

Motor Vehicle Industry Board

Annual Report 2004/2005

22 December 2004 to 30 June 2005



Department of Consumer
and Employment Protection
Government of Western Australia

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

In accordance with Section 51(1) of the *Motor Vehicle Dealers Act 1973 - 1982*, I submit for your information and presentation to Parliament, the Annual Report of the Motor Vehicle Industry Board for the year ending 30 June 2005.

Note this Board commenced operating on 22 December 2004.


Virginia Seymour
Chairperson

1 November 2005

ABOUT THE BOARD

LEGISLATIVE CHARTER

The Motor Vehicle Industry Board is established under the *Motor Vehicle Dealers Act 1973* (as amended by the *Motor Vehicle Dealers Amendment Act 2003 – 73 of 2004*).

MISSION

The Board has defined its mission as:

To administer licensing, registration and other functions in respect of persons involved in motor vehicle dealing and motor vehicle repair work.

To regulate dealing in motor vehicles.

OBJECTIVES

The Board's objectives are to:

- license appropriate entities to carry on business in the motor vehicle sales and motor vehicle repair industry;
- deny access to the motor vehicle sales and motor vehicle repair industry of unfit entities;
- investigate the conduct of entities from the motor vehicle sales and motor vehicle repair industry to determine if that conduct should be reviewed by the State Administrative Tribunal;
- 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.

motor vehicle repairer licence and certificate holders will:

- behave in a way that is neither deceptive nor misleading;
- repair motor vehicles to a safe, merchantable quality, and appropriately and accurately repaired as described and/or advertised;
- provide accurate and fair information about the repair 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-repair 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 Hearing 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 hearings giving applicants opportunities to show cause on its own motion into matters concerning the fitness of an applicant to obtain a licence or a licensee to remain licensed.

In addition to assuming the role of the former Motor Vehicle Dealers Licensing Board as the licensing authority for motor vehicle dealers, yard managers, salespersons, the Board also has responsibility for:

- the future licensing of motor vehicle repair businesses and certification of repairers; and
- regulating the conduct of motor vehicle repairers.

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 Industry Board comprises the following persons:

- A person appointed as Chairperson:

Name: Occupation: Position: Last appointment date: Length of service: Deputy to Chairperson:	Ms Virginia SEYMOUR Lawyer Chairperson 22 December 2004 to 30 June 2006 6 months Mr David MOIR
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- Two persons nominated by the Minister for Consumer Protection who have knowledge and experience in the motor vehicle dealing industry:

Name: Occupation: Position: Last appointment date: Length of service: Deputy to Member:	Mr Robert PEARCE Company Director and licensed motor vehicle dealer Member 22 December 2004 to 30 June 2006 6 months Mr Colin ROCKMAN
Name: Occupation: Position: Last appointment date: Length of service: Deputy to Member:	Mr Lance Douglas KERR Company Director and licensed motor vehicle dealer. Member 22 December 2004 to 30 June 2005 6 months Mr Robert FOWLER

- Two persons nominated by the Minister for Consumer Protection who have knowledge and experience in the motor vehicle repair industry:

Name: Occupation: Position: Last appointment date: Length of service: Deputy to Member:	Mr Patrick BROWNE Company Director Member 22 December 2004 to 30 June 2006 6 months Mr Brian FORBES
Name: Occupation: Position: Last appointment date: Length of service: Deputy to Member:	Mr Wayne PHIPPS Company Director Member 22 December 2004 to 30 June 2005 6 months Mr Kevin DAVIS

- Three persons nominated by the Minister for Consumer Protection who represent the interests of purchasers of motor vehicles or customers of motor vehicle repairers (persons licensed under the *Motor Vehicle Repairers Act 2003*);

Name: Occupation: Position: Last appointment date: Length of service: Deputy to Member:	Ms Helen TAPLIN Member Financial Counsellors Resource Project Member 22 December 2004 to 30 June 2006 6 months Mr Rod STYLE
Name: Occupation: Position: Last appointment date: Length of service: Deputy to Member:	Ms Judy SEIF Lawyer Member 22 December 2004 to 30 June 2006 6 months Ms Miriam SAULEY

Name:	Dr Allan BARTON
Occupation:	Board Director Australian Consumers Association; Associate Professor in Chemistry at Murdoch University
Position:	Member
Last appointment date:	22 December 2004 to 30 June 2005
Length of service:	6 months
Deputy to Member:	Ms Rhonda ALGABA

