

Motor Vehicle Industry Board

Annual Report
2008/2009



Government of **Western Australia**
Department of **Commerce**

Motor Vehicle Industry Board

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**THE HONOURABLE TROY BUSWELL BEc MLA
TREASURER, MINISTER FOR COMMERCE, SCIENCE AND INNOVATION,
HOUSING AND WORKS**

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 2009.



Virginia Seymour
Chairperson

11 August 2009

1. Compliance with reporting standards

The Motor Vehicle Industry Board submits this Annual Report pursuant to the provisions of section 51 of the *Motor Vehicle Dealers Act 1973*.

The Motor Vehicle Industry Board is a body corporate established under an Act of the Parliament of Western Australia.

The Board is not empowered to raise revenue and is not directly funded by the State of Western Australia.

The Board is funded and provided with resources by the Department of Commerce, Consumer Protection division.

The Board does not have reporting obligations under the *Public Sector Management Act 1994* or the *Financial Management Act 2006*.

This Annual Report includes details of

- a) the number, nature and outcomes of:
 - i. investigations and inquiries undertaken by, or at the direction of, the Board; and
 - ii. matters that have been brought before the State Administrative Tribunal by the Board;
- b) the number and nature of matters that are outstanding [from (a)];
- c) any trends or special problems that have emerged;
- d) forecasts of workload of the Board for the next financial year; and
- e) proposals for improving the performance of the Board's functions.

2. Executive summary

The Motor Vehicle Industry Board's mission is to administer licensing, registration and other functions in respect of businesses operating in, and persons working in, motor vehicle dealing and motor vehicle repair industries.

A focus of the Board in this reporting year has been the implementation of the licensing system for motor vehicle repair businesses, and the continuing implementation of the system of certifying motor vehicle repair tradespersons, under the *Motor Vehicle Repairers Act 2003*.

The repair business licensing provisions (Part 2) of the *Motor Vehicle Repairers Act 2003* commenced on 1 July 2008.

The Board is again disappointed with the poor response of industry to the new licensing system. As at 30 June 2009, only 2100 of an expected 7500 repair business applications, and 6250 of an expected 10000 individual certification applications had been received.

The Board, with the support of the Department of Commerce, has continued with activities aimed at encouraging industry compliance. These have included a continuing program of seminars about the new law, working with industry, particularly the Motor Trade Association of Western Australia, to publicise the law, increasing the circulation of the Board newsletter and direct approaches to repair businesses by providing application forms.

The Board has endorsed a new compliance strategy proposed by the Department of Commerce which will focus initially on direct contact with traders to promote the regulatory scheme, followed by compliance activities which will involve infringement notices and prosecutions.

The Board is again pleased to note the success of its dealer liaison and inspection programs. Under these programs all new motor vehicle dealers are visited by Board inspectors within three months of commencing business and all dealer operations including vehicles displayed for sale are subject to an inspection at least every two years.

The latter program, which provides some assurance of quality and safety in the fleet of vehicles sold by dealers, targets all metropolitan and regional dealers, and was completed in just over 18 months, six months earlier than anticipated. Particularly pleasing to the Board is the continuing positive feedback received from dealers.

During this year the Board adopted a risk oriented approach to compliance issues within the motor vehicle dealing industry. The early focus of this approach, in addition to assistance provided to newly established motor

vehicle dealers, was the development and implementation of audit guidelines for those dealers required to operate consignment trust accounts. The Board has endorsed a new audit strategy and altered the compliance reporting year to better reflect the operational requirements of dealers.

The Board has also made significant progress in revising or developing procedures and policies which reflect the Government's desire to reduce 'red-tape' for small business.

3. About the Board

3.1 Legislative charter

The Motor Vehicle Industry Board is established under the *Motor Vehicle Dealers Act 1973* (as amended). The Board has the functions, powers and duties conferred on it by both the *Motor Vehicle Dealers Act 1973* and the *Motor Vehicle Repairers Act 2003*.

3.2 Mission

The Board has defined its mission as:

- To administer licensing, registration and other functions in respect of businesses operating in, and persons working in, both the motor vehicle dealing and motor vehicle repair industries.
- To regulate dealing in new and second hand motor vehicles.

3.3 Functions of the Board

The Board's key functions in relation to the motor vehicle dealing industry are to:

- license appropriate entities to carry on business in the motor vehicle dealing industry;
- license dealers, yard managers and salespersons to work in the motor vehicle dealing industry;
- deny unfit entities and persons access to the motor vehicle dealing industry;
- investigate the conduct of licensed entities and individuals within the motor vehicle dealing industry to determine if that conduct should be reviewed by the State Administrative Tribunal;
- investigate the conduct of unlicensed entities and individuals and, if necessary, recommend prosecution action;
- ensure the registration and maintenance of appropriate facilities by licensed entities;
- approve training courses for persons seeking entry to the motor vehicle dealing industry; and
- approve persons who provide those training courses.

