



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



Decision Regulatory Impact Statement

**Proposals for reform of the regulation
of motor vehicle consignment sales**

January 2022

PROPOSALS FOR MOTOR VEHICLE CONSIGNMENT SALES REFORM DECISION REGULATORY IMPACT STATEMENT

This Decision Regulatory Impact Statement (D-RIS) has been prepared in compliance with the Western Australian (WA) Government's requirement for Regulatory Impact Assessment.

The purpose of this D-RIS is to recommend preferred options for reform of the regulation of motor vehicle consignment sales in Western Australia.

Every care has been taken to ensure accuracy in the preparation of this paper. The contents do not constitute legal advice, legal information, or government policy. This paper should not be used as a substitute for a related Act or professional advice.

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EXECUTIVE SUMMARY

The Department of Mines, Industry Regulation and Safety – Consumer Protection Division (Consumer Protection) conducted a review to determine whether consignment selling of motor vehicles under the *Motor Vehicle Dealers Act 1973* (WA) (MVDA) should continue in its current form.

This Decision Regulatory Impact Statement (D-RIS) is part of the regulatory impact assessment process and sets out recommendations based on an analysis of submissions to the review and the costs and benefits of proposed options for reform.

Three regulatory options were considered:

- make no change – retain status quo (Option A);
- retain consignment selling but strengthen contract arrangements, licensing eligibility requirements and training (Option B);
- ban consignment selling (Option C).

Preferred Option

Under Option B, the Consultation Regulatory Impact Statement C-RIS proposed that a dealer selling vehicles on consignment would need to lodge a bank guarantee or fidelity bond, comply with strengthened fiduciary responsibilities and have the fitness of close associates checked to prevent unsuitable persons from participating in the business.

Instead, it is proposed that a varied Option B be implemented that excludes a requirement for a bank guarantee or fidelity bond but retains strengthened fiduciary obligations, improved training for dealers and assessment of applicants close associates as part of the licensing process. A distinct licence category for dealers who apply to sell on consignment is also proposed. Creating a separate licence for consignment selling will make it clearer that different conditions apply to obtaining a licence and allow for more flexibility if disciplinary action needs to be taken. The current process only allows the Commissioner for Consumer Protection (Commissioner) to reimpose a ban on consignment selling as a condition on a dealer's licence.

Prescribing a distinct licence category for consignment sales will also remove the requirement to place a condition prohibiting consignment selling on all dealer's licences.

1. INTRODUCTION

1.1 Statement of the Issue

Consumer Protection concluded a review of legislation regulating motor vehicle dealers and repairers (Review) in July 2019. The Review considered consignment selling and determined that current consumer safeguards within the MVDA relating to consignment sales should be retained. These safeguards include the assessment of financial viability of motor vehicle dealers, specific requirements for operating trust accounts and the requirement to use a prescribed consignment sales agreement contract.

Following completion of the Review, several cases of consignment selling failings occurred which resulted in considerable financial losses to consumers. Consumer losses, totalled approximately \$1.9million, with two motor vehicle consignment dealers accounting for the majority of this amount. In addition to these two cases, a caravan dealer selling caravans on consignment ceased trading which resulted in losses to 24 owners of around \$550,000.

These cases of consignment selling failings highlight the potential risks for consumers and support the case for regulatory reform. The key issue for consideration is dealers engaging in consignment selling not fulfilling their fiduciary duty obligations to vehicle owners, potentially leading to:

- Owners suffering significant financial loss if the proceeds of sale are not paid to the owner or in the event of no sale, their vehicle is not returned to them. This can be due to insolvency of a dealer, or dishonesty or poor business practices.
- Financial loss if an owner does not receive a fair price or the agreed price for their vehicle due to misrepresentations by the dealer.
- The risk that the purchaser of a consignment vehicle cannot have their warranty claims addressed despite the dealer's statutory responsibility under the MVDA.
- The risk of misrepresentation or misleading conduct by a dealer failing to communicate all offers received to an owner.
- A lack of transparency where a dealer fails to keep an owner informed, or if it appears information has been withheld as part of a deliberate strategy, to mislead the owner for the purpose of financial gain.

1.2 Review process

Consumer Protection released a Consultation Regulatory Impact Statement (C-RIS) on 30 October 2020 for a six week consultation period ending on 4 December 2020. The C-RIS identified three proposed reform options as outlined in Table 1 below.

Table 1: Proposed options

Option A:	Retain the status quo, that is, make no changes to the current consignment sales regulatory regime.
Option B:	Retain consignment selling but strengthen contract arrangements, licensing eligibility requirements and training.
Option C:	Ban consignment selling.

The C-RIS was published on Consumer Protection's website. Industry and consumers were able to make a written submission or to provide their feedback through an online survey.

The Commissioner released a media statement on 30 October 2020 and a media blog on 26 November 2020, inviting submissions. Consumer Protection's website and social media posts also promoted the C-RIS. In addition, an e-bulletin was distributed to motor vehicle industry stakeholders and other subscribers advising them about the review.

