and failing to terminate contract/s during cooling off period. <p>Government</p> <ul style="list-style-type: none"> • Poor conduct on the part of dealers and their staff may not come to the attention of Government as affected consumers would have been able to cancel their contracts during the cooling off period.

Question	
Question 1	Which option do you prefer and why?
Question 2	Are there other options to address this issue? Please identify any additional benefits or disadvantages.
Question 3	What are the cost implications of the different options? Please include quantifiable information if possible?

WHAT TYPES OF REPAIR WORK SHOULD BE COVERED BY THE MVRA?

ISSUE

Until recently, the MVRA required repair businesses to be licensed for each specific class of repair work they undertook. The CPLA Act amended the MVRA on 19 November 2014, and removed this requirement, so that a licensed repair business is now only required to employ a suitably qualified tradesperson in order to carry out a particular class of repair work.

Certification is the key measure used to ensure that repair work is carried out by an appropriately qualified tradesperson.

The policy issue to determine is whether an appropriate level of regulation is being imposed on motor vehicle repair businesses and tradespersons.

OBJECTIVE

To assess whether the current classes of repair work remain appropriate.

DISCUSSION

Currently, under the MVR Regulations there are 30 classes of repair work.¹⁶¹ Details of these classes are set out in Appendix C. The separate classes of repair work allow the Commissioner to ensure that only repairers with the appropriate skills are able to perform unsupervised work under each class of repair work. The 2013 discussion paper suggested that there may be a case for some types of repair work to be deregulated as they may not present the same level of risk to consumers from a safety perspective as other types of vehicle repair work, for example, the fitting of vehicle accessories, such as audio systems.

Table 23 below shows the industry responses to the online Motor Vehicle Repair Industry Survey in relation to whether any changes must be made to the classes of repair work.¹⁶² It indicates that the industry is generally satisfied with the current structure of the classes of repair work and does not see a need to either add more classes of repair work or remove any of the current classes of repair work.

¹⁶¹ Motor Vehicle Repairers Regulations 2007 (WA) – regulation 5. There are 30 classes of repair work prescribed for business licences (including auto gas work), and 29 classes prescribed for individual certification as auto gas work certification is undertaken by Energy Safety.

¹⁶² Specific questions relating to this matter were not included in the consumer survey.

Table 23: Repairer online survey responses in relation to regulated classes of work

	Yes (%)	No (%)	Not Specified (%)	TOTAL (%)
Are there repair classes that do need to be licensed?	46 (10%)	339 (71%)	91 (19%)	476 (100%)
Are there repair classes that do not need to be licensed?	36 (8%)	344 (72%)	96 (20%)	476 (100%)

The written industry submissions to the discussion paper broadly supported the existing classes of repair work, but were of the opinion that there was scope to remove items that have no bearing on the performance, safety or security of the vehicle. However, none of the submissions identified classes of repair work which could be removed.

Written industry submissions also suggested adding the following classes of repair work to the MVRA:

- Structural repairs: SGIO stated that this should be subject to licensing requirements as at present a repairer can conduct this type of repair even with limited equipment, knowledge or access to repair information.
- Scratch and dent repairs: the MTA argued that the addition of this class would better reflect the current repair market where specialist, but not necessarily full trade skills, are required to provide an essential service in the repair trade.
- Breakdown service: the MTA argued that the addition of this class would better reflect the repair market where specialist, but not necessarily full trade skills, are required to provide an essential service in the repair trade. A written submission from a towing contractor argued that breakdown service providers should be given an exemption from the licensing requirements in respect of basic roadside assistance for flat tyres, re-fuelling, flat batteries and low water in order to reduce the level of unnecessary regulation.
- Caravan/recreational vehicles servicing and repairs: industry submissions by the MTA and CIAWA stated that repairing caravans or recreational vehicles requires a different knowledge and skill set from that required for general mechanical repairs. Therefore, specific training should be required to be undertaken by repairers of these vehicles.
- Work on motorhomes: the CIAWA stated that repairing motorhomes requires a different knowledge and skill set from that required for general mechanical repairs.
- Work on hybrid and electric vehicles that operate with higher electrical voltages: the MTA argued that new skills are required in order to repair such vehicles and as technology advances, the classes of repair work need to reflect this.

- Engine Tune and Diagnosis: the Department's motor vehicle compliance area has recommended the addition of this new class of repair work. Due to the increasing use of electronics in cars, engine tune and diagnosis has become a specialised area of repair work. Repairers, who do this work, tend not to do any other mechanical work, and for that reason, it would benefit from being in its own class of repair work. This traditionally used to be an area where the repairer would engage someone to complete the engine tune and diagnosis on motor vehicles. However, the Department is now increasingly finding that some consumers will directly engage a repairer to diagnose their motor vehicle and complete an engine tune on the motor vehicle in order to recalibrate it.

The SGIO and ICA also commented in their submissions that some type of distinction should be created between licences held for repair work to light passenger vehicles as opposed to commercial vehicles or heavy transport vehicles.

Removing or combining classes of repair work

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

On that basis, it is arguable that removing repair items from classes of repair work which have no bearing on the performance, safety or security of the vehicle would be consistent with the aims of the MVRA. Furthermore, there should not be any decrease in the quality of such work as all vehicle repair work must still comply with the protections and consumer guarantees within the ACL, such as: the repairer must use due care and skill; materials and parts should be fit for specified purpose; and repairs must be completed within a reasonable timeframe. However, no specific classes of repair work were identified in submissions indicating they should be removed because they have no bearing on safety or security of the vehicle. Instead, the Department's motor vehicle compliance area has identified the following classes of repair work which can be combined due to the similarities between the skills required to undertake these repairs:

- 'cylinder head reconditioning work' combined with 'engine reconditioning work';
- 'driveline servicing and repairing work' combined with 'driveline work' and 'transmission work';
- 'diesel fitting work' combined with 'diesel fuel and engine work' and 'heavy vehicle work';
- 'underbody work' combined with 'steering, suspension and wheel aligning work' and 'exhaust system work'; and
- 'tyre fitting (heavy) work' combined with 'tyre fitting (light) work'.

Adding classes of repair work

A general principle when considering the addition of classes of repair work should be that only work which has a bearing on the performance, safety or security of the vehicle should be added. The addition of new classes of repair work will increase the complexity of the licensing system. Therefore, consideration must be given to whether the benefits of adding classes, outweighs the costs that will be created by restricting the number of people qualified to undertake the work.

Structural repair: Currently the MVRA has the following classes of repair work, which could be considered to be structural repairs to a vehicle:

- body building work; and
- panel beating work.¹⁶³

It is unclear why the addition of a separate category of structural repair work is required as it is likely such work would be captured by the above classes of repair work. Unless there are certain types of structural repair work occurring that would not fall into these classes, it is not considered necessary that a separate class of repair work be created specifically for structural repairs.

Scratch and dent repairs: As the title suggests scratch and dent repair work generally relates to minor work to repair scratches, dents and paint on the body of a motor vehicle. Currently the MVRA has the following classes of repair work, which could be considered to include scratch and dent repairs to vehicles:

- painting work; and
- panel beating work.¹⁶⁴

Conditions restricting the type of work that the repairer can undertake will be imposed on the repairer's certificate based on their qualifications. For instance, some repairers who will engage in scratch and dent repair work will be issued with a certificate for panel beating work, with a condition that they are restricted to paint less dent removal only.

This type of work is unlikely to have any impact on the performance, safety or security of a vehicle, it is not considered necessary that a separate class of repair work be created.

Breakdown service: Regulation 3(1) of the MVR Regulations currently defines the term 'emergency servicing or repair' as '...servicing, or repair, that is on-the-spot and of a minor nature...for the purpose of restoring, or attempting to restore, the vehicle's mobility, including, if applicable, any of the following:

- carrying out minor electrical servicing and minor electrical repair;
- cleaning or lubricating the thing or any of its components;
- replenishing any oil, lubricant, coolant or other liquid that requires replenishment;
- replacing the thing or any of its component; or
- tightening or otherwise adjusting the thing or any of its component parts.

Refuelling a vehicle that has run out of fuel is excluded from this definition. These services are included as sub-categories of repair work under the following classes of repair work¹⁶⁵:

- heavy vehicle servicing work;
- light vehicle servicing work; and
- motor cycle servicing work.

¹⁶³ Motor Vehicle Repairers Regulations 2007 (WA) – regulation 3(1).

¹⁶⁴ Motor Vehicle Repairers Regulations 2007 (WA) – regulation 3(1).

¹⁶⁵ Motor Vehicle Repairers Regulations 2007 (WA) – regulation 3(1).

Having emergency servicing or repair work as a separate class of repair work would clearly identify this work and also allow different or lower level qualification requirements to be imposed on providers of emergency repair services. The work specified in the current definition of 'emergency servicing or repair' can impact the performance or safety of a vehicle and therefore should be included within the classes of repair work. Consideration should also be given to whether there are types of emergency servicing or repair work, such as replenishing oil or water in a motor vehicle, which should be excluded from the definition in the manner refuelling has been excluded.

Caravans/recreational vehicles: There is currently no separate class of repair work for non-motorised vehicles, such as caravans. Depending on the gross vehicle mass of the caravan or recreational vehicle, it will be classified as either a light vehicle or a heavy vehicle.

Currently, if a repairer of a caravan or recreational vehicle has an appropriate trade certificate for the relevant work, then they can obtain a light vehicle work, light vehicle servicing work, heavy vehicle work or heavy vehicle servicing work class of repairer's certificate and then complete the relevant work upon caravans or recreational vehicles. If however, the repairer is relying upon their previous experience working on repairing caravans, then they can only obtain a more targeted class of repairer's certificate, such as underbody work or body building work. This is due to the fact that caravans or recreational vehicles do not have a motor and therefore experienced caravan repairers would not necessarily have any experience repairing an ignition system, engine etc.

Submissions indicate that it would be useful to have separate classes of repair work for these vehicles as the nature of the skills required to work on them is different to that required for other vehicles. A separate class for this work would allow more specialised qualifications to be recognised. Many of these caravan repair skills are associated with the vehicle body building, cabinet making, plumbing and electrical trades.

Motor homes: There is currently no separate class of repair work for motor homes. However, as these vehicles have a motor, repairers of these vehicles can obtain classes of repair licences in the same manner that a repairer of a motor vehicle would. Therefore, repairers of motor homes can obtain a light vehicle work or light vehicle servicing work certificate.

Submissions indicate that it would be useful to have separate classes of repair work for these vehicles as the nature of the skills required to work on them is different to that required for other vehicles. However, unless there are certain types of repairs to motor homes occurring that do not fall into the existing classes of repair work, it is not considered necessary that a separate class of repair work be created.

Hybrid and electric vehicles: In 2012, more than one million new cars were sold with around 1.3 per cent of these sales being for hybrid vehicles.¹⁶⁶ It is anticipated that as sales of hybrid and electric vehicles increase over time, this will become a more significant area of repair work. Therefore, introducing a separate class of repair for hybrid and electric cars may, on face value, seem beneficial. However, there is a risk that requiring repairers of hybrid and electric vehicles to obtain a separate qualification may reduce the number of repairers able to offer this service and thereby impact the development of this service area. Furthermore, there is also a view that this not a separate class of repair work, rather a workplace issue to ensure repairers receive appropriate and on-going professional development training to obtain the requisite skills and knowledge to undertake such work.

¹⁶⁶ Energy Supply Association of Australia, Sparking an Electric Vehicle Debate in Australia, November 2013, <http://ewp.industry.gov.au/files/Sparking%20an%20Electric%20Vehicle%20Debate%20in%20Australia.pdf>.

Engine tune and diagnosis: Currently the 'light vehicle servicing work' class of repair work includes minor electrical servicing of the fuel system, air induction system, the engine, the ignition system, engine management system, as part of wider servicing work to a light vehicle. However, the Department's motor vehicle compliance area has increasingly found that repairers are specialising in engine tune and diagnosis where they do not perform any other light vehicle servicing work on vehicles. A separate class for this work would allow more specialised skills to be recognised.

For the category of 'vehicle engine tuning' a person requires knowledge of the basic principles of a four stroke engine and how air temperature and engine loads effects fuel ratios and engine timing. This class of repair work would include the servicing of:

- the fuel system;
- the air induction system;
- the engine;
- the ignition system; and
- the engine management system and fitting/soldering of electrical components (EAF) – injector/wiring harness. Removal and refit of an engine control unit and sensors.

OTHER JURISDICTIONS

New South Wales has recently updated and consolidated its classes of repair work for tradespersons. There are now 12 classes of repair work for tradespeople, as opposed to the 16 classes that previously existed. In order to obtain a tradesperson certificate for a class of repair work, the repairer must possess the specified qualification for that class of repair work.

The following changes have been introduced in New South Wales:

- Gas mechanics repair class has been expanded into three classes to reflect the highly specialised skills required to repair and install the different types of gas equipment;
- Underbody work repair class is now made up of the former brake mechanic, exhaust repairer and front-end specialist repair classes;
- Work involving the installation or replacement of certain accessory fittings is no longer licensed. Therefore, accessory fittings such as skirts, ute linings, spoilers, weather shields, head light protectors, bonnet protectors, tow bars (bolted), sound systems, radios etc. no longer require certification;
- Emergency breakdown repairs provided by a membership organisation to its members are exempted repair work. This amendment was the result of an assessment of what classes of repair work are needed in the industry relevant to the risk of that repair work resulting in consumer detriment or the serious risk of an unsafe vehicle being returned to the road. As part of the review, emphasis was also placed upon the fact that the consumer guarantees under the ACL apply regardless of any other legislation and in some instances could replace the need for specific regulation or a requirement for a person with a trade certificate to do low risk, routine motor repair work¹⁶⁷; and
- Underbody work on caravans and trailers does not require a tradesperson certificate, but must be done at a licensed repair business. Work on the non-motor vehicle parts of caravans, trailers and recreational motor vehicles (such as living spaces) are exempt.

¹⁶⁷ Issues paper – NSW Fair Trading regulation of motor vehicles, NSW Government, April 2012, pages 23-24.

OPTIONS

The following options have been considered in relation to the types of repair work that should be covered by the certification requirements.

Option A – Maintain the status quo

Under this option, the classes of repair work for the purposes of certifying individual repairers would remain unchanged.

Option B – Combine items from classes of repair work

Under this option, the following activities would be combined into single classes of repair work:

- ‘cylinder head reconditioning work’ combined with ‘engine reconditioning work’;
- ‘driveline servicing and repairing work’ combined with ‘driveline work’ and ‘transmission work’;
- ‘diesel fitting work’ combined with ‘diesel fuel and engine work’ and ‘heavy vehicle work’;
- ‘underbody work’ combined with ‘steering, suspension and wheel aligning work’ and ‘exhaust system work’; and
- ‘tyre fitting (heavy) work’ combined with ‘tyre fitting (light) work’.

Option C – Reclassify and add classes of repair work

Under this option, the following classes of repair work, which are already covered under the existing general category, would be reclassified and the following classes of repair work added:

- breakdown service;
- caravan/recreational vehicles servicing work;
- caravan/recreational vehicle work; and
- engine tune and diagnosis.