The Board's functions in relation to the motor vehicle repair industry are to:

- license appropriate entities to carry on business in the motor vehicle repair industry;
- certify persons to work in the motor vehicle repair industry;
- deny unfit entities and persons access to the motor vehicle repair industry;
- investigate the conduct of licensed entities and individuals within the motor vehicle repair industry to determine if that conduct should be the subject of inquiry by the Board;
- investigate the conduct of unlicensed entities and individuals and, where necessary, recommend prosecution action;
- ensure the registration and maintenance of appropriate facilities by licensed entities;
- make recommendations to the Director General of the Department of Commerce regarding claims against the Motor Vehicle Repair Industry Compensation Account;
- make recommendations to the Director General of the Department of Commerce regarding application of the Motor Vehicle Repair Industry Education and Research Account;
- approve training courses for persons seeking entry to the motor vehicle repair industry; and
- approve persons who provide those training courses.

3.4 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*. The Governor will make all appointments to the Board based on nominations made by the Minister for Consumer Protection. 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:	Ms Virginia SEYMOUR
Occupation:	Lawyer
Position:	Chairperson
Appointment period:	4 November 2008 to 3 November 2011
Deputy to Chairperson	Mr David MOIR (ended 30 September 2008) Ms Miriam Sauley from 4 November 2008
Length of service:	4.5 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.

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

Name:	Mr Robert PEARCE
Occupation:	Company Director and licensed motor vehicle dealer
Position:	Member
Appointment period:	4 November 2008 to 3 November 2011
Deputy to member:	Mr Colin ROCKMAN
Length of service:	4.5 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.
Name:	Mr Lance Douglas KERR
Occupation:	Company Director and licensed motor vehicle dealer.
Position:	Member
Appointment period:	1 September 2007 to 31 August 2010
Deputy to member:	Mr Robert FOWLER
Length of service:	4.5 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.

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

Name: Occupation: Position: Appointment period: Deputy to member: Length of service:	Mr Patrick BROWNE Company Director and certified repairer Member 4 November 2008 to 3 November 2011 Mr Brian FORBES (ended 30 September 2008) Mr Matt NEGUS from 4 November 2008 4.5 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.
Name: Occupation: Position: Appointment period: Deputy to member: Length of service:	Mr Wayne PHIPPS Company Director and certified repairer Member 1 September 2007 to 31 August 2010 Mr Ray Reichard 4.5 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.

- 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: Appointment period: Deputy to member: Length of service:	Ms Helen TAPLIN Member Financial Counsellors Resource Project Member 4 November 2008 to 3 November 2011 Ms Diane HAYES 4.5 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.
Name: Occupation: Position: Appointment period: Deputy to member: Length of service:	Ms Miriam SAULEY Lawyer, Dept for Planning and Infrastructure Member 4 November 2008 to 3 November 2011 Ms Jo GHIRARDI 4.5 years First appointed as a deputy member of the Motor Vehicle Industry Board 22 December 2004.

Name:	Dr Allan BARTON
Occupation:	Member Policy Advisory Group, Australian Consumers Association; Emeritus Professor in Chemistry at Murdoch University
Position:	Member
Appointment period:	1 September 2007 to 31 August 2010
Deputy to member:	Ms Rhonda ALGABA
Length of service:	4.5 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.

EXPIRED APPOINTMENT	
Name:	Ms Judy SEIF
Occupation:	Lawyer
Position:	Member
Appointment:	Ended 30 September 2008
Deputy to member:	Ms Miriam Sauley
Length of service:	3.75 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.

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

Name:	Ms Karen CARRIERO (resigned May 2009)
Occupation:	Deputy General Manager (Membership)
Position:	Member
Appointment period:	4 November 2008 to 3 November 2011
Deputy to member:	Mr Adrian FIRTH
Length of service:	6 months First appointed as a member of the Motor Vehicle Industry Board 4 November 2008.

EXPIRED APPOINTMENT	
Name:	Mr David Moir
Occupation:	Previously, Executive Manager
Position:	Member
Appointment period:	Ended 30 September 2008
Deputy member:	Mr Michael Upton
Length of service:	3.75 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.

3.5 Meetings

During this period under review the Board met on 14 occasions. At those meetings the Board considered new licence applications, renewal applications, and policy issues. The Board conducted 12 Hearings about the fitness of licence applicants.

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 deputy members are unable to sit in deliberation on a matter at the same meeting.

3.6 Administrative support - Motor Vehicles Branch

The Department of Commerce, through the Motor Vehicles Branch, continues to provide the Motor Vehicle Industry Board with administrative support.

The Board's primary function of licensing motor vehicle dealers, yard managers, salespersons and repairers is supported by a team within the Motor Vehicles Branch.

In addition the Branch provides a secretariat to the Board comprising the Manager of the Branch who also undertakes the role of Board Secretary, a Policy Officer, a Licensing Coordinator and a Board Minute Secretary to ensure that Board business is conducted in a planned and efficient manner.

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

4. Significant issues and trends

4.1 Focussing on the motor vehicle dealing industry

4.1.1 Regional compliance activities

As part of the service delivery agreement with the Motor Vehicles Branch of the Department of Commerce, the Board requires that all licensed motor vehicle dealers throughout Western Australia be visited as part of the Dealer Inspection Program.

