



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



Decision Regulatory Impact Statement

**Review of the Motor Vehicle Dealers Act 1973
and the Motor Vehicle Repairers Act 2003**

July 2019

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EXECUTIVE SUMMARY

This report represents the third and final stage of the combined Review of the *Motor Vehicle Dealers Act 1973* (MVDA) and the *Motor Vehicle Repairers Act 2003* (MVRA). It is recognised that this area of regulation affects a significant proportion of Western Australians, whether as consumers, employees or business owners.

The key purpose of the Review is to assess the effectiveness of the legislation and to ensure it is appropriate and operating in the interests of both consumers and industry. The report presents an overview of stakeholder input to the Review, an analysis of options and makes several recommendations for reform for the Government's consideration.

The report is presented in the form of a Decision Regulatory Impact Statement (DRIS) with the key aim of ensuring that detailed impact analysis is provided to aid decisions, particularly where a recommendation for reform may result in a significant negative impact on stakeholders.

CHANGING LANDSCAPE

The Review identified substantial changes facing the industry due to technological disruption with the transition to electrically powered and self-drive autonomous vehicles. Given this rapidly changing landscape, it is vital that the regulatory framework remains relevant and does not obstruct industry's capacity to respond and adapt.

FUNDING REGULATORY SERVICES

The Department currently provides a range of regulatory services relevant to the purchase, repair and maintenance of motor vehicles.

These regulatory services fall into two broad categories:

- administering and enforcing the Australian Consumer Law (ACL), for example, dealing with consumer complaints about consumer guarantee rights as they relate to motor vehicles; and
- administering and enforcing the licensing regimes for dealers and repairers, for example, compliance activities in relation to unlicensed activities.

The delivery of regulatory services applicable to dealers and repairers are funded through licensing and certification fees paid by industry participants as well as the Government's Consolidated Fund. At present, the revenue generated from fees falls short of full cost recovery and, as a result, the Consolidated Fund is utilised to meet the funding shortfall. In particular, the dealer licensing scheme currently only achieves approximately 50 per cent cost recovery.

This situation is of concern particularly in the context of current budgetary pressures and the Government's policy of setting fees at a level that reflects the full cost of providing the regulatory services in relation to occupational licensing Acts such as the MVDA and MVRA. The principle of charging full cost is seen as justifiable given the Government's goals of ensuring resources are allocated efficiently and ensuring taxpayers are not required to pay for services which they do not use.

Further consideration

The Review noted that budgetary pressures may in the future impact the Department's delivery of services to the community and concluded that alternative funding models should be explored.

These initiatives will be advanced separately in consultation with relevant stakeholders and Government agencies.

CONSULTATION

The Review process included extensive consultation with stakeholders. Stakeholder comment was received in response to a discussion paper released in August 2013 and a comprehensive Consultation Regulatory Impact Statement (CRIS) released in November 2015. In addition, stakeholders provided responses to online surveys targeting consumers and industry participants. Over the course of the review, stakeholders made 83 written submissions and provided over 650 responses to online surveys targeting industry and consumers.

REVIEW OUTCOMES

Overall, the Review found that the legislation appears to be operating reasonably well but that there remains scope for a number of regulatory reforms. In making recommendations, the Review's primary goal is to achieve a regulatory framework which provides appropriate protections for consumers whilst at the same time maintaining the commercial viability of the motor vehicle sales and repair industries.

The Review makes 20 recommendations comprising:

- thirteen recommending amendments to the MVDA, MVRA or Regulations; and
- seven recommending retention of the status quo.

Eleven recommendations for amendments to the primary legislation and two recommendations for amendments to the Regulations have been assessed as unlikely to result in a significant impact on stakeholders. Seven recommendations for retention of the status quo are included for completeness in reporting back to stakeholders.

A considerable number of the recommendations for reform deliver red tape reductions for business, improved protections for consumers and streamline licensing processes for government.

OVERVIEW OF RECOMMENDATIONS FOR AMENDING THE MVDA and MVRA

The following summarises recommendations for amending the MVDA and MVRA. A full list of recommendations including those recommending amendments to subsidiary legislation and those recommending retention of the status quo is provided in the following section.

Appendix A presents an overview table including all recommendations, brief description of the current situation in Western Australia, impact assessment, regulatory arrangements in other jurisdictions and the policy position reached by the Review.

Recommendations for amending the MVDA

Licensing of salespersons

Recommendation

That the MVDA be amended to allow the requirement for motor vehicle dealer salespersons to be licensed to sunset in three years from enactment of the amendment.

That the MVDA be amended to place an obligation on dealers to ensure salespersons hold qualifications approved by the Commissioner.

Car hire operators

Recommendation

That car hire operators be removed from the definition of dealer under the MVDA.

That car hire operators selling vehicles other than directly to licensed motor vehicle dealers be required to be licensed under the MVDA.

The Review considered whether car hire operators should continue to fall within the definition of motor vehicle dealer. At present, all car hire operators are required to be licensed unless they have obtained an exemption on the basis that:

- buying or selling vehicles does not comprise a significant part of their business; and
- they ordinarily dispose of their vehicles directly to licensed dealers.

The Review concluded that car hire operators should fall outside of the licensing regime for dealers given the primary objective of the MVDA is to establish a licensing regime for people whose ordinary business is buying, selling and exchanging motor vehicles in Western Australia.

This change will mean that car hire operators selling directly to the public will be required to be licensed but that car hire operators opting to dispose of vehicles directly through a licensed dealer will fall outside of the licensing regime and will no longer have to seek an exemption.

This approach will deliver reduced regulatory burden for industry and is consistent with the approach taken in other jurisdictions.

It is noted that the ACL provides protections for consumers in that car hire businesses must comply with a number of consumer guarantees, including that rental vehicles must be of acceptable quality, for example, vehicles must be safe to drive.

Financiers

Recommendation

That financiers be removed from the definition of dealer under the MVDA.

That financiers selling vehicles other than to or through licensed motor vehicle dealers be required to be licensed under the MVDA.

The Review considered whether financiers should continue to fall within the definition of motor vehicle dealer. At present, financiers are able to obtain an exemption if they ordinarily dispose of their vehicles directly to licensed dealers.

The Review concluded that financiers should fall outside of the licensing regime for dealers given the primary objective of the MVDA is to establish a licensing regime for people whose ordinary business is buying, selling or exchanging motor vehicles in Western Australia.

Financiers would no longer be required to seek an exemption from the provisions of the MVDA if they dispose of vehicles to or through licensed motor vehicle dealers. This approach delivers reduced regulatory burden for financiers. Financiers would, however, be required to be licensed under the MVDA if they dispose of vehicles directly to members of the public.

Excluding financiers from the definition of motor vehicle dealers will bring Western Australia into line with the majority of other jurisdictions.

Used car warranties

Recommendation

That the MVDA be amended to allow for requirements in relation to statutory used car warranties to sunset in five years from enactment of the amendment.

The Review considered whether current arrangements in relation to used car warranties should continue. The MVDA currently includes specific statutory warranty provisions which place an obligation on dealers to repair or make good defects in second hand vehicles sold to consumers.

The ACL, which commenced in January 2011, introduced uniform, national consumer protection legislation. Goods and services sold or provided by motor vehicle dealers are subject to the consumer guarantees offered under the ACL.

The Review assessed the used car warranty provisions offered under the MVDA as being generally consistent with the ACL. The MVDA and ACL provisions are therefore able to apply concurrently. The Review, however, considered that it is appropriate to work towards reliance on the ACL rather than industry specific legislation.

The Review concluded that the used car warranty provisions under the MVDA should sunset in five years' time in favour of full reliance on the ACL. This will provide a reasonable period of time for planned ACL initiatives and proposed reforms to be implemented. During this time, general consumer and industry understanding of consumer guarantees available under the ACL is likely to further improve.

Manufacturer/demonstrator warranties

Recommendation

That the MVDA be amended so that a manufacturer's warranty obligation in relation to time is determined from the date the demonstration vehicle was first licensed to be driven rather than from the date of purchase.

The Review considered the operation of the manufacturer's warranty and statutory warranty under the MVDA in relation to demonstration vehicles. At present, purchasers of demonstration vehicles are entitled to the full time period of the manufacturer's warranty from the date of purchase.

The Review concluded that the manufacturer's warranty obligation, in relation to time, should be determined from the date the demonstrator vehicle was first licensed to be driven rather than the date of purchase. This approach will provide consumers in WA with similar rights as apply in other jurisdictions in relation to demonstrator vehicles.

Consignment sales by auctioneers

Recommendation

That the MVDA be amended to exclude sales on consignment made by dealer auctioneers on behalf of corporate fleet owners and other businesses from the consignment sales provisions of the MVDA.

The Review considered whether protections in relation to consignment sales provided for under the MVDA should continue to apply where businesses dispose of fleet vehicles through licensed dealer auctioneers.

At present, dealer auctioneers engaged in disposing vehicle fleets owned by businesses or corporations such as mining companies are required to comply with consignment sales provisions under the MVDA, for example, the establishment of trust accounts for dealing with moneys received from the sale of vehicles on consignment.

The Review concluded that arrangements between auctioneers and fleet owners are commercial arrangements and beyond the intent of the consumer protection objectives of the legislation. The Review supports excluding sales on consignment made by dealer auctioneers on behalf of corporate fleet owners.

This approach is consistent with current exclusions provided for under the MVDA in relation to sales on behalf of trade owners and dealers. The proposed change will deliver reduced regulatory burden for business as well as reduced administrative and compliance costs for government.

Following completion of the Review process, a number of concerning cases involving consignment sales have come to light which have caused considerable consumer detriment.

For example, in one case, consumers suffered significant losses of around \$1million due to the dealer not passing on the proceeds of vehicle sales. In addition, the dealer misled vehicle sellers as to the value for which their vehicles were being sold, thus reaping higher commissions on false pretences. The company in question closed down and the directors fled overseas making recovery of consumer losses virtually impossible. While the MVDA regulates consignment sales, offences of this nature are very difficult to detect until a complaint is made.

As a result, further consideration is being given to whether these concerns warrant the banning of consignment sales of passenger vehicles and motor cycles by dealers (but not sales by auction) as is the case in Victoria.

Cooling off period

Recommendation

That the MVDA be amended to provide for a cooling off period for linked finance contracts.

That the MVDA be amended to allow for a termination fee of \$100 to apply to linked finance contracts cancelled within the cooling off period.

The review considered whether a cooling off period should be introduced under the MVDA.

At present, consumers wishing to rescind their contracts to purchase a vehicle do not have access to a cooling off period. Significant concerns were raised by stakeholders during the Review about the detriment being caused to consumers due to the absence of a cooling off period.

The Review also noted concerns raised by the Australian Securities and Investment Commission, the Australian Competition and Consumer Commission and the Royal Commission into Misconduct in the Banking Superannuation and Financial Services Industry in respect of dealer practices in arranging finance for purchasers which had resulted in poor outcomes for consumers.

The Review concluded that these serious concerns warranted implementing stronger consumer protection measures in the form of cooling off periods to apply specifically to those contracts including linked finance.¹

¹ Linked finance refers to those contracts where the dealership arranges the loan for the consumer or supplies application forms for, or a referral to, a credit provider. Linked finance does not include situations where consumers arrange their own finance, independent of the dealer.

Providing cooling off periods for contracts involving linked finance will assist consumers by protecting their interests and providing them with the opportunity to reconsider their finance arrangements away from sales pressure. As a result, consumers will benefit from being able to reverse poor financial decisions without suffering excessive costs.

The Review also concluded that providing scope for consumers to extinguish or waive their rights to a cooling off period would be counter-productive and diminish benefits for consumers in providing for a cooling off period. The Review concluded that the introduction of a cooling off period for vehicle purchases involving linked finance (Option C) with no scope to extinguish or waive the right to a cooling off period is supported.

Industry stakeholders generally expressed opposition to the introduction of cooling off periods during the Review, citing increased costs as the main concern. It is noted that all other jurisdictions apart from Tasmania and the Northern Territory provide for some form of cooling off period.

Recommendations for amending the MVRA

Certification of repairers

Recommendation

That the MVRA be amended to provide for certified repairers to be required to lodge with the Commissioner updated details every three years.

That the MVRA be amended to remove the criteria of being a fit person to hold a certificate.

The review considered:

- whether perpetual certification of individual motor vehicle repairers remains appropriate; and
- whether the fit person criteria under the MVRA should continue to apply to repairers applying for certification.

Perpetual certification

At present, an individual repairer's certificate is perpetual in that it does not have a specified duration, but continues in force until it is either surrendered or the holder is disqualified. Repair businesses are required to renew their licences every three years.

The Department is required to maintain a register of certified repairers. This register is becoming increasingly out of date as repairers appear not to be aware of requirements to update specified details, for example, change of address. Maintaining an inaccurate register is costly for government and counter to the intent of the legislation.

The Review considered whether perpetual certification should be replaced with a system of periodic renewals. The Review concluded that a requirement for repairers to update details every three years should be introduced but that the process should be simple to complete and be at low cost to individuals. Repairers would be provided with a grace period in which to comply with renewal requirements. Consideration will be given to utilising the myWA Government Digital Services Portal which is currently under development as part of the myWA Program.

Only NSW and WA require repairers to be certified. This approach is consistent with arrangements in place in NSW which moved from perpetual certification to requiring three yearly renewals. This approach is also consistent with general standards applicable to occupational licensing and provides an improved and more sustainable model for regulating repairers.

Fitness criteria

The Review considered whether the criteria for assessing individual applicants seeking certification should be limited to assessing qualifications rather than assessing both qualifications and fitness.

At present, in order to meet the fitness criteria, applicants are required to provide a criminal history check and answer a range of fitness questions. This imposes considerable regulatory burden on applicants and is considered an unnecessary barrier to entry.

In assessing fitness, decisions are based on a range of considerations including the extent and seriousness of a person's criminal history. In many cases, criminal convictions would not necessarily preclude certification.

The Review concluded that little public benefit is gained as a result of requiring applicants to meet the fitness criteria. Risk to the public is assessed as low given the number of applicants being refused repairer certification is negligible. By contrast, the qualification criteria are considered of primary importance in terms of an applicant's capacity to undertake repair work and will be retained.

The Review also concluded that, as is the case in many areas of employment, fitness checks (for example, requiring a criminal history check) should be a decision for individual businesses to make, depending on their assessment of risk. This may include consideration of the likely extent of contact with customers. Removing the fit person criteria will relieve individual repairers of costs associated with meeting these requirements and will remove a barrier to entry.

Note: Repair businesses are subject to renewal requirements every three years and are required to meet probity criteria of being of good character and repute and a fit and proper person to hold a licence. This proposal for change relates to individual repairers rather than to licensing arrangements for repair businesses.

Simplifying mobile repairer requirements

Recommendation

That the MVRA be amended so that it will no longer be necessary for repair businesses to advise the Commissioner in relation to make and model, year of manufacture, vehicle colour or registration number of mobile repair vehicles.

The Review considered whether licensing requirements applicable to mobile repairers should be simplified. Applicants for a repair business licence who operate mobile premises are currently required to provide details about each of the mobile premises including: make and model of the vehicle; year of manufacture; vehicle colour; and registration number.

In addition, a fee is charged for any alterations to details in relation to existing mobile premises as well as on notification of additional mobile premises.

The Review concluded that there is little to be gained in continuing to impose these requirements and that removing these requirements will significantly reduce the impost and costs on business and government.

Businesses operating exclusively from mobile premises will continue to be required to specify a fixed address, where business records are kept and which can be used to contact the repair business. This will ensure that adequate information is provided on applying for a business licence application to enable effective oversight.

This approach will not affect the way in which licence fees are calculated or impact government revenue derived from licensing fees. Licensing fees are currently based on the number of staff engaged in repair work (excluding apprentices, trainees and administrative staff) rather than being based on the number of premises. All licence holders will continue to be required to notify the Department of the number of staff they employ for the purpose of calculation of licence fees.

Recommendations for amending both the MVDA and the MVRA

Sufficient resources criteria

Recommendation

That the sufficient resources criteria under the MVDA and MVRA be removed apart from in relation to dealers selling vehicles on consignment on behalf of consumers.

That the MVDA and MVRA be amended to instead enable the regulator to take into consideration objective financial measures to determine whether an applicant is suitable to be granted a licence.

(Note: It is intended that consumer safeguards provided for within the MVDA in relation to consignment sales will be retained.)

The Review considered whether the sufficient resources criteria under the MVDA and MVRA should be replaced with a more objective measure of financial viability. The primary purpose in assessing sufficient resources is to ensure that motor vehicle dealer and repair businesses can meet their compliance and financial obligations under the MVDA and MVRA.

An assessment of sufficient resources is undertaken on initial application as well as on renewal. Specific application requirements are in place to assist the Commissioner in determining whether a dealer or repair business licence should be granted. For example, requiring a statement of assets and liabilities for companies established in the previous six months and obtaining a credit history report.

Significant difficulties arise in assessing the financial standing of a licence applicant, for example, many businesses are structured to gain maximum tax benefit, which makes assessing the financial position complex.

It also assesses financial viability at a particular point in time which 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.

The Review concluded that removing the broad criteria requiring an assessment of whether an applicant has sufficient resources in favour of specifying objective financial measures (for example, whether a person has been bankrupt or a company has been the subject of insolvency proceedings) will deliver similar outcomes and reduce compliance costs for business and administrative costs for government.

In respect of consignment sales, current financial viability assessment criteria will be retained in recognition of increased potential for consumer detriment.

Other means of monitoring business viability outside of the application and renewal processes are available to the Department, for example, independent financial monitoring services offered by a range of private sector companies.

Adopting objective measures of financial viability reflects the approach taken in several other jurisdictions. There appears to be no evidence of systemic failures in these jurisdictions. In addition, there is no evidence that assessment of financial viability every three years prevents the financial failure of businesses.

Consignment sales

The Review concluded that current consumer safeguards provided for within the MVDA in relation to consignment sales should be retained given the higher level of consumer risk. These safeguards include stringent assessments of financial viability and specific requirements in regard to operating trust accounts.

As noted earlier, following completion of the Review process, a number of concerning cases involving consignment sales came to light which have caused considerable consumer detriment. As a result, further consideration is being given to whether these concerns warrant the banning of consignment sales of passenger vehicles and motor cycles by dealers (but not sales by auction) as is the case in Victoria.

LIST OF RECOMMENDATIONS

DEALER RECOMMENDATIONS

Dealer theme: Scope (Who is required to be licensed)

Definition of vehicle	Recommendation 1 That the existing definition of a vehicle under the MVDA be retained.
Yard managers	Recommendation 2 That yard managers continue to be regulated under the MVDA.
Dealer categories	Recommendation 3 That Motor Vehicle Dealers (Licensing) Regulations 1974 be amended to reduce the prescribed categories of dealer licences to three broad categories.
Salespersons' licensing to sunset	Recommendation 4 That the MVDA be amended to allow the requirement for motor vehicle dealer salespersons to be licensed to sunset in three years from enactment of the amendment. That the MVDA be amended to place an obligation on dealers to ensure salespersons hold qualifications approved by the Commissioner.
Car hire operators	Recommendation 5 That car hire operators be removed from the definition of dealer under the MVDA That car hire operators selling vehicles other than directly to licensed motor vehicle dealers be required to be licensed under the MVDA.
Financiers	Recommendation 6 That financiers be removed from the definition of dealer under the MVDA That financiers selling vehicles other than to or through licensed motor vehicle dealers be required to be licensed under the MVDA.

Dealer theme: Consumer protections/ dealer operations

Compensation fund	Recommendation 7 That a compensation fund not be introduced under the MVDA.
Warranties on used cars	Recommendation 8 That the MVDA be amended to allow for requirements in relation to statutory used car warranties to sunset in five years from enactment of the amendment.
Manufacturer/demonstrator warranty obligations	Recommendation 9 That the MVDA be amended so that a manufacturer's warranty obligation in relation to time is determined from the date the demonstration vehicle was first licensed to be driven rather than from the date of purchase. .

Dealer auctioneers/consignment sales	Recommendation 10 That the MVDA be amended to exclude sales on consignment made by dealer auctioneers on behalf of corporate fleet owners and other businesses from the consignment sales provisions of the MVDA.
Disclosure requirements	Recommendation 11 That the MVDA be amended so that in addition to current disclosures, dealers are required to disclose to consumers: <ul style="list-style-type: none"> • <i>whether they have been made aware of, and have been able to confirm, that an odometer has been altered or replaced;</i> • <i>whether a vehicle has been declared a repairable write-off;</i> • <i>whether a vehicle's engine has been replaced and the date of replacement; and</i> • <i>whether a vehicle has been used as a taxi, rental car or hire car.</i> Note: The Department will take into consideration legislative amendments being led by the Department of Transport which may impact how this disclosure requirement operates in respect of how taxis and vehicles used for similar purposes are defined.
Cooling off periods liquidated damages, and contract termination fees.	Recommendation 12 <i>That the MVDA be amended to provide for a cooling off period for linked finance contracts.</i> <i>That the MVDA be amended to allow for a termination fee of \$100 to apply to linked finance contracts cancelled within the cooling off period.</i> <i>That the maximum 15 per cent pre-estimated damages as provided for in the Motor Vehicle Dealers (Sales) Regulations 1974 be reduced to five per cent.</i>

REPAIRER RECOMMENDATIONS

Repairer theme: Scope (Who is required to be licensed)

Repairers' regime	Recommendation 13 That repairers continue to be regulated under the MVRA.
Definition of vehicle	Recommendation 14 That vintage vehicles continue to be excluded from the definition of motor vehicle under the MVRA.
Types of repair work covered	Recommendation 15 That the number of classes of repair work prescribed in the Motor Vehicle Repairers Regulations 2007 be decreased. That accessory fitting repair work which does not impact vehicle performance, safety and security be excluded from being repair work covered by the MVRA.

Repairer theme: Licensing requirements (How repairers are licensed)

Certified repairers to update details

Recommendation 16

That the MVRA be amended to provide for certified repairers to be required to lodge with the Commissioner updated details every three years.

That the MVRA be amended to remove the criteria of being a fit person to hold a certificate.

Simplification of requirements for mobile repairers

Recommendation 17

That the MVRA be amended so that it will no longer be necessary for repair businesses to advise the Commissioner in relation to make and model, year of manufacture, vehicle colour or registration number of mobile repair vehicles.

Businesses operating exclusively from mobile premises will continue to be required to specify a fixed address, where business records are kept and which can be used to contact the repair business.

Repairer theme: Consumer protections/repairer operations

Consumer guarantees (MVRA)

Recommendation 18

That specific consumer guarantees under the MVRA not be introduced.

BOTH DEALER AND REPAIRER RECOMMENDATIONS

Both dealer and repairer theme: Licensing requirements (How dealers and repairers are licensed)

Probity criteria for dealers and repairers (business licensing)

Recommendation 19

That the current probity criteria under the MVDA and MVRA of being a person of good character and repute and a fit and proper person continue to apply.

Sufficient resources criteria for dealers and repairers (business licensing)

Recommendation 20

That the sufficient resources criteria under the MVDA and MVRA be removed apart from in relation to dealers selling vehicles on consignment on behalf of consumers.

That the MVDA and MVRA be amended to instead enable the regulator to take into consideration objective financial measures to determine whether an applicant is suitable to be granted a licence.

(Note: It is intended that consumer safeguards provided for within the MVDA in relation to consignment sales will be retained.)

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ABBREVIATIONS

The following is a summary of abbreviations used in this paper.

ABBREVIATION	MEANING
ABS	Australian Bureau of Statistics
ACL	The Australian Consumer Law
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.)
CRIS	Consultation Regulatory Impact Statement
DRIS	Decision Regulatory Impact Statement
Department	The Department of Mines, Industry Regulation and Safety - Consumer Protection Division
ICA	Insurance Council of Australia
MTAWA	Motor Trade Association of Western Australia
MVDA	Motor Vehicle Dealers Act 1973
MVIAC	Motor Vehicle Industry Advisory Committee
MVRA	Motor Vehicle Repairers Act 2003
RAC	Royal Automobile Club of Western Australia
Review	The Review of Motor Vehicle Dealers Act 1973 and Motor Vehicle Repairers Act 2003
SBDC	Small Business Development Corporation

INTRODUCTION

The *Motor Vehicle Dealers Act 1974* (MVDA) establishes a licensing regime which applies to those persons engaged in the business of buying, selling and exchanging of motor vehicles in Western Australia. The MVDA was introduced with the aim of protecting the interests of consumers in this important sector of the consumer market. The MVDA was last reviewed in the late 1990's with substantial amendments to the MVDA commencing in 2002.

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

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 and certified repairers as at 1 July 2017.

Table 1: Number of licences and certificates issued as at 1 July 2017

Category	No. licensed or certified
Motor vehicle dealers - business licence	904
Motor vehicle dealers - sales persons	2,004
Motor vehicle dealers - yard managers	1,320
Motor vehicle repairers - business licence	4,351
Motor vehicle repairers - certificate holder	13,373

A combined review of the MVDA and the MVRA has been 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. As at 1 July 2017, 408 businesses operate as both motor vehicle dealers and repairers.

OBJECTIVES FOR REFORM

The policy objective is to achieve a regulatory framework which provides appropriate protections for consumers whilst maintaining the commercial viability of the motor vehicle dealing and repairing industries.

This includes assessing options to reduce the regulatory burden imposed by the MVDA and MVRA on industry, government and consumers. In establishing the future policy direction and legislative reform, the likely future of the motor vehicle industry has been considered.

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.

The ACL has been the subject of a major review to assess its effectiveness in meeting its objectives as well as its flexibility to respond to new and emerging issues. The review culminated in the release of a final report in March 2017 which identified a number of reforms for ministerial consideration.²

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

The Review has not identified any issues of inconsistency between the ACL and MVDA and MVRA. In respect of the MVDA, the Review is recommending a move from reliance on both the MVDA and the ACL to sole reliance on the ACL's consumer guarantees in five years' time.

In regard to the MVRA, the Review is recommending continued reliance on the consumer guarantees offered by the ACL rather than introducing new consumer guarantees under the MVRA

The Review has also afforded the opportunity to consult broadly with stakeholders in regard to the specific recommendations made by the Red Tape Reduction Group (RTRG).

REVIEW PROCESS

The Review has been 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** was the completion and release of a Consultation Regulatory Impact Statement (CRIS) outlining various options for reform and seeking stakeholder feedback to assist in deciding which reforms are needed.
- **Stage 3** presents the findings of the Review. This document, the Decision Regulatory Impact Statement (DRIS), addresses the outcome of consultation with stakeholders, examines the impact of the various options considered in the CRIS and recommends the preferred options for reform to Government.

PURPOSE OF THIS PAPER

The State 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.

This DRIS has been prepared by the Department of Mines, Industry Regulation and Safety – Consumer Protection Division (the Department) to assist the Government in its consideration of recommendations for reform.

² Consumer Affairs and Australia and New Zealand, *Australian Consumer Law Review Final Report, March 2017* Canberra.

The purpose of this DRIS is to:

- Provide background information on motor vehicle industries and the development of recommended amendments to the MVDA and the MVRA.
- Outline the current issues with the existing regulation and identify changes to the legislation which will address these issues.
- Examine the impacts of the recommended changes to the legislation.
- Discuss implementation plans for these changes.

PART 1: THE FUTURE OF THE MOTOR VEHICLE INDUSTRY

CHALLENGES FACING THE INDUSTRY

The industry is facing several key challenges in the short to medium term, including:

- *disruption through technology with the advent of electric vehicles, self-drive autonomous vehicles and online purchasing of vehicles, servicing and parts;*
- *the cessation of motor vehicle manufacturing in Australia;*
- *the shortage of skilled labour due to the retirement of baby boomers from the industry as the population ages, difficulties in attracting school leavers into apprenticeships and retaining these people in the industry; and*
- *the rapid pace of change in vehicle design and technology requiring up-skilling of industry members.*

“The auto industry is poised for more change in the next five to ten years than it’s seen in the past 50.” Mary Barra CEO General Motors. ³

There is the potential for a relatively short transition period for the electrically powered autonomous or semi-autonomous vehicle to become the norm across the Australian fleet. This has been the case with technological disruption in other industries. Predictions on the timing of this change range from 2020 to 2050. Regardless of timing, this change is on the horizon and regulators and industry need to be prepared. The average age of a vehicle registered in Australia is 10 years.⁴ Predictions from local industry representatives suggest that the non-electric second-hand vehicle market is likely to continue for up to 30 years after the advent of electric vehicles.

“We’ve got a clock ticking...This technology is coming. Ready or not, it’s coming.” Former U.S. Transportation Secretary Anthony Foxx. ⁵

The Tesla Model S is seen as the beginning of the curve for this change both in terms of its extended range and battery power and the fact that the vehicle is semi-autonomous and can self-drive for extended periods. However, technology giants such as Google and Apple and traditional car manufacturers are all working on electrically powered autonomous or semi-autonomous vehicles.

On 5 July 2017, Volvo announced that from 2019 all of its vehicles that it launches will have an electric motor resulting in a vehicle fleet that will be a mix of hybrid and fully electric vehicles – with the intention being that between 2019 and 2021, five fully electric vehicles will be released.

Importantly, also in July this year, two major European countries, France and Britain, announced their intention to ban the sale of petrol and diesel vehicles by 2040.

³ Mary Barra, General Motors CEO, speaking at The Code Conference, May 2015.

⁴ The Australian Bureau of Statistics, ‘9309.0 - Motor Vehicle Census, Australia 31 Jan 2015’ (4 August 2015).

⁵ Erin Griffith, ‘Who Will Build the Next Great Car Company?’ *Fortune Magazine* (1 July 2016) <<http://fortune.com/self-driving-cars-silicon-valley-detroit/>>.

ELECTRIC VEHICLES

The Australian Bureau of Statistics noted in the 2016 Motor Vehicle Census that the number of hybrid and fully electric vehicles is increasing.⁶ The ABS stated that the survey is not able to provide accurate data in this area as not all state and territory motor vehicle regulators identify these vehicle types. In 2016, the ABS recorded 300,000 passenger vehicles in Australia as using an alternative fuel source. However, this number not only includes hybrid and fully electrically powered vehicles but vehicles using other power sources such as liquid gas.⁷

Relatively speaking fully electric vehicles still represent a small percentage of all vehicles on the road. In June 2016, the Sydney Morning Herald put the number of fully electric vehicles, not including hybrids, at less than 1000 across Australia.⁸ According to the ABC, in June 2015 there were around 150 fully electric vehicles owned in Western Australia.⁹ The number of electric vehicles on the road varies significantly from country to country. In Norway, fully electric and hybrid vehicles made up 29 per cent of new vehicles registered in 2016.¹⁰

Range and charge

Batteries have been one of the main technological bottlenecks, holding back the large scale adoption of electric vehicles. The cost of producing lithium-ion batteries has kept the price of electric vehicles high. Lithium batteries also produce a large amount of heat and effective and cheap coolant has been another factor affecting price.¹¹

It is understood that manufacturers of electric vehicles have traditionally used large format lithium-ion cells. Rather than using a single battery, Tesla's battery pack is made up of thousands of small lithium-ion battery cells. This method has apparently helped address some of the short comings of lithium batteries.

Another possible factor as to why there has not yet been a large scale uptake of electric vehicles in Australia is that they have a limited range and battery capacity, combined with lengthy charge times. The Nissan Leaf has a nominal range of 200km¹² and the BMW i3 has a range of 160km.¹³ In comparison the Tesla Model S has a nominal range of 426km.¹⁴

⁶ The Australian Bureau of Statistics, '9309.0 - Motor Vehicle Census, Australia, 31 Jan 2016,' (21 July 2016).

⁷ The Australian Bureau of Statistics, '9309.0 - Motor Vehicle Census, Australia, 31 Jan 2016,' (21 July 2016).

⁸ Lucy Cormack, 'Electric vehicle uptake in Australia held back by price, infrastructure,' *Sydney Morning Herald* (12 June 2016) <<http://www.smh.com.au/business/consumer-affairs/electric-vehicle-uptake-in-australia-held-back-by-price-infrastructure-20160610-gpgkn6.html>>.

⁹ Katrin Long, 'Australia's first electric highway links Perth to South-West,' *Australian Broadcasting Corporation* (23 Jun 2015) <<http://www.abc.net.au/news/2015-06-22/electric-highway-links-ev-drivers-from-perth-to-the-south-west/6565378>>.

¹⁰ 'Countries-Norway,' *European Alternative Fuels Observatory* (23 August 2016) <<http://www.eafo.eu/content/norway>>.

¹¹ 'Electric Vehicles In Europe: Gearing Up For A New Phase?' *Amsterdam Roundtables Foundation and McKinsey & Company* (April 2014) <<http://www.mckinsey.com>>.

¹² Ibid p35.

¹³ Phil Hickey, 'RAC Electric Highway a power route for next generation of cars,' *Perth Now* (23 August 2015) <<http://www.perthnow.com.au/news/western-australia/rac-electric-highway-a-power-route-for-next-generation-of-cars/news>story/392f5453c77fe462608085ce797687d7>>.

¹⁴ 'Electric Vehicles In Europe: Gearing Up For A New Phase?,' *Amsterdam Roundtables Foundation and McKinsey & Company* p35.

Infrastructure and other incentives

A network of fast charging (direct current) stations is an important requirement to facilitate the large scale adoption of electric vehicles by consumers. Early owners of electric vehicles primarily charged their cars at home, using the slow charge (alternating current) option, which takes several hours.¹⁵ Fast charging of electric vehicles still requires 20-30 minutes, compared to the few minutes to refuel an internal combustion engine vehicle.¹⁶

Countries where there has been a noteworthy uptake of fully electric and hybrid vehicles are those where there has been a significant investment in infrastructure or there are other incentives in place. For example, the Norwegian government has launched a program to finance the establishment of two fast charging stations for every 50 km of main road by 2017.¹⁷

Various tax incentives have also been put in place by many European countries to encourage the uptake of electric vehicles. For example, since 2001 in Norway, electric and hybrid vehicles have been exempt from the 25 per cent Value Added Tax (VAT) which would normally apply to the purchase of a vehicle. In the Netherlands, where fully electric and hybrid vehicles had a market share of 4.9 per cent in 2016, electric vehicles and accompanying charging points are listed as deductible investments for corporations.¹⁸ Other incentives used at a local level include exemptions from toll road fees, access to bus lanes and free parking in the CBD.

In August 2015, the RAC installed twelve public fast charging direct current stations in the south west of Western Australia between Perth and Augusta. While the network was funded and commissioned by the RAC the individual charging stations are owned and maintained by local governments. However, the majority of public charge stations in the metropolitan area are slow charge alternating current stations.

Price

The price point for electric vehicles is coming down faster than anticipated, meaning that affordability is not likely to continue to act as a major barrier for the purchase of electric vehicles in the future. It is predicted that the price of lithium batteries will continue to improve because of economies of scale in their production and technological advancements.

The BMW i3 is priced at \$72,000 and the Nissan Leaf at \$40,000.¹⁹ The Tesla Model S is priced at around \$130,000. In January 2016, there were only about 580 Model S Teslas on Australian roads.²⁰

¹⁵Ibid.

¹⁶Ibid.

¹⁷ 'Countries-Norway,' *European Alternative Fuels Observatory* (23 August 2016) <<http://www.eafo.eu/content/norway>>.

¹⁸ 'Countries –Netherlands,' *European Alternative Fuels Observatory* (23 August 2016) <<http://www.eafo.eu/content/netherlands>>.

¹⁹Phil Hickey, 'RAC Electric Highway a power route for next generation of cars,' *Perth Now* (23, August 2015) <<http://www.perthnow.com.au/news/western-australia/rac-electric-highway-a-power-route-for-next-generation-of-cars/news-story/392f5453c77fe462608085ce797687d7>>.

²⁰Harry Tucker, 'This is how many Tesla cars are in Australia,' *Business Insider Australia* (4 January 2016) <<https://www.businessinsider.com.au/this-is-how-many-tesla-cars-are-in-australia-2016>>.

Tesla is now accepting deposits for the Model 3, priced at \$60,000, which is scheduled for release in Australia in 2018. It is noted that the luxury car tax threshold in Australia for 2016-2017 for fuel efficient cars is \$75,526 meaning vehicles purchased for less than this amount are exempt from the tax.²¹

AUTONOMOUS AND CONNECTED VEHICLES

“All vehicles on Australian roads will be driverless by 2030.” Hugh Bradlow Telstra’s Chief Scientist²²

The use of microprocessors in car engines has been steadily increasing for decades. The modern connected car has one million lines of software code and produces up to 25GB of data every hour.²³

Devices are increasingly being created with embedded software, sensors, an IP address and the ability to transfer data over a network. These devices, known as the ‘Internet of Things,’ communicate and interact with other devices.

In this context, commentary suggests that it is best to think of the car as a computer with four wheels and as a node in a network, rather than a self-contained unit.²⁴

Modern vehicles not only transfer data over the network such as engine fault diagnostics and traffic conditions, but are moving towards being able to interact with their environment in the form of autonomous or semi-autonomous self-driving vehicles.

The US Department of Transportation defines five levels of autonomous driving from total human control to fully autonomous. The semi-autonomous features at the lower end of the scale include automatic braking and lane centring. Vehicles further up the scale allow the driver to give up full control under certain traffic or environmental conditions.

As at 1 August 2016, there were 14 trials of autonomous vehicles underway in California.²⁵ In August 2016, Delphi Automotive and the Singapore Land Transit Authority commenced a trial of six automated self-driving taxis in Singapore.²⁶

In WA, the RAC has been developing and trialling a self-driving bus. The bus commenced full public road testing during September 2016. In March 2017, Curtin University began operating an autonomous bus on campus as part of a trial of driverless technology. A number of research projects are involved in this program including looking at how autonomous vehicles can be successfully utilised by people with physical disabilities.

²¹ Australian Tax Office, ‘Luxury car tax rate and thresholds,’ (27 May 2016) <<https://www.ato.gov.au/Rates/Luxury-car-tax-rate-and-thresholds>>.

²² Meredith Booth, ‘On road to cars without drivers,’ *The Australian* (1 August 2016) page 3.

²³ ‘What’s driving the connect car’ (McKinsey and Company) quoted in ‘Digital Disruption and the Future of The Automotive Industry’, *IMB Centre for Applied Insights* (September 2015).

²⁴ Dirk Wollschlaeger et al, ‘Digital Disruption and the Future of The Automotive Industry’, *IMB Centre for Applied Insights* (September 2015).

²⁵ Meredith Booth, ‘On road to cars without drivers’ *The Australian*, (1 August 2016), p3.

²⁶ James Vincent, ‘World’s first self-driving taxi trial begins in Singapore,’ *The Verge*, (25 August 2016) <<http://www.theverge.com/2016/8/25/12637822/self-driving-taxi-first-public-trial-singapore-nutonomy>>.

Ride sharing

Technological disruption has also seen a move towards ride-sharing as an alternative transport method. Ride sharing apps such as Lyft and Uber have already caused significant disruption in the taxi industry. In the eastern states, 110,000 users have also signed up to car-sharing services GoGet (where consumers pay a subscription fee to access a network of pool cars) and Car Next Door (which connects car borrowers with car owners).²⁷

There is a view that as this business model continues to develop it could ultimately lead to a decrease in the private ownership of vehicles. One study predicts that there will be up to 90,000 fewer cars on Sydney roads by 2036.²⁸ The ride sharing model also has the potential to combine effectively with autonomous self-driving technology. In the last two years, technology giants such as Google and Apple and traditional car manufactures General Motors, Toyota and Volkswagen have all invested in ride-sharing companies.²⁹

On 9 August 2017, The Australian reported that study undertaken by the National Roads and Motorists' Association (NRMA) forecasts, among other things, that fully autonomous vehicles without steering wheels will be on Australian roads by 2035 and that the potential exists for driver's licences to become redundant.³⁰ The study supports suggestions that ultimately, ride sharing arrangements will be preferred to private vehicle ownership and that as early as 2020 could see level 4 autonomous vehicles on the roads – such vehicles operate in “auto pilot” mode, only requiring the driver to take over when prompted.

HOW THESE TRENDS COULD IMPACT THE MOTOR VEHICLE SALES INDUSTRY

New car market

Online purchasing, without first examining and test driving a new vehicle, could become the preferred way vehicle purchases are made in the future. Feedback from local industry suggests that online purchasing of new vehicles already occurs in Western Australia. It is, however, suggested that test driving remains the norm in the second-hand market.

Tesla vehicles are purchased online, bypassing traditional dealerships. While Tesla numbers in Australia are still small, there is nothing to prevent this purchasing model being adopted by other car manufacturers. This trend may be accelerated if the companies producing smart cars are technology firms as well as traditional car manufacturers.

²⁷Bianca Nogrady, 'Peak car: Australia's love affair with ownership fades with rise of car-sharing services,' *The Guardian*, (1 February 2017) < <https://www.theguardian.com/sustainable-business/2017/feb/01/peak-car-australias-love-affair-with-ownership-fades-with-rise-of-car-sharing-services>>.

²⁸ Johnny Sollitt-Davis, 'Transport on Demand Accelerative: Accelerating Australian Cities' *AECOM* (9 February 2017) <<http://www.aecom.com/au/transport-on-demand/>>.

²⁹ Erin Griffith, 'Who Will Build the Next Great Car Company?' *Fortune Magazine* (23 June 2016) <<http://fortune.com/self-driving-cars-silicon-valley-detroit/>>.

³⁰ <http://www.theaustralian.com.au/business/technology/driverless-car-future-means-no-licence-required/news-story>.

Generally, there has been a decline in a desire by consumers to test drive new cars. This trend pre-dates Tesla. A 2014 US study of 2000 automotive consumers found that 16 per cent took no test drive and 33 per cent only test drove one car.³¹

The report also commented that there had been an increase in online research by prospective new car purchasers with four out of five consumers using the internet to research their new car.³² This change is perhaps partly attributable to the general increase in vehicle quality in the motor vehicle industry.³³ The advent of the internet has also meant that information asymmetry poses less of a risk to consumers purchasing products and services.

If there was an increase of new vehicles being purchased online directly from manufacturers and delivered to Western Australia, it is possible that disruption may arise where local licensed dealers are competing with unlicensed online competitors based overseas. As demonstrated with the uptake of Uber and Airbnb in Australia, consumers and suppliers appear to be prepared to ignore local laws and regulations if the model is good enough.

Given these trends, in the future, the provisions of the ACL may be sufficient to ensure the interests of consumers are protected, particularly if buying a car becomes akin to being simply another retail purchase.

It is conceivable that the risks in buying a car, which first led to the regulation of the industry, will not be the same. In the future, if the risks posed to consumers when purchasing a vehicle decline significantly, there may be scope to regulate the industry in a different and less prescriptive manner.

Second-hand market

The large scale uptake of electric vehicles could also disrupt the second-hand car market and aftermarket. The prohibitively high cost of replacing a lithium battery could have dramatic effects on the resale value of electric vehicles. It is estimated that the cost of replacing a Tesla Model S's battery pack is \$15,800, although it is anticipated that as battery technology improves this cost is likely to decline.³⁴ The performance of lithium batteries depletes over time and a high level of degradation is anticipated.³⁵ A loss of 30 per cent capacity in battery power could be expected after ten years.³⁶

The nature of electric vehicles also means that they do not require as many spare parts or additional components; this would have a major impact on the traditional parts and accessory aftermarket. The value of non-electric vehicles is likely to drop as consumers switch to electric vehicles or ride share services and as the repair industry loses the skills to maintain these vehicles.

³¹ '1 in 6 Buyers Skips Test Drive; Nearly Half Visit Just One or No Dealership Prior to Purchase,' *DMEautomotive* (15 April 2014) <<http://www.dmeautomotive.com/announcements/1-in-6-car-buyers-skips-test-drive-nearly-half-visit-just-one-or-no-dealership-prior-to-purchase>>.

³² *Ibid.*

³³ Evan Hirsh et al, '2015 Auto Industry Trends,' *Price Waterhouse Coopers*, (March 15, 2016) <<http://www.strategyand.pwc.com/reports/2016-auto-industry-trends>>.

³⁴ Tony Ibrahim, 'What is holding back the electric car,' *Choice* (6 April 2016) <www.choice.com.au/transport/cars/eco-friendly/articles/tesla-model-3-costs-versus-savings>.

³⁵ *Ibid.*

³⁶ *Ibid.*

HOW THESE TRENDS COULD IMPACT THE REPAIR INDUSTRY

A decrease in the need for repairs

With the exception of the replacement of the lithium battery, electric vehicles have very low servicing costs. Electric vehicles do not have a mechanical engine. Compared to an internal combustion engine vehicle, which has hundreds of moving parts, an electric vehicle can have less than ten.³⁷ As a result, electric vehicles need fewer repairs compared to traditional vehicles.³⁸

In addition to this, a large scale uptake of autonomous or semi-autonomous vehicles would result in a decrease in the number of repairs resulting from accidents. Some predictions suggest that accident frequencies could drop by 80 per cent by 2040 due to the uptake of autonomous vehicles.³⁹

Changing business models

Increased connectivity also has the capacity to affect the repair industry (including for internal combustion engine vehicles). There are a number of different business models emerging in the repair and parts market, with a shift towards business-to-consumer models and away from business-to-business models.⁴⁰

The fact that all new vehicles are able to wirelessly connect to the cloud and run advanced diagnostics has meant that phone apps such as Zubie are able to offer maintenance alerts and diagnostic information directly to consumers. In the US, online service Openbay allows competing repairers to tender directly to consumers. Openbay gathers diagnostic engine information from a user's car and sends the information to repairers in the region who have signed up for the service.

Repairers offer the consumer competing quotes, with the repairer who wins the tender paying a commission to Openbay. Openbay also retrofits, for free, older cars (built since 1996), offering consumers a device which can be attached to the car's diagnostic ports.

There is also the potential for suppliers and makers of vehicle parts and accessories to deal directly with more sophisticated consumers through online portals. For example, Goodyear now enables consumers to buy tyres online directly from the Goodyear website and in 2015 Michelin bought a 40 per cent stake in French online tyre retailer Allopneus and took over British online tyre retailer Blackcircles.⁴¹

In the event of a dispute, it is also possible that in the future vehicles will have the technology to identify who undertook repair work and to determine whether such repair work was faulty. In the long term, another possibility is that, with technology giants entering the market, future manufacturers may seek to restrict third parties from servicing and repairing their vehicles.

³⁷ Jordan Richard, Exactly how many moving parts in the MS, *Tesla Forum* (16 July 2014) <https://forums.tesla.com/en_HK/forum/forums/exactly-how-many-moving-parts-ms>.

³⁸ Harry Tucker, 'Why Australian dealers don't want to sell electric cars,' *Business Insider Australia* (14 January 2016) <<http://www.businessinsider.com.au/why-australian-dealers-dont-want-to-sell-electric-cars-2016-1>>.

³⁹ 'Automobile Insurance in the era of autonomous vehicles,' *KPMG* (June 2015) <kpmg.com/insurance>.

⁴⁰ Sarwant Singh, 'the Future of the Automotive Aftermarket and car servicing - Consumers Will Have More Channels to Shop Around,' *Forbes* (2 June 2015) <<https://www.forbes.com/sites/ey/2016/04/29/will-businesses-reach-gender-diversity-in-your-lifetime/#5c0ec50f43e8>>.

⁴¹ Ibid.

Training

The role of the mechanic is transitioning into the role of a computer technician.⁴² It is predicted that traditional mechanical expertise will, and is shifting, as cars become more connected and software dependant.⁴³ Even in internal combustion engine vehicles the role of repairers increasingly requires an understanding of computer technology and how to run software diagnostics. It is likely, therefore, that training for repairers will increasingly need to be focused on computer programming.

Repairers will need to attend frequent software training in order to remain up to date and there is a risk of a shortfall of repairers with the new skill set.⁴⁴ Electric cars also have live systems with a voltage that can have fatal consequences if an untrained person attempts to undertake repairs. Training will therefore also need to focus on the dangers of the live charge. Over time, this shift in industry training requirements is likely to precipitate a need to completely revise the classes of repair and the qualifications a person is required to hold in order to be registered as a certified repairer under the MVRA.

⁴² Pia Duxbury, 'The Future of the Auto Mechanic is Clean,' *Motor Trade Association of Western Australia* (5 January 2017) <<https://mtawa.com.au/membership/member-communication/latest-news/item/3005-the-future-of-the-auto-mechanic-is-clean.html>>.

