

# Motor Vehicle Dealers Licensing Board



## Annual Report 2004/2005



Department of Consumer  
and Employment Protection  
Government of Western Australia

1 July 2004 to 21 December 2004

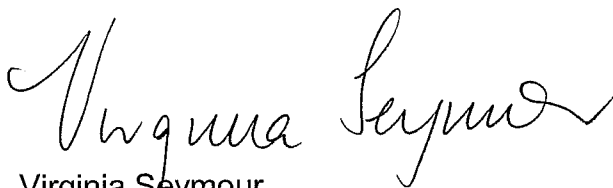
## TABLE OF CONTENTS

ABOUT THE BOARD .....	3
LEGISLATIVE CHARTER .....	3
MISSION .....	3
OBJECTIVES .....	3
KEY RESPONSIBILITIES.....	4
MEMBERSHIP OF THE BOARD.....	5
MEETINGS .....	7
BOARD ACTIVITIES .....	7
ADMINISTRATIVE SUPPORT .....	7
COMPLIANCE ADVERTISING PROGRAM .....	8
PROACTIVE COMPLIANCE .....	8
UNLICENSED DEALING.....	9
POCKET RACER COMPLIANCE PROGRAM.....	9
DEALER AUDIT PROGRAMS.....	10
POLICIES .....	12
MEANING OF “SUFFICIENT RESOURCES” .....	12
FINANCE AND INSURANCE OFFICERS AT DEALERSHIPS .....	12
MOTORISED SCOOTERS, MINI MOTOR CYCLES, “POCKET RACERS” .....	13
BOARD INQUIRIES .....	14
FORMAL INQUIRIES CONDUCTED BY THE BOARD IN THE 2004/05 FINANCIAL YEAR (up to 21 December 2004).....	14
DETAILS OF DISCIPLINARY INQUIRIES INVOLVING PENALTIES .....	15
LICENSING STATISTICS .....	17

**THE HONOURABLE JOHN CHARLES KOBELKE  
MINISTER FOR CONSUMER AND EMPLOYMENT PROTECTION**

In accordance with Section 51(1) of the *Motor Vehicle Dealers Act 1973*, I submit for your information and presentation to Parliament, the final Annual Report of the Motor Vehicle Dealers Licensing Board for the period 1 July 2004 to 21 December 2004.

The Board completed its duties under the Act and ceased operations on 21 December 2004, passing responsibility for regulating the motor vehicles dealing industry to the Motor Vehicle Industry Board which commenced operating on 22 December 2004.

A handwritten signature in black ink, reading "Virginia Seymour". The signature is fluid and cursive, with the first name "Virginia" written in a larger, more prominent script than the surname "Seymour".

Virginia Seymour  
**Chairperson**

1 November 2005

## **ABOUT THE BOARD**

### LEGISLATIVE CHARTER

The Motor Vehicle Dealers Licensing Board is established under the *Motor Vehicle Dealers Act 1973*.

### MISSION

The Board has defined its mission as:

To regulate entry into, and influence standards of conduct within, the motor vehicle sales industry.

### OBJECTIVES

The Board's objectives are to:

- license appropriate entities to carry on business in the motor vehicle sales industry;
- deny access to the motor vehicle sales industry by unfit entities;
- remove unfit entities from the motor vehicle sales industry; and
- ensure the registration and maintenance of appropriate facilities by licensed entities.

This means that licence holders will:

- behave in a way that is neither deceptive nor misleading;
- provide motor vehicles that are safe, of merchantable quality, and appropriately and accurately described and/or advertised;
- provide accurate and fair information about the availability of motor vehicles;
- inform themselves about their rights and responsibilities;
- not default prior to concluding a contract; and
- provide appropriate levels of responsibility for post-sale performance, eg, through statutory or implied warranty, as applicable.

and that the marketplace will:

- operate freely with restrictions only where this is demonstrably in the public interest;
- allow market entry without significant barriers;
- afford appropriate protection for business transactions;
- provide no regulatory advantage for one section of the market over another; and
- have access to clear, easy to understand legislation and information about its accompanying rights and responsibilities.