During 2008/2009 officers continued to visit licensed dealers in regional locations. Visits were made to the southern regions of Busselton and Albany, as well as the Kimberley towns of Kununurra, Halls Creek, Derby and Broome. Officers also joined other Consumer Protection staff for a Departmental visit to Esperance in May 2009, focusing on educational and compliance activities.

As this was the second time that dealers in these regions had been visited, it was anticipated that dealerships would have a high level of compliance. For the most part, this was the case, with only a small number of dealerships having issues requiring further investigation.

In total **202** regional dealers have been visited, with officers inspecting a total of **2686** vehicles, issuing **40** Work Orders and **38** Minor Defect Notices.

Officers also continued to promote the implementation of the *Motor Vehicle Repairers Act 2003* as part of the regional program, conducting information seminars in regional centres for motor vehicle repairers.

4.1.2 Dealer Trust Account Audit Program

Motor vehicle dealers who undertake consignment sales are required to hold proceeds from the sale of those vehicles in consignment trust accounts and are required to have their trust accounts audited annually. This audit report must be lodged with the Board within three months of the end of the audit period. If no transactions have been made in the trust account during the period, a statutory declaration to this effect is to be submitted to the Board.

During the year the Board endorsed a set of Guidelines for Auditors of motor vehicle dealer consignment trust accounts. These Guidelines

are intended to assist auditors in undertaking and preparing audit reports.

During the year the Board determined that the audit period of 1 April to 31 March each year should be changed to ensure consistency with other provisions of the legislation, and to better fit with the operational requirements of dealers. The Board introduced a new audit period of 1 January to 31 December of each year. In future years audits will be due by 31 March the following year.

As a consequence the Board has reviewed two sets of audit reports for this financial year.

For the audit period of 1 April 2007 to 31 March 2008, under which audits were submitted by 30 June 2008, the Board noted two areas of concern. First, there was a significant number of technical compliance issues identified including the format of reporting and statutory declarations by auditors, appropriate auditor appointments and minor technical matters relating to the charging of bank fees to the consignment trust account. In relation to this the Board has developed trust account management and audit guidelines for dealerships.

Secondly, the Board was also concerned about the lack of timeliness in the submission of audits and a number of dealers were issued with formal cautions to ensure future completion and submission of audit reports within the approved time-frames.

The following table outlines the audit documentation for the audit period 1 April 2007 to 31 March 2008:

Statutory Declarations (used where there have not been any transactions through the consignment trust account for the period)	31
Unqualified audits	46
Qualified audits	1
Total	78
Warnings Issued	19

Note: Qualified audits refer to audit reports received which identify serious issues (e.g. misappropriation of trust monies). For the audit period 1 April 2007 to 31 March 2008 only one audit report was received which identified issues of this nature, whereby deposits in respect of consignment sales were not banked to the trust account. However, upon further investigation it was identified that these deposits were remitted to the consignor and the issue was considered to be of a technical nature.

Audits that identified minor technical issues were not classified as qualified audits.

For the audit period ended 31 December 2008 **69** dealerships were required to lodge audit reports or statutory declarations by 30 June

2009. The following table outlines the audit documentation received as at 30 June 2009:

Statutory Declarations received by 30 June 2009 (used where there have not been any transactions through the consignment trust account for the period)	26
Audits received by 30 June 2009	33

There were no major issues identified with matters arising generally being of a technical nature. In future audit periods, the focus will be on minimising technical issues through compliance action, especially where these issues have arisen repeatedly in prior years.

4.1.3 Dealer inspection program

Having commenced on 1 February 2007, the Dealer Inspection Program is now in its second year of operation.

In keeping with the priorities determined by the Board, the program focused on visiting all new dealerships within the first three months of operation to provide introductory advice and assistance. In addition, the program has also focussed on vehicle safety inspection at yards selling older, cheaper vehicles, which are not protected by the warranty provisions of the *Motor Vehicle Dealers Act 1973* and are therefore considered to be a higher risk to the consumer in terms of vehicle roadworthiness.

Where a vehicle is found at inspection to be unsafe or un-roadworthy, officers have issued an 'Order to Remedy Defects' and attached an 'Unfit for Sale' notice, commonly known as the 'green sticker'. These vehicles were subsequently subject to reinspection at a Department for Planning and Infrastructure licensing centre to have the notice removed. If a defect is considered not to be of a serious nature, the officers may issue an administrative 'Minor Defect Advice Notice'.

A 'Minor Defect Advice Notice' audit program was also implemented where Officers reinspected randomly selected vehicles at dealer's premises that have previously been issued with the administrative notice, to ensure that the defects noted have been repaired. Should the fault not have been rectified, and the dealer has no legitimate reason for the work not having been completed, then the officers will issue an 'Order to Remedy Defects' as a result.

The auditing of 'expired or surrendered' dealers licences continues to form part of the program with officers attending at the premises of

dealers whose licenses had either expired or been surrendered. This is in order to verify that the dealerships had actually ceased trading.

In January 2009, the program was expanded to focus on dealers who engage in consignment sales and therefore operate consignment trust accounts. As part of these visits officers examine consignment transactions and review the trust account and related records to ensure the provisions of the *Motor Vehicle Dealers Act 1973* have been complied with.