Impact Analysis:

	Potential benefits	Potential disadvantages
Option A – No change	<p>Industry</p> <ul style="list-style-type: none"> • No additional costs or compliance implications. <p>Consumer</p> <ul style="list-style-type: none"> • No change to consumer rights. <p>Government</p> <ul style="list-style-type: none"> • No impact on resources associated with implementing changes to process or legislation. 	<p>Industry</p> <ul style="list-style-type: none"> • Compliance costs for areas of the industry which do not pose risk to consumers. <p>Consumer</p> <ul style="list-style-type: none"> • Risk of consumer detriment if certain type of repair work is not regulated. <p>Government</p> <ul style="list-style-type: none"> • Risk of inadequate level of regulation.
Option B – Combine classes of repair work	<p>Industry</p> <ul style="list-style-type: none"> • More streamlined classes of repair work. This should enable 	<p>Industry</p> <ul style="list-style-type: none"> • None discernible

	Potential benefits	Potential disadvantages
	<p>the application form for the certification to be easier to complete.</p> <p>Consumer</p> <ul style="list-style-type: none"> • None discernible. <p>Government</p> <ul style="list-style-type: none"> • None discernible. 	<p>Consumer</p> <ul style="list-style-type: none"> • None discernible. <p>Government</p> <ul style="list-style-type: none"> • None discernible.
<p>Option C – Reclassify and add classes of repair work</p>	<p>Industry</p> <ul style="list-style-type: none"> • Allow better targeting of training requirements. • Improvement in skill levels. <p>Consumer</p> <ul style="list-style-type: none"> • Maintains and increases consumer confidence. <p>Government</p> <ul style="list-style-type: none"> • Potential increase in licensing administration costs. 	<p>Industry</p> <ul style="list-style-type: none"> • Increases compliance costs for business.¹⁶⁸ <p>Consumer</p> <ul style="list-style-type: none"> • Increased risk of reduction in competition. <p>Government</p> <ul style="list-style-type: none"> • Additional resources required to administer compliance and expanded licensing function (would need to ensure cost recovery).

Questions	
Question 1	Which option do you prefer and why?
Question 2	Do you support combining certain classes of repair work? Please identify the specific classes of repair work which you think should be combined together.
Question 3	Do you support the removal of certain items from classes of repair work? Please identify the specific items of repair work which can be removed without compromising the performance, safety or security of the vehicle.
Question 4	Do you support the addition of new classes of repair work? Please identify which classes of repair work you would like added and the reasons for doing so.
Question 5	Do you support the reclassification of certain items of repair work into a separate class of repair work? Please identify which existing classes of repair work should be reclassified in this manner and the reasons for doing so.
Question 6	Are there other options to address this issue? Please identify any additional benefits or disadvantages.

¹⁶⁸ It is not possible to quantify the potential increase in compliance costs that may be imposed. Costs will vary across businesses and depend upon factors, such as whether the repairer used by the business needs to obtain new qualifications in order to obtain a certificate for a new class of repair work.

Question 7

What are the cost implications of the different options? Please include quantifiable information if possible.

GOOD CHARACTER AND REPUTE CRITERIA: MOTOR VEHICLE REPAIR BUSINESS LICENSING

ISSUE

An applicant for a motor vehicle repairer's business licence must satisfy the Commissioner in relation to a number of criteria set out in the MVRA.

Under consideration for reform are the criteria relating to:

- being a person of good character and repute; and
- being a fit and proper person.

The policy issue to be resolved relates to whether these two licensing criteria would benefit from being more specific, for example, specifying matters which would automatically disqualify an applicant from being granted a licence.

Options for reform in regard to the good character and repute and fit and proper person criteria are discussed in the following section.

STAKEHOLDER VIEWS

In responding to the 2013 discussion paper, there was general support for retaining the good character and repute and fit and proper person criteria but with some streamlining of processes.

Few comments were received in regard to specifying the types of matters to be taken into account in determining whether a person is of good character and repute and fit and proper. Stakeholders, however, generally supported the concept of specifying matters which would automatically disqualify an applicant from being granted a licence.

More detail in relation to stakeholder views is provided in the following section.

BACKGROUND

An applicant for a repairer's licence must satisfy the Commissioner that they are, of good character and repute and a fit and proper person to hold a licence.

Similar requirements apply to firms and body corporates. For example, in the case of a body corporate, all individuals involved in the management or conduct of the body corporate are required to be persons of good character and repute and fit persons to be concerned in the management or control of the repair business.

Application requirements

Application requirements are in place to assist the Commissioner in determining whether a repairer business licence should be granted. A repairer's licence may be granted to an individual, a firm¹⁶⁹ or a body corporate.¹⁷⁰ Application requirements apply to each individual, proprietor or director of a company.

Application requirements relevant to the criteria of being of good character and repute and fit and proper include:

- providing a National Police Certificate issued within the previous three month period;
- answering a range of fitness questions, for example whether there have been previous convictions, any legal proceedings, adverse findings by a government board or agency and disciplinary action by a licensing authority; and
- authorising the Commissioner to obtain documents necessary to consider fitness to hold a certificate.

In administering the legislation, there is some scope for the Commissioner to adjust these requirements and attendant processes providing the broad requirements as set out in the MVRA are still met.

Explanation of difference between good character and fit and proper

An assessment of whether a person is of good character and repute is different from, but related to an assessment of whether a person is fit and proper to be the holder of a licence. There is, however, some overlap between good character and fitness, for example, if an applicant is of bad character, they will also usually be unfit to hold a licence.

The expression 'good character and repute' has been held to involve two discrete elements and that while 'good character' does not have a precise meaning, it ordinarily refers to a person's moral qualities (whether known to others or not), as opposed to the estimation in which (fairly or unfairly) the person is held by other, that is, their repute: *Real Estate and Business Agents Supervisory Board v LJW* [2011] WASCA 35 at [28].

The High Court case *Australian Broadcasting Tribunal v Bond*¹⁷¹ dealt with considerations of fitness and propriety and good character and repute and Chief Justice Mason explained:

The question whether a person is fit and proper is one of value judgment. In that process the seriousness or otherwise of particular conduct is a matter for evaluation by the decision maker.

So too is the weight, if any, to be given to matters favouring the person whose fitness and propriety are under consideration.

Justices Toohey and Gaudron also said:

The expression 'fit and proper person', standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities.

¹⁶⁹ MVRA – section 18.

¹⁷⁰ MVRA – section 20.

¹⁷¹ (1990) 170 CLR 321.

The concept of 'fit and proper' cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur.

The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

Also of relevance in considering the good character and repute and a fit and proper person criteria are, the comments of her Honour Justice Wheeler in *Tavelli v Johnson*¹⁷² in which she said:

It must be stressed therefore that there can be no inflexible rules and no policy but that the discretion falls to be exercised anew in the circumstances of each application in the light of the statutory framework.

Refusing a business licence

The Commissioner must not grant a business licence if the applicant has been disqualified from holding or obtaining a business licence.¹⁷³

The Commissioner may refuse to grant a business licence on a number of grounds.¹⁷⁴ For example on the grounds of the applicant having contravened a provision of the MVRA; or having engaged in conduct which renders the person unfit.

For the period of 1 July 2011 to 31 December 2015, the Commissioner refused three applicants for a motor vehicle repair business licence, based on those applicants not satisfying the fit and proper and good character and repute criteria.

Extent of the problem

Given the nature of this issue, quantifying the extent of the problem is not possible as it centres on the question of whether the MVRA provides the Commissioner with the appropriate level of discretion in decision making in respect of the good character and repute and fit and proper criteria.

Anecdotal evidence

Anecdotal evidence provided by departmental staff indicates that the criteria for fit and proper appear to be working well in terms of preventing unsuitable persons from entering the industry. Major consumer issues relating to poor conduct on the part of repairers have not been reported or occur very infrequently.

¹⁷² Unreported, WASC, Library No 960693, 25 November 1996.

¹⁷³ MVRA – section 22.

¹⁷⁴ MVRA – section 23.

Departmental staff also noted that whilst significant work goes into assessing each application, this is necessary as each individual's unique situation needs to be considered on its merit. It was pointed out that without discretion on the Commissioner's part, individuals could be restricted from working in a regulated industry purely because of their criminal history which may reflect actions that have happened some time ago and only have marginal relevance. As a result, their prospect of earning a living may be severely impeded.

Qualitative evidence in relation to good character and repute and a fit and proper criteria

Qualitative evidence relevant to the good character and repute and a fit and proper person criteria is drawn from a 2012 case considered by the SAT. Whilst this case relates to the MVDA, it is relevant to the MVRA as it dealt with interpretation of the good character and repute and a fit and proper person criteria.

This is evident in the 2012 case in which the view of the Commissioner in determining whether an applicant was of good character and repute and a fit and proper person to hold a licence was viewed differently by the SAT.

In this case, the Commissioner refused an application to renew a salesperson's licence on the basis that the applicant did not meet the fit and proper test to hold such a licence. This decision was on the basis that the applicant had been charged and convicted in the Perth Magistrates Court for offences relating to the failure to pay sales proceeds to customers following sales of vehicles on consignment.

On review, the SAT found that, notwithstanding a number of convictions, the applicant was of good character and repute and a fit and proper person to hold a motor vehicle salesperson's licence. In the reasons for decision, the SAT noted that whilst the convictions had occurred in the course of the applicant's occupation as a motor vehicle dealer at the time, the convictions were not necessarily relevant to the vocation of a salesperson.

In coming to a decision, the SAT took into account the applicant's:

- insight into his misconduct and contrition;
- attempts to make good the financial losses which his customers suffered;
- health, both physical and mental had been restored;
- had successfully undergone training; and
- continued support from his family.

The reasons for decision, points to deliberations on the part of Wheeler, in the context of an agent's licence in the *Tavelli v Johnson* case¹⁷⁵, in which her Honour said:

It must be stressed therefore that there can be no inflexible rules and no policy but that the discretion falls to be exercised anew in the circumstances of each application in the light of the statutory framework.

OBJECTIVE

The key objective for considering reforms is to ensure that the licensing criteria relating to probity which apply to businesses involved in carrying out motor vehicle repair work are appropriate in the context of the purposes of the MVRA.

¹⁷⁵ *Tavelli v Johnson* (Unreported, WASC, Library No 960693, 25 November 1996).

This objective supports the purposes of MVRA to:

- improve consumer protection;
- improve the general standard of repairs conducted on motor vehicles; and
- enhance consumer confidence in the motor vehicle repair industry.

OTHER JURISDICTIONS' APPROACH TO FIT AND PROPER AND OF GOOD CHARACTER AND REPUTE CRITERIA

The Australian Capital Territory and New South Wales are the only other jurisdictions that regulate motor vehicle repairers.

Australian Capital Territory licensing requirements

The Australian Capital Territory's legislation¹⁷⁶ requires any person carrying on a business as a motor vehicle repairer to hold a licence. Specific criteria relating to fit and proper and of good character and repute are not included in the Australian Capital Territory legislation.

Instead, the legislation focuses on eligibility based on an individual not being a disqualified person. Similarly, a person in a partnership is eligible as long as no partner in the partnership is a disqualified person. In relation to corporations, a corporation is eligible as long as no director of the corporation is a disqualified person.

A person is a disqualified person if the person has committed or engaged in a disqualifying act.

A number of disqualifying acts are set out in the legislation, for example:

- a contravention of the Fair Trading (Motor Vehicle Repair Industry) Act 2010 (ACT);
- a contravention of a condition of a licence;
- a contravention of the Fair Trading (Motor Vehicle Service and Repair Industry) Code of Practice 1999 (ACT);
- an offence against the ACL (ACT); or
- an offence against a law of the Territory, the Commonwealth, a State, another Territory or a foreign country punishable by imprisonment for longer than 1 year.

The legislation, however, provides for considerable discretion on the part of the regulator. Even if a person has committed or engaged in a disqualifying act, the person is not a disqualified person if the regulator is satisfied that, in all the circumstances, it would be reasonable not to regard the person as a disqualified person. For example, the time since the disqualifying act was committed or engaged in; and whether the disqualifying act was an isolated event.

New South Wales licensing requirements

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.

New South Wales recently strengthened the fit and proper requirements applicable to motor vehicle repairers. For example, both business licence holders and close associates must be fit and proper persons.

¹⁷⁶ Part 2 of the *Fair Trading (Motor Vehicle Repair Industry) Act 2010* (ACT).

In addition if requested by the regulator, the New South Wales' Commissioner of Police is required to investigate and report on an application for a licence. Presumably, this is aimed at addressing issues around criminal activity.

Mandatory grounds for refusing licences

The New South Wales' legislation also includes grounds for refusing licences for example¹⁷⁷:

- in relation to individuals, not being a fit and proper person to hold a licence, being a controlled member of a declared organisation, being an undischarged bankrupt, having been found guilty in the past 10 years of a motor vehicle stealing offence; and
- in relation to corporations:
 - the director or person involved in the management or person in control would be prohibited from being granted a licence if they had applied as an individual;
 - the officers of the body corporate do not have the qualifications, if any, prescribed by the regulations for the purposes of the licence;
 - the reputation of the body corporate is such that it is not a fit and proper person to hold a licence; or
 - the applicant is not likely to carry on the business honestly and fairly.

Matters to be considered by regulator

The New South Wales' legislation sets out the matters that may be considered by the regulator in determining whether a person is a fit and proper person to hold a licence including:

- whether the applicant has, in the preceding 10 years, been found guilty of an offence involving fraud or dishonesty (whether in New South Wales or elsewhere);
- whether proceedings for such an offence have been commenced against the applicant but have not been finally determined;
- whether the applicant has been convicted of an offence under specified legislation; and
- whether the applicant has failed to pay any contribution or other payment required to be paid by the applicant to the Compensation Fund under the New South Wales' legislation.

The New South Wales' legislation gives the regulator the power to reject a licence application on the grounds that a close associate of the licensee who has significant influence over the operation and management of the business is not a fit and proper person. Close associate appears to have a wider definition than the similar concept under the MVRA and is defined as including anyone who:

- holds or will hold a financial interest, or will exercise any relevant power in the business of the applicant or licence holder and therefore will be able to exercise a significant influence over or with respect to the management or operation of that business;
- holds or will hold any relevant position in the business of the applicant or licence holder; or
- is or will be engaged as a contractor or employed in the business of the applicant or licence holder.¹⁷⁸

¹⁷⁷ *Motor Dealers and Repairers Act 2013* (NSW) – section 25.

¹⁷⁸ *Motor Dealers and Repairers Act 2013* (NSW) – Section 8(1).

This is aimed at preventing family members or close business associates from taking over businesses and running them on a day-to-day basis with the previous licensees being silent partners. As a result, the regulator has the power to prevent former motor vehicle repairers who have broken the law in a serious way from obtaining another licence.

In Western Australia, the MVRA requires the Commissioner to be satisfied that any person who is concerned with the management or conduct of a firm or a body corporate that has applied for a business licence, is of a good character and repute and is a fit and proper person to be concerned in the management of the business to which the application relates.¹⁷⁹ In order to satisfy these requirements the applicants are required to answer various questions in the application form.

It is noted that while Western Australia currently restricts assessment of the fitness and propriety of directors, there is currently scope under the MVRA to also assess close associates if it is determined that they are considered to be involved in the management of the repair business or in control of the repair business.

New South Wales' legislation, however, appears to include more specific safeguards in relation to organised crime.

DISCRETION IN DECISION MAKING

The MVRA provides the regulator with considerable discretion in decision making. It is, however, important to note that in administering the legislation, many of the matters legislated for in New South Wales are addressed in practice in Western Australia by requiring applicants to answer various questions contained in the application form. These requirements are not, however, specifically enshrined in the legislation.

Balance between discretion and transparency

Achieving a balance between providing adequate discretion for the regulator and at the same time providing adequate clarity for stakeholders and regulators alike is an ongoing challenge in formulating legislation.

Discretion

There are varying views in relation to the merits of providing regulators with extensive discretion in decision making.

Providing less discretion through more specific regulation can be seen as delivering greater transparency, clarity and certainty for stakeholders and regulators alike, but has the disadvantage of being less flexible and thus less responsive to marketplace changes.

Setting prescriptive criteria limits the degree of discretion afforded the regulator. For example, specifying disqualifying offences may result in unfairly denying deserving applicants the opportunity to a livelihood.

¹⁷⁹ MVRA – sections 18 and 20.

Flexibility importantly, provides the opportunity to consider issues in context and balance a range of competing issues, for example, new personal circumstances, the opportunity for rehabilitation in circumstances of supervision and monitoring and the broader community benefit in rehabilitation. Discretion allows for the circumstances of each application to be taken into account rather than being constrained by the legislation which in turn limits this discretion. Providing greater discretion also allows more flexibility to respond quickly to changing marketplace circumstances.