### KEY RESPONSIBILITIES

The Board's key responsibilities as determined by reference to the *Motor Vehicle Dealers Act 1973*, are:

- consideration of applications for dealers' licences;
- consideration of the registration of premises at which the business of dealing in motor vehicles is carried on;
- consideration of applications by persons seeking to be yard managers and salespersons in the motor vehicle sales industry;
- to conduct Inquiries into objections raised by the Commissioner for Fair Trading to an applicant obtaining a licence or a licensee continuing to hold a licence; and
- to conduct Inquiries on its own motion into matters concerning the fitness of an applicant to obtain a licence or a licensee to remain licensed.

## MEMBERSHIP OF THE BOARD

The Board comprises members and deputy members appointed by the Governor in accordance with Section 8 of the *Motor Vehicle Dealers Act 1973*. Membership of the Board is determined by the provisions of the Act and requires that industry and consumer bodies nominate a panel of names to the Minister. In keeping with the State Government policy on gender equity, nominations are sought from industry and consumer bodies and wherever possible, include the nomination of female representatives.

The Motor Vehicle Dealers Licensing Board comprises the following persons:

- A person appointed as a member and Chairperson;

<b>Name:</b> <b>Occupation:</b> <b>Position:</b> <b>Last appointment date:</b> <b>Length of service:</b> <b>Deputy to Chairperson:</b>	Ms Virginia Anne SEYMOUR Lawyer Chairperson 1 April 2004 to 21 December 2004 4 years Ms Miriam SAULEY
<b>Name:</b> <b>Occupation:</b> <b>Position:</b> <b>Last appointment date:</b> <b>Length of service:</b>	Ms Miriam SAULEY Lawyer Ms Sauley was appointed deputy Chairperson for the first time commencing from 1 April 2004 1 April 2004 to 21 December 2004 8 months

- A nominee of the Australian Automobile Dealers' Association;

<b>Name:</b> <b>Occupation:</b> <b>Position:</b> <b>Last appointment date:</b> <b>Appointment expires:</b> <b>Length of service:</b> <b>Deputy to Member:</b>	Mr Lance Douglas KERR Company Director and licensed motor vehicle dealer. Member 11 June 2002 21 December 2004 2 years Mr Colin Saul ROCKMAN
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- A nominee of the Motor Trade Association of Western Australia (Inc.);

<b>Name:</b>	Mr Robert Arthur PEARCE
<b>Occupation:</b>	Company Director and licensed motor vehicle dealer
<b>Position:</b>	Member
<b>Last appointment date:</b>	1 April 2003
<b>Appointment expires:</b>	21 December 2004
<b>Length of service:</b>	12 years
<b>Deputy to Member:</b>	Mr Trevor Phillip HANCOCK

- A nominee of the Minister for Consumer Protection representing the interests of purchasers of motor vehicles;

<b>Name:</b>	Ms Rhonda ALGABA
<b>Occupation:</b>	Retired Trained Nurse
<b>Position:</b>	Member
<b>Appointment date:</b>	13 January 2004
<b>Appointment expires:</b>	21 December 2004
<b>Length of service:</b>	1 year
<b>Deputy to Member:</b>	Ms Judy SEIF who was appointed for the first time on 1 April 2003

- A nominee of the Royal Automobile Club of WA (Inc);

<b>Name:</b>	Mr David Leslie MOIR
<b>Occupation:</b>	Manager
<b>Position:</b>	Member
<b>Last appointment date:</b>	19 March 2001
<b>Appointment expires:</b>	21 December 2004
<b>Length of service:</b>	12 years
<b>Deputy to Member:</b>	Mr Christopher Paul ATKINSON

## MEETINGS

During this period under review the Board met on six occasions at which it considered new licence applications, renewal applications, and policy issues.

The Board met on a further six separate occasions to conduct Inquiries into the fitness of persons to hold licences.

## BOARD ACTIVITIES

### ADMINISTRATIVE SUPPORT

#### MOTOR VEHICLES BRANCH

The Department of Consumer and Employment Protection (DOCEP), through the Motor Vehicles Branch, provides the Motor Vehicle Dealers Licensing Board with administrative support.

The first half of the financial year has seen a continuation of growth in the Branch's resources as a consequence of:

- the anticipated commencement of the new Motor Vehicle Industry Board in December 2004. The new Board will have nine members and eight deputy members compared with the previous Board of five members and four deputy members.
- The advent of the implementation of the Motor Vehicle Repairers legislation.