Currently, there are **917** authorised dealer's premises, of which **658** are located within the metropolitan area and **259** throughout regional Western Australia.

In the twelve months to 30 June 2009, a total of **540** dealers have been visited, with officers inspecting a total of **7203** vehicles, issuing **87** Work Orders and **98** Minor Defect Notices.

Common problems encountered by officers in the dealership inspections include the following:

- The failure of dealers to maintain the dealer's register in the current prescribed form;
- The failure of yard managers/salespersons to provide notification of the change of employment and dealerships not notifying the Department of changes in staff;
- Dealers not ensuring that licence numbers are contained in advertisements (including television and radio advertisements);
- Dealers who have vehicles displayed for sale on premises which are not authorised (e.g. premises located next door or adjacent to the licensed premises).

Officers have also continued to deliver the 'Motor Vehicle Repairers Information Sessions' as part of the education program designed to implement the requirements of the *Motor Vehicle Repairers Act 2003*. In total, **30** presentations have been delivered throughout metropolitan and regional Western Australia.

The Dealer Inspection Program as a whole continues to be well received by dealers and the program will continue to be delivered State-wide, with the view to dealers being subject to a visit every two years.

4.1.4 Investigations and Proceedings

This year saw the continuation of investigations into a range of breaches against current legislation including the *Motor Vehicle Dealers Act (1973)*, the *Fair Trading Act (1987)* and the *Consumer Affairs Act (1971)*.

Some proceedings which had been commenced in the 2007/2008 financial year were brought to conclusion:

- **Albert and Winifred Gallop**

In October 2008, the Commissioner was successful in using her powers to defend the action being taken against Mr and Mrs Gallop, residents of Bunbury, WA, by NSW licensed motor dealership Hunter Valley Coaches Pty Ltd, t/as Murphy's Commercials.

The action came about through the purchase of a converted camper bus for \$45,000 by the Gallops in 2005 from an agent of the NSW dealer, unaware that the vehicle was registered to the NSW dealer.

The dealer, and the finance company who had part-leased the vehicle, then commenced proceedings against the Gallops to have the vehicle returned. However as the seller of the vehicle was the dealer's agent, the Commissioner defended the action on the basis that the dispute was one between the dealer, and the agent.

The matter settled out of court with the two companies ceasing their claim, and the Gallops ceasing their counter claim for damages. The settlement saw the Gallops keep the converted campervan-style bus.

- **Candice Jones**

In November 2008, the Commissioner was successful in using her powers to achieve an out of court settlement between Mrs Candice Jones, and Dubove Pty Ltd, t/as Esprit Autos. The dispute involved the purchase of a 1979 Jaguar XS Coupe which broke down the same day as being purchased, and which the dealership refused to repair.

Although the vehicle did not attract a statutory warranty under the *Motor Vehicle Dealers Act (1973)*, implied warranties under the *Fair Trading Act (1987)* relating to 'merchantability' of goods, still apply. As the breakdown of the vehicle was due to a corroded head that caused the head gasket to leak, a

problem that existed at the time the vehicle was purchased, the dealer is required to ensure vehicles are safe and in good mechanical order, regardless of statutory warranties.

Another matter brought to conclusion in the courts this year was:

- **Michael Holmes t/as WA Auto Wholesalers**

In November 2007, Mr Holmes pleaded 'Not Guilty' to the allegations of unlicensed dealing, and false and misleading representations.

Mr Holmes was previously licensed between 2000 and 2005, but carried on his business as a dealer despite being denied a renewal of his licence in 2006.

In November 2008, Mr Holmes changed his plea and the Perth Magistrate's Court found Mr Holmes Guilty of the offence of unlicensed dealing. Mr Holmes was fined \$5000 and ordered to pay \$7000 in costs for dealing in motor vehicles whilst not being the holder of a valid motor vehicle dealer's licence.

Unlicensed dealing continues to be a concern in WA, and a number of persons and business entities alleged to have been involved in 'unlicensed dealing', as defined in the *Motor Vehicle Dealers Act (1973)*, were investigated by the Investigations Team of the Motor Vehicles Branch during the year.

In addition, during the past year prosecution action was also commenced against the following alleged 'backyard dealers'. These include:

- **Musa Jamal Al-Din**

As a result of an investigation undertaken, in May 2009 prosecution action was commenced against Mr Musa Jamal Al-Din on a charge of unlicensed dealing. In June 2009, the Perth Magistrate's Court fined Mr Jamal Al-din \$2000, and ordered him to pay \$308 in costs. A spent conviction order was handed down by the Magistrate.

The following unlicensed dealing matters are still before the Courts:

- **James Basha Tewa Lofa**

In May 2009, prosecution action was commenced against Mr James Basha Tewa Lofa.

This matter has been adjourned until 10 July 2009 in the Perth Magistrate's Court.

- **Brian Buttsworth/P.C. Consultants (WA) Pty Ltd**

In May 2009, prosecution action was commenced against Mr Brian Buttsworth and his company P.C. Consultants (WA) Pty Ltd.

This matter was adjourned.