Legislation such as the MVRA, which provides regulators with considerable discretion in decision making, is often seen as less rigid as it allows decision makers to consider individual circumstances and context of the particular role. In practice, exercising this discretion is appropriately constrained in that it must be used for the purpose for which it is granted and must constitute a lawful exercise of power.

It is noted that the approach to exercising discretion provided for under the legislation, is broadly consistent with the Senate Standing Committee on Regulations and Ordinances¹⁸⁰ observations in that:

- the decision making power is objectively formulated by way of having processes and procedures in place;
- criteria are identified (the MVRA specifies the general probity criteria); and
- a right of appeal is provided for (the MVRA provides for this).

It is important to note that whilst considerable discretion is provided for under the MVRA, procedural checklists are used by departmental staff to assist in assessing applications. These approved procedures ensure that consistent and objective assessments are made.

Decisions to refuse a repair business licence in complex cases are made by the Commissioner. Routine refusals are delegated to the licensing and registration director. In addition, decisions are ultimately reviewable by the SAT. There is also scope to appeal decisions of the SAT. The outcomes of such decisions as well as general case law are taken into account in reviewing the Department's processes and procedures for assessing applications.

Assessment of applications disclosing offences

The following summarises the Department's considerations for assessing licence applications which list convictions on the National Police Certificate. Each application is dealt with on a case by case basis. Matters which are taken into account reflect case law in this area, for example:

- the length of time since the last offence/pending charge;
- the nature of the offence (for example, did it involve dishonesty, or was it an offence against a person);
- whether the individual's circumstances have changed since the offence occurred;
- whether the offence is directly relevant to the intended occupation, or occurred during the course of their occupation;
- whether the individual will be a supervisor or will be supervised if the authorisation is granted; and
- the seriousness of the offences.

¹⁸⁰ 119th Annual Report 2000 to 2001 (pp15-16).

Applicants are sometimes asked to also provide:

- a written explanation as to the circumstances surrounding the offence/pending charge, including any mitigating factors; and
- their authority for the Commissioner, or her delegate, to obtain further information in relation to the application.

If the Commissioner is not satisfied that the individual is a fit and proper person, or a person of good character and repute to hold an authorisation, the applicant is advised accordingly and invited to provide additional information which may address specific concerns. Final decisions to object to or refuse a licence are taken very seriously as it is appreciated that such decisions affect an individual's capacity to earn a living.

Policies and guidelines

The Department does not currently publish policies or guidelines for determining a person's fitness and propriety on the basis that that not every case is the same. In addition, this serves to avoid setting precedents and helps to avoid applicant confusion.

The regulator often takes into consideration mitigating or extenuating circumstances in relation to each individual. It also often depends on the licence type and therefore, how much supervision, control or responsibility the applicant will ultimately exercise.

The Department does, however, provide guidance when applicants query whether or not their application will be refused on the basis of convictions appearing on their National Police Certificate. In these instances, applicants are advised that they should answer all questions within the application truthfully, and to provide as much additional information regarding those convictions as possible so that the Commissioner has enough information to make an informed decision.

Applicants are also formally given an opportunity to provide additional information if a preliminary view is formed that the application should be refused.

STAKEHOLDER VIEWS: GOOD CHARACTER AND REPUTE AND FIT AND PROPER CRITERIA (REPAIRERS)

The 2013 discussion paper sought stakeholder comment in regard to whether the legislation should specify the types of matters to be taken into account in determining whether a person is of good character and repute and fit and proper. In addition, stakeholders were asked to consider whether any types of offences should automatically disqualify a person from being able to obtain a licence.

The following summarises stakeholder comments in response to this issue.

Summary of stakeholder responses

None of the written submissions expressed the view that the fit and proper provisions should no longer apply. There was support for:

- streamlining the steps required to satisfy the good character and repute and fit and proper person test, particularly on renewal (for example, requiring a statutory declaration to the effect that there have been no changes in relation to criminal convictions since the last application); and
- making the character and fit and proper assessment process more transparent for applicants by making approved policies and guidelines publicly available.

There was very strong support amongst industry stakeholders for automatic disqualification for offences such as illegal odometer tampering and fraud.

Written submissions: industry

The MTA is of the view that red tape could be substantially reduced by modifying the requirements for repair business licensing (including renewal) particularly in terms of the character test.

The MTA expressed support for the retention of the character assessment criteria for business licence applicants, but believed further direction should be included in the legislation about its application.

Where legislative amendment is not necessary, the MTA recommended that the Commissioner adopt certain published policies, which make the assessment process more transparent to applicants and which would provide industry with a clear view about the character of person admitted to the industry.

The MTA also suggested:

- The Commissioner adopt a new processing arrangement under which the applicant(s) or directors of the applicant company must provide:
 - a National Police Certificate on first application and authorise the Department to access the Department of Transport drivers licence database to access the applicant's drivers licence, identity and photographic details; and
 - on renewal, a statutory declaration about criminal convictions in the previous three years and an authorisation for the Department to access CrimTrac. The MTA accepted that a fee may have to be charged. (It is noted that this suggestion will be possible with the implementation of online renewals.)
- Disqualification for a period of 10 years from holding a business licence under the MVRA for offences relating to tampering with odometers, vehicle identification, vehicle "ghosting" or offences relating to stealing motor vehicles or parts of motor vehicles;
- The inclusion of a requirement on the part of the Commissioner to take into account offences for dishonesty and offences against the person where the applicant has been sentenced to a term of imprisonment in the previous 10 years;
- A person should be eligible for a licence if they had not committed an offence for five years involving a custodial term and had not been imprisoned; and
- Consideration be given to the concept of a probationary repair business licence so that the Commissioner is not immediately obliged to make the current irrevocable determination as to whether a person is fit and proper. This would provide the Commissioner authority to allow an operation to commence where there might be doubt as to fitness or financial viability and where operational conduct might give a better indication of suitability. (It is noted that for borderline cases, the Department undertakes NPC checks every 12 months. In addition, NPC checks are required following any pending charge/conviction.)

The MTA suggested that a person should be disqualified under the MVRA from holding a business licence for a period of 10 years for the following:

- offences relating to tampering with odometers, vehicle identification, vehicle "ghosting"; and
- offences relating to stealing motor vehicles or parts of motor vehicles.

The RAC supported the current business licence requirements, but was of the view that the renewal process should be streamlined.

In addition, the RAC supported clarifying the fit, proper, good character and repute requirements for a licensing authority to consider as part of the applicant's application. The RAC noted that an example of how these requirements may be clarified is prescribed in section 18 of the *Motor Vehicle Repairers Act 1980* (NSW).

The IAME believes that it is an unnecessary burden and cost to business to obtain a police clearance on renewal of licences and suggested that a statutory declaration indicating that there has been no change with regards to the police clearance should be used.

Comments about automatic disqualification from obtaining a business licence for certain offences

Online survey: Industry responses

Table 24 below summarises the repair industry stakeholder responses to the online Motor Vehicle Repair Industry Survey question relating to the types of offences which should automatically disqualify a person from being able to obtain a business licence. The responses do not add up to 100% as it was a multiple choice question.¹⁸¹

Table 24: Repairer online survey responses in relation to automatic disqualification

	Yes – offences involving fraud or dishonesty	Yes – offences involving physical violence	Yes – offences relating to stolen motor vehicles or parts	Yes – all of the above offences	No	No view on this issue	Not specified
Should any types of offences automatically disqualify a person from being able to obtain a business licence?	110 (23%)	55 (12%)	125 (26%)	131 (28%)	180 (38%)	27 (6%)	36 (8%)

¹⁸¹ Specific questions relating to this matter were not included in the consumer survey.

OPTIONS RELATING TO GOOD CHARACTER AND REPUTE AND FIT AND PROPER CRITERIA

Four options are under consideration in relation to the good character and repute and fit and proper criteria for considering applications for motor vehicle repair business licences.

Option A: No change

This option would mean no changes to the legislation.

Compared to the other options, option A provides maximum discretion and flexibility in decision making on the part of the Commissioner. Under this option, as is currently the case, there would still be scope to make adjustments to the manner in which the legislation is administered providing the broad probity requirements as set out in the MVRA are still met.

The Department supports this position and notes that in considering this option, decisions to refuse licence applications on probity grounds are not routinely challenged.

Option B: Specify disqualifying offences

Under this option, the legislation would be amended to include certain types of offences which would automatically disqualify a person from being able to obtain a licence. For example, disqualifying a person who has been convicted of a serious offence relating to stolen motor vehicles or parts would result in automatic disqualification from obtaining a business licence.

The Commissioner would however still retain a general discretionary power to consider whether an applicant is of good character and repute and a fit and proper person to hold a licence under the MVRA. This would enable the Commissioner to take into account additional issues which may not be listed as automatically disqualifying an applicant.

Alternatively, should retaining some degree of discretion be preferred, the approach taken by the Australian Capital Territory in relation to repair business licensing could be adopted. The Australian Capital Territory legislation¹⁸² allows for a person who has committed or engaged in a disqualifying act, not to be disqualified, if the regulator is satisfied that, in all the circumstances, it would be reasonable not to regard the person as a disqualified person. For example, the time since the disqualifying act was committed or engaged in; and whether the disqualifying act was an isolated event.

Option C: Specify factors to be taken into account

Under this option, the legislation would be amended to clarify the requirement that a person be of good character and repute and fit and proper. This would be achieved by including factors to be taken into account by the Commissioner in assessing an applicant's suitability. For example, whether the individual has been convicted of an offence against a relevant Act.

The Commissioner would also be provided with a general power to take into account any other factors that the Commissioner considers relevant to exercising the power to assess good character and repute and fit and proper.

¹⁸² Part 2 of the *Fair Trading (Motor Vehicle Repair Industry) Act 2010* (ACT).

Option D: Specify disqualifying offences and factors to be taken into account

Amend the legislation as outlined under both options B and C above.

Benefits and disadvantages

The benefits and disadvantages of each option for industry, consumers and government are outlined in the table below.

	Potential benefits	Potential disadvantages
Option A – No change	<p>Industry</p> <ul style="list-style-type: none"> Status quo maintained. Flexibility to enable entry to industry when specific circumstances justify. <p>Consumers</p> <ul style="list-style-type: none"> Maintains consumer confidence. <p>Government</p> <ul style="list-style-type: none"> No impact on resources associated with implementing changes to legislation. 	<p>Industry</p> <ul style="list-style-type: none"> Concerns regarding lack of transparency not addressed. <p>Consumers</p> <ul style="list-style-type: none"> Current barriers to entry may result in reduced competition. <p>Government</p> <ul style="list-style-type: none"> Decisions more likely to be challenged. (Note: Challenges occur infrequently.)
Option B – Specify ‘disqualifying’ offences	<p>Industry</p> <ul style="list-style-type: none"> Clearer parameters as to who is not eligible. Potential for improved reputation of industry due to transparency around disqualifying offences. <p>Consumers</p> <ul style="list-style-type: none"> Maintains confidence in industry. <p>Government</p> <ul style="list-style-type: none"> Clearer guidance in decision making. Decisions may be less likely to be challenged. (Note: challenges occur infrequently.) 	<p>Industry</p> <ul style="list-style-type: none"> Additional barriers may prevent entry of suitable people to the industry. Reduced capacity on the part of the regulator to take into account circumstances of an applicant may result in fewer successful applicants. Less scope for applicants to successfully challenge decisions not to licence due to offences. <p>Consumers</p> <ul style="list-style-type: none"> Barriers to entry may result in reduced competition. <p>Government</p> <ul style="list-style-type: none"> Reduced discretion in decision making. Less flexibility to respond to marketplace changes.

	Potential benefits	Potential disadvantages
Option C– Specify factors to be taken into account	<p>Industry</p> <ul style="list-style-type: none"> Improved clarity and transparency. Reputation of industry improved due to improved understanding of how decisions are made. <p>Consumers</p> <ul style="list-style-type: none"> Potentially increased confidence in industry. <p>Government</p> <ul style="list-style-type: none"> Increased clarity and transparency around criteria, simplifying decision making. Retains ability to exclude persons who may pose an unacceptable risk (e.g. involved in criminal activity). Decisions may be less likely to be challenged. (Note: challenges occur infrequently.) 	<p>Industry</p> <ul style="list-style-type: none"> Additional barriers may prevent entry of suitable people to the industry. Potentially less scope to successfully challenge decisions not to grant licence. <p>Consumers</p> <ul style="list-style-type: none"> Barriers to entry may result in reduced competition. <p>Government</p> <ul style="list-style-type: none"> Less flexibility to respond to marketplace changes.
Option D: Specify 'disqualifying' offences and factors to be taken into account	As above for Options B and C.	As above for Options B and C.

Questions	
Question 1	Which option do you prefer and why?
Question 2	Are there other options to address this issue? Please identify any additional benefits or disadvantages.
Question 3	What are the cost implications of the different options? Please include quantifiable information if possible.

SUFFICIENT RESOURCES CRITERIA: MOTOR VEHICLE REPAIR BUSINESS LICENSING

ISSUE

An applicant for a motor vehicle repairer's business licence must satisfy the Commissioner in relation to a number of criteria set out in the MVRA. Concerns have been raised in relation to the requirement that an applicant for a motor vehicle repairer's licence have sufficient resources.

The criteria relating to having sufficient resources is under consideration for reform.

The policy issue to be resolved relates to whether this licensing criteria would benefit from being changed to be more specific or removed.

Options for reform in regard to the sufficient resources criteria are discussed in the following section.

Extent of the problem

Given the nature of this issue, quantifying the extent of the problem is not possible as it centres around the question of whether the sufficient resources criteria needs to be retained or made more specific so as to simplify the assessment process.

From 1 July 2011 to 31 December 2014, the Commissioner refused two applications from repair businesses on the grounds that the applicant failed to meet the sufficient resources requirement. The applicants did not appeal the decision to SAT.

The existing legislation appears to provide sufficient foundation to reject applications when individuals fail to meet the sufficient resources criteria. At the same time, the lack of prescription of particular matters that would render a person unfit provides appropriate flexibility and discretion to have regard to all the factors that might be relevant.

Qualitative evidence in relation to sufficient resources criteria

A number of difficulties arise in assessing the financial standing of a business licence applicant. Concerns have been expressed about capacity to properly assess financial viability. As a result, consideration is being given to whether a more objective measure of financial viability should be considered. It could be argued that it is not necessary to fully assess the financial standing of a repairer because the financial obligations of a repairer under the Act are not significant.

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. In the event of a business failure, government could potentially be exposed to criticism for its role in having assessed the business as having sufficient resources.

It is also noted that 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 and becomes insolvent.¹⁸³ The fund is only available as a claim of last resort and all other legal avenues have been exhausted.

OBJECTIVE

The key objective for considering reforms is to ensure that the licensing criteria relating to sufficient resources which apply to businesses involved in repairing motor vehicles are appropriate in the context of the purposes of the MVRA.

This objective supports the purposes of MVRA to:

- improve consumer protection;
- improve the general standard of repairs conducted on motor vehicles; and
- enhance consumer confidence in the motor vehicle repair industry.

BACKGROUND

Application requirements

Application requirements are in place to assist the Commissioner in determining whether a repairer business licence should be granted. A repairer's licence may also be granted to a firm¹⁸⁴ or body corporate.¹⁸⁵

Current application requirements are in place to assist the Commissioner to assess whether applicants have sufficient resources. These requirements include:

- providing information in regard to sufficient financial resources (this is assessed via a credit history report obtained by the licensing authority);
- providing a statement of assets and liabilities for companies established in the previous six months; and
- advising as to whether or not sufficient resources are available to carry on the business.

In administering the legislation, there is some scope for the Commissioner to adjust these requirements and attendant processes providing the broad requirements as set out in the MVRA are still met.