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

Name:	Mr David MOIR
Occupation:	Executive Manager
Position:	Member
Last appointment date:	22 December 2004 to 30 June 2005
Length of service:	6 months
Deputy to Member:	Mr Chris ATKINSON

MEETINGS

During this period under review the Board met on twelve occasions. At five of those meetings the Board considered new licence applications, renewal applications, and policy issues. On five occasions the Board met to conduct Hearings about the fitness of licence applicants. The Board members also attended two training sessions

The first focussed on the role of the Board and its individual members including consideration of the Board's Code of Conduct, the Public Sector Code of Ethics and Public Sector Management Guidelines for Boards and Committees. The second training session focussed on developing and enhancing the skills of Board's members to deal with formal statutory hearings. Deputy members also attended these sessions.

Deputy Members normally attend meetings in a member's absence. However, a deputy member may sit on a Board licensing hearing on the same day that a licensing and policy meeting is held and attended by the Member. Members and Deputies are unable to sit in deliberation on a matter at the same meeting.

BOARD ACTIVITIES

ADMINISTRATIVE SUPPORT

MOTOR VEHICLES BRANCH

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

The commencement of operations of the State Administrative Tribunal (SAT) in January 2005 has resulted in the transfer of the Board's responsibility to conduct disciplinary hearings to the SAT. The Board will continue to determine applications for dealer, yard manager and salesperson licenses and, where appropriate, conduct Hearing's about an applicants suitability. Appeals against the Board's decision will no longer be brought before the Local Court. From 1 January 2005 applicants can request a review of the Board's decision through the SAT.

The commencement of the new Board's operations has provided impetus for a review of the procedures which were adopted from the former Motor Vehicle Dealers Licensing Board.

The Board has developed an induction/reference manual for all new members, re-written a code of conduct for members, developed new procedural guidelines for Board meetings and revised the documentation standards.

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. During this year the Legal Unit has developed new procedures to assist the Board to review and endorse applications to SAT.

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 (DPI). 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.

The Board commenced a review of the service delivery arrangements with DPI. The Board recognises the importance of the valuable work that DPI undertakes on its behalf and is committed to ensuring that the work is targeted and effective. DPI plays an important role in ensuring that the dealer stocks of used vehicles are of the good mechanical standard and the Board believes that the inspection program should focus on higher risk vehicles, particularly those that do not attract a statutory warranty.

MAJOR REVISION OF THE TRAINING COURSES FOR MOTOR VEHICLE DEALERS, YARD MANAGERS & SALESPERSONS

The Board and the Motor Trade Association of Western Australia (MTAWA) have identified deficiencies in the current training courses provided to both individuals and businesses wishing to obtain licences to enter the motor vehicle sales industry. The courses are run by the MTAWA and are based on manuals that were originally written by the Motor Vehicles Branch in 1993. The manuals were last revised in 2003 and endorsed by the former Motor Vehicle Dealers Licensing Board.

The *Motor Vehicle Dealers Act 1973* requires all persons applying for a licence to have “sufficient knowledge of the Act.” The Board has raised concerns with the MTAWA, about the effectiveness of the course material to meet the industry’s current requirements.

As a consequence a committee comprising of three senior officers of the Motor Vehicles Branch, two MTAWA officers and an industry member was formed in December 2004 to review the current training requirements and develop a new training scheme. A training course based on modules has now been developed and accepted by both the MTAWA and the Branch. Currently the course content for each topic is being drafted. Once complete the training course will be submitted to the Board for approval.

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.

The Board endorses the work that DOCEP and MTAWA have undertaken in developing both guidelines and the compliance framework which should provide for more consistency of practice in dealer advertising resulting in fairer competition.

PROACTIVE COMPLIANCE

The Proactive Compliance inspection program continued to build with a total of 167 inspections carried out to 30 June 2005. 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 22 December 2004 to 30 June 2005, the following prosecutions were commenced:

- On 3 June 2005, prosecution action was commenced against Rahman Abbas on a charge of unlicensed dealing. That matter is still before the Perth Magistrates Court and he is yet to enter a plea.
- On 3 December 2004, prosecution action was commenced against Victor Wasylewski on a charge of unlicensed dealing. He entered a plea of 'Guilty' in the Perth Magistrates Court on 29 June 2005, and was fined 5,000 and ordered to pay \$492 costs.

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.

In the Supreme Court in May 2005, DOCEP successfully appealed against the Magistrate's decision and the matter remitted to him for hearing. A date for a summary trial is yet to be set.