The additional staffing required to service both the motor vehicle sales and repairers industries in the coming year had also been the catalyst for the relocation of the Motor Vehicles Branch from the city to Osborne Park in October 2004. The new offices at 321 Selby Street provides for further expansion in the future and have on-site facilities for vehicle inspections.

The Board recognises that there will significant changes forecasted for both the motor vehicle sales and repairer industries in the coming years. To keep the industries updated in December 2004 the Board launched the first of its quarterly newsletters simply titled the *Motor Vehicle Industry Newsletter*.

The Newsletter has proven to be a huge success in informing industry participants of not only current issues but also proposal or impending matters



that will directly affect them. The Board and the Branch have received positive feedback to this initiative.

The Board acknowledges the dedicated efforts of Motor Vehicles Branch staff and management who have ensured that the work of the Board is both efficient and effective.

## LEGAL UNIT

The Department of Consumer and Employment Protection provides legal services to the Board through the Legal Unit.

The Board acknowledges the support of the Legal Unit, which has supported the Board by providing advice on matters of policy and legislative interpretation and assisting the Board in undertaking its disciplinary functions.

## LICENSING AND COMPLIANCE SERVICES (formerly named the Dealer Compliance Unit)

The Board is provided with support from Licensing and Compliance Services of the Department for Planning and Infrastructure. These services include inspectors regularly visiting dealerships to assess the roadworthiness of vehicles and to ensure that dealers complete documentation in accordance with relevant legislation.

## COMPLIANCE ADVERTISING PROGRAM

The Branch's Advertising Compliance Program continues to see a significant improvement in the standard of advertisements published in newspapers, with respect to compliance to the provisions of the *Motor Vehicle Dealers Act 1973*, the *Fair Trading Act 1987*, and the *Consumer Credit Code*. The program has established a central contact point for industry to seek information.

## PROACTIVE COMPLIANCE

The Proactive Compliance inspection program continued to build with a total of 132 inspections carried out to 21 December 2004. The Proactive Program has established itself as an integral part of the Branch's function, not only in attending authorised premises to carry out inspections, but also seeing the

Proactive Officer serving as a virtual 'dealer's help line' when not on the road, working through all manner of challenging problems put to him.

### UNLICENSED DEALING

Unlicensed dealing in motor vehicles continues to be an area of concern in the motor vehicle industry. For the period 1 July 2004 to 21 December 2004, two prosecutions were commenced:

- On 9 September 2004, prosecution action was commenced against Musa Al Samahi on a charge of unlicensed dealing. He entered a plea of 'Not Guilty' and the matter is set down for a five-day summary trial in the Perth Magistrates Court commencing 16 September 2005.
- On 3 December 2004, prosecution action was commenced against Victor Wasylewski on a charge of unlicensed dealing.

Another matter that remains before the Courts is a charge of unlicensed dealing against Francesco La Rosa. That prosecution was commenced in December 2003, however a presiding Magistrate dismissed the charge on the basis that the complaint wording was flawed. An appeal to the Supreme Court will be lodged.

### POCKET RACER COMPLIANCE PROGRAM

In late 2004 the staff of the Motor Vehicles Branch of DOCEP brought to the attention of the Board the development of new retail market in the sale of miniature motor cycles, commonly known as "pocket racers" or "pocket rockets". Complaints were received from the Motor Trade Association (MTA), licensed motor cycle dealers, purchasers of faulty miniature motor cycles, and also from the general public regarding the sellers of these products.

Additionally, the community generally, together with the Western Australia Police and the Department for Planning and Infrastructure (DPI), expressed concern about the potential dangers about the sale of these small but powerful vehicles in an apparently unregulated market. DOCEP provided the Board with advice regarding the matter and the Board resolved that a dealer's licence was required to sell these vehicles. A joint project between DOCEP, WA Police and DPI ensured that the public and industry were informed about the need to have the dealers licence. In addition a campaign was conducted to

ensure the public was informed about where these vehicles could be used legally.

The project involved issuing educational letters to those known to be selling the vehicles, and giving them 30 days to apply for a licence, or cease selling them. At the conclusion of the 30 days another letter was sent requesting the sellers complete a questionnaire to assist in determining a course of action for their particular circumstances.