Financial viability is assessed at the time of initial application for a licence and upon renewal.

OTHER JURISDICTIONS' APPROACH TO ASSESSING FINANCIAL VIABILITY

The Australian Capital Territory and New South Wales are the only other jurisdictions that regulate motor vehicle repairers.

¹⁸³ Claims may be made up to a maximum of \$6,000 – see MVRA section 92.

¹⁸⁴ MVRA – section 18.

¹⁸⁵ MVRA – section 20.

Australian Capital Territory

The Australian Capital Territory's legislation does not include any specific criteria relating to sufficient resources.

New South Wales

The New South Wales' legislation includes the applicant being an undischarged bankrupt as a ground for refusing an application for a repairer's licence.

STAKEHOLDER VIEWS: SUFFICIENT RESOURCES CRITERIA (REPAIRERS)

The 2013 discussion paper sought stakeholder commentary in regard to the appropriateness of the current licensing criteria relating to whether an applicant has sufficient financial resources and whether it should be retained.

All of the industry stakeholders who provided written submissions were of the view that the sufficient financial resources test should be retained.

Support was, however, expressed for streamlining the requirements relating to the financial viability of repair businesses (particularly in relation to licence renewals) by instead requiring the business to hold appropriate insurance cover, for example, public liability insurance and workers' compensation cover if employing staff.

It is noted that consumers did not provide responses to this issue.

Written submissions: industry

MTA

The MTA noted that repair businesses pose very little risk to consumers in terms of potential consumer losses and noted that consumers do not generally pay up front for repairs. The MTA, however, acknowledged that consumers place a valuable asset in the care of a repair business and some risk arises in that context. For example, a major consumer loss could arise if a vehicle was damaged or destroyed while in the care of the repair business.

The MTA recommended that the sufficient resources criteria for a business licence be retained but applied in the following manner:

- the requirement for credit history information only be applied to the assessment of the first application;
- on application, the applicant provides a statement of assets and liabilities under statutory declaration and a certificate of currency for public liability insurance; and
- for renewals, the applicant be required to only provide a certificate of currency for public liability insurance.

RAC

The RAC supported retention of provisions relating to sufficient financial resources. The RAC also supported the licensing authority taking into account whether the applicant has been declared bankrupt or if they have been banned or disqualified from being a company director.

CIAWA

The CIAWA supported the retention of the financial resources requirement, but proposed changes in terms of how this is assessed:

- new applicants for a repair business licence be required to provide a statement of assets and liabilities under statutory declaration and a certificate of currency for public liability insurance; and
- for renewal of the repair business licence, to satisfy the financial viability test, the applicant only provides a certificate of currency for public liability insurance.

The CIAWA noted that repair businesses do not create the same risk for consumer as motor vehicle dealers and pointed out that consumers are strongly advised by the Department not to pay in advance for repairs.

As a consequence, the CIAWA believes the primary consumer risk relates to damage to, or loss of a vehicle while in the care of a repairer through damage, fire or theft resulting from the repairer's negligence.

The CIAWA noted that all sensible business owners invest in public liability insurance and it seems that under a regulated licensing scheme with consumer protection as one of its primary objectives, such insurance should be compulsory. The CIAWA noted that section 29 of the MVRA contemplates compulsory insurance and supports such an initiative.

Alternatively, the CIAWA suggested that:

- new applicants for a repair business licence be required to provide:
 - a statement of assets and liabilities under statutory declaration and a certificate of currency for Public Liability insurance; and
 - a statement of assets and liabilities for companies established in the previous six months;
- for renewal of the repair business licence, financial viability test be satisfied by:
 - providing a certificate of currency for Public Liability insurance;
 - advising as to whether or not sufficient resources are available to carry on the business;

It is noted that the Department now obtains a credit history report on behalf of applicants rather than applicants being required to obtain and submit a credit history report.

Online survey: Industry responses

Table 25 below summarises the stakeholder responses to the online Motor Vehicle Repair Industry Survey question relating to the issue of whether a repair business owner should be required to prove that it has sufficient resources.¹⁸⁶

¹⁸⁶ Specific questions relating to this matter were not included in the consumer survey.

Table 25: Repairer online survey responses in relation to sufficient resources criteria

	Yes (%)	No (%)	No view (%)	Not specified (%)	TOTAL (%)
Should a repair business owner be required to prove that it has sufficient material or financial resources?	156 (33%)	211 (44%)	71 (15%)	38 (8%)	476 (100%)

OPTIONS RELATING TO THE SUFFICIENT RESOURCES CRITERIA

Three options are under consideration relevant to the criteria of having sufficient resources to hold a licence.

Option A: No change.

Under this option, there would be scope for administrative changes that reduce compliance costs as long as they remained within the scope of the current legislation. For example, further streamlining application processes. These administrative changes could have the potential to reduce compliance costs for business.

Option B: Objective financial measures

Amend the MVRA to remove the requirement that a licensee has sufficient resources but include provisions that enable the Commissioner to take into account matters such as whether an applicant is or has been bankrupt or insolvent in determining whether to grant a licence.

Option C: Remove the sufficient resources criteria

Amend the MVRA to remove the sufficient resources criteria. Consumers would still have access to the compensation fund which provides 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.¹⁸⁷

Benefits and disadvantages

The benefits and disadvantages of each option for industry, consumers and government are outlined in the table below.

	Potential benefits	Potential disadvantages
Option A – No change	<p>Industry</p> <ul style="list-style-type: none"> • Status quo maintained. • Improved assessments can be adopted as procedural changes are made. 	<p>Industry</p> <ul style="list-style-type: none"> • Concerns regarding lack of transparency not addressed.

¹⁸⁷ Motor Vehicle Repairers Act 2003 (WA) – Part 9.

	Potential benefits	Potential disadvantages
	<p>Consumers</p> <ul style="list-style-type: none"> Maintains consumer confidence. <p>Government</p> <ul style="list-style-type: none"> No impact on resources associated with implementing changes to processes or legislation. 	<p>Consumers</p> <ul style="list-style-type: none"> Continued low level of risk of repairers being unable to meet obligations. <p>Government</p> <ul style="list-style-type: none"> Ongoing difficulties in objectively assessing licence applicants against sufficient resources criteria. Risk of consumers criticising regulator if relied on assessment of financial viability.
Option B – Introduce objective financial measures	<p>Industry</p> <ul style="list-style-type: none"> Improved clarity and transparency around sufficient resources criteria and how they are applied. Potentially reduced compliance costs. <p>Consumers</p> <ul style="list-style-type: none"> Continued consumer confidence. <p>Government</p> <ul style="list-style-type: none"> Simplified decision making. Increased exposure to risk in event of consumer losses due to financial issues not able to be identified. 	<p>Industry</p> <ul style="list-style-type: none"> Additional barriers/less discretion in decision making may prevent entry of suitable people to the industry. <p>Consumers</p> <ul style="list-style-type: none"> Barriers to entry may reduce competition. Potentially reduced confidence in industry as financial checks are more limited and more financial collapses may occur. <p>Government</p> <ul style="list-style-type: none"> Less flexibility in assessing sufficient financial resources.
Option C – Remove sufficient resources criteria	<p>Industry</p> <ul style="list-style-type: none"> Potentially reduced compliance costs. Reduced barriers to entry to the industry. <p>Consumers</p> <ul style="list-style-type: none"> Reduced compliance costs to industry potentially passed on to consumers. <p>Government</p> <ul style="list-style-type: none"> Simplified decision making. 	<p>Industry</p> <ul style="list-style-type: none"> Potential for reduced confidence in industry in the event of business failures. <p>Consumers</p> <ul style="list-style-type: none"> Reduced confidence in industry due to removal of financial checks which may result in increased number of financial collapses. <p>Government</p> <ul style="list-style-type: none"> Possible increased exposure to risk in event of consumer losses due to financial collapses.

Questions	
Question 1	Which option do you prefer and why?
Question 2	Are there other options to address this issue? Please identify any additional benefits or disadvantages.
Question 3	What are the cost implications of the different options? Please include quantifiable information if possible?

DEFINITION OF WHAT IS A MOTOR VEHICLE FOR LICENSING PURPOSES OF THE MVRA

ISSUE

The MVRA applies to repair work carried out on a motor vehicle. Therefore, the definition of a motor vehicle is essential to determining when the licensing and other provisions of the MVRA apply to a business or repairer. For the purposes of the MVRA a motor vehicle is¹⁸⁸:

- a vehicle that is propelled wholly or partly by any volatile spirit, steam, gas, oil, electricity or any other means, apart from human or animal power; or
- a trailer.

For the purposes of the MVRA a motor vehicle does not include;

- a vehicle that is constructed or adapted:
 - for use on a railway or tramway; or
 - principally for use in primary production; or
 - otherwise for use in a manner than does not involve the carriage of persons or goods over public roads; or
- anything that is excluded from the definition of motor vehicle by the MVR Regulations.

Vintage vehicles are currently excluded from the definition of a motor vehicle.¹⁸⁹ The policy issue that needs to be examined is whether the scope of the MVRA should be widened to include vintage vehicles within the definition of a motor vehicle.

OBJECTIVE

To ensure the definition of a motor vehicle remains relevant for the current and future marketplace.

DISCUSSION

The 2013 discussion paper discussed whether the current exclusions from the MVRA, such as vintage vehicles, should continue to be excluded from the definition of motor vehicles. Table 26 outlines the repair industry response to the online Motor Vehicle Repair Industry Survey in relation to this issue.¹⁹⁰

¹⁸⁸ MVRA – section 3(1).

¹⁸⁹ Motor Vehicle Repairers Regulations 2007 – regulation 4. Box-trailer without brakes, a power assisted pedal cycle and an exempt motorised wheelchair are also currently excluded from the definition of a motor vehicle.

¹⁹⁰ Specific questions relating to this matter were not included in the consumer survey.

Table 26: Repairer online survey responses in relation to definition of motor vehicle

	Yes (%)	No (%)	Not specified (%)	TOTAL (%)
Are the exclusions from the definition of motor vehicle appropriate?	313 (66%)	67 (14%)	96 (20%)	476 (100%)

Differing views from industry submissions have been received about whether vintage vehicles should be excluded from the definition of a motor vehicle. The RAC and MTA were of the opinion that the current exclusion of vintage vehicles from the definition of a motor vehicle was appropriate. SGIO held the opposite view.

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 car club members to assist one another with repair and restoration work.

Proponents for including vintage vehicles in the definition of a motor vehicle 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 of vintage vehicles;
- there is the potential for unsafe repairs being carried out on vintage vehicles by unlicensed repairers. This can result in a greater risk of unsafe cars being on the roads; and
- consumers spend considerable sums on repairing vintage vehicles and should therefore be afforded adequate protections.

Repair businesses of vintage vehicles have to comply with the protections and consumer guarantees within the ACL.¹⁹¹ This means that the repairers of vintage vehicles will have a duty to ensure that the repairs are:

- provided with acceptable care and skill or technical knowledge and taking all necessary steps to avoid loss and damage;
- fit for the purpose or give the results that the consumer and repairer had agreed to; and
- delivered within a reasonable time when there is no agreed end date.

If a repairer fails to meet any of those guarantees, the ACL provides the consumer with a right to seek certain remedies, such as compensation for damage and loss suffered in certain situations.

It is noted that as a result of the licensing status of some vintage vehicles they are unable to be used for general commuting purposes but restricted to use in connection with car club events or for road testing purposes. Not all vintage vehicles are licensed in this way. The nature of these vintage and collectible vehicles means that they are on the roads for limited periods of time.

Vintage vehicles are not excluded from the operation of the New South Wales¹⁹² or the Australian Capital Territory¹⁹³ legislation which regulates motor vehicle repairers.

¹⁹¹ If the cost of the vintage vehicle is less than \$40,000 then the purchaser is automatically covered. If the cost of the vintage vehicle is more than \$40,000, then it is likely to be classified as a good of a kind ordinarily acquired for personal, domestic or household use or consumption and thereby covered by the protections and consumer guarantees within the ACL.

OPTIONS

There are two options for consideration.

Option A – No change, maintain status quo

Under this option, the status quo would be maintained and vintage vehicles would continue to be listed under the exclusions in the MVR Regulations from the definition of a motor vehicle.

Option B – Amend the definition of a motor vehicle by removing vintage vehicles from exclusions from the definition

Under this option, vintage vehicles would be removed from the list of exclusions under the MVR Regulations. Repairs to vintage vehicles will then become regulated under the MVRA.

Benefits and Disadvantages

The benefits and disadvantages of each option for industry, consumers and government are outlined in the table below.

	Potential benefits	Potential disadvantages
Options A – Retain the status quo	<p>Industry</p> <ul style="list-style-type: none"> Status quo maintained. Less regulation around the hobby industry of vintage vehicles. <p>Consumers</p> <ul style="list-style-type: none"> No change. <p>Government</p> <ul style="list-style-type: none"> No impact on resources associated with implementing changes to process. 	<p>Industry</p> <ul style="list-style-type: none"> Potential competitive disadvantage to licensed repairers of vintage vehicles. <p>Consumer</p> <ul style="list-style-type: none"> Potential for unsafe repairs if repairs of vintage vehicles are conducted by unlicensed repairers. <p>Government</p> <ul style="list-style-type: none"> None discernible.
Option B – Remove vintage vehicles from list of current exclusions from definition of motor vehicles	<p>Industry</p> <ul style="list-style-type: none"> None discernible. <p>Consumers</p> <ul style="list-style-type: none"> Maintains consumer confidence. 	<p>Industry</p> <ul style="list-style-type: none"> Introduces barriers to entry and compliance costs for businesses that were not previously licensed. For example, a vintage vehicle repair business with 1-2 repairers would need to obtain a business licence for \$1,028 for three years

¹⁹² *Motor Dealers and Repairers Act 2013* (NSW) – section 4 defines the term ‘motor vehicle’. Section 9 of the *Motor Dealers and Repairers Act 2013* (NSW) and regulation 4 of the *Motor Dealers and Repairers Regulations 2014* (NSW) set out exemptions of certain motor vehicles from the operation of this Act.

¹⁹³ *Fair Trading (Motor Vehicle Repair Industry) Act 2010* (ACT) – section 3 defines the term ‘motor vehicle’ as being the same as the definition under section 2 of the *Sale of Motor Vehicles Act 1977* (ACT). Section 92 of the *Sale of Motor Vehicles Act 1977* (ACT) states that certain vehicles can be declared not to be motor vehicles for the purposes of the *Sale of Motor Vehicles Act 1977* (ACT). No such declaration has been made about vintage vehicles.

	Potential benefits	Potential disadvantages
	<p>Government</p> <ul style="list-style-type: none"> • None discernible. 	<p>and the repairers would each need to obtain a certificate for \$77.10 per repairer.¹⁹⁴</p> <ul style="list-style-type: none"> • Potential to reduce competition and could act as a deterrent for new participants. • Risk that current participants could leave the marketplace. <p>Consumers</p> <ul style="list-style-type: none"> • Potential for increased costs with repairers being licensed. • May prevent informal arrangements between vintage car club members. <p>Government</p> <ul style="list-style-type: none"> • Additional resources required to administer compliance and expanded licensing function (would need to ensure cost recovery).

Questions	
Question 1	Which option do you prefer and why?
Question 2	Are there other options to address this issue? Please identify any additional benefits or disadvantages.
Question 3	What are the cost implications of the different options? Please include quantifiable information if possible.

¹⁹⁴ Fees are current as at May 2015.

RENEWAL OF REPAIRERS' CERTIFICATES

ISSUE

The policy issue to be resolved relates to whether perpetual certification of repairers should continue in its current form given:

- a repairer's status in terms of meeting fit and proper requirements may well change over time; and
- perpetual certification of repairers may be unsustainable for government in the long-term given the considerable costs associated with keeping records indefinitely, without any capacity to determine if they are current or accurate.