1.3 Stakeholder response to the C-RIS

Twenty-five replies to the C-RIS were received comprising eight written submissions and 17 responses to the online survey. Responses to the C-RIS came from six main sources, these being individual dealers, peak industry bodies, government, a non-government advocacy service, consumers, and a group of respondents who did not specify their affiliation.

Table 2: Categories of respondents and number of submissions

Category of respondents		No.
Individual dealers	Motor vehicles	5
	Caravans	4
Industry peak bodies	Motor Trade Association of WA	1
	Auctioneers and Valuers Association of Australia	1
	Caravan Industry Association of Western Australia	1
Government	Department of Transport (DoT)	1
Non-Government	Consumer Credit Legal Service WA (Inc.)	1
Consumers	Individual members of the community	5
	Consumer Advisory Committee	1
Unclassified	Insufficient information to categorise.	5
		Total: 25

Summary of respondents' preferred options

Four respondents, including the Motor Trade Association of WA (MTA WA) and the Caravan Industry Association Western Australia (CIAWA), supported retaining the status quo (Option A). Both industry associations opposed banning consignment selling by motor vehicle dealers (Option C), stating such a change would result in businesses suffering considerable financial hardship. They also felt that there was not a strong enough case for additional regulation and that improved training for dealers and enforcement of existing regulation would address problems.

Seven respondents supported strengthening contract arrangements, licensing eligibility requirements and training rather than banning consignment sales (Option B).

The Consumer Advisory Committee (CAC) provides advice to the Minister for Commerce and the Commissioner on the activities and policies of Consumer Protection as they affect consumers. The CAC noted the significant losses incurred by consumers attributed to consignment sales failings, but acknowledged that prohibiting the sale of vehicles on consignment would remove a method of conducting business from dealers and limit an option for owners to sell their vehicles. The CAC identified Option B as the most effective option. These views were also expressed by six dealers and a consumer.

Five respondents, comprising two from the motor vehicle industry, one consumer, the Auctioneers and Valuers Association of Australia (AVAA) and the Consumer Credit Legal Service of WA (CCLSWA) supported banning consignment selling by dealers (Option C). These respondents argued that exploitation of consumers was such that banning was appropriate and that alternate options were available for consumers. The AVAA and the CCLSWA supported the Victorian model, where consignment sales are banned with the exception of sales conducted by public auction.

Eight respondents did not provide a view about any option.

2. BACKGROUND

Many consumers favour using consignment services offered by dealers to dispose of their used vehicles. Various reasons apply, including being time poor, having concerns about security implications of unknown persons visiting their homes, or lacking the skills or confidence to complete a private sale.

Dealers offering vehicle consignment services appeal to these consumers because they can provide a simple and effective process of selling a vehicle at the best possible price.

They can also provide a showroom or yard for consigned vehicles, have access to potential customers and advertising platforms and have statutory warranty obligations for vehicles sold.

Consignment dealers tend to specialise in particular sectors of the motor vehicle industry, which may be important to consumers when choosing the most appropriate dealer to sell their vehicle.

Consignment selling provides flexibility for vehicle owners and the motor vehicle industry. A transparent and effective consignment sale process is fundamental to protecting consumers from the risk of detriment and financial loss and to maintaining the reputation of the motor vehicle industry.

2.1 Legislation that applies to consignment selling

The MVDA establishes the licensing regime which applies to persons engaged in the business of buying, selling and exchanging motor vehicles in WA. This includes the business of consignment sales. In addition, the Motor Vehicle Dealer Sales Regulations 1974 (WA) (MVDSR) contain provisions that dealers are required to follow when conducting consignment sales to ensure accountability and transparency in transactions so that consumers are protected.¹

A person seeking to be a licensed motor vehicle dealer must satisfy the Commissioner that they:

- are of 'good character and repute' and a 'fit and proper person' to be in the business of buying and selling vehicles (i.e. by providing a national police clearance certificate);
- have completed a motor vehicle dealer licensing course conducted by an accepted training provider; and
- have sufficient material and financial resources to meet the obligations for the category of licence applied for (i.e. by providing a statement of assets and liabilities and supporting document/s and providing a declaration to having sufficient financial resources to comply with the requirements of the MVDA).

The Commissioner attaches a condition prohibiting consignment selling on all motor vehicle dealers licences unless an applicant seeks to have the condition removed in order to engage in consignment sales. Before removing the condition, the Commissioner must be satisfied the licensee has sufficient financial resources. A current assessment of the dealership's continued financial viability is undertaken to assist with this decision.²

¹ MVDSR, regulations 10A, 10B, 10C, schedule 4.

² DMIRS 2021: Request to remove consignment sales condition (motor vehicles)

(Available at: <https://www.commerce.wa.gov.au/publications/request-remove-consignment-sales-condition-motor-vehicles>) (Accessed 16 March 2021).