4.2 Focussing on the motor vehicle repair industry

4.2.1 Motor vehicle repairers legislation

The repair business licensing provisions (Part 2) of the *Motor Vehicle Repairers Act 2003* commenced on 1 July 2008.

The focus of the Board in this reporting year has been the implementation of Part 2, and the continuing implementation of Part 3, of the *Motor Vehicle Repairers Act 2003*. Under this legislation the motor vehicle repair industry is regulated by means of a licensing system for repair businesses and a certification system for individual repairers who do repair work unsupervised or who supervise repair work.

In this second stage of the implementation process the *Motor Vehicle Repairers Act 2003* allowed a 12 month transitional period, ending 30 June 2009, for motor vehicle repair businesses to apply for their licence.

Unfortunately there was a very slow take-up of repair business licensing and in December 2008 the Motor Vehicle Industry Board surveyed the motor vehicle repair industry to find out why so few business licence applications had been received to date. The research found that while most repair businesses were aware that they needed to be licensed by 30 June 2009, many businesses put off applying because of the time and cost involved in obtaining proof of local council planning approval (planning certificates).

In response to concerns of industry, the Minister for Commerce, the Hon Troy Buswell, BEc MLA, obtained cabinet approval to exempt motor vehicle repair businesses that had been operating before 1 July 2008, from having to provide a planning certificate in their application for a business licence.

The proposal for an exemption was gazetted by the Government on 1 April 2009 and licence applicants were asked to submit their applications without planning certificates. Repair businesses were

encouraged to apply as soon as possible to ensure they had their licences by the 30 June deadline.

Consistent with this reduction in 'red-tape', the Motor Vehicle Industry Board also announced changes to business licence application requirements for motor vehicle repairers. The Board determined that licence applicants were no longer required to submit photographs or site plans of their premises with their applications.

Although the Board expected to receive more than 7000 applications this financial year, at 30 June 2009, **2100** motor vehicle repair business licence applications had been received.

At 30 June 2009 **6250** certification applications for individual tradespersons had been received by the Board.

4.2.2 Motor Vehicle Repair Industry Compensation Account and Motor Vehicle Repair Industry Education and Research Account

The Motor Vehicle Repair Industry Compensation Account and Motor Vehicle Repair Industry Education and Research Account are funds established under the *Motor Vehicle Repairer's Act 2003*.

The purpose of the Compensation Account is to permit owners of vehicles which have been repaired incompetently or incompletely, and who have exhausted normal avenues of redress, to apply for compensation which may be approved by the Director General of the Department of Commerce on the recommendation of the Board.

The Board has received legal advice and is currently considering the Motor Vehicle Industry Compensation Account Administrative Procedures for processing claims against the account.

The purpose of the Education and Research Account is to provide means to finance certain education, research or other public purpose projects in relation to the repair industry. The Board can recommend approval of projects to the Director General of the Department of Commerce.

Each of these funds are credited with one percent of the application fee for a Motor Vehicle Repairer's Certificate, and one percent of an application fee for, or renewal of, a Motor Vehicle Repair Business Licence.

The Board believes that at the end of the first licensing year each fund should hold in excess of \$30000. At 30 June 2009, the balances held by these funds were as follows:

Fund:	Balance as at 30 June 2009
Motor Vehicle Repair Industry Compensation Account	\$9686
Motor Vehicle Repair Industry Education and Research Account	\$9686

4.3 Regulating for results - policy development

The Board has continued its strong commitment to policy review and development because it believes that clear and concise policy statements provide transparency in the application of statute based regulatory systems. Well developed policies can also recognise circumstances not contemplated when legislation is framed and provide practical solutions to problems confronted by the regulated industry.

Throughout most of this financial year much emphasis was again placed on developing policies relating to the implementation of the motor vehicle repairer's legislation.

The Board also understands that the process of developing new regulatory legislation will not identify all of the issues in the operational environment and therefore uses policy to explain how the law will apply to those unforeseen problems.

The Board also continued its review and update of its policies relating to the application of the *Motor Vehicle Dealers Act 1973*.

The key policies which have been developed or reviewed in the year under review are summarised in this section.

4.3.1 Motor vehicle repairers policies

Certification of caravan repairers

The Board recognised that there are no specific training courses or apprenticeships for caravan repairers. Also, the *Motor Vehicle Repairers Act 2003* does not define a separate class of repair for caravan repair work. However, it is necessary for these repairers to have a range of skills which are usually gained through years in the industry. The classes of Body Building Work (BBW), Heavy Vehicle

Work (HVW) and/or Light Vehicle Work (LVW) are considered to be the appropriate classes for a person to hold in order to qualify for conducting repairs to caravans.

There are also specialist repairers in the industry who may need a restricted condition on their certification and/or licence.

Persons may undertake repairs to caravans if they hold the Certificate III classes LVW, HVW, or BBW. Persons may also carry out general repairs to caravans if they satisfy the requirements for a restricted Body Building Work (BBW) certificate as detailed below.

Applicants who do repair work in the Caravan industry are often not qualified in a field of motor vehicle repairs, but have skills learned from trades as diverse as electrical work, carpentry, gas fitting, and on occasions, welding fabrication and body building.