STAKEHOLDER VIEWS

Stakeholder responses to the 2013 discussion paper indicated broad support for the retention of certification of repairers. There was also general support for the introduction of renewals but with the removal of probity requirements on the basis that the level of risk is limited and probity checks could be undertaken by repair businesses as part of pre-employment processes.

EXTENT OF THE PROBLEM

The extent of the problem caused by the perpetual nature of certification of repairers cannot be readily quantified. It is logical, however, to assume that as evidenced in New South Wales, the magnitude of the problem in terms of maintaining an increasingly inaccurate register will increase exponentially over time. Similarly, the inaccuracy of the register, particularly in terms of whether those listed still meet probity requirements, is likely to increase over time. It is also noted that photo identification issued as part of the current licensing process may become less useful over time.

OBJECTIVE

To ensure that the MVRA's certification requirements for repairers appropriately support the key purposes of the legislation which are to improve consumer protection, to improve the general standard of repairs and to enhance consumer confidence in the industry.

BACKGROUND

The certification of repairers underpins the MVRA's key objective of protecting consumers from poor quality repairs. This is achieved by ensuring that motor vehicle repair work is performed or supervised by suitably qualified repairers.

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. This approach to certification was modelled on the approach taken in New South Wales up until December 2014, at which time, the New South Wales' government introduced a system of triennial renewals for repairers.

Applicants for a repairer's certificate in Western Australia pay a one-off fee of \$77.10¹⁹⁵, however, the MVRA requires certified repairers to notify the Commissioner of any change in address¹⁹⁶ or of any serious criminal convictions that may occur following their certification.¹⁹⁷ There is concern as to whether these notification requirements are in fact being complied with by certified repairers. Ensuring compliance is very costly for the regulator but is important to ensuring the integrity of the regulatory regime.

In addition, these requirements do not address all changes in the circumstances of a certificate holder, for example, whether they are still working in the industry.

Qualification and probity checks

A repairer's certificate is granted where the applicant satisfies the Commissioner that they are:

- a fit person to hold a certificate; and
- sufficiently qualified to carry out each class of repair work to which the application relates.¹⁹⁸

Current application requirements include:

- providing certified copies of qualifications or verified information about work experience (where applicable);
- providing a National Police Certificate issued within the previous three month period;
- answering a range of fitness questions, for example about previous convictions, legal proceedings, adverse findings by a government board or agency and disciplinary action by a licensing authority;
- providing photographic proof of identity; and
- authorising the Commissioner to obtain documents necessary to consider fitness to hold a certificate.

Commissioner's obligations

Under the MVRA, the Commissioner is required to:

- keep a register of certified repairers;
- allow inspection of the register (on application); and
- issue a statement certifying specific matters in the register (for example, whether or not a person is the holder of a certificate and any conditions and restrictions attached to a certificate).

¹⁹⁵ Fee amount is current as at February 2015.

¹⁹⁶ MVRA – section 48.

¹⁹⁷ 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.

¹⁹⁸ MVRA – section 42.

Reliance on register

A person wishing to access the register which is available online (e.g. repair businesses checking to see if a prospective employee is certified for a particular class of repair work) should be able to rely on the accuracy of the register at the time of their enquiry. It is noted, however, that the register lists repairers who have satisfied requirements at a particular point in time. This may not be an issue in terms of qualifications but could be of consequence in terms of probity requirements, as this element is more likely to be subject to change over time.

In the event that certification remains perpetual in nature, the usefulness of retaining probity requirements as a key element of the regime for certifying repairers may need to be further considered.

New South Wales' introduction of renewals for repairers

New South Wales implemented a three year renewal requirement for repairer certification in December 2014.¹⁹⁹ As at March 2015, the associated renewal fee was \$45.

This decision was made despite the New South Wales Better Regulation Office's 2009 review of motor vehicle repair licensing, concluding that it was not necessary to introduce a renewal process for repairer certificates. The review found that any benefits of such a system would not outweigh the additional burdens on tradespeople, repair businesses and government.

A key argument for moving away from perpetual certification centred on concerns that in the absence of a specified certificate term, the number of certificates and electronic storage costs would continue to rise exponentially.²⁰⁰ As a result, New South Wales came to the conclusion that unfunded activities, such as keeping records indefinitely without any ability to determine if they are current or accurate, was not sustainable. It is noted that this issue is likely to have been exacerbated by the fact that New South Wales has regulated repairers for over three decades.

As part of their application to renew their certificates, New South Wales tradespersons are required to provide their address, driver's licence number, tradesperson's certificate number, postal address, phone number and other contact details to New South Wales Fair Trading. They are also required to disclose in their renewal application if:

- they have been found guilty (within the previous 10 years) of any offence;
- there are proceedings for an offence pending against them;
- they have been convicted of an offence against the *Motor Dealers and Repairers Act 2013* (or previous Acts) or regulations;
- they have been convicted under any Act administered by the Minister for Fair Trading; or
- they have failed to pay any contribution or other payment required to be paid by them to the Compensation Fund.

¹⁹⁹ *Motor Dealers and Repairers Act 2013* (NSW) — section 33: licences (including certificates) are not to exceed three years.

²⁰⁰ *Motor Dealers and Repairers Regulation 2014* (NSW), Regulatory Impact Statement, May 2014 (NSW Fair Trading).

The information disclosed is used to determine if the tradesperson is a fit and proper person to hold a certificate in line with section 26 of the *Motor Dealers and Repairers Act 2013* (NSW). It is understood that New South Wales Fair Trading is primarily concerned with major stealing offences or anything to do with fraud and dishonesty or 'rebirthing' stolen cars. In addition to the disclosure requirements placed on the applicant, Fair Trading New South Wales checks their departmental databases and conducts other background checks.

A New South Wales' tradesperson will still be considered a fit and proper person to hold a repairer certification if they have a conviction for minor offences. Another factor that New South Wales Fair Trading considers in determining whether the renewal applicant is a fit and proper person is rehabilitation. So in a situation where the offence occurred some years ago and since then, the applicant had behaved appropriately, they would almost certainly still be granted a licence. It is important to note that decisions are always based on the context and individual circumstances.

Since implementation of the requirements to renew in December 2014, no tradesperson who has applied to New South Wales Fair Trading for a renewal of their repairer certification has had their application rejected (as at March 2015) on the basis that they are not a fit and proper person.

Outcome of consultation

Written submissions

Written submissions reflected general industry support for introducing a renewal requirement for repairer certificates. Views amongst industry about the period of validity for certificates ranged from three years to five years. The MTA reported that based on its own consultation with members, it appeared that repairers would not be opposed to paying a fee upon renewal.

The RAC supported the introduction of renewals so as to ensure that industry knowledge remains relevant and up-to-date. The RAC noted that under the current system, an individual repairer who has been out of the industry for a number of years has the ability to re-enter the industry without any training and recommence work on consumers' vehicles. The RAC believed this could result in safety and quality of repair related issues.

The MTA expressed concern about the movement of tradespersons in and out of the industry and noted that in recent years many had left the industry to take advantage of the mining development boom. It was noted that many of these tradespersons were returning to the industry. The MTA questioned the relevance or currency of their skills.

The MTA suggested that skill currency could be checked through a renewal process involving a check of qualifications as well as employment history. In addition, the MTA noted that employer assessment and supervision would ensure the individual's skills were appropriate for the employer's business.

The MTA did not support the concept of a formal professional development system as it would create new layers of bureaucracy which would not deliver the skill results in a timely manner. The MTA also noted that the rapid evolution of vehicle manufacturing and hence vehicle servicing and repair makes up-skilling on the shop floor a necessity for business success.

The MTA expressed support for the removal of probity tests (whilst supporting the concept of renewals) on the basis that some repairers refuse to apply for certification due to concerns about prior criminal convictions. Its view is that probity checks should be the responsibility of employers rather than the regulator and noted that its members (representing repair businesses) have indicated that they believe it should be their responsibility as employers, to ensure that their employees engage in appropriate conduct.

In addition, the MTA noted that its members have argued that there is no evidence to suggest the character test has resulted in better industry outcomes or greater levels of consumer protection. It was also noted that tradespersons, other than sole traders, do not have close contact with consumers.

The MTA also noted that educational programs offered by correctional institutions include vehicle repair skills and to place inappropriate emphasis on past criminal behaviour would unfairly deny entry of people into the workforce.

Online survey: industry responses

Table 27 below summaries the industry stakeholder responses to the online Motor Vehicle Repair Industry Survey questions relating to the issue of renewal.²⁰¹ The responses do not add up to 100% as it was a multiple choice question.

Table 27: Repairer online survey responses in relation to renewal of repairer certificates

	Yes – every 3 years (%)	Yes – every 5 years (%)	Yes – every 10 years (%)	No (%)	Not specified (%)
Should repairer certificates be issued for a limited duration and require renewal?	33 (7%)	58 (12%)	46 (10%)	212 (45%)	93 (20%)

OPTIONS

There are four options for consideration.

Option A – No change, maintain status quo

Under this option, the status quo would be maintained.

Option B – Retain qualification requirements but remove the fit and proper test

Under this option, the qualification requirements would be retained but the fit and proper test would be removed. Certification would remain perpetual as is currently the case.

Option C – Retain both the qualification and fit and proper test requirements and require renewals

Under this option, retain the qualification and fit and proper test requirements. Renewals would be required every three or five years.

²⁰¹ Specific questions relating to this matter were not included in the online Consumer survey.

Option D – Remove the fit and proper person test but require renewal

Under this option, the qualification requirements would be retained but the fit and proper person test would be removed. Renewals would be required every three or five years.

Benefits and disadvantages

The benefits and disadvantages of each option for industry, consumers and government are outlined in the table below.

	Potential benefits	Potential disadvantages
Option A – No change	<p>Industry</p> <ul style="list-style-type: none"> • Certification and fee only required once. <p>Consumers</p> <ul style="list-style-type: none"> • Maintains a level of consumer confidence. <p>Government</p> <ul style="list-style-type: none"> • No impact on resources associated with implementing changes to process or legislation. 	<p>Industry</p> <ul style="list-style-type: none"> • Risk that certified repairers who no longer satisfy the probity test or have been out of the industry for an extended period operate in the industry. • Repair businesses relying on a register which may not be accurate. • Probity check may discourage suitably qualified people from seeking certification. <p>Consumers</p> <ul style="list-style-type: none"> • Risk of consumer detriment due to unfit person continuing to operate in the industry. <p>Government</p> <ul style="list-style-type: none"> • Costs of maintaining a register will steadily increase (electronic storage costs). • Ongoing difficulty in ensuring industry compliance with the legislation (e.g. matching certified repairers to licensed businesses). • Information dissemination less effective due to inaccurate register.
Option B– Retain qualification requirements but remove the fit and proper person test. Certification would remain perpetual as is currently the	<p>Industry</p> <ul style="list-style-type: none"> • Certification and fee only required once (same as current arrangements). • Potentially reduced compliance costs of around \$63 per three year period (represents cost of obtaining a National Police Certificate). 	<p>Industry</p> <ul style="list-style-type: none"> • Risk that certified repairers who no longer satisfy the probity test continue to operate in the industry. <p>Consumers</p> <ul style="list-style-type: none"> • Risk of consumer detriment due to unfit person continuing to operate in the industry.

	Potential benefits	Potential disadvantages
case.	<ul style="list-style-type: none"> Clarity around reliance on the register for qualifications only. May encourage suitably qualified people concerned about exclusion because of past behaviour to seek certification. <p>Consumers</p> <ul style="list-style-type: none"> Maintains confidence that appropriately qualified tradespersons are on register. <p>Government</p> <ul style="list-style-type: none"> Better able to meet responsibility for maintaining an accurate register. Reduced costs in not undertaking probity checks. 	<p>Government</p> <ul style="list-style-type: none"> Costs of maintaining a register will steadily increase (electronic storage costs). Ongoing difficulty in ensuring industry compliance with the legislation (e.g. matching certified repairers to licensed businesses). Information dissemination less effective due to inaccurate register. The National Police Certificate also acts as a proof of identity check. A new proof of identity check will need to be implemented.
Option C – Retain both the qualification and fit and proper test requirements and require renewals every three or five years	<p>Industry</p> <ul style="list-style-type: none"> Increased accuracy of register. <p>Consumers</p> <ul style="list-style-type: none"> Increased confidence in industry (regular checks of compliance with certification requirements). <p>Government</p> <ul style="list-style-type: none"> More effective mechanism for maintaining the integrity of the register. Increasing costs of maintaining a register able to be contained through increased income. Regulator better able to ensure compliance with the legislation (e.g. matching certified repairers to licensed businesses). Dissemination of information to repairers made easier. 	<p>Industry</p> <ul style="list-style-type: none"> Additional costs to meet renewal requirements estimated at \$108 per three year period.²⁰² <p>Consumers</p> <ul style="list-style-type: none"> Reduced risk of consumer detriment as a result of dealing with unfit repairers due to regular assessment by regulator on renewal. <p>Government</p> <ul style="list-style-type: none"> Additional resources required to administer renewal process (would need to ensure cost recovery).
Option D: Retain qualification requirements but remove the	<p>Industry</p> <ul style="list-style-type: none"> Reduced one-off compliance cost of around \$63 (represents cost of obtaining a National Police Certificate). 	<p>Industry</p> <ul style="list-style-type: none"> Risk that certified repairers who no longer satisfy the probity test continue to operate in the industry.

²⁰² This figure is based on the renewal fee of \$45 for repairers recently introduced in NSW plus the cost of obtaining a National Police Certificate of \$63.

	Potential benefits	Potential disadvantages
fit and proper person test and require renewals every three or five years	<ul style="list-style-type: none"> Clarity around reliance on the register for qualifications only. Increased accuracy of register. May encourage suitably qualified people concerned about exclusion because of past behaviour to seek certification. <p>Consumers</p> <ul style="list-style-type: none"> Maintains confidence that appropriately qualified tradespersons are on register. <p>Government</p> <ul style="list-style-type: none"> Reduced costs in not undertaking probity checks. More effective mechanism for maintaining the integrity of the register. Increasing costs of maintaining a register able to be contained through increased income. Regulator better able to ensure compliance with the legislation (e.g. matching certified repairers to licensed businesses). Dissemination of information to repairers made easier. 	<p>Consumers</p> <ul style="list-style-type: none"> Risk of consumer detriment due to unfit person continuing to operate in the industry. <p>Government</p> <ul style="list-style-type: none"> Additional resources required to administer renewal process (would need to ensure cost recovery). The National Police Certificate also acts as a proof of identity check. A new proof of identity check will need to be implemented.

Questions	
Question 1	Which option do you prefer and why?
Question 2	Are there other options to address this issue? Please identify any additional benefits or disadvantages.
Question 3	What are the cost implications of the different options? Please include quantifiable information if possible.
Question 4	Do you prefer renewal periods of three years or five years?

PART 4: ISSUES NOT REQUIRING FURTHER ACTION

This part of the paper identifies areas where it is considered that no change is required and provides reasons for retaining the current arrangements. Stakeholder input in relation to these matters is not required at this stage.

OVERVIEW OF ISSUES

The following summarises the areas identified as not requiring change.

Motor vehicle dealers

This section of the paper deals with the following matters in relation to motor vehicle dealers:

- continuing to regulate yard managers under the MVDA; and
- retention of current arrangements in relation to used car warranties.

Motor vehicle repairers

This section of the paper deals with the following matters in relation to motor vehicle repairers:

- continuing to regulate motor vehicle repairers under the MVRA; and
- no introduction of specific consumer guarantees under the MVRA.

CONTINUATION OF LICENSING REGIME FOR YARD MANAGERS

POSITION

A number of options have been considered in relation to the future regulation of yard managers. These options were included in the discussion paper released for public consultation in August 2013 and include:

- **Option A:** Remove licensing requirements for yard managers. Under this option, the onus of checking the suitability of employees would shift from the licensing authority to employers;
- **Option B:** Replace licensing requirements for yard managers with regulation prohibiting dealers from employing unsuitable staff in a customer service capacity (based on factors such as criminal record and disqualification from holding an occupational licence);
- **Option C:** Implement a negative licensing scheme for yard managers; or
- **Option D:** Retain the current regulatory arrangements for yard managers.