POCKET RACER COMPLIANCE PROGRAM

In late 2004 the staff of the Motor Vehicles Branch of DOCEP brought to the attention of the former Motor Vehicle Dealers Licensing Board the development of new retail market in the sale of miniature motor cycles, commonly known as "pocket racers" or "pocket rockets".

The community together with Western Australia Police and the Department for Planning and Infrastructure (DPI), expressed concern about the potential dangers about the sale 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 the dealers licence. In addition a campaign was conducted to ensure the public was informed about where these vehicles could be used legally.

This proactive approach to educating sellers and providing them with a range of options saw all but a minority compliant by December 2004.

In February 2005 the project was concluded by issuing ultimatums to those who had not complied, giving them a final opportunity to apply for a licence. To assist sellers of 'Pocket Racers,' on 2 March 2005 the Board endorsed the inclusion of the following condition on sellers' licenses;

“The licensee can engage in the sale of new miniature motor cycles and motorised scooters only; the licensee must not engage in consignment sales”.

Having regard to the category of licence, the Board also determined that applicants would be exempted from attending the Yard Managers/Dealers course conducted by the MTAWA, and further endorsed a the proposal that the licence be issued for a period of six months and for a pro-rata fee to be paid. The Board believes its approach reflected a more responsive but rigorous approach to regulating a changing motor industry. It allows for compliance with the Act, and also for those licensed sellers to surrender their licence, once their product line stock is extinguished, should they wish to do so.

INVESTIGATION PRACTICES AND PROCEDURES

During the first half of 2005, a review was undertaken to refine practices and procedures in relation to the investigation of complaints against unlicensed dealers. The Board notes that almost 75% of the compliance investigations undertaken by DOCEP relate to unlicensed dealing matters. The review is seeking to develop more effective means of targeting the investigation resources of the Motor Vehicle Branch by identifying matters of highest risk. The results of this review will see a more efficient and effective use of

resources by introducing target-orientated investigations. This will include a graduated level of sanctions to deal with those who commit technical offences, freeing staff to deal with those who are of serious concern to the industry.

This review process will be complete by August 2005.

DEALER AUDIT PROGRAMS

Forty six Consignment Trust Account audits were received in the period 22 December 2004 to 30 June 2005.

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)	18
Unqualified audits	23
Qualified audits	5
Total	46

The 5 qualified audit reports appear to report minor technical breaches. However assessment of these reports is still under way.

It was noted that a number of auditors did not have the audit report verified by a statutory declaration of the auditor, in the approved form as required under the *Motor Vehicle Dealers (Licensing) Regulations 1974*. Each of these auditors will be contacted and advised of the need to comply with the requirements of the Motor Vehicle Dealers Act and associated Regulations.

MOTOR VEHICLE REPAIRERS LEGISLATION

The *Motor Vehicles Repairers Act 2003* (MVRA) was passed through Parliament in 2003. The purpose of the MVRA is to increase consumer protection and enhance consumer confidence in the motor vehicle repair

industry by promoting high standards of repairs. The Act achieves this by creating a new Motor Vehicle Industry Board with additional powers to that of the previous Motor Vehicle Dealers Licensing Board, to regulate motor vehicle repairs.

The Motor Vehicle Dealers Licensing Board ceased operating on 21 December and the new Motor Vehicle Industry Board commenced on 22 December 2004.

In addition to assuming the role of the former Motor Vehicle Dealers Licensing Board as the licensing authority for motor vehicle dealers, yard managers, salespersons, in relation to repairers the new Board is empowered to:

- Licence businesses involved in the carrying out of any prescribed class of motor vehicle repair work;
- Certify individual repairers based on their qualifications and/or experience to undertake any prescribed class of repair work;
- Require licensees to ensure that repairs to motor vehicles are conducted by, or under the supervision of, certified repairers;
- Conciliate disputes between licensees and the owners of vehicles;
- Administer a compensation fund to compensate owners of vehicles who suffer loss in the event of repairer bankruptcy or insolvency; and
- Administer an Education and Research Fund to fund education or research or any other public purpose in connection with motor vehicle repair work.

Prior to the full implementation of the MVRA, the Regulations must be formulated. The Department of Consumer and Employment Protection has focused on developing the Regulations over the past 12 months. The Board is recognised as a key stakeholder and will play a pivotal role in the development of the Regulations.