The project also included inspections at various weekend markets such as the Canning Vale Markets, and the Fremantle 'E' Shed Markets. The media was also utilised by requesting they cease publishing advertisements on behalf of sellers, unless they provided a dealers licence number.

As at December 2004 the project had successfully bought regulation to the sale of these vehicles, leaving only a minority of sellers with whom to deal with in the coming months.

### [DEALER AUDIT PROGRAMS](#)

There were no financial audits due during the period 1 July 2004 to 21 December 2004. However the processing of 75 Consignment Trust Accounts received for the 2004 audit closing on 30 June 2004 continued.

The audit reports received were comprised of:

Statutory Declarations (used where there have not been any transactions through the consignment trust account for the period)	20
Unqualified audits	41
Qualified audits	14
Total	75

Of the 14 qualified audits, letters advising of the qualifications and seeking information on the processes the dealer had put in place to prevent the re-occurrence of the breach were issued. The dealers involved responded

positively with information on increased safeguards for the future operation of the trust accounts.

## **POLICIES**

The Board continued its commitment to policy review and development during this period. The Board has reviewed many existing policies and has made several changes to key policies.

### MEANING OF “SUFFICIENT RESOURCES”

The Board considered the assessment of dealer’s requirements to satisfy the Board that they have sufficient resources. The Board accepted the recommendation that an amendment be made to the Motor Vehicle Dealers Act to shift the obligation on dealers from one of satisfying the Board that they have sufficient resources, to satisfying the Board that consumers’ warranty rights are protected.

The Board has an obligation to ensure that dealers have sufficient resources during the life or period of the licence. It is difficult for the Board to oversight a dealer’s viability continuously for three years.

A further amendment to be considered is to shift the obligation from the Board making an assessment of the dealer’s capacity to pay for its obligations to a situation where the dealer must satisfy the Board by declaring that it has sufficient resources.

### FINANCE AND INSURANCE OFFICERS AT DEALERSHIPS

The Board resolved that any person involved in the substantive processes that occur between the introduction of a customer and the dealer’s acceptance of an offer to purchase a vehicle is engaging in the selling of that vehicle and needs to be licensed as either a salesperson or a yard manager. This will include finance and insurance consultants and “after-care” sale staff.

Finance and insurance consultants means a person who is employed, or engaged by or on behalf of a licensed motor vehicle dealer to sell finance and insurance products in conjunction with the sale of motor vehicles. “After-care” sales staff sell high profit products such as rust-proofing and paint protection systems. The Board has determined that the finance, insurance and after-care consultants are integral to the process of retail selling of motor vehicles.

The Board recognises that independent contractors may be licensed under the *Finance Brokers Control Act*. The Board does not believe that it is

necessary that a Finance and Insurance consultant holds licences under both the *Motor Vehicle Dealers Act* and the *Finance Brokers Control Act*.

### MOTORISED SCOOTERS, MINI MOTOR CYCLES, “POCKET RACERS”

The Board has resolved that the provisions of the *Motor Vehicle Dealers Act* require the sellers of motorised scooters, mini motor cycles, “pocket racers” and similar recreational motor cycles to hold a motor vehicle dealers licence.

Under the *Motor Vehicle Dealers Act*, a person must hold a motor vehicle dealer’s licence to sell motor cycles, which are defined as self propelled two-wheeled vehicles.

The Department of Consumer and Employment Protection and the Motor Vehicle Industry Board consider that any self-propelled vehicle with a power capacity of over 0.2 kilowatts is a vehicle to which the Act applies. In Western Australia motorised scooters, mini motor cycles and “pocket racers” are classified under the *Road Traffic Act 1974*, as motor vehicles.

## BOARD INQUIRIES

### FORMAL INQUIRIES CONDUCTED BY THE BOARD IN THE 2004/05 FINANCIAL YEAR (up to 21 December 2004)

The Board conducted or finalised twenty-four formal Inquiries into the fitness of applicants or licensees to obtain or hold a licence under the *Motor Vehicle Dealers Act 1973*. Inquiries are shown in the tables below in two categories - New Applications and Disciplinary Inquiries.

#### **New Applications**

Sixteen Inquiries were conducted in relation to applications for new licences. The Board disqualified one applicant on the basis that the applicants had been convicted of offences the Board considered rendered the persons unfit to be the holders of a licence.

