

Do I have to fix it?



A guide to used car warranty for dealers



Department of Consumer
and Employment Protection
Government of Western Australia



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Introduction

Most complaints the Department of Consumer and Employment Protection receives regarding motor vehicles are about warranty repairs. The purpose of this booklet is to help you solve these complaints before they come to us. Of course, there will be some cases that cannot be solved easily and will require our involvement. But the advantages in you sorting out your own complaints include:

- time savings
- increased revenue
- reduced costs
- increased goodwill
- retention of customers
- improved staff morale

Research shows that customers will tell up to 20 people if complaints are not fixed quickly, but on average will recommend your business to 15 friends if they are happy with the service you provide.

This booklet has been produced to provide you with assistance to resolve warranty claims and prevent disputes.

What is the statutory warranty?

The statutory warranty is a legal obligation imposed on you as a licensed dealer to fix certain defects which occur in vehicles you have sold.

Section 34 of the *Motor Vehicle Dealers Act* (“the Act”) describes the extent of dealers liability as:

“...(if) a defect which renders or is likely to render the vehicle unroadworthy or unserviceable appears in that vehicle, whether or not that defect existed at the time of sale, the dealer who sold that vehicle shall, at his own expense, repair or make good or cause to be repaired or made good, that defect so as to make the vehicle roadworthy and to place that vehicle in a reasonable condition having regard to its age.”

Dealers often misinterpret this section by asking the question, “Do I have to fix this fault? - I think it’s acceptable in a vehicle of this age.”

The question you should ask yourself is: “Is this defect likely to make the vehicle unserviceable or unroadworthy?”

If the answer is “yes,” then you must repair it to a serviceable condition having regard to the vehicle’s age. For example, you are not required to fit new parts to a 10-year-old vehicle if there are serviceable secondhand parts available.

It is helpful to consider the meanings of the crucial terms in the warranty section of the Act.

Where a term is not defined in a piece of legislation, its meaning is generally defined by the context in which it appears and its common usage.

The statutory warranty is a legal obligation imposed on you as a licensed dealer to fix certain defects which occur in vehicles you have sold.



“Unroadworthy”

This term is not specifically defined in the Act. However, its meaning can be determined from other parts of the Act. A vehicle is unroadworthy if it is “stickered” by the police or Department for Planning and Infrastructure, Licensing Services inspector. Stickers can be placed on vehicles when, in the opinion of the person inspecting the vehicle:

- it requires any repair, adjustment or reconditioning;
- it requires the supply, fitting or removal of any equipment;
- it is in such a condition as to cause danger to any person or damage to any property; or

- it requires any other attention to make it comply with any law relating to the equipment, serviceability or roadworthiness of the vehicle.

In general terms, if the vehicle has a fault which the police would “sticker,” then that fault must be rectified by the dealer.

“Unserviceable”

“Unserviceable” is also not defined in the Act.

The Concise Oxford Dictionary defines “serviceable” as:

“of use, useful or usable...durable, suited for rough use or ordinary wear rather than for ornament.”



The most helpful word here is “usable”. If the defect is not one which makes or would make the vehicle unroadworthy, you must ask the question:

“Does the defect make the car unusable or is it likely to make the car unusable?”

For example, a vehicle may not be considered to be unroadworthy by the police because it has a leaking core plug. However, that defect is likely to make the vehicle unusable, so it must be fixed.

One test you could apply to any problem is: “What will happen if I don’t fix it?”

If the result is likely to be a failure which would make the vehicle unusable, the defect should always be fixed.

What is covered by warranty?

To help you determine what is covered we have compiled the following list.

It should be noted that just because a mechanic calls a repair an “adjustment,” it does not mean you do not have to fix it under warranty. If the adjustment means substantial work, such as power steering box adjustments, you will probably have to fix it.

If you have any queries don’t hesitate to call us. It’s better for all concerned to sort out the problem on the “shop floor.”

Trader enquiry service

If you need technical advice in relation to a warranty problem, you can arrange for a department automotive technical officer to come to your premises and inspect a vehicle for a nominal fee.

This can be done in the presence of you and your customer. After the inspection a written opinion or report will be provided as to the cause of a mechanical condition or failure.

You will also get advice as to whether you have an obligation to repair the vehicle under warranty (eg: no statutory requirement, customer misuse).