The MVDA imposes specific obligations on dealers who consignment sell, including that a dealer:

- (i) has a written agreement signed by the owner, or his agent that contains prescribed particulars, terms and conditions;³
- (ii) has an open trust account with a prescribed financial institution;⁴
- (iii) pays all monies received from the sale of vehicle under a consignment agreement into the dealer's consignment trust account not later than the next business day after the day of receipt;⁵
- (iv) pays the proceeds of sale to the owner within two working days;⁶
- (v) provides the Commissioner with the dealer's particulars and associated details on the opening of a trust account;⁷
- (vi) appoints an auditor approved by the Commissioner, at the time of opening a trust account;⁸ and
- (vii) has each trust account held by the dealer audited by a registered company auditor every financial year in which consignment sales occurred.⁹

Other jurisdictions

Each Australian jurisdiction applies a different approach to the regulation of vehicle consignment sales. Consignment sales are permitted in all other jurisdictions except Victoria where they are banned.

A summary of motor vehicle industry legislation that applies in Australia is provided at Table 3.

³ MVDA, section 32B(1).

⁴ Ibid, section 32C.

⁵ Ibid, section 32D.

⁶ Ibid, section 32G.

⁷ MVDSR, regulation 10C.

⁸ Ibid, regulation 10H.

⁹ MVDA, section 32I(1).

NB: A dealer is to be taken to have complied with the requirements of section 32(1) of the MVDA in any year, if the dealer:

(a) has neither received nor held money in a trust account during that year; (b) makes a statutory declaration to that effect; and (c) gives the statutory declaration to the Commissioner within the period prescribed by the MVDSR.

Table 3: Consignment sales regulation in Australia

Regulation	QLD	NSW	VIC	SA	TAS	ACT	NT	WA
Decision-maker required to consider applicant's associates in determining suitability of applicant to be granted a dealer's licence.	✓ ¹⁰	✓ ¹¹	✓ ¹²	X	X	X	✓ ¹³	X
Consignment selling permitted	✓	✓	X	✓	✓	✓	✓	✓
Appointment to be writing	✓	✓	N/A	X	✓	✓	✓	✓
Written consignment agreements (prescribed content)	X	✓	N/A	X	X	✓	✓	✓
Dealer, agent required to have trust account	✓	✓	N/A	X	X	✓	X	✓
Dealer, agent required to deposit money from sale into trust account within set period	✓	✓	N/A	X	X	✓	X	✓
Agreed amount to be paid to owner within set period	✓	✓	N/A	X	X	✓	X	✓
Compensation funds – allows owner claim for losses incurred from actions of dealers	✓	✓	✓	✓	X	✓	X	X

¹⁰ *Motor Dealers and Chattel Auctioneers Act 2014* (Qld), sections 17, 23, schedule 3.

¹¹ *Motor Vehicle Dealers and Repairers Act 2013* (NSW), sections 8 and 25.

¹² *Motor Car Traders Act 1986* (Vic), sections 13 and 13A.

¹³ *Consumer Affairs and Fair Trading Act 1990* (NT), sections 136 and 137.

2.2 Profile of the motor consignment selling market in WA

Within the motor vehicle industry, dealers who specialise in the sale of luxury vehicles, motorcycles, trucks and caravans have mostly engaged in consignment selling. Over recent years, a tightening motor vehicle industry and increased competition in the marketplace has seen consignment selling evolve to include general vehicle sales.

On 31 December 2020, there were 1045 licensed motor vehicle dealers in WA, of which 143 were approved by the Commissioner to sell vehicles on consignment. This represents approximately 14 per cent of licensed dealers.¹⁴ Of this number, 118 dealers held an open consignment trust account and were required to have their trust account audited and submitted to the Commissioner by 30 September 2020.

2.3 Complaints relating to consignment selling

Table 4 below shows that between 2014 and 2020, there were 197 complaints relating to consignment selling.

Table 4: Complaints by year 2014 – 2020

2014	2015	2016	2017	2018	2019	2020	Total
13	50	12	27	23	37	35	197

Of the 197 complaints, the majority (137, or 70 per cent of complaints) were internally generated by Consumer Protection following the annual audits of dealer consignment trust accounts, or licensing and proactive compliance checks. The issues identified through the audit and compliance processes are largely around poor administrative and account keeping practices by dealers, and include:

- ledgers not being properly maintained or reconciliations of accounts not being done;
- bank fees debited to trust accounts;
- consignment sale proceeds posted to a general account instead of a trust account and vice versa;
- trust account overdrawn and discrepancies between bank statements and the account; and
- funds not being paid into trust accounts within the required time period or proceeds of the sale not paid to the owner within the required time period of two business days of receiving payment.¹⁵

Of the remaining 60 complaints, the issues dealt with included:

- dealers accepting vehicles for sale on consignment without being approved by the Commissioner and in contravention of the conditions of their dealer's licence;
- dealers accepting vehicles for sale on consignment without entering into a written agreement with vehicle owners and without holding a consignment trust account;
- dealers failing to record variations made to standard contracts to reflect changes to consignment sale arrangements negotiated with vehicle owners;¹⁶
- dealers failing in their responsibility to ensure that vehicles have been appropriately maintained and stored while held on consignment. Consumer Protection received complaints from consumers alleging vehicles were returned from dealers at the end of the consignment period with missing items and with excessive kilometres;

¹⁴ DMIRS 2021, Licensing Services data, 9 February.