Following careful consideration, it is concluded that retention of current regulatory arrangements applicable to yard managers is the most viable option. The current level of regulatory costs to industry is considered appropriate in light of the Government's consumer protection objectives, coupled with the important role yard managers play in assuming responsibility for managing dealerships and ensuring compliance with the Act.

As a consequence, the option of deregulating yard managers will not be further pursued in this Review. As current arrangements are being retained, no additional costs are envisaged. Forgone savings for industry in retaining yard manager licensing is \$412 per three year period plus a one-off cost of between \$500 and \$600 to obtain the required qualification.

In addition, it is important to note that industry stakeholders are generally strongly in favour of retaining the current regulatory arrangements for yard managers despite the associated costs.

Further detail in regard to reasons underpinning this decision are provided below.

Stakeholder views

Based on the outcome of stakeholder consultation undertaken to date, there is strong industry and consumer support for retention of the current regulatory arrangements relevant to yard managers.

Further details in regard to the outcome of stakeholder consultation are provided later in this section.

GOVERNMENT'S POLICY OBJECTIVES

The Government's key objectives in regulating yard managers include:

- providing essential consumer protections;
- screening for dishonest and unscrupulous people and preventing them from operating in the industry;
- improving safety of vehicles to be used on the roads; and
- assisting in crime prevention.

REASONS FOR RETAINING CURRENT ARRANGEMENTS

The key reasons for retaining the current regulatory arrangements in relation to yard managers are summarised below.

Consumer risk

A licensed dealer may operate over multiple premises and is therefore not able to provide effective day to day oversight and management at all premises. Yard managers are therefore required to step into a dealer's shoes and effectively run a business on behalf of the dealer.

This may include oversight and management of the business and sales staff; acceptance of sales contracts; making decisions about warranty repairs and dealing with customer complaints relating to the conduct of sales staff and transactions with consumers.

As yard managers are effectively in control of the day to day business of a particular dealership it is important that they be suitably skilled and licensing provides this certainty.

Negative licensing unviable

The option of negative licensing is not considered viable in that it would not meet the core consumer protection objectives of the legislation relating to screening for dishonest and unscrupulous people and preventing them from operating in the industry. As noted above, yard managers often assume responsibility for managing dealerships and ensuring compliance with the Act.

In the absence of licensing, general consumer protection legislation would protect consumers to some degree, but it is noted that the ability to prevent unsuitable persons from operating in the industry would be limited, and prohibition from working in the industry is only likely to arise after an event where significant consumer detriment has occurred.

Funding of regulatory functions

Advisory, conciliation and compliance functions performed under the MVDA are partly funded by licensing fees. Removing the licensing requirements for yard managers would reduce the availability of funding available to undertake these functions. This could in turn adversely affect consumer access to advice and redress.

OUTCOME OF CONSULTATION

Overview

The discussion paper invited stakeholders to comment on whether licensing of yard managers should be retained in Western Australia.

A total of four written submissions were received, including two from industry associations, one from an individual dealer business and one from a consumer association. Three of the written submissions indicated strong support for regulating yard managers while one submission did not support the regulation of yard managers.

A total of 190 responses (comprising 149 industry responses and 41 consumer responses) were received to the online surveys. Responses generally reflected strong support amongst industry and consumers for retention of current regulatory arrangements in relation to yard managers.

Written submissions

The following summarises written submissions received from stakeholders in response to the question of whether the current licensing regime for yard managers should continue.

CIAWA

The CIAWA strongly supported the retention of the legislation. The CIAWA noted that caravan dealers are strongly of the view that their customers are reassured by the knowledge that the people they are dealing with are qualified and approved by an independent regulatory authority.

MTA

The MTA recommended that the licensing of yard managers be retained.

The MTA noted that this position could be viewed as supporting an unnecessary level of regulation but believed that Western Australia's system has resulted in a more professional industry than in other jurisdictions which do not licence yard managers.

The MTA advised that it had consulted extensively with its 1,800 members and reported there was strong consensus in favour of a licensing system which not only regulates entry at the business level but also entry at the individual sales staff level.

The MTA stated that this issue had been considered at length and the conclusion had been reached that licensing of yard managers generally improves professional and ethical standards, leading to improved outcomes for consumers.

The MTA also noted that the largest national dealer group in Australia has expressed the view that that the Western Australia's system encourages a better quality of yard manager through the regulator screening process.

Smith Broughton Pty Ltd

Smith Broughton Pty Ltd stated that licensing requirements should only apply to business entities.

Consumers' Association of Western Australia (Inc.)

The CAWA strongly supported the current regulatory arrangements and applauded the protections afforded to Western Australia consumers as a result of the current licensing regime as compared to other jurisdictions.

Response to online surveys

Industry survey

Responses to the online Dealer Industry Survey reflected a high level of industry satisfaction with the current licensing requirement of yard managers. Table 28 below summarises the industry stakeholder responses to the online Motor Vehicle Dealer Industry Survey question about the level of regulation which is necessary for yard managers.

Table 28: Dealer online survey responses in relation to the regulation of yard managers

	Licensing – licensing authority assesses suitability based on set criteria	Restrictions on entry – employer assess suitability on set criteria	No regulation – employer assesses suitability	Not specified	Total
What level of regulation do you think is necessary for yard managers?	100 (67%)	34 (23%)	8 (5%)	7 (5%)	149 (100%)

Consumer survey

Responses to the Consumer Online Survey indicated that of those consumers who specified a preference, there was a significant level of support for the current requirement to licence yard managers. Table 29 below summarises the consumer responses to the Consumer Online Survey question about the level of regulation which is necessary for yard managers.

Table 29: Consumer survey response to the level of regulation necessary for yard managers

	Licensing – licensing authority assesses suitability based on set criteria	Restrictions on entry	No regulation – employer assesses suitability	Not specified	TOTAL
What level of regulation do you think is necessary for Yard Manager?	21 (51%)	2 (5%)	3 (7%)	15 (37%)	41 (100%)

RTRG RECOMMENDATIONS

A yard manager is someone who is employed or engaged by or on behalf of a dealer to manage or supervise the dealer's business and to ensure general compliance with the MVDA.

The RTRG recommended that the motor vehicle dealer licensing category for yard managers should be abolished.²⁰³ Under this approach, the onus for checking the suitability of employees would shift from the licensing authority to employers. The RTRG noted that alternative methods for banning individuals who breach the rules may need to be put in place including negative licensing arrangements.²⁰⁴

The RTRG's recommendation has been considered in the context of the possible risk to consumers and stakeholder input in response to the discussion paper.

²⁰³ Reducing the Burden - Report of the Red Tape Reduction Group, Government of Western Australia 2009, page 92, Recommendation 9.2.

²⁰⁴ Reducing the Burden - Report of the Red Tape Reduction Group, Government of Western Australia 2009, page 92.

RETENTION OF CURRENT ARRANGEMENTS IN RELATION TO USED CAR WARRANTIES

POSITION

The discussion paper released for public consultation in August 2013 sought views about whether the current arrangements in relation to used car warranties should be retained, or if these warranties should be replaced by the consumer guarantees provided under the ACL.

Following careful consideration, it was concluded that the retention of the used car warranty provisions in the MVDA was the most viable option for delivering on the Government's consumer protection objectives at this time. The ACL consumer guarantees will therefore continue to operate concurrently with the MVDA used car warranty provisions.

It is noted that as current arrangements are being retained, no additional costs are envisaged.

Further details in regard to the reasons underpinning this decision are provided below.

Stakeholder views

Based on the outcome of stakeholder consultation undertaken to date, there appears to be very strong industry support for retaining the current used car warranty arrangements despite the associated costs. Consumer stakeholders also expressed strong support for the retention of current used car warranty arrangements.

Further details in regard to the outcome of stakeholder consultation are provided at the end of this section.

INTERGOVERNMENTAL AGREEMENT

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'. Table 30 below outlines how the used car warranty applies to second hand motor vehicles with a purchase price of \$4,000 or more. Table 31 below outlines how the used car warranty applies to second hand motorcycles with a purchase price of \$3,500 or more.

Table 30: Used car warranty for second hand motor vehicles

Age of car	Kilometres travelled at time of sale	Warranty entitlement
Not more than 10 years	Not more than 150,000km	Earlier of 3 months or 5,000km
10 to 12 years	150,000km to 180,000 km	Earlier of 1 month or 1,500km
More than 12 years	More than 180,000 km	No statutory warranty – ACL provisions apply.

Table 31: Used car warranty for second hand motorcycles

Age of motor cycle	Kilometres travelled at time of sale	Warranty entitlement
Not more than 8 years	Not more than 80,000km	Earlier of 3 months or 5,000km
More than 12 years	More than 80,000km	No statutory warranty – ACL provisions apply.

The ACL, which commenced on 1 January 2011, introduced uniform, national consumer protection legislation. The ACL replaced Part V of the *Trade Practices Act 1974* (Cth) and the *Fair Trading Act 1987* (WA) and was 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.²⁰⁵

REASONS FOR RETAINING CURRENT ARRANGEMENTS

The key reasons for retaining used car warranty provisions in the MVDA are summarised below.

Consistency with the ACL

In line with Western Australia’s commitment under the relevant Intergovernmental Agreement, the used car warranty provisions in the MVDA have been assessed as being generally consistent with the ACL. It is therefore possible for the MVDA and ACL to continue to operate concurrently, as was the case with the *Trade Practices Act 1974* (Cth) and the *Fair Trading Act 1987* (WA).

MVDA warranty provisions provide clarity

The MVDA used car warranty provisions have the advantage of clearly specifying a standard to be met in relation to the obligation to repair certain used vehicles (i.e. that the vehicle is roadworthy having regard to its age). This has enabled well-established guidelines to be developed identifying the items in a used vehicle which would need to be repaired to make the vehicle roadworthy and place it in a reasonable condition having regard to its age. These guidelines provide certainty for consumers and dealers. The Department has also published guidelines for dealers and consumers in relation to the application of the warranty obligations.²⁰⁶ There appears to be a significant level of awareness amongst consumers of their warranty rights under the MVDA.

The consumer guarantees under the ACL apply more broadly and do not set specified timeframes or distances after which the obligation will no longer apply. The ACL requires that a motor vehicle be of ‘acceptable quality’, as determined by a reasonable consumer. 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.

²⁰⁵ Intergovernmental Agreement for the Australian Consumer Law - Clause 3.2.

²⁰⁶ Do I have to fix it? A guide to used car warranty for dealers – March 2013.

The determination of whether a defect in a vehicle breached the guarantee of acceptable quality will to a large part depend on the circumstances of the purchase. At this early stage in the life of the ACL, the concept of 'acceptable quality' may be regarded as less certain than the requirements specified under the MVDA.

No cost saving

The removal of the used car warranty would not generate any cost savings. If the MVDA used car warranty was to be removed, then the provisions of the ACL would still continue to apply. However, at this early stage in the life of the ACL the nature of the protections available for purchasers of used vehicles is not as well defined as it is under the used car warranty.

Removal of the warranty would create uncertainty. Therefore, the Department would need to undertake an extensive education campaign for motor vehicle dealers and consumers about the ACL warranties and their application. The Department would also anticipate an increase in complaints for a period, whilst understanding about the applicability of consumer guarantees under the ACL increased amongst motor vehicle dealers and consumers.

OUTCOME OF CONSULTATION

Overview

The discussion paper invited stakeholders to comment on whether it is necessary to continue to have specific statutory warranty provisions under the MVDA.

A total of six written submissions were received, including three from associations, two from individual businesses and one from a consumer legal service. Three of the written submissions indicated strong support for retaining the current warranty arrangements while three supported reliance on the ACL alone.

A total of 190 responses (comprising 149 industry responses and 41 consumer responses) were received in response to the online surveys. Responses generally reflected strong support amongst industry and consumers for retention of current warranty arrangements under the MVDA.

Stakeholder support for current arrangements

Stakeholder input indicated strong support for retaining current arrangements whereby both the ACL and used car warranty provisions under the MVDA should continue to apply.

Based on the outcome of stakeholder consultation undertaken to date, there is strong industry and consumer support for retention of the used car warranty provisions in the MVDA.

Further details in regard to the outcome of stakeholder consultation are provided below.

Written submissions

The following summarises written submissions received from stakeholders.

MTA

The MTA strongly supported the retention of warranty provisions in the MVDA as it provides a degree of certainty in respect to warranty claims on motor vehicles.

Royal Automobile Club

The RAC supports the removal of the statutory obligation to repair (used car warranty) as they consider that the ACL adequately covers all types of vehicles and condition and believes that this would not result in any reduction in protections available to consumers.

Pickles Auctions Pty Ltd

Pickles Auctions Pty Ltd considers that the ACL provides adequate cover for the purpose of the statutory warranty.

Smith Broughton Pty Ltd

Smith Broughton Pty Ltd does not support the continuation of specific statutory warranties under the MVDA.

Consumer Credit Legal Service (Western Australia) Inc.

The CCLSWA supports the retention of the statutory warranty provisions of the MVDA for the following reasons:

- the warranty is easier to enforce;
- the warranty specifies a clear standard to be met; and
- the MVDA allows for intervention by the Department in warranty disputes.

Response to online surveys

Industry

Responses to the online Dealer Industry Survey indicated that of the respondents who specified a preference, there was significant support for retention of the used car warranty under the MVDA. Table 32 below summarises industry responses.

Table 32: Dealer online survey responses in relation to used car warranties

	The consumer guarantees under the ACL only	Both the used car warranty under the MVDA and the consumer guarantees under the ACL	Not specified	Total
What legislative requirements would you prefer to see retained in relation to second hand vehicles?	26 (17%)	82 (55%)	41 (28%)	149 (100%)

Consumers

Responses to the Consumer Online Survey indicated that of those consumers who specified a preference, there was strong support for retention of the used car warranty under the MVDA. Table 33 below summarises consumer responses.

Table 33: Consumer online survey responses in relation to the need for both warranties under the MVDA and the protections under the ACL

	Yes	No	Not specified	Total
Do you think it is necessary to have both sets of rights (i.e. under the MVDA and under the ACL?)	22 (54%)	2 (5%)	17 (41%)	41 (100%)

CONTINUATION OF THE LICENSING AND CERTIFICATION REGIME FOR REPAIRERS

POSITION

A number of options have been considered in relation to the future regulation of motor vehicle repairers. These options were included in the discussion paper released for public consultation in August 2013 and include:

- **Option A:** Remove all industry specific regulation for repairers;
- **Option B:** Implement a negative licensing scheme for repairers;
- **Option C:** Retain current licensing requirements applicable to repair businesses, but remove certification requirements for individual repairers; or
- **Option D:** Retain the current regulatory regime for repairers.

Following careful consideration, it is concluded that retention of the current regulatory arrangements for repairers is the most viable option as it imposes a relatively low level of regulatory burden on motor vehicle repairers whilst delivering on the Government's objectives of consumer protection, road safety and crime prevention.

As a consequence, the option of deregulating motor vehicle repairers will not be further assessed at this time. It is noted that given current arrangements are being retained, no additional costs are envisaged. Forgone savings in retaining the current regime of between \$860 and \$3,000 per business per three year period (fees are based on the number of repairers employed) and a one-off cost of \$77 per individual repairer to obtain certification.

In addition, it is important to note that industry stakeholders are generally strongly in favour of retaining the current regulatory arrangements for yard managers despite the associated costs.

Further details in regard to reasons underpinning this decision are provided later in this section. In addition, a summary of stakeholder comments and responses to online survey is provided at the end of this section.

Stakeholder views

Based on the outcome of stakeholder consultation undertaken to date, there appears to be strong industry and consumer support for the retention of the regulatory regime for motor vehicle repairers.