The work undertaken in the caravan repair trade encompasses aspects of body building, automotive electrical, carpentry, accessory fitting, trimming, glazing, suspension and brake work (underbody) and gas fitting.

A person who undertakes specialist repairs may be granted a certificate in one or more of the following classes depending on their qualifications and/or experience.

<u>Repair role</u>	<u>Classes of repair work required</u>	<u>Qualifications or experience</u>	<u>Conditions to be applied to certificate</u>
General caravan repairs	LVW, HVW, BBW	Certificate III trade certificate or 10 years experience in LVW, HVW, or BBW	Nil
General caravan repairs	BBW (restricted)	4 years experience in general caravan repairs, or any other Certificate III and one years experience	BBW restricted to 'Caravan and trailer repairs only'
Specialist caravan repairs	Any one or more of EAF, MAF, UNW, GLW and TFL	Specialist Certificate II trade certificate or 4 years experience	Nil
Caravan Trimming	TRI (restricted)	2 years experience in general caravan trimming	TRI restricted to 'Caravan and trailer repairs only'

Certification of RAC battery fitters

The Board approves certification of battery installers employed by RACWA with the class of repair work 'Electrical Accessory Fitting' (EAF) with the condition that it is restricted to **battery testing and installation only**.

RACWA is now employing contactors to carry out their mobile battery replacement service which operates 24 hours a day, seven days a week. Generally the installers have little prior mechanical knowledge therefore the RACWA holds 'in-house' training prior to these installers being allowed in the field. RACWA has also engaged the Institute of Automotive Mechanical Engineers (IAME) to carry out industry specific training and assessment program targeted to battery testing and installation.

The *Motor Vehicle Repairers Act 2003* requires any person who carries out unsupervised repairs to obtain individual certification. As the Battery Service being offered by RACWA is a mobile service, all of the installers would fall into this category. RACWA is seeking to have all of its installers certified to comply with this legislative requirement.

Credit History Reports – Repair Business Licence and Dealer Licence Applications

The Minister for Commerce has requested that, where possible, all government agencies reduce 'red-tape' for small businesses.

Credit History Reports are one part of the financial assessment for applicants for motor vehicle dealer and repair business licences. Since 2007 business licence applicants have been required to submit credit history reports to facilitate an assessment of the viability of a business.

Applicants for a Motor Vehicle Dealer's Licence or a Motor Vehicle Repair Business Licence were required to provide a credit history report for each sole proprietor, partner, and where the applicant is a corporation, reports for both the directors and the corporation. A number of corporate licence applicants are new corporations with little or no credit history.

Directors are generally not responsible for the debts of a corporation and therefore a credit history report for a director at the time of the renewal of a licence probably offers little beneficial information.

The Board amended the financial assessment policy to reflect the following requirements for both Motor Vehicle Dealer and Motor Vehicle Repair Business licensing:

Sole Proprietor or Partner on first application and renewal

- A credit history report is required for each individual proprietor or partner.

Director and/or Company on first application

- If a company has been established fewer than 12 months, a credit history report is only required for each director, not the company.
- If a company has been operating for greater than 12 months, a credit history report is required for the corporation only.

Director and/or Company on renewal application

- A credit history report **is not** required for each director.
- A credit history report is required for the corporation that holds the licence.

4.3.2 Motor vehicle dealers policies

Dealers storage yards for new vehicles need not be authorised premises

The Board has reviewed its policy on the storage of vehicles at authorised premises and has reaffirmed that storage of **new vehicles only** can be at premises other than premises authorised by the Board.

The Board notes that section 27 (3) of the *Motor Vehicle Dealers Act 1973* (MVDA) requires, “that a dealer, or a yard manager or salesperson acting on behalf of the dealer shall not cause **a second-hand vehicle** to be kept or parked elsewhere than at the authorised premises”. This provision does not extend to new vehicles and as a consequence new vehicles can be located in storage yards which are not authorised (approved) by the Board.

However, the Board considers that under no circumstance may second hand vehicles be stored anywhere other than at the dealer’s authorised premises except in a limited number of circumstances as detailed below.

It is an offence against the Section 27 of MVDA to store a second-hand vehicle away from authorised premises. The penalty is \$5000.

Sub-section (4) of s27 of the MVDA provides that it is a defence to any prosecution if it can be shown:

1. That a vehicle was kept at a residence or place of work of a prospective purchaser for the purpose of showing it to that prospective purchaser; or
2. That it was not displayed or offered for sale from alternative premises; or
3. That it was not kept elsewhere for the purpose of avoiding the provisions of the MVDA.

Interim authorisations for salespersons and yard managers

An applicant for a yard manager or salespersons licence may be issued with an interim authorisation (permit) to engage in selling motor vehicles prior to the issue of a licence in certain circumstances.

However, the Board has been concerned to ensure that the issue of an interim authorisation was not seen by industry as a 'right', and therefore a person of questionable character will be refused an interim authorisation until the application has been considered by the Board.

The Board amended this policy to provide that an Interim Authorisation will **not** be issued unless an applicant has submitted all documentation other than notification of success on the MTAWA training course.