⁴³ CB Information Services, 'Driverless cars will disrupted 13 surprising sectors other than the auto industry' *Australia Financial Review* (26 April 2016) <<http://www.afr.com/leadership/driverless-cars-will-disrupt-13-surprising-sectors-other-than-the-auto-industry-20160425-goe8ae>>.

⁴⁴ Pia Duxbury, 'The Future of the Auto Mechanic is Clean,' *Motor Trade Association of Western Australia* (5 January 2017) <<https://mtawa.com.au/membership/member-communication/latest-news/item/3005-the-future-of-the-auto-mechanic-is-clean.html>>.

PART 2: CONTEXT AND BACKGROUND TO THE REVIEW

Consultation process

In 2012, the Department conducted a series of preliminary consultation meetings with a range of key external stakeholders, including the Motor Trade Association of Western Australia, the Royal Automobile Club WA (RAC) and the Institute of Automotive Mechanical Engineers. Key government stakeholders including the Department of Transport, Police, the Department of Training and Workforce Development and the Small Business Development Corporation, were also consulted. The purpose of these meetings was to inform key stakeholders of the Review and to ensure that major issues of concern were identified.

In addition, the Motor Vehicle Industry Advisory Committee (MVIAC) and the Consumer Advisory Committee (CAC) were presented with background information in regard to the Review. Both Committees are appointed by the Minister for Commerce under the *Fair Trading Act 2010*, for the purpose of providing advice to the Minister and Commissioner.

As a result of this preliminary consultation 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 Department received 33 written submissions in response to the discussion paper. 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 MTAWA representing the views and comments of a significant majority of its 1,800-plus member businesses.

A large number of stakeholders also provided responses to online surveys. These surveys targeted consumers and industry participants. The surveys generated 149 responses from dealers, 476 responses from repairers and 41 responses from consumers.

From this information, the Department prepared and published a CRIS in November 2015. The key focus of this stage of the Review was to obtain stakeholder feedback vital to weighing up the costs and benefits of the various options presented.

A total of 50 submissions were received in response to the CRIS comprising:

- three repairers;
- three salespersons;
- twenty-four repair businesses;
- five dealers;
- three consumers/consumer advocates; and
- twelve industry and consumer associations.

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:

- There were 18.8 million vehicles registered in Australia as at 31 January 2017 of which, around 75 per cent were passenger vehicles.
- The number of registered passenger vehicles has increased by 11 per cent since 2011.
- Of the total number of registered vehicles in Australia, 2.2 million were registered in Western Australia.⁴⁵
- In 2016, there were 1.6 million passenger vehicles in Western Australia up from 1.4 million in 2011.⁴⁶
- Between 2015 and 2016, Western Australia recorded an increase of 1.1 per cent in the number of registered vehicles.⁴⁷
- Over a million new vehicles were sold in Australia in 2016 (100,234 of which were sold in Western Australia).⁴⁸

CONSUMER EXPENDITURE: ABS DATA

At the time of the 2017 Motor Vehicle Census, there were 18.8 million motor vehicles, registered in Australia, of these vehicles, 14 million were passenger vehicles.⁴⁹

The average age of all vehicles registered in Australia was 10.1 years, which has remained unchanged since 2015. Tasmanian vehicles reported the oldest average age at 12.8 years, whilst the Northern Territory had the youngest fleet with an average age of 9.2 years.

As at 31 January 2017, passenger vehicles accounted for 75 per cent of all vehicles registered, campervans made up less than 1 per cent and motor cycles accounted for 4.5 per cent of vehicles.⁵⁰

In 2017, diesel powered vehicles increased by 1.3 per cent to 22.2 per cent of the Australian fleet and remains the fastest growing category by fuel type. Petrol powered vehicles decreased by 1.1 per cent over the same period.

There were 775 motor vehicles per 1,000 estimated residents across Australia, up from 731 vehicles per 1,000 residents in 2010. In 2017, Tasmania had the highest number of vehicles per 1,000 residents with 903, followed by Western Australia with 846 per 1,000 residents.⁵¹

The distribution of vehicles across the states and territories broadly reflects the population distribution, with Western Australia having a 12 per cent share of the Australian motor vehicle fleet.

⁴⁵ Australian Bureau of Statistics 2017, *Motor Vehicle Census, Australia*, cat. no. 9309.0, ABS Canberra, 31 January 2017.

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Australian Bureau of Statistics 2017, *Sales of New Motor Vehicles*, cat. no. 9314.0, ABS Canberra, February 2017.

⁴⁹ Australian Bureau of Statistics 2017 -*Motor Vehicle Census*, cat. no. 9309.0, ABS Canberra, 31 January 2017.

⁵⁰ Ibid.

⁵¹ Ibid.

There has generally been an increase in the number of new vehicles sold in Australia over the last five years. Close to one million new vehicles were sold in Australia during the 2016-17 financial year, of which, around 100,000 were sold in WA. Record sales of new vehicles occurred in the months of May and June 2017, with sales exceeding 100,000 vehicles. Sales of sports utility vehicles and light commercial vehicles overtook sales of passenger cars during the first half of 2017.⁵² This reflects the general decrease in the proportion of passenger vehicles compared to other vehicles sold over the five year period, 2012 to 2017.⁵³

Australians are highly reliant on their motor vehicles for transport, with ABS data indicating that the average number of motor vehicles per dwelling is 1.8 with 34.8 per cent of occupied private dwellings having one vehicle, 36.2% having two vehicles and 18.1% having three or more vehicles.⁵⁴

Further evidence of our reliance on motor vehicles is reflected in ABS data which indicates that 80 per cent of adults use a private motor vehicle to travel to work or full-time study.⁵⁵ Only 14 per cent of adults use public transport.⁵⁶

This reliance on motor vehicle transport translates into significant costs for Australian households, with 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 expenditure 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.⁵⁷

Of relevance to the DRIS 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).⁵⁸

NEW VEHICLE RUNNING COSTS

The RAC's 2017 Vehicle Running Costs Guide provides further evidence of the significant cost to consumers of running their motor vehicles.⁵⁹ Based on the RAC's data identifying the running costs for a range of new medium sized vehicles, the running costs equate to around \$10,000 per year.

⁵² Australian Bureau of Statistics 2017, *Sales of New Motor Vehicles*, cat. no. 9314.0, ABS Canberra, September 2017.

⁵³ Motor Vehicle Census January 2017, 9309.0.55.003.

⁵⁴ Australian Bureau of Statistics 2009, *Year Book Australia, 2009 – 2010* cat. no.1301.0 ABS, Canberra.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Note: the category of transport excludes all holiday travel.

⁵⁸ Australian Bureau of Statistics 2010, *Household Expenditure Survey, Australia, Detailed Expenditure Items, 2009-10* cat. no. 6530.0, ABS, Canberra.

⁵⁹ Royal Automobile Club of Western Australia, 2017 Vehicle Running Costs Guide.

This figure is based on a medium sized vehicle bought new on finance, travelling 12,000 km per year for private use and held for a period of five years. The amount of \$10,000 takes into account depreciation, loan interest payments, fuel, tyres, on road costs (includes stamp duty, registration insurance and club membership), repairs and servicing.

Rationale for government intervention to date

LICENSING OF DEALERS

There has been legislation regulating the sale of motor vehicles in Western Australia for almost 100 years, with the introduction of the *Traffic Act 1919* and later the *Used Car Dealers Act 1964*.

The MVDA 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.

Prior to the introduction of the MVDA in 1974, 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.

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 of 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.⁶⁰

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 DRIS considers whether the arrangements contained in the MVDA and MVRA remain relevant in today's and likely future 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.

Current legislative framework

MOTOR VEHICLE DEALERS ACT 1973

Key purposes

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).

⁶⁰ Productivity Commission 2008, *Review of Australia's Consumer Policy Framework*, Final Report, Canberra, Volume 2 page 93.

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 Transport; 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 State Administrative Tribunal.

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.

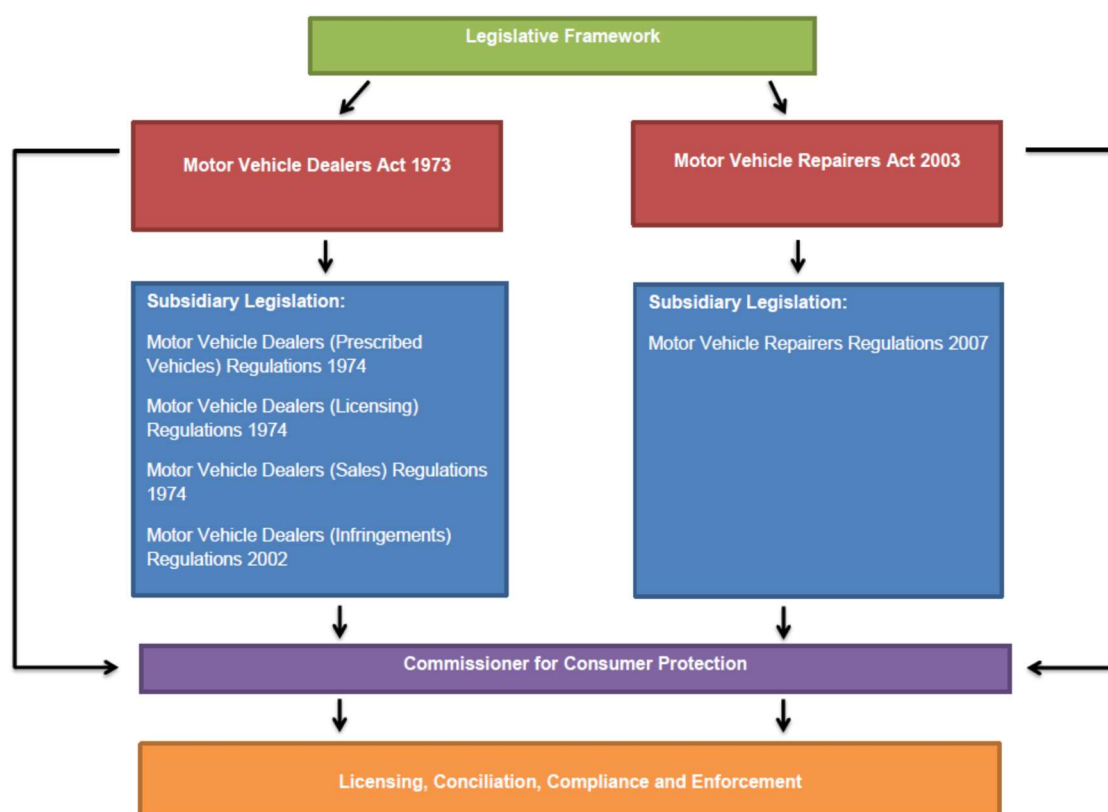
The MVRA does not set ratios for supervision. The former Motor Vehicle Industry Board, in consultation with stakeholders, determined that a ratio of one certified repairer to every three uncertified repairers (for each place of business) was appropriate to ensure the quality and consistency of repair work. The Department 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.

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



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 reducing the number of pages by around 20, including the removal of statutory declarations. This resulted in improved ease of use for applicants and provided 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 estimated that this initiative has led to a direct cost saving of \$30 for individuals and over \$150 for body corporate applicants every three years, and considerable time saving for all applicants.

Consumer Protection Legislation Amendment Act 2013 (CPLA Act)

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 the 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 State Administrative Tribunal review jurisdiction over decisions or orders of the Commissioner. Previously this jurisdiction rested with the Magistrates Court.

Uncollected goods

Many businesses, including motor vehicle repairers, hold goods which customers have left in their custody and not returned to collect. In the case of repairers, vehicles often take up valuable storage space and impose unnecessary costs on the businesses holding them.

The *Disposal of Uncollected Goods Act 1970* sets out the procedures that need to be followed in order to dispose of uncollected goods. Under this legislation, a business must seek an order from the court to dispose of items over a certain value. In June 2017 the Disposal of Uncollected Goods Regulations 1971 were amended to raise the threshold value from \$300 to \$3,500 for an uncollected good requiring a court order.

This means that businesses disposing of uncollected goods valued at less than \$3,500 now have a somewhat less complex and costly process to complete in order to lawfully dispose of uncollected goods. The amendment also provides for the threshold value to be amended by regulation from time to time as required.

The Department intends undertaking public consultation on a broader review of the *Disposal of Uncollected Goods Act 1970*.

Alternative providers of criminal history checks (trial)

Previously, applicants for a licence were required to provide a criminal history check by lodging an application through Australia Post. The Commissioner has also commenced a trial to determine the risks and benefits of accepting criminal history checks from a number of Australian Criminal Intelligence Commission (formerly Crim-Trac) accredited agencies.

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

Review of the Auction Sales Act 1973

The Department is conducting a review of the *Auction Sales Act 1973* (the Auction Sales Act). A CRIS was released in December 2016 and the consultation phase was completed in March 2017. The Department is currently in the process of preparing a DRIS for the Government's consideration.

At present, if a significant part of an auctioneer's business comprises the selling of motor vehicles, the auctioneer is required to hold a licence under the Auction Sales Act as well as a licence under the MVDA. The review is considering whether dealers licensed under the MVDA should be provided with an exemption from being required to hold a licence under the Auction Sales Act, but still be required to comply with the conduct provisions of the Auction Sales Act.

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 ACL.⁶¹ The intent is to rely on the ACL wherever relevant and reduce reliance on industry specific regulation.

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 \$40,000⁶²;
- 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.

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.⁶³ 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.⁶⁴

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.⁶⁵

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.⁶⁶

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

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 major or non-major in nature.⁶⁷

When the failure is not major, the supplier can choose between providing a repair or offering the consumer a replacement or a refund.

⁶¹ Intergovernmental Agreement for the ACL - clause 3.2.

⁶² The ACL review has recommended increasing this amount to \$100,000.

⁶³ ACL – sections 54, 55, 56 and 57.

⁶⁴ ACL – section 58.

⁶⁵ ACL – sections 51, 52 and 53.

⁶⁶ ACL – sections 60, 61 and 62.

⁶⁷ ACL – part 5-4.

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.⁶⁸

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.⁶⁹

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 provision that a person must not engage in conduct that is misleading or deceptive or likely to mislead or deceive⁷⁰ or make false or misleading representations⁷¹;
- a provision that a person must not act unconscionably when selling or supplying goods or services to a consumer⁷²;
- a prohibition on unfair contract terms in standard form consumer contracts⁷³;
- a provision relating to unsolicited goods or services⁷⁴;
- a requirement that a supplier must provide proof of transaction to consumers (such as a tax invoice)⁷⁵; and
- a requirement that a supplier provide an itemised bill for services (on request).⁷⁶

⁶⁸ The ACL review final report released in March 2017, includes a reform proposal to specify that where a good fails to meet the consumer guarantees within a short specified period of time, a consumer is entitled to the remedies of a refund or replacement without needing to prove a 'major failure' and a reform proposal to clarify that multiple non-major failures can amount to a major failure.

⁶⁹ ACL – sections 260 and 268.

⁷⁰ ACL – section 18.

⁷¹ ACL – section 29.

⁷² ACL – section 21.

⁷³ ACL – section 23.

⁷⁴ ACL – section 40.

⁷⁵ ACL – section 100.

⁷⁶ 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	✓	✓	✓	✓	✓ ⁷⁷	✓	✓	✓
Registration/licensing of salespersons				✓				✓
Restrictions on who may be employed as salesperson					✓ ⁷⁸	✓ ⁷⁹	✓ ⁸⁰	
Licensing of yard managers			✓ ⁸¹					✓
Licensing/registration of car market operators	✓	✓						✓

⁷⁷ 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.

⁷⁸ 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.

⁷⁹ 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.

⁸⁰ 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.

⁸¹ 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.

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		✓						✓

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 AND COMPLAINTS

In respect of the motor vehicle dealer 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;
- 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.

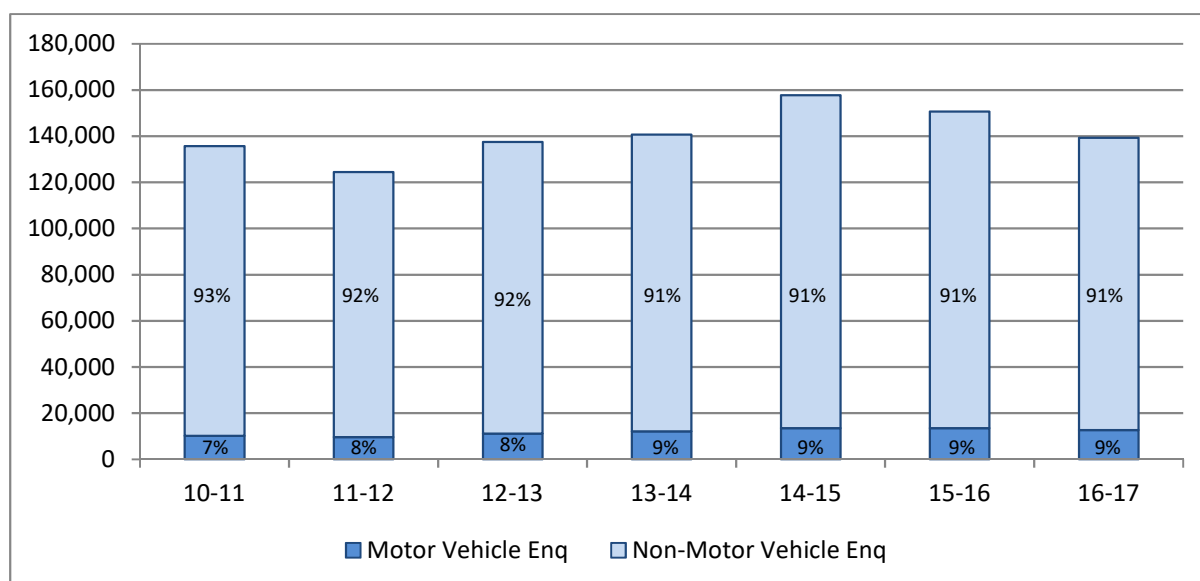
The vast majority of motor vehicle related matters raised by consumers do not require formal investigation or compliance action. Where prosecution is necessary, the most common issues relate to unlicensed motor vehicle dealing or unlicensed motor vehicle repairing.

Advice line enquiries

The Department provides a telephone advisory service whereby callers can seek advice about issues of concern. The Department recorded 150,636 calls to the advice line during the 2015-2016 financial year. Around nine per cent of these calls were motor vehicle related enquiries.

Figure 2 below identifies advice line calls received by the Department for the financial years 2010-2011 to 2016-2017 and includes the percentage motor vehicle related enquiries and non-motor vehicle related enquiries. The proportion of motor vehicle enquiries as compared to non-motor vehicle enquiries remained relatively constant for this period representing between seven per cent and nine percent of all calls.

Figure 2: Advice line enquiries



Complaints

The Department plays an important role in dealing with formal complaints made by consumers and industry. 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.

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.

The emphasis of conciliation is on early resolution by negotiating a mutually acceptable settlement, thus avoiding an overly legalistic approach. Complaints generated by industry participants often lead to the Department taking enforcement action for unlicensed motor vehicle dealing or repair activity.

For the two year period 2015-2016 and 2016-2017, the value of consumer redress achieved by the Department in relation to motor vehicle complaints totalled \$1.2 million. The average value of redress achieved for the same period was around \$4,000 per complaint.

Figure 3 below presents motor vehicle complaints and non-motor vehicle complaints dealt with by the Department for the financial years 2006-2007 to 2016-2017. The proportion of motor vehicle complaints as compared to non-motor vehicle complaints has remained relatively constant over this period representing between 12 per cent and 17 per cent of all complaints.

Figure 3: Total complaints vs Motor Vehicle complaints

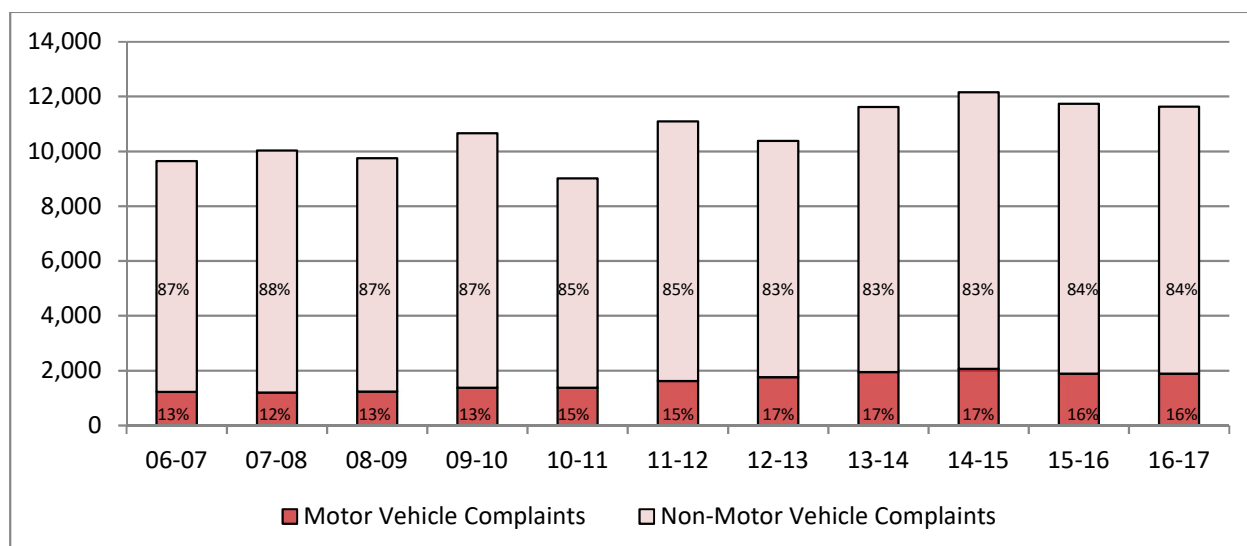
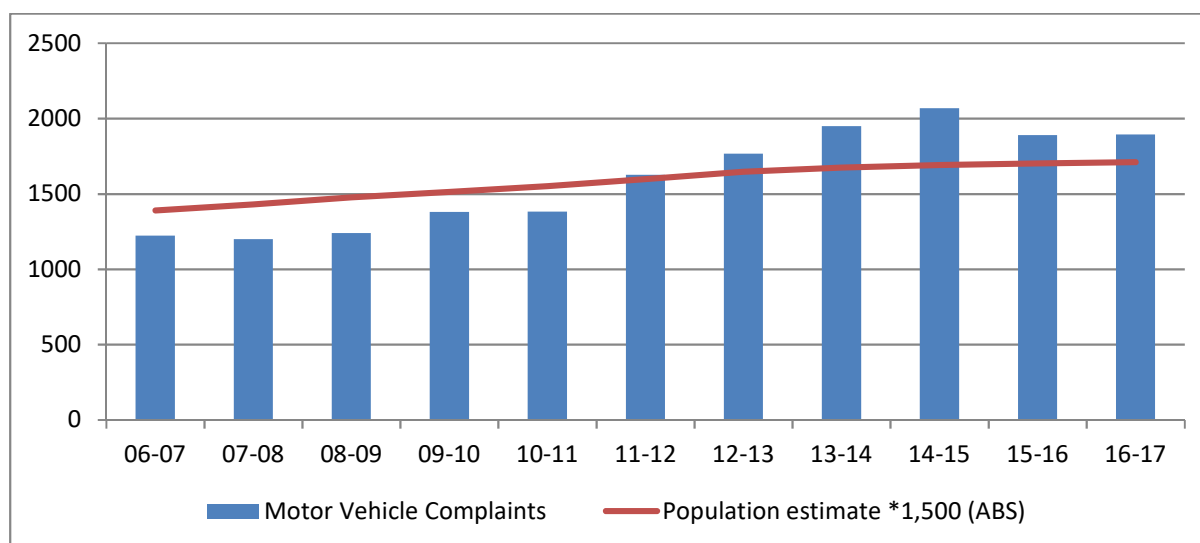


Figure 4 below indicates that WA's population increased from 2 million to 2.6 million during the financial years 2006-2007 to 2016-2017.⁸² The rate of increase in motor vehicle complaints appears to have exceeded Western Australia's rate of population growth during the financial years between 2012-2013 and 2016-2017.

Figure 4: Motor vehicle complaints and population growth in Western Australia

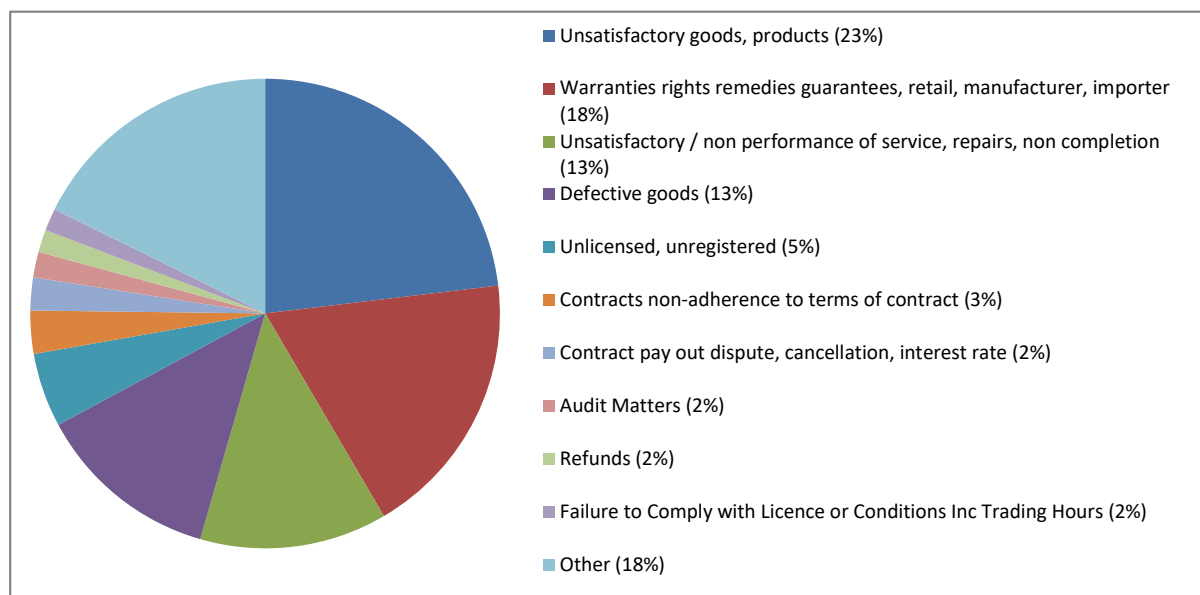


⁸² 3101.0 - Australian Demographic Statistics, Jun 2005 and ABS 3101.0 - Australian Demographic Statistics, June 2016.

Motor vehicle dealer complaints

Figure 5 below identifies the top ten complaint issues against dealers for the financial years 2006-2007 to 2016-2017. The most common issue for dealer complaints was unsatisfactory goods or products (23 per cent) followed by and warranty matters (18 per cent).

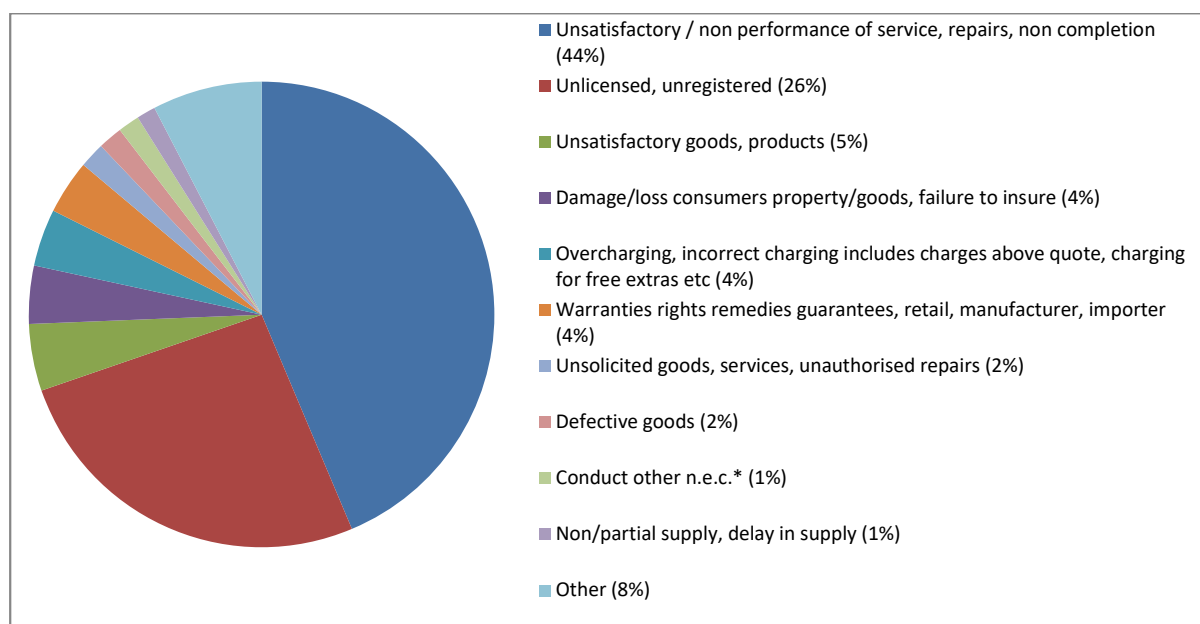
Figure 5: Dealer complaint issues



Motor vehicle repairer complaints

Figure 6 below identifies the top ten complaint issues against repairers for the financial years 2006-2007 to 2016-2017. The most common issue for repairer complaints was unsatisfactory or non - performance of service, repairs or non-completion (44 per cent) followed by unlicensed, unregistered (26 per cent).

Figure 6: Repairer complaint issues



(*n.e.c. - Not elsewhere classified)

PART 3: DEALER RECOMMENDATIONS

OVERVIEW OF TOPICS

This part of the DRIS considers the following topics in relation to motor vehicle dealers.

Theme: Scope (Who is required to be licensed)

- Whether the definition of vehicle under the MVDA should be expanded.
- Whether yard managers should continue to be regulated under the MVDA.
- Whether the categories of dealers prescribed in the Regulations should be changed.
- Whether salespersons should continue to be regulated under the MVDA.
- Whether car hire operators should continue to fall within the definition of dealer under the MVDA.
- Whether financiers should continue to fall within the definition of dealer under the MVDA.

Theme: Consumer protections/dealer operations (Protections in place for consumers)

- Whether a compensation fund should be introduced under the MVDA.
- Whether statutory used car warranties should be retained.
- Whether the commencement timeframe for manufacturer/demonstrator warranties should be changed.
- Whether consumer safeguards in relation to consignment sales should be retained (see sufficient resources MVDA and MVRA).
- Whether consignment sales requirements should continue to apply to dealer auctioneers selling on behalf of corporate owners.
- Whether dealers should provide additional disclosure information to consumers in relation to vehicles offered for sale.
- Whether cooling off periods should be introduced under the MVDA.
- Whether the maximum liquidated damages provided for in the Regulations should be significantly reduced.

No change to the definition of vehicle under the MVDA

RECOMMENDATION 1

That the existing definition of a vehicle under the MVDA be retained.

STATEMENT OF THE ISSUE

Issue

The Review considered whether the definition of vehicle under the MVDA should be changed.

The definition of vehicle is central to the application of the licensing requirements of the MVDA as it determines who must hold a licence to carry on a business as a dealer.

The specific issue to be resolved relates to whether or not the definition of vehicle, and thereby the scope of the MVDA, should be expanded to include all terrain vehicles (ATVs) and passenger vans seating between nine and 14 persons.

Definition of vehicle

For the purposes of the licensing requirements under the MVDA, a vehicle is defined as:

- a passenger car;
- a passenger car derivative;
- a motor cycle;
- a camper van; or
- a vehicle of a prescribed type or class that is prescribed in the Regulations.⁸³

The vehicles prescribed in the Regulations 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.⁸⁴

⁸³ Motor Vehicle Dealers (Prescribed Vehicles) Regulations 1974 (WA).

⁸⁴ Motor Vehicle Dealers (Prescribed Vehicles) Regulations 1974 (WA) - Regulation 3.

Current situation

ATVs

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.

ATVs are used primarily in business and for agricultural purposes, however, in recent years quad bikes have become increasingly popular for use in recreational activities. Prices for new ATVs range from \$4,000 and \$20,000, while second-hand ATVs generally sell for between \$800 and \$5,000.

ATVs do not currently fall within the definition of vehicle which means that businesses selling ATVs are not regulated under the MVDA. This is because they are primarily used for commercial purposes and off road. It is, however, noted that some licensed dealers selling motor cycles also sell 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, or extended warranty, irrespective of whether or not these warranties have expired.

Passenger vans

Passenger vans used for transporting people with a seating capacity exceeding eight, do not currently fall within the definition of vehicle and, as a result, businesses selling these larger vans are not regulated under the MVDA.

The Review considered whether the definition of vehicle should be expanded to include these larger passenger vans and concluded that the definition should not be expanded given that such vans are likely to be purchased for commercial purposes rather than for domestic use. Expanding the definition was assessed as going beyond the consumer protection intent of the legislation.

The ACL provisions outlined above would also be relevant to passenger van purchases. In addition, the ACL currently provides the full protection of the consumer law where a vehicle is purchased for commercial use if the purchase price is less than \$40,000. Proposed amendments to the ACL will increase the threshold to \$100,000 extending the coverage of the consumer law to a broader range of vehicle purchases by small businesses.

OBJECTIVE

The policy objective is to ensure that the current definition of vehicle under the MVDA remains appropriate.

OPTIONS CONSIDERED

Options in relation to ATVs

Option A: No change

Retain the status quo by not including ATVs in the definition of vehicle for the purposes of the MVDA, relying instead on the provisions of the ACL to protect the interests of purchasers of ATVs.

Option B: Amend the definition to include ATVs

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.

Options in relation to passenger vans

Option A: No change

Retain the status quo by not expanding the definition of passenger van.

Option B: Expand the definition of passenger vans

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

OUTCOME OF CONSULTATION

Overview: Stakeholder views

A total of eight written submissions were received during stages one and two of the Review. In addition, the Review received 149 industry responses to the online industry survey conducted during stage one of the Review in relation to questions about whether to expand or reduce the scope of the definition of vehicle under the MVDA.⁸⁵

⁸⁵ Specific questions relating to this matter were not included in the consumer survey.

Based on the outcome of stakeholder consultation undertaken during the Review, there appears to be general satisfaction with the current definition of vehicle, although several written submissions supported including ATVs in the definition of vehicle.

Key reasons for suggesting the definition of vehicle be expanded to cover ATVs included their increasing popularity and significant cost. In addition, it was suggested that there was a need for sellers to be knowledgeable due to the complexity of ATVs as well as a need to better educate consumers about safety issues in relation to riding ATVs.

There was limited support for expanding the definition of vehicle in respect of passenger vans as well as specific recommendations for incorporating some classes of vehicles currently prescribed in the Regulations within the MVDA itself.⁸⁶

Overall, responses to the online industry survey indicated strong support for retaining the status quo. In response to the survey question about whether additional types of vehicles should be included in the definition of vehicle, 23 per cent of respondents supported this suggestion while 63 per cent were opposed (14 per cent of respondents did not indicate a preference).

In response to the survey question about whether any types of vehicles should be removed from the definition of vehicle, five per cent of respondents were in support while 80 per cent were opposed (15 per cent of respondents did not indicate a preference).

Stakeholder responses to the CRIS (Stage 2 of the Review)

Six stakeholders provided written responses to options presented in the CRIS relevant to ATVs and passenger vans.

In regard to expanding the definition of vehicle to include ATVs:

Option A: No change was supported by one industry stakeholder.

Options B: Including ATVs in the definition of vehicle was supported by two associations representing industry, one association representing trail bike riders and one government department.

In regard to expanding the definition of passenger van:

Option A: No change was supported by one industry stakeholder.

Option B: Expanding the definition to include vans with a seating capacity not exceeding 14 passengers was supported by one industry association.

The following provides further detail in regard to stakeholder responses to the CRIS.

⁸⁶ Motor Vehicle Dealers (Prescribed Vehicles) Regulations 1974 (WA) - Regulation 3(e).

Responses in relation to ATVs

Motor Trade Association of Western Australia (MTAWA)

MTAWA believes that ATVs should be included under substantive definitions in section 5(3) of the MVDA as being a motorcycle like vehicle also known as a (quad bike) with three or more wheels, with a seat that is straddled by the operator, along with handlebars for steering control.

Department of Local Government and Communities (DLGC)

DLGC supported Option B.

DLGC expressed the view that if all dealers were required to obtain a licence it may provide an opportunity to encourage registration of off-road vehicles at the point of sale and educate owners about the provisions of the *Control of Vehicles (Off-road areas) Act 1978*.

DLGC noted that 'vehicle' is defined in the *Control of Vehicles (Off-road areas) Act 1978* as 'a vehicle that is propelled by an engine or other mechanical source of power' and that it would consider amending the definition, if required, to make it consistent with the MVDA once the final definition is determined.

Recreational Trailbike Riders' Association of WA (RTBRA)

The RTBRA supported Option B and made the following points in its support of Option B.

Consistency reasons

The distinction between agricultural use and recreational use of ATVs is very blurred as recreational use can be anything from ATV based touring using the more agricultural style of ATV, through to riding through the sand dunes on a racing quad.

ATVs purchased solely for agricultural use often end up being used for recreation, either on the farm or in the hands of a subsequent, non-farming owner. For this reason, RTBRA did not support the concept of attempting to distinguish between different uses of ATVs. RTBRA believes that all ATVs should be treated equally under this legislation.

ATVs and off highway motorcycles share many of the same components including engines, transmissions, brakes, electrical and fuel systems. RTBRA believes that an ATV is essentially a four wheeled motorcycle and should, therefore, be treated the same under the legislation.

While the definition of an ATV is a three or four wheel vehicle steered by handlebars, there is a new format of ATV becoming popular in Australia referred to as 'side x sides'. These vehicles are essentially a larger ATV where the driver and a passenger sit side by side and the vehicle is controlled with a steering wheel rather than handlebars. It is not clear whether this new type of vehicle is classified as an ATV. RTBRA believes that this type of vehicle should fall within the definition of vehicle under the legislation.

Practical reasons

RTBRA noted that licensed motorcycle dealers are seen as the appropriate businesses to import and sell motorcycles and ATVs. By selling a range of related products, motorcycle dealers can carry protective gear such as helmets, boots, gloves, goggles and body armour (which RTBRA advocate all off road riders should wear). A retailer who sells the occasional ATV as a line extension to other unrelated products such as hardware or lawnmowers may not have the volume to support carrying an inventory of different styles and sizes of safety gear.

Licensed motorcycle dealers may also have access to a broader size and power range of ATVs, thereby being better able to suggest a vehicle that is suitable to customers of every age group. Buying the appropriate size of ATV, especially for young children, has been shown to be a significant means of mitigating risk of injury.

RTBRA noted that the discussion paper indicated that restricting the sale of ATVs to licensed dealers may result in an increase in the cost of ATVs to consumers. RTBRA is of the view that this would be a positive outcome, in that it might reduce the number of low cost ATVs purchased impulsively, without proper consideration being given to critical matters such as where they are going to be ridden and how they will be transported there. RTBRA also noted that ATVs are not toys, and they should neither be sold nor purchased as toys.

RTBRA believes that increasing the purchase cost of ATVs also serves to shift the balance between the purchase price of the vehicle and the purchase price of protective equipment. A purchaser of a \$500 ATV may balk at the thought of spending an equivalent amount on protective equipment, whereas a more expensive ATV purchase brings down the proportionate cost of the protective gear within the overall package.

Federal Chamber of Automotive Industries (FCAI)

FCAI supported Option B.

FCAI is concerned about ATVs being sold without appropriate licensing and being sold in an unassembled form which it believes brings significant consumer risks due to the assembly of ATVs by unqualified persons.

In order to overcome these concerns, FCAI recommended that the definition of a vehicle include a reference to completely knocked down or unassembled forms of ATVs.

Pickles Auctions

Pickles Auctions supported Option A.

Responses in relation to passenger vans

Motor Trade Association of Western Australia (MTAWA)

MTAWA recommended that the definition of vehicle be amended to explicitly include buses as well as larger passenger vans.⁸⁷

⁸⁷ Expanding the definition to apply to buses was not canvassed in the CRIS as it was raised following the release of the CRIS.

Pickles Auctions

Pickles Auctions supported Option A in relation to passenger vans.

Additional comments

MTAWA also made the following comments in regard to concerns about possible gaps in the current definition of vehicle and suggested the following amendments be made in order to provide greater clarity for industry.

- Include ‘caravans’ under substantive definitions in section 5(3) and remove it from the Motor Vehicle Dealers (Prescribed Vehicles) Regulations 1974.
- Insert a definition of caravan under section 5(4) as a trailer, including a camper trailer, fitted for human habitation in the course of a journey. The words ‘*fitted for human habitation*’ be further defined in the MVDA as meaning ‘having fixed sleeping or fixed cooking facilities’.
- Include ‘goods vehicle’ under substantive definitions in section 5(3) and remove it from the Motor Vehicle Dealers (Prescribed Vehicles) Regulations 1974.
- Include ‘trailers’ under the substantive definitions in section 5(3) and define trailer under section 5(4) as ‘...an unpowered vehicle towed by powered vehicle and fitted with a braking system.’

The suggested changes are assessed as technical.

OTHER JURISDICTIONS

Motor vehicle dealer legislation in other jurisdictions does not specifically deal with ATVs or quad bikes, therefore, whether a person is required to be licensed to sell an ATV or quad bike is based on how the legislation in a state or territory generally defines the term “vehicle” or whether exclusions apply.

ATV’s

Most jurisdictions do not appear to require businesses selling ATV’s to be licensed. For example, Victoria’s legislation excludes vehicles that are not intended to be used on highways. Similarly, New South Wales’ legislation does not apply to vehicles that are not purchased principally for the transport of passengers or goods on public roads.

Passenger vans

The approaches taken to regulating the sale of passenger vans tend to vary across jurisdictions. For example, in Victoria and Tasmania, commercial vehicles including vehicles capable of carrying more than 10 passengers are exempt from the legislation. Some jurisdictions such as New South Wales, South Australia and the Northern Territory exempt vehicles based on weight. For example, in South Australia, the sale of vehicles with an un-laden mass exceeding 3 000 kilograms are excluded from the legislation.

PREFERRED OPTION

The Review did not identify any specific evidence that indicated that reforms in this area would produce better outcomes for consumers or industry. As a result, the Review recommends that the definition of vehicle not be expanded. This will mean that the scope of businesses regulated under the MVDA will not be expanded.

The Review concluded that:

- there does not appear to be a demonstrated need for imposing licensing requirements on businesses selling ATVs or passenger vans seating between nine and 13 persons;
- current arrangements are considered sufficient to safeguard the interests of consumers, for example, the ACL includes considerable consumer protection measures which are applicable to ATVs and larger passenger vans; and
- any benefits of regulating these businesses would be outweighed by the additional costs to industry, consumers and government.

It is also noted that there appeared to be general support amongst stakeholders for retaining the current definitions of vehicle, notwithstanding advocacy for change by major industry groups.

Reasons

MVDA not suitable legislation for addressing ATV safety issues

It is acknowledged that there are well founded concerns around the safety of ATVs and that ATV riders need to be better educated about safety issues and how to ride ATVs safely.

The MVDA is not, however, considered to be the appropriate legislation to deal with such concerns as its primary objective is to provide a licensing regime to regulate persons operating within the sales industry and to protect consumers in their dealings when purchasing motor vehicles.

It is also noted that the ACL provides a comprehensive product safety regime which applies to ATVs.

In addition, the focus of the MVDA is to regulate the sale of on-road vehicles generally used by households. Recreational off-road vehicles fall outside of the scope of the legislation and would require a very strong case for inclusion.

Impost on business

There appears to be insufficient evidence to warrant expanding the scope of businesses required to be regulated under the MVDA to include businesses selling ATVs and passenger vans seating between nine and 13 persons. Expanding the scope of the MVDA as suggested would result in additional barriers to entry as well as additional compliance costs for businesses.

For example, triennial costs of \$1,628 for dealers, \$412 for yard managers and \$280 for salespeople as well as the one off cost of completing relevant dealer, salesperson and yard manager training at a cost of around \$600 per person.⁸⁸ The Review has not been able to establish how many businesses would be affected.

There would also be additional costs associated with meeting licensing criteria, such as satisfying probity and sufficient financial resources requirements. Expanding the licensing regime to encompass most commercial bus sellers as suggested by MTAWA would result in a similar additional impost for business and appears to go beyond the consumer protection intent of the MVDA.

Additional impost on business is likely to result in costs being passed on to consumers and some businesses opting not to sell these kinds of vehicles, thus potentially reducing market competition.

MVDA warranty provisions would not apply to ATVs

It is noted that second-hand ATVs would not be covered by the consumer warranty provisions provided for under the MVDA as these provisions do not apply to off-road vehicles.

Increased costs for government

Expanding the scope of the MVDA would result in additional government resources being required to administer expanded compliance and licensing functions.

No additional costs

As retaining the current definition for vehicle is recommended, no additional costs are envisaged.

⁸⁸ Higher fees apply where dealers operate additional premises.

Continuation of licensing regime for yard managers

RECOMMENDATION 2

That yard managers continue to be regulated under the MVDA.

STATEMENT OF THE ISSUE

This topic was initially canvassed in the discussion paper. The CRIS subsequently reported on stakeholder input and concluded that this was an area where no change was required. The following reflects a summary of content presented in the CRIS including reasons for retaining the current arrangements.

Issue

The policy issue to be resolved is whether it is necessary to continue licensing yard managers under the MVDA.

Current Situation

Yard managers are required to be licensed under the MVDA. For the purposes of the MVDA, 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. Yard managers assume responsibility for managing a dealership and ensuring compliance with the Act. The granting of a yard manager's licence is subject to satisfying a range of requirements including age, probity and knowledge requirements.

OBJECTIVES

Objectives in regulating yard managers include:

- providing essential consumer protections; and
- screening for dishonest and unscrupulous people and preventing them from operating in the industry.

OPTIONS CONSIDERED

The following options were included in the discussion paper released for public consultation in August 2013.

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: Prohibit dealers from employing unsuitable staff

Under this option licensing requirements for yard managers would be replaced 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: Negative licensing scheme

Under this option a negative licensing scheme for yard managers would be implemented under whereby unsuitable yard managers could be prohibited from working in the industry.

Option D: No change

Under this option, the current regulatory arrangements for yard managers would be retained.

OUTCOME OF CONSULTATION

Overview: Stakeholder views

The discussion paper invited stakeholders to comment on whether licensing of yard managers should be retained in Western Australia.

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 their regulation.

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

Caravan Industry Association Western Australia (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.

Motor Trade Association of Western Australia (MTAWA)

MTAWA recommended that the licensing of yard managers be retained.

MTAWA noted that while this could be viewed as supporting an unnecessary level of regulation it believed that Western Australia's system has resulted in a more professional industry than in other jurisdictions which do not licence yard managers.

MTAWA 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 and at the individual sales staff level.

MTAWA 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.

MTAWA also noted that the largest national dealer group in Australia has expressed the view 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

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 6 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 6: 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 7 below summarises the consumer responses to the Consumer Online Survey question about the level of regulation which is necessary for yard managers.

Table 7: 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%)

OTHER JURISDICTIONS

Yard managers are not required to be licensed in other jurisdictions, however, in the Northern Territory, the person in charge of the day to day conduct of a dealer's business at each place of business must be approved by the Northern Territory's Commissioner.⁸⁹

PREFERRED OPTION

Following careful consideration, it is concluded that retaining licensing for yard managers was the most viable option.

Reasons

Appropriate

The current level of regulatory costs to industry is considered appropriate given the important role yard managers play in assuming responsibility for managing dealerships and ensuring compliance with the Act as well as the strong industry and consumer support for retention of the current regulatory arrangements.

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.

⁸⁹ *Consumer Affairs and Fair Trading Act* – section 176.

This would 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.

No additional costs

As current arrangements are being retained, no additional costs are envisaged. Forgone savings for industry in retaining yard manager licensing is \$491 per three year period plus a one-off cost of between \$500 and \$600 to obtain the required qualification.

Motor vehicle dealers – categories of licences

RECOMMENDATION 3

That Motor Vehicle Dealers (Licensing) Regulations 1974 be amended to reduce the prescribed categories of dealer licences to three broad categories.

STATEMENT OF THE ISSUE

Issue

The policy issue to be resolved is whether the current categories of dealer licences as set out in the Motor Vehicle Dealers (Licensing) Regulations 1974 (MVD Licensing Regulations) should be amended.