One of the first requirements of the MVRA is to implement the certification of repairers, followed by licensing of repair businesses. In December 2004 DOCEP released an “Issues for Consideration” paper to key stakeholders, including this Board. The Board provided feedback and comments, which were used to develop an “Issues Paper regarding Certification of Motor Vehicle Repairers” in the first half of 2005.

DOCEP released its principal discussion paper *“Issues Paper regarding Certification of Motor Vehicle Repairers”* in May 2005 and the Board submitted its response to this paper in June 2005, providing feedback and

comment on the main issues and options proposed for 'classes of repair work', 'tradesperson qualifications', 'skills shortages', and 'tools and equipment' in relation to motor vehicle repairs.

POLICIES

The Board continued its commitment to policy review and development during this period. The Board has made some changes to the following key policies.

LAPSED APPLICATIONS

The Board agreed that an incomplete application for motor vehicle dealer, yard manager or salesperson licence will lapse three months from the date of application, if all required documentation has not been received.

APPLICATION BY DEALER TO SUSPEND OPERATIONS

The Board agreed that a dealer may apply to temporarily suspend the operations of their dealership for up to three months for the purposes/reasons of taking holidays/leave, acquiring new premises or extended illness. The dealer may make additional applications for extension, but in no circumstances will the Board grant suspensions totalling more than six months. If the dealer surrenders the licence and applies within a period of twelve months to recommence operations from the same premises, the dealer will not be required to submit the premises information or re-sit the dealer training course.

MANUFACTURERS

The Board has resolved to discontinue the unqualified requirement that a vehicle manufacturer must hold a motor vehicle dealers licence.

The primary purpose of the *Motor Vehicle Dealers Act 1973* is to regulate dealing in motor vehicles in Western Australia and to license dealers to ensure consumers are afforded a general level of protection.

It is the Board's view that its primary role is to regulate dealing in the context of retail sales, particularly the sale of second-hand vehicles. Motor vehicle manufacturers generally operate by selling their product to franchised dealers (new car dealers) without any direct dealings with members of the public.

In terms of manufacturers' obligations to consumers, the Board believes the public interest is protected by express manufacturer warranties, and implied warranties imposed by the *Fair Trading Act 1987* and the *Trade Practices Act*

1974, as a result of consumers entering a into a contract with the new car dealer. The public does not generally deal with the manufacturer in the purchase or warranty repair of the vehicle.

The Board is therefore of the view that manufacturers who do not engage in retail selling should not be required to hold a dealer's licence under the *Motor Vehicle Dealers Act 1973*.

The revised policy now states that:

"In Western Australia a motor vehicle manufacturer is not required to hold a motor vehicle dealer's licence provided:

- it does not engage in retail selling of vehicles in Western Australia;
- it does not sell motor vehicles directly to any member of the public other than a ***bona fide*** employee of the manufacturer; and
- it otherwise sells vehicles only to licensed motor vehicle dealers or trade-owners."

BOARD HEARINGS

FORMAL HEARINGS CONDUCTED BY THE BOARD IN THE 2004/2005 FINANCIAL YEAR

The Board conducted or finalised 5 hearings into the fitness of applicants or licensees to obtain or hold a licence under the *Motor Vehicle Dealers Act 1973*. Hearings are shown in the tables below in two categories - New Applications and Disciplinary Hearings.

New Applications

Five Hearings were conducted in relation to applications for new licences. The Board refused one applicant on the basis that the applicant had been convicted of offences that in the Board's opinion rendered the person unfit to be the holder of a licence.

New Applications¹	Approved	Refused/Pending
Dealers	1	
Yard Managers	2	
Salespersons	1	1
Total	4	1

TABLE OF HEARINGS

Name of Applicant / Licence Holder	Outcome
Christopher Bignell	Application for Dealers Licence granted
Troy Byfield	Application for Yard Managers Licence granted
Karl Healey	Application for Salespersons licence refused
David Steedman	Application for renewal of Yard Managers licence granted
Keenan John Haigh	Application for Salespersons licence granted

¹ This denotes where an Hearing 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.

LICENSING STATISTICS

Licensing data for the financial year (from 22 December 2004) is shown in the table below.

The Board notes that there has been no significant change in the number of dealers and licensed personnel since January 2000.

The recent increase in the number of dealers may reflect the strength of the current market.

Licence Type	Current as at 1 January 2000	Current as at 1 January 2005	Current as at 30 June 2005
Dealers	789	782	820
Car Market Operator	1	2	3
Yard managers	903	1001	898
Salespersons	1899	2090	1935

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