Further details in regard to the outcome of stakeholder consultation are provided at the end of this section.

HISTORICAL PERSPECTIVE: INTRODUCTION OF REPAIRER LICENSING

It is noted that the repair industry was strongly in support of the introduction of a licensing regime for repairers, having lobbied successive governments for many years.

The legislation to regulate repairers was the culmination of two committees of inquiry and extensive consultation with the motor vehicle industry and consumers over a number of years. The following provides an historical context for the decision to proceed with regulating the repair industry.

Motor Vehicle Repair Industry Review Committee

Support for regulating the motor vehicle repair industry can be traced back to the early 1990's, with the appointment of a Motor Vehicle Repair Industry Review Committee. The committee was established to assess the functioning of the industry with a view to possible legislative reform.

Although unable to address all of its terms of reference in the time allotted, the committee released a preliminary report in December 1992 recommending a number of reforms, many of which are now included in the MVRA. The committee also recommended that there be further study of the New South Wales' regulatory scheme for motor vehicle repairers.

Bloffwitch Committee

In 1993, a second committee (referred to as the Bloffwitch Committee), was established to conduct an investigation of other Australian legislation regulating the motor vehicle repair industry, and the extent to which the repair industry in Western Australia supported regulation.

The Bloffwitch Committee closely examined the New South Wales' regulatory scheme and conducted two surveys that indicated substantial industry support for similar controls in Western Australia. The Bloffwitch Committee delivered its report in December 1997, recommending the introduction of a scheme based largely on the New South Wales model.

Consumer consultation

In July 2000, the then Ministry of Fair Trading embarked on a public consultation program with a strong consumer focus. The consultation consisted of focus groups with urban consumers, in-depth phone interviews with regional consumers and a phone interview survey of 400 urban and regional consumers. The research indicated that there was considerable dissatisfaction with repairers with poor quality repairs cited as a major reason for their dissatisfaction.

The findings also indicated strong support for the introduction of legislation, with 80 per cent of all respondents supporting regulation of the repair industry.

Consultation Bill

In June 2002, a draft of the Motor Vehicle Repairers Bill was released as a Green Bill. A period of three months was allowed for public submissions. This final legislation largely reflected the Green Bill but included a number of minor changes suggested by respondents during the consultation period.

GOVERNMENT'S POLICY OBJECTIVES

The Government's policy objective in regulating repairers 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 will become increasingly important as rapid advances in motor vehicle technology continue to occur. Over time, this will result in the need for greater skills, education and specialised training to ensure the knowledge and skills of repairers keeps pace with such changes.

RTRG RECOMMENDATIONS

Concerns have been raised about the administrative burden imposed by the licensing requirements of the MVRA²⁰⁷, with the RTRG suggesting that it may be more appropriate for the motor vehicle repair industry to self-regulate.²⁰⁸ Consistent with this view, the RTRG recommended that the MVRA be repealed and a negative licensing arrangement introduced under which unsuitable repairers could be prohibited from working in the industry.²⁰⁹

The RTRG's recommendation has been assessed against the possible risk to consumers in removing regulation of motor vehicle repairers.

REASONS FOR RETAINING CURRENT ARRANGEMENTS

The key reasons for retaining the current regulatory regime are summarised below.

Stakeholders support current arrangements

Based on the outcome of stakeholder consultation undertaken to date, there appears to be strong industry and consumer support for retention of the current regulatory regime.

Further details in regard to the outcome of stakeholder consultation are provided below.

Consumer risk

The current regime successfully addresses risks to consumers which are assessed as relatively high. These include:

- the 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 vehicle safety.²¹⁰

Limitations of general consumer protection measures

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. It is, however, noted that the ability to prevent unsuitable persons from operating in the industry would be limited and the crime prevention mechanisms would be lost. It is also noted that the Department's advisory, conciliation and compliance functions are partly funded by licensing fees.

²⁰⁷ Reducing the Burden - Report of the Red Tape Reduction Group, Government of Western Australia 2009, pages 88-89.

²⁰⁸ Reducing the Burden - Report of the Red Tape Reduction Group, Government of Western Australia 2009, page 89.

²⁰⁹ Reducing the Burden - Report of the Red Tape Reduction Group, Government of Western Australia 2009, page 90, Recommendation 9.1.

²¹⁰ Better Regulation Office Report – Licensing of Selected Occupations, New South Wales Government, April 2009 – page 33.

Compensation fund of benefit to consumers

The MVRA includes a compensation fund to provide additional protections to consumers in the event of loss incurred as a result of dealing with a repairer. Although only one claim has been made against the compensation fund to date, evidence of the number of claims made under compensation or fidelity funds in relation to other occupational areas²¹¹ indicates that such a fund is a valuable consumer protection mechanism. This benefit would be lost in the event of deregulation.

Negative licensing unviable

The alternative option of negative licensing is not considered viable in that it would not meet the core objectives of ensuring skilled and reputable people manage repair businesses.

Legislation recently implemented

The legislation has been in place for a relatively short period of time and appears to be operating effectively. To deregulate at this point is seen as counter-productive and potentially confusing for both industry and consumers.

Outcome of New South Wales' review

New South Wales has a similar legislative regime in place 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.²¹² It is noted that New South Wales Better Regulation Office conducted an assessment of a number of licensing occupations including New South Wales' repairers licensing regime. The final report published in 2009, concluded that the regime should remain in place.²¹³

OUTCOME OF CONSULTATION

Overview

The discussion paper invited stakeholders to provide input in relation to whether licensing of motor vehicle repair businesses and the certification of individual repairers should be retained in Western Australia.

Four written submissions including one from a government agency and three from individual repair businesses indicated strong support for deregulating repairers.

Six written submissions including four from a range of associations, one from an insurance provider and one from an individual repair business indicated strong support for retaining the current regulatory regime. One written submission from an individual repairer called for the introduction of a national licensing scheme.

²¹¹ Other occupations such as real estate agents and settlement agents in Western Australia and motor vehicle dealers in other jurisdictions.

²¹² In Western Australia some work can be carried out under the supervision of a certificate holder.

²¹³ Better Regulation Office Report – Licensing of Selected Occupations, New South Wales Government, April 2009 – page 33.

A total of 517 responses (comprising 476 industry responses and 41 consumer responses) were received to the online surveys. Responses generally reflected strong support amongst industry and consumers for retention of current regulatory arrangements.

Written submissions

The following summarises written submissions received from stakeholders in response to the question of whether the current licensing regime should continue.

Small Business Development Corporation (government agency)

The SBDC expressed the view that a strong case based on sound evidence for retaining the licensing scheme for motor vehicle repairers had not been made out in the discussion paper. Coupled with this, the SBDC believed there is an apparent lack of resources within Commerce to readily undertake compliance activities, especially in regional Western Australia.²¹⁴

The SBDC expressed concern that the licensing scheme had created what it considered to be a large amount of red tape for limited benefit to the community. The SBDC noted that industry may potentially be better served by a self-regulatory approach whereby motor vehicle repair businesses would be encouraged to become members of peak industry bodies as a means of maintaining high industry standards and ensuring the best service for consumers. The peak industry body would therefore have greater responsibility for industry standards and educating industry participants. The SBDC noted that this is a role which, to a large degree, was already being performed by the MTA.

It is noted that the RTRG review coincided with the commencement of licensing of repair businesses and certification of repairers. This may, to some extent, explain the concerns expressed by stakeholders contacted as part of the RTRG's review. Previously unregulated established businesses and individual repairers were, at the time, coming to terms with having to make an application for a business licence and being required to pay fees to the then Motor Vehicle Industry Board to comply with the new regulatory requirements.

It is noted that, many of the licensing and certification processes have been streamlined since the Commissioner became the licensing authority.

Pilbara Towing and Tilt Tray Services

Pilbara Towing and Tilt Tray Services noted that the legislation makes it very difficult to attract mechanics in the Pilbara when competing with the high income offered by the mining companies or mining supply companies that do not have to comply with this legislation. Pilbara Towing and Tilt Tray Services noted the cost of obtaining a licence as well as the added cost of flying an assessor from Perth to the Pilbara due to no assessors being available in the region.²¹⁵

²¹⁴ It is noted that the Department has sufficient resources to undertake compliance activities in relation to repairers. It is acknowledged that compliance work in some regional areas is somewhat restricted due to additional costs associated with travel to these areas, however, the Department has officers based in a number of regional centres who are able to provide assistance where required.

²¹⁵ When an applicant cannot obtain sufficient points from formal qualifications or work experience, a certification test can be completed. At the completion of the test, a written report of assessed competence from the test assessor is forwarded directly to the Department.

Gin Gin Mechanical Services

Gin Gin Mechanical Services expressed opposition to licensing of repairers as it is seen as being a waste of time and money.

Active Auto Electrics

Active Auto Electrics expressed opposition to licensing as it is seen as being excessive and unnecessary.

A Grade Mechanical Services

A Grade Mechanical Services suggested that national regulation would be cheaper and more cost effective. It would also provide a basis for other states to adopt such regimes.

Field Air Conditioning and Auto Electrical

Field Air Conditioning and Auto Electrical was in favour of business licensing of motor vehicle repair businesses, although it was noted that it is time consuming and expensive.

MTA

The MTA indicated strong support for the retention of the MVRA and the licensing and certification system which operates in Western Australia. The MTA noted that it was a prime mover in the development of this system because of its potential to improve repair industry standards through the establishment of standards and benchmarks.

In regard to repairer certification, the MTA noted that the core of the current licensing system is that it requires a skilled workforce, assessed against verifiable standards. The MTA believes that this certification of skills gives the community confidence in the repairer system. The MTA noted that without certification, a primary reason for regulating this industry would be removed.

The MTA reported that it had conducted a series of seminars and had made a survey available online to obtain member feedback for the Review. Responses indicated that over 90 per cent of MTA members surveyed supported the retention of the business licensing system and the same percentage supported the continuation of certification of individual repairers.

The MTA noted that the New South Wales Office of Better Regulation recognised the benefits of licensing as better consumer protection; greater vehicle fleet safety; better crime prevention and an increased level of trust in industry. The MTA strongly endorsed this view, and believed that these outcomes result from better managed businesses and a better skilled workforce. The MTA believes that these benefits are well demonstrated in Western Australia with low levels of disputation between repairers and consumers and high levels of trust in the industry.

Royal Automobile Club

The RAC expressed the view that the licensing of motor vehicle repair businesses and certification of individual repairers should be retained to ensure consumer confidence in the industry.

Caravan Industry Association of Western Australia (Inc.)

The CIAWA strongly supported the retention of the motor vehicle repair industry licensing scheme.

SGIO

The SGIO noted that it would not support completely removing all regulation, for example, removing all licensing for motor vehicle repairers as it would pose some level of risk to consumers in terms of the safety and quality of repairs and therefore the safety of vehicles on Western Australian roads.

Insurance Council of Australia

The ICA supported the retention of the licensing of motor vehicle repair businesses in Western Australia as it provides consumer protection, is outcomes focussed and includes appropriate provisions and sanctions for the enforcement and cancellation of licences as required.

The ICA was also of the view that removing all licensing requirements would pose an unacceptable level of risk for consumers and indicated support for the issues highlighted in the discussion paper. The ICA also noted that continued repairer licensing would enhance the consistency and the degree of skills, equipment, technology and expertise within the Western Australian smash repair industry.

Consumers' Association of Western Australia (Inc.) (representing consumers)

The CAWA supported the retention of the licensing of motor vehicle repair businesses as it delivers protection to Western Australian consumers. The CAWA viewed Western Australia's system as working satisfactorily by offering safeguards for consumers and repairers alike. The CAWA also supported the continued certification of individual repairers.

Responses to online surveys

Industry survey

Responses to the online Repair Industry Survey indicated a high level of industry satisfaction with the current certification requirements for tradespersons. Table 34 below summarises repair industry responses.

Table 34: Repairer online survey responses in relation to certification requirements for tradespersons

	Yes	No	Not specified	Total
Are the current certification requirements for tradespersons appropriate?	379 (80%)	52 (11%)	45 (9%)	476 100.0%

Consumer survey

Responses to the Consumer Online Survey indicated that of those consumers who specified a preference, there was a significant level of support for the current approach to licensing and certifying repairers. Table 35 below summarises consumer survey responses.

Table 35: Consumer online survey responses in relation to licensing and certifying repairers

	Repair business to be licensed and tradespersons to be certified (current situation)	Repair business to be licensed and business owner to make sure that employee tradespersons have the right training and experience	No licensing of repair businesses and no certification of tradespersons required	Other	Not specified
What level of regulation is necessary for the motor vehicle repair industry?	12 (29%)	6 (15%)	1 (2%)	4 (10%)	18 (44%)

Previous consumer research commissioned by the Department

Of relevance is the consumer research conducted prior to the introduction of the legislation.²¹⁶ This research indicated that around 64 per cent of respondents were dissatisfied with the motor vehicle repair industry, with 82 per cent of these respondents citing poor quality of work as the major reason for dissatisfaction with their repairer.

The research also found that just over two-thirds of respondents indicated that they were willing to pay extra for their repairs if a licensing system was introduced.

This research indicated that consumers were mainly concerned about the quality of the repair work carried out on their vehicles. In addition, around one third of respondents rated honesty and trustworthiness of the repairer as the most important criteria when having their cars serviced or repaired.

²¹⁶ Research commissioned by the Department and conducted by Hides Consulting in 2000. Research included phone surveys of approximately 400 consumers based in metropolitan and regional Western Australia.

CONSUMER GUARANTEES NOT TO BE INTRODUCED UNDER THE MVRA

POSITION

The option of introducing specific consumer guarantees under the MVRA rather than continuing to rely on consumer guarantees offered under the ACL was raised in the discussion paper released for public consultation in August 2013.

No gaps have been identified in the current consumer guarantees offered by the ACL which would warrant specific consumer guarantees being introduced under the MVRA. Further, it is noted that incorporating consumer guarantees under the MVRA would simply duplicate existing consumer guarantees offered under the ACL.

It is therefore concluded that separate consumer guarantees under the MVRA are unnecessary as consumer guarantees offered by the ACL appear to be adequately delivering on the Government's consumer protection objectives.

As a consequence, the option of introducing consumer guarantees under the MVRA will not be further assessed at this time.

It is noted that given current arrangements are being retained, no additional costs are envisaged.

Stakeholder views

Based on the outcome of stakeholder consultation there did not appear to be any support from industry for the introduction of consumer guarantees under the MVRA. Apart from the RAC (which represents both repairers and consumers), no submissions were received from consumers in regard to this issue.

Further details about the outcome of stakeholder consultation are provided later in this section.

BACKGROUND

The MVRA does not include any specific obligations in relation to the standard of work performed by repairers.

The ACL, which commenced on 1 January 2011, introduced uniform, national consumer protection legislation. The ACL replaced Part V of the *Trade Practices Act 1974* (Cth) and the *Fair Trading Act 1987* (WA) and was implemented by the *Competition and Consumer Act 2010* (Cth) and the *Fair Trading Act 2010* (WA). It includes consumer guarantees which apply to any goods or services provided by a motor vehicle repairer. Appendix A sets out further details about the types of consumer protections and remedies available under the ACL.

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 the vehicle is normally used for personal, household or domestic purposes. A repairer must guarantee that the repair services:

- are provided with due care and skill;

- are reasonably fit for any specified purpose; and
- will be provided within a reasonable period of time.

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. The ACL also provides consumers with remedies if a good or service fails to meet a consumer guarantee. Appendix A sets out further details about the remedies available to consumers under the ACL.