¹⁵ Motor Vehicle Dealers (Sales) Regulations 1974 (WA), schedule 4, CI 3.1.

¹⁶ Ibid, cl 12.1.

- dealers making false and misleading misrepresentations to vehicle owners about the viability of achieving the agreed minimum sale price of a vehicle, with the dealers going on to sell the vehicle for a higher price;¹⁷ and
- dealers failing to pay the proceeds of sale to vehicle owners, in contravention of the prescribed terms and conditions of standard consignment contracts.¹⁸

¹⁷ Ibid, cl. 2.1.

¹⁸ Ibid, cl 3.

3. ASSESSMENT OF OPTIONS AND IMPACT ANALYSIS

Objective of regulating consignment sales

The principal objective in regulating consignment sales is to provide adequate protection for consumers while maintaining the commercial viability of the motor vehicle dealing industry.

Analysis

The C-RIS contained three options about the regulation of consignment selling in the motor vehicle industry. Each option has been considered and assessed against the principle objective in regulating consignment sales.

As indicated above, Consumer Protection received 25 submissions to the C-RIS comprising eight written submissions and 17 responses to the online survey.

The level of support, based on the number of respondents who supported each option in the C-RIS, is provided in Table 5 below.

Table 5: Number of respondents who supported each option

Option		No.
Option A	Retain the status quo, that is, make no changes to the current consignment sales regulatory regime.	5
Option B	Strengthen existing licensing eligibility provisions and training.	7
Option C	Ban consignment selling.	5
No clear view	A specific view regarding any of the options was not stated or identifiable in the submission.	8

3.1 Option A – Retain the status quo

Option A retains the status quo in relation to the current level of regulation through licensing and other regulatory provisions imposed on dealers under the MVDA.

Option A provides the base case for analysis of Options B and C.

Stakeholder views supporting Option A

Option A received support from the MTA WA, the CIAWA and three survey respondents (two dealers and one unspecified).

The MTA WA, stated that current consignment sales regulation allows dealers to operate effectively and provides appropriate consumer safeguards.¹⁹ It noted three cases of consignment sales failings arose through the dealers having failed in their responsibilities under the MVDA and acknowledged the seriousness of offences and the significance of the detriment suffered by consumers.²⁰ However, the MTA WA felt that the actions of three dealers was not sufficient cause to increase regulation and cost for the entire industry.

¹⁹ MTA WA, submission No.6.

²⁰ Ibid.

The MTA WA also stated demand for consignment services was driven by the consumer, noting that consignment selling creates an opportunity for consumers to achieve a selling price as close to retail as possible, along with having the added security of dealing through a licensed dealer who offers additional benefits.²¹

The view of the MTA WA was that amending the existing MVDA consignment selling requirements would not automatically improve consumer protections, whereas more regulation would increase costs for dealers and ultimately the consumer.

The CIAWA stated the focus of consignment sales regulation should centre on Consumer Protection conducting regular compliance inspections of dealers approved to sell by consignment, together with ongoing audits of dealer consignment trust accounts.

Stakeholder views not supporting Option A

Twelve of the 25 respondents to the C-RIS did not support retaining the status quo because they thought that some reform was needed to strengthen the current regulatory regime, increase dealer compliance, and reduce the risk of detriment to consumers associated with consignment selling.

Of these respondents, nine industry respondents and consumers supported either Options B or C. Four industry respondents and two consumers preferred Option B alone. The CAC also identified Option B as being the most effective option.

Two industry respondents and one of the consumer respondents supported Option C alone. The two industry respondents were licensed dealers who do not engage in consignment selling. These three respondents expressed strong views about the fundamental principles underpinning the consignment sales system, including consumers frequently having unrealistic expectations and dealers failing to adhere to their statutory obligations.

The AVAA, referring to its assessment of the effectiveness of consignment sales legislation that applies in Victoria, supported Option C. The CCSLWA supported Option C based on its interactions with clients who suffered detriment and significant financial losses as a result of the actions of dealers selling vehicles on consignment.²²

Impact analysis

Table 6: Option A: Potential benefits and disadvantages

Potential benefits	Potential disadvantages
Industry	
No additional compliance costs for industry due to status quo being retained.	Concern about consignment sales negatively impacting industry not addressed.
Consumers	
Level of consumer protection remains the same.	Continued risk of consumer detriment occurring.
Government	
No additional regulation required.	Potential negative reaction due to continued risk of consumer detriment occurring.

²¹ MTA WA, submission No.6.

²² Note: 8 respondents did not express a clear view/preference on any of the options.

Assessment against the objective

The retention of the status quo under Option A is assessed as not achieving the objective and as having an overall negative impact, with benefits being outweighed by the disadvantages.

Consumers who engage dealers to sell vehicles on consignment would remain susceptible to the risk of detriment and financial loss arising from the actions of unscrupulous dealers who mislead and deceive consumers and who fail to comply with their MVDA obligations.