An interim authorisation may be issued to an applicant for a yard manager or salesperson licence who at the time of submitting their application has:

- Properly completed and answered the character questions in the application form.
- Ensured the employer statement in the application form is completed or provides a letter from the prospective employing dealer.
- Paid all fees.
- Provided a current National Police Clearance Certificate;
- Applied for and paid for, but not yet attended, an approved course of training.
- A minimum of two years previous experience as a manager or salesperson in a vehicle dealership in order to gain a yard manager's interim authorisation.

Where the National Police Certificate discloses criminal convictions which would cause the Board to question whether the applicant is of good character and repute and a fit and proper

person to hold a licence, an interim authorisation may only be issued with the approval of the Chairperson.

Where the applicant has been resident in Australia for fewer than three years, they will need to provide a police certificate from their last country of long term residence. An interim authorisation may be issued provided the applicant has declared in their application that they have no convictions involving a term of imprisonment.

All interim authorisations will be issued with the following conditions:

1. The holder shall be subject to close supervision by the licensed employing dealer or yard manager.
2. The holder may act as a yard manager/salesperson only with the employing dealer named in the authorisation.

The authorisation shall state that the authorisation is not transferable.

The authorisation shall state that the Board must be notified if the employment arrangement ceases.

Period of authorisation

Interim authorisations will normally be granted for a period expiring 14 days after the nominated date for the applicant to undertake their training course.

Where the applicant is based in regional Western Australia or where the applicant has been unable to secure a date to undertake the training program, an interim authorisation shall be issued for a period no greater than 90 days.

The Secretary may grant or renew an interim authorisation for a period of up to six months where the circumstances justify such an extension. (For example, an applicant may have difficulty obtaining police documents from overseas.)

Staffing of dealerships – directors and partners engaged in day-to-day operations of dealerships

A director of a corporation which holds a dealer's licence cannot be engaged by the licence holder to undertake the duties of dealer, yard manager or salesperson without the approval of the Board. Generally the Board will require such a person to have completed the training course offered by MTAWA.

Given feedback from the industry, the Board reviewed its policy regarding directors and partners engaged in day-to-day operations of a dealership in order to differentiate between sales duties and management duties.

The Board resolved that the following conditions will be endorsed on the licence of the dealer:

- (1) For directors/partners who have **not** passed **any** approved training course, the condition is:

"<Name> is not to engage in the buying or selling of vehicles without prior approval of the Board."

In this instance, the director or partner is required to submit a letter to the Board with their application asking to be exempt from completing the course as they do not have any dealings with the day-to-day running of the business.

- (2) For directors/partners who **have** passed an approved salesperson training course, **but have not** passed the dealer/yard manager training course, the condition is:

"<Name> is not to undertake the duties of dealer or yard manager without prior approval of the Board."

This condition would allow the said director or partner to buy and sell vehicles.

Special Occasion Permits

Under section 20H of the *Motor Vehicle Dealers Act 1973* the Board may approve the issue of a temporary permit for dealers carrying on business at a special occasion. A permit may be issued if the Board is satisfied that the following conditions will be met:

1. An application has been made by the dealer, or on behalf of a dealer, by the organiser of the event.
2. The prescribed fee has been paid.
3. The special occasion is for a limited period.

The Board considers special occasions to include agricultural shows, annual vehicle exhibitions, fund raising events or similar.

Static Displays of new or used vehicles – not located at authorised premises

The Board has developed new guidelines for industry to deal with static displays of motor vehicles.

The display of motor vehicles for the purposes of advertising (commonly known as static displays) is not prevented by the *Motor Vehicle Dealers Act 1973*, provided there are no dealership staff in attendance at the display. A static display of a motor vehicle, where no staff are present, does not constitute 'carrying on business' but is a form of advertising, and is regulated under the Act by the requirement to display the dealer's trading name and licence number.

However, static displays of used vehicles may only occur during hours other than the normal hours of business for a motor vehicle dealer because Section 27 of the Act prohibits the parking or keeping of **second hand** vehicles at locations other than authorised premises during the normal hours of business of a motor vehicle dealer.

In the case of used vehicles, static displays must incorporate the following information:

- Dealer trading name and licence number.
- A Form 4 in the window of the vehicle displayed, containing the vehicle's registration number, cash price and year of manufacture and the dealer's normal trading address.

5. Board statistical data

5.1 Investigations undertaken at the direction of the Board

Under section 13A of the *Motor Vehicle Dealers Act 1973* the Board has the power to make inquiries and appoint investigators for the purposes of determining applications before the Board or determining whether disciplinary action should be taken against a licensee.

However, as the Board works closely with the Department of Commerce, the Board rarely exercises this power as most matters requiring investigation are referred directly to the Department. On completion of the investigation, where disciplinary or prosecution action is required, the Department informs the Board.

In the reporting year the Board directed that one matter be investigated with a view to disciplinary action before the State Administrative Tribunal being considered. In this matter a licensee has been convicted of corruption related offences. The Board is of the view that the actions of the licensee may constitute conduct which may render the person unfit to hold a licence and pending completion of the investigation it may be appropriate for the matter to be referred to the State Administrative Tribunal for a determination. Investigations are continuing.