If you need technical advice in relation to a warranty problem, you can arrange for a department automotive technical officer to come to your premises and inspect a vehicle for a nominal fee.

IMPORTANT

This warranty list is to be used as a guide only, Consumer Protection staff will assist you and your client to resolve claims which are disputed.

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COVERED BY WARRANTY ✓

NOT COVERED BY WARRANTY NO

ENGINE AND ENGINE BAY

ENGINE

Abnormal noises	✓
Air cleaner (if missing, broken, modified or leaking)	✓
Air filter element blockage	NO
Air flow meter & associated ducting	✓
Anti-pollution controls (ADR requirement)	✓
Carburettor (if stalling, surging, racing, leaking)	✓
Compression (if variation over 20% or excessively low)	✓
Coolant leaks	✓
Core plug leakage or seepage	✓
Cylinder head gasket leakage or seepage	✓
Cylinder head cracked or corroded	✓
Distributor (including vacuum unit)	✓
Engine block cracked or corroded	✓
Engine failure due to excessive oil sludging	✓
Engine management systems, computer and all allied equipment including dash/ instrument panel warning indicators	✓
Engine mounts (if broken, oil saturated, soft or loose)	✓
Engine stabiliser bar	✓
Excess oil usage (1 litre/1000km if exhaust smoke emission not excessive)	✓
Excessive piston ring blow-by	✓
Excessive oil smoke emission from exhaust	✓
High tension and spark plug leads breaking down	✓
Lifters/hydraulic lash adjusters (if excessively noisy)	✓
Oil leaks (if major but not seepage or dampness)	✓
Oil sludging	✓
Plugs and points	NO
Tappet/valve clearance (if adjustable)	NO
Timing belts (if damaged or cracked)	✓
Timing belts and chains adjustments	NO
Timing chains - if noisy	✓
Turbo charger (including super charger)	✓

FUEL SYSTEM

Fuel filler cap must be correct for vehicle	✓
Fuel filters	NO
Fuel injection systems (all components) includes servicing and cleaning of injectors, injection pump and delivery pump	✓
Fuel pump including oil or fuel leaks	✓
Fuel vent system and charcoal canister	✓
Gas conversion (dual fuel vehicles) - all associated components and vehicle must operate satisfactorily on both petrol and gas.	
Conversion must comply with all relevant licensing regulations	✓
Leaking, perished, rusted or non-secured fuel lines	✓
Remote fuel filler cap (unless it can't be opened manually)	NO
Tank leakage	✓

COOLING SYSTEM

Cooling fans (manual & electric including thermo switches - viscous fans must operate efficiently)	✓
Core plug leakage or seepage	✓
Cylinder head gasket leakage or seepage	✓
Fan cowling	✓
Fan/drive belt	
(if cracked, broken, frayed badly or stretched badly - ie. no adjustment)	✓
Leaks (including heater and heater hoses, radiator and radiator hoses, seepage from head gasket)	✓
Overheating	✓
Radiator	✓
Radiator blockages	✓
Radiator cap and overflow system	✓
Radiator fins fretting (if excessive)	✓
Thermostat and housing	✓
Water pump including excessive bearing noise and/or leakage	✓

EXHAUST

Any gas leak	✓
Catalytic converter	✓
Excessive noise	✓
Exhaust hitting body or other components	✓
Excessive smoke emission from exhaust	✓
Loose baffles (unless causing blockage)	NO
Not secured correctly	✓

(Note: repairs must be replacement or steel welding - putty, bandages not acceptable)

DRIVELINE

CLUTCH

Clutch adjustment	NO
Clutch not disengaging (gear grate)	✓
Clutch pedal rubber pad (if split, badly worn or missing)	✓
Clutch shudder (if excessive)	✓
Linkage or hydraulic components (including leakage)	✓
Slippage	✓
Throw-out (thrust) bearing	✓

GEARBOX/TRANSMISSION

Abnormal noises	✓
Hard gear selection	✓
Linkages sloppy	✓
Not holding in gear	✓
Oil leaks	✓
Reverse detent (gate) weak or not working	✓
Synchromesh	✓

AUTOMATIC TRANSMISSION

Drive faults - including abnormal change patterns	✓
Fluid leaks	✓
Gear indicator quadrant must line up with correct indicator position and quadrant light to operate	✓
Linkages	✓
Routine servicing	NO
Torque converter	✓