3.2 Option B – Retain consignment selling but strengthen contract arrangements, licensing eligibility requirements and training

Option B proposed retaining consignment selling but making amendments to the MVDA to strengthen contract arrangements, licensing eligibility requirements and training.

Under this proposed reform, amendments would be made to the MVDA to:

- enable the Commissioner (where appropriate) to require a dealer who intends selling vehicles by consignment to lodge a bank guarantee or a fidelity bond as part of their dealer licence application;
- introduce principal-agent relationship obligations into motor vehicle consignment sales contract arrangements, similar to those that operate in the real estate and settlement industries. This change would be supported by improving the content of dealer licensing training courses delivered by registered training organisations to incorporate material relating to the fiduciary responsibilities that are created under a principal-agent relationship; and
- enable the Commissioner to consider the fitness and character of an applicant's close associates in assessing the suitability of applicants when determining whether to grant or refuse licences or renewals in order to prevent an unsuitable person from participating in the business.

Stakeholder views supporting Option B

Of the 25 responses received to the C-RIS, seven respondents supported Option B. Four of the respondents were from industry and two were consumers. The CAC also identified Option B as being the most effective option.

Of these responses, one industry respondent and one consumer respondent supported amendments being made to the MVDA consignment sales provisions so that the duties and functions of a dealer under the standard consignment contract can be made clearer.²³

These respondents also favoured improvements being made to the consignment selling components of dealer licensing training courses delivered by training providers, and which a person is required to complete as part of an application to the Commissioner for a licence.

One industry respondent stated they considered existing regulations to be adequate, however given the recent consignment sales failings, they support additional dealer reporting requirements being introduced in order to strengthen compliance outcomes, provided there were no additional costs to business. This industry respondent noted that they rely on their auditor and industry association for all compliance information and thought that dealers would benefit from the provision of online reference material.²⁴

²³Survey #13.

²⁴Survey #13.

Consumer Protection publishes information on its website for the motor vehicle industry regarding the proactive compliance program to assist dealers to meet the requirements set out by the legislation plus identify and rectify areas of risk. This information also covers consignment documents, notably consignment trust account bank records and stock records held by consignment dealers.

Three of the industry respondents supported proposed reforms requiring a dealer who intends to sell vehicles on consignment to lodge a bank guarantee or fidelity bond to provide some protection against future liabilities.²⁵

A caravan dealer submitted that the consignment selling process is indispensable to their business, stating they were opposed to the proposal to lodge bank guarantees or fidelity bonds as this would create significant barriers to entry, and represent a substantial capital outlay that would lead to increased dealership costs to the detriment of the business.

Stakeholders not supporting Option B

The MTA WA, the CIAWA and one industry respondent did not support Option B, stating that the current MVDA provisions are adequate and provide an appropriate regulatory framework for dealers and consumers. Concern was expressed that some elements of the proposed reforms would impose additional regulatory requirements and increased costs on dealers and would not necessarily lead to consumer protection improvements.

The MTA WA stated that many independent used car dealers, particularly those operating in the caravan, prestige car and truck sectors, represent the majority of dealers offering consignment selling services. These sectors rely heavily on consignment sales. The MTA WA, cited one mid-sized dealer who held up to 70 per cent of its caravan stock under consignment, typically valued from between \$10,000 to \$100,000. The MTA WA indicated many caravan dealers had advised that removing consignment selling would lead to dealerships either downsizing or closing completely due to the exorbitant cost of establishing and maintaining a floorplan finance facility.

The MTA WA acknowledged that the industry would benefit from a greater level of understanding of the requirements for dealing in consignment sales. It noted that these objectives could be achieved through a targeted education program and that it was prepared to collaborate with Consumer Protection in reviewing consignment sales content delivered as part of the motor vehicle dealer licensing course, and in developing any updated material.

The CIAWA stated the general view of its membership was that current MVDA consignment sales provisions were operating effectively, including current standard contracts and that specifying principal/agent obligations would not be required. The CIAWA also advised that requirements relating to the establishment and maintenance of dealer consignment trust accounts are considered adequate to support the activity.

The CIAWA proposed that regular inspections of consignment dealers combined with ongoing consignment trust account audits could help mitigate any potential dealer non-compliance and consumer protection concerns.

The CIAWA, although opposed to dealers having to lodge guarantees as a condition of dealers being permitted to sell vehicles on consignment, indicated it would consider more stringent assessments by the Commissioner and additional dealer training as additional licensing eligibility requirements in preference to banning consignment sales.

Variation of Option B

After considering submissions, Consumer Protection decided to vary Option B. It accepts that requirements for bank guarantees or fidelity bonds would impose undue costs on dealers based on the degree of risk to consumers. The other elements of Option B – inserting principal-agent or dealer-principal fiduciary obligations in prescribed terms and conditions of

DMIRS 2021, Proactive Compliance – Motor vehicle dealers.

(Available: <https://www.commerce.wa.gov.au/consumer-protection/proactive-compliance-motor-vehicle-dealers>)

(Accessed 22 March 2021).