Disciplinary action may also be taken under the MVRA 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 relates²¹⁷; or
- the holder of a business licence for utilising someone to carry out repair work of a class prescribed by the MVR Regulations who either does not have a certificate for that class of repair work or who is not being supervised by someone who has a certificate for that class of repair work.²¹⁸

There is also a high level of education around the consumer guarantees available under the ACL. There is an ACL website (www.consumerlaw.gov.au), which outlines information about the ACL, the rights of consumers under the ACL when purchasing goods or services, the enforcement of ACL and consumer policy in Australia. The Department, in conjunction with its counterparts in the other states and territories, has also published an industry guide to the ACL for motor vehicle sales and repairs, which is available through its website and the ACL website. The Department also provides advice services, which can be utilised by consumers and repairers if they need help understanding their rights and responsibilities.

The discussion paper released for public consultation in August 2013 sought views about whether:

- the consumer guarantees in the ACL are sufficient in relation to repair work; or
- specific consumer guarantees should be introduced within the MVRA to complement the protections already available under the ACL to consumers.

REASONS FOR RETAINING CURRENT ARRANGEMENTS

The key reasons for not further considering the introduction of consumer guarantees within the MVRA are summarised below.

ACL coverage

The ACL currently provides an appropriate framework of consumer guarantees and remedies. No gap has been identified in the current consumer protection provisions under the ACL, which would need to be covered by specific provisions under the MVRA.

²¹⁷ 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.

²¹⁸ MVRA – sections 39 and 68.

Intergovernmental Agreement

In order to ensure that we continue to comply with Western Australia's commitment under the relevant Intergovernmental Agreement, any new consumer guarantees under the MVRA would need to be generally consistent with the ACL. Therefore, any new consumer guarantees would essentially duplicate the existing ACL consumer guarantees. This duplication could potentially create confusion for consumers.

Stakeholder support not evident

There appears to be no stakeholder support for the introduction of consumer guarantees and remedies under the MVRA. (See below for further detail.)

Counter to key policy objectives

The key objectives of the MVRA were to address the incidence 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.

The introduction of consumer guarantees and remedies under the MVRA would expand the scope of the MVRA beyond its original objectives.

OUTCOME OF CONSULTATION

Overview

The discussion paper invited stakeholders to provide input in relation to whether the current consumer guarantees in the ACL are sufficient in relation to repair work. Another issue raised was whether it is necessary to have any other requirements in relation to the standard of repair work.

A total of five written submissions were received, including three from associations, one from an individual business and one from an insurance company.

The issue was not considered as part of either the Consumer Online Survey or online Motor Vehicle Repair Industry Survey.

Written submissions

The following summarises the written submissions received from stakeholders in response to the question of whether the current consumer guarantees in the ACL are sufficient.

Royal Automobile Club, A Grade Mechanical Services and Insurance Council of Australia

The RAC, A Grade Mechanical Services and ICA all stated in their written submissions that in their opinion the current guarantees in the ACL are sufficient in relation to motor vehicle repair work. ICA also stated that there should be greater education about the relevant provisions within ACL and how they apply to motor vehicle dealers and repairers.

MTA

The MTA was of the opinion that the ACL is too prescriptive when dealing with the issues of acceptable quality and major and minor defects in motor vehicles. However, despite this, the MTA did not support the introduction of a new layer of regulation in the MVRA through consumer guarantees which would duplicate the ACL. The MTA expressed the opinion that the MVRA is about setting entry standards, assessing and monitoring skills and preventing unskilled and unqualified people from providing services to consumers.

SGIO

The SGIO queried the effectiveness of the ACL consumer guarantees on the basis that consumer awareness of their rights is low. The SGIO was also of the view that the ACL consumer guarantees may not expressly cover issues that can arise in the repair process. For example, what level of repair quality and customer service should the customer receive? Is the consumer being overcharged? Is the repairer inducing the consumer to enter into a transaction they do not understand or exposes them to a potential liability they do not understand? However, the SGIO was of the view that a code of conduct regulating repairers and consumers (insured and uninsured) may be a preferred way of resolving concerns, rather than the introduction of consumer guarantees within the MVRA.

COMMENT

As discussed above, there is a high level of publicly available information about the consumer guarantees under the ACL, issued by the Department and also through the ACL and ACCC websites. Furthermore, as outlined in Appendix A, the ACL consumer guarantees are wide ranging and cover issues that can arise in the repair process around quality and customer services. For instance, the ACL prohibits repairers from engaging in conduct that is misleading or deceptive or likely to mislead or deceive. Similarly, the ACL also states that a person must not act unconscionably when selling or supplying goods or services to a consumer. Therefore, the Department is of the opinion that there are adequate levels of information available to consumers about their rights and there is an appropriate framework of consumer guarantees under the ACL that cover the various issues that can arise in the motor vehicle repair process.

APPENDIXES

Appendix A – ACL consumer guarantees relevant to motor vehicle repairs

Appendix B – Comparison of MVDA warranty provisions and ACL consumer guarantees

Appendix C – MVRA classes of repair work

APPENDIX A – ACL CONSUMER GUARANTEES RELEVANT TO MOTOR VEHICLE REPAIRS

CONSUMER GUARANTEES

Consumer guarantees under the ACL 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.

Services provided by 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.²¹⁹ 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.²²⁰ Goods must come with clear title and without any undisclosed securities or charges attached to them. Consumers have a right to undisturbed possession of the goods.²²¹

Services must be delivered with due care and skill, be fit for any disclosed purpose and, if the contract for services does not set a time frame, be completed within a reasonable time.²²²

The ACL 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. 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 obtain compensation for the difference in value of the goods or services.

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 that they wanted the goods or service for a particular purpose or to achieve a specific result, which they could not achieve; or
- the goods are unsafe or the supply of services has created an unsafe situation.²²³

²¹⁹ ACL – sections 54, 55, 56 and 57.

²²⁰ ACL – section 58.

²²¹ ACL – sections 51, 52 and 53.

²²² ACL – sections 60, 61 and 62.

²²³ ACL – section 260 and 268.

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 deceive²²⁴ or make false or misleading representations²²⁵;
- a person must not act unconscionably when selling or supplying goods or services to a consumer²²⁶;
- a prohibition on unfair contract terms in standard form consumer contracts²²⁷;
- a provision relating to unsolicited goods or services – it is unlawful to request payment for unsolicited goods or services²²⁸;
- a requirement that a supplier must provide proof of transaction to consumers (such as a tax invoice) for goods or services valued at \$75 or more (or on request if less than \$75).²²⁹ The proof of transaction must set out the details of the supplier, date of supply, details of the goods or services and the price; and
- a requirement that a supplier provide, upon request, an itemised bill for services 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 seven days of the request.²³⁰

²²⁴ ACL – section 18.

²²⁵ ACL – section 29.

²²⁶ ACL – section 21.

²²⁷ ACL – section 23.

²²⁸ ACL – section 40.

²²⁹ ACL – section 100.

²³⁰ ACL – section 101.

APPENDIX B – COMPARISON OF MVDA WARRANTY PROVISIONS AND ACL CONSUMER GUARANTEES

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

		MVDA	ACL
Standard to be met		Roadworthy and in reasonable condition having regard to its age.	Of acceptable quality (taking into account nature and price) and reasonably fit for purpose.
Vehicles covered	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"> ordinarily acquired for personal domestic or household use; or for use principally in transportation of goods on public road.
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"> less than \$40,000; or ordinarily acquired for personal domestic or household use; or for use principally in transportation of goods on public road.
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.
What is covered	Tyres, battery, radio, tape-player, air-conditioning	x	✓
Defects can be excluded by dealer		✓	✓
Duration	Beyond 5,000 km	x	If reasonable in the circumstances.
	Beyond 3 months	x	
Remedies	Repair	✓	✓
Refund		x	For major failure
Compensation for difference in value		x	For major failure
Compensation for consequential loss		x	✓

APPENDIX C – MVRA CLASSES OF REPAIR WORK

Classes of repair work prescribed for the purposes of the MVRA	
1	<p>Air conditioning work</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>
2A	<p>Autogas work (business licence only)</p> <p>Any work required to do any of the following —</p> <ul style="list-style-type: none"> (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; (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; (c) to convert a fuel system that consists partly of a gas fuel system — <ul style="list-style-type: none"> i. to a fuel system that is not a gas fuel system; or ii. to a gas fuel system.
2	<p>Body building work</p> <ul style="list-style-type: none"> (a) any work required to do any of the following: <ul style="list-style-type: none"> i. to fabricate or modify a body of a motor vehicle to fit the vehicle's chassis; ii. to fit the chassis of a motor vehicle with a fabricated or modified body; (b) but does not include any of the following: <ul style="list-style-type: none"> i. realigning the chassis of a motor vehicle; ii. realigning, repairing, preparing for painting or painting a panel, frame or other component of the body of a motor vehicle; iii. installing or removing any glass in the body of a motor vehicle, other than installing or removing any moveable glass, if required.
3	<p>Brake work</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>Cooling system work</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>Cylinder head reconditioning work</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>

Classes of repair work prescribed for the purposes of the MVRA

6	<p>Diesel fitting work</p> <p>Any work required to do any of the following —</p> <p>(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 —</p> <ul style="list-style-type: none"> i. a diesel fuel system; ii. a diesel engine; <p>(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 —</p> <ul style="list-style-type: none"> i. an air induction system; ii. an ignition system; iii. an engine management system; iv. a cooling system; v. a hydraulic system; <p>(c) to do any of the following in respect of a heavy vehicle or light vehicle propelled by a diesel engine —</p> <ul style="list-style-type: none"> i. to fabricate, service, repair or modify the exhaust system; ii. to repair or replace a rim, tyre or tube; iii. to balance a wheel.
7	<p>Diesel fuel and engine work</p> <p>Any work required to do any of the following —</p> <p>(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;</p> <p>(b) to service or repair a diesel engine that is, was, or may be, fitted to a heavy vehicle or light vehicle;</p> <p>(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 —</p> <ul style="list-style-type: none"> i. an air induction system; ii. an ignition system; iii. an engine management system.
8	<p>Driveline servicing and repair work</p> <p>Any work required to service or repair a driveline that is, was, or may be, fitted to a motor vehicle.</p>
9	<p>Driveline work</p> <p>Any work required to service, repair, overhaul or modify a driveline that is, was, or may be, fitted to a motor vehicle.</p>
10	<p>Electrical accessory fitting work</p> <p>Any work required to install or remove an electrical accessory to a motor vehicle.</p>
11	<p>Electrical work</p> <p>Any work required to install, service, repair, overhaul or remove any of the following in a motor vehicle —</p> <p>(a) any electrical equipment or system (including any electrical accessory and any electrical component associated with any other prescribed accessory);</p> <p>(b) any electrical part of any other thing or system.</p>
12	<p>Engine reconditioning work</p> <p>Any work required to overhaul an engine (including a cylinder head of an engine) that is,</p>

Classes of repair work prescribed for the purposes of the MVRA

	was, or may be, fitted to a motor vehicle.
13	<p>Exhaust system work</p> <p>Any work required to fabricate, service, repair or modify the exhaust system in a motor vehicle.</p>
14	<p>Glazing work</p> <p>Any work required to install, repair or remove a windscreen or other glass in the body of a motor vehicle.</p>
15	<p>Heavy vehicle servicing work</p> <p>Any work required to do any of the following —</p> <p>(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 —</p> <ul style="list-style-type: none"> i. the fuel system; ii. the air induction system; iii. the engine; iv. the ignition system; v. the engine management system; vi. the cooling system; vii. the driveline; viii. electronic drive management system; ix. the braking system; x. the steering system; xi. the suspension system; xii. a wheel assembly; xiii. any hydraulic system; <p>(b) in respect of a heavy vehicle during an emergency breakdown —</p> <ul style="list-style-type: none"> i. to diagnose the cause of the breakdown; ii. to carry out emergency servicing or repair on a thing diagnosed as the cause or possible cause of the breakdown.
16	<p>Heavy vehicle work</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"> i. the fuel system; ii. the air induction system; iii. the engine; iv. the ignition system; v. the engine management system; vi. the cooling system; vii. the driveline; viii. any electronic drive management system; ix. the braking system; x. the steering system; xi. the suspension system; <p>(b) to fabricate, service, repair or modify the exhaust system;</p> <p>(c) to service, repair or replace a wheel assembly;</p>

Classes of repair work prescribed for the purposes of the MVRA

	<ul style="list-style-type: none"> (d) to balance a wheel or align the wheels; (e) to service or repair any hydraulic system; (f) to carry out minor electrical servicing or minor electrical repair; and (g) to install or remove a prescribed accessory.
17	<p>Light vehicle servicing work</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"> i. the fuel system; ii. the air induction system; iii. the engine; iv. the ignition system; v. the engine management system; vi. the cooling system; vii. the driveline; viii. any electronic drive management system; ix. the braking system; x. the steering system; xi. the suspension system; xii. a wheel assembly; xiii. any hydraulic system; <p>(b) in respect of a light vehicle during an emergency breakdown —</p> <ul style="list-style-type: none"> i. to diagnose the cause of the breakdown; ii. to carry out emergency servicing or repair on a thing diagnosed as the cause or possible cause of the breakdown.
18	<p>Light vehicle work</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"> i. the fuel system; ii. the air induction system; iii. the engine; iv. the ignition system; v. the engine management system; vi. the cooling system; vii. the driveline; viii. any electronic drive management system; ix. the braking system; x. the steering system; xi. the suspension system; <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>

Classes of repair work prescribed for the purposes of the MVRA

	(g) to install or remove a prescribed accessory.
19	<p>Mechanical accessory fitting Means any work required to install or remove a mechanical accessory to a motor vehicle.</p> <p><i>mechanical accessory</i> —</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>Motor cycle servicing work 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"> i. the fuel system; ii. the air induction system; iii. the engine; iv. the ignition system; v. the engine management system; vi. any cooling system; vii. the driveline; viii. any electronic drive management system; ix. the braking system; x. the steering system; xi. the suspension system; xii. a wheel assembly. <p>(b) in respect of a motor cycle during an emergency breakdown —</p> <ul style="list-style-type: none"> i. to diagnose the cause of the breakdown; and ii. to carry out emergency servicing or repair on a thing diagnosed as the cause or possible cause of the breakdown.
21	<p>Motor cycle work 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"> i. the fuel system; ii. the air induction system; iii. the engine; iv. the ignition system; v. the engine management system; vi. any cooling system; vii. the driveline; viii. any electronic drive management system; ix. the braking system; x. the steering system; xi. the suspension system; <p>(b) to fabricate, service, repair or modify the exhaust system;</p> <p>(c) to service, repair or replace a wheel assembly;</p>

Classes of repair work prescribed for the purposes of the MVRA

	<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>Painting work</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> <ol style="list-style-type: none"> i. realigning the chassis of a motor vehicle; ii. realigning or repairing a panel, frame or other component of the body of a motor vehicle; iii. installing or removing any glass in the body of a motor vehicle, other than installing or removing any moveable glass, if required.
23	<p>Panel beating work</p> <p>(a) any work required to do any of the following —</p> <ol style="list-style-type: none"> i. to realign the chassis of a motor vehicle; ii. to realign or repair a panel, frame or other component of the body of a motor vehicle; <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>Steering, suspension and wheel aligning work</p> <p>Any work required to do any of the following in respect of a motor vehicle —</p> <ol style="list-style-type: none"> (a) to service or repair the steering system or suspension system; or (b) to balance a wheel or align the wheels;
25	<p>Transmission work</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> <ol style="list-style-type: none"> (a) a transmission; (b) a final drive assembly the differential of which is integrated with a transmission; or (c) an electronic drive management system.
26	<p>Trimming work</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>Tyre fitting (heavy) work</p> <p>Any work required to do any of the following in respect of a heavy vehicle —</p> <ol style="list-style-type: none"> (a) to repair or replace a rim, tyre or tube; or (b) to balance a wheel.
28	<p>Tyre fitting (light) work</p> <p>Any work required to do any of the following in respect of a light vehicle or motor cycle —</p> <ol style="list-style-type: none"> (a) to repair or replace a rim, tyre or tube; or (b) to balance a wheel.

Classes of repair work prescribed for the purposes of the MVRA

29

Underbody work

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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