<b>New Applications<sup>1</sup></b>	<b>Approved</b>	<b>Disqualified/or Refused/Pending</b>
Dealers	3	0
Yard Managers	1	0
Salespersons	11	1
<b>Total</b>	<b>15</b>	<b>1</b>

#### **Disciplinary Inquiries**

As demonstrated by the table below, the Board conducted eight disciplinary Inquiries against existing licence holders. Five Inquiries resulted in reprimands and fines being applied.

<b>Disciplinary Inquiries</b>	<b>No Action</b>	<b>Reprimand</b>	<b>Disqualified or Refused</b>	<b>Fined</b>	<b>Pending</b>
Dealers	1	0	0	1	
Yard Managers	0	1	0	1	
Salespersons	2	0	0	2	
<b>Total</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>4</b>	

<sup>1</sup> This denotes where an Inquiry was held into the application for a licence. It does not reflect those applications that met all Board requirements for a licence to be issued.

## DETAILS OF DISCIPLINARY INQUIRIES INVOLVING PENALTIES

Name of Applicant / Licence Holder	Outcome
<p>SEAN BEAUMASTER</p> <p>Inquiry into making a false statement and not disclosing serious convictions listed on his Police Certificate. Section 20(1)(a) contravened or failed to comply with provision of the Act. Held on 17 August 2004.</p>	<p>The Board ordered Sean Beaumaster pay a penalty of \$500.</p>
<p>AARON CHRISTOPHER PITT</p> <p>Inquiry into working as an unlicensed yard manager from 10 October 2003 to 10 May 2004 contrary to Section 31A. Held on 17 August 2004.</p>	<p>The Board ordered Aaron Pitt pay a penalty of \$500.</p>
<p>PICKLES AUCTIONS PTY LTD</p> <p>Inquiry into employment of an unlicensed yard manager namely Aaron Pitt from 10 October 2003 to 10 May 2004 contrary to Section 20 and Section 31C. Held on 12 October 2004.</p>	<p>The Board formally reprimanded Pickles Auctions Pty Ltd under Section 20.</p> <p>The Board ordered Pickles Auctions Pty Ltd pay a penalty of \$300.</p>
<p>ROBERT FLEMING BENSON</p> <p>Inquiry into working as an unlicensed yard manager from 1 September 2003 to 24 December 2003 contrary to Section 31B. Held on 30 November 2004.</p>	<p>The Board formally reprimanded Robert Benson under Section 20A (6) of the Act.</p>
<p>LEE TRENT</p> <p>Inquiry into his non-disclosure of offences and the fact he signed a Statutory Declaration attesting to the correctness of the application. Held on 30 November 2004</p>	<p>The Board ordered Lee Trent pay a penalty of \$1,500.</p>
<p>GARRY COE</p> <p>Inquiry into his fitness to hold a salesman's licence Held on 7 November 2004.</p>	<p>The Board disqualified Garry Coe from holding or obtaining, whether solely or jointly, any authorisation or any specified kind of authorisation for a period of 2 years.</p>



Name of Applicant / Licence Holder	Outcome
<p>DARRYL WAYNE CARPENTER</p> <p>Inquiry into working as an unlicensed salesperson from 31 August 2003 to 10 April 2004 contrary to Section 31B. Held on 3 August 2004.</p>	<p>The Board ordered Darryl Wayne Carpenter's application for renewal of a salesperson's licence be granted.</p>
<p>SALVATORE DOMENICO MALATESTA</p> <p>Inquiry into convictions of 23 March 1995 for cause odometer to be altered and the subsequent decision of MVDLB on 5 May 1995 to disqualify him from holding a licence until further order. Held on 3 August 2004.</p>	<p>The Board ordered Salvatore Domenico Malatesta, being a Director of Pearl Court Investments Pty Ltd, be granted an exemption from holding a car hire operator licence.</p>

## LICENSING STATISTICS

Licensing data for the financial year (to 21 December 2004) is shown in the table below.

<b>Licence Type</b>	<b>Current as at 21 December 2004</b>	<b>Current as at 30 June 2004</b>
<b>Dealers</b>	782	775
<b>Car Market Operator</b>	2	1
<b>Yard managers</b>	1001	941
<b>Salespersons</b>	2090	1936

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