²⁵ Mr Demtrious Stefanatos – KS Motor Co – submission No 2; Surveys #5, #15.

consignment agreements, improving training for dealers and assessing an applicant's close associates as part of the licensing process – would be retained.

Consumer Protection will consult with the motor vehicle industry about new content on principal-agent or dealer-principal fiduciary obligations and consignment sales obligations. It is anticipated that training on consignment sales will constitute a small addition to the training information such that it is not expected to result in significant additional cost.

In varying Option B, Consumer Protection proposes to create a distinct licence category for dealers who apply to sell on consignment. Prescribing a new and distinct category of dealer's licence for consignment sales will be a more effective way of regulating consignment selling activities than the current approach of placing conditions on all dealer's licences. It will also provide greater clarity for industry. Administrative obligations for both industry and government will reduce because dealers who wish to engage in consignment selling will no longer need to apply to have the condition removed from their licence. This change will not result in additional licensing fees because an applicant who applies for a dealer's licence and indicates that they will be accepting vehicles on consignment would still be granted a single licence and pay the current applicable fee. Similarly, applying to add the consignment category to an existing dealer's licence after grant is generally done by email and is not subject to additional licensing fees – although proof of having undertaken the consignment module would need to be provided.

Creating a separate dealer licence category for consignment selling will also allow greater flexibility if disciplinary action needs to be taken. The current process only allows the Commissioner to reimpose a ban on consignment selling as a condition on a dealer's licence.

In their submissions to the Review, the MTA WA and the CIAWA supported the creation of a separate category of dealer's licence for consignment sales.

Impact analysis

Table 7: Variation of Option B: Potential benefits and disadvantages

Potential benefits	Potential disadvantages
Industry	
<ul style="list-style-type: none"> Retains consignment sales. Improved training for dealers leading to more effective compliance outcomes. Improved industry reputation. Prescribing a new category of dealer's licence will not lead to significant additional licensing costs. 	<ul style="list-style-type: none"> Risk of licence refusal if associate check identifies unsuitable person.
Consumers	
<ul style="list-style-type: none"> Retains consignment sales. Reduces the risk of consumer detriment occurring. Increased consumer confidence. 	<ul style="list-style-type: none"> None evident.
Government	
<ul style="list-style-type: none"> Provides a more efficient licensing process. Improved consumer protections, including greater options for disciplinary action. 	<ul style="list-style-type: none"> Minor increase in licence assessment and compliance requirements for associated checks.

Assessment against the objective

The implementation of a varied Option B is assessed as achieving the objective and as having minimal negative impact, with the benefits outweighing the disadvantages.

A varied Option B is unlikely to impose significant additional licensing costs and achieves the reform objective through improvements to training to promote a greater level of understanding of the requirements for dealing in consignment sales and those relating to fiduciary obligations.

A new prescribed category of dealer's licence will allow the Commissioner to target assessments and penalties for non-compliance more effectively and provide greater clarity for industry.

Amending the MVDA licensing and registration provisions to include additional "good character", and "fit and proper" person criteria relating to an applicant's associates will enable the Commissioner to consider the fitness of the dealer's close associates as part of the dealer's licence and will provide additional consumer protections.

3.3 Option C – Ban consignment selling.

Option C proposed banning consignment sales of vehicles by dealers, with the exception of those sold at public auction.

Consignments between licensed motor vehicle dealers and a trade owner would be excepted²⁶ meaning motor vehicle dealers, financiers, hire car companies who currently may dispose of the vehicles they own (e.g. a fleet of vehicles) through a licensed motor vehicle dealer, would be able to continue to do so. Consumers would be able to continue to consign their vehicle for sale by public auction through a licensed motor vehicle dealer.

Consumers seeking to sell their vehicles including caravans, motorcycles or luxury vehicles would have the following alternatives available to them:

- sale by public auction;
- by trade-in, when purchasing another vehicle;
- by direct sale to a motor vehicle dealer; or
- private sale – where the consumer undertakes the responsibility of selling the vehicle.

Stakeholder views supporting Option C

Of the 25 respondents to the C-RIS, five supported Option C. The five respondents comprised a peak industry body, a non-government consumer advocacy organisation, two industry members and a consumer respondent.²⁷

Two of the industry respondents, who indicated they did not engage in consignment selling, stated they considered vehicle owners generally have unrealistic expectations of the value of their vehicle which places them at risk of being exploited by unscrupulous dealers.

One of these respondents also stated vehicle owners have both sufficient knowledge and the ability to access the same tools that are available to dealers to market their vehicles without needing to engage a dealer to sell their vehicles on consignment.

The consumer respondent stated that consignment selling has been proven to be a very high risk proposition and that some dealers are jeopardising funds that rightly belong to vehicle owners.

²⁶ MVDA, section 5.

²⁷ Mr Paul Lombardi – Autostrada, submission No.1; Auctioneers and Valuers Association of Australia (AVAA), submission No. 3; Ms Gemma Mitchell Managing Solicitor- Consumer Credit Legal Service WA (CCLSWA), submission No. 5; Survey #11; Survey #12.