DRIVE SHAFTS/TAIL SHAFTS

All components including centre bearings	✓
CV boots (if cracked or leaking)	✓
CV joints (if noisy or excessively worn)	✓
Shaft balance vibration if excessive	✓
Viscous couplings	✓

DIFFERENTIAL

Axles	✓
Bearings	✓
Bearing seals (front and rear)	✓
Differential (if abnormal noise)	✓
Oil leaks	✓
Period whine	NO
Pinion backlash (if excessive)	✓
Wheel bearings (front and rear but not adjustment)	✓

WHEELS

Cracked	✓
Hubs and bearings	✓
Spoke type (if missing, broken or loose)	✓
Studs stripped or nuts missing	✓
Wheel balance	NO
Wheel alignment	NO
Wheel alignment after steering/suspension repairs	✓

(Note: wheel alignment must be able to be adjusted to manufacturer's specifications)

TYRES

Damage or wear (excluded under MVDA)	NO
Spare wheel & tyre	NO

(Note: Tyres must all be the same diameter and width, must meet ADR requirements and be speed and load rated to the vehicle.)

BRAKES, STEERING AND SUSPENSION

BRAKES

Adjustment only	NO
Anti-lock braking systems	✓
Brake causing vehicle to pull one side	✓
Brake pedal pulsation (excessive)	✓
Brake pedal rubber pad (if split, badly worn or missing)	✓
Calipers (if seized, sticking or leaking)	✓
De-dusting	NO
Disc/Rotor and drum thickness (to be within manufacturer's specifications)	✓
Disc/Rotor scoring (if not excessive or disc/rotor not undersize)	NO
Foot brake adjustment	NO
Glazed pads	NO
Lines and hoses (if cracked, perished, rusted, unsecured or leaking)	✓
Master cylinder leakage or failure	✓
Pad or lining material (if 80% worn by end of warranty period. To be measured on material thickness)	✓
Squealing	NO
Vacuum or power booster	✓
Wheel cylinders (if seized, sticking or leaking)	✓

HANDBRAKE

Adjustment	NO
Cable (if binding frayed or not secured)	✓
Must operate efficiently	✓
Ratchet or button faults	✓

STEERING

Four-wheel steering	✓
Power steering pump, drive belt and hoses	✓
Shaft play	✓
Steering boots and rubbers (if badly split)	✓
Steering box (if abnormal play)	✓
Steering box adjustment (if manual)	NO
Steering box adjustment (if power)	✓
Steering box oil leaks	✓
Steering idler (if excessive movement)	✓
Steering lock	✓
Steering rack (internal leaks and boots)	✓
Steering tie rod ends (if excessive movement)	✓
Steering wheel (if cracked through)	✓
Steering wheel cover (excessive lateral movement only)	✓
Steering wheel height and reach adjustment must be secure	✓

(Note: modified steering wheels must comply with ADR and VSR regulations)

SUSPENSION

Adjustable height or ride suspension	✓
Ball joints (if movement exceeds manufacturer's specifications)	✓
Ball joint boots (if badly split)	✓
McPherson struts (if leaking or broken)	✓
Rebound rubbers	✓
Shock absorbers/McPherson struts must operate reasonably efficiently	✓
Springs (if vehicle lowered beyond manufacturer's specifications)	✓
Springs sagging (if more than 25mm (1") variation between sides)	✓
Stabiliser/anti-roll bars	✓
Torsion bar	✓

BODY AND FRAME

RUST (structural not surface)

Bonnet (except around hinge and catch area)	NO
Boot floor	✓
Boot lid	NO
Bulk heads (fire wall)	✓
Doors (except around hinge and catch area)	NO
Fenders	NO
Floor pan	✓
Quarter panel (exterior)	NO
Quarter panel (interior)	✓
Roof and door pillars	✓
Rocker panels	✓
Sub-frame/chassis	✓
Wagon rear doors (except around hinge and catch area)	NO
Window frames	✓

(Note: All rust repairs should be done by steel plating and full perimeter steel welding (not bronzed). No jagged edges from lower panels).

DOORS AND WINDOWS

(Note: all passenger doors must open and shut from inside and outside. Key locks do not have to work).

Bonnet or boot stays/struts	✓
Bonnet lock and safety catch	✓
Central locking (but must be able to unlock doors)	