5.2 Formal hearings conducted by the Board

The Board conducted or finalised 12 hearings into the fitness of applicants or licensees to obtain or hold a licence under the *Motor Vehicle Dealers Act 1973* or *Motor Vehicle Repairers Act 2003*.

The Board refused one new applicant on the basis that the applicant did not satisfy the Board that he was a person of good character and repute and a fit and proper person to be the holder of a licence.

Type of Application ¹	Approved	Refused
Dealer	1	-
Exemption	-	-
Yard Manager	-	-
Salesperson	6	1
Repairer	4	-
Total	11	1

¹ This denotes where a 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.

Table of hearings:

Name of Applicant / Licence Holder	Outcome
Allan Boon	Application for Salesperson's Licence Granted
Roger Malagas	Application for Salesperson's Licence Granted
Kimberley Read	Application for Dealer's Licence Granted
Julio Gonzalez	Application for Salesperson's Licence Refused
Daniel Woodward	Application for Salesperson's Licence Granted
Paul Trout	Application for Salesperson's Licence Granted
Andrew Philip	Application for Repairer's Certificate Granted
Matthew Johnston	Application for Repairer's Certificate Granted
Jean-Michel Mungar	Application for Salesperson's Licence Granted
Joshua Shannahan	Application for Salesperson's Licence Granted
Daniel Triscari	Application for Repairer's Certificate Granted
Ian Smith	Application for Repairer's Certificate Granted

5.3 Licensing statistics

Licensing data for the financial year is shown in the table below.

Licence Type	Current as at 30 June 2006	Current as at 30 June 2007	Current as at 30 June 2008	Current as at 30 June 2009
Dealers	860	821	791	805
Car Market Operators	3	3	2	2
Yard Managers	1089	1025	1073	1065
Salespersons	2244	1988	2073	1953

Exemption from holding a dealer's licence for Auctioneers	12	9	7	2
Exemption from holding a dealer's licence for Financiers	46	44	33	12
Exemption from holding a dealer's licence for Hire Car Operators	46	58	56	52

Certified Motor Vehicle Repairers	n/a	209	2755	5125
Licensed Motor Vehicle Repair Businesses	n/a	n/a	n/a	669

6. Compliance with public sector standards and ethical codes

The Motor Vehicle Industry Board operates in accordance with a Code of Conduct.

The Code of Conduct is based on the 'Western Australian Public Sector Code of Ethics', which is applicable to nearly all public sector bodies and their employees, including all boards and committees established for a public purpose under Western Australian legislation. Accordingly all boards, including the Motor Vehicle Industry Board, must comply with the 'Western Australian Public Sector Code of Ethics'.

The most significant fiduciary obligation of Board members is broadly known as a duty to act in good faith. This means that a Board member cannot use his or her position to his or her own advantage. The obligations to prevent conflict of interest and duty, and to prevent the misuse of information derived in confidence, are probably the most important fiduciary duties for Board members.

The Board updated its 'Code of Conduct' in January 2009. An Induction program was conducted in February 2009 for a new Board member and the three new Deputy Members to the Board. A specific session included in this Induction dealt with the Board 'Code of Conduct', the updated Office of Public Sector Standards Commissioner (OPSSC) 'Code of Ethics', and 'Conduct Guide' for the Western Australian Public Sector. Conflict of interest and confidentiality issues were also highlighted as particularly important to the role of Board members.

Copies of these updated documents were provided to both new and existing Board members. All Board members have signed the 'Member's Agreement to comply with the Motor Vehicle Industry Board Code of Conduct'.

Board members were also provided with the Public Sector Commission guide, '*Good Governance for Western Australian Public Sector Boards and Committees*'.

The Board also ensures consideration and declaration of potential conflicts of interest by means of a standing agenda item at the commencement of every meeting and conducts a conflict of interest check prior to every hearing.

7. Corruption prevention

The Motor Vehicle Industry Board is not an employer of staff and as a consequence leaves the measures to ensure corruption prevention of support staff to the Department of Commerce.

Nevertheless the Board takes its responsibilities to ensure the integrity of its own conduct very seriously. The Board operates under a Code of Conduct which was developed from the template code from the Office of Public Sector Standards Commissioner.

The Board has also established a Public Interest Disclosure regime and requires Board members to disclose conflicts of interest, both potential and real, when deliberating on matters relating to its statutory duties.

Finally, to ensure the consistency and integrity of decision-making, the Board maintains and constantly reviews a policy manual which guides the day-to-day functioning of the Board.

8. Public Interest Disclosure

The Chairperson and Board have complied with its obligations under the *Public Interest Disclosure Act 2003*, s23 (1)(f).

The Motor Vehicle Industry Board has appointed the person holding the position of Chairperson of the Board as its Public Interest Disclosure Officer.

The Board has also published the *Motor Vehicle Industry Board Public Interest Disclosure Act 2003 Guidelines on Internal Procedures*.

The Board did not receive any public interest disclosures for the period 1 July 2008 to 30 June 2009.

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