The AVAA and CCLSWA supported WA introducing a ban on consignment sales of vehicles by dealers, with the exception of those sold at auction, similar to the Victorian regulatory model.

CCLSWA provided case studies which described the experiences of consumers who suffered detriment and financial losses resulting from the actions of two high profile luxury motor vehicle dealers selling vehicles on consignment. The detriment suffered by these consumers included: failure by a dealer to provide the proceeds of sale to an owner within the prescribed period; failure by the dealer to sell a vehicle free of encumbrances and the dealer allegedly misrepresenting a vehicle to a consumer in the sale contract.

The AVAA supported the banning of consignment sales and stated Victoria's legislation has worked successfully since being introduced and that it believed implementing the Victorian model in WA would benefit both the motor trade industry and consumers.²⁸

Stakeholders not supporting Option C

Twelve respondents did not support Option C. Respondents opposing this option comprised the peak automotive industry and caravan industry bodies and industry members, including some dealers operating within the caravan sector.

These respondents noted the reliance of many dealers, particularly those operating in the caravan, prestige car and truck sectors, on consignment selling. They were concerned that banning consignment sales would result in their businesses suffering or closing. Some noted that caravans were difficult to sell at auction.

Impact analysis

Table 8: Option C: Potential benefits and disadvantages

Potential benefits	Potential disadvantages
Industry	
<ul style="list-style-type: none"> Improved reputation and confidence in the industry as cases of consignment sales failings reduce. 	<ul style="list-style-type: none"> Loss of income for dealers selling on consignment. Closure of some businesses.
Consumers	
<ul style="list-style-type: none"> Reduced risk of detriment and financial loss. Retains opportunity to sell vehicle by consignment via public auction. 	<ul style="list-style-type: none"> Reduced convenience and choice for those who do not like to conduct sales themselves.
Government	
<ul style="list-style-type: none"> Reduced consumer complaints and associated compliance costs. 	<ul style="list-style-type: none"> Costs of monitoring and enforcing prohibition.

Assessment against the objective

The implementation of Option C is assessed as not achieving the objective and as having a significant negative impact with the benefits being outweighed by the disadvantages.

Option C maintains a way for consumers to sell their vehicle by auction through a licensed motor vehicle dealer and addresses the highest risk in the marketplace where consumer detriment currently occurs by prohibiting retail consignment sales. The exposure to misleading and deceptive practices, lack of transparency and risk of significant financial loss would be minimised.

²⁸ AVAA, submission No.3.

Option C, in exempting trade owners, will ensure that there is consistency with the current exclusions provided for under the MVDA²⁹ for licensed motor vehicle dealers, finance companies and hire car companies.

Option C has the potential to cause financial detriment to a substantial number of motor vehicle dealers that rely on consignment sales as part of their business model and could possibly lead to business closures.

4. PREFERRED OPTION

It is recommended that the varied Option B be implemented.

Implementing the varied Option B would see consignment selling retained. Dealers who choose to sell vehicles on consignment will be required to apply to the Commissioner for a separate category of dealer's licence relating to consignment sales.

Creating a separate licence category for consignment selling will make it clearer that different conditions apply to obtaining a licence and allow for more flexibility if disciplinary action needs to be taken. It will also remove the requirement to place a condition prohibiting consignment selling on all dealer's licences.

The varied Option B will see the consignment sales component within the motor vehicle dealers training course improved to raise the level and understanding by dealers about their fiduciary obligations to consumers when undertaking consignment sales. Consumers in turn would benefit from a reduced risk of detriment.

The varied Option B is expected to provide a more effective regulatory regime at minimal increased cost to industry.

²⁹ MVDA, section 32.

5. IMPLEMENTATION AND EVALUATION

5.1 Implementation

Implementation of the preferred option requires amendments to legislation, principally with changes being implemented by amendments to the MVDSR and the MVDLR to create a separate category of motor vehicle dealer's licence for the consignment sale of vehicles. Implementing the proposal to enable the Commissioner to consider the fitness and character of an applicant's close associates when determining whether to grant or refuse an application for a dealer's licence will require an amendment to the MVDA.

Changes to the content of dealer licensing training courses delivered by registered training organisations will be required to incorporate material relating to the fiduciary responsibilities under a principal-agent relationship.

Consumer Protection will coordinate the drafting of the amendments to the legislation and will liaise with the providers of dealer licensing training courses to update course content. Transitional issues will be taken into account and appropriate lead in times for implementation of the changes will be determined in consultation with stakeholders. The changes to regulations and course content policies may be progressed in advance of legislative amendments.

A community education campaign will be developed and implemented in conjunction with the proposed legislative amendments. Initiatives would include:

- revised and updated information on Consumer Protection's website; and
- targeted information to industry stakeholders.

Consumer Protection is amending the MVDA to implement recommendations of an earlier review and will seek to include amendments to improve consignment selling in that process.

5.2 Evaluation

Consumer Protection will continue to monitor enquiries and complaints about consignment selling. This information, and feedback from stakeholders, will be used to identify any issues in the sector that may require further review and consideration.