Current Situation

The MVDA provides for different categories of dealer licences to be prescribed for various types of business undertaken by motor vehicle dealers.⁹⁰ Table 8 below identifies the categories of licence which are currently prescribed in the MVD Licensing Regulations as well as the number of licensees for each category.⁹¹

A dealer may obtain a licence for any number and any combination of the categories below. Obtaining a licence for a number of dealer categories does not affect the fee paid. As at 1 July 2017, 931 dealers were licensed under the MVDA.

⁹⁰ MVDA – section 5A.

⁹¹ Motor Vehicle Dealers (Licensing) Regulations 1974 (WA) – regulation 8 and Fourth Schedule.

Table 8: Categories of dealer licences and number of licensees by category

Category	Description of business	Number of licensees as at July 2017
Category A	Buying, selling and auctioning vehicles other than motor cycles, caravans or campervans.	750
Category B	Buying, selling and auctioning motor cycles.	407
Category C	Buying, selling and auctioning caravans and campervans.	388
Category D	Buying any vehicles for the purpose of dismantling them and selling off the parts.	193
Category E	Acting as an agent to facilitate the selling or purchase of any vehicles on behalf of members of the public.	140
Category F	Hiring out vehicles, buying vehicles for hiring out, and selling and auctioning any vehicles that have been hired out by the dealer.	173

The MVDA makes provision for the Commissioner to attach conditions or restrictions to a licence. This is an administrative process and can take place on granting the licence or at any other time.⁹² Standard conditions are imposed in relation to some of the licence categories. For example, a standard condition imposed on dealer agents is that they must not hold money on behalf of members of the public.

The current business classifications and licensing categories for motor vehicle dealers commenced in 2002. The rationale for moving to the current differential licensing system was that it provided:

- simpler identification and prescription of the types of business for which a dealer's licence is required;
- capacity for the licensing authority to grant a dealer's licence subject to conditions or restrictions related to the activities of a particular category of dealer's licence;
- improved flexibility, enabling the licensing authority to keep pace with industry changes as they evolved; and
- a safeguard prohibiting persons conducting activities outside of the category of licence for which they had been assessed and granted a licence.⁹³

⁹² MVDA – section 18A.

⁹³ Explanatory Memorandum for the Motor Vehicle Dealers Amendment Bill 2001, introduced into Parliament on 7 November 2011 page 5 and WA Legislative Assembly Second Reading Speech for the Motor Vehicle Dealers Amendment Bill 2001, Hansard—page 5169.

Retail and wholesale dealers

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

It is noted that the licensing criteria, process and application fees are currently the same for wholesalers and retailers. The current application form differentiates between wholesale and retail selling and enables applicants to apply for a wholesale only licence. Strict conditions are imposed by the Commissioner on granting the licence. For example, wholesalers are only permitted to sell vehicles to licensed dealers.

To be granted a licence, wholesalers are required to 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. Similarly, wholesalers must also advise the Commissioner of the location of their premises.

The term, wholesale only, 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.'* As at 30 June 2017, there were around 30 dealer licence holders for whom wholesaling formed a substantial part of their business.

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.

Sale by consignment is an area where there is a significant potential risk to consumers. As a result, licensees intending to sell on consignment undergo more stringent financial viability assessments. Consequently, applicants for a dealer's licence must declare on the application form whether they will be accepting vehicles for sale on consignment.

If so, they 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. If an applicant advises that they do not intend to undertake consignment selling, the Commissioner imposes a licence condition to restrict this activity.

OBJECTIVE

To ensure that the current categories of licensing for motor vehicle dealers remain appropriate for today's marketplace and are sufficiently flexible to cater for any future changes.

OPTIONS CONSIDERED

Three options were presented in the CRIS for consideration.

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 Motor Trade Association of Western Australia

Under this option, the nine new categories of licence suggested (as listed later 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.

OUTCOME OF CONSULTATION

Overview: Stakeholder views

Nine written submissions were received during stages one and two of the Review comprising, two from business owners, five from industry associations, one from a consumer association and one from a government department.

Written responses generally supported the differential system of dealer licensing. Varying views were expressed in regard to how the specific categories should be prescribed in the MVD Licensing Regulations with some stakeholders supporting a reduction in the number of categories while others supported the inclusion of additional categories.

It is noted that several submissions:

- did not specify support for any particular option; or
- indicated no particular preference but suggested the inclusion of consignment sales as a separate category.

Stakeholder responses to the CRIS (Stage 2 of the Review)

Overview

Option A – No changes to the existing categories of dealer licence did not attract any responses.

Option B – Replace existing categories A to F with categories 1 to 9 as suggested by MTAWA was supported by MTAWA.

Option C – Replace the existing categories A to F with three general categories of licences was supported by Pickles Auctions and SBDC.

Written submissions

Consumers' Association of Western Australia (CAWA)

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. A preferred option was not specified.

Caravan Industry Association Western Australia (CIAWA)

CIAWA did not have a strong view about the best option for licensing categories. In relation to consignment selling, CIAWA advocated that recreational vehicle dealers engaging in consignment selling be granted a separate category 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.

Motor Trade Association of Western Australia (MTAWA)

MTAWA supported Option B.

MTAWA suggested that the six dealer categories prescribed in the MVD Licensing Regulations be replaced with the following categories:

- **Category 1** - retail buying and selling of motor vehicles other than goods vehicles.
- **Category 2** - buying and selling goods vehicles or other commercial vehicles.
- **Category 3** - wholesale buying and selling of motor vehicles.
- **Category 4** - auctioning motor vehicles (including via online auctions).
- **Category 5** - buying vehicles for the purpose of dismantling them and selling off the parts.
- **Category 6** - retail buying and selling of non-motorised vehicles (such as caravans and camper trailers).
- **Category 7** - consignment selling of motor vehicles.
- **Category 8** - acting as a broker or agent for the buying and selling of motor vehicles on behalf of members of the public.
- **Category 9** – car hire operators.

It is noted that MTAWA’s suggested categories cover activities that are currently regulated in some form and that there is no suggestion that the scope of coverage be extended. Table 9 below shows the overlap between the existing categories and the suggested new categories.

Table 9: Comparison of coverage between existing dealer categories and MTAWA’s suggested 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
MTAWA Suggested categories 1, 2, 3, 4 and 7	MTAWA Suggested categories 1, 2, 3, 4 and 7	MTAWA Suggested categories 1, 2, 3, 4, 6 and 7	MTAWA Suggested category 5	MTAWA Suggested category 8	MTAWA Suggested category 9

MTAWA argued that a ‘one size fits all’ approach to dealer licensing is not appropriate in the modern marketplace and that a better defined system across multiple categories would be of assistance to both the Department and industry.

MTAWA 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.

MTAWA expressed the view that 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.

MTAWA indicated that there would be minimal cost implications in adopting Option B and that any costs would be offset by greater clarity of licensing categories which would assist in the maintenance of the system.

MTAWA's submission also indicated 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, MTAWA suggested 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.

Caravan Industry Association Australia

CIAA noted that any of the three options proposed with regard to categories of licences would be appropriate but suggested that a new category be created for consignment selling.

Pickles Auctions

Pickles Auctions supported Option C, provided dealers would be able to be licenced in all three categories.

Small Business Development Corporation (SBDC)

SBDC noted that a core objective of the MVDA is to licence a person engaged in the business of buying, selling and exchanging motor vehicles with the purpose of providing protections for consumers when buying or selling vehicles from a dealer.

SBDC noted that outside of WA, only Queensland and the Australian Capital Territory have categories of licensing for motor vehicle dealers, but both jurisdictions limit this to only three categories.

SBDC suggested that consideration should be given to whether a similar capacity exists in WA to reduce the number of categories to broadly cover dealer, wrecker and broker (as per Option C) and argued that such an amendment is likely to have a positive impact on the regulatory burden of business operators, particularly those dealers requiring multiple licences.

OTHER JURISDICTIONS

Apart from Queensland and the Australian Capital Territory, other jurisdictions do not create categories of motor vehicle dealer licences.

Queensland

Queensland has the following categories of motor dealer licences for individuals and corporations:

- Motor dealer licence;
- Motor dealer wrecker licence; and
- Motor dealer broker licence.⁹⁴

Australian Capital Territory

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

- Dealer;
- Wholesaler; and
- Car Market Operator.⁹⁵

PREFERRED OPTION

While it is acknowledged that there was considerable support amongst stakeholders for retaining current arrangements, the Review concluded that the current categories should be amended to reflect three broad categories of dealer licences. The benefits of Option C are assessed as outweighing the costs. Option C is therefore recommended.

Under this option, the existing categories A to F will be replaced with three general categories of licences comprising motor dealer licence, motor dealer wrecker licence and motor dealer agent or broker licence. It is intended that knowledge requirements be retained. Such an approach is considered appropriate for today's marketplace and will provide improved flexibility to cater for future changes.

Reasons

Simpler approach

Adopting Option C will deliver a more streamlined and simplified application and assessment process which will deliver reduced compliance costs for business as well as reduced administrative costs for government in the mid to longer term. It will also bring WA into line with other jurisdictions which either don't specify dealer categories or specify a maximum of three dealer categories.

By contrast, increasing and rearranging the dealer categories, as proposed by Option B, was not supported on the basis that there does not appear to be any clear discernible benefit in doing so which would justify the additional regulatory burden on business and additional costs to government in implementing and administering such changes. It would also create additional costs for government in administering a considerably more complex system of licensing.

⁹⁴ *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.

⁹⁵ *Sale of Motor Vehicles Act 1977* (ACT) – sections 7, 7A and 7B.

Delivers adequate clarity

Option C also provides adequate clarity in terms of the regulator's compliance and enforcement activities. In addition, scope for imposing conditions or restrictions on granting of licences will be retained. This is achieved administratively and provides considerable flexibility which is important in responding to specific issues and marketplace changes.

Scope to tailor knowledge requirements

Option C also provides scope for tailoring sufficient knowledge requirements to the proposed dealer categories. For example, in Queensland, the knowledge requirements for dealers vary from the knowledge requirements for wreckers. This is unlikely to impose an additional regulatory burden on industry as businesses are unlikely to apply for multiple categories of licence. Such an approach will have the advantage of addressing concerns in relation to some dealer course content being irrelevant for certain types of activity – e.g. wreckers.

Wholesale dealers

The Review considered the suggestions that:

- the use of the word 'wholesale' in a business name, be regulated under the MVDA; and
- retail and wholesale businesses owned by a single dealer be required to operate from separate premises.

The Review does not support these suggestions on the basis that they go beyond the scope and intent of the legislation and are overly prescriptive. Intervening in the marketplace in this manner appears unnecessary. In addition, the costs of implementing these suggestions would outweigh the benefits.

Additional costs

Moving from the current system to a new system will result in increased costs for government in the short-term in implementing these changes and administering the legislation, however, in the longer term, savings for both business and government are anticipated.

Other issues relevant to dealer licensing

Issues specific to car hire operators, financiers, and consignment selling by auctioneers are dealt with separately as the matters raised are not directly relevant to the issue of how dealer categories are described in the MVD Licensing Regulations.

Licensing of salespersons

RECOMMENDATION 4

That the MVDA be amended to allow the requirement for motor vehicle dealer salespersons to be licensed to sunset in three years from enactment of the amendment.

That the MVDA be amended to place an obligation on dealers to ensure salespersons hold qualifications approved by the Commissioner.

STATEMENT OF THE ISSUE

Issue

The policy issue to be resolved is whether it is necessary to continue licensing motor vehicle salespersons in WA to ensure that the rights of those who purchase motor vehicles are adequately protected.

Historical perspective

The licensing of motor vehicle dealers in Western Australia can be traced back to the *Traffic Act 1919*. Although the *Traffic Act 1919* 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. Serious concerns about backyard selling and dubious sales practices led to the decision to strengthen the legislation regulating the motor vehicle sales industry.

These practices included:

- generally deceiving consumers, for example, disguising mechanical defects by using temporary remedies;
- high pressure sales tactics resulting in consumers signing contracts without fully considering the implications;
- failure to disclose important information; and
- odometer tampering.

Licensing of yard managers and salespersons

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.

Current situation

The MVDA currently requires motor vehicle salespersons to be licensed. 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'. As at 1 July 2017, there were 1,872 licensed salespersons. This represents around 50 per cent of licensees regulated by the MVDA.

In general, a salesperson currently needs to obtain a licence if they wish to:

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

To qualify for a licence, a 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, applicants are required to provide:

- a criminal history check that is no more than three months old; and
- evidence that they have successfully completed a motor vehicle salesperson licensing training course approved by the Commissioner.

Role of salespersons

Salespersons play an important role in the purchase of a motor vehicle as they are usually the first point of contact for consumers. 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 generally complete the required sales documentation, including the contract. 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.

Red Tape Reduction Group Report

The Red Tape Reduction Group (RTRG) was established by the State Government as one of a number of initiatives aimed at reducing the regulatory burden in Western Australia. The RTRG was given the task of identifying, reporting and recommending measures that would reduce the compliance burden on the community of excessive and sometimes redundant regulation.

The RTRG's 2009 report recommended that the licensing requirement for salespeople be removed.⁹⁶ The report noted that in practice, the owner of a dealership is ultimately responsible if any disputes arise, irrespective of whether the sales were conducted by licensed employees.

Consultation undertaken by the RTRG addressed a wide range of government regulation. Issues relevant to motor vehicle dealers were raised a total of five times by stakeholders. The report indicated that most of the submissions related to:

- unnecessary licensing categories and associated requirements;
- high compliance cost and paperwork requirements;
- costly and time-consuming application requirements; and
- excessive state taxation requirements.

The report noted that stakeholders expressed concerns about the unnecessary burden imposed on salespeople. In addition, the report indicated that individuals and dealerships had raised concerns with respect to mandatory training requirements. Businesses operating in regional areas reported that they had found it difficult to access licensed employees in smaller country towns.

The RTRG's recommendation to cease licensing salespeople is not supported by the motor vehicle industry. MTAWA strongly refutes the RTRG's view that the removal of licensing would provide significant benefits in terms of flexibility, arguing that the existing regulatory model has contributed greatly to the professional and ethical motor vehicle retail market in Western Australia and delivered long-term qualitative benefits for both consumers and industry.

⁹⁶ Red Tape Reduction Group, Government of Western Australia, *Reducing the Burden - Report of the Red Tape Reduction Group*, December 2009.

OBJECTIVES

The policy objective is to ensure that the regulation of salespersons is appropriate in the context of providing consumer protections and screening for and preventing unfit persons from operating in the industry.

OPTIONS CONSIDERED

Five options were presented in the CRIS in relation to the future regulation of salespersons.

It is noted that under all options, 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 could also be the subject of actions under the ACL.

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 salesperson capacity for a specified period. Industry has recommended this option to allow new salespeople who are yet to complete licensing requirements to be able to take consumers for test drives.

Option C: Deregulate the licensing of salespersons but require dealers to ensure salespersons are appropriately qualified

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 motor vehicle salesperson training course as approved by the regulator.

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.

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.

OTHER JURISDICTIONS

Extent of regulation

Table 10 below provides an overview of the extent of regulation of salespersons across jurisdictions.

Table 10: Level of regulation of salespersons across Australia

JURISDICTION	LEVEL OF REGULATION
NSW	No regulation of salespersons.
NT	No regulation of salespersons.
ACT	No regulation of salespersons.
Vic	No licensing or registration but restrictions on who individual dealers may employ as a salesperson.
SA	No licensing or registration but restrictions on who individual dealers may employ as a salesperson.
Tas	No licensing or registration but restrictions on who individual dealers may employ as a salesperson.
Qld	Must be registered.
WA	Must be licensed.

In New South Wales, the Northern Territory and the Australian Capital Territory, there is no regulation governing who may be employed as a salesperson for the purposes of motor vehicle dealing.

In Victoria, South Australia and Tasmania, dealers are free to employ or engage whomever they choose, subject to that person meeting certain mandatory criteria. For example, 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.⁹⁷ It is also an offence for a person to act as a salesperson if they fall within these exclusions.

⁹⁷ *Second-hand Vehicle Dealers Act 1995 (SA)* – section 13A.

Western Australia is the only jurisdiction requiring motor vehicle salespersons to be licensed, although it is noted that in Queensland, salespersons are required to be registered. The licensing and registration criteria for salespersons are similar in both jurisdictions. In Western Australia, an applicant must satisfy the Commissioner that they understand the duties and obligations imposed on salespersons by the legislation and that they have sufficient knowledge of the duties and obligations imposed on dealers and yard managers.

In Queensland, an applicant for registration as a salesperson must hold qualifications approved by the chief executive or an equivalent qualification approved for the relevant registration category.

OUTCOME OF CONSULTATION

Overview: Stakeholder views

A total of 11 written submissions were received during stages one and two of the Review. In addition, the Review received 149 industry and 41 consumer responses to the online survey conducted during stage one of the Review.

Overall, there appears to be considerable industry and some consumer support for the continued regulation of salespersons with industry strongly supporting the retention of licensing of salespersons despite the associated costs.

There was some limited support for full deregulation of salespersons on the basis that licensing requirements do not apply in other jurisdictions and business owners should be responsible for assessing the suitability of prospective employees and their conduct in the workplace.

Online surveys reflected minimal support for the deregulation of salespersons with only 12 per cent of industry respondents and five per cent of consumer respondents supporting deregulation.

Stakeholder responses to the CRIS (Stage 2 of the Review)

Option A: No change was supported by two industry stakeholders.

Option B: Retain licensing and provide for interim authorisations was supported by three industry associations.

Option C: Deregulate but require dealers to ensure salespersons attend appropriate training received nil responses.

Option D: Deregulate but prescribe offences that would prohibit employment in case of certain offences received nil responses.

Option E: Full deregulation was supported by one business, one government department and CAC.

Written submissions in response to CRIS

Salesperson (confidential)

One salesperson did not support any of the options presented in the CRIS and instead expressed a preference for licensing requirements to be tightened to heighten consumer confidence on the basis that this would:

- enhance the known benefits of regulating the role;
- ensure that employees are both of a high calibre and good nature; and
- ensure that salespersons work within the spirit of the law.

Pickles Auctions

Pickles Auctions supported the full deregulation of licencing of sales persons (Option E) and noted that this would bring WA into line with most other jurisdictions. Pickles also noted that most organisations undertake their own criminal history and police checks on applicants when employing salespersons as this is common practice when employing staff in any role.

Pickles also noted that the CRIS indicated that for the period 1 July 2011 to 31 December 2014, the Commissioner had only refused to grant nine applications on the grounds that the applicant was either not of good character or repute, or not a fit or proper person to hold a licence.

Motor Trade Association of Western Australia (MTAWA)

MTAWA supported the retention of the licensing of salespersons and provisions for the Commissioner to issue interim authorisation to applicants for a salesperson licence as described in the consultation paper (Option B).

MTAWA argued that industry strongly supports maintaining the licensing of salespeople and noted that greater flexibility is needed in the area of employing new salespeople and allowing them to operate, under supervision, whilst their licensing application is being processed.

MTAWA wished to see:

- licensing of salespersons be retained;
- dealers being permitted to employ a person as a salesperson for a period not exceeding three months, subject to the person submitting a national police clearance prior to employment, during which time the applicant must make application for a licence, and must successfully complete the salesperson training course;
- no restriction on the activity of a person employed in this manner other than the requirement that a person must be under the direct supervision of a licensed dealer or yard manager; and
- unlicensed probationary salespersons not be permitted to sign or witness a contract to buy a motor vehicle.

MTAWA noted that there would be limited cost implications in adopting Option B as applications would still need to be made and the allowance of a three month period could be noted on the applicant's file in the same manner in which the trainee status is currently maintained.

Caravan Industry Association Australia (CIAA)

CIAA supported retention of licensing of salespersons and inclusion of provisions for the Commissioner to issue interim authorisations to applicants for a salespersons licence (Option B). CIAA argued that the retention of salesperson's licensing in WA would protect consumers and the reintroduction of an interim authorisation would allow for the engagement of trainee salespersons or temporary salespersons for special events (such as caravan and camping shows).

CIAA believes that Option B would reduce the cost to industry and potential employees and (if appropriately framed) would shift the burden of compliance from the regulator to the dealer.

Caravan Industry Association Western Australia (CIAWA)

CIAWA supported retention of licensing of salespersons and inclusion of provisions for the Commissioner to issue interim authorisations to applicants for a salespersons licence for special events such as caravan and camping shows (Option B).

CIAWA considers that there would be no negative unintended consequences in relation to this proposal and believes that Option B may potentially reduce costs to industry and to potential employees of the industry and would shift the burden of compliance from the regulator to the dealer.

CIAWA noted that the licensing of salespersons has almost unanimous support from CIAWA's Trade Committee and 75 per cent support from its members.

In the event that Option B proceeds, CIAWA would support any proposal which clearly defines, preferably through regulation, the role and authority of holder of an interim authorisation.

Small Business Development Corporation (SBDC)

SBDC supported the full deregulation of licensing of salespersons (Option E).

SBDC's submission:

- noted that the MVDA was introduced with the aim of providing essential consumer protections, screen for and prevent dishonest and unscrupulous people from operating in the industry, improve the safety of vehicles and assist in crime prevention;
- noted that industry supports the retention of licensing as it provides greater flexibility around the employment of salespersons and the opportunity to assess their suitability;
- supported measures that provide greater flexibility to industry participants, but reiterates its view that the requirement for licensing of salespersons be removed;
- noted the absence of this requirement in similar licensing regimes in other jurisdictions;
- expressed the view that adequate protections already exist under the MVDA that hold dealers and yard managers accountable for the actions of their salespersons and in turn operates as a significant inducement for these parties to ensure they employ reputable sales staff;
- agreed with the premise included in the CRIS that a yard manager plays an important and central role in the day-to-day operation of the dealership, particularly in the absence of a dealer principal; and
- expressed the view that yard managers should continue to be licensed.

W.F.Harry OAM

Mr Harry strongly supported retention of salesperson licensing and believes that the MVDA will fail or be far less effective if licensing of salespeople is removed. Mr Harry also noted that real estate agents are required to be licensed.

Consumer Advisory Committee (CAC)

CAC does not support the retention of the licensing of salespersons as it believes that it is incumbent upon dealers to screen prospective sales staff and determine whether they are fit and proper to carry out their duties. CAC is also of the view that the additional regulatory costs of licensing salespeople are not justified.

IMPACT ANALYSIS

Costs and benefits

Impact on salespersons

Salesperson licensing represents a barrier to entry as applicants are required to meet specific requirements including completion of formal training to satisfy the knowledge requirements of the MVDA. Deregulation of salespersons will remove direct compliance costs for individuals of \$290 per salesperson to obtain a three year licence. Salespersons will still be required to complete relevant training which currently costs between \$400 and \$600 per salesperson (one-off cost).

Time savings will be achieved as a result of salespersons no longer being required to complete the licensing application process. It is anticipated that the majority salespersons may still be required to provide a criminal history check to prospective employers as part of pre-employment checks.

Impact on consumers

As licensing imposes a regulatory burden on business, these costs are likely to be passed on to consumers. This is, however, likely to be minimal due to the large number of motor vehicle sales transactions.

It is also acknowledged there may be some increased risk of an unsuitable person working in the industry and, therefore some risk of consumer detriment. The risk is, however, assessed as low given that dealers have a vested interest in employing suitable staff. Also, the decision making responsibility in relation to motor vehicle transactions with consumers will continue to sit with dealers and yard managers rather than salespersons.

Impact on government

The consequent loss of revenue for government previously derived from licensing fees for salespersons will no longer be available to offset costs associated with advisory, conciliation and compliance functions performed under the MVDA as well as actions under the ACL.

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 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.

Based on the Department's Fees and Charges Model as approved by Treasury for the 2017/18 financial year, the level of cost recovery in relation to administering the MVDA would be reduced from 50 per cent to around 43 per cent as a result of no longer deriving revenue from salespersons licensing regime.⁹⁸ As a result, consideration may need to be given to reviewing and restructuring the fees and charges applicable under the MVDA to ensure that the current level of cost recovery is at least maintained or improved.⁹⁹

Any proposed fee increases would, however, require consideration by the Expenditure Review Committee (ERC).

Summary of costs and benefits

The following table summarises the costs and benefits associated with each of the five options. Option C is assessed as providing the best balance between benefits and costs for industry, consumers and government.

⁹⁸ 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.

⁹⁹ 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.

Table 11: Summary of costs and benefits

	OPTION A <i>No Change</i>	OPTION B Retain licensing and include provisions for issuing interim authorisations	OPTION C Deregulate but onus on dealer to ensure that salespersons are qualified	OPTION D Deregulate and prescribe offences prohibiting employment	OPTION E Full deregulation of the licensing of salespersons
INDUSTRY	No change as status quo maintained.	Certainty regarding trainee salespersons arrangements. Barriers to entry and compliance costs remain the same.	Reduces barriers to entry and direct compliance costs for individuals of \$290 for three year licence plus a one off cost of between \$400 and \$600 to attend a mandatory training course. ¹⁰⁰ Increased flexibility in recruiting salespersons. Some risk that dealers may employ unsuitable persons.	Removes barriers to entry and direct compliance costs for individuals of \$290 for three year licence and around \$400 to \$600 to attend mandatory training course. Increased flexibility in recruiting salespersons. Some risk that dealers may employ unsuitable persons.	Removes barriers to entry and direct compliance costs for individuals of \$290 for three year licence and around \$400 to \$600 to obtain mandatory qualification. Increased flexibility in recruitment of staff. Some risk that dealers may employ unsuitable persons.
CONSUMERS	No change Maintains consumer confidence.	Maintains consumer confidence.	Maintains level of consumer confidence through compulsory training of salespersons.	Possible increased risk of consumer detriment through no compulsory training of salespersons.	Possible increased risk of consumer detriment through employment of unsuitable persons and no compulsory training of salespersons.

¹⁰⁰ The salesperson licence fee is current as at April 2017.

	OPTION A <i>No Change</i>	OPTION B Retain licensing and include provisions for issuing interim authorisations	OPTION C Deregulate but onus on dealer to ensure that salespersons are qualified	OPTION D Deregulate and prescribe offences prohibiting employment	OPTION E Full deregulation of the licensing of salespersons
GOVERNMENT	No change No impact on resources and ongoing compliance costs.	Increased workload in assessing interim authorisations.	Reduced workload and costs due to no longer licensing salespersons. Ongoing costs in ensuring compliance with training requirements without scope for cost recovery through salesperson licensing fees.	Reduced workload and costs due to no longer licensing salespersons. Ongoing costs in regulating industry without scope for cost recovery through salesperson licensing fees.	Ongoing costs in regulating industry without scope for cost recovery through salesperson licensing fees.

Public benefit assessment

Overall, the costs associated with Options A, B, D and E appears to outweigh the benefits. Option C is assessed as providing an overall net public benefit with the benefits outweighing the costs. By implementing Option C it:

- will reduce costs for salespersons as a result of no longer being licensed;
- may increase administration costs for dealers;
- maintains a reduced risk of consumer detriment due to salespersons still being trained in their responsibilities under the MVDA and ACL; and
- will decrease administration costs for government.

Option C is assessed as providing the best overall balance between costs and benefits.

PREFERRED OPTION

Option C is recommended.

The Review concludes that it is no longer necessary to regulate salespersons in order to meet the policy objective of ensuring that the rights of those who purchase vehicles are adequately protected. In addition, the Review concludes that it is appropriate to place a positive obligation on dealers to ensure that salespersons are appropriately qualified.

In view of considerable industry support for the retention of licensing, it is recommended that the MVDA be amended to provide for a sunset clause to provide for salesperson licensing to cease in three years from enactment of the amendment. Implementation of amendments in respect of placing an obligation on dealers to ensure salespersons are qualified will also be delayed to coincide with the commencement of sunset provisions. This will enable an orderly transition to deregulation and new arrangements in respect of qualification obligations. It will also allow for a transition period for new employees.

Reasons

Changed environment

The MVDA commenced in 1973, prior to the introduction of general consumer protection legislation in Western Australia and nationally. As a result, the regulatory environment has significantly changed, with greater general protections now available to consumers included under the ACL.

It is considered no longer necessary to licence salespersons as the industry has progressed significantly over the 40 years since the introduction of the MVDA. In the absence of licensing, the ACL will continue to provide protections for consumers and apply to the actions of salespersons. Removal of licensing requirements for salespersons will bring WA into line with the majority of other jurisdictions across Australia.

In addition, the used vehicle fleet has improved considerably in terms of quality and reliability meaning that there are fewer 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.

Reduced regulatory burden

Removing licensing requirements for salespersons also reflects the Government's objective of reducing the regulatory burden on the community. It will provide dealers with more discretion and flexibility in recruiting suitable salespersons and reduce barriers to entry for prospective employees.

Low consumer risk

Potential consumer risk is assessed as very low. It is noted that the Review was unable to identify lower levels of consumer complaints in WA as compared to other jurisdictions which could be linked to the requirement for salespersons to be licensed. In recent times, it is evident that motor vehicle dealing businesses are more professionally run.

Further, the Review concludes that there is no evidence that the deregulation of salespersons will result in significant consumer detriment as there are sufficient consumer safeguards in place through the regulation of yard managers and dealers. In addition, placing an obligation on dealers to ensure that salespersons are appropriately qualified will provide appropriate protections for consumer.

It is acknowledged that there may be some increased risk of unsuitable persons working in the industry as a result of ceasing to license salespersons, however, this risk is assessed as very low as salespersons are sufficiently well supervised to overcome this risk.

In addition, it is noted that the MVDA holds dealers accountable for the actions of their employees with proceedings usually commenced against dealers in relation to offences rather than employees.¹⁰¹ For example, if a salesperson breaches the MVDA, the Department generally takes action against the business as well as the salesperson unless the dealer is able to prove that they had no knowledge of the offence and could not, by the exercise of due diligence, have prevented the offence.¹⁰²

As a result, there is a strong incentive for dealers to employ suitable sales staff and to ensure that they are aware of their obligations in their dealings with consumers. In addition, it is noted that dealers and yard managers would continue to be licensed and trained.

It is also noted that while there was some consumer support for retaining salesperson's licensing, the CAC, which is appointed to provide advice to the Minister and Commissioner from a consumer perspective, did not support the retention of the licensing of salespersons on the basis that the additional regulatory costs of licensing salespeople are not justified.

Appropriate business responsibility

It is considered appropriate to expect business owners to be responsible for assessing the suitability of prospective employees in terms of their qualifications and conduct.

It is possible that the absence of salesperson licensing some dealers may opt not to undertake pre-employment probity checks of their staff. As is the case for many other businesses, this will ultimately be a business decision for dealers. It is, however, anticipated that most dealers will recognise the competitive advantage to be gained from employing suitable staff. In regard to qualification checks, appropriate penalties will apply to encourage dealer compliance.

Improved flexibility to adapt to change

As outlined earlier, rapid change within the motor vehicle sales industry is anticipated making it necessary for dealerships to have the capacity to readily adapt to different modes of engaging customers. Removing salespersons licensing will deliver improved flexibility for industry to respond to change.

Interim authorisations: not supported

In regard to interim authorisations, the Department notes that interim authorisation provisions (permits) were previously included in the MVDA giving dealers the flexibility to engage salespersons and fill vacant positions in advance of having met licensing requirements.

The interim authorisation provisions were repealed in 2011. Interim authorisations were seen as diminishing the objectives of the licensing regime by allowing prospective employees to commence work in the industry without having met the requirements set out in the legislation. While licensing of salespersons remains, reinstating interim authorisations is not supported. It is noted that this issue will fall away once the deregulation of salespersons occurs.

¹⁰¹ MVDA - sections 42 and 54.

¹⁰² Ibid.

Motor vehicle dealers licensing – car hire operators

RECOMMENDATION 5

That car hire operators be removed from the definition of dealer under the MVDA.

That car hire operators selling vehicles other than directly to licensed motor vehicle dealers be required to be licensed under the MVDA.

STATEMENT OF THE ISSUE

Issue

The policy issue to be resolved is whether the requirement for car hire operators to be licensed should be removed in favour of a simpler requirement that car hire operators must dispose of vehicles to or through a licensed motor vehicle dealer.

Current Situation

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’.¹⁰³ 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.¹⁰⁴

Such exemptions may be subject to conditions and may extend to a person acting as an employee or agent of the car hire operator. As at 1 July 2017, 111 car hire operators had been granted exemptions under the MVDA.

It has been suggested that instead of having to be licensed, car hire operators should be removed from the definition of dealer under the Act on the basis that car hire operator be required to dispose of vehicles to or through a licensed motor vehicle dealer. If a car hire operator did not wish to dispose of vehicles in this manner, but wanted to sell vehicles on their own behalf, then they would be required to be licensed as a dealer.

¹⁰³ MVDA – section 5.

¹⁰⁴ MVDA – section 31(1).

Complaints data

Consumer complaints in regards to car hire operators selling vehicles are relatively low. While 430 complaints were received by the Department in relation to car hire operators or car hire services between 1 July 2006 and 30 June 2017, only 28 complaints or six per cent related to the sale of a vehicle. In the 2016-2017 financial year, only one complaint was received in relation to the sale of a vehicle by a car hire operator.

OBJECTIVE

In considering reforms, the policy objective is to provide adequate protections for consumers whilst maintaining the commercial viability of the motor vehicle dealing industry.

OPTIONS CONSIDERED

Three options were presented in the CRIS for consideration.

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.

OUTCOME OF CONSULTATION

Overview: Stakeholder views

This issue was not specifically addressed in the 2013 discussion paper but was raised by stakeholders and addressed in the CRIS.

A total of four written submissions were received MTAWA, CIAWA (two submissions) and CIAA during stages one and two of the Review.

Stakeholders raised concerns about the safety implications arising from the increasing use of second-hand vehicles in car hire operations. Submissions noted 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.

Submissions proposed this safety issue be addressed by narrowing the scope for exempting car hire operators 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 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.

Stakeholder responses to the CRIS (Stage 2 of the Review)

Caravan Industry Association Australia (CIAA)

CIAA supported car hire operators being licensed to ensure that consumer safety is not compromised.

Caravan Industry Association Western Australia (CIAWA)

CIAWA supported removing the exemption provisions from the MVDA so that all car hire operators would be required to conform with the same rules including the requirement that their vehicles be subject of inspections.

CIAWA noted that the existing exemption arrangements prevented the potential for regular inspection of fleets and compromises consumer safety. CIAWA argued that the removal of licensing requirements would exacerbate this problem.

CIAWA also supported requiring car hire operators to employ certified repairers to repair their vehicle fleets.

CIAWA noted that it had been suggested in the CRIS that the licensing of car hire operators is not core to the objectives of the MVDA and that the MVDA is not considered to be the correct mechanism for resolving this issue.

CIAWA acknowledged that the existing regulatory regime for car hire operators was a compromise and noted that the decision to regulate the car hire operators was a consequence of extensive dishonest, unethical and sometimes illegal practices which characterised the industry in the 1990's.

CIAWA indicated that, based on anecdotal evidence gathered in its recent research of unlicensed recreational vehicle hire operators that a number of exemption holders continue to sell their surplus vehicles direct to market in contravention of the MVDA.

CIAWA argued that that there is no reason to believe that such practices would not return following deregulation. CIAWA also indicated that it was not aware of industry demand for deregulation of the car hire industry, and argued that it represents a sensible and cost effective compromise which should be retained.

OTHER JURISDICTIONS

Car hire operators

Car hire operators in other jurisdictions are not required to hold a dealer's licence unless they sell their vehicles directly to the public.

IMPACT ANALYSIS

Costs and benefits

The following summarises the costs and benefits associated with the three options. Option C is assessed as providing the best balance between benefits and costs for industry, consumers and government.

Costs and benefits

Under Option A, compliance costs would remain the same for industry, consumers and government.

Under Option B, there would be increased costs for industry and government as a result of implementing expanded inspection powers.

Under Option C there would be reduced compliance costs for industry (saving of \$139.50 per three year exemption application plus associated time savings). Also, there would be some minor cost savings for government as a result of no longer processing exemption applications. These savings are likely to be off-set by the cost of dealing with an increase in complaints.

Cost savings for business as a result of no longer being required to apply for an exemption equate to \$139.50 per applicant plus time savings in completing the process.

PREFERRED OPTION

Option C is the preferred option.

This option involves amending the MVDA to remove car hire operators from the definition of dealer. As a result, car hire operators would no longer be required to seek an exemption from the provisions of the MVDA, if they dispose of vehicles directly to a licensed motor vehicle dealer. Car hire operators would, however, be required to seek a licence under the MVDA if they dispose of vehicles other than directly to a licensed motor vehicle dealer.

Reasons

Similar outcomes for consumers

Option C is supported as it essentially achieves the same consumer protection outcomes but delivers reduced regulatory burden for industry.

Consumer risk is considered low as the protections afforded consumers remain the same under Option C. Option C simply changes how car hire operators are regulated. Car hire operators who opt to sell vehicles directly to licensed dealers will no longer be required to obtain an exemption.

Car hire operators wishing to dispose of vehicles directly to members of the public on their own behalf would be required to be licensed as a dealer.

Increased compliance costs for business

Extending the MVDA licensing scheme to apply to all car hire operators with no scope for exemptions is not supported as it would unreasonably increase the scope of the MVDA and impose increased compliance costs on car hire operators. For example, a licence to trade at a single location would be at a cost of \$1,706 per three year period regardless of whether or not the car hire operator was selling vehicles to the public.

ACL coverage

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. Complaints about hire vehicles can be investigated by the Department.

Safety issues

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.

While it is acknowledged that safety issues in relation to second-hand vehicles hired to consumers are important, the MVDA is not considered to be the best mechanism for addressing these concerns. General consumer protection laws provide scope for dealing with consumer complaints in relation to unsafe hire vehicles. The Department contributes to the safety of the hire vehicle fleet but is not directly responsible for it.

Other mechanisms are in place 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. 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.

Motor vehicle dealers licensing – financiers

RECOMMENDATION 6

That financiers be removed from the definition of dealer under the MVDA.

That financiers selling vehicles other than to or through licensed motor vehicle dealers be required to be licensed under the MVDA.

STATEMENT OF THE ISSUE

Issue

The policy issue to be resolved is whether the requirement for financiers to be licensed should continue.

Current Situation

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.¹⁰⁵

A financier falls within the definition of dealer under the MVDA and is therefore required to hold a dealer's licence.¹⁰⁶ 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 or she ordinarily disposes of vehicles which have been repossessed directly to licensed dealers.¹⁰⁷

Such exemptions may be subject to conditions and may extend to a person acting as an employee or agent of the financier.

¹⁰⁵ MVDA – section 5.

¹⁰⁶ MVDA – section 5.

¹⁰⁷ MVDA – section 31.

As at 30 June 2017, nine financiers had exemptions granted under the MVDA. There is no ability to renew an exemption under the MVDA. Exemptions are granted for a period of three years after which time the exemption holder is required to re-apply. Consumer complaints in regard to financiers are low. For the past four financial years, complaints averaged less than two per year.

OBJECTIVE

In considering reforms, the policy objective is to provide adequate protections for consumers whilst maintaining the commercial viability of the motor vehicle dealing industry.

OPTIONS CONSIDERED

Two options were presented in the CRIS for consideration.

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.

OUTCOME OF CONSULTATION

Overview: Stakeholder views

A total of three written submissions were received from the RAC, MTAWA and Australian Finance Conference (AFC) during stages one and two of the Review. All stakeholders supported Option B on the basis that it would simplify the licensing process and reduce costs for both financiers and the licensing authority.

Stakeholder responses to the CRIS (Stage 2 of the Review)

The Review received one submission in response to the CRIS.

Australian Finance Conference (AFC)

AFC supported excluding financiers from licensing requirements under the MVDA (Option B).

AFC noted that Option B's reference to repossessed vehicles may suggest that the exemption will only apply to the disposal of vehicles repossessed after default by the customer. AFC suggested the proposed exemption should also refer to disposals by financiers of 'off-lease' and 'returned' vehicles, as well as repossessed vehicles as not doing so would not fully achieve its purpose. As a result, some financiers will continue to be discouraged by licensing conditions from offering motor vehicle finance in Western Australia.

AFC reported that depending on the nature of their activities in Western Australia, some of their members are required to apply regularly for an exemption from licensing under the MVDA to carry out activities that are ancillary to their primary business of financing the acquisition of motor vehicles.

AFC also reported that some of their members choose not to operate in Western Australia due to the burden of obtaining a licensing exemption, particularly where this involves collecting and keeping up-to-date detailed information about overseas resident directors and filing this with the Department.

OTHER JURISDICTIONS

New South Wales¹⁰⁸, Northern Territory¹⁰⁹, Victoria¹¹⁰, Australian Capital Territory¹¹¹, Tasmania¹¹² and South Australia¹¹³ all exclude financiers from the definition of motor dealers.

IMPACT ANALYSIS

Costs and benefits

Option B is assessed as providing the best balance between benefits and costs for industry and consumers. No additional costs are envisaged for industry, consumers and government as a result of implementing Option B.

Cost savings for business as a result of no longer being required to apply for an exemption are \$139.50 per applicant plus time savings in completing the process. Also, some minor cost savings will be achieved for the regulator as a result of no longer processing exemption applications.

¹⁰⁸ *Motor Dealers and Repairers Act 2013* (NSW) – section 5, definition of motor dealers.

¹⁰⁹ *Consumer Affairs and Fair Trading Act* (NT) – section 125(1), definition of ‘dealer’.

¹¹⁰ *Motor Car Traders Act 1986* (Vic) – section 3(3) and definition of ‘special traders’.

¹¹¹ *Sale of Motor Vehicles Act 1977* (ACT) – section 6A.

¹¹² *Motor Vehicle Traders Act 2011* (Tas) – section 4(3).

¹¹³ *Second-hand Vehicle Dealers Act 1995* (SA) – section 7(2).

Table 13: Summary of costs and benefits

	OPTION A Status quo	OPTION B Exclude financiers from the requirement to hold a motor vehicle dealer's licence
INDUSTRY	Compliance costs remain the same (\$139.50 per exemption which applies for three years) plus time costs.	Reduced compliance cost to financiers of \$139.50 per exemption application (for a three year period) plus associated time savings.
CONSUMERS	No change	Increased competition as a result of more financiers opting to trade in WA as a result of reduced regulation.
GOVERNMENT	Same licensing administration costs.	Reduced licensing administration costs.

PREFERRED OPTION

Option B is the preferred option. As a result, financiers would no longer be required to seek an exemption from the provisions of the MVDA, if they dispose of vehicles to or through a licensed motor vehicle dealer. Financiers would, however, be required to seek a licence under the MVDA if they dispose of vehicles directly to members of the public.

Reasons

Option B is supported as it achieves the same consumer protection outcomes but delivers reduced regulatory burden for industry. This may in turn encourage more financiers to offer their services in WA thus increasing competition.

Consumer risk is considered low as the protections afforded consumers remain the same under Option B. Option B simply changes the mechanics of how financiers are regulated. Financiers who opt to sell vehicles to or through licensed motor vehicle dealers will no longer be required to obtain an exemption. Financiers wishing to dispose of vehicles on their own behalf would still be required to be licensed as a dealer.

Compensation fund not to be introduced under the MVDA

RECOMMENDATION 7

That a compensation fund not be introduced under the MVDA.

STATEMENT OF THE ISSUE

Issue

The Review considered whether a compensation fund should be introduced under the MVDA in order to compensate consumers for certain losses as a result of the actions of motor vehicle dealers.

Compensation funds deliver benefits to consumers by providing compensation to those who have suffered loss. Such funds are generally financed by industry through the payment of annual fees. In order to contain costs, compensation funds are often established as funds of last resort which means that consumers must first establish that they have exhausted all other reasonable prospects of recovering the amount of their claim before seeking compensation.

Current situation

As the MVDA does not currently provide for a compensation fund, the Review considered whether there is a need for a compensation fund in the context of the various consumer protection measures already in place under the ACL and MVDA. While the ACL and MVDA provide a considerable level of consumer protection, it is noted that, as is the case with other retail situations, such protections would not be of assistance in situations of dealer insolvency or bankruptcy.

Industry dealer warranty scheme

MTAWA currently operates an industry administered Dealer Warranty Support Scheme. The scheme is not a formal insurance product and is designed to offset risks to consumers in the event of a dealer's insolvency. The scheme is available to dealers at a cost of \$80 per year and around 130 dealers are members of the scheme. The scheme has some limitations to its effectiveness in protecting consumers, as it covers only losses relating to the obligation to repair under the statutory warranty provisions of the MVDA and is subject to any restrictions imposed by the scheme manager.

Consumer risk

Potential areas of financial risk for a consumer in a transaction with a dealer include:

- failure to meet the obligation to repair under the statutory warranty;
- failure to return a consignment vehicle or pay funds received for a sale on consignment; and
- failure to return a deposit for a vehicle.

Based on available complaints data, it is considered that the risk and value of loss due to the closure of motor vehicle dealers is low as complaints resulting from dealer closures or similar events represent less than two per cent of overall complaints.¹¹⁴ Further evidence of low consumer risk is the minimal number of claims on the MTAWA's Dealer Warranty Support Scheme, with only two claims over a five year period.

It is noted that in general, consumers are less likely to be at risk of losing funds paid for goods or services when the time period between making payment and receipt of the goods or services is relatively short. This is generally the case in transactions with dealers as payment in full usually takes place upon collection of the vehicle. Deposits are not usually significant amounts of money and in many instances, the value of a trade-in vehicle is factored into the transactions.

OBJECTIVES

The policy objective is to:

- ensure that consumers are adequately protected from certain losses as a result of the actions of motor vehicle dealers; and
- (if need be) determine whether a compensation fund would provide such protection for consumers.

OPTIONS CONSIDERED

Two options were presented in the CRIS in relation to the issue of whether a compensation fund should be established under the MVDA.

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 on the basis that claims could only be made against the fund in relation to dealer insolvency or bankruptcy. Such a fund would cover claims against all types of motor vehicle dealers, including dealers who sell on consignment.

Claimants would be required to seek to recover their losses through other means of legal redress before making a claim against the fund. The fund would be established and maintained using funds paid by licensees (either as a proportion of licensing fees or a separate payment).

¹¹⁴ A total of 46 complaints were lodged with the Department from 1 July 2010 to 30 June 2016 against motor vehicle dealers that had closed, gone into liquidation, could not be located or were subject to similar events.

OUTCOME OF CONSULTATION

Overview: Stakeholder views

A total of nine written submissions were received during stages one and two of the Review. In addition, the Review received 149 industry and 41 consumer responses to online surveys conducted during stage one of the Review. Overall, industry stakeholders believed that current arrangements provided sufficient safeguards for consumers while some consumer stakeholders expressed support for the introduction of a fund.

Table 14 below shows dealer and consumer responses to the 2013 online survey in relation to the issue of whether a compensation fund should be introduced. The survey responses reflect limited support for the introduction of a compensation fund amongst stakeholders, although, it should be noted that the overall number of consumer responses was low. In addition, a considerable percentage of respondents opted not to specify a preference.

Table 14: 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%)

Stakeholder responses to the CRIS (Stage 2 of the Review)

Overview

Five stakeholders provided responses to the CRIS.

Option A: No change was supported by three stakeholders representing industry.

Option B: The establishment of a compensation fund was supported by one stakeholder representing industry and one stakeholder representing consumers.

Written submissions in response to CRIS: Industry responses

Motor Trade Association of Western Australia (MTAWA)

MTAWA did not support the introduction of a compulsory government administered compensation fund on the basis that the existing arrangements were seen as sufficient to safeguard the interests of consumers.

MTAWA was of the view that the financial viability requirements under the sufficient resources criteria further strengthen the financial position of dealers. MTAWA pointed out that many dealers have excellent business models in place as well as financial resources and, as a result, there does not appear to be a need to establish a compulsory compensation fund.

MTAWA also noted that warranty work for dealers that have ceased trading and defalcation on consignment sales represented almost all of the claims made in jurisdictions where compensation funds exist. MTAWA believes it would be inequitable if the majority of dealers funded a scheme to protect customers of a minority of dealers given that only a small percentage of dealers in Western Australia engage in consignment selling.

MTAWA noted its support for the voluntary system which ensures the payment of warranty work as currently exists under MTAWA's Dealer Warranty Support Scheme. MTAWA also noted that in one jurisdiction, the operating costs of the compensation fund represented 32 per cent of the income of the scheme.

Caravan Industry Association Western Australia (CIAWA)

CIAWA did not support the introduction of a compensation fund as it believes the costs would significantly outweigh the benefits. CIAWA believed that the complaints data presented in the CRIS does not demonstrate that consumers are subject to significant risk in relation to dealer insolvency resulting in losses to consumers.

CIAWA strongly believes that the greatest risk to consumers in their transactions with licensed dealers, arises when they place their property 'in trust' with those dealers for sale on consignment. CIAWA believes that this risk has been mitigated over recent years because of the standards and vigilance of the Department's compliance staff. CIAWA, however, noted that this had not entirely prevented losses through consignment selling.

CIAWA is of the view that the most cost effective method of mitigating risk to consumers is to raise the qualification standard for dealers wishing to sell vehicles on consignment. CIAWA recommended that dealers engaging in consignment selling should be granted a licence under a separate class and should be required to meet more stringent financial viability criteria. CIAWA pointed out that consumers are financially more at risk when consigning a vehicle, as compared to having warranty work completed, in the event of a dealer becoming insolvent.

Pickles Auctions

Pickles Auctions supported no change as it believes that the introduction of a fund will increase the fees motor dealers have to pay to contribute to the fund, with no advantage to the industry.

Australian Finance Conference (AFC)

The AFC supported the establishment of a more widely cast compensation fund than was envisaged in the CRIS. AFC suggested that the fund should be available to all those who suffer a loss due to the actions of a dealer and that this should include businesses (i.e. not only consumers) and financiers.

AFC noted that many of its members were experiencing increased levels of dealer fraud and inappropriate practices which can sometimes result losses for financiers.

Written submissions in response to CRIS: Consumer response

Consumer Credit Legal Service (Western Australia) (CCLSWA)

CCLSWA supported the concept of a compensation fund, but suggested that the fund be created based on the Victorian model which is not a fund of last resort. CCLSWA noted that the Victorian model does not require aggrieved consumers to exhaust all reasonable avenues of recovery in order to make a claim, thus relieving consumers of extra time and monetary expenses.

OTHER JURISDICTIONS

A number of other jurisdictions have compensation funds established under their respective dealer legislation which specifies the matters for which claims may be made against the fund. For example, claims can be made for losses incurred due to the dealer's failure to:

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

Compensation funds in other jurisdictions are established and maintained using fees received from licensees (either as a proportion of licensing fees or a separate payment) and in some instances with monies received as penalties or fines under relevant Acts.

The following table provides an overview of compensation funds in place in New South Wales, South Australia and Victoria.¹¹⁵

¹¹⁵ Figures current as at September 2017.

Table 15: Compensation funds in other jurisdictions

	NSW	SA	Vic
What contribution do dealers have to make to the compensation fund?	<p>\$945 compensation fund contribution on the grant of a one year licence.</p> <p>\$1,224 on the grant of a three year licence (per place of business).</p> <p>\$139 on renewal of licence for one year (per place of business).</p>	<p>\$200 per premises per year applies to all licensed dealers of second-hand vehicles.</p> <p>\$60 per premises per year applies to licensed dealers of second-hand motorcycles.</p>	<p>Dealers do not make a separate contribution to the compensation fund. Instead, all licensing fees and penalties raised are paid into the Motor Car Traders Guarantee Fund.¹¹⁶</p> <p>General licensing fees are as follows:</p> <p>\$907 initial application fee plus \$1,621 licence fee for first year.</p> <p>\$1,638 renewal fee applies for subsequent years. (An annual statement must be lodged.)</p>
Payments made from compensation fund.¹¹⁷	<p>\$237,343 (2015-16 financial year).</p> <p>\$306,185 (2014-15 financial year).</p> <p>\$416,485 (2013-14 financial year).¹¹⁸</p>	<p>\$9,000 (2015-16 financial year).</p> <p>\$12,000 (2014-15 financial year).</p> <p>\$24,000 (2013-14 financial year).¹¹⁹</p>	<p>\$408,917 (2015-2016 financial year).</p> <p>\$381,343 (2014-15 financial year).</p> <p>\$675,707 (2013-14 financial year).¹²⁰</p>
Fund of last resort?	Yes	Yes	No
Consignment sales allowed?	Yes, with trust fund requirements.	Not specified in the legislation.	No, prohibited.

¹¹⁶ In Victoria, all licence fees which motor car traders pay under section 74(2)(b) the *Motor Car Traders Act 1986* (the Act) and penalties raised for breaches of the Act are deposited into the Motor Car Traders Guarantee Fund. Interest income, and moneys recovered on previously settled claims are treated as Fund revenue. Fund expenditure in any given financial year, comprises payment of claims in their totality, however activity also incorporates a wide range of administrative-related functions, with significant associated annual expenditures being incurred.

¹¹⁷ A breakdown of nature of claims is not available. Compensation payments for 2016-17 financial year were not available.

¹¹⁸ Office of Finance and Services Annual Reports (2013-14, 2014-15 and 2015-16).

¹¹⁹ Consumer and Business Services South Australia 2015, Annual Report (2013-14, 2014-15 and 2015-16).

¹²⁰ Consumer Affairs Victoria Report on Operations 2014/15 *Making markets fair*, Financial information (2013-14, 2014-15, and 2015-16).

PREFERRED OPTION

The Review considered whether consumers are suffering detriment as a result of the actions of motor vehicle dealers and, if so, whether a compensation fund would resolve this detriment.

The Review concluded that current arrangements provide adequate protections for consumers whilst maintaining the commercial viability of the motor vehicle dealing industry. Option A is recommended. Under this option, a compensation fund would not be established under the MVDA and instead, the key consumer protections afforded by the MVDA and the ACL would continue to apply.

Reasons

Adequate protection and low consumer risk

The Review found that current arrangements under the MVDA and ACL appear to be providing consumers with adequate protections. These protections include a mix of warranty provisions, consumer guarantees, licensing criteria as well as specific arrangements in relation to consignment sales, for example, more stringent assessments of financial viability and specific requirements in regard to operating trust accounts as a means of protecting consumer funds.

It is, however, acknowledged that the ACL and MVDA do not provide consumers with protections in the event of dealer insolvency or bankruptcy. The Review found that consumer risk in this regard is low with complaints arising from dealer closures or similar events representing less than two per cent of overall complaints.¹²¹

Costly to establish and maintain

Establishing and maintaining a compensation fund will give rise to significant costs for both government and industry estimated at \$92,400 per year to establish and manage a compensation fund.¹²² In addition, increased costs for dealers are estimated at approximately \$350 per year per place of business.¹²³ These costs may in turn result in higher costs for consumers.

Costs associated with administering compensation funds tend to be significant and can in some cases equate to more than the amount paid into the fund by dealers. For example, in 2014-15, South Australia's operating costs equated to around 30 per cent more than fees paid into the fund by dealers.

Limited coverage

In order to contain costs, a compensation fund would most likely be established as a fund of last resort. As a result, claimants would be required to take various steps before being able to lodge a claim and would only be able to lodge claims in a very limited set of circumstances.

¹²¹ Department's complaints data, 1 July 2010 to 30 June 2014 in relation to motor vehicle dealers that had closed, gone into liquidation, could not be located or were subject to similar events.

¹²² South Australia is comparable to Western Australia and was therefore used as the basis for this estimate. The figure is based on the cost of administering the South Australia's compensation scheme of \$132,000 per year.

¹²³ 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)*.

NSW has noted that consignment selling represents the largest category of claims on its compensation fund.¹²⁴ It may therefore be inequitable to ask the broader industry to fund a scheme that may receive a disproportionate number of claims from a small number of dealers selling vehicles on consignment.

Overall, the Review came to the conclusion that the benefits of establishing a compensation fund are outweighed by the additional costs to industry, consumers and government.

No additional costs

As current arrangements are being retained, no additional costs are envisaged.

¹²⁴ *Issues Paper – NSW Fair Trading regulation of motor vehicles*, NSW Government, April 2012, page 16.

Used car warranties

RECOMMENDATION 8

That the MVDA be amended to allow for requirements in relation to statutory used car warranties to sunset in five years from enactment of the amendment.

STATEMENT OF THE ISSUE

Issue

The policy issue to be resolved is whether current arrangements in relation to used car warranties should continue.

Current Situation

Statutory warranty under the MVDA

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'.

Consumer guarantees under the ACL

The ACL, which commenced in January 2011, introduced uniform, national consumer protection legislation. Goods and services sold or provided by motor vehicle dealers are subject to the consumer guarantees offered under the ACL.

The consumer guarantees apply to all goods including second hand vehicle and provide that goods must be of acceptable quality, be fit for any disclosed purpose and match any description, sample or demonstration model shown.¹²⁵ 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.¹²⁶

The ACL also provides consumers with remedies if goods or services fail to meet a guarantee.¹²⁷ Appendix B sets out a list of the consumer guarantees under the ACL. Consumers can enforce their rights in relation to the consumer guarantees through the courts.

¹²⁵ ACL – sections 54, 55, 56 and 57.

¹²⁶ ACL – section 58.

¹²⁷ ACL – part 5-4.

Table 16 below outlines how the used car statutory warranty provisions apply to second hand motor vehicles. Table 17 below outlines how the statutory warranty provisions apply to second hand motorcycles.

Table 16: Used car warranty for second hand motor vehicles priced over \$4,000

Age of car	Kilometres travelled at time of sale	Warranty entitlement
Not more than 10 years	Not more than 150,000 km	Earlier of 3 months or 5,000 km
10 to 12 years	150,000 km to 180,000 km	Earlier of 1 month or 1,500 km
More than 12 years	More than 180,000 km	No statutory warranty

Table 17: Used car warranty for second hand motorcycles priced over \$3,500

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

OUTCOME OF CONSULTATION

Overview: Stakeholder views

The discussion paper invited stakeholders to comment on whether it is necessary to continue to provide specific statutory warranty provisions under the MVDA. Overall, stakeholder views were mixed.

Based on the outcome of stakeholder consultation, there appears to be very strong industry support for retaining the current used car warranty arrangements whereby both the ACL and used car warranty provisions under the MVDA should continue to apply. Consumer stakeholders also expressed support for the retention of current used car warranty arrangements.

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 expressed very 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 support amongst industry and consumers for retention of current warranty arrangements under the MVDA.

Written submissions

Motor Trade Association of Western Australia (MTAWA)

MTAWA strongly supported the retention of warranty provisions under the MVDA as it provides a degree of certainty in respect to warranty claims on motor vehicles.

Royal Automobile Club (RAC)

The RAC supported 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 considered that the ACL provides adequate cover for the purpose of the statutory warranty.

Smith Broughton Pty Ltd

Smith Broughton Pty Ltd did not support the continuation of specific statutory warranties under the MVDA.

Consumer Credit Legal Service (Western Australia) (CCLSWA)

The CCLSWA supported 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 18 below summarises industry responses.

Table 18: 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 19 below summarises consumer responses.

Table 19: 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%)

OTHER JURISDICTIONS

All jurisdictions currently provide some form of statutory warranty. In most jurisdictions, a warranty is provided for vehicles that are less than 10 years old and have been driven less than 160,000 at the time of sale. Less comprehensive warranties apply for motorcycles.

Table 20: Summary of used car warranty arrangements in other jurisdictions

	VEHICLE TYPE	WARRANTY
NSW and ACT	New motor vehicle driven less than 15,000 km at sale.	12 months or total 200,000 km after manufacture.
	New motor vehicle driven more than 15,000 km at sale.	3 months or 5,000 km after sale.
	Second hand vehicle driven not more than 160,000 km and not more than 10 years old at sale.	3 months or 5,000 km after sale
NT	New motor vehicle/demonstrator.	For the period of the manufacturer's warranty where sold with a manufacturer's warranty or otherwise 3 months or 5,000 km after sale.
	Second hand vehicle driven not more than 160,000 km and not more than 10 years old at sale.	3 months or 5,000 km after sale.
Qld	Used motor vehicle driven not more than 160,000 km and not more than 10 years old at sale.	3 months or 5,000 km after the purchaser takes possession of the vehicle.

	VEHICLE TYPE	WARRANTY
SA	Warranties only apply where a vehicle is less than 15 years old and has been driven less than 200,000 km at sale (as follows).	(see below)
	Where vehicle is sold for \$3,001 - \$6,000.	2 months or 3,000 km after sale.
	Where vehicle is sold for more than \$6,000.	3 months or 5,000 km after sale.
Tas	New or used motor vehicle that has driven less than 120,000 km and is less than 7 years old.	3 months or 3,000 km after delivery to the purchaser.
Vic	Used motor vehicle (registered before being offered for sale so would include a demonstrator) driven not more than 160,000 km and not more than 10 years old at sale.	3 months or 5,000 km after delivery.

PREFERRED OPTION

This topic was canvassed in the discussion paper. The CRIS subsequently reported on stakeholder input and concluded that the ACL consumer guarantees should continue to operate concurrently with the MVDA used car warranty provisions. In light of recent developments proposing reforms to the ACL, the Review concludes that the used car warranty provisions under the MVDA should sunset in five years' time in favour of full reliance on the ACL.

Reasons

ACL consumer guarantees not well understood

The MVDA used car warranty provisions specify a standard to be met in relation to the obligation to repair certain used vehicles. 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.¹²⁸

At this early stage in the life of the ACL, the protections available for purchasers of used vehicles are not well understood. This view is supported by the draft market study report released by the Australian Competition and Consumer Commission (ACCC) in August 2017, which acknowledged that consumers face difficulties in understanding consumer guarantees provided for under the ACL, including the distinction between consumer guarantees and warranties.¹²⁹ In recognition of this issue, the ACCC has committed to publishing an updated version of *Motor vehicle sales and repairs- an industry guide to the ACL* (August 2013).

¹²⁸ Do I have to fix it? A guide to used car warranty for dealers – March 2013.

¹²⁹ New Car Retailing Industry – a market study by the ACCC, Draft Report, August 2017.

In addition, the recent review of the ACL has proposed amendments to provide greater clarity to address uncertainties about the application of the consumer guarantees. These proposed reforms will be aimed at assisting consumers to understand and choose a remedy if things go wrong with a good, including motor vehicles.

Consistency with the ACL

In line with Western Australia's commitment under the relevant Intergovernmental Agreement, the used car warranty provisions under the MVDA have been assessed as being generally consistent with the ACL.

It is therefore possible for the MVDA and ACL to operate concurrently for a further five years. It is, however, considered appropriate to work towards reliance on the ACL rather than industry specific legislation.

Benefits of sunset approach

Transitioning from the current warranty requirements in five years' time will have the benefit of providing a reasonable period during which time ACL initiatives and proposed reforms related to consumer guarantees will be implemented. During this time, general consumer and industry understanding of consumer guarantees is likely to improve.

It will also provide the opportunity for the development of clear guidelines specific to used vehicles in the context of the ACL. Such guidelines will be better informed as changes to the ACL and case law evolve over the coming years.

Immediate removal of the warranty provisions under the MVDA would potentially create unnecessary uncertainty in the short-term and in an increase in complaints.

No additional costs

The move to reliance on consumer guarantees offered under the ACL will not result in additional costs to industry, government or consumers. Conversely, the immediate removal of the used car warranty would not generate any cost savings as the provisions of the ACL would continue to apply.

Manufacturer's warranty obligations: demonstration vehicles

RECOMMENDATION: 9

That the MVDA be amended so that a manufacturer's warranty obligation in relation to time is determined from the date the demonstration vehicle was first licensed to be driven rather than from the date of purchase.

STATEMENT OF THE ISSUE

Issue

The policy issue to be resolved is whether the MVDA should continue to deem that the manufacturer's warranty, by reference to time, commences from the date a dealer sells a demonstration vehicle to a purchaser.

Current Situation

A demonstration vehicle is currently defined as meaning a vehicle:

- that is licensed under the *Road Traffic Act 2012* (WA) in the name of the dealer offering it for sale and has been used by the dealer for demonstration purposes; and
- for which the manufacturer has an obligation to the purchaser greater than the statutory warranty obligation the dealer would have to the purchaser (under section 34 of the MVDA) at the date of sale by the dealer to the purchaser.¹³⁰

A second-hand vehicle is defined to include a vehicle that has, at any time before being offered for sale, been licensed or registered under any law regulating the use of vehicles in any state or territory.¹³¹ The definition of a second-hand vehicle, however, specifically excludes a demonstration vehicle.

¹³⁰ Section 5(1) MVDA.

¹³¹ Section 5(1a) MVDA.

The MVDA that commenced in 1974, however, only contained a definition for “second-hand vehicle,” meaning that demonstration vehicles were initially captured within this definition. Subsequent amendments made in 1975, 1976 and 1979 to the Act resulted in the current situation being reached, this being, separate definitions in the MVDA for a ‘demonstration vehicle’ and for a ‘second-hand vehicle’. The amendments during this period addressed two key issues:

- industry views at the time that demonstrator vehicles are effectively being sold as “new vehicles,” were understood as such by consumers and, therefore, should be covered by the new vehicle warranty; and
- to ensure that where the balance of the manufacturer’s warranty on a demonstration vehicle was greater in time and kilometres than the statutory warranty which applied to second-hand vehicles under the MVDA, that the manufacturer’s new car warranty applied.

To assist in determining whether the manufacturer’s warranty or statutory warranty applied in relation to a demonstration vehicle, section 41B was inserted into the MVDA by the 1979 amendment.

This provision requires that an obligation expressed by reference to time shall be regarded as having commenced on the date of sale of the vehicle to the purchaser, or if the sale was on terms and reduced to writing, on the date of execution of the written agreement. An obligation expressed by reference to distance travelled excludes the distance travelled before the sale of the vehicle to a purchaser.¹³²

The effect of this being that the length of time a vehicle has been used as a demonstration vehicle is excluded for the purposes of calculation of warranty, but the kilometres a demonstration vehicle has travelled are taken into account. Under the MVDA, the purchaser of a demonstration vehicle is therefore entitled to the full time period of the manufacturer’s warranty from the date of purchase, provided that the manufacturer’s warranty, both in time or kilometres travelled, is greater than the selling dealer’s statutory warranty obligation at the time of sale.

Statutory warranty - MVDA

Under the MVDA, the selling dealer is responsible for meeting the statutory warranty obligation to repair certain defects that are identified during the warranty entitlement period in a second-hand vehicle to make it roadworthy, and place it in a reasonable condition having regard to its age.¹³³ The purchase price of the vehicle has to be \$4,000 or more. The age of the vehicle and kilometres it has travelled will determine the warranty entitlement that applies as contained in the table below.

Given the length and kilometres of manufacturer warranties that are now available in the marketplace, where the statutory warranty is greater than the manufacturer’s warranty on a demonstration vehicle, the 3 month/5,000 km statutory warranty period will always apply.

¹³² Section 41B MVDA.

¹³³ Section 34 MVDA.

Table 21: Statutory warranty entitlement for motor vehicles

AGE OF CAR	KILOMETRES TRAVELLED AT TIME OF SALE	WARRANTY ENTITLEMENT
Not more than 10 years	Not more than 150,000	3 months or 5,000 km (whichever happens first)
Between 10 and 12 years	Between 150,000 and 180,000	1 month or 1,500 km (whichever happens first)
More than 12 years	More than 180,000	No warranty

Manufacturer's warranty

A manufacturer's warranty is a contractual promise (usually in writing) in relation to the manufacturer's obligations if the goods prove defective. In the case of vehicles, different remedies may apply, but generally, vehicle manufacturers will repair a vehicle at no cost to the consumer.

In relation to new vehicles, most manufacturer warranties in the current marketplace are for a minimum period of three years or 100,000 kilometres, whichever is reached first. There are also manufacturers that warrant their vehicles for five and seven years with no kilometre limit (i.e. unlimited kilometres).

During the warranty period, any repair that becomes necessary due to a defect in materials or workmanship is warrantable. The manufacturer guarantees that the vehicle is free from any defect in material and workmanship and that an authorised dealer will make necessary repairs to correct any such defect. The standard manufacturer's warranty does not cover normal wear and tear, or deterioration.

The manufacturer's warranty also usually transfers when ownership of the vehicle is transferred from one person to another, provided the warranty limit has not been reached and that the terms and conditions of maintaining the vehicle for warranty purposes have been met. For example, it is a condition of manufacturer warranties that the vehicle has been maintained and serviced in accordance with the owner's manual.

Importantly, a manufacturer's warranty does not change their responsibilities in relation to consumer guarantees under the ACL. The consumer guarantees such as, matching descriptions, acceptable quality and fit for purpose apply to all vehicles sales – whether new, demonstrator or second-hand.

These rights cannot be excluded by agreement and entitle a consumer to various remedies to address major or minor failures in a vehicle. For example, remedies to address a defect in a vehicle can range from repair, refund or replacement, depending on whether the failure is major or minor.¹³⁴ These rights may exist beyond the point a manufacturer's warranty on a demonstration vehicle ends.

By way of example of the interplay between the ACL and manufacturers warranties, the Australian Competition and Consumer Commission (ACCC) recently accepted a court enforceable undertaking from a major manufacturer in relation to complying with consumer guarantees under the ACL.¹³⁵

The key complaint against the manufacturer centred on misrepresentations made to some consumers that it had discretion to decide whether the vehicle owner would be offered a refund, repair or replacement for a car with a manufacturing fault, and that any remedy was a goodwill gesture. In addition, some consumers were told that a remedy would not be provided because the vehicle had not been serviced by one of the manufacturer's dealers, or with sufficient regularity, or as the vehicle was purchased second hand.

In accepting the enforceable undertaking, the ACCC pointed out that consumer guarantees operate separately to the manufacturer's warranty, and cannot be modified to require consumers to have their vehicles serviced by authorised dealers in order to obtain a remedy.

MVDA statutory warranty – application to demonstration vehicles

As indicated above, under the MVDA the purchaser of a demonstration vehicle is entitled to the full time period of the manufacturer's warranty from the date of purchase.

In June 2016, and in May 2017, the Commissioner issued a reminder to Western Australian consumers not to be misled by misrepresentations about their warranty rights on demonstration vehicles. In the articles, the Commissioner stressed that the full warranty, in respect of time, is not something 'thrown in' as an incentive to buyers of demonstration vehicles but is a legal right under the MVDA.¹³⁶

In response to the 2016 reminder, the Federal Chamber of Automotive Industries (FCAI) made a submission arguing that the current provision in the MVDA which regulates when the manufacturer's warranty obligations are deemed to have commenced be amended. The FCAI submitted that, the Commissioner's interpretation of when the time period commences, has the effect resulting in manufacturers having to warrant demonstration vehicles beyond the intended (manufacturer's) warranty date.

The FCAI also submitted that this is not the intention of the MVDA or the current wording of section 41B, and that manufacturers would need to consider the viability of offering a manufacturer's warranty in WA, which could lead to an undesirable situation such as the manufacturer express warranties excluding demonstration vehicles in WA.

The FCAI proposed that section 41B of the MVDA should be amended to remove ambiguity for the purpose of ascertaining the obligation expressed by reference to time by having it commence on the date a vehicle was first registered to be driven on public roads.

¹³⁴ ACCC – Motor vehicle sales and repairs – An industry guide to the Australian Consumer Law (2013).

¹³⁵ ACCC - Media release: *Holden undertakes to comply with consumer guarantees* (3 August 2017).

¹³⁶ *Commissioner's Column: Warranties For Demo Cars* (27 June 2016) Department of Commerce <https://www.commerce.wa.gov.au/announcements/commissioners-column-warranties-demo-cars>.

Nissan Motor Company (Australia) Pty Ltd also wrote to the Department on this issue requesting that the Department give consideration to the FCAI's submission. As a result of this feedback, the Review has considered the operation of the manufacturer's warranty and MVDA statutory warranty in relation to demonstration vehicles.

Emerging Issue - 'called cars' or 'un-driven demonstrators'

An issue that has emerged in the marketplace in recent years relates to 'called cars' or 'undriven demonstrators.' According to recent news articles¹³⁷, in order to reach monthly or quarterly sales targets, vehicle manufacturers routinely offer dealers incentives or bonuses to reach these targets.

It is reported that, in some instances, dealers may not have sold a vehicle to a buyer but that the vehicle in question is declared as "being sold" to claim incentives/bonuses and to reach sales targets. It is also reported that in some instances, some manufacturers also commence the 'clock ticking' on the new car warranty on the basis of the vehicle being 'declared as sold' instead of from the date of sale or registration. These vehicles are also counted in the reporting of FCAI monthly sales data.¹³⁸

It was also reported that, in some instances, a significant period of time may elapse between vehicles in this situation actually being sold to a buyer and registered/licensed for the road. An example cited in the article suggested that a demonstration vehicle was 18 months old before it was first registered, although most 'demonstration vehicles' are usually sold within six months.¹³⁹

The emergence of 'called cars' or vehicles that are 'declared as sold' has effectively created different levels of demonstration vehicles.¹⁴⁰ This includes:

- the true demonstration vehicle – a new vehicle that has been licensed and is used by a selling dealer at their car yard for display, test drives and most likely by staff for home garaging; and
- the declared sold demonstration vehicle – a new vehicle that may be held in stock by the dealer or manufacturer and may, or may not be, licensed for use on the road as a demonstrator.

The practice has the potential, particularly where a significant period of time may elapse between vehicles in this situation actually being sold to a buyer, to mislead consumers about their entitlements when it comes to time remaining on the manufacturer's warranty.

DISCUSSION

There are a number of consumer protections in place for the purchaser of a demonstrator vehicle from a dealer in Western Australia. These include the remainder of the manufacturer's warranty, the statutory warranty under the MVDA and the ACL.

¹³⁷ Joshua Dowling, 'How The Push For Record New Car Sales Leaves Thousands Of Buyers Short-Changed,' *News Corp Australia Network*, 5 February 2016.

¹³⁸ Joshua Dowling, 'Looking to buy a new car? Here's how to drive the best deal on an ex-demo or dealers used' *Herald Sun*, 17 January 2017.

¹³⁹ Ibid.

¹⁴⁰ Joshua Dowling, 'How to buy a dealer demonstrator vehicle,' *Cars Guide*, 12 August 2016.

As discussed above, when section 41B was introduced the standard manufacturer's warranty was 12 months or 20,000 km, whichever came first. It was also the case that when the MVDA commenced there was only one tier of demonstrator vehicle – this being, a vehicle that was licensed and used by a selling dealer at their premises for demonstration purposes, i.e. test drives by potential purchasers.

As indicated earlier, both of these situations have changed – manufacturer warranties are usually now a minimum of three years, with five and seven year warranties also available; and there are potentially different types of demonstration vehicles available in the marketplace. It is likely therefore, in the scenario where the demonstration vehicle has spent several months at a dealership, or in a holding facility before being actually sold to a consumer, it will still be covered for a much longer period of time under a manufacturer's warranty than would have been the case when a warranty was for 12 months or 20,000 km.

Although it could be argued that this is not an unreasonable situation, particularly as the purchase of such a vehicle usually involves a substantial saving off the usual new car selling price, it is potentially the second (or third) purchaser of the vehicle which may be adversely affected through incorrect assumptions or advice.

It is acknowledged that the second or third purchaser of a vehicle would be buying it as a second hand vehicle. If the vehicle has the balance in time of new car warranty remaining, it is possible, however, that this could be for a period that is considerably less than a purchaser expects, due to the manufacturer having started the 'clock ticking' on the warranty when the vehicle was 'declared as sold' rather than from the date the vehicle was sold to the first purchaser. For example, without access to such information at the time of purchase, a consumer will probably rely on advice from the sales staff or their own calculation of when the manufacturer's warranty expires.

In both cases, it will more than likely they be based from the year of manufacture of the vehicle and not from when the manufacturer started the 'clock ticking' on the warranty. A purchaser may be influenced in their final decision to purchase a vehicle, based on a calculation which they believe gives them greater time on the manufacturer's warranty.

OBJECTIVE

To ensure that consumers are able to make informed purchasing decisions and have appropriate warranty protection when buying a demonstration vehicle.

OPTIONS CONSIDERED

Option A: Status quo

Under this option, there would be no change to the legislation and the current requirements of section 41B of the MVDA would continue to apply. A consumer is entitled to the full time period of the manufacturer's warranty from the date of purchase of a demonstration vehicle.

Option B: Amend the MVDA so that a manufacturer's warranty obligation in relation to time is determined from the date the demonstration vehicle was first licensed to be driven.

Under this option, the MVDA would be amended to regulate that a manufacturer's warranty obligation in relation to time is determined from the day a demonstration vehicle is first licensed to be driven. This means the length of time a vehicle has been used as a demonstration vehicle (and the kilometres it has travelled) will be taken off at the time of sale to determine the remainder of the manufacturer's warranty obligation.

Option C: Amend the MVDA as per Option B, and to require dealers selling a demonstration vehicle to display the Vehicle Particulars Form (Form 4) which includes the date on which the manufacturer's warranty commenced.

Under this option, a prospective purchaser will be informed, prior to making a purchasing decision, about the date on which the manufacturer commenced the warranty in order to calculate the time remaining on the warranty of a demonstration vehicle.

OTHER JURISDICTIONS

No other jurisdiction imposes additional terms or interpretation requirements onto the manufacturer's warranty for demonstration vehicles. Only Tasmania has interpretation provisions which apply to the manufacturer's warranty and these only apply if it is not specified in the warranty when the obligations commence. In other jurisdictions, demonstration vehicles are considered to be used vehicles and are covered by the statutory warranty period (usually three months) relating to used vehicles. They are also covered by the remaining amount of time left on the manufacturer's warranty.

NEW CAR RETAILING INDUSTRY MARKET STUDY

The ACCC is currently undertaking an inquiry into the new car retailing industry. The market study is examining issues that relate to ensuring that a competitive market operates in the new car retailing industry. The issues paper released in October 2016 identified the issue of when the manufacturer's warranty commences and the interaction of consumer guarantees under the ACL.¹⁴¹ The issues paper noted that inconsistent statements about warranty commencement dates can potentially cause consumer detriment.¹⁴² A final report was released in December 2017.

¹⁴¹ New Car Retailing Industry – a market study by the ACCC, Issues Paper, October 2016.

¹⁴² New Car Retailing Industry – a market study by the ACCC, Issues Paper, October 2016, Page 11.

IMPACT ANALYSIS

Costs and benefits

The following table summarises the costs and benefits associated with each of the three options. Option B provides the best balance between benefits and costs for industry and consumers.

Table 22: Benefits and disadvantages

	Potential benefits	Potential disadvantages
Option A – Status quo	<ul style="list-style-type: none"> • Maintains consumers' entitlement to the full time period of the manufacturer's warranty on a demonstration vehicle. • Purchasing decision can be made with certainty about warranty period. 	<ul style="list-style-type: none"> • Risk that manufacturers apply different warranty arrangements to demonstration vehicles sold in WA – i.e. reduced time period. • Risk of increased costs for consumers purchasing demonstration vehicle in WA.
Option B – MVDA to be amended to start manufacturer's warranty from date a demonstration vehicle is first licensed.	<ul style="list-style-type: none"> • Certainty of purchasing decision – consumers will be able to inform themselves about time remaining on manufacturer's warranty at the time of sale. • Reduces risk that manufacturers apply different warranty arrangements to demonstration vehicles sold in WA – consistency with other jurisdictions. • Reduces risk of increased costs for consumers due to reduced manufacturer warranty period. • Reduces regulatory burden on manufacturers. 	<ul style="list-style-type: none"> • Reduces current statutory protection for consumers – potential for increased risk of consumer detriment.
Option C – Implement Option B and require the date that warranty commenced on demonstration vehicle to be displayed	<ul style="list-style-type: none"> • Consumers can make informed purchasing decision about time remaining on manufacturer's warranty. • Reduces regulatory burden on manufacturers. • Reduces risk that manufacturers apply different warranty arrangements to demonstration vehicles sold in WA – consistency with other jurisdictions. • Reduces risk of increased costs for consumers due to reduced manufacturer warranty period. 	<ul style="list-style-type: none"> • Reduces current statutory protection for consumers – potential for increased risk of consumer detriment. • Selling dealer will need to obtain warranty commencement date from manufacturer on demonstration vehicles. • Increased impost on a selling dealer – particularly where dealer is selling to a second or third purchaser of the vehicle and has to ascertain date the manufacturer commenced warranty. • Potential increased cost of a vehicle for the second or third purchaser.

PREFERRED OPTION

Assessment of the options against the objective

Option B is the preferred option. It strikes an appropriate balance between ensuring that consumers (whether they are the first, second or third purchaser) are able to make a fully informed purchasing decision and have appropriate warranty protection when buying a demonstration vehicle. Demonstration vehicles are usually sold cheaper than the new vehicles in lieu of the usage, both in time and kilometres, that they have had as a result of being used as a demonstrator.

Setting the commencement date to determine the manufacturer's warranty obligation in relation to time for a demonstration vehicle from the date on which it was first licensed, will provide certainty in the marketplace for dealers and purchasers – reducing the risk of dispute from consumers on the basis of potentially being misled about the length of time remaining on the manufacturer's warranty.

Unlike Options A and C, Option B is the least likely option to result in increased costs or significant consumer detriment. There is some risk that manufacturers will licence all demonstration vehicles, including "called cars" or "undriven demonstrators" in order to start the clock ticking on warranty, but this is mitigated by the fact that a consumer will be able to negotiate accordingly on price because of knowing the date on which warranty commenced. The risk is also mitigated by the fact that consumer guarantee provisions of the ACL apply.

Consignment sales by vehicle auctioneers

RECOMMENDATION 10

That the MVDA be amended to exclude sales on consignment made by dealer auctioneers on behalf of corporate fleet owners and other businesses from the consignment sales provisions of the MVDA.

STATEMENT OF THE ISSUE

The issue under consideration is whether protections in relation to consignment sales provided for under the MVDA should continue to apply where businesses (e.g. mining companies) dispose of fleet vehicles through licensed dealer auctioneers.

OBJECTIVE

In considering reforms, the policy objective is to provide adequate protections for consumers buying or selling vehicles whilst maintaining the commercial viability of the motor vehicle dealing industry.

DISCUSSION

Dealer auctioneers engaged in disposing of vehicle fleets owned by businesses or corporations such as mining companies are required to comply with consignment sales provisions under the MVDA.

A question has been raised as to whether imposing these requirements remains appropriate given that dealer auctioneers in these circumstances are entering into commercial arrangements with corporate entities rather than with individual consumers.

Sale by consignment is an area of potential financial risk to consumers. Given these risks, more stringent financial viability assessments are undertaken of dealers selling on consignment and specific provisions are also included in the MVDA in relation to consignment selling. For example, there is a requirement that consignment agreements must include prescribed terms and conditions.¹⁴³ There are also specific requirements in relation to the establishment of trust accounts for dealing with moneys received from the sale of vehicles on consignment.¹⁴⁴

¹⁴³ MVDA – section 32B.

¹⁴⁴ MVDA – sections 32C – 32E.

It is noted that licensed dealer auctioneers who sell motor vehicles on behalf of trade owners are not required to comply with the consignment sales provisions under the MVDA.¹⁴⁵ Licensed motor vehicle dealers, finance companies and hire car companies currently fall into the definition of trade owners.¹⁴⁶

By contrast, dealer auctioneers who sell motor vehicles on behalf of private owners must comply with the consignment sales provisions under the MVDA.¹⁴⁷

OUTCOME OF CONSULTATION

Overview: Stakeholder views

Three written submissions were received during stages one and two of the Review. Stakeholders supported excluding auctions sales made on behalf of corporate fleet owners such as mining companies from the sales on consignment provisions.

Stakeholder responses to the discussion paper (Stage 1 of the Review)

Smith Broughton

Smith Broughton noted that 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 noted that the extension of the MVDA into what would normally be considered 'business or commercial transactions' rather than a consumer transaction had added to the costs of doing business and has provided little additional protection for members of the public.

Dodd & Dodd Pty Ltd (trading as Ross's Sales & Auctions)

Dodd & Dodd argued that the consignment sales provisions under the MVDA needed to be reviewed and suggested the following changes:

- 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
- relax the rules relating to the timing of payments to consignees holding a valid ABN.

Stakeholder responses to the CRIS (Stage 2 of the Review)

Pickles Auctions

Pickles Auctions noted that the majority of its sales were on consignment on behalf of corporate fleet owners. Pickles Auctions supported excluding auctions sales made on behalf of corporate fleet owners such as mining companies from the consignment provisions under the MVDA.

¹⁴⁵ MVDA – section 32A.

¹⁴⁶ MVDA – section 5.

¹⁴⁷ MVDA – section 32A.

Pickles Auctions also argued that reducing administrative processes in relation to prescribed forms would deliver benefits for industry given the large volume of consignment sales on behalf of corporate fleet owners.

OTHER JURISDICTIONS

In most jurisdictions, a written authority from the owner including specific prescribed details is required for all consignment sales. While other jurisdictions do not exclude the auction of corporate fleet vehicles, the regulations in respect of consignment selling are less prescriptive and generally allow more flexibility in contents of agreements and payment of proceeds, resulting in less onerous requirements for dealers selling fleet vehicles on consignment.

In the Australian Capital Territory, New South Wales and Queensland a consignment seller is required to operate a trust account into which the proceeds of such sales are paid. Victoria prohibits consignment selling except at public auction. No specific provisions are made in respect of consignment sales in South Australia or Victoria.

PROPOSED CHANGE

That the MVDA be amended to exclude sales on consignment made by dealer auctioneers on behalf corporate fleet owners. The consignment sales provisions would continue to apply to all motor vehicle sales made by dealer auctioneers of motor vehicles on behalf of consumers.

MINOR IMPACT

This proposal for change is considered minor in nature and unlikely to have a significant negative impact on stakeholders. This proposal is not contentious and is presented for the purposes of reporting on the outcome of stakeholder consultation.

Excluding dealer auctioneers from the consignment selling requirements under the MVDA in circumstances where they are acting on behalf of corporate fleet owners and other businesses is consistent with current exclusions provided for in relation to sales on behalf of trade owners and dealers.¹⁴⁸

Arrangements between auctioneers and fleet owners are considered commercial arrangements and beyond the intent of the consumer protection objectives of the legislation. In addition, the proposed amendment does not affect the rights of consumers in respect of statutory warranties. Currently, statutory warranties do not apply to the purchase of a vehicle at auction unless the vehicle is being sold on behalf of a trade owner.

The proposed change aligns with the core consumer protection objectives of the MVDA and will result in reduced regulatory burden for business as well as reduced administrative and compliance costs for government.

¹⁴⁸ MVDA section 32A (a) (i): Note: A trade owner is any person who acquires vehicles for the purposes of reselling that vehicle or for the purpose of hiring where the right to purchase that vehicle is not included in that hiring.

Changes to disclosure requirements under the MVDA

RECOMMENDATION 11

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.*

(Note: The Department will take into consideration legislative amendments being led by the Department of Transport which may impact how this disclosure requirement operates in respect of how taxis and vehicles used for similar purposes are defined.)

STATEMENT OF THE ISSUE

The CRIS presented this topic as a proposal for change which was considered minor and unlikely to have a negative impact on stakeholders. The CRIS invited stakeholder input in relation to the proposed changes.

Issue

The policy issue to be resolved is whether dealers should be required to provide additional disclosure information for consumers in relation to vehicles offered for sale.

Current situation

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 particulars:¹⁴⁹

- 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

Overview: Stakeholder views

Fifteen written submissions were received during stages one and two of the Review, including from the RAC, CAWA and MTAWA. The majority of submissions supported the proposed disclosure requirements.

Industry responses to the 2013 Motor Vehicle Dealers Industry Online survey reflected strong industry support for the retention of the existing disclosure requirements. There was limited support for additional 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).¹⁵⁰

¹⁴⁹ MVDA – section 33.

¹⁵⁰ Note: Responses did not total 100 per cent as this was a multiple choice survey question.

Stakeholder responses to the CRIS (Stage 2 of the Review)

Seven stakeholders provided written submissions in response to the CRIS. Three submissions from dealers did not support disclosure of repairable write offs. MTAWA supported improved disclosure (with specific suggestions) apart from disclosure of safety ratings. One dealer, CIAA and CIAWA supported the proposal in full.

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-off¹⁵¹;
- whether the vehicle has been used as a taxi, rental car or hire car¹⁵²;
- whether the odometer has been altered or replaced or the dealer suspects that this has occurred¹⁵³; and
- whether the vehicle's engine has been replaced and the date of replacement.¹⁵⁴

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.

Reasons

The obligation to provide details of vehicle particulars, so that they are readily available at the time of purchase, is an important consumer protection measure. The proposed changes will 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. The proposed changes will help consumers in reaching an informed decision and may influence the purchase price.

This proposal is assessed as unlikely to have a significant negative impact on stakeholders. The requirement to provide such information is not considered to be a significant additional impost on dealers as it is likely that prudent dealers would already seek such information when buying or trading-in vehicles.

¹⁵¹ NSW and Vic.

¹⁵² SA.

¹⁵³ NSW, ACT and Qld.

¹⁵⁴ Qld.

Cooling off periods, liquidated damages and contract termination fees

RECOMMENDATION 12

That the MVDA be amended to provide for a cooling off period for linked finance contracts.¹⁵⁵

That the MVDA be amended to allow for a termination fee of \$100 to apply to linked finance contracts cancelled within the cooling off period.

That the maximum 15 per cent pre-estimated damages as provided for in the Motor Vehicle Dealers (Sales) Regulations 1974 be reduced to five per cent.

STATEMENT OF THE ISSUE

Issue

The policy issues to be resolved are:

- whether a cooling off period should be introduced under the MVDA; and
- whether the current regulatory arrangements in relation to pre-estimated liquidated damages on termination of contracts to purchase motor vehicles are operating as intended and, if not, how best to overcome the potential regulatory failure.

Cooling off periods

Cooling off periods represent a consumer protection tool which provides consumers with a specific timeframe during which they can rescind their contract at little or no cost. Cooling off periods give consumers the opportunity to consider their purchase and check that the contract they have entered into is in their best interests. Cooling off periods are seen as helpful in cases where a decision is made under pressure, in haste or without all of the information needed to make a good choice.

¹⁵⁵ Linked finance refers to those contracts where the dealership arranges the loan for the consumer or supplies application forms for, or a referral to, a credit provider. Linked finance does not include situations where consumers arrange their own finance, independent of the dealer. Consumers wishing to organise their own finance generally include a 'subject to finance' clause in their contracts so that if acceptable finance is not secured they are able to withdraw from the contract at no cost.

Cooling off periods are often designed to address problems such as high-pressure sales techniques, short-sighted or emotion-based decisions, and lack of information about goods being purchased.

Current situation

Contract to purchase terms and conditions

While the MVDA does not provide for a cooling off period, it includes a requirement that a contract or agreement for the purchase of a motor vehicle must contain prescribed particulars, terms and conditions. These prescribed requirements (including reference to liquidated damages) are set out in Schedule 5 of the Motor Vehicle Dealers (Sales) Regulations 1974 and is referred to as the 'Vehicle Sale, Contract Terms and Conditions'.

The prescribed requirements include reference to the contract being legally binding on both parties. In addition, many standard contracts used by dealers include notices, printed in bold font, stating that the contract becomes a legally binding contract on acceptance by the dealer and that there is no cooling off period.

Purchaser's right to terminate contract

Schedule 5 of the Regulations sets out the purchaser's right to terminate the contract.¹⁵⁶ 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. In these circumstances, consumers are entitled to a refund of their deposit and the return of their vehicle if the transaction included a trade-in.

Dealer's right to terminate contract

Schedule 5 of the Regulations also sets out the dealer's right to terminate the contract.¹⁵⁷ A dealer may terminate a contract if the purchaser has breached any of the obligations imposed 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. For example, in the case of a purchase totalling \$20,000, up to \$3,000 in pre-estimated liquidated damages to terminate the contract could be sought by the dealer.

Concerns about pre-estimated liquidated damages and retention of deposits

The Department is aware of concerns about liquidated damages with some dealers automatically applying the maximum 15 per cent in circumstances where they have not actually suffered a loss, or if they have, it is well below the 15 per cent in liquidated damages being claimed from consumers.

In dealing with complaints about this issue, the Department explains to dealers that they will be required to justify their losses in court should the matter be pursued. In these circumstances, dealers generally agree to settle for a lesser amount.

This practice on the part of some dealers is contrary to the intent of the legislation which was for dealers to cover the reasonable costs of a terminated contract rather than to derive profit or use high termination costs to discourage consumers from terminating their contracts.

¹⁵⁶ Motor Vehicle Dealers (Sales) Regulations 1974, Schedule 5.

¹⁵⁷ Ibid.

It is a well-established principle of law that liquidated damages must be a genuine pre-estimate at the time the contract is entered into of the loss that a party is likely to suffer as a result of the contract not proceeding. Otherwise, the amount charged is considered a penalty and may not be enforceable.¹⁵⁸

It is, however, unlikely that consumers would be aware of their rights in this regard and the option of seeking legal redress would generally be both cost-prohibitive and impractical for most consumers.

Extent of the problem

Quantitative and qualitative evidence relevant to the issues of liquidated damages and cooling off periods is provided below. Quantifying the extent of the problem is difficult. Many instances where a reduction in the level of liquidated damages or the provision of a cooling off period may have assisted consumers cannot be readily identified, as many consumers would not be aware of their rights in respect of liquidated damages.

The qualitative evidence presented below includes case studies provided by CCLSWA.¹⁵⁹

Quantitative evidence relevant to liquidated damages and cooling off periods

Formal complaints

In the period, 1 July 2006 to 30 June 2017, the Department received 62 written complaints about motor vehicle dealers seeking liquidated damages when a contract to purchase a motor vehicle was cancelled. Of these 62 complaints, 14 consumers received financial redress. The total amount of redress paid to consumers over this period was \$39,986 with the average amount paid out to individuals being \$2,856.

During the 1 July 2006 to 30 June 2017 period, there were 152 general complaints about issues relating to the cancellation of contracts, changes of mind or cooling off periods. Twenty-three such complaints were received during the 2016-2017 financial year.

Also of relevance are complaints received by the Department about deposits retained by dealers. In the period 1 July 2006 to 30 June 2017, the Department received 277 complaints in relation to deposits retained by dealers, often in cases where the contract was able to be validly terminated due to conditions, such as being subject to finance or mechanical inspection, not being satisfied.¹⁶⁰ Of the 277 complaints received, 59 consumers received financial redress.

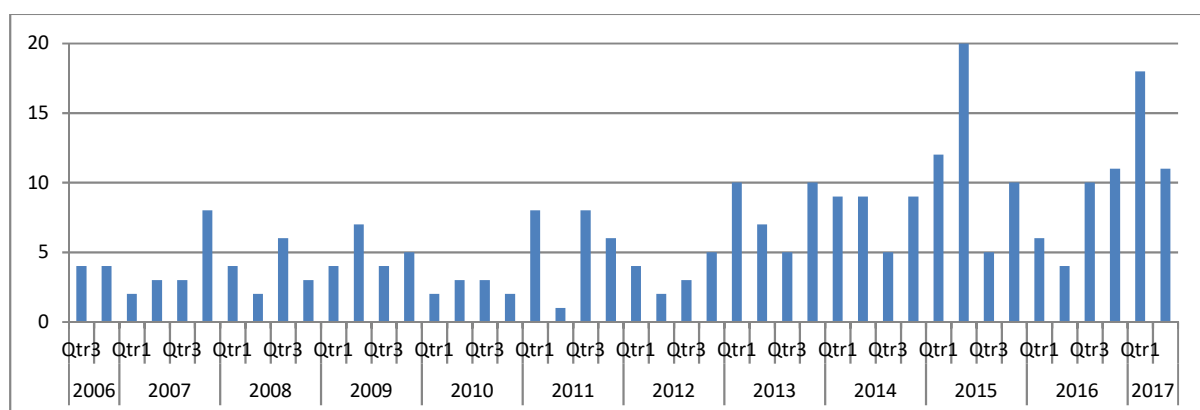
The total amount of redress paid to consumers over this period was \$191,874, with the average amount paid out to individuals being \$2,131.

¹⁵⁸ 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".'

¹⁵⁹ CCLSWA is an organisation funded by the Commonwealth and Western Australian governments to provide free legal advice to the Western Australian public.

¹⁶⁰ It is noted that complaints listed under liquidated damages may also be included in this number.

Figure 7: Holding Deposits: Complaints against Dealers



Based on the Department's complaints data, 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.

Whilst the number of complaints relevant to liquidated damages and retention of deposits by dealers is not particularly high, consumers may be unlikely to lodge complaints with the Department due to a general lack of awareness of their rights in this area. Even so, the amounts being returned to consumers are significant and warrant this problem being addressed.

Phone enquiries

The Department's call centre received 355 motor vehicle phone enquiries related to cooling off periods and changes of mind during the 2016-17 financial year. A total of 2,129 phone enquiries relevant to cooling off periods were received by the Department for the period 1 July 2010 to 30 June 2017. This represents an average of around 25 enquiries per month, which is considered high given that many consumers would already be aware that cooling off periods do not apply in Western Australia or would have found information about their rights in terms of not having rights to a cooling off period through other means, such as the internet.

The main reasons for consumers wishing to cancel their contracts included:

- the preferred credit provider rejecting an application for finance;
- the cost of the loan repayments were considered too high or unaffordable; and
- not wanting to proceed with additional items included in the contract, for example, extended warranties or optional extras.

Consumers contacting the Department for advice about their rights in relation to cancelling their contracts would be unlikely to lodge formal complaints given that they would be advised that cooling off periods do not apply in Western Australia.

CCLSWA

The following quantitative evidence in relation to the issue of liquidated damages was provided by the CCLSWA. CCLSWA reported that, over a 17 month period, it had dealt with 26 instances of motor vehicle dealer complaints relating to concerns about the 15 per cent liquidated damages clause.

In eight of the 26 cases, it was the dealer who told the consumers that they were liable to pay a termination fee if they did not proceed with the contract. In two of these instances, the dealer wrote a formal letter of demand seeking payment of the 15 per cent termination fee.

In nine of the 26 cases, consumers were not aware of the liquidated damages clause until CCLSWA advised them of their risk of liability to pay up to 15 per cent of the purchase price as liquidated damages.

CCLSWA believes that complaints from clients represent a small percentage of the consumers actually affected by the liquidated damages clause. CCLSWA noted that most consumers are unlikely to dispute their concerns with the liquidated damages clause because they lack information about their legal rights or appropriate channels to seek affordable or free legal advice.

CCLSWA is of the view that five per cent of the purchase price more accurately reflects a dealer's true loss when a buyer decides not to proceed with the contract.

Qualitative evidence relevant to liquidated damages

Consumer lawyer

The following was provided by Mr Andrew Lynn (Lawyer) and provides qualitative evidence, relevant to the issue of liquidated damages.

Mr Lynn:

- noted three occasions involving clients with limited English where he believed the terms of the contract were unfair and unconscionable;
- referred to a provision in the contracts (generally printed on the reverse of the contract) requiring purchasers in breach to forfeit an amount equivalent to 15 per cent of the value of the contract as a pre-estimate of liquidated damages;
- expressed the view that inclusion of such a clause represents a form of penalty rather than a genuine pre-estimate of liquidated damages;
- noted concerns that purchasers were not being informed of the impact of such clauses prior to being asked to sign contracts; and
- noted his reluctance to take these matters further due to his clients' limited income, particularly given the amount in question would be consumed by legal fees.

Consumer Credit Legal Service (Western Australia) (CCLSWA)

CCLSWA also provided nine case studies based on its advice and advocacy work to illustrate issues of concern relevant to the issues of cooling periods and liquidated damages. It appears that in all of the cases, a cooling off period and/or a reduction in the level of liquidated damages would have greatly assisted in providing a reasonable resolution for the consumers involved.

These cases reflect a recurring theme of consumers signing contracts to purchase vehicles without necessarily realising the potential binding nature of the document. For example, consumers signing contracts because they have been told that this must be done before they can have the vehicle inspected by a mechanic or for the salesperson to be able to present the contract to the Manager for consideration. This is not a legal or reasonable requirement and consumers often reported that they felt deceived into signing the contract.

On deciding not to buy the vehicle, consumers are often pressured into either paying 15 per cent in liquidated damages or, alternatively, proceeding with a purchase which they ultimately cannot afford.

CCLSWA also noted that it was evident from these case studies that consumers are frequently pursued or threatened with the enforcement of the liquidated damages clause, even if the dealer has not incurred or would not incur any loss.

Four of the case studies provided by the CCLSWA are presented below. CCLSWA noted that these case studies served to highlight the hardship caused to consumers by the liquidated damages provision and absence of a cooling off period.

Case Study 1

The client suffers from bipolar disorder. The client needed a reliable car for work. The client approached a dealership and found a car he liked for \$26,000. The client told the salesperson that he would need finance to buy the car. The salesperson asked the client to sign a document and said that he would speak to the finance department at the car yard.

The salesperson took the client to the car yard's finance department. The finance representative told the client that he had agreed to purchase the car. The client was taken by surprise, as he did not realise he had signed a contract. The client was told that if he did not buy the car, he would be liable to pay 15 per cent of the purchase price as a termination fee. The client felt that he could not afford to buy the car, but felt pressured to apply for a loan because of the termination fee.

The client received finance approval and proceeded with the car purchase, however, ended up suffering hardship as a result of the loan and missed many repayments. The client negotiated a hardship moratorium with his financier. The moratorium has expired and the client lost his job due to his mental illness and no longer has a reliable income. The client is considering bankruptcy.

Case Study 2

The client, from a non-English speaking household, attended a dealership to test drive a \$25,000 vehicle. The client wanted to know what his finance repayments would be if he were to purchase the vehicle.

The client was told that they could only find out the finance repayments if they signed a contract and paid a \$500 deposit. The client then received approval for the finance from the dealership. At this time, the client had been unemployed following a redundancy for over a year and he did not believe he could afford the repayments suggested by the dealer's financier.

The client sought finance from another lender and was rejected as he could not even produce proof of income such as payslips. The client sought to withdraw from the sale but was informed that he would need to pay 15 per cent of the purchase price in order to terminate the contract.

Case Study 3

The client was a 19 year old migrant from a non-English speaking household. The client attended a car dealership to look at purchasing a new vehicle. He informed the dealer that he was unfamiliar with the process and that he would only be able to go through with the purchase if his parents gave him permission to do so.

The client instructed us that the dealer assured him that there was no issue with him requiring permission from his parents and that the sale did not have to proceed if they did not want him to make the purchase.

The client instructed us that he felt pressured by the dealer to sign a sales contract and that he did so with little understanding of how the sales process worked. The client called the dealership to let them know that his parents did not want the client to proceed with the sale. The dealership stated that he needed to continue with the purchase or pay 15 per cent of the purchase price, otherwise he would be taken to Court.

Case Study 4

The client attended the dealership to purchase a \$42,000 vehicle under a contract that was subject to finance. The client was rejected for finance from the dealership. The dealership informed the client that he would be approved if they added his wife as a co-borrower to the finance application.

The client did not want to proceed with his wife as a co-borrower and the dealership stated that they would continue looking for lenders. The client was advised that finance had been approved through another lender, however he later discovered that the finance application had been submitted with his wife's income included in the application (contrary to his instructions).

The dealer informed the client that the finance would be in his sole name, however, they stated they had included his wife's income to boost his borrowing capacity. The client informed the dealer he would not proceed with the finance as it did not actually reflect his individual capacity to repay the debt and as such the contract should be terminated on the basis that it was subject to finance.

The client was told that he was required to either sign the finance agreement and take the vehicle or pay 15 per cent of the purchase price. The dealer stated that it would pursue the matter in Court if the client failed to pay.

OTHER EVIDENCE: MATTERS RAISED IN THE WA PARLIAMENT

Ministerial Statement

The Hon Bill Johnston MLA, then Minister for Commerce, made a Ministerial Statement about pre-estimated liquidated damages in the Legislative Assembly on 19 September 2018. The Ministerial Statement was in response to a matter raised with him by Mrs Lisa O'Malley MLA, Member for Bicton, on behalf of a constituent.

The Ministerial Statement expressed serious concerns about the manner in which some dealers had been applying pre-estimated liquidated damages and put the industry on notice that they should ensure that they apply pre-estimated damages in a manner which is within the law and advised that a range of options were being considered to address this issue.

The following is an excerpt from the Ministerial Statement:

It has come to my attention that some vehicle dealers are automatically imposing the maximum 15 per cent in pre-estimated liquidated damages when consumers seek to terminate their contracts.

Sadly, the consumers involved have suffered considerable detriment as a result of dealers imposing or threatening court action and imposing excessive liquidated damages. Although contracts may provide for a dealer to seek an amount not exceeding 15 per cent, the intent is that dealers cover their reasonable costs if a contract is terminated.

Instead, some dealers appear to be deriving a profit, or using excessive damages to intimidate consumers into proceeding with the purchase. It is a well-established principle of law that liquidated damages must be a genuine pre-estimate of the loss that a party is likely to suffer as a result of the contract not proceeding. Otherwise, the amount may be considered an unenforceable penalty.¹⁶¹

Grievance

On 22 November 2018, Mrs Lisa O'Malley MLA, Member for Bicton subsequently raised a Grievance in the Legislative Assembly, on behalf of a constituent who had suffered significant financial loss as a result of a combination of high pressure sales tactics and the dealer requiring the payment of \$3000 in pre-estimated liquidated damages when the deal did not proceed. It is understood that the dealer had initially demanded \$6363 in pre-estimated liquidated damages which was subsequently negotiated down to \$3000.¹⁶²

OTHER EVIDENCE: RECENT REPORTS

The Review identified a number of recent reports of relevance to the issue of cooling off periods and liquidated damages. These reports highlighted changes in the marketplace resulting in dealer profit margins relying heavily on the sale of ancillary services including finance and insurance.^{163 164}

Concerns raised by ASIC and ACCC

Concerns have been raised by the Australian Securities and Investment Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC) about many consumers committing to finance and insurance arranged by dealers which is considerably more costly than finance offered in the marketplace.

This can have long term consequences over the life of a loan with some consumers unnecessarily paying thousands of dollars more in interest than they need to. For example, ASIC identified that lenders were providing strong incentives for dealers to sign consumers up to high interest loans which were clearly not in the interests of consumers.

This practice involves lenders offering larger up-front commissions to dealers, the higher the interest rate secured. ASIC noted a case where \$453 was paid in commissions for securing the base interest rate on a loan as compared to \$3,332 in commissions for securing an interest rate around five per cent higher than the base rate for the same size of loan.

¹⁶¹ Hansard, WA Parliament, Legislative Assembly, *Statement by Minister*, 19 September 2018 page 6295b, (Mr W.J. Johnston, Minister for Commerce and Industrial Relations)

¹⁶² Hansard, WA Parliament, Legislative Assembly, *Grievance*, 22 November 2018 page 8543b, (Mrs L O'Malley MLA, Member for Bicton and Mr W J Johnston, Minister for Commerce and Industrial Relations)

¹⁶³ ASIC, *Regulation Impact Statement: Flex commission arrangement in the car finance market*, Attachment 2 to CP 279 (March 2017), page 6.

¹⁶⁴ ACCC, *New Car Retailing Industry: A Market Study by the ACCC*, Final report December 2017, 30, 142.

This raises serious conflict of interest concerns which have the potential to cause considerable consumer detriment and poor outcomes for consumers. This practice referred to as flex commissions, was subsequently banned from 1 November 2018, however, as observed by the Royal Commission into Misconduct in the Banking Superannuation and Financial Services Industry (Banking Royal Commission), many vehicle loan contracts arranged by dealers would still be on foot where the interest rate being charged is well above the lender's base rate.¹⁶⁵

Similarly, ASIC reported that consumers are being sold expensive, poor value insurance products by dealers (often paid for with finance) which provide little or no benefit. ASIC reported in 2016 that consumers paid \$1.6 billion in premiums for insurance sold by dealers and only received \$144 million in successful claims.

By contrast, salespeople earned \$602 million in commissions, representing around four times the value of successful claims. ASIC reported that these insurance products sold by dealers were returning nine cents for every dollar paid in premium, as compared to 85 cents in the dollar for general car insurance.¹⁶⁶

Royal Commission

A background paper prepared for the Banking Royal Commission highlighted the fact that vehicle dealers are increasingly playing a significant role in selling finance to consumers.¹⁶⁷

The paper noted that around 90 per cent of all car sales were arranged through finance of which, 39 per cent were financed through a dealership. In terms of scale of lending, for the calendar year 2017, new finance commitments for motor vehicles were around \$35.7 billion.¹⁶⁸ The paper also noted that the average car loan size in 2017 was around \$39,445 and average car loan repayments were estimated to be around \$500 per month.

The Banking Royal Commission handed down its final report in February 2019.¹⁶⁹ The report raised general concerns about the role of intermediaries and noted that these concerns extended beyond home lending (e.g. mortgage brokers) to point of sale negotiation of credit arrangements for example, by car dealers and white goods retailers.

The Banking Royal Commission noted that retail dealers (sometimes referred to as vendor introducers), for example, vehicle dealers act as agents for lenders without holding an Australian Credit Licence and are exempted from the *National Consumer Credit Protection Act 2009* (NCCP Act).

This exemption has resulted in the following consequences:

- dealers are not subject to entry or conduct standards and ASIC has no power to exclude from the market any who engage in conduct that is dishonest or incompetent;

¹⁶⁵ ASIC Credit (Flexible Credit Cost Arrangements) Instrument 2017/780 (Cth).

¹⁶⁶ ASIC Report 492: *A market that is failing consumers: the sale of add-on insurance through car dealers*, September 2016, page 7 Canberra, Australia.

¹⁶⁷ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Background Paper, *Some Features of Car Financing*, April 2018, Australian Government Publishing Service Canberra, April 2018.

¹⁶⁸ A 'finance commitment' is a firm offer of finance from a lender that has been or is normally expected to be accepted by a borrower.

¹⁶⁹ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Background Paper, *Final Report*, Government Publishing Service Canberra, February 2018.

- dealers have no responsible lending obligations; and
- consumers may be unable to obtain remedies for their conduct.

In response, the Banking Royal Commission recommended that this exemption from the operation of the NCCP Act should be abolished. In the event that this recommendation is implemented, retail dealers including vehicle dealers will be subject to the stringent requirements of the NCCP Act including responsible lending obligations and the requirement to hold an Australian Credit Licence issued under the NCCP Act. This would impose an overarching obligation to 'do all things necessary to ensure' that the financial services or credit activities authorised by the licence are provided 'efficiently, honestly and fairly'.¹⁷⁰

The Banking Royal Commission also raised concerns about dealer conduct in arranging loans and made the following observation:

Lenders relied, and continue to rely, on retail dealers submitting completed loan applications that give accurate information about the applicant's financial situation and sufficient means for the lender to verify the applicant's financial situation. Often, the retail dealer will not make the underlying sale unless the loan is approved.

*The dealer thus has a strong reason to portray the loan applicant's financial situation in a way that will warrant loan approval. On this matter the case studies showed that dealers did not, and it can safely be assumed, do not now, always record the true position.*¹⁷¹

The Banking Royal Commission's final report noted that commissions and volume-based bonuses paid to dealers were a significant cause of problems and particularly likely to create incentives to engage in poor sales practices and the mis-selling of insurance products.

In response, the Banking Royal Commission recommended that ASIC should impose a cap on the amount of commission that may be paid to vehicle dealers in relation to the sale of add-on insurance products.

The Review notes that the issue of add-on insurance is of relevance to linked finance arrangements given that insurance policies are often financed as part of the loans to purchase vehicles. This results in additional adverse consequences for consumers.

OBJECTIVES

In considering reforms, the policy objectives are to:

- implement an option which minimises the regulatory burden on business while achieving an appropriate level of consumer protection; and
- overcome regulatory failure around pre-estimated liquidated damages which has resulted in unintended consequences for consumers paying amounts which exceed the genuine loss incurred by dealers.

¹⁷⁰ Corporations Act s 912A(1)(a); NCCP Act s 47(1)(a).

¹⁷¹ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Background Paper, *Final Report*, page 86, Government Publishing Service Canberra, February 2018.

OPTIONS CONSIDERED

Four options were presented in the CRIS in relation to the issues of cooling off periods and liquidated damages.

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 and pre-estimated liquidated damages on termination of a contract to purchase a motor vehicle would remain at a maximum of 15 per cent.

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 contracts to purchase a motor vehicle from the current 15 per cent to a lesser percentage.

Option C: Introduction of a cooling off period for linked finance contracts¹⁷²

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 motor vehicle.

Option D: Introduction of a cooling off period 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.

OTHER JURISDICTIONS

The Review considered arrangements in place in other jurisdictions in relation to consumers terminating contracts to purchase motor vehicles. All jurisdictions apart from Tasmania, Northern Territory and Western Australia have cooling off periods in place. Table 23 summarises cooling off arrangements in place in other jurisdictions including amounts required to be paid by consumers on termination of contracts as well as whether rights to a cooling off period can be waived or extinguished.

¹⁷² Linked finance refers to those contracts where the dealership arranges the loan for the consumer or supplies application forms for, or a referral to, a credit provider. Linked finance does not include situations where consumers arrange their own finance, independent of the dealer. Consumers wishing to organise their own finance generally include a 'subject to finance' clause in their contracts so that if acceptable finance is not secured they are able to withdraw from the contract at no cost.

Table 23: Cooling off arrangements in NSW, Vic, ACT, Qld and SA

Jurisdiction	Cooling off period	Termination of contract during cooling off period	Cooling off period able to be waived/ extinguished
NSW	Only applies to contracts with linked finance and extends to 5 pm on the following business day. ¹⁷³ Note: Linked finance refers to purchases where the dealership: <ul style="list-style-type: none"> • arranges the loan for the car, or • supplies application forms for, or a referral to, a credit provider. 	\$250 or two per cent of the purchase price whichever is the lesser amount. ¹⁷⁴	Yes
Vic	Extends to the end of three clear business days for all purchases. ¹⁷⁵	\$100 or one per cent of the purchase amount, whichever is the greater amount for used cars. ¹⁷⁶ \$400 or 2 per cent of the purchase price, whichever is the greater, for new cars. ¹⁷⁷	Yes
ACT	Extends to the end of three clear business days after the purchaser signs the agreement. ¹⁷⁸	\$100 or one per cent of the purchase amount, whichever is the greater amount for new and used cars. ¹⁷⁹	Yes
Qld	Applies only to second hand vehicles and extends until close of business on the following day for all purchases. ¹⁸⁰	Non-refundable deposit not to exceed \$100. ¹⁸¹	Yes
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. ¹⁸²	Two per cent of the contract price or \$100 whichever is the lesser amount. ¹⁸³	Yes

¹⁷³ *Motor Dealers And Repairers Act 2013* (NSW) – section 80.

¹⁷⁴ *Motor Dealers and Repairers Act 2013* (NSW) – section 85.

¹⁷⁵ *Sale of Motor Vehicles Act 1977* (ACT) – section 25B; *Motor Car Traders Act 1986* (Vic) – section 43.

¹⁷⁶ *Motor Car Traders Act 1986* (Vic) – section 43(4).

¹⁷⁷ *Motor Car Traders Act 1986* (Vic) – section 43(4)(a)(ii).

¹⁷⁸ *Sale of Motor Vehicles Act 1977* (ACT) - section 25B(1)

¹⁷⁹ *Sale of Motor Vehicles Act 1977* (ACT) - section 25B(4)

¹⁸⁰ *Property Agents and Motor Dealers Act 2000* (Qld) – section 297.

¹⁸¹ *Motor Dealers and Chattel Auctioneers Act 2014* (Qld) – section 106.

¹⁸² *Second-hand Vehicle Dealers Act 1995* (SA) – section 3.

¹⁸³ *Second-hand Vehicle Dealers Act 1995* (SA) – Section 18B(7).

Legislation in place in other jurisdictions does not include reference to the specific term of ‘pre-estimated liquidated damages’. Also, consumers in other jurisdictions generally lose their right to rescind the contract if they accept delivery of the vehicle during the cooling off period.

In addition, Victoria provides that if a purchaser terminates their contract to purchase a used car outside of the cooling off period, they are required to forfeit an amount up to five per cent of the total purchase price.¹⁸⁴ The amount to be forfeited is required to be specified in the contract.

Similarly, the Northern Territory provides that if a purchaser terminates their contract to purchase a used vehicle they may be required to forfeit up to 10 per cent of the purchase price.¹⁸⁵

OUTCOME OF CONSULTATION

Overview: Stakeholder views

A total of 18 written submissions were received during stages one and two of the Review. In addition the Review received a total of 190 responses (comprising 149 industry responses and 41 consumer responses) to the online survey conducted during stage one of the Review. Survey responses reflected little support amongst industry for the introduction of cooling off periods but strong support amongst consumers.

Overall, responses indicated that stakeholders held mixed views with consumer stakeholders generally supporting the introduction of cooling off periods and the reduction of the maximum pre-estimated liquidated damages, while industry stakeholders were generally opposed to the introduction of cooling off periods and the reduction of the maximum pre-estimated liquidated damages.

Industry generally felt that introducing cooling off periods would put sales at risk needlessly. Industry also noted that consumers can and do research vehicle purchases beforehand and generally want to take possession of their vehicles as soon as possible. Industry also observed that problems such as difficulties in making payments do not emerge within a few days and so a cooling off period would be of no benefit. Some were also concerned that buyers would find or negotiate a better deal with a competitor during the cooling off period.

Consumer advocates on the other hand, generally favoured the introduction of cooling off periods and were keen to provide relief for consumers who were carried away by the sales process and became over-committed, particularly where add-ons were included in the deal. Consumer advocates felt that a brief time for reflection would allow consumers to reconsider ill-considered or unaffordable purchases. Consumer advocates provided several relevant case studies of relevance to this viewpoint. It is noted that CAC did not support the introduction of cooling off periods and instead supported retention of the status quo.

The divergence of views is also illustrated by stakeholder responses to the online survey during stage one of the Review which reflected little industry support for the introduction of a cooling off period with only 11 per cent of industry respondents indicating support.

¹⁸⁴ Motor Car Traders Regulations 2018 (Vic) – Schedule 2

¹⁸⁵ Consumer Affairs and Fair Trading Act (Motor Vehicle Dealers Regulations) 2018 (NT) – Schedule 3

Consumer responses indicated that of those consumers who specified a preference, there was a significant level of support (58 per cent) for the introduction of a cooling off period.

Stakeholder responses to the CRIS (Stage 2 of the Review)

Overview

Options relevant to cooling off periods and pre-estimated liquidated damages were canvassed in the CRIS and 12 stakeholders responded.

Option A: No change was supported by four industry associations, two businesses and CAC. CAC suggested that information set out in sales contracts should be clearer in regard to pre-estimated liquidated damages.

Option B: Reduction in maximum level of pre-estimated liquidated damages was supported by CCLSWA (that also supported Option D).

Option C: Introduction of a cooling off period for linked finance contracts was not supported (preference expressed for a cooling off period to apply to all contracts).

Option D: Introduction of cooling off periods for motor vehicle purchases was supported by CCLSWA, one association representing consumers, one government department (in the event that industry fails to self-regulate in respect of liquidated damages), one consumer and one consumer advocate (supported a variation of Option D).

Written submissions in response to CRIS

The following provides further detail in regard to industry, consumer and government stakeholder responses to the CRIS.

Industry responses

Motor Trade Association of Western Australia (MTAWA)

MTAWA supported retention of the status quo (Option A).

MTAWA did not support the introduction of a cooling off period on the basis that:

- it would result in additional costs for dealers, for example, marketing costs, fees to web based sales sites and costs associated with holding stock;
- there is a lack of demonstrable evidence that this represents a significant issue for consumers;
- vehicle transactions are generally complex often involving trade-ins and financing;
- the buying context for consumers has changed considerably with consumers being better informed and less likely to make impulse purchases;
- salespeople generally behave in a professional and transparent manner;
- it is not in the dealer's interest to attempt to lock a consumer into a finance arrangement which they cannot afford;
- it will result in consumers negotiating a deal with one dealer and then shopping the deal around in an attempt to secure a better deal;
- charging of the full 15 per cent of the purchase price in liquidated damages is very rare; and
- a range of remedies already provide safeguards for the consumer, including the ACL.

MTAWA noted that in total, 33 formal complaints were received by the Department in relation to change of mind or cooling off periods over a 43 month period and that during this time the industry sold approximately 350,000 new cars alone, this represented a complaint rate of 0.009 per cent. MTAWA did not believe that this demonstrated a significant failure in the market.

MTAWA also noted industry research indicating that key reasons for consumers wanting to withdraw from contracts are buyer's remorse or finding a similar vehicle at a better price, neither of which were deemed as valid grounds to withdraw from correctly signed and binding contracts.

Caravan Industry Association Australia (CIAA)

CIAA supported retention of the status quo (Option A) and did not support the introduction of cooling off periods for the sale of caravans and campervans.

Caravan Industry Association Western Australia (CIAWA)

CIWA supported retention of the status quo (Option A) and did not support the introduction of cooling off periods for the following reasons:

- the data reported in the CRIS in regard to disputation about contract termination does not indicate a significant problem in WA;
- most purchasers of recreational vehicles are mature and experienced consumers who have undertaken extensive research before settling on their vehicle; and
- recreational vehicle purchases would rarely be an impulse purchase and unlikely to be made in circumstances where the buyer has overcommitted financially.

Australian Finance Conference (AFC)

The AFC supported retention of the status quo (Option A) and did not support the introduction of cooling off periods as it does not believe that the data quoted in the CRIS provides sufficient grounds for introducing a cooling off period in Western Australia.

AFC sought further consultation if a cooling off period is introduced and believes the consultation should consider:

- the extent to which a cooling off period in Western Australian could be consistent with those in jurisdictions that already have them (noting that each jurisdiction has slightly different provisions); and
- whether a cooling off period is needed in view of the current consumer protection provisions and recent extension of the ACL unfair contracts terms legislation to small businesses.

Pickles Auctions

Pickles Auctions supported retention of the status quo (Option A) and did not support the introduction of a cooling off period as the majority of vehicles purchased are financed at the point of purchase. Prohibiting this process by providing for a cooling off period was seen as impractical, given the administrative work involved, entering into a finance contract and then having to wait two to three days for the consumer to decide if they wish to proceed, particularly when the consumer has already committed to the finance contract.

Autohaus Motors

Autohaus Motors supported retention of the status quo (Option A) and did not support the introduction of a cooling off period for the following reasons:

- it would create industry uncertainty;
- online advertising currently offers tens of thousands of cars for sale which would in turn mean that staff would be run off their feet by people wanting to sign up to buy cars, fully understanding that the sales contracts were not binding on them, but binding on the dealer;
- Departmental staff would be inundated by queries from both dealer and purchasers trying to understand cooling off periods and contractual obligations;
- there would never be a 'one size fits all' solution;
- the current regulation seems to be running smoothly, and able to control the rare instances of malfeasance in the industry; and
- it would be unfair on all motor vehicle dealers to be further penalised due to the actions of finance brokers as recently publicised.

Autohaus Motors noted that:

- it had never enforced the 15 per cent liquidated damages clause in its sales contracts;
- 'subject to finance' clauses may lead to some confusion, but believed that a reasonable clause can be written into the current sales contract to reflect both parties' intentions; and
- it should be incumbent on purchasers to be comfortable with the contract before going ahead.

Consumer responses

Consumer Advisory Committee (CAC)

CAC recommended that a cooling off period not be introduced (Option A) as it may provide a false impression about consumer rights generally, may give consumers the opportunity to 'shop around' to the detriment of dealers and may not protect vulnerable consumers.

CAC recommended that the issue of liquidated damages be addressed by redrafting the relevant clause in the motor vehicle purchase contract to avoid dealers applying the 'punitive' figure and to instead, note the dealer's right to require the consumer to pay to the dealer the loss actually incurred.

CAC also recommended general improvements to the standard contract to purchase a motor vehicle as provided for in the Motor Vehicle Dealers (Sales) Regulations 1974. CAC's recommendations focussed on simplifying contract wording to make it easier to understand for consumers. CAC noted that providing greater clarity for consumers has the potential to prevent issues arising.

National Council of Women of Western Australia (NCWWA)

NCWWA strongly supported the introduction of a one day cooling off period (Option D) for new and used car purchases in Western Australia and noted that this arrangement is working well in NSW. NCWWA indicated that the issue of no cooling off periods for motor vehicle purchases involving linked finance had been raised on a number of occasions by its members.

NCWWA suggested that a cooling off period would be an important safeguard to give consumers time to consider their purchase and the terms of the contract. NCWWA also referred to anecdotal evidence that there appears to be an increase in contractual complaints.

NCWWA referred to the following issues of concern which would benefit from the introduction of a cooling off period:

- purchasers not realising the repayments required and this information not being properly explained to the purchaser before the contract is signed;
- a number of cases where the purchaser was advised that finance would be no trouble, the terms of the finance was unacceptably more expensive than expected, however, the contract had been signed and the purchaser was held to the contract;
- cases involving young people being pressured into signing up for a car purchase without having the opportunity to properly think through the affordability of the vehicle (for example, in one case, the young person was put under extreme pressure and did not understand that he was unable to get out of the contract);
- culturally and linguistically diverse men and women being put under pressure to purchase without properly understanding the consequences of the contract; and
- a salesperson applying undue pressure on an older single woman to sign a contract involving linked finance.

Consumer Credit Legal Service (Western Australia) (CCLSWA)

CCLSWA strongly advocated for the inclusion of a cooling off period in the MVDA contracts for all motor vehicle purchases (Option D), noting that many calls are received from consumers seeking advice in relation to contracts for the purchase of vehicles from car dealers.

CCLSWA indicated that based on the organisation's experience, inclusion of a cooling off period would substantially reduce motor vehicle sales complaints. CCLSWA also noted that five out of seven Australian jurisdictions provide for cooling off periods.

In its submission, CCLSWA suggested that cooling off periods apply to all sales of motor vehicles regardless of whether the contract is linked to finance. CCLSWA noted that such a cooling off period would be consistent with section 134 of the National Credit Code which provides for the termination of sales contracts which are conditional on obtaining credit.

CCLSWA also advocated for a cooling off period of three clear business days and inclusion of a condition that no payment be payable to the dealer should the buyer elect to rescind the agreement within the cooling off period.

CCLSWA raised concerns about:

- contracts being signed as a result of the salesperson's high pressure sales tactics and the consumer's own ignorance they were signing contractual documents; and
- consumers complaining that they had unknowingly signed up for a higher level of debt than intended or were led to believe through the inclusion of additional extras such as insurance or warranties as well as physical extras.

CCLSWA supported reducing the amount of pre-estimated liquidated damages payable to dealers upon termination of a contract (Option B) from the current 15 per cent to five per cent of the purchase price on the basis that it more accurately represents the dealer's true loss when the buyer decides not to proceed with the contract.

CCLSWA noted the following concerns relevant to liquidated damages:

- whilst the standard contract term states the dealer may charge 'up to' 15 per cent of the purchase price of the vehicle, in almost all cases dealers charge the full 15 per cent upon termination of a contract, rather than assessing the genuine loss they would likely suffer as a result of the consumer's termination of the contract;
- the contractual 15 per cent pre-estimated liquidated damages amount is an over-estimate, and does not represent the loss suffered by the dealer upon a purchaser's decision not to proceed with the contract;
- some elements in the motor vehicle industry may be guilty of using the liquidated damages clause to raise their revenue and profits;
- the arrangements in other jurisdictions suggest that the 15 per cent amount available to dealers in Western Australia is arbitrary and punitive;
- consumers are frequently pursued or threatened with the enforcement of the liquidated damages clause, even where extenuating circumstances justify their termination of the contract, for instance, failure to obtain finance;
- consumers who find out about the liquidated damages clause normally do not possess the necessary knowledge, time or energy to challenge dealerships that wilfully and/or wrongfully rely on the clause; and
- many cases do not come to the attention of the Department and consumers are left to bear the consequences of the motor vehicle dealers' improper conduct.

Mr Graham McPherson (consumer advocate)

Mr McPherson proposed an alternative to the option of a cooling off period (Option D) suggesting regulations be made so that the period between the vehicle offer contract completion and readiness for collection be considered a period for the customer to read the contract documentation including finance, warranties, vehicle assist, and accessories.

It was also suggested that a three to five day period be allowed for all documents to be provided to customers for review away from the sales environment.

On the vehicle collection day, Mr McPherson suggested that the documents could be further discussed as needed, the vehicle inspection checklist reviewed and the final payment or finance arrangements confirmed and the contract signed.

Mr McPherson noted that consumers are often ambushed with a range of documents and that salespeople expect customers to simply trust their verbal summary of the documents prior to signing. Mr McPherson is of the view that customers may get caught out later by certain negative conditions they did not expect and the salesperson did not mention or highlight.

Consumer (confidential submission)

A consumer supported the introduction of a cooling off period for all motor vehicle purchases (Option D) and referred to a recent experience of inadvertently purchasing a vehicle which he believed demonstrated the need for a cooling off period:

- the consumer was told that he could pay a deposit and view the car and that the deposit would be returned;
- the consumer noted that the contract clearly stated “subject to viewing” and was also assured by the Finance department that he wasn’t buying the car; and
- on the following day, the General Manager stated that the consumer was obliged to purchase the vehicle.

Government agency response

Small Business Development Corporation (SBDC)

SBDC was of the view that the introduction of some sort of cooling off mechanism may have merit (Option D). It noted, however, that such a measure should only be considered where industry is unable to self-regulate to limit the excessive nature of liquidated damages charges so as to bring them back into line with the reasonable expectations of the community and the experience in other jurisdictions.

SBDC believed that this would be in the interests of ensuring that the industry maintains overall high levels of professionalism, and to limit the perception of poor conduct, for example, operating as an incentive to some in the industry to vigorously pursue the completion of a contract despite concerns that a potential purchaser may not fully appreciate all its terms, conditions and costs.

SBDC also noted that the amount of damages applied in other jurisdictions is significantly lower, at around \$100 to \$250 or one to two per cent of the total purchase price. SBDC expressed concerns about the possible impact that this may be having on the reputation of the motor vehicle industry in WA.

IMPACT ANALYSIS

Given a combination of two options is being recommended the following provides an impact analysis for each of the two options.

Costs and benefits: Option B

Impact on industry, consumers and government

No additional costs are envisaged for industry, consumers and government as a result of implementing Option B.

The reduction in the maximum amount which can be charged on termination of a contract may, however, impact some dealers who are currently opting to automatically apply the maximum amount in pre-estimated liquidated damages rather than a true pre-estimate of damages incurred.

As outlined earlier, this practice is open to challenge and conflicts with the intent of the legislation. Industry is of the view that the practice of applying excessive liquidated damages is not very common amongst dealers. It follows therefore that the financial impact of this reform will be minimal.

As implementing Option B will not have a significant negative impact on business, consumers or the economy, consistent with the Department of Finance's July 2010 Regulatory Impact Assessment Guidelines, a detailed regulatory impact analysis is not required.

Costs and benefits: Option C

Impact on industry

Overall, some additional costs are envisaged for industry as a result of implementing Option C including costs associated with:

- loss of sales opportunities during the cooling off period;
- administration and staffing costs;
- lost commissions and delays in accessing payments; and
- holding vehicles pending the cooling off period.

These costs are not likely to be significant particularly given that cooling off periods will only apply to linked finance contracts. Also, the proposed cooling off period is relatively short, thus imposing only minor delays in transactions. In addition, any costs are likely to be largely offset by the amount paid by consumers to dealers in the event of terminating contracts during the cooling off period.

Costs not covered by termination fees are likely to be passed on to consumers but are unlikely to be significant. Several other jurisdictions have had cooling off periods in place for some time and this does not appear to have resulted in negative consequences for industry.

Consumer Affairs Victoria conducted a study into cooling off periods in which it noted that fully compensating traders for costs incurred by consumers exercising their rights to a cooling off period would provide few incentives for traders engaging in high pressure sales tactics to change this practice.¹⁸⁶ Costs to industry are likely to be lower for those dealers who conduct their businesses in an ethical manner.

It is acknowledged that there may be a risk for dealers in the event that consumers seek to take advantage of their right to a cooling off period, for example, committing to the purchase of several vehicles (utilising linked finance) during the cooling off period and using this period to decide which one to purchase. Imposing a fee to be paid by consumers on terminating the contract should serve to discourage this behaviour on the part of consumers. This issue was considered as part of the study undertaken by Consumer Affairs Victoria. The study found that in practice, cooling off periods do not substantially increase the rate of cancelled contracts.¹⁸⁷

It is also worth noting that where consumers organise their own finance (i.e. not linked finance), a 'subject to finance' clause is generally included in the contract. This means that if acceptable finance is not secured (several days are generally allowed for completing this process) consumers are able to withdraw from the contract at no cost. This arrangement is specified in the prescribed 'Vehicle Sale Contract'. In these circumstances, dealers are required to refund any deposit paid. Dealers have not raised concerns about the costs associated with this arrangement despite not being able to retain a portion of the deposit.

¹⁸⁶ Research Paper Number 15: *Cooling of periods in Victoria: their use, nature cost and implications*, Consumer Affairs Victoria, January 2009, page 21.

¹⁸⁷ Ibid

The percentage of consumers likely to exercise their right to a cooling off period is anticipated to be low. This view is supported by data identified in the study undertaken by Consumer Affairs Victoria, which indicated that of a sample of 1,500 consumers surveyed, only eight per cent had exercised their right to a cooling off period across a range of purchase categories and timeframes to which cooling-off legislation applied.

Of this eight per cent, only three per cent of consumers had exercised their right to a cooling off period in relation to a used vehicle purchases (at the time of the survey, cooling off periods did not apply to new vehicles). It is, however, noted that cooling off periods apply to all vehicle purchases in Victoria whereas in WA the right to a cooling off period will be restricted to linked finance purchases estimated at around 35 per cent of all purchases.

This estimate of 35 per cent is drawn from a background paper prepared for the Banking Royal Commission as referred to earlier in this section which noted that around 90 per cent of all car sales were arranged through finance of which, 39 per cent were financed through a dealership.¹⁸⁸ Based on this data, it can be assumed that around 35 per cent of vehicles sold are likely to involve linked finance.

Given that only around 35 per cent of contracts will involve linked finance, the overall percentage of consumers likely to exercise their right to a cooling off period is likely to be a very low percentage of overall sales.

In addition, as identified by the SBDC, cooling off periods may assist in ensuring that the industry maintains overall high levels of professionalism. In addition, cooling off periods may also assist dealers in closing deals involving linked finance as a result of consumers being confident that they will have scope to reconsider their purchase decision.

Impact on consumers

Overall, reduced costs are envisaged for consumers as a result of implementing Option C as any costs to consumers are likely to be outweighed by savings achieved as a result of not proceeding with vehicle purchases involving linked finance which are unaffordable.

The introduction of a cooling off period for linked finance contracts may result in dealers' costs being passed on to consumers. It is, however, not possible to quantify the financial impact of cooling off periods on consumers, but is likely to be negligible when spread across all vehicle sales.

It is anticipated that cooling off periods will deliver the benefit of avoiding costs associated with short-sighted, emotion-based decisions; high pressure sales techniques; and decisions based on lack of adequate information in relation to finance options. Under this option, consumers will have the opportunity to reconsider finance costs and, if considered unaffordable or uncompetitive, withdraw from the contract with limited costs.

More broadly, Option C is likely to deliver the benefit of reduced consumer detriment where linked finance is involved as cooling off periods tend to deter high pressure sales tactics and poor conduct on the part of some dealers. In addition, costs to consumers associated with pursuing their rights under the Australian Consumer Law will be avoided.

¹⁸⁸ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Background Paper, *Final Report*, page 86, Government Publishing Service Canberra, February 2018.

It is noted that alternative and improved protections will be available to purchasers who do not have access to a cooling off period (i.e. their contracts do not involve linked finance) as a result of Option B as outlined above. Option B will deliver a considerable reduction in the maximum pre-estimated liquidated damages which can be imposed on consumers on the termination of a contract to purchase.

Impact on Government

Overall, reduced costs are envisaged for Government as a result of implementing Option C. Option C will deliver the benefit of reduced costs in complaint resolution and compliance activities due to fewer complaints related to the cancelling of contracts and salesperson conduct.

Summary of costs and benefits

The following table summarises the costs and benefits associated with each of the four options. The combination of Option B and Option C provides the best balance between benefits and costs for industry and consumers.

Table 24: Summary of costs and benefits

	OPTION A Status quo	OPTION B Reduce the maximum percentage consumers can be charged in pre-estimated liquidated damages. (Will also apply to contracts cancelled outside of the cooling off period).	OPTION C Introduce a cooling off period for linked finance contracts	OPTION D Introduce cooling off periods for all motor vehicle purchases
INDUSTRY	Sale certain.	Sale may be lost but costs covered. Improved industry reputation and community trust.	Sale at risk but most costs covered. Reduced incentives for poor conduct. Improved industry reputation and community trust.	Sale at risk but most costs covered. Reduced incentives for poor conduct. Improved industry reputation and community trust.
CONSUMERS	Expensive to withdraw and may be held to poor purchase decisions. Consumer detriment remains as no incentive for addressing poor conduct.	Can withdraw from a contract to purchase at reasonable cost. Reduced consumer detriment as incentive for poor conduct reduced. Costs to consumers in pursuing their rights avoided.	Can withdraw for a limited time at reasonable cost. Some costs may be passed on to consumers. Reduced consumer detriment as incentive for poor conduct reduced.	Can withdraw for a limited time at reasonable cost. Some costs passed may be passed on to consumers. Reduced consumer detriment as incentive for poor conduct reduced.

	OPTION A Status quo	OPTION B Reduce the maximum percentage consumers can be charged in pre-estimated liquidated damages. (Will also apply to contracts cancelled outside of the cooling off period).	OPTION C Introduce a cooling off period for linked finance contracts	OPTION D Introduce cooling off periods for all motor vehicle purchases
			Costs to consumers in pursuing cases under the ACL avoided.	Costs to consumers in pursuing cases under the ACL avoided.
GOVERNMENT	Continued impact on resources and ongoing compliance costs.	Reduced workload and costs due to reduction in complaints.	Reduced workload and costs due to reduction in complaints.	Reduced workload and costs due to reduction in complaints.

Public benefit assessment

Overall, the costs associated with Options A and D appear to outweigh the benefits.

Implementing the combination of Option B and Option C is likely to:

- reduce the risk of detriment to consumers, in particular vulnerable consumers;
- ensure that additional consumer protections apply to motor vehicle purchases involving linked finance;
- increase some costs for dealers;
- increase costs for consumers in the event that dealer costs are passed on;
- decrease costs to all consumers wishing to withdraw from a contract to purchase;
- decrease costs for consumers as a result of proceeding with unsuitable/unaffordable purchases; and
- decrease complaint resolution and compliance costs for government and consumer advocates, such as community legal services.

It is noted that the amount paid by consumers in the event of terminating their linked finance contracts during the cooling off period will offset the additional costs to dealers identified above.

Option B combined with Option C is assessed as providing the best overall balance between costs and benefits.

PREFERRED OPTION

Option B combined with Option C is recommended.

The Review concludes that the combination of these two options will meet the objectives of: minimising the regulatory burden on business while achieving an appropriate level of consumer protection; and overcoming regulatory failure around pre-estimated liquidated damages which has resulted in unintended consequences for consumers.

The Review concludes that it is appropriate to provide improved consumer protections in light of serious concerns about consumer detriment.

Option B

Option B is the first element of the preferred option.

This option involves amending the Motor Vehicle Dealers (Sales) Regulations 1974 to prescribe a maximum percentage of five per cent in pre-estimated liquidated damages to be forfeited in the event that a purchaser terminates a contract to buy a motor vehicle.

The intention is for a reduced maximum of five per cent in pre-estimated liquidated damages to apply in the event a consumer breaches the contract. This will include situations where a consumer opts to terminate the contract outside of the cooling off period. This is similar to arrangements in place in Victoria.

This reduction in pre-estimated liquidated damages will potentially deliver benefits to all vehicle purchasers, including purchasers terminating their contracts involving linked finance outside of the cooling off period.

Reasons (Option B)

Limiting pre-estimated liquidated damages provides an appropriate level of protection for consumers whilst minimising the regulatory burden for business. It also represents a measured and appropriate response to the policy issue. This measure imposes a similar level of regulation on business as is currently the case, while removing the capacity for dealers to unfairly penalise consumers who break a sales contract or inappropriately threaten to impose excessive liquidated damages to discourage consumers from breaking a sales contract.

Dealers will still be able to charge pre-estimated liquidated damages, but the maximum amount will be set at five per cent which is considered a more reasonable level that is more likely to reflect actual loss. This approach may adversely affect those dealers who are not applying the current provisions as intended.

Conversely, those dealers currently charging consumers reasonable amounts on termination of contracts are unlikely to be affected by this change. This will result in more equitable outcomes for those dealers who are correctly applying the pre-estimated liquidated damages provisions.

This change improves transparency for consumers and will be more consistent with arrangements in place in other jurisdictions. On a \$25,000 purchase, consumers in Western Australia potentially pay over seven times more in liquidated damages than consumers pay in termination fees in other jurisdictions.

Option C

Option C is the second element of the preferred option.

This option involves amending the legislation to provide for a cooling off period only where a linked finance contract to purchase a motor vehicle is arranged through the dealer on behalf of the consumer. This includes situations where the dealership supplies the application forms or provides a referral to a credit provider.

Under this option, the cooling off period would extend to the end of three clear business days for all purchases involving linked finance. The amount to be paid by the consumer in the event of terminating the contract during the cooling off period would be \$100 for used and new vehicles.

The Review concluded that the introduction of a cooling off period for vehicle purchases involving linked finance (Option C) with no scope to extinguish or waive the right to a cooling off period is supported.

This option is largely consistent with the Victorian model, however, it is proposed that no scope be provided to extinguish or waive the right to a cooling off period. In Victoria, consumers extinguish their right to a cooling off period on accepting delivery of their vehicle within the three day cooling off period).¹⁸⁹

Reasons (Option C)

Option C addresses many of the concerns raised by stakeholders during the Review. Purchasing a vehicle still represents one of the largest purchases a consumer is likely to make.¹⁹⁰

Dealers are clearly playing an increasingly significant role in selling finance to consumers as evidenced by the recent Banking Royal Commission which reported that 90 per cent of all car sales are arranged through finance of which, 39 per cent are financed through a dealership.¹⁹¹

This coupled with significant changes in the marketplace has resulted in dealer profit margins relying heavily on the sale of ancillary services such as finance. As outlined earlier in this section, there is evidence that these changes have resulted in consumers being sold poor value financial products with potential for long-term consumer detriment.

Cooling off periods are generally designed to address problems such as high-pressure sales techniques, short-sighted or emotion-based decisions, information asymmetry and lack of information about goods being purchased.

As highlighted by the Banking Royal Commission, consumers accessing linked finance are at a comparatively higher risk of making poor decisions under pressure and without all of the information needed to make a good choice. Such decisions are likely to result in long-term financial consequences.

Risks to consumers resulting from poor purchasing decisions involving linked finance are considered significant compared to the potential loss of benefits caused by a short delay in completing the purchasing process.

It therefore follows that providing cooling off periods to this specific group of consumers represents an appropriate, measured and targeted response to the issues raised during the Review.

Restricting cooling off periods to linked finance products is seen as appropriate given that it is intended that this reform will be implemented in tandem with a significant reduction in the maximum pre-estimated liquidated damages which can be charged by dealers in situations where consumers wish to terminate their contracts to purchase a vehicle.

¹⁸⁹ *Motor Car Traders Act 1986* (Vic) – section 43(2).

¹⁹⁰ ASIC, *Car Loans*, Moneysmart (20 June 2017) <<https://www.moneysmart.gov.au/borrowing-and-credit/car-loans>>

¹⁹¹ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Background Paper, *Some Features of Car Financing*, April 2018, Australian Government Publishing Service Canberra, April 2018.

This reduction in pre-estimated liquidated damages will potentially deliver benefits to all vehicle purchasers, including purchasers terminating their contracts outside of the cooling off period. In addition, as identified earlier in this section, where consumers organise their own finance (i.e. not linked finance), a 'subject to finance' clause is generally included in the contract. This means that if acceptable finance is not secured consumers are able to withdraw from the contract at no cost. This arrangement is referred to in the prescribed 'Vehicle Sale Contract' by the following information under the heading Finance:

'If the Purchaser has taken all reasonable steps towards obtaining loan approval, but does not obtain approval, then either the Purchaser or the Dealer may terminate this Contract by giving Notice to the other party. The Dealer must immediately refund any deposit paid and return any trade-in vehicle to the Purchaser'.¹⁹²

This provides some degree of protection for consumers who opt to arrange their own finance and is consistent with the Department's community education messaging in relation to entering into contracts to purchase vehicles.

It is acknowledged that the imposition of a cooling off period for linked finance purchases is likely to result in an additional regulatory burden for motor vehicle dealers and may result in costs being passed on to consumers. Termination costs paid by consumers are expected to largely cover costs incurred by dealers. The overall benefits of this reform are therefore considered to outweigh the costs.

Implementing a cooling off period for linked finance contracts imposes a similar or, in some cases, lesser level of regulation on business as is currently the case in most other jurisdictions across Australia including, NSW, Vic, ACT, Qld and South Australia where such provisions appear to be working well for both industry and consumers.

In summary, the introduction of a cooling off period where linked finance is involved is supported on the basis that it:

- represents a measured and targeted response to the policy issue;
- provides an appropriate level of protection for consumers whilst minimising the regulatory burden for business;
- will overcome many of the serious concerns raised by stakeholders about consumer detriment;
- will address significant changes in the purchasing environment resulting in dealers now relying more heavily on generating profits from the sale of add-ons such as finance and insurance;
- will prevent consumers from suffering considerable financial hardship as a result of proceeding with unaffordable vehicle purchases;
- will reduce risks to vulnerable and inexperienced consumers as a result of being locked into poor financial decisions, by providing scope to consider the affordability of the finance on offer and the ability to rescind the contract at reasonable cost;
- will deter high pressure, misleading and deceptive sales practices and give consumers the opportunity to reconsider their purchase away from sales pressure;
- will reduce the number of complaints and compliance actions dealt with by the regulator; and

¹⁹² Motor Vehicle Dealers (Sales) Regulations 1974, Schedule 5.

- will give consumers the opportunity to reflect on or research their finance decisions and ensure that they are in their best interests.

Reasons for providing no scope to extinguish or waiver the right to a cooling off period

The Review concluded that providing scope for consumers to extinguish or waiver their rights to a cooling off period would be counter-productive and diminish the benefits of a cooling off period.

A key reason for excluding this element of Victoria's approach is based on a comprehensive study undertaken by Consumers Affairs Victoria which found that most consumers waive their rights to a cooling off period.¹⁹³ Over a two year period, eight per cent of the sample of consumers surveyed had exercised their cooling off rights across a range of purchases.

Used motor vehicles (bought through a licensed dealer) comprised three per cent of the purchases where consumers had exercised their cooling off rights.¹⁹⁴

The study noted considerable debate about whether waivers should be included in a cooling-off period. The main concern was that some traders may put pressure on consumers to waive their rights, rendering the cooling off period ineffective.

It is, however, acknowledged that there may be valid reasons for consumers not wishing to avail themselves of their rights to a cooling off period. For example, consumers from regional areas not wanting to incur accommodation costs while waiting for the cooling off period to expire before taking possession of their vehicle.

The study also noted that an option for overcoming this issue is to subject the waiver to particular conditions, for example the requirement to consult a third person, for example, a Justice of the Peace. The Review concluded that such an approach would be too complex or costly to implement.

The Review concluded that providing no scope to extinguish or waiver the right to a cooling off period will ensure the effectiveness of this consumer protection measure.

Operation of Options B and C

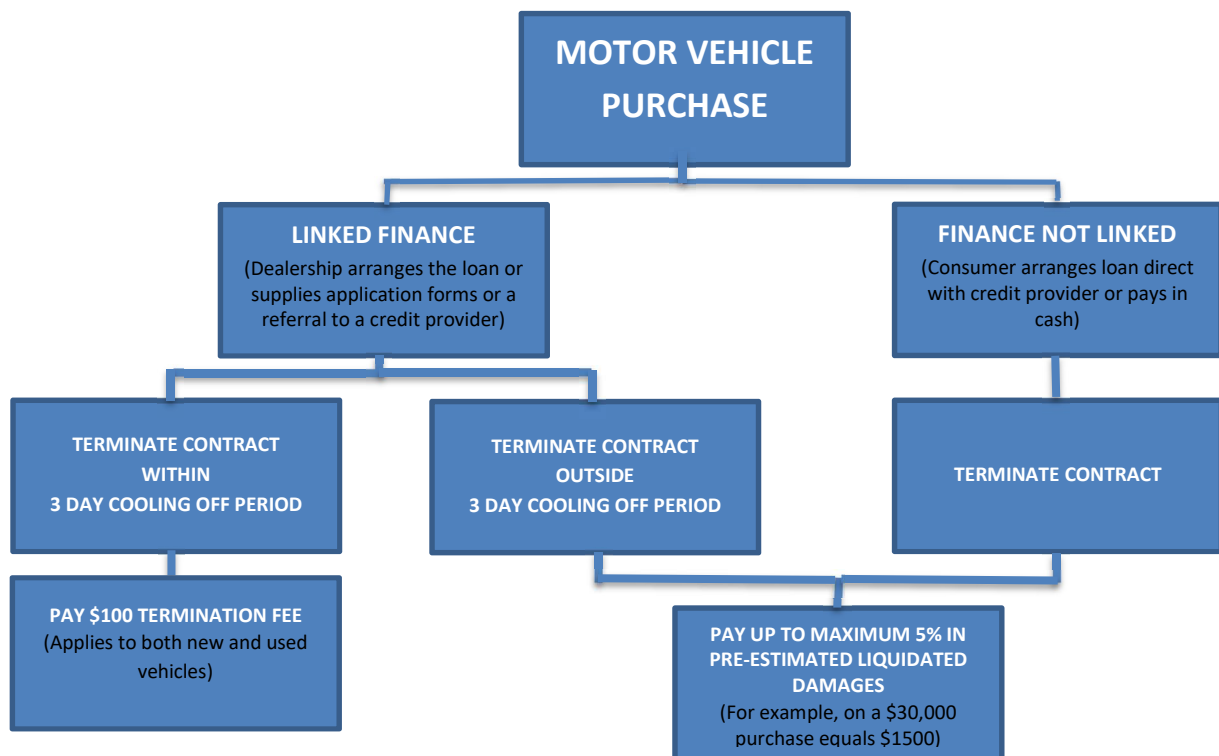
Figure 8 below shows how Options B and C will operate in practice.

Note: Where consumers organise their own finance (i.e. not linked finance) a 'subject to finance' clause is generally included in the contract. This means that if acceptable finance is not secured consumers are able to withdraw from the contract at no cost.

¹⁹³ Research Paper Number 15: *Cooling of periods in Victoria: their use, nature cost and implications*, Consumer Affairs Victoria January 2009.

¹⁹⁴ Research Paper Number 15: *Cooling of periods in Victoria: their use, nature cost and implications*, Consumer Affairs Victoria January 2009 page 56. Note: 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).

Figure 8: Diagram showing how the combination of Option B and C will work in practice.



PART 4: REPAIRER RECOMMENDATIONS

OVERVIEW OF TOPICS

This section of the DRIS considers the following topics in relation to motor vehicle repairers.

Theme: Scope (Who is required to be licensed)

- Whether repairers should continue to be regulated under the MVRA.
- Whether the definition of a motor vehicle under the MVRA should be amended.
- Whether the number of classes of repair work prescribed in the Regulations should be reduced.
- Whether accessory fitting repair work not impacting vehicle performance, safety and security should continue to be covered by the MVRA.

Theme: Licensing requirements (How repairers are licensed)

- Whether perpetual certification arrangements for repairers should be replaced with a requirement to update details on a regular basis.
- Whether the fit person criteria applicable to certified repairers should be removed.
- Whether compliance requirements for mobile repair premises should be simplified.

Theme: Consumer protections/ repairer operations (Protections in place for consumers)

- Whether specific consumer guarantees should be introduced under the MVRA.

Continuation of the licensing and certification regime for repairers

RECOMMENDATION 13

That repairers continue to be regulated under the MVRA.

STATEMENT OF THE ISSUE

This topic was initially canvassed in the discussion paper. The CRIS subsequently reported on stakeholder input and concluded that this was an area where no change was required. The following reflects a summary of content presented in the CRIS including reasons for retaining the current arrangements.

Issue

The policy issue to be resolved is whether the licensing and certification regime applicable to repairers should continue.

Current Situation

The MVRA provides for the certification of individual repairers and the licensing of repair businesses within prescribed classes of repair work.

The MVRA provides that a person who carries on a repair business must be licensed and that any motor vehicle repair work can only be carried out by a person holding a repairer's certificate for the particular class of repair work or supervised by such a person.

Historical perspective: introduction of repairer licensing

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 undertook 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. Final consultation on a Green Bill occurred in 2002 and the MVRA became fully operational in 2008.

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.

OBJECTIVES

The policy objective in regulating repairers is to reduce the risk to the public by ensuring that repair work carried out on vehicles is performed by persons qualified to do that work.

This will continue to be important as rapid advances in motor vehicle technology continue to occur. Over time, this will result in the need for different 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 MVRA, with the RTRG suggesting that it may be more appropriate for the motor vehicle repair industry to self-regulate.¹⁹⁵ 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.¹⁹⁶

The RTRG's recommendation has been assessed against the possible risk to consumers in removing regulation of motor vehicle repairers.

¹⁹⁵ Reducing the Burden - Report of the Red Tape Reduction Group, Government of Western Australia 2009, pages 88-89.

¹⁹⁶ Reducing the Burden - Report of the Red Tape Reduction Group, Government of Western Australia 2009, page 90, Recommendation 9.1.

OPTIONS CONSIDERED

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: Deregulate

Under this option, all industry specific regulation for repairers would be removed.

Option B: Negative licensing

Under this option, a negative licensing scheme for repairers would be implemented.

Option C: Remove certification requirements

Under this option, current licensing requirements applicable to repair businesses will remain but certification requirements for individual repairers will be removed.

Option D: No change

Under this option, the current regulatory regime for repairers would be retained.

OUTCOME OF CONSULTATION

Overview: Stakeholder views

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.

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

Small Business Development Corporation (SBDC)

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 the department to readily undertake compliance activities, especially in regional Western Australia.¹⁹⁷

¹⁹⁷ It is noted that the Department has sufficient resources to undertake compliance activities in relation to repairers. It is
Statutory Review: Decision Regulatory Impact Statement
Motor Vehicle Dealers Act 1973 and Motor Vehicle Repairers Act 2003

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 MTAWA.

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.¹⁹⁸

Gin Gin Mechanical Services

Gin Gin Mechanical Services opposed licensing of repairers as it is seen as being a waste of time and money.

Active Auto Electrics

Active Auto Electrics opposed 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.

Motor Trade Association of Western Australia

MTAWA indicated strong support for the retention of the MVRA and the licensing and certification system which operates in Western Australia. MTAWA 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, MTAWA noted that the core of the current licensing system is that it requires a skilled workforce, assessed against verifiable standards. MTAWA believes that this certification of skills gives the community confidence in the repairer system. MTAWA noted that without certification, a primary reason for regulating this industry would be removed.

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.

¹⁹⁸ 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.

MTAWA 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 MTAWA members surveyed supported the retention of the business licensing system and the same percentage supported the continuation of certification of individual repairers.

MTAWA 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. MTAWA strongly endorsed this view, and believed that these outcomes result from better managed businesses and a better skilled workforce. MTAWA 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 (RAC)

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.)

CIAWA strongly supported the retention of the motor vehicle repair industry licensing scheme.

SGIO

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 (ICA)

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.

ICA was also of the view that removing all licensing requirements would pose an unacceptable level of risk for consumers. 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 (CAWA)

CAWA supported the retention of the licensing of motor vehicle repair businesses as it delivers protection to Western Australian consumers. CAWA viewed Western Australia's system as working satisfactorily by offering safeguards for consumers and repairers alike. 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 25 below summarises repair industry responses.

Table 25: 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 26 below summarises consumer survey responses.

Table 26: 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%)

PREFERRED OPTION

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 consumer protection, road safety and crime prevention objectives.

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.

As 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 \$81 per individual repairer to obtain certification.

Industry stakeholders are generally strongly in favour of retaining the current regulatory arrangements for repairers despite the associated costs.

Of relevance is the consumer research conducted prior to the introduction of the legislation.¹⁹⁹ 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.

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.

Reasons

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.

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.²⁰⁰

Limitations of general consumer protection measures

In the absence of licensing, the ACL legislation would protect consumers to some degree in relation to the quality of the work carried out. Licensing, however, provides additional consumer benefits by identifying businesses which meet probity requirements and people who are competent in their occupation.

¹⁹⁹ 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.

²⁰⁰ 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. This benefit would be lost in the event of deregulation.

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.²⁰¹ 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 as licensing was considered an appropriate way of minimising safety, financial and criminal risks.²⁰²

²⁰¹ In Western Australia some work can be carried out under the supervision of a certificate holder.

²⁰² Better Regulation Office Report – Licensing of Selected Occupations, New South Wales Government, April 2009 – page 2.

No change to the exclusion of vintage vehicles from the definition of motor vehicle under the MVRA

RECOMMENDATION 14

That vintage vehicles continue to be excluded from the definition of motor vehicle under the MVRA.

STATEMENT OF THE ISSUE

Issue

The Review considered whether vintage vehicles should continue to be excluded from the definition of motor vehicle under the MVRA.

Definition of motor vehicle

The MVRA applies to repair work carried out on a motor vehicle. The definition of motor vehicle is therefore central to the application of the licensing requirements of the MVRA as it determines who must hold a licence.

For the purposes of the MVRA, a motor vehicle is a vehicle that is propelled wholly or partly by ²⁰³:

- any volatile spirit, steam, gas, oil, electricity; or
- any other means, apart from human or animal power; and includes a trailer.

A motor vehicle does **not** include:

- a vehicle that is constructed or adapted:
 - for use on a railway or tramway;
 - 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 Motor Vehicle Repairers Regulations 2007.

²⁰³ MVRA – section 3(1).

Current situation

The Motor Vehicle Repairers Regulations 2007 currently exclude:

- a box-trailer without brakes;
- a vintage vehicle;
- a power assisted pedal cycle; and
- an exempt motorised wheelchair.

Vintage vehicle is defined under the Motor Vehicle Repairers Regulations 2007 as a vehicle that displays the description “veteran”, “vintage”, “post-vintage” or “invitation class” above its number plate as required by the department of the Public Service principally assisting in the administration of the *Road Traffic (Vehicles) Act 2012* Part 2. This department is currently the Department of Transport.

Reasons for excluding vintage vehicles

The original intention for excluding vintage vehicles from the definition of motor vehicle 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.

The licensing status of some vintage vehicles restricts their use to car club events or road testing purposes. Not all vintage vehicles are licensed in this way. The nature of vintage and collectible vehicles means that they are only on the roads for very limited periods of time.

Coverage under the ACL

Vintage vehicle repair businesses are required to comply with the protections and consumer guarantees provided for under the ACL.²⁰⁴ This means that repairers of vintage vehicles 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 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.

OBJECTIVES

The policy objective is to ensure that the current exclusion of vintage vehicles from the definition of motor vehicle remains appropriate.

²⁰⁴If the cost of the service is less than \$40,000 then the purchaser is automatically covered by the protections and consumer guarantees within the ACL. If the cost of the service is more than \$40,000 and it is normally used for personal, domestic or household purposes, it is covered by the protections and consumer guarantees within the ACL.

OPTIONS CONSIDERED

Two options were presented in the CRIS in relation to the issue of whether vintage vehicles should be included in the definition of motor vehicle under the MVRA.

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 Motor Vehicle Repairers Regulations 2007.

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 Motor Vehicle Repairers Regulations 2007 and, as a result, businesses repairing vintage vehicles would be regulated under the MVRA.

OUTCOME OF CONSULTATION

Overview: Stakeholder views

Six written submissions were received during stages one and two of the Review. In addition, the Review received 476 responses to the question about this issue included in the online industry survey conducted during stage one of the Review.

Apart from one repair business and one insurer, stakeholders supported retention of the current exclusion for vintage vehicles.

The online survey of industry stakeholders indicated strong support for retaining the status quo with around 66 per cent of respondents of the view that the current exclusions from the definition of motor vehicle were appropriate, while 14 per cent disagreed and 20 per cent did not indicate a view.²⁰⁵

Stakeholder responses to the CRIS (Stage 2 of the Review)

Four stakeholders provided written responses to the options presented in the CRIS relevant to the issue of whether vintage vehicles should continue to be excluded from the definition of motor vehicle under the MVRA.

Option A: No change was supported by three stakeholders representing industry. One of these stakeholders suggested other minor changes to current exclusions.

Option B: Removing vintage vehicles from exclusions to the definition of motor vehicle was supported by one industry stakeholder.

²⁰⁵ Specific questions relating to this matter were not included in the consumer survey.

Written submissions in response to CRIS

SGIO

SGIO supported Option A (no change).

SGIO noted that it had previously supported removal of the current exemption, but indicated that after further investigation was of the view that vintage vehicles fill a small segment of the market and are better placed outside the licensing governance of the MVRA.

Neil McLean Automotives (repair business)

Mr McLean supported Option B.

Mr McLean argued the exemption needs to be removed in order to provide a level playing field for licensed workshops that also work on these vehicles. He noted that unlicensed repairers are able to charge lower rates due to lower or no overheads. Mr McLean also felt that licensing was required to ensure vehicle safety.

He expressed concern that none of the safeguards that had been put in place for licensed workshops to protect consumers apply when an unlicensed repairer is used. Mr McLean noted that there is a lot more money involved in restoring motor vehicles as compared to just repairing them, thus leaving consumers open to exposure to someone who may not be a fit and proper person.

Confidential (repair business) submission

The repair business supported Option A and noted that vintage vehicles are unlikely to be a concern as they are very rarely on the road and are someone's pride and joy and are more likely to be well maintained.

Motor Trade Association of Western Australia (MTAWA)

MTAWA indicated that neither Option A or B fully addressed the issue. MTAWA considered the existing MVRA exclusion list to be appropriate but recommended some changes which are presented in the table below and are considered minor.

For comparison purposes, the table also includes the list of current exclusions under the Motor Vehicle Repairers Regulations 2007 and indicates whether or not the suggested changes are supported. Suggested changes are considered minor and will be considered separately.

It is noted that in regard to the exclusion of vintage vehicles from the definition of motor vehicle, MTAWA's suggestion most closely aligns to Option A.

Table: 27: Comparison of current exclusions with suggested exclusions

CURRENT EXCLUSIONS	MTAWA SUGGESTIONS	COMPARISON/POSITION
<i>Box-trailer without brakes</i>	<i>Box trailers without brakes</i>	<i>Same</i>
<i>Power assisted pedal cycle.</i>	Power assisted pedal cycles	<i>Same</i>
N/A	Segways	<i>New</i> Minor change which will not significantly impact stakeholders. <i>Supported</i>
<i>Exempt motorised wheelchair</i> Note: Exempt motorised wheelchair is currently defined in the Motor Vehicle Repairers Regulations 2007 ²⁰⁶ as follows: <ul style="list-style-type: none"> • a motorised wheelchair that is fitted with 3 or more wheels; and • for which a vehicle licence is not required under the <i>Road Traffic (Vehicles) Act 2012</i> while the vehicle is being used on a road. 	<i>Motorised wheelchairs and vehicles known as gophers.</i>	<i>Same</i> Gophers are already excluded as they fall into the definition of 'exempt motorised wheelchair' provided for in the Motor Vehicle Repairers Regulations 2007. ²⁰⁷
<i>Vintage vehicle</i> Current definition included in the Motor Vehicle Repairers Regulations 2007 ²⁰⁸ as follows: <i>vintage vehicle</i> means a vehicle that displays the description "veteran", "vintage", "post-vintage" or "invitation class" above its number plate as required by the department of the Public Service principally assisting in the administration of the <i>Road Traffic (Vehicles) Act 2012</i> Part 2. ²⁰⁹	<i>Vintage vehicle</i> Vehicles owned by a financial member of a motoring club or association (approved by the Department of Transport) formed for the purpose of restoring and/or collecting motor vehicles and/or motorcycles that fit into one of the following categories: <ul style="list-style-type: none"> • Veteran - manufactured prior to and including 1918; 	<i>In effect, same exclusion but MTAWA suggests specifying this wording in the Motor Vehicle Repairers Regulations 2007</i> Wording in regard to vintage vehicles suggested by MTAWA matches the current definition as applied by the Department of Transport. Requirements are as follows: <i>"The vehicle owner/s must be financial members of an approved historic motoring club or association, formed for the purpose of restoring and/or collecting motor vehicles and/or motor cycles. Evidence of current membership must be provided at the time of application for this concession."</i> ²¹⁰ <i>Not supported</i>

²⁰⁶ Regulation 3.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ The Department of Transport is currently the department of the Public Service principally assisting in the administration of the *Road Traffic (Vehicles) Act 2012* Part 2'.

²¹⁰ http://www.transport.wa.gov.au/mediaFiles/licensing/LBU_F_VL_C_E81_VintageVeteranConcession.pdf.

CURRENT EXCLUSIONS	MTAWA SUGGESTIONS	COMPARISON/POSITION
	<ul style="list-style-type: none"> • Vintage manufactured between 1919 and 1930; • Post Vintage manufactured between 1930 and 1950; or • Invitation manufactured after 01/01/1950 but no less than 25 years old. 	<p>Replicating this wording in the Motor Vehicle Repairers Regulations 2007 is not supported as would be unnecessary duplication and would require amending each time Department of Transport amends its legislation creating additional costs for government.</p> <p>In addition, having vehicle ownership / club membership define coverage is not seen as an appropriate approach in the circumstances.</p>
No exclusion at present	<p>Vehicles with a power of less than 0.2 kilowatts</p> <p>The MTAWA noted that the suggested exclusion of vehicles with a power of less than 0.2 kilowatts is consistent with the position adopted by the Departments and the Department of Transport on what constitutes a toy vehicle.</p>	<p>Minor change which will not impact stakeholders</p> <p>Exemption to specifically include vehicles with a power of less than 0.2 kilowatts.</p> <p>Supported</p>

OTHER JURISDICTIONS

Vintage vehicles are not excluded from the operation of the New South Wales²¹¹ or the Australian Capital Territory²¹² legislation regulating motor vehicle repairers.

PREFERRED OPTION

The Review did not identify evidence of consumer detriment requiring reform in this area. It is also noted that there was support from most stakeholders for retaining the current approach of continuing to exclude vintage vehicles from the definition of motor vehicle under the MVRA.

As a result, the Review found that the current exclusion provided for vintage vehicles remains appropriate.

²¹¹ *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.

²¹² *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.

Reasons

Original reasons for excluding vintage vehicles remain in that this segment of the market is not considered mainstream and the current approach accommodates less formal arrangements in place between vintage car club members to assist one another with repair and restoration work.

Adequate protections available to consumers

Vintage vehicle repair businesses are required to comply with the protections and consumer guarantees provided for under the ACL. For example, repairers of vintage vehicles have a duty to ensure that 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.

These protections are considered adequate in the context of repairs to vintage vehicles.

Barriers to entry and costs

Expanding the scope of the MVRA to include individuals and businesses which repair vintage vehicles would result in additional barriers to entry and compliance costs for businesses that were not previously licensed. For example, triennial licensing costs of at least \$954 per repair business and around \$80 in registration costs for individual repairers.²¹³

These additional costs may:

- result in costs being passed on to consumers;
- reduce competition;
- act as a deterrent for new participants; and
- cause current participants to leave the marketplace.

Also, additional government resources would be required to administer expanded compliance and licensing functions.

No additional costs

As retaining the current exclusion in relation to vintage vehicles is recommended, no additional costs are envisaged.

²¹³ Fees current as at September 2017.

Types of repair work covered by the MVRA

RECOMMENDATION 15

That the number of classes of repair work prescribed in the Motor Vehicle Repairers Regulations 2007 be decreased.

That accessory fitting repair work which does not impact vehicle performance, safety and security be excluded from being repair work covered by the MVRA.

STATEMENT OF THE ISSUE

Issue

The policy issue to be resolved is whether the current classes of repair work as set out in the Motor Vehicle Repairers Regulations 2007 should be amended.

Current situation

Central to the MVRA is the requirement that repair work be carried out by suitably qualified tradespersons.

The MVRA defines repair work as:

“Any kind of work that is done on or to motor vehicles and that under section 5(1) is prescribed by the regulations to be repair work but does not include any kind of such work that is prescribed by the regulations not to be repair work.”²¹⁴

The Motor Vehicle Repairers Regulations 2007 currently prescribe 30 classes of repair work.²¹⁵ Details of the classes of repair work are included at Appendix C. The Motor Vehicle Repairers Regulations 2007 also prescribe the qualifications required in order to be certified to undertake the various classes of repair work.

²¹⁴ Section 3(1).

²¹⁵ 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.

Extent of the problem

Qualitative evidence provided to the Review indicates that:

- thirty classes of repair work is proving unwieldy to administer and represents more than double the number of classes of repair work prescribed in NSW; and
- there is a view that some accessory fitting work which does not affect vehicle performance, safety or security should not be covered by the MVRA.

OBJECTIVES

The policy objective is to achieve an appropriate level of consumer protection by ensuring that repair work carried out on vehicles is performed by persons qualified to do the work and at the same time minimise the regulatory burden on business.

OPTIONS CONSIDERED

Three options were presented in the CRIS in relation to classes of repair work.

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 existing classes of repair work, would be reclassified and included as separate classes of repair work:

- breakdown service;
- caravan/recreational vehicles servicing work;
- caravan/recreational vehicle work; and
- engine tune and diagnosis.

OUTCOME OF CONSULTATION

Overview: Stakeholder views

A total of 19 written submissions were received during stages one and two of the Review comprising, six business owners, ten industry associations, two insurers and a government department.

Written submissions reflected a range of views including support for:

- retaining the current classes of repair work;
- combining some classes of repair work in order to reduce the overall number of classes of repair work;
- creating new specific classes of repair work (within the current scope of coverage of the MVRA);
- excluding accessory fitting repair work which does not present a risk to consumers due to having no effect on vehicle performance, safety or security; and
- limiting any expansion of coverage of repair work unless there is an identifiable risk to vehicle performance, safety or security.

In addition, the Review received a total of 476 responses to the 2013 Motor Vehicle Repair Industry Survey conducted during stage one of the Review relevant to this issue.²¹⁶ Survey responses indicated strong support for the continued inclusion of repair classes where there are significant risks to safety, consumer protection and crime prevention.

Stakeholder responses to the CRIS (Stage 2 of the Review)

Fifteen responses were received in response to the options canvassed in the CRIS.

Option A: No change was supported by one repair business and ICA.

Option B: Combine items from classes of repair work was supported by SGIO, one repair business and MTAWA (but noted their concerns about the combinations of repair work suggested in the CRIS).

Option C: Reclassify and add classes of repair work was supported by CIAA, CIAWA and SGIO.

CIAWA indicated that it was not opposed, as a general principle, to rationalising the current classes of repair work and also suggested that the classes of repair work provide capacity to address evolving technologies.

SBDC's submission did not express support for any particular option, however, it specified that Option C was not supported.

²¹⁶ Specific questions relating to this matter were not included in the consumer survey.

Stakeholder views not related to the options presented in the CRIS

The Master Locksmiths Association of Australia and five business owners proposed an exemption for locksmiths or the creation of a separate specialist locksmith class of repair work. Concerns were also raised in relation to duplication of regulation in respect of locksmiths.²¹⁷

Concerns raised in relation to the regulation of locksmiths will be considered administratively as there is scope to adjust qualification requirements at departmental level.

Supercheap Autos, the National Retail Association, the Australian Automotive Aftermarket Association, the Aftermarket Network Australia and the Large Format Retail Association proposed an exemption for work involving the installation or fitting of accessories that do not impact vehicle handling, performance or safety (similar to the approach taken in NSW).

Written submissions in response to CRIS

The following provides further detail in regard to industry and government stakeholder responses to the CRIS.

Motor Trade Association of Western Australia (MTAWA)

MTAWA supported the concept of combining items from classes of repair work (Option B), but expressed concerns in relation to the specific combinations suggested in the CRIS. For example, MTAWA did not support combining driveline servicing and repair work with driveline work and transmission work.

MTAWA instead supported merging of the following categories:

- 'cylinder head reconditioning work' combined with 'engine reconditioning 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'.

MTAWA did not support the removal of any classes of repair work given the increasing technological sophistication of vehicles and components as well as risk to public safety.

MTAWA supported adding new classifications of repair work on the basis that this would ensure compliance with safety standards including:

- caravan servicing and repair;
- scratch and dent repairs; and
- breakdown services.

MTAWA supported reclassifying certain items of repair work into separate classes. For example, reclassifying hybrid and electric vehicles on the basis that they represent a high risk for untrained technicians should they fail to adhere to operational standards.

²¹⁷ Issues raised in relation to locksmiths will be dealt with separately as there is already scope for the Commissioner to determine qualifications sufficient for a class of repair work.

Caravan Industry Association Western Australia (CIAWA)

CIAWA strongly supported the retention of the motor (recreational) vehicle repair industry licensing scheme and also supports Option C, which would include specific classes for recreational vehicle servicing work and recreational vehicle work. CIAWA does not believe that such a change would impose any significant cost burden on repairers.

CIAWA advised it represents a very limited number of repair businesses which specialise in recreational vehicle repairs and therefore did not hold strong views in relation to the other proposed changes to the classes of repair work.

As a general principle, CIAWA supported rationalising the number of classes as well as recognising classes of repair work which address evolving technology.

CIAWA noted that increasing or decreasing the number or nature of repair classes would not necessarily alter compliance costs for either business or government.

Insurance Council of Australia (ICA)

ICA supported retention of the current classes of repair work under the MVRA and did not support the amalgamation or consolidation of repair classes given the increasing technical complexity involved in repairing modern vehicles.

SGIO

SGIO supported combining items from classes of repair work as set out in Option B. SGIO noted that the skills required in the reduced classes are similar if not the same and as such, would not adversely affect consumer confidence.

SGIO supported the introduction of caravan/recreational vehicle servicing and accident repair requirements under the MVRA and argued that this would improve consumer confidence in this growing specialised segment of the automotive repair industry.

Neil McLean (repair business owner)

Mr McLean supported retention of the status quo and noted that there may be duplication in regulating air conditioning work as it also covered by federal law.

Master Locksmiths Association of Australia (MLAA)

MLAA supported introducing a specialist locksmith class of repair work. MLAA noted that locksmith businesses are required to hold a security agent's licence under the *Security and Related Activities (Control) Act 1996* and individual locksmiths are required to hold a security installer's licence.

MLAA raised concerns in relation to compliance efforts, for example, national retail stores are offering transponder solutions and in-vehicle programming. MLAA suggested that these businesses require auditing.

Steve Kennedy (Locksmith business owner)

Mr Kennedy expressed concerns about the impact of the MVRA on locksmiths and argued that the current requirements add another layer of regulation and financial burden on an already heavily regulated industry.

Mr Kennedy noted that the security industry in WA (of which locksmiths are a part) is a highly regulated and monitored industry that comes under the umbrella of the West Australian Police Licensing and Security Arm. Mr Kennedy also noted that locksmiths are required to comply with police licensing requirements, the Securities and Related Activities Act, the Building Code of Australia, Public Building Regulations and manufacturers' licensing requirements.

Mr Kennedy noted that locksmiths are required to complete an apprenticeship achieving a Certificate III in Locksmithing. This includes competencies ranging from general trade skills to industry specific modules such as units relating to vehicle security systems. He noted that the industry is extremely proactive in completing ongoing training in order to keep up with technological advancements.

Mr Kennedy argued that it is difficult to understand why someone who obtained a mechanical or electronic accessory fitters endorsement would be better qualified to undertake this work as compared to someone who has undertaken specific training in these areas.

Further, Mr Kennedy argued that it should not be necessary to obtain a certificate to verify competence where individuals hold specific locksmith qualifications and believes that this creates a further financial impost on business.

Mr Kennedy suggested that the locksmithing sector (business and individuals) should be provided with an exemption under the MVRA. Alternatively, he suggested the following options:

- only licence the individual performing the work with the correct endorsement as a mechanical and electrical accessory fitter; and
- create a new class of certificate 'Security Systems' that covers the manipulation (gain entry), installation, repair and modification of physical and passive security systems.

Barry Coombe (locksmith business owner) Steve Arias (locksmith business owner) and Lesley Gregory (mobile locksmith business owner)

Mr Coombe, Mr Arias and Mr Gregory supported Mr Kennedy's submission above.

In addition, Mr Gregory supported retaining the current regulatory requirements as he believes this prevents unqualified people from entering the industry and also noted his company's financial investment over the past five years in ensuring compliance with the MVRA.

Mr Gregory suggested that:

- licensing processes be streamlined;
- mobile vans and locksmiths should not have to be licensed; and
- apprentices be granted probationary certification.

Confidential submission (Locksmith business owner)

Supported combining certain classes of repair work (Option B).

National Retail Association (NRA)

NRA expressed concerns about the current interpretation of the MVRA, especially as it applies to the fitment of aftermarket products requiring automotive aftermarket retailers to hold a motor vehicle repair licence to provide basic services. NRA noted that several of its members had expressed concerns about the current interpretation.

NRA argued that this interpretation is restricting the ability of businesses selling these automotive products to provide important, value-added services to customers. NRA believes that minor work is being directed to qualified mechanics and automotive tradespersons, which is considered an unnecessarily expensive and a perverse outcome for consumers.

NRA argued that if the installation or fitment does not impact the handling, performance or safety of the motor vehicle, there should be no requirement for the work to be conducted by a qualified automotive mechanic.

Confidential submission (wholesaler and distributor of automotive parts and accessories)

The submission supported amendments to the MVRA to remove licensing requirements for accessory fitters and noted that such amendments would not detract from the central intent of MVRA.

The submission noted that:

- vehicle accessories and aftermarket products are not designed or fitted to the vehicle to repair the vehicle or otherwise restore it;
- such products are most often provided with end-user installation instructions, so consumers themselves can install these products without licensing, training or supervision;
- fitment services are subject to protection afforded by the warranties under the ACL; and
- obtaining a licence to undertake fitment services is uneconomical for the businesses concerned.

Australian Automotive Aftermarket Association (AAAA)

AAAA supported the NSW approach whereby businesses undertaking certain work restricted to the installation or replacement of accessories that do not affect the safety or performance of a vehicle are not required to hold a licence to do such work.

AAAA argued that the fitting of simple accessories should not be considered a 'repair' as these products are not designed to repair the vehicle or otherwise restore it to basic operational condition, but to enhance its appearance, driver information, entertainment, and/or occupational functionality.

AAAA believes that it is unreasonable to require fitment by a qualified automotive tradesperson where accessories are sold with end-user installation instructions and fitment does not impact the performance, handling or safety levels of the vehicle; does not impact the Australian Design Rule compliance; or require disarming or dismantling of original fitment devices.

AAAA noted that auto accessory items are frequently fitted by consumers. AAAA expressed concern that if the legislation is not amended it is likely that more customers will attempt the fitment themselves when it would be safer to have the vendor do so. It believes that retail outlets performing fitment services are more likely to be experienced and generally have access to the appropriate physical space and tools and that in many cases, the fitment service is offered after training is provided by the accessory manufacturers.

AAAA argued that it is in the manufacturers' and the retailers' best interests that the product is fitted well as the final use of the product affects customer satisfaction with the retailer and with the particular product. As a result, AAAA believes that there is an inbuilt market mechanism to ensure that accessories are fitted well and that the product is fit for purpose. In addition, AAAA noted that many consumers are choosing to have someone else fit the product.

AAAA noted that their membership includes licensed workshops and that their consultation indicated that these members have no desire to fit basic accessory items. AAAA also noted that the fitment of simple accessories does not represent high value jobs for repairers and can tend to take time away from mechanical repairs.

Large Format Retail Association (LFRA)

LFRA supported adopting the recently implemented approach taken by NSW to the regulation of the non-repair accessory fitting services.

Supercheap Auto (representing 29 franchise businesses operating in WA)

Supercheap Auto supported exempting repair work which has no bearing on the performance, safety or security of vehicles on the basis that this work does not present the same level of risk to consumers from a safety perspective as compared to other types of vehicle repair work. Supercheap Auto argued that regulating the fitting of basic accessories is inappropriate and creates unnecessary compliance red tape for business.

Supercheap Auto also noted that in the event that accessory fitting services are no longer offered by retailers, consumers may opt to fit these products themselves resulting in adverse safety consequences for consumers.

In addition, Supercheap Auto noted that the qualification requirements relevant to accessory fitting services is regulatory overreach as very little of such training is relevant to these services. The submission also noted that there are no appropriate alternative training packages available for the retail sector and noted that WA's approach appears inconsistent with other jurisdictions and community expectations.

Small Business Development Corporation (SBDC)

SBDC did not support the option of creating additional classes of repair work due to concerns about the impact this may have on repair businesses already experiencing a significant degree of administrative burden in meeting existing licensing obligations.

SBDC argued that any consideration of increasing this burden on business must have regard to the underlying principle of only creating additional compliance requirements where there are identifiable risks on the performance, safety or security of a vehicle subject to repair.

OTHER JURISDICTIONS

In order to obtain a tradesperson certificate for a class of repair work, repairers in New South Wales must possess the specified qualification for that class of repair work.

New South Wales recently updated and consolidated its classes of repair work for tradespersons. There are now 12 classes of repair work for tradespeople (compared to 30 in WA), instead of the 16 classes that previously existed.

The following changes have been introduced in New South Wales:

- Work involving the installation or replacement of certain accessory fittings that do not affect the safety or performance of a vehicle is no longer licensed. Repairers fitting accessories such as skirts, ute linings, spoilers, weather shields, head light protectors, bonnet protectors, tow bars (bolted), sound systems, radios etc. no longer require certification.
- 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.
- Emergency breakdown repairs provided by a membership organisation to its members are exempted repair work.²¹⁸
- 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.

PREFERRED OPTION

The Review considered whether the current classes of repair work prescribed in the Motor Vehicle Repairers Regulations 2007 should be amended.

The Review concluded that:

- Option B should be adopted so as to decrease the overall number of classes of repair work; and
- the scope of coverage of repair work should be reduced where it can be demonstrated that the repair work exempted will not have a bearing on vehicle performance, safety or security.

Reasons

Option A is not supported as it is acknowledged that changes to the classes of repair work is necessary.

Option C is not supported as it will result in an overall increase in the number of classes of repair work prescribed in the Motor Vehicle Repairers Regulations 2007. The current number of classes of repair work is already considered unwieldy for both industry and government.

²¹⁸ 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 work. Issues paper – NSW Fair Trading regulation of motor vehicles, NSW Government, April 2012, pages 23-24.

Adding further classes will only exacerbate this problem. As noted earlier, WA currently prescribes 30 classes of repair work while New South Wales prescribes 12.

Option B strikes a balance between providing an appropriate level of consumer protection and minimising the regulatory burden on business. Option B will decrease the number of classes of repair work, simplify application processes and streamline administration of the legislation. This will result in cost savings for both industry and government. Option B also provides sufficient flexibility to readily accommodate future changes to the repair industry, for example, advances in technology.

Reducing scope of coverage

Removing repair work which has no bearing on vehicle performance, safety or security, from the scope of the MVRA is consistent with the intent of the MVRA and will deliver cost savings for industry, consumers and government as well as increased competition. It will also make it easier for business to recruit staff and reduce barriers to entry for potential employees as they will no longer be required to hold specific qualifications.

Reducing coverage in this manner will not result in increased risks to consumers. It is also noted that these services would continue to be subject to protections afforded under the ACL.

No significant negative impact

Changes to the classes of repair work prescribed in the Motor Vehicle Repairers Regulations 2007 represent minor reforms of a technical nature and are unlikely to have a significant negative impact on stakeholders. No additional costs are envisaged for industry, consumers and government.

Certified repairers to update details

RECOMMENDATION 16

That the MVRA be amended to provide for certified repairers to be required to lodge with the Commissioner updated details every three years.

That the MVRA be amended to remove the criteria of being a fit person to hold a certificate.

STATEMENT OF THE ISSUE

Issue

The Review considered whether perpetual certification of individual repairers should be replaced by periodic certification and secondly, whether the fit person criteria should continue to apply to applicants for an individual repairer's certificate.

This policy issue is being considered in the context of:

- the regulator's obligations under the legislation to keep a register of repairers and to issue statements certifying specific matters in the register;
- apparent non-compliance on the part of certified repairers with legislative requirements to notify the Commissioner of any change in address or of any serious criminal convictions that may occur following certification (regulatory failure);²¹⁹
- concerns about the integrity of the register deteriorating over time and potentially undermining the central intent of the legislation;
- potential flow on effects for industry, consumers and government associated with an increasingly inaccurate register;
- retaining a growing number of inaccurate records being unsustainable for government in the long-term; and
- concerns that the fit person criteria provided for under the MVRA may represent an unnecessary barrier to entry.

This topic is restricted to consideration of regulatory arrangements in relation to individual repairers rather than repair businesses. Repair businesses are subject to renewal requirements every three years and are required to meet probity criteria of being of good character and repute and a fit and proper person to hold a licence.

²¹⁹ MVRA – section 48.

Current situation

A repairer's certificate is granted where the applicant satisfies the Commissioner that they are:

- sufficiently qualified to carry out each class of repair work to which the application relates; and
- a fit person to hold a certificate.²²⁰

Perpetual certification

Around 13,400 repairers are certified in Western Australia. At present, an individual repairer's certificate is perpetual in that it does not have a specified duration, but continues in force until it is either surrendered or the holder is disqualified. This approach was modelled on the approach taken by NSW up until recently.

Applicants for a repairer's certificate currently pay a one-off fee of \$81.00.²²¹ The register of repairers lists certified repairers who have satisfied certification requirements at a particular point in time.

Fit person

Current application requirements relevant to the criteria of being a fit person to hold a certificate include:

- answering a range of fitness questions, for example, questions about pending charges, convictions and prior legal proceedings in relation to occupational licensing and general fitness;
- providing a criminal history check issued within the previous three month period;
- providing photographic and documentary proof of identity; and
- authorising the Commissioner to obtain any information necessary to consider fitness to hold a certificate.

Extent of the problem

Perpetual certification

Under consideration is whether perpetual certification should be replaced with periodic renewals.

The extent of the problem caused by the perpetual nature of current certification arrangements is difficult to quantify. The following reports on relevant qualitative observations.

Regulatory failure

The MVRA requires certified repairers to notify the Commissioner of any change in address or of certain specified criminal convictions that may occur following their certification.²²² Despite the legislative requirements, it has been established that repairers are not complying with these notification requirements, however, due to the perpetual nature of the certification requirements it is not possible to obtain data on the level of non-compliance.²²³

²²⁰ MVRA — section 42.

²²¹ Fee amount is current as at August 2017.

²²² MVRA — section 48 relates to change of address. 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.

²²³ Commissioner for Consumer Protection and Rozario [2017] WASAT 76.

Similarly, it is difficult to enforce compliance in relation to these requirements as the register of certified repairers contains outdated contact information. For example, in May 2012, the Department gave certified repairers listed on the register the opportunity to update their photograph and contact information for the purposes of issuing a new identification card, only around 64 per cent of repairers responded.

This has raised concerns about the accuracy of the contact information contained in the register. NSW experienced similar difficulties when it recently introduced renewals for repairers, with around 37 per cent of register entries (45,000) being found to be inaccurate or not current.

Similarly, in implementing recent reforms in relation to associations and clubs, the Department anticipates that of the 18,000 registered associations, only around 12,000 are likely to be active and operating. This is despite regulatory requirements being in place to require associations to advise the Department in the event of ceasing to operate. Recent reforms place a positive obligation on associations to submit updated information statements at regular intervals or face being deregistered.

The Department undertakes regular pro-active compliance checks of repair businesses but these have limited coverage and are not aimed at confirming individual repairer's details or probity status in terms of convictions. The option of enforcing the notification requirements is considered impractical as locating repairers who have not otherwise updated their details is inherently difficult, time consuming and costly for the Department. In addition, taking legal action against individual repairers who are not complying with the notification requirements is not considered to be in the public interest.

As a result, it is concluded that relying on repairers to voluntarily notify the regulator of specified matters as required under the MVRA is unworkable, difficult to enforce and points to regulatory failure. In addition, the notification requirements provided under the MVRA do not address all changes in the circumstances of a certificate holder, for example, whether they are still working in the industry.

Reliance on register

The regulator has obligations under the legislation to keep a register and to issue statements certifying specific matters in the register. As the integrity of the register is undermined over time, the perpetual nature of the licensing regime impedes the regulator's ability to meet these legislative obligations.

This also impacts other stakeholders wishing to use the register to check on who is certified to carry out specified types of vehicle repair work. For example, a repair business accessing the register to find out whether 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 simply lists repairers who have satisfied certain requirements at a particular point in time.

Data storage

Around 780 new repairer certificates are issued each year. Over a ten year period, this will equate to an additional 7,800 repairers. Based on these figures, by 2027, it is anticipated that the Department will hold in excess of 21,000 certification records. Storing such records is costly for government particularly as over time, a significant proportion of the records are likely to become inaccurate and out of date. Of relevance, the NSW Government recently moved from perpetual certification to requiring three yearly renewals in part due to concerns about the significant cost of maintaining an increasingly inaccurate register.

Fit person requirements

Under consideration is whether the criteria for assessing applicants seeking certification should be limited to assessing qualifications rather than assessing both qualifications and fitness. The Review found that the assessment of qualifications continues to be of primary importance in terms of an applicant's capacity to safely undertake motor vehicle repairs.

In assessing fitness, decisions are based on a range of considerations including the length and seriousness of a person's criminal history. For serious convictions or where there is a long history of convictions, additional information is routinely sought. However, there are a number of factors that mitigate against refusing to grant a certificate.

These factors include, the severity of the penalty imposed, whether the nature of the convictions is directly relevant to the occupation and the number of years that have passed since the offences occurred. Where the risk to consumers is assessed as being low or negligible granting a certificate is warranted.

The extent of the problem caused by the fit person test is difficult to quantify. The following reports on relevant observations.

The Review considered data in relation to the number of applications refused on the basis of the assessment of fitness since the implementation of the MVRA in 2008. A total of fourteen applications have been refused due to the nature of convictions identified through the criminal history check. This represents approximately one tenth of one per cent of the total number of applicants and raises the question whether the current fitness requirements are warranted given the considerable costs for industry and the licensing authority.

It is clear from these figures that, in the vast majority of cases, the assessment of applicants' fitness results in the Commissioner being satisfied as to fitness. This outcome is in part due to the fact that repairer contact with members of the general public is limited and, as a result, this occupational category generally presents as a low risk to consumers.

This is also consistent with the experience in NSW where since the recent implementation of renewals in NSW, no repairers have been formally denied renewal of certification on probity grounds.²²⁴

Anecdotal evidence provided by industry indicates that some repairers refuse to apply for certification due to concerns about prior criminal convictions despite the strong likelihood that these convictions would not preclude them from being certified. It is therefore conceivable that such requirements may be inadvertently creating a barrier to entry in the capacity of a certified repairer for some qualified repairers that would not pose a significant risk to the community.

In the event that probity requirements are removed, there will still be scope for repair businesses to seek a criminal history check as part of pre-employment processes. This will, however, be a decision for individual businesses and may depend on the likely extent of contact with customers. The benefit of this approach is that the information provided by prospective employees will be current.

²²⁴ As at July 2016.

Research

The Review also considered research in this area and found that licensing regimes give rise to administrative difficulties in circumstances where many practitioners are registered at one point in time.²²⁵ The research indicated that in the absence of any legislative requirement to renew and to provide any accompanying updated information, a regulator has limited prospect of accurately determining whether or not an individual is involved within a particular industry at any given time.

The research also noted that any system of restriction on entry that falls short of detailed ongoing control is regarded as inherently inadequate. Perpetual licensing is generally seen as being more suitable in situations where the number of regulated individuals is relatively small and the industry is relatively homogeneous.

Auditor General's 2015 report

The issue of the appropriateness of perpetual certification should also be considered in the context of a report published by the Auditor General in February 2015, regarding 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
- adequately monitors and enforces compliance with legislation, regulations and codes of conduct.²²⁶

Of relevance is the report's audit conclusion (page ii) which pointed to a general expectation that occupational licensing regimes be properly administered beyond the initial approval processes.

This in turn raises questions about the capacity of perpetual certification to deliver an acceptable level of confidence generally expected of occupational licensing regimes in respect to the fitness criteria, particularly as convictions subsequent to initial registration are unlikely to be notified by repairers or identified by the regulator.

Comparison to other licensed occupations

The Review considered other licensed occupations in Western Australia including real estate agents, settlement agents, land valuers, building services providers and plumbers and found that none of these licensed occupations operate under a perpetual licensing scheme. In addition, the Review was not able to identify relevant examples of perpetual licensing in place in other jurisdictions.

OBJECTIVES

In considering reforms, the policy objectives are to implement an option which:

- ensures the ongoing integrity of the register of certified repairers; and
- ensures that the probity criteria provided for under the MVDA for assessing applicants are appropriate, necessary and in the public interest.

²²⁵ C J Aislabie and K Lindgren~7 state (Ref: Economic Analysis of Legal Restrictions on Entry into Business' (1975) and R Cranston, Consumers and the Law (1983).

²²⁶ Regulation of Real Estate Agents and Settlement Agents Report 1 Office of the Auditor General Western Australia (2015).

OPTIONS CONSIDERED

Four options were presented in the CRIS.

Option A – No change, maintain status quo

Under this option, current arrangements would remain in place whereby repairer certification would continue to be perpetual, with no renewal required. Qualification requirements and fit person test would continue to apply.

Option B – Retain qualification requirements but remove the fit person test

Under this option, the qualification requirements would be retained but the fit person test would be removed. Certification would remain perpetual as is currently the case.

Option C – Retain both the qualification and fit person test requirements and require renewals

Under this option, qualification requirements and fit person test would be retained. Renewals would be required every three or five years.

Option D – Remove the fit person test but require renewal

Under this option, the qualification requirements would be retained but the fit person test would be removed. Renewals would be required every five years.

OUTCOME OF CONSULTATION

Overview: Stakeholder views

Seven written submissions were received during stages one and two of the Review. In addition, the Review received 149 industry responses to the online survey conducted during stage one of the Review.

Stakeholders held mixed views in regard to the prospect of introducing renewals for certified repairers. Written submissions to the Review generally reflected industry support for renewals. In addition, MTAWA reported that based on consultation with its members, it appeared that repairers would not be opposed to the introduction of renewals.

Industry responses to the 2013 Motor Vehicle Repair Industry Online Survey reflected diverging views in relation to this issue with around 30 per cent of respondents supporting the introduction of renewals whereas around 45 per cent were opposed.²²⁷ (Note: Responses did not total 100 per cent as this was a multiple choice survey question.)

²²⁷ Specific questions relating to this matter were not included in the online Consumer survey.

In regard to probity requirements, industry respondents felt that probity checks should be undertaken by repair businesses as part of pre-employment processes. Industry indicated that some repairers refuse to apply for certification due to concerns about prior criminal convictions which in reality would not preclude them from being certified.

Industry input also noted that educational programs offered by correctional institutions include vehicle repair skills, and as a consequence, placing undue emphasis on past criminal behaviour may unfairly deny some individuals re-entry into the workforce. Further, industry responses indicated that there appeared to be no evidence to suggest the fit person test has resulted in better industry outcomes or greater levels of consumer protection. Industry also noted that individual certified repairers, other than sole traders, generally do not have close contact with consumers.

Stakeholder responses to the CRIS (Stage 2 of the Review)

Written submissions

Five stakeholders provided written submissions relevant to repairer certification in response to the CRIS.

Option A: No change was supported by the MTAWA (also supported Option D) and a dealer.

Option B: Retaining qualification requirements but remove the fit person test did not receive any responses.

Option C: Retaining both the qualification and fit person test requirements and require renewals was supported by CIAWA and ICA.

Option D: Removing the fit person test but requiring renewal was supported by MTAWA (also supported Option A) and SGIO.

The following provides further detail in regard to stakeholder submissions in response to the CRIS.

Motor Trade Association of Western Australia

MTAWA supported retention of the status quo (Option A) with some adjustments. MTAWA also supported the concept of renewals noting that it had conducted its own survey and reported support for renewals amongst its members. Further, MTAWA believed that there would be minimal impact on costs in adopting these reforms.

MTAWA was of the opinion that the certification system should be linked to the trade training system so that all new graduating apprentices and all new trainees completing their automotive trade certificates are issued with a certificate under the MVRA under their respective class of repair. Renewal periods of five years were seen as lessening the regulatory burden on industry.

In addition, MTAWA recommended that the requirement for employers to notify the Commissioner when a technician leaves a business be amended to require the certified holder to be responsible for advising the Commissioner. This was seen as overcoming the situation where an employee may be terminated or leave the business unexpectedly and the employer has no knowledge of where the employee has moved to.

Insurance Council of Australia (ICA)

ICA supported the introduction of renewals every three to five years as well as retaining both the qualification and fit and proper test requirements (Option C).

ICA was of the view that a renewal system, similar to the renewal system established in NSW, would be beneficial to consumers as it would ensure that repairers' knowledge remained up to date. It would also ensure that character and fit and proper person criteria continued to be met.

SGIO

SGIO supported the removal of the fit person test for individual licence holders on the basis that a licence renewal process is introduced (every five years) to ensure repairer competence is maintained (Option D).

SGIO believes that the determination of a fit person test in relation to individual repairers should rest with the employer.

Caravan Industry Association Western Australia (CIAWA)

CIAWA opted not to take a position, but expressed support for a continuation of the assessment of the character of applicants for a repairer's certificate.

Repair business (confidential submission)

One repair business supported retention of the status quo (Option A).

The repairer suggested that:

- on first application both qualifications and fit person test should be required for a one off fee;
- any certified repairer over the age of 65 or 70 years could be deleted from the system reducing perpetuity issues; and
- there should be an avenue for a motor vehicle repair business to report any anomalies in staff enabling an investigation of particular employees who may need to be reported and reassessed/renewed.

Other jurisdictions

The Review considered arrangements in place in other jurisdictions and found that NSW is the only jurisdiction to require repairers to be certified. The following outlines information in relation to renewals and probity criteria applicable in NSW.

New South Wales

Renewals

NSW implemented a renewal requirement for repairer certification in December 2014.²²⁸ As at 1 July 2017, the associated renewal fee for repairer certification was \$48 every three years.

²²⁸ *Motor Dealers and Repairers Act 2013* (NSW) — section 33: licences (including certificates) are not to exceed three years.
Statutory Review: Decision Regulatory Impact Statement
Motor Vehicle Dealers Act 1973 and *Motor Vehicle Repairers Act 2003*

NSW's key argument for moving away from perpetual certification to periodic renewal 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 and, as a result, was unsustainable. It is noted that this issue is likely to have been exacerbated by the fact that NSW has regulated repairers for over three decades.

The database accuracy concerns identified by NSW in developing its reforms were subsequently borne out during the implementation phase, with around a third of database records proving to be inaccurate.

Fit and proper person to hold a repairer certification

NSW has retained probity requirements for individual repairers both on application and on renewal. NSW's repairers are likely to be considered a fit and proper person to hold a repairer certificate even if they have been convicted of minor offences. Decisions are based on the context and individual circumstances. Rehabilitation factors are also taken into consideration as is currently the case in WA.

IMPACT ANALYSIS

The Review ruled out Option D on the basis of being cost-prohibitive. Instead, the Review considered a variation on Option D which would require repairers to complete a simple, low cost renewal process.

No additional costs are envisaged for consumers. Additional costs are envisaged for industry and government as a result of implementing this option.

Costs and benefits

The following table provides costs and benefits associated with each of the options, including the variation on Option D.²²⁹ The variation on Option D is assessed as providing the best balance between benefits and costs for industry and consumers.²³⁰

²²⁹ Hourly rate of \$27 per hour derived from Australian Bureau of Statistics 2014, Employee Earnings and Hours, Australia, May 2014, catalogue 6306.0, ABS, Canberra Australian and New Zealand Standard Classification of Occupation (ANZSCO) Code 3212 "Motor mechanics", Table 1. Note: Based on 'ordinary time for males'.

²³⁰ The variation on Option D (preferred option) involves amending the MVRA to require certified repairers to complete a simple online low cost renewal process.

Table 28: Summary of costs and benefits

	BENEFITS	COSTS
OPTION A No change	Industry <ul style="list-style-type: none"> No change to compliance costs. Certification and fee only required once. Government <ul style="list-style-type: none"> No additional impact on resources as no changes to process or legislation. 	Industry <ul style="list-style-type: none"> Probity check may discourage suitably qualified people from seeking certification (perceived barrier to entry). Compliance costs on application including: \$53 for NPC and lodgement fee of \$77. Government <ul style="list-style-type: none"> Costs of maintaining an increasingly inaccurate register of certified repairers will continue to steadily increase (for example, electronic storage costs estimated at \$168,000 over ten year period). Ongoing difficulty in meeting responsibility for maintaining an accurate register. The level of cost recovery will continue to fall due to regulating increasing numbers of repairers with increasingly limited injection of funds.
OPTION B Retain qualification requirements but remove the fit and proper person test. Certification would remain perpetual as is currently the case.	Industry <ul style="list-style-type: none"> Certification and fee only required once (same as current arrangements). Reduced compliance costs for new applicants saving of \$53 and \$20.25 time saving due to no probity/NPC requirements. Application fee remains the same. May encourage suitably qualified people concerned about exclusion because of past behaviour to seek certification. Perceived barrier to entry removed due to fit person test being removed and no longer discouraging some applicants who would most likely meet this criteria from applying. Government <ul style="list-style-type: none"> Reduced administrative costs in no longer undertaking probity checks but still below full cost recovery. 	Industry <ul style="list-style-type: none"> Compliance costs on application including lodgement fee of \$77. Government <ul style="list-style-type: none"> Costs of maintaining an increasingly inaccurate register of certified repairers will continue to steadily increase. The criminal history check also acts as a proof of identity check. A new proof of identity check would need to be implemented for new applicants. Ongoing difficulty in meeting responsibility for maintaining an accurate register. Cost recovery improved but still low resulting in activities being substantially subsidised by the taxpayer.

	BENEFITS	COSTS
OPTION C Retain both the qualification and fit and proper test requirements and require renewals every three or five years	Industry <ul style="list-style-type: none"> Increased accuracy of register. Employers will be able to better rely on the register in terms of information about prospective employees. Government <ul style="list-style-type: none"> More effective mechanism for maintaining the integrity of the register. Improved scope to recover compliance and administrative costs. Dissemination of information to repairers made easier. Costs savings due to not needing to maintain an increasingly inaccurate register. Savings due to not needing to cover storage of inaccurate records (saving difficult to estimate). 	Industry <ul style="list-style-type: none"> Increased compliance costs due to introduction of renewals. Compliance costs on application including: \$53 for NPC and lodgement fee of \$77 plus additional compliance costs in meeting renewal requirements every five years: Renewal fees would be set at full cost recovery. Additional time costs are estimated at \$33.75 (75 minutes). Perceived barrier to entry remains the same due to fit person test discouraging some applicants who would most likely meet this criteria from applying. Government <ul style="list-style-type: none"> Additional resources required to implement and administer renewals and ensure compliance, however, fees would be based on full cost recovery in line with Government policy.
OPTION D (VARIATION) Retain qualification requirements but remove the fit and proper person test and require updating of information every three or five years	Industry <ul style="list-style-type: none"> Reduced compliance costs for new applicants saving of \$53 and \$20.25 time saving due to no probity/NPC requirements. (Note application fee remains the same.) Increased accuracy of register means employers able to better rely on the register in terms of prospective employees being suitably qualified/experienced. Reduces barrier to entry and may encourage more suitably qualified people to seek certification. Government <ul style="list-style-type: none"> Reduced administrative costs in no longer undertaking probity checks but still below full cost recovery. More effective mechanism for maintaining the integrity of the register. Reduced risk of not meeting regulator's obligations under the legislation in relation to maintaining a reliable register as integrity of register not undermined over time. Dissemination of information to repairers made easier. 	Industry <ul style="list-style-type: none"> Additional costs in meeting renewal requirement to update information every three years (time cost estimated at \$7.00/15 minutes). Some employers may require that prospective employees provide a NPC as part of their recruitment processes (usually paid for by employee, currently \$53). Consumers <ul style="list-style-type: none"> Some minimal risk of unfit repairer impacting consumers but business operators will still be required to meet probity requirements. No additional costs are envisaged for consumers. Government <ul style="list-style-type: none"> Additional resources required to implement and administer. This would be offset by the implementation of more efficient licensing processes in the mid-term and savings in no longer undertaking probity checks.

ASSESSMENT AGAINST OBJECTIVES

The following table presents a comparative assessment of reform Options B, C and D against the MVRA's key objectives.²³¹ It is noted that each option meets the objectives of the MVRA, however, some options are assessed as superior to others. Option D is assessed as the option which best meets the MVRA's policy objectives.

Each option has been assessed against the policy objectives for reform:

- providing adequate protections for consumers whilst maintaining the commercial viability of the motor vehicle repair industry (overarching objective);
- implementing an option which ensures the ongoing integrity of the register of certified repairers; and
- ensuring that the probity criteria provided for under the MVDA for assessing applicants are appropriate and necessary.

²³¹ The number of ticks reflects the extent to which the option meets the specified objective.

Table 29: Assessment of reform options

	Overarching Objective <i>To provide adequate protections for consumers whilst maintaining the commercial viability of the motor vehicle repair industry.</i>	Policy objective 1 <i>To ensure the ongoing integrity of the register of certified repairers.</i>	Policy objective 2 <i>To ensure that the probity criteria are appropriate and necessary.</i>
Option A No change	✓	X	X
Option B Retain qualification requirements but remove the fit person test. Certification would remain perpetual as is currently the case.	✓	X	✓
Option C Retain both the qualification and fit person test requirements and require renewals every three or five years.	✓	✓	X
Option D Retain qualification requirements but remove the fit person test and require renewals every three or five years.	✓	✓	✓

Option D may result in an additional regulatory burden on repairers in having to update their information every three years but overall this has not been assessed as a having a significant negative impact on stakeholders. Additional compliance costs as a result of being required to confirm or update information every three years will be minimal.

These time costs are estimated at around \$7.00 every three years based on 15 minutes per repairer to complete the process.²³² Repairers may also be required to provide an NPC to employers at a direct cost of \$53. There may also be some additional costs for government as a result of implementing this option but these will be offset by savings as a result of no longer undertaking an assessment against probity criteria.

²³² Ibid.

Public benefit assessment

The table below summarises the impacts of Options A, B, C and D on stakeholders.

Table 30: Impacts summary

OPTIONS	COST	BENEFIT	OVERALL BENEFIT
Option A	<i>Medium</i>	<i>Medium</i>	MEDIUM
Option B	<i>Low to medium</i>	<i>Medium</i>	MEDIUM
Option C	<i>High</i>	<i>Medium</i>	MEDIUM TO HIGH
Option D	<i>Medium to low</i>	<i>High</i>	HIGH

Overall, the costs associated with Options A, B and C appears to outweigh the benefits, resulting in a net negative public benefit under these options.

The benefits of implementing Option D appear to outweigh the costs resulting in a net public benefit under this Option D.

Option D is assessed as providing the best overall balance between costs and benefits.

PREFERRED OPTION

A variation on Option D is the preferred option.²³³ This option involves amending the MVRA to:

- require certified repairers to lodge with the Commissioner updated details every three years; and
- remove the fit person test to hold a certificate criteria.

Under this option, a minimal fee would apply.

This approach is similar to arrangements in place for associations and clubs whereby information statements are required to be submitted to the Commissioner at regular intervals.

In the event that repairer information is not updated within six months of the specified date, repairers would be provided with a grace period after which time their certification would lapse and their details would be removed from the register of repairers.

Consideration will be given to utilising the myWA Government Digital Services Portal which is currently under development as part of the myWA Program. This major initiative is aimed at providing a 'one stop shop' and ensuring access to government services online is simple and seamless.

²³³ Option D as described in the CRIS involved retaining qualification requirements but removing the fit person test and requiring renewals every three or five years.

Reasons

The Review considered implementing Option D as outlined in the CRIS which would require repairers to complete a renewal process. This option was not supported due to the significant cost impost for repairers.

The variation on Option D meets the policy objectives of the MVRA as well as the identified reform objectives. It retains certification of individual repairers which underpins the MVRA's key objective of protecting consumers from poor quality repairs. It relieves repairers of costs associated with meeting probity requirements and removes a (perceived) barrier to entry. This option responds to considerable industry support for reforms.

It also introduces reforms which are consistent with general standards applicable to occupational licensing and provides an improved and more sustainable model for regulating repairers. It also meets general expectations in relation to the administration of occupational licensing regimes (refer Auditor General's report) as legislation will be administered beyond the initial approval processes.²³⁴

It will also deliver benefits to the community as a result of a more accurate register of repairers and improves the regulator's capacity to meet obligations in relation to maintaining an accurate register. It also addresses regulatory failure in relation to repairer notification requirements under the MVRA and addresses concerns about current arrangements being unsustainable for government in terms of costs associated with maintaining an increasingly inaccurate register.

It is noted that probity requirements will be removed but scope remains for employers to undertake probity checks in the event that this is seen as necessary. In addition, industry has indicated support for this approach.

²³⁴ Regulation of Real Estate Agents and Settlement Agents Report 1 Office of the Auditor General Western Australia.

Simplifying mobile repairer requirements

RECOMMENDATION 17

That the MVRA be amended so that it will no longer be necessary for repair businesses to advise the Commissioner in relation to make and model, year of manufacture, vehicle colour or registration number of mobile repair vehicles.

Businesses operating exclusively from mobile premises will continue to be required to specify a fixed address, where business records are kept and which can be used to contact the repair business.

STATEMENT OF THE ISSUE

Issue

The policy issue to be resolved is whether licensing requirements applicable to mobile repairers should be simplified.

Current situation

Mobile premises (in relation to a business) are defined in the MVRA as any motor vehicles from which business is carried out.

Applicants for a repair business licence who operate mobile premises are required to provide details about each of the mobile premises including:

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

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.

A fee is charged for any alterations or additions to mobile premises.

OBJECTIVE

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

OUTCOME OF CONSULTATION

This issue was identified in the CRIS in response to concerns raised by an industry representative about the administrative burden imposed on businesses, particularly those with large fleets of mobile repair vans, in meeting notification requirements in regard to adding mobile premises or altering details in relation to mobile premises.

The CRIS proposed simplification of requirements for mobile repairers to:

- make it no longer necessary to advise the Commissioner about vehicle details;
- only require notification to the Commissioner of the overall number of mobile premises; and
- make it an offence if a repair business fails to notify the Commissioner of changes in the number of mobile premises.

Response to CRIS (Stage 2 of the Review)

Four written submissions were received in response to the CRIS.

MTAWA supported the proposal of no longer requiring information to be provided about the vehicle make and model. MTAWA did not support the other proposed changes on the basis that the same regulatory requirements should apply regardless of whether a repair business operated from fixed or mobile premises. MTAWA supported continuing to require registration details for each mobile premises. MTAWA believes that this information is necessary for accurately establishing the number of mobile premises.

One repair business and SGIO supported the proposed changes.

One repair business partially supported the proposed changes.

OTHER JURISDICTIONS

New South Wales

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.²³⁵

²³⁵ *Motor Dealers and Repairers Act 2013* (NSW) – section 29.

Each mobile premises is regarded as a place of business and a fee is payable for each place of business. Applicants for a licence are required to provide the registration number of each motor vehicle. A fee is payable if the licensee subsequently adds additional mobile premises to their business licence.

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.

Australian Capital Territory

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.²³⁶

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, there is no requirement 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.

PROPOSED CHANGE

The Department undertook an assessment of the information required of mobile repair businesses and as a result, proposes the following arrangements in relation to mobile repairers:

- 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.
- Changes to the overall number of mobile premises and any changes to the mobile premises details, such as vehicle registration number, will no longer need to be notified to the Commissioner.
- A fee will no longer be charged for the addition or reduction in the number of mobile premises used by the business.²³⁷
- Mobile premises will no longer be issued with a certificate specific to the mobile repair vehicle and will no longer be required to display such a certificate in a conspicuous position on or inside the mobile premises. Mobile repairers will instead be required to display, in a prominent position, a copy of the business licence certificate under which the mobile repairer is operating.
- In addition, mobile repairers will be required to display in a conspicuous position on the outside of their vehicle the business name and business licence number.
- Businesses operating exclusively from mobile premises will be required to specify a fixed address, where business records are kept and which can be used to contact the repair business.
- Businesses operating both fixed and mobile premises will continue to be required to specify a fixed street address where the repair business will be based.
- There will be a requirement that vehicles used for mobile repairs be licensed in the name of the repair business to enable compliance checks to be completed.

²³⁶ *Fair Trading (Motor Vehicle Repair Industry) Act 2010 (ACT)* – section 8.

²³⁷ As at August 2017, a fee of \$120 applies for the addition of mobile premises or alteration to details in relation to mobile premises.

- There will be an administrative requirement that on application as well as on renewal, applicants will be required to specify as to whether they will be operating fixed premises, mobile premises or both.
- The register in relation to repairers will no longer record particulars in relation to mobile premises.²³⁸
- Mobile premises will no longer be considered premises for the purposes of the MVRA.

Reasons

It is acknowledged that this approach goes beyond what was outlined in the CRIS which proposed simplifying requirements in respect of mobile repairers but still imposing a requirement on repair businesses in relation to advising the regulator as to the number of mobile premises or changes in the number of mobile premises.

On further consideration, the Review found that there would be little benefit in imposing these requirements.

The proposed approach will significantly reduce the impost and costs on business and government, while at the same time ensuring that adequate information is provided to enable effective oversight of repair businesses that utilise mobile premises. In addition, the Department's compliance staff currently deal with mobile repair businesses at their fixed address.

This approach will not impact government revenue derived from licensing fees as fees are currently based on the number of staff engaged in repair work (excluding apprentices, trainees and administrative staff) rather than being based on the number of premises.

Consumers will still be provided with identifiers confirming that the business with whom they are dealing with is appropriately licensed. These identifiers will also assist the regulator in identifying unlicensed premises and/or repair business activity.

²³⁸ Motor Vehicle Repairers Regulations 2007 - Regulation 9(1)(i).

Consumer guarantees not to be introduced under the MVRA

RECOMMENDATION 18

That specific consumer guarantees under the MVRA not be introduced.

STATEMENT OF THE ISSUE

This topic was initially canvassed in the discussion paper. The CRIS subsequently reported on stakeholder input and concluded that this was an area where no change was required. The following reflects a summary of content presented in the CRIS including reasons for retaining the current arrangements.

Issue

The policy issue to be resolved is whether specific consumer guarantees should be introduced under the MVRA rather than relying on the consumer guarantees offered under the ACL.

Current Situation

The MVRA does not include any specific obligations in relation to the standard of work performed by repairers. The ACL includes consumer guarantees which apply to any goods or services provided by a motor vehicle repairer. Appendix D 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.

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 relates²³⁹; or

²³⁹ 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.

- the holder of a business licence for allowing someone to carry out repair work of a class prescribed by the Motor Vehicle Repairers Regulations 2007 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.²⁴⁰

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.

OUTCOME OF CONSULTATION

Overview: Stakeholder views

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.

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.

Five written submissions were received, including three from associations, one from an individual business and one from an insurance company.

This issue was not considered as part of either the Consumer Online Survey or online Motor Vehicle Repair Industry Survey.

Royal Automobile Club(RAC), 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.

Motor Trade Association of Western Australia (MTAWA)

The MTAWA 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.

²⁴⁰ MVRA – sections 39 and 68.

However, despite this, the MTAWA did not support the introduction of a new layer of regulation in the MVRA through consumer guarantees which would duplicate the ACL. MTAWA 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.

PREFERRED OPTION

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 is not supported. It is noted that given current arrangements are being retained, no additional costs are envisaged.

Reasons

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 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.

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.

PART 5: BOTH DEALER AND REPAIRER RECOMMENDATIONS

OVERVIEW OF TOPICS

This section of the report considers the following topics which relate to both motor vehicle dealers and repairers.

Theme: Licensing requirements (How dealers and repairers are licensed)

- Whether probity criteria should continue to apply to dealers and repair businesses.
- Whether the sufficient resources criteria should continue to apply to dealers and repairers.

No change to business licensing probity criteria under the MVDA and MVRA

RECOMMENDATION 19

That the current probity criteria under the MVDA and MVRA of being a person of good character and repute and a fit and proper person continue to apply.

STATEMENT OF THE ISSUE

Issue

The Review considered whether the probity criteria under the MVDA and MVRA used to assess applicants for motor vehicle dealer and repair business licences would benefit from being more prescriptive by including:

- specific factors to be taken into account in assessing applicants; and/or
- specific disqualifying offences which would automatically disqualify a person from being able to obtain a licence.

The expression ‘good character’ ordinarily refers to a person’s moral qualities while the expression ‘repute’ refers to the estimation in which the person is held by others. The expression ‘fit and proper person’, takes its meaning from its context, for example, the activities in which the person will be engaged.

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 for example, if an applicant is of bad character, they will also usually be unfit to hold a licence.

Current situation

Applicants for a business licence under the MVDA and MVRA are currently required to provide information relevant to the probity criteria, for example:

- provide a criminal history check;
- answer a range of ‘fitness’ questions, for example questions relating to legal proceedings and any disciplinary action by a licensing authority; and
- authorise the Commissioner to obtain documents necessary to consider fitness to hold a licence.

Significant effort goes into assessing each application, with each individual's situation considered on its merits. The assessment also gives consideration to the applicant's scope of responsibilities and potential risks to consumers.

Guidelines and procedural checklists are used by licensing staff to assist in assessing applications. Matters which are taken into account include:

- any offence for which the applicant has been convicted and the length of time since the last offence;
- 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 licence is granted; and
- the seriousness of the offence.

If the regulator is not satisfied that the individual is a fit and proper person, or a person of good character and repute to hold a licence, 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.

Consumer risk

Consumer risk is considered low as consumer issues relating to poor conduct on the part of dealers and repairers are infrequent. Refusal of applications is rare, for example, for the period 1 July 2013 and 30 June 2017, the Commissioner did not refuse any motor vehicle dealer applications on probity grounds. Similarly, for the same period the Commissioner only refused six applicants for a motor vehicle repair business licence on probity grounds.

OBJECTIVES

The probity criteria under the MVDA and MVRA include:

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

The policy objective is to ensure that these probity criteria are adequate in enabling the regulator to screen for and prevent dishonest or otherwise unsuitable people from operating in the industry.

OPTIONS CONSIDERED

Four options were presented in the CRIS relevant to the probity criteria used to assess applicants for a business licence under the MVDA and MVRA.

Option A: No change

This option would not require changes to the legislation.

Under this option, current probity criteria under the MVDA and MVRA would be retained. Compared to the other options, Option A provides maximum discretion and flexibility in decision making on the part of the Commissioner.

Option B: Specify disqualifying offences

Under this option, the MVDA and MVRA would be amended to include certain types of offences which would automatically disqualify a person from being able to obtain a licence.

Option C: Specify factors to be taken into account

Under this option, the MVDA and MVRA would be amended to be more specific in relation to assessing whether a person is of good character and repute and fit and proper.

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

Under this option, the MVDA and MVRA would be amended as outlined under both Options B and C above.

OUTCOME OF CONSULTATION: DEALERS

Overview: Stakeholder views

Seven written submissions were received during stages one and two of the Review. In addition, the Review received 149 responses to the online survey conducted during stage one of the Review.

Overall, stakeholders supported retention of the current probity criteria, but expressed support for amending the MVDA to also allow for automatic disqualification from obtaining a dealer licence for certain criminal offences, particularly those concerning fraud, illegal tampering with vehicle identification or instruments, and the theft of vehicles or parts. The CAC was opposed to such amendments as it may be limiting and lead to unintended consequences if the list was lacking in some way.

The 2013 online Dealer Industry Survey indicated that 76 per cent of industry respondents supported the concept of identifying offences which would automatically disqualify applicants from being able to obtain a licence.²⁴¹

Stakeholder responses to the CRIS (Stage 2 of the Review)

Overview

Three stakeholders provided responses to the options relevant to probity criteria for dealers presented in the CRIS.

Option A: No change was supported by one stakeholder representing consumers.

Option B: Specifying disqualifying offences was supported by one government department.

²⁴¹ Specific questions relating to this matter were not included in the consumer survey.

Option C: Specifying factors to be taken into account received nil responses.

Option D: Specifying disqualifying offences and factors to be taken into account was supported by one industry association.

Written submissions in response to CRIS

Motor Trade Association of Western Australia (MTAWA)

MTAWA supported Option D. The MTAWA also accepted that motor vehicle dealer licence applicants should be required to meet probity requirements and believed that the National Police Certificate should be the primary test of good character.

MTAWA supported:

- specifying the types of matters that can be taken into account in determining whether a person is fit and proper and of good character and repute;
- identifying 'cardinal' offences which would disqualify entry to the industry (non-discretionary);
- specifying ten year disqualification from holding any form of licence under the MVDA for the following offences:
 - offences relating to misuse of trust funds;
 - offences relating to tampering with odometers or vehicle identification;
 - 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;
- screening being undertaken on entry to the industry and, in the absence of concerns about the applicant, renewal processes being streamlined; and
- persons who had not, for five years, committed an offence involving a non-custodial term being eligible to apply for a licence.

Consumer Advisory Committee (CAC)

CAC supported Option A (status quo) on the basis that specifying disqualifying offences and factors to be taken into account may be limiting and lead to unintended consequences.

Department of Transport (DoT)

DoT supported Option B and noted that the administration of processes involving 'fit and proper person' and 'good character' tests can be problematic. Such processes can be unwieldy and can result in inappropriate people being able to continue their business.

DoT noted that specifying disqualifying offences would provide a transparent process which would greatly strengthen efforts to keep criminals, and criminal enterprises out of the motor industry. While noting the potential for old convictions to limit one's ability to earn a living, DoT noted that this needs to be balanced with public safety.

DoT suggested that greater consistency in the powers of the Department and DoT compliance officers would be helpful as it would enable greater coordination of compliance and enforcement activity.

OUTCOME OF CONSULTATION: REPAIRERS

Seven written submissions were received during stages one and two of the Review. In addition, the Review received 149 responses to the online survey conducted during stage one of the Review.

Overall stakeholders strongly supported the retention of current probity requirements as well as amending the MVRA to specify matters which would automatically disqualify an applicant from being granted a licence, for example offences involving fraud and dishonesty.

CAC was opposed to amending the legislation as it may be limiting and lead to unintended consequences if the list was lacking in some way.

The 2013 Online Repair Industry Survey indicated considerable support amongst respondents for identifying offences which would automatically disqualify applicants from being able to obtain a licence.²⁴² For example, offences involving fraud or dishonesty, stolen motor vehicles or parts and physical violence.

Stakeholder responses to the CRIS (Stage 2 of the Review)

Written submissions in response to CRIS

The following provides further detail in regard to industry, consumer and government stakeholder responses to the CRIS.

Option A: No change received nil responses.

Option B: Specifying disqualifying offences was supported by one government department.

Option C: Specifying factors to be taken into account received nil responses.

Option D: Specifying disqualifying offences and factors to be taken into account was supported by MTAWA, SGIO and one repairer.

Motor Trade Association of Western Australia (MTAWA)

MTAWA supported Option D as producing the best outcome for both consumers and the industry with the following caveats.

- That the character assessment criteria for business licence applicants should be retained but further direction be included in the legislation about its application.
- That the Commissioner adopts 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.

²⁴² Specific questions relating to this matter were not included in the consumer survey.

MTAWA reaffirmed the following points:

- That a person submits a National Police Certificate on first application and authorises the Department to access the Department of Transport's driver's licence database to provide licence, identity and photographic details of the applicant.
- On renewal, allow for a statutory declaration about criminal convictions in the previous three years and an authorisation for the Department to access CrimTrac.
- That a person should be disqualified for a period of ten years, from holding a business licence under the MVRA for the following offences:
 - offences relating to tampering with odometers, vehicle identification, vehicle "ghosting"; and
 - offences relating to stealing motor vehicles or parts of motor vehicles.
- The Commissioner should be required to take into account offences for dishonesty and offences where the applicant has been sentenced to a term of imprisonment in the previous ten years.
- A person who has not, for five years, committed an offence involving a custodial term, and has not been imprisoned, should be eligible for a licence.

Department of Transport (DoT)

DoT supported Option B and noted that the administration of processes involving 'fit and proper person' and 'good character' tests can be problematic. Such processes can be unwieldy and can result in inappropriate people being able to continue their business.

DoT noted that specifying disqualifying offences would provide a transparent process which would greatly strengthen efforts to keep criminals, and criminal enterprises out of the motor industry. While noting the potential for old convictions to limit one's ability to earn a living, DoT argued that this needs to be balanced with public safety.

DoT suggested that greater consistency in the powers of Department and DoT compliance officers would be helpful as it would enable greater coordination of compliance and enforcement activity.

SGIO

SGIO supported Option D and noted that for the benefit of consumer protection, it is critical that the Act supports a robust licensing regime that ensures high standards of behaviour and conduct in the repair industry. SGIO noted the option of amending the legislation to include certain types of offences that would deem automatic disqualification of a person from obtaining a licence, such as stealing a vehicle.

Repair business owner (confidential submission)

Supported Option D on the basis that it will increase business reputation and consumer confidence.

OTHER JURISDICTIONS: DEALERS

Legislation in other jurisdictions generally provides for some degree of discretion on the part of regulators but generally appears to take a more prescriptive approach than Western Australia by legislating:

- matters to be taken into consideration by the regulator in assessing probity criteria;
- matters precluding granting of a licence, but at the same time, still allowing some discretion on the part of the regulator in reaching a final decision; and/or
- matters such as certain offences which automatically disqualify a person from obtaining a motor vehicle dealer's licence, with no scope for discretion on the part of the regulator in reaching a final decision.

Levels of discretion across jurisdictions

The following table identifies the level of discretion available to regulators in assessing motor vehicle dealer licence applications across jurisdictions.

Table 31: Comparison of regulator discretion - motor vehicle dealers

	LEGISLATION INCLUDES PROBITY CRITERIA	LEGISLATION SPECIFIES MATTERS TO BE TAKEN INTO ACCOUNT IN CONSIDERING APPLICATIONS.	LEGISLATION SPECIFIES SOME MATTERS PRECLUDING GRANTING OF A LICENCE BUT STILL ALLOWS SOME DISCRETION ON THE PART OF THE REGULATOR.	LEGISLATION SPECIFIES SOME MANDATORY MATTERS WHICH PRECLUDE GRANTING OF A LICENCE AND DOES NOT ALLOW FOR DISCRETION ON THE PART OF REGULATOR.
WA	✓	✗	✗	✗
NT	✓	✓	✓	✗
ACT	✓	✓	✓	✗
Vic	✓	✗	✓	✓
Qld	✓	✓	✗	✓
SA	✓	✗	✗	✓
Tas	✓	✓	✗	✓
NSW	✓	✗	✓	✓

Similar outcomes

The MVDA and MVRA provide the regulator with considerable discretion, however, in administering the legislation, many of the matters legislated for in other jurisdictions are addressed in practice in Western Australia. While these requirements are not specifically enshrined in the legislation, decision outcomes would be very similar due to the rigorous administrative processes in place for assessing applicants. For example, an applicant recently convicted of a serious offence involving dishonesty would be very unlikely to be granted a licence.

Northern Territory

The Northern Territory provides the regulator with considerable degree of discretion in determining whether an applicant meets the probity criteria. For example, the Commissioner may have regard to whether the person has:

- been found guilty of an offence involving fraud or dishonesty during the last 10 years;
- 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.²⁴³

The Northern Territory Act also refers to offences involving physical violence.

Australian Capital Territory

The Australian Capital Territory provides the regulator with a considerable degree of discretion in determining whether an applicant meets the probity criteria. The legislation 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.²⁴⁴

Victoria

Victoria provides that the regulator must refuse an application for a licence if satisfied that a ground for refusal exists.²⁴⁵ For example, 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.

The regulator must also refuse a licence if satisfied that the applicant is not a person likely to carry on such a business honestly and fairly, the applicant does not have sufficient expertise or knowledge or the applicant is in any other way not a fit and proper person to be a licensee. There are, however, no specified criteria that the regulator must consider in determining if the applicant is a fit and proper person.

Queensland

The Queensland legislation provides that a person is not a suitable person to hold a licence if they have been convicted of a serious offence within five years of making an application. There is no discretion on the part of the regulator in relation to this point.

²⁴³ *Consumer Affairs and Fair Trading Act 1990* (NT) – section 136.

²⁴⁴ *Sale of Motor Vehicles Act 1977* (ACT) – section 71.

²⁴⁵ *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).

The regulator has discretion in considering other aspects of whether a person is a suitable person to hold a licence including the person's character the character of the person's business associates and the individual's criminal history.

South Australia

The South Australian legislation provides that a licence cannot be granted to a person who has been convicted of a serious offence during the period of 10 years preceding the application or of an indictable offence involving dishonesty. There is no discretion on the part of the regulator in relation to this point.

Tasmania

In Tasmania, a person is not a fit and proper person to hold a motor vehicle trader licence (with no discretion on the part of the regulator) if they have been convicted of an offence involving theft, fraud or other dishonesty that is punishable by a term of imprisonment of three years or more.²⁴⁶

In addition, the regulator must refuse to grant an application if the regulator is not satisfied that the applicant is a fit and proper person. In determining, whether or not a person is a fit and proper person to hold a motor vehicle trader licence, the regulator is required to have regard to a number of specific factors, for example, whether the person, within three years of applying, has been refused a licence or had a licence cancelled.

The regulator also has scope to otherwise determine that the person is not a fit and proper person to hold a motor vehicle trader licence.

New South Wales

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

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.²⁴⁷ The legislation also includes specific safeguards in relation to organised crime and includes mandatory grounds for refusing licences for example, 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.

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.

²⁴⁶ *Motor Vehicle Traders Act 2011 (Tas)* – section 7.

²⁴⁷ *Motor Dealers And Repairers Act 2013 (NSW)*– section 27.

OTHER JURISDICTIONS: REPAIRERS

The Australian Capital Territory and New South Wales regulate motor vehicle repairers.

Australian Capital Territory licensing requirements

Any person carrying on a business as a motor vehicle repairer is required to hold a licence.²⁴⁸ Specific criteria relating to fit and proper and of good character and repute are not included in the legislation.

Instead, the ACT legislation focuses on eligibility based on an individual not being a disqualified person. Similarly, a person in a partnership or corporation is eligible, as long as, no partner or director is a disqualified person.

A person is a disqualified person if the person has committed or engaged in a disqualifying act, for example:

- a contravention of the *Fair Trading (Motor Vehicle Repair Industry) Act 2010* (ACT);
- a contravention of a condition of a licence;
- 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 one 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. Both business licence holders and close associates must be fit and proper persons. 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.

Mandatory grounds for refusing licences

The New South Wales' legislation also includes grounds for refusing licences for example²⁴⁹:

- 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

²⁴⁸ *Part 2 of the Fair Trading (Motor Vehicle Repair Industry) Act 2010* (ACT).

²⁴⁹ *Motor Dealers and Repairers Act 2013* (NSW) – section 25.

- 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 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.²⁵⁰

This is aimed at preventing family members or close business associates from taking over a business and running it on a day-to-day basis with the previous licensees being a silent partner. 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.²⁵¹ In order to satisfy these requirements an applicant is required to answer various questions in the application form.

²⁵⁰ *Motor Dealers and Repairers Act 2013* (NSW) – Section 8(1).

²⁵¹ MVRA – sections 18 and 20.

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 considered that they are to be involved in the management of the repair business or otherwise in control of the repair business.

As indicated above, the New South Wales legislation includes more specific safeguards in relation to organised crime.

It is 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.

PREFERRED OPTION

It is acknowledged that there was substantial support amongst stakeholders for the introduction of non-discretionary matters in the MVDA and MVRA which would automatically exclude applicants from obtaining a dealer or repairer's licence. Varying views exist in relation to the merits of providing regulators with extensive discretion in decision making. Setting prescriptive criteria is often seen as delivering greater transparency, clarity and certainty for stakeholders and regulators alike. It, however, has the disadvantage of being less flexible and thus less responsive to marketplace changes or individual circumstances. For example, specifying disqualifying offences may result in unfairly denying deserving applicants the opportunity to a livelihood.

The Review found that the current probity criteria are working effectively and are providing sufficient scope for preventing unsuitable persons from entering the industry. In addition, the Review did not identify any evidence of consumer detriment or marketplace failure which pointed to a need for reforms in this area. It is also noted that most other jurisdictions which have more prescriptive legislation in place provide for some degree of discretion on the part of the regulator. In effect, this means that outcomes of assessments are similar.

The current probity criteria are considered appropriate and adequate in:

- meeting the consumer protection objective of screening for and preventing dishonest or unsuitable people from operating in the industry;
- providing sufficient foundation for rejecting applications where individuals have a criminal history related to dishonesty and violence;
- providing the regulator with an appropriate level of discretion and flexibility to have regard to all the relevant factors; and
- providing appropriate flexibility to accommodate future changes in the industry.

The Review, therefore recommends the retention of the current approach as this provides fairer outcomes for applicants.

As current arrangements are being retained, no additional costs are envisaged.

Changes to sufficient resources criteria under the MVDA and MVRA

RECOMMENDATION 20

That the sufficient resources criteria under the MVDA and MVRA be removed apart from in relation to dealers selling vehicles on consignment on behalf of consumers.

That the MVDA and MVRA be amended to instead enable the regulator to take into consideration objective financial measures to determine whether an applicant is suitable to be granted a licence.

(Note: It is intended that consumer safeguards provided for within the MVDA in relation to consignment sales will be retained.)

STATEMENT OF THE ISSUE

Issue

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.

Sufficient resources

The primary purpose of assessing sufficient resources is to ensure that motor vehicle dealers and repair businesses can meet their compliance and financial obligations under the MVDA and MVRA.

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.*²⁵²

The MVRA defines sufficient resources as meaning:

*sufficient material, manpower and financial resources to carry on business doing repair work.*²⁵³

²⁵² MVDA – section 15(6).

²⁵³ MVRA – section 12.

Current situation

Application requirements for dealers and repairers

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 including probity, knowledge and sufficient resources criteria.

In administering the legislation, specific application requirements are in place to assist the Commissioner in determining whether a dealer or repairer meets the sufficient resources criteria. These application requirements are not specified in the legislation but are determined by the regulator and include:

- providing information in regard to sufficient financial resources (this is assessed via a credit history report obtained by the licensing authority but paid for by the applicant);
- 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.

Areas of risk

The potential areas of financial risk for consumers in transactions with dealers include:

- a dealer failing to meet the statutory warranty repair obligations;
- a dealer failing to return a deposit for a vehicle; and
- a dealer failing to return a consignment vehicle, or pay funds received for a sale on consignment to the seller.

Complaints against dealers and repairers that have closed, gone into liquidation or could not be located are very low, averaging between seven and nine complaints per year.²⁵⁴ Cases where warranty associated issues have arisen as a result of dealerships going into liquidation or closing down are rare. In practice, in the event a dealer is ceasing to trade, the dealer is asked to nominate a repairer who will undertake warranty repairs following the closure of the business. This ensures that consumers are still able to access their statutory warranty rights with the cost borne by the dealer.

Potential financial risk for consumers in their dealings with repairers is considered low as consumers do not generally pay up front for repairs. In addition, 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.²⁵⁵

The fund is a fund of last resort and is only available if all other legal avenues have been exhausted. Since its creation, only four claims have been made against the Motor Repair Industry Compensation Account.

²⁵⁴ A total of 46 complaints were lodged with the Department between 1 July 2010 and 30 June 2016 in relation to motor vehicle dealers that had closed, gone into liquidation or could not be located. A total of 54 complaints were lodged with the Department between 1 July 2010 and 30 June 2016 in relation to motor vehicle repairers that had closed, gone into liquidation or could not be located.

²⁵⁵ Claims may be made up to a maximum of \$6,000 – see MVRA section 92.

Extent of the problem

The legislation currently provides the regulator with considerable discretion in regard to how financial viability is assessed. There is concern that this approach is costly to administer and is also open to challenge.

In addition, there is no definitive evidence that current assessment processes are effective in preventing financial problems. Current assessment against the sufficient resources criteria represents a particular point in time assessment and does not necessarily give an indication of the future prospects of the licensee or any guarantee that financial problems will not arise following the granting of a licence.

A number of difficulties arise in assessing the financial standing of a licence applicant. For example, in many instances, businesses are structured to gain maximum tax benefit, which further complicates the assessment of financial position for licensing purposes. New businesses generally require start-up loans which are in many cases not off-set by a strong asset or profit position, despite often being backed by considerable personal assets. In some instances, a financially sound business's level of past borrowing may mean a negative net asset position.

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 or repairing motor vehicles are appropriate in the context of the purposes of the MVDA and the MVRA.

OPTIONS CONSIDERED

OPTIONS RELATING TO SUFFICIENT RESOURCES CRITERIA

Three options were presented in the CRIS relevant to the criteria of having sufficient resources to hold a business licence under the MVDA and MVRA.

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 has sufficient resources.

OUTCOME OF CONSULTATION: DEALERS

Overview: Stakeholder views

Overall, there appears to be considerable industry support for retaining the sufficient resources requirement particularly for first time applicants.

A total of seven written submissions were received during stages one and two of the Review. In addition the Review received a total of 149 industry responses to the online survey conducted during stage one of the Review.

Responses to the industry online survey indicated considerable support for retaining the sufficient resources criteria for dealers with 50 per cent of respondents in support on both application and renewal and 27 per cent of respondents in support on initial application only.²⁵⁶

Stakeholder responses to the CRIS (Stage 2 of the Review)

Overview

Options regarding the sufficient resources criteria were canvassed in the CRIS with three stakeholders responding. All three submissions supported Option A (no change). No responses were received in regard to Option B (introduction of objective financial measures) and Option C (removal of sufficient resources criteria).

Written submissions in response to CRIS

The following provides further detail in regard to stakeholder responses to the CRIS.

Motor Trade Association of Western Australia (MTAWA)

MTAWA supported Option A noting that the key risks to consumers relate to capacity to carry out or fund warranty work and protecting assets of a consignor in the case of consignment selling. MTAWA believes that financial viability should remain at the core of licensing system for dealers, especially those which have warranty or consignment selling obligations.

MTAWA made the following points.

- That the existing financial viability requirements are retained for all applicants for a new dealer licence.
- That the used vehicle warranty protection scheme known as Dealer Warranty Support Scheme be recognised in the MVDA and that membership of the scheme become compulsory for dealers subject to the MVDA's statutory warranty provisions.
- That dealers, other than those engaging in consignment selling, be required to only submit a statement of assets and liabilities on renewal.

²⁵⁶ Specific questions relating to this matter were not included in the consumer survey.

- That dealers who hold a consignment selling category of licence be required, in addition to current requirements, to submit a credit history report annually and hold public liability insurance.

Caravan Industry Association Australia (CIAA)

CIAA supported the current approach to assessing the financial viability of dealers, however, it was suggested that a more onerous and clearly published set of standards apply to dealers engaging in consignment sales. It was argued that this would assist consumers wishing to sell their caravans or campervans on consignment.

Caravan Industry Association Western Australia (CIAWA)

CIAWA supported the current approach to the assessment of financial viability of dealers, but supported a more onerous and clearly publicised set of standards for those dealers wishing to engage in consignment selling. CIAWA acknowledged that this would impose additional obligations.

CIAWA noted that consignment selling has particular relevance to the recreational vehicle market and therefore should be permitted to continue as a sales method but that the regulatory system should demand a higher standard of qualification and business practice.

OUTCOME OF CONSULTATION: REPAIRERS

Overview: Stakeholder views

A total of six written submissions were received during stages one and two of the Review relevant to repairers. In addition, the Review received a total of 149 industry responses to the online survey conducted during stage one of the Review. Overall, industry tended to support retention of the sufficient resources requirement, particularly for first time applicants.

Industry survey responses indicated mixed views with 33 per cent of respondents supporting retention of the sufficient resources criteria for repairers and 44 per cent of respondents not supporting the need for this criteria.²⁵⁷

Stakeholder responses to the CRIS (Stage 2 of the Review)

Two submissions supported Option A (no change) and one supported Option C (removal of the sufficient resources criteria). No responses were received in regard to Option B (introduction of objective financial measures).

Written submissions in response to CRIS

The following provides further detail in regard to stakeholder responses to the CRIS.

Motor Trade Association of Western Australia (MTAWA)

MTAWA indicated that none of the options contained in the discussion paper reflected the views of the MTAWA. MTAWA maintained its position that repairers pose very limited risk for consumers in terms of potential losses.

²⁵⁷ Specific questions relating to this matter were not included in the consumer survey.

MTAWA recognised that consumers do entrust their vehicles to repairers and that this does come with some risk and recommended that the sufficient resources criteria for a business licence be retained but applied in the following manner:

- That the requirement for credit history information only be applied to the assessment of the first application.
- That on application, the applicant provides a statement of assets and liabilities under statutory declaration and a certificate of currency for public liability insurance.
- For a renewal of the licence, the applicant simply provide a certificate of currency for public liability insurance.

Caravan Industry Association Western Australia (CIAWA)

CIAWA supported Option A and believes that financial viability remains a core element of a licensing system.

CIAWA supported the process changes made by the Commissioner to the assessment of financial viability and restated its position that all licensed repair businesses be required to hold public liability insurance as envisaged by section 29 of the MVRA.

CIAWA expressed support for an improved version of the existing assessment process.

Andrew Hicks: Trading as Mechanically Sound

Mr Hicks supported Option C.

OTHER JURISDICTIONS: DEALERS

Dealers

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

In Queensland, South Australia and Tasmania the legislation does not require that a licensee have sufficient resources, however, the licensing authorities 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.

Repairers

The Australian Capital Territory legislation does not include any specific criteria relating to sufficient resources.

The New South Wales legislation includes the applicant being an undischarged bankrupt as a ground for refusing an application for a repairer's licence.

PREFERRED OPTION

Option B is the preferred option. This option involves amending the MVDA and MVRA to remove the requirement that an applicant have sufficient resources and instead be amended to enable the regulator to take into consideration objective financial measures to determine whether an applicant is suitable to be granted a licence. For example, whether a person is a bankrupt or the subject of insolvency proceedings and whether a person has been a director of a body corporate that has been wound-up.

In addition, in recognition of the higher level of risk for consumers, the Review supports retention of current requirements in respect of dealers seeking approval to sell vehicles on consignment.

Reasons

Overcome difficulties

Option B will overcome ongoing difficulties in assessing licence applicants against the sufficient resources criteria. Amending the legislation to specify objective measures of financial viability will simplify the assessment process.

Utilising objective financial measures to assess financial viability has the benefit of not requiring high levels of accounting expertise and industry knowledge to complete the assessment process. In addition, simplified assessment processes based on objective measures are likely to deliver reduced administrative costs for government and compliance costs for industry.

Option B has the benefit of still providing adequate scope for the regulator to consider the financial viability of applicants in determining suitability to be granted a licence. It also provides improved clarity and transparency around sufficient resources criteria and how they are applied.

Commensurate with risk

Option B is considered to be commensurate with risk particularly as it is noted that consumers are less likely to be at risk of losing funds paid for goods or services when the time period between making payment and receipt of the goods or services is relatively short.

This is generally the case in transactions with dealers and repairers as payment in full usually takes place on collection of vehicles. In addition, deposits paid to dealers are not usually significant.

In addition, it is noted that the Commissioner rarely refuses applications from dealers or repairers on the grounds that the applicant has failed to meet the sufficient resources requirement.

Option B is similar to the approach taken in several other jurisdictions. It is noted that there does not appear to be any evidence of systemic failures in these jurisdictions.

Reduced costs for industry and government

This approach will result in reduced compliance costs for industry in that the application and renewal process will be simplified in respect of meeting the sufficient resources criteria. There will also be reduced costs for government as the assessment criteria will be objective and simpler to assess.

Scope for monitoring financial viability through other means

Other means of monitoring business viability outside of the application and renewal processes are available to the Department. For example, the Department may opt to use independent financial monitoring services which identify businesses at risk of insolvency.

Consignment sales protections to be retained

Sale by consignment is a particular area of financial risk for consumers and more stringent requirements are in place to provide additional safeguards for consumers.

Applicants wishing to sell vehicles on consignment²⁵⁸ are required to meet sufficient criteria requirements as well as:

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

Maintaining current consumer safeguards including financial viability criteria within the MVDA in relation to consignment sales is supported given the level of consumer risk including failure to return a consignment vehicle or pay funds received for a sale on consignment. In supporting retention of specific safeguards, it is noted that in NSW, consignment selling represents the largest category of claims on its compensation fund.²⁵⁹

Need for additional protections under consideration

Following completion of the Review process, a number of cases involving consignment sales have come to light which have caused considerable consumer detriment. As a result, further consideration is being given to whether these concerns warrant the banning of consignment sales of passenger vehicles and motor cycles by dealers (but not sales by auction) as is the case in Victoria.

IMPACT ANALYSIS

Costs and benefits

The following table summarises the costs and benefits associated with each of the three options. Option B provides the best balance between benefits and costs for industry and consumers.

No additional costs are envisaged for industry, consumers and government as a result of implementing Option B. A reduction in costs is envisaged for industry and government as a result of implementing Option B. Implementing Option B will not have a significant negative impact on business, consumers or the economy.

²⁵⁸ 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. The MVDA includes certain requirements in relation to sale by consignment including prescribed consignment agreements, trust funds and payments to the seller.

²⁵⁹ *Issues Paper – NSW Fair Trading regulation of motor vehicles*, NSW Government, April 2012, page 16.

Table 32: Summary of costs and benefits

	OPTION A Status quo	OPTION B Introduce objective financial measures	OPTION C Remove sufficient resources criteria
INDUSTRY	Compliance costs remain the same.	Compliance costs reduced.	Compliance costs reduced. May impact industry reputation if consumer losses occur.
CONSUMERS	Nil	Minimal risk as scope for financial checks retained.	Increased risk of loss due to no financial checks.
GOVERNMENT	Resources required to assess applications remains the same.	Reduction in resources required to assess applications. Scope retained for assessing financials if issues identified. Less flexibility in assessing sufficient financial resources.	Reduction in resources required to assess applications as simplified decision making process.

PART 6: TECHNICAL AMENDMENTS

Technical amendments

In the course of the Review, the Department has identified a number of areas where minor amendments to the laws affecting motor vehicle dealers and repairers will make the operation of the laws more clear and efficient, without impacting the rights and obligations of businesses and consumers. The proposed technical and administrative amendments are outlined in Table 33 below.

The amendments address items in the laws that are outdated, ambiguous or inconsistent and do not alter current regulatory policy. The proposed technical amendments in relation to dealer agents, camper vans, scrap metal recyclers and prescribed qualifications for repairers were consulted on as part of the CRIS process. In addition, targeted consultation was undertaken with stakeholders who raised specific matters of a technical nature in providing submissions to the Review.

As the amendments are administrative in nature and will not produce any negative impact on businesses, consumers or the economy, broader external consultation is not required.

Table 33: Proposed technical and administrative amendments

<i>Motor Vehicle Dealers Act 1973</i>		
SECTION	SUBJECT	PROPOSED AMENDMENT
5	Definition of “hire purchase agreement”	The Act will be amended by removing the reference to the <i>Hire-Purchase Act 1959</i> , which is targeted for repeal, and replacing it with a generic definition of hire-purchase similar to the definition used in other jurisdictions.
5	Replace term “dealer agent” with “dealer broker”	This is a change in terminology only and is considered to provide a clearer indication of the type of activity that is intended to be covered by the relevant provisions in the Act.
5	Definition of “year of manufacture”	Amendments to the Act have led to a number of different, sometimes inconsistent, terms being used to describe the date of production of a vehicle. This term will be deleted and “built date” and “compliance date” will be defined in and used consistently through the Act.
5	Definition of “built date”	Move definition from section 34F to definitions section. This will allow consistent use of the defined term through the Act.
5(4)	Definition of “camper trailer”	<p>The definition will be amended to make it clear that a vehicle does not require both sleeping and cooking facilities to be classified as a camper trailer.</p> <p>The amendment will take into account the need to ensure consistency/correct interaction with the definition of</p>

Motor Vehicle Dealers Act 1973

SECTION	SUBJECT	PROPOSED AMENDMENT
		“caravan” and “trailer” in the Motor Vehicle Dealers (Prescribed Vehicles) Regulations 1974.
5A	Requirement for a licence – scrap metal recycler	Amend the Act to make it clear that a licence is not required where motor vehicles are purchased for scrap metal recovery by the purchaser and no part of the vehicle is to be on-sold (other than as scrap metal).
20H	Special Occasion Permits	Amend section 20H to provide that special occasion permits may only be granted for a limited period of time (1 month). This reflects current practice and the intention of the provision, which is to allow for events such as shows and exhibitions.
21	Requirement to show name	<p>Section 21 requires the business name stated on the application for a licence to be displayed. There is currently no provision in the Act permitting a licensee to change the business name, or use more than one business name.</p> <p>Neither is there currently a requirement for the use of a business name by the licensee to be permitted under the <i>Business Names Act 2011</i> (Cwth). A new provision is to be inserted into the Act requiring a licence holder to notify the Commissioner of the business name(s) to be used by the licensee, and to notify the Commissioner of any changes of business name.</p> <p>Section 21 will be amended to require the licence holder to display licence number and licence name or a business name notified to the Commissioner under the above (new) section. The amendments will also incorporate a requirement that any name used must be permitted under the <i>Business Names Act 2011</i> (Cwth).</p>
23	Changes in composition of partnership	<p>Some issues have arisen in the past with regard to the interpretation of section 23, and specifically, whether a new licence application is required where there is a change in composition of a licenced partnership.</p> <p>Current practice is that only notification is required where there is a change in composition of a partnership – with the existing licence continuing in force. The content of the provision will be reviewed to ensure that the provision supports that policy intent.</p>

Motor Vehicle Dealers Act 1973

SECTION	SUBJECT	PROPOSED AMENDMENT
32D	Payments into trust account	<p>Section 32D will be amended to permit auctioneers dealing with mixed consignments to pay the proceeds of the transaction into one trust account – rather than being required to pay the proceeds of motor vehicle disposals into a separate account.</p> <p>This will reduce the administrative costs of dealing with trust account transactions for dealers who regularly deal with mixed lots. As accounts will need to be audited, individual dealers will need to determine whether operating one account is more cost effective for their business. (Section 32D(4) currently requires an account for motor vehicle transactions only.)</p>
33	Particulars to be displayed on second hand vehicles	<p>The requirement at section 33(3)(d) for notice displayed on a second hand vehicle to include year of first registration and year of manufacture will be replaced with a requirement for it to include “built date” and “compliance date”.</p> <p>This information is more useful for consumers, is consistent with terminology in other parts of the Act and removes current ambiguity around date of manufacture.</p>
34F	Calculation of age of vehicle for warranty purposes	<p>Section 34(F)(2)(b) which is potentially inconsistent with the preceding sub-section will be deleted. The age of a vehicle for warranty purposes will be calculated based on compliance date, and, if that date is not known, default arrangements at section 34F(2)(c) will apply.</p>
36, 37, 37A and 37B	Disputes	<p>Sections 36, 37, 37A and 37B are to be deleted as they are obsolete. The sections permit the Commissioner to intervene to determine disputes between dealers and consumers and enforce those determinations.</p> <p>The sections are not utilised as it is considered that it would result in a conflict of interest for the Commissioner, as the licensing authority, to perform that function.</p>
46	Implied conditions	<p>Section 46 which provides for conditions to be implied in contracts for sale is to be deleted. The section duplicates the requirements of ACL and is no longer required.</p>

Motor Vehicle Dealers (Sales) Regulations 1974

REGULATION	SUBJECT	PROPOSED AMENDMENT
12	Undesirable practices	Regulation 12 and Schedule 2 “undesirable practices” will be deleted. Provisions in relation to undesirable practices are no longer utilised as they are adequately dealt with by the ACL or no longer applicable in the modern environment.
13	Prescribed accessories	<p>As a result of the operation of section 34B, the used car warranty covers only those defects likely to render the vehicle un-roadworthy or unserviceable.</p> <p>Schedule 3, prescribes accessories that are not covered by the dealer warranty. This list of accessories which includes radios, tape players and air conditioning units is out of date and is no longer considered relevant as consumers are able to rely on the ACL if an issue arises with items not covered.</p>
13A	Consignment agreements	<p>Regulation 13A and Schedule 4 prescribe requirements for consignment agreements, but the vehicle consignment contract at Schedule 4 is not suitable for use by dealers disposing of multiple vehicles for a single consignee.</p> <p>An alternative agreement will be prescribed for use where more than 12 vehicles are consigned to a dealer per year by an ABN holder.</p> <p>The alternative agreement will allow for use of a single contract for consignment of multiple vehicles and 30 days to make payment.</p>
13B	Vehicle sale agreements	<p>In response to suggestions from industry, the content of Schedule 5 will be updated to amend the title of the prescribed form to “Contract to buy a vehicle” and to require the following particulars to be included in the sales contract:</p> <ul style="list-style-type: none"> • Whether the vehicle is new, used or demonstrator • Compliance plate date • Vehicle Identification Number (VIN) • Total cash price <p>Inclusion of these details avoids potential disagreement between dealers and consumers and is consistent with industry practice.</p>

Motor Vehicle Dealers (Licensing) Regulations 1974

REGULATION	SUBJECT	PROPOSED AMENDMENT
3	Notification of change of employment	<p>The prescribed form for notification of change of employment by a yard manager or salesperson (Form 14) will be deleted.</p> <p>There will still be a requirement for the Commissioner to be notified of a change of employment, but a new regulation made pursuant to section 56(g) of the Act will require written notification rather than the use of a prescribed form.</p>
7	Fees	<p>Schedule 3 prescribes fees for functions under the Act. The schedule will be amended to divide the licence fees into two components – an administration fee that would be retained if the application does not proceed or the licence is surrendered, and a licence fee that would be refunded on a pro-rata basis. This approach provides a fairer apportionment of the costs of administration of the licensing function between licence holders.</p>

Motor Vehicle Dealers (Infringements) Regulations 2002

REGULATION	SUBJECT	PROPOSED AMENDMENT
Schedule 1	Infringement notices	<p>Issue of infringement notices has proved an effective way of dealing with minor breaches of the Act and regulations, reducing costs associated with enforcement for both industry and the regulator.</p> <p>The following offences will be added to Schedule 1, allowing them to be dealt with by way of issue of an infringement notice:</p> <p>Motor Vehicle Dealers Act 1973</p> <ul style="list-style-type: none"> • Section 22A – Failure to return licence. • Section 31A – Acting in the capacity of a yard manager without holding a licence. • Section 31B – Acting in the capacity of a salesperson without holding a licence. • Section 31C – Employment of an unlicensed yard manager or salesperson by a dealer. • Section 31D – Carrying on an unregistered car market. • Section 32B – Non-compliance with consignment agreement requirements.

Motor Vehicle Dealers (Infringements) Regulations 2002

REGULATION	SUBJECT	PROPOSED AMENDMENT
		<ul style="list-style-type: none"> Section 32C – Accepting a vehicle for sale on consignment without having opened a designated trust account. Section 32D – Failure to pay proceeds of a consignment sale into the trust account. Section 32E – Unauthorised trust account withdrawal. Section 32G – Failure to distribute proceeds of a consignment sale in accordance with the terms of the agreement. Section 32H – Failure to keep full and accurate accounts. Section 32I – Failure to have trust account audited. Section 42A(5) – Sales agreement does not contain prescribed particulars. <p>Motor Vehicle Dealers (Sales) Regulations 1974</p> <ul style="list-style-type: none"> Regulation 10C(1) – Opening a trust account without prescribed details in the name of the account. Regulation 10C(2) – Failing to notify the Commissioner of specified details of a trust account. Regulation 10D – Failing to keep correct records of a trust account. Regulation 10E – Failing to issue a receipt for monies paid into the trust account. Regulation 10F – Failure to provide a statutory declaration in respect of trust monies. Regulation 10H – Failure to appoint an auditor.

Motor Vehicle Repairers Act 2003

SECTION	SUBJECT	PROPOSED AMENDMENT
31(2)	Renewing licence after expiry	<p>The Act will be amended to permit renewal for up to 28 days after expiry of licence on discretion of the Commissioner. The Act does not currently provide any discretion for late renewal.</p> <p>This will provide consistency with the licensing provisions in the <i>Motor Vehicle Dealers Act 1973</i> and avoid the requirement for a new licence application where a renewal application is submitted shortly after the due date.</p>

Motor Vehicle Repairers Act 2003

SECTION	SUBJECT	PROPOSED AMENDMENT
53	Surrender of licence	<p>The Act will be amended to permit the Commissioner to treat a licence as surrendered when there is evidence that the business has ceased to operate, but no written notice has been provided of surrender.</p> <p>This will avoid the requirement to apply to the State Administrative Tribunal for cancellation where the repairer is no longer operating a repair business, but has not taken formal steps to surrender the licence. Safeguards will be included to ensure that the licensee is notified of the intention to cancel and that the licence can be reinstated in the event of an error.</p>
108	Requirement to show name	<p>Section 108 requires the business name stated on the application for a licence to be displayed. There is currently no provision in the Act permitting a licensee to change the business name, or use more than one business name. Neither is there currently a requirement for the use of a business name by the licensee to be permitted under the <i>Business Names Act 2011</i> (Cwth).</p> <p>A new provision is to be inserted into the Act requiring a licence holder to notify the Commissioner of the business name(s) to be used by the licensee, and to notify the Commissioner of any changes of business name.</p> <p>Section 108 will be amended to require the licence holder to display licence number and licence name or a business name notified to the Commissioner under the above (new) section. The amendments will also incorporate a requirement that any name used must be permitted under the <i>Business Names Act 2011</i> (Cwth).</p>
91(1)(b)	Claim for losses – compensation fund	<p>The Act will be amended to address an unintended restriction on claimants by specifically allowing a claim against the fund where the licensee has failed to complete work because the repairer has died or cannot be located.</p>
New	Action against former licence holder	<p>The Act will be amended to provide that disciplinary action under the Act in relation to conduct while licenced can be commenced/completed after surrender of a certificate.</p>

Motor Vehicle Repairers Regulations 2007

REGULATION	SUBJECT	PROPOSED AMENDMENT
8	Prescribed qualifications	The regulation will be amended to provide for appropriate qualifications to be approved by the Commissioner rather than prescribed by regulation. This allows for changes to be more easily accommodated as course contents and providers change.

PART 7 IMPLEMENTATION AND EVALUATION STRATEGY

Implementation

Implementation of a number of the recommendations will require amendments to the legislation, principally the MVDA and the MVRA which will require approval by the Parliament. Other changes will be implemented through amendments to the MVD Regulations and Motor Vehicle Repairers Regulations 2007.

The Department will coordinate the drafting of the amendments to the legislation and will provide support and advice to stakeholders.

Where appropriate, administrative changes and changes to policies may be progressed in advance of legislative amendments.

Transitional issues will be carefully considered and appropriate lead in times for implementation of the changes will be determined in consultation with stakeholders.

A community education and advice campaign will be developed and implemented in conjunction with the proposed legislative amendments. Some possible initiatives could include:

- an education campaign to advise of the amendments;
- revised and updated information on the Department's website; and
- targeted information to industry stakeholders.

In addition, the Review notes the lack of awareness on the part of consumer in regard to their rights under the Australian Consumer Law. The Department is committed to implementing a Consumer Education Campaign to ensure that consumers are made aware of their rights under the Australian Consumer Law. In addition, the campaign will focus on the issue of liquidated damages/ termination fees once the proposed amendments are made to the Motor Vehicle Dealers (Sales) Regulations 1974.

Evaluation

The MVRA and MVDA do not impose ongoing statutory reviews. However, the Department will monitor disputes and concerns in relation to the implementation of the changes proposed in this paper. This information and feedback from stakeholders will be used to identify any issues in the sector that may necessitate further review or reviews.

The evaluation process will include consideration of the following market intelligence collected by the Department.

- number and nature of calls received by year in regard to motor vehicle dealers and repairers;
- outcome of phone enquiries;
- number and nature of complaints received by the Department' by year in regard to motor vehicle dealer and repairer issues;

- analysis of advice line and complaint trends pre and post legislative reforms;
- analysis of any changes/trends over time;
- level of calls/complaints as compared to other areas regulated by the Department; and
- analysis of media coverage following changes to the legislation.

In addition, CAC and MVIAC (advisory committees appointed by the Minister) will play an important role in providing feedback in relation to the reforms from both a consumer and industry perspective. Both committees meet regularly and will have scope to provide input to the Department's evaluation of the reforms against objectives.

The Department will also consult with key stakeholders, relevant government agencies and industry associations.

APPENDICES

Appendix A – Overview of recommendations

Appendix B – ACL consumer guarantees relevant to motor vehicle repairs

Appendix C – MVRA classes of repair work

Appendix D – Comparison of MVDA warranty provisions and ACL consumer guarantees

Appendix A – Overview of recommendations

	Recommendation/Current situation	Change	Impact assessment	Other jurisdictions	Position
Dealer Recommendations					
1.	DEFINITION OF VEHICLE That the existing definition of a vehicle under the MVDA be retained. Current situation All-terrain vehicles (ATV) and passenger vans, seating in excess of eight, currently not covered.	No change	No significant negative impact on stakeholders	ATV's Most jurisdictions do not include in definition. Passenger vans Arrangements vary, for example, Vic and Tas exempt passenger vans seating more than ten while NSW, SA and NT exempt based on weight of vehicle.	Expanding definition of vehicle not supported The Review does not support expanding the definition of vehicle. The focus of the MVDA is to regulate the sale of on-road vehicles generally used by households. The Review could not identify any specific evidence that indicated that reforms in this area would produce better outcomes for consumers or industry.
2.	YARD MANAGERS That yard managers continue to be regulated under the MVDA. Current situation 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.	No change	No significant negative impact on stakeholders	Yard managers are not required to be licensed in other jurisdictions. In NT, the person in charge of the day to day conduct of a dealer's business must be approved by the Commissioner.	Retention of status quo supported The Review concluded that this is an area where no change is required.

	Recommendation/Current situation	Change	Impact assessment	Other jurisdictions	Position
	<p>Yard managers are required to be licensed under the MVDA.</p> <p>Age, probity and knowledge requirements apply.</p>				
3.	<p>DEALER CATEGORIES</p> <p>That Motor Vehicle Dealers (Licensing) Regulations 1974 be amended to reduce the prescribed categories of dealer licences to three broad categories.</p> <p>Current situation</p> <p>The MVDA provides for different categories of dealer licences to be prescribed in the Regulations.</p> <p>Currently six categories are prescribed. Dealers may obtain a licence for any number and any combination of categories without affecting the fee paid.</p>	Regulation change	No significant negative impact on stakeholders	Only Qld and ACT specify dealer categories (both specify a total of three categories).	<p>Simplification of dealer categories supported</p> <p>The Review concluded that the current categories should be simplified to reflect three broad categories of dealer licences as this will deliver a more streamlined and simplified application and assessment processes.</p>
4.	<p>SALESPERSONS' LICENSING</p> <p>That the MVDA be amended to allow the requirement for motor vehicle dealer salespersons to be licensed to sunset in three years from enactment of the amendment.</p>	Act change	No significant negative impact on stakeholders	<p>NSW, NT and ACT do not regulate salespersons.</p> <p>Vic, SA and Tas do not license but probity restrictions apply in regard to who dealers may employ as salespersons.</p>	<p>Deregulation supported. Obligation on dealer to check qualifications supported</p> <p>The Review concluded no longer necessary to regulate salespersons, but recommends three year sunset clause in view of considerable industry support for retaining licensing. This will enable an orderly transition to deregulation and allow for a transition period for new employees.</p>

	Recommendation/Current situation	Change	Impact assessment	Other jurisdictions	Position
	<p>That the MVDA be amended to place an obligation on dealers to ensure salespersons hold qualifications approved by the Commissioner.</p> <p>Current situation</p> <p>Motor vehicle salespersons are required to be licensed. Age, probity and knowledge requirements apply.</p>			Qld requires registration of salespersons.	<p>The Review concluded that an obligation should be placed on dealers to ensure salespersons hold suitable qualifications.</p> <p>The Review did not support interim authorisations as this would diminish the objectives of the licensing regime. This issue will be resolved in any event when licensing of salespersons ceases.</p>
5.	<p>CAR HIRE OPERATORS</p> <p>That car hire operators be removed from the definition of dealer under the MVDA.</p> <p>That car hire operators selling vehicles other than directly to licensed motor vehicle dealers be required to be licensed under the MVDA.</p> <p>Current situation</p> <p>Car hire operators are required to hold a dealer's licence but may apply for an exemption if the buying or selling of vehicles does not comprise a significant part of their business and the vehicles bought are ordinarily disposed of directly to licensed dealers.</p>	Act change	No significant negative impact on stakeholders	Car hire operators in other jurisdictions are not required to hold a dealer's licence unless they sell their vehicles directly to the public.	<p>Removal of car hire operators from definition of dealer is supported</p> <p>The Review concluded that car hire operators should no longer fall within the definition of dealer. Car hire operators should instead be required to seek a dealer licence if they dispose of vehicles other than directly to a licensed motor vehicle dealer.</p> <p>The MVDA is not considered the best mechanism for addressing safety concerns.</p> <p>General consumer protection laws provide scope for dealing with consumer complaints, in relation to unsafe hire vehicles, and other mechanisms are in place to ensure that vehicles on the road comply with safety standards, for example, the <i>Road Traffic Act 1974 (WA)</i>.</p>

	Recommendation/Current situation	Change	Impact assessment	Other jurisdictions	Position
6.	<p>FINANCIERS</p> <p>That financiers be removed from the definition of dealer under the MVDA</p> <p>That financiers selling vehicles, other than to or through licensed motor vehicle dealers, be required to be licensed under the MVDA.</p> <p>Current situation</p> <p>Financiers fall within the definition of dealer under the MVDA and are required to hold a dealer's licence. Financiers are able to seek an exemption if they ordinarily dispose of vehicles which have been repossessed directly to licensed dealers.</p>	Act change	No significant negative impact on stakeholders	All other jurisdictions exempt financiers from the definition of dealer.	<p>Removal of financiers from definition of dealer is supported</p> <p>The Review concluded that financiers should no longer fall within the definition of dealer. Financiers should instead be required to seek a dealer's licence if they dispose of vehicles directly to members of the public.</p>
7.	<p>COMPENSATION FUND</p> <p>That a compensation fund not be introduced under the MVDA.</p> <p>Current situation</p> <p>The MVDA does not currently provide for a compensation fund.</p>	No change	No significant negative impact on stakeholders	NSW, ACT, SA and Vic have compensation funds in place.	<p>Introduction of compensation fund not supported</p> <p>The Review concluded that current arrangements provide adequate protections for consumers as risk is considered low.</p> <p>Compensation funds tend to be costly to establish and administer, with costs estimated at over \$92,000 per year. Available evidence does not suggest that the benefits would outweigh costs.</p>

	Recommendation/Current situation	Change	Impact assessment	Other jurisdictions	Position
8.	<p>WARRANTIES ON USED CARS</p> <p>That the MVDA be amended to allow for requirements in relation to statutory used car warranties to sunset in five years from enactment of the amendment.</p> <p>Current situation</p> <p>The used car warranty provisions require dealers to repair 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.</p> <p>Motor vehicle dealers are also subject to the consumer guarantees provided for under the Australian Consumer Law (ACL).</p>	Act change	No significant negative impact on stakeholders	<p>All jurisdictions currently provide some form of statutory warranty with most providing warranties on vehicles that are less than 10 years old and have been driven less than 160,000 km at the time of sale.</p> <p>Warranties generally cover defects arising in the first 5,000 km or within 3 months of sale.</p>	<p>Reliance on ACL consumer guarantees supported</p> <p>The Review concluded that protections offered by the MVDA and ACL can operate concurrently, however, it is considered appropriate to work towards reliance on the ACL.</p> <p>Transitioning to reliance on the ACL in five years will provide time for implementation of ACL initiatives and proposed reforms related to consumer guarantees. This also provides time for consumers and industry to improve their understanding of consumer guarantees. The existing statutory warranty provisions would become guidelines to assist in future dispute resolution.</p>
9.	<p>MANUFACTURER/DEMONSTRATOR WARRANTY OBLIGATIONS</p> <p>That the MVDA be amended so that a manufacturer's warranty obligation in relation to time is determined from the date the demonstration vehicle was first licensed to be driven rather than from the date of purchase.</p>	Act change	No significant negative impact on stakeholders	<p>Unlike WA, other jurisdictions do not impose a requirement whereby the date of purchase of a demonstrator vehicle determines the commencement date for the manufacturers' warranty.</p>	<p>Commencement of manufacturers' warranty for demonstrator vehicles to commence from when licensed supported</p> <p>The Review concluded that the manufacturer's warranty obligations, in relation to time, should be determined from the date the demonstrator vehicle was first licensed to be driven on roads, rather than the date of purchase.</p> <p>This approach will provide consumers in WA with similar rights that apply in other jurisdictions in relation to demonstrator vehicles.</p>

	Recommendation/Current situation	Change	Impact assessment	Other jurisdictions	Position
	<p>Current situation</p> <p>Purchasers of demonstration vehicles are entitled to the full time period of the manufacturer's warranty from the date of purchase regardless of the time period for which the vehicle has been licensed prior to being purchased.</p>			<p>This means that demonstrator vehicles are instead covered by the balance of time remaining on the manufacturer's warranty.</p> <p>This approach is consistent with the reform being proposed.</p>	
10.	<p>DEALER AUCTIONEERS/CONSIGNMENT SALES</p> <p>That the MVDA be amended to exclude sales on consignment made by dealer auctioneers on behalf of corporate fleet owners and other businesses from the consignment sales provisions of the MVDA.</p> <p>Current situation</p> <p>Dealer auctioneers engaged in disposing of vehicle fleets owned by businesses or corporations such as mining companies are required to comply with consignment sales provisions under the MVDA.</p>	Act change	No significant negative impact on stakeholders	<p>Other jurisdictions do not exclude auction of corporate fleet vehicles from consignment sales provisions.</p> <p>Regulations in relation to consignment sales are, however, generally less prescriptive and allow more flexibility, making compliance less onerous.</p> <p>No specific provisions are made in respect of consignment sales in SA or Vic but legislation in respect of agency generally may apply. (Vic prohibits consignment</p>	<p>Excluding consignment sales by dealer auctioneers on behalf of corporate fleet owners and other businesses supported</p> <p>The Review concluded that arrangements between auctioneers and fleet owners are commercial arrangements and beyond the intent of the consumer protection objectives of the legislation.</p>

	Recommendation/Current situation	Change	Impact assessment	Other jurisdictions	Position
	This appears to be inconsistent with arrangements whereby licensed dealer auctioneers who sell motor vehicles on behalf of trade owners are not required to comply with the consignment sales provisions under the MVDA.			selling except at public auction.)	
11.	<p>DISCLOSURE REQUIREMENTS</p> <p>That the MVDA be amended so that in addition to current disclosures, dealers are required to disclose to consumers:</p> <ul style="list-style-type: none"> • 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. <p>Note: The Department will take into consideration legislative amendments being led by the Department of Transport which may impact how this disclosure requirement operates in respect of how taxis and vehicles used for similar purposes are defined.</p>	Regulation change	No significant negative impact on stakeholders	Proposed changes are consistent with disclosure obligations which apply in most other jurisdictions.	<p>Introduction of additional disclosure requirements supported</p> <p>The Review concluded that consumers would benefit from the provision of additional details in making purchasing decisions.</p>

	Recommendation/Current situation	Change	Impact assessment	Other jurisdictions	Position
	<p>Current situation</p> <p>Dealers are required to attach a notice to a second-hand vehicle that is offered or displayed for sale. The notice must contain certain particulars, for example: odometer reading; cash price; and licence plate number.</p>				
12.	<p>COOLING OFF PERIODS AND CONTRACT TERMINATION FEES/LIQUIDATED DAMAGES</p> <p>That the MVDA be amended to provide for a cooling off period for linked finance contracts.</p> <p>That the MVDA be amended to allow for a termination fee of \$100 to apply to linked finance contracts cancelled within the cooling off period. This termination fee will apply to both new and used vehicle purchases.</p> <p>That the maximum 15 per cent pre-estimated damages as provided for in the Motor Vehicle Dealers (Sales) Regulations 1974 be reduced to five per cent.</p> <p>Current situation</p> <p>The MVDA does not provide for a cooling off period.</p>	<p>Act change (cooling off periods for linked finance contracts) and Regulation changes (reduction in liquidated damages).</p>	<p>No significant negative impact on stakeholders.</p>	<p>Cooling off periods in place in all other jurisdictions apart from Tas and NT.</p> <p>Liquidated damages not in place in other jurisdictions.</p> <p>Vic requires forfeit of amount up to 5 per cent of the total price if consumer cancels contract outside of cooling off period.</p>	<p>Introduction of cooling off periods supported</p> <p>The Review concluded that the introduction of a cooling off period for linked finance contracts with no scope to extinguish or waiver the right to a cooling off period is supported.</p> <p>It is appropriate to provide improved consumer protections in the form of a cooling off period where linked finance is involved in light of consumer detriment caused by the absence of these protections.</p> <p>Cooling off periods will deliver benefits to consumers purchasing vehicles involving linked finance. These benefits will include, avoiding costs associated with a short-sighted, emotion-based decisions; high pressure sales techniques; and decisions based on lack of adequate information about finance being purchased at the same time.</p> <p>Reduction of maximum liquidated damages from 15 per cent to five per cent supported.</p> <p>The Review concluded that providing for a significantly reduced maximum termination fee would address</p>

	Recommendation/Current situation	Change	Impact assessment	Other jurisdictions	Position
	<p>The MVDA includes a requirement that a contract or agreement for the purchase of a motor vehicle must contain prescribed particulars, terms and conditions. These prescribed requirements include reference to liquidated damages.</p> <p><i>Dealer's right to terminate contract</i></p> <p>Schedule 5 of the Regulations includes the dealer's right to terminate the contract.</p> <p>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.</p> <p>For example, in the case of a purchase totalling \$20,000 this would equate to \$3,000 in pre-estimated liquidated damages.</p>				<p>consumer detriment and provide improved clarity for both consumers and industry.</p> <p>The practice on the part of some dealers in relation to liquidated damages is contrary to the intent of the legislation which was for dealers to cover the reasonable costs of a terminated contract rather than to derive profit or use high termination costs to discourage consumers from terminating their contracts.</p> <p>It is a well-established principle of law that liquidated damages must be a genuine pre-estimate at the time the contract is entered into of the loss that a party is likely to suffer as a result of the contract not proceeding. Otherwise, the amount charged is considered a penalty and may not be enforceable.</p>

	Recommendation/Current situation	Change	Impact assessment	Other jurisdictions	Position
REPAIRER RECOMMENDATIONS					
13.	<p>REPAIRERS' REGIME</p> <p>That repairers continue to be regulated under the MVRA.</p> <p>Current situation</p> <p>The MVRA provides for the certification of individual repairers and the licensing of repair businesses within prescribed classes of repair work.</p> <p>A person who operates a repair business must be licensed and 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 by someone supervised by a certified repairer.</p>	No change	No significant negative impact on stakeholders	<p>NSW and WA are the only jurisdictions to regulate both repair businesses and individual repairers.</p> <p>ACT licenses repair businesses only.</p>	<p>Continuation of licensing regime for repairers supported</p> <p>The Review concluded that retention of the current regulatory arrangements for repairers is appropriate as it imposes a relatively low level of regulatory burden on motor vehicle repairers whilst delivering on objectives.</p> <p>The legislation has been fully operational since 2008 and appears to be operating effectively.</p> <p>Deregulating at this point is seen as counter-productive and potentially confusing for both industry and consumers.</p>

	Recommendation/Current situation	Change	Impact assessment	Other jurisdictions	Position
14.	<p>DEFINITION OF MOTOR VEHICLE</p> <p>That vintage vehicles continue to be excluded from the definition of motor vehicle under the MVRA.</p> <p>Current situation</p> <p>The MVR Regulations currently exclude vintage vehicles from the definition of motor vehicle.</p> <p>The original intention for excluding vintage vehicles was based on the view that this segment of the market was 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.</p>	No change	No significant negative impact on stakeholders	Vintage vehicles are not excluded from the operation of the NSW, ACT legislation.	<p>Continued exclusion of vintage vehicle from the definition of motor vehicle supported</p> <p>The Review concluded that the current exclusion provided for vintage vehicles remains appropriate as there was no evidence of consumer detriment requiring reform in this area.</p>

	Recommendation/Current situation	Change	Impact assessment	Other jurisdictions	Position
15.	<p>TYPES OF REPAIR WORK COVERED</p> <p>That the number of classes of repair work prescribed in the Motor Vehicle Repairers Regulations 2007 be decreased.</p> <p>That accessory fitting repair work which does not impact vehicle performance, safety and security be excluded from being repair work covered by the MVRA.</p> <p>Current situation</p> <p>The Regulations specify what is considered to be repair work for licensing purposes. Currently 30 classes of repair work are prescribed. There is also scope to prescribe what is not repair work.</p>	Regulation change	No significant negative impact on stakeholders	NSW recently updated and consolidated 16 classes of repair work to 12 classes of repair work.	<p>Decrease in number of classes of repair work supported</p> <p>Excluding accessory fitting work supported</p> <p>The Review supports decreasing the overall number of classes of repair work as this will simplify application processes and streamline administration of the legislation.</p> <p>The Review supports excluding accessory fitting which does not impact vehicle performance, safety and security given this will not result in increased risks to consumers. These services would continue to be subject to protections afforded under the ACL.</p>
16.	<p>CERTIFICATION OF REPAIRERS</p> <p>That the MVRA be amended to provide for certified repairers to be required to lodge with the Commissioner updated details every three years.</p> <p>That the MVRA be amended to remove the criteria of being a fit person to hold a certificate.</p>	Act change	No significant negative impact on stakeholders	<p>Only NSW and WA require individual repairers to be certified.</p> <p>NSW implemented a renewal requirement for repairer certification in December 2014.</p> <p>NSW moved away from perpetual certification due to electronic storage costs rising exponentially.</p>	<p>Updating of repairer details and removal of probity requirements supported</p> <p>The Review supported simple low cost renewal process in place of current perpetual certification arrangements.</p> <p>The Review supported removing probity requirements and as a result relieving repairers of associated costs.</p> <p>Will remove barrier to entry and will become a business decision for employers to decide whether to undertake probity checks as part of pre-employment processes.</p> <p>Also addresses industry concerns that some repairers refuse to apply for certification due to concerns about</p>

	Recommendation/Current situation	Change	Impact assessment	Other jurisdictions	Position
	<p>Current situation</p> <p>Repairers are required to meet qualification and probity requirements.</p> <p>Repairer certificates are perpetual (no specified duration) and continue in force until either surrendered or the holder is disqualified.</p> <p>This has resulted in the accuracy of the register of certified repairers declining over time.</p>			NSW has retained probity requirements for individual repairers both on application and on renewal.	prior criminal convictions which in reality would not preclude them from being certified.
17.	<p>SIMPLIFICATION OF REQUIREMENTS FOR MOBILE REPAIRERS</p> <p>That the MVDA be amended so that it will no longer be necessary for repair businesses to advise the Commissioner in relation to make and model, year of manufacture, vehicle colour or registration number of mobile repair vehicles. The number of repair vehicles will continue to be required.</p> <p>Businesses operating exclusively from mobile premises will continue to be required to specify a fixed address, where business records are kept and which can be used to contact the repair business.</p>	Act change	No significant negative impact on stakeholders	<p>NSW requires businesses to specify place of business (fixed or mobile) and to provide registration details for mobile premises. Changes must be notified.</p> <p>ACT requirements restricted to only advising as to how many mobile premises.</p>	<p>Simplification of requirements in relation to mobile repairers supported</p> <p>The Review concluded that current requirements impose an unnecessary burden on repair businesses, particularly those with large fleets of mobile repair vehicles.</p> <p>The proposed approach will still ensure that adequate information is provided to enable effective identification and oversight of repair businesses that utilise mobile premises.</p>

	Recommendation/Current situation	Change	Impact assessment	Other jurisdictions	Position
	<p>Current situation</p> <p>Repair businesses operating mobile premises are required to provide details including: make and model of the vehicle; year of manufacture; vehicle colour; and registration number.</p> <p>Repair businesses are required to advise of any changes and any additional mobile premises. A fee is charged for any alterations or additions to mobile premises.</p>				
18.	<p>CONSUMER GUARANTEES (MVRA)</p> <p>That specific consumer guarantees under the MVRA not be introduced.</p> <p>Current situation</p> <p>The MVRA does not include any specific obligations in relation to the standard of work performed by repairers.</p> <p>The ACL includes consumer guarantees which apply to any goods or services provided by motor vehicle repairers.</p>	No change	No significant negative impact on stakeholders	No specific consumer guarantees are provided in other jurisdictions.	<p>Introduction of consumer guarantees under the MVRA not supported</p> <p>The Review concluded that separate consumer guarantees under the MVRA are unnecessary and would result in duplication with the ACL.</p>

	Recommendation/Current situation	Change	Impact assessment	Other jurisdictions	Position
BOTH DEALER AND REPAIRER RECOMMENDATIONS					
19.	<p>PROBITY REQUIREMENTS FOR DEALER AND REPAIR BUSINESSES</p> <p>That the current probity criteria under the MVDA and MVRA of being a person of good character and repute and a fit and proper person continue to apply.</p> <p>Current situation</p> <p>Applicants for a business licence under the MVDA and MVRA are required to meet probity criteria.</p> <p>Significant effort goes into assessing each application, with each individual's situation considered on its merits.</p> <p>Consideration is also given to the applicant's scope of responsibilities and potential risks to consumers.</p>	No change	No significant negative impact on stakeholders	Legislation in other jurisdictions generally provides for some degree of discretion on the part of regulators but overall appears to take a more prescriptive approach than WA.	<p>No change to business licensing probity criteria supported</p> <p>The Review concluded that the current probity criteria are working effectively and are providing sufficient scope for preventing unsuitable persons from entering the industry.</p>
20.	<p>SUFFICIENT RESOURCES CRITERIA</p> <p>That the sufficient resources criteria under the MVDA and MVRA be removed apart from in relation to dealers selling vehicles on consignment on behalf of consumers.</p> <p>That the MVDA and MVRA be amended to instead enable the regulator to take into consideration objective financial</p>	Act change	No significant negative impact on stakeholders	<p>Dealers</p> <p>NSW, ACT, Vic and NT impose similar requirements on motor vehicle dealers to those currently applied in WA. In Qld, SA and Tas the legislation does not require that a licensee</p>	<p>Removing sufficient resources criteria in favour of introducing objective measures of financial viability is supported</p> <p>The Review concluded that replacing the broad criteria requiring an assessment of whether an applicant has sufficient resources with specific objective financial measures would deliver similar outcomes and reduce</p>

	Recommendation/Current situation	Change	Impact assessment	Other jurisdictions	Position
	<p>measures to determine whether an applicant is suitable to be granted a licence.</p> <p>(Note: It is intended that consumer safeguards provided for within the MVDA in relation to consignment sales will be retained).</p> <p>Current situation</p> <p>An applicant for a motor vehicle dealer's licence and repairers licence must satisfy the Commissioner in relation to a number of criteria including sufficient resources criteria.</p> <p>Specific application requirements are in place to assist in determining whether a dealer or repair business applicant meets the sufficient resources criteria, for example, requiring a statement of assets and liabilities for companies established in the previous six months and obtaining a credit history report.</p> <p>This assessment represents a particular point in time and does not necessarily give an indication of the future prospects of the licensee or any guarantee that financial problems will not arise following the granting of a three year licence.</p>			<p>have sufficient resources.</p> <p>The licensing authorities do however, 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.</p> <p>Repairers</p> <p>The ACT legislation does not include any specific criteria relating to sufficient resources.</p> <p>NSW legislation includes the applicant being an undischarged bankrupt as a ground for refusing an application for a repairer's licence.</p>	<p>compliance costs for business and administrative costs for government.</p> <p>Adopting objective measures of financial viability (for example, whether a person has been bankrupt) reflects the approach taken in several other jurisdictions. There appears to be no evidence of systemic failures in these jurisdictions.</p> <p>Other means of monitoring business viability outside of the application and renewal processes are available to the Department, for example, independent financial monitoring services offered by companies such as Dun and Bradstreet.</p> <p>Note: The Review concluded that current consumer safeguards in relation to consignment sales will be retained.</p> <p>These safeguards include stringent assessments of financial viability and specific requirements in regard to operating trust accounts.</p>

Appendix B – 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.²⁶⁰

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.²⁶¹ 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.²⁶²

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.²⁶³

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

²⁶⁰ ACL – sections 54, 55, 56 and 57.

²⁶¹ ACL – section 58.

²⁶² ACL – sections 51, 52 and 53.

²⁶³ ACL – sections 60, 61 and 62.

- the goods are unsafe or the supply of services has created an unsafe situation.²⁶⁴

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 deceive²⁶⁵ or make false or misleading representations;²⁶⁶
- a person must not act unconscionably when selling or supplying goods or services to a consumer;²⁶⁷
- a prohibition on unfair contract terms in standard form consumer contracts;²⁶⁸
- a provision relating to unsolicited goods or services – it is unlawful to request payment for unsolicited goods or services;²⁶⁹
- 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).²⁷⁰ 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.²⁷¹

²⁶⁴ ACL – section 260 and 268.

²⁶⁵ ACL – section 18.

²⁶⁶ ACL – section 29.

²⁶⁷ ACL – section 21.

²⁶⁸ ACL – section 23.

²⁶⁹ ACL – section 40.

²⁷⁰ ACL – section 100.

²⁷¹ ACL – section 101.

Appendix C – MVRA classes of repair work

Classes of repair work prescribed for the purposes of the MVRA	
1	Air conditioning work Any work required to install, service, repair, overhaul, remove or retrofit an air conditioning system in a heavy vehicle or light vehicle.
2A	Autogas work (business licence only) Any work required to do any of the following — <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	Body building work <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	Brake work Any work required to service, repair, overhaul or modify a braking system that is, was, or may be, fitted to a motor vehicle.
4	Cooling system work Any work required to service, repair, overhaul or modify a cooling system that is, was, or may be, fitted to a motor vehicle.
5	Cylinder head reconditioning work Any work required to overhaul a cylinder head of an engine that is, was, or may be, fitted to a motor vehicle.

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>

Classes of repair work prescribed for the purposes of the MVRA

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> <ul style="list-style-type: none"> (a) any electrical equipment or system (including any electrical accessory and any electrical component associated with any other prescribed accessory); (b) any electrical part of any other thing or system.
12	<p>Engine reconditioning work</p> <p>Any work required to overhaul an engine (including a cylinder head of an engine) that is, was, or may be, fitted to a motor vehicle.</p>
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> <ul style="list-style-type: none"> (a) in respect of a heavy vehicle to which paragraph (b) does not apply, to carry out minor electrical servicing or to service any of the following — <ul style="list-style-type: none"> 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; (b) in respect of a heavy vehicle during an emergency breakdown — <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.

Classes of repair work prescribed for the purposes of the MVRA

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> <p>(d) to balance a wheel or align the wheels;</p> <p>(e) to service or repair any hydraulic system;</p> <p>(f) to carry out minor electrical servicing or minor electrical repair; and</p> <p>(g) to install or remove a prescribed accessory.</p>
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Classes of repair work prescribed for the purposes of the MVRA

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;

Classes of repair work prescribed for the purposes of the MVRA

	<ul style="list-style-type: none"> (b) to fabricate, service, repair or modify the exhaust system; (c) to service, repair or replace a wheel assembly; (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.
19	<p>Mechanical accessory fitting Means any work required to install or remove a mechanical accessory to a motor vehicle. <i>mechanical accessory</i> —</p> <ul style="list-style-type: none"> (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 (b) includes any electrical component associated with the accessory.
20	<p>Motor cycle servicing work Any work required to do any of the following —</p> <ul style="list-style-type: none"> (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 — <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. (b) in respect of a motor cycle during an emergency breakdown — <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.

Classes of repair work prescribed for the purposes of the MVRA

21	<p>Motor cycle work</p> <p>Any work required to do any of the following in respect of a motor cycle —</p> <p>(a) to service, repair, overhaul or modify any of the following —</p> <ul style="list-style-type: none"> 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> <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> <ul 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.

Classes of repair work prescribed for the purposes of the MVRA

23	<p>Panel beating work</p> <p>(a) any work required to do any of the following —</p> <ul 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> <ul 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> <ul 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> <ul 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> <ul 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	<p>Underbody work</p> <p>Any work required to do any of the following in respect of a light vehicle —</p> <p>(a) to service or repair any of the following —</p> <ul style="list-style-type: none">i. the braking system;ii. the steering system;iii. the suspension system; <p>(b) to fabricate, service, repair or modify the exhaust system.</p>
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Appendix D – 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	✗	✓
Second-hand vehicles	Less than \$4,000 (\$3,500 for motorcycles)	✗	✓
\$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		✗	✓
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		✗	
Single rider off-road motor cycles		✗	
Multi-wheeled motor cycles		✗	
Buses		✗	
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	✗	✓
Defects can be excluded by dealer		✓	✓
Duration	Beyond 5,000 km	✗	If reasonable in the circumstances.
	Beyond 3 months	✗	
Remedies	Repair	✓	✓
Refund		✗	For major failure
Compensation for difference in value		✗	For major failure
Compensation for consequential loss		✗	✓

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