The evaluation process will include consideration of market intelligence collected by Consumer Protection on such matters as:

- the number and nature of enquiries and complaints received by year about motor vehicle consignment sales;
- analysis of contact centre advice and complaint trends before and after changes;
- analysis of any changes/trends over time; and
- analysis of industry feedback following the changes.

Consumer Protection will also consult with key stakeholders such as the CAC, government agencies, industry associations and relevant non-government organisations dealing with consumer issues.

SUBMISSIONS

APPENDIX 1

No.	Respondent Name	Option A Status quo	Option B Stronger regulation	Option C Banning	Other
1	Mr Paul Lombardi – Autostrada			Supported.	
2	Mr Demetrios Stefanatos – KS Motor Company		Supported. Based on reforms requiring: <ul style="list-style-type: none"> a dealer who intends to sell vehicles on consignment to lodge a bank guarantee; and a person who applies for a dealer's licence to have completed additional consignment sales training as part of the approved dealer licensing course. 		
3	Ms Emma Barnes – Chief Executive Officer, Auctioneers and Valuers Association of Australia (AVAA)			Supported. Respondent's organisation believes laws similar to those enacted in Victoria provide the best approach for the motor industry moving forward in WA.	
4	Department of Transport (DoT)				DoT supports DMIRS in its preferred option, once determined.

SUBMISSIONS

No.	Respondent Name	Option A Status quo	Option B Stronger regulation	Option C Banning	Other
5	Ms Gemma Mitchell –Managing Solicitor, Consumer Credit Legal Service WA (CCLSWA)			Supported. Respondent advocated that a ban on consignment selling by dealers be introduced similar to the arrangement that exists in Victoria.	
6	Mr Stephen Moir – Chief Executive Officer, Motor Trade Association of Western Australia (MTA WA)	Supported. Consignment selling is essential for sectors of the motor vehicle industry. There is not a strong case for additional regulation and cost for industry. A greater level of industry understanding of the requirements for dealing in consignment sales could be achieved through a targeted education program.			
7	Mr Julian Barry – Chief Executive Officer, Caravan Industry Association Western Australia (CIAWA)	Supported. Respondent advised the elements it would consider in relation to Option B would be: <ul style="list-style-type: none"> • more stringent assessments from the Commissioner; and • additional dealer training. 			

SUBMISSIONS

No.	Respondent Name	Option A Status quo	Option B Stronger regulation	Option C Banning	Other
8	Consumer Advisory Committee (CAC)		Supported. Thought that Option B was an effective option to address problems without removing consumer access to consignment selling. Noted this option would likely result in added costs for dealers that would be passed on to consumers.		

SURVEYS

Respondent #	Respondent type	Option A Status quo	Option B Stronger regulation	Option C Banning	Other
1	Consumer				No clear view. Respondent has used a motor vehicle dealer to sell vehicle or caravan on consignment.
2	Industry	Supported. Respondent identified clearer consignment contracts as being a possible reform.			
3	Unspecified				No clear view.
4	Unspecified	Supported. Respondent does not consider any changes to current legislation should be made.			
5	Industry		Supported. Respondent supported lodging a bank guarantee or fidelity bond.		

SURVEYS

Respondent #	Respondent type	Option A Status quo	Option B Stronger regulation	Option C Banning	Other
6	Consumer		<p>Supported.</p> <p>Respondent supported the following reforms:</p> <ul style="list-style-type: none"> specifying the dealer's obligations to the vehicle owner (principal-agent relationship) in legislation; and requiring additional dealer training or demonstrated proficiency in consignment selling. 		
7	Unspecified				No clear view.
8	Consumer				<p>No clear view.</p> <p>Respondent has used a motor vehicle dealer to sell vehicle or caravan on consignment.</p>
9	Consumer		<p>Respondent strongly agrees changes to current legislation should be made (unspecified).</p> <p>Respondent has used a motor vehicle dealer to sell vehicle or caravan on consignment.</p>		
10	Unspecified				No clear view.

SURVEYS

Respondent #	Respondent type	Option A Status quo	Option B Stronger regulation	Option C Banning	Other
11	Industry			Supported. Respondent is a dealer who does not sell vehicles on consignment.	
12	Consumer			Supported.	
13	Industry		Supported. Respondent supported: <ul style="list-style-type: none"> • additional dealer training or demonstrated proficiency in consignment selling; and • clearer contracts. 		
14	Unspecified				No clear view.
15	Industry		Supported. Respondent supported: <ul style="list-style-type: none"> • additional dealer training or demonstrated proficiency in consignment selling; • clearer contracts; and • requiring bank guarantee or fidelity bond. 		

SURVEYS

Respondent #	Respondent type	Option A Status quo	Option B Stronger regulation	Option C Banning	Other
16	Industry				Respondent stated that dealers who agree to sell vehicles on consignment should behave honestly in their dealings rather than trading vehicles to avoid audits.
17	Industry	Supported. If changes to consignment sales legislation were to be made, would support additional dealer training or demonstrated proficiency in consignment selling.			

Government of Western Australia

Department of Mines, Industry Regulation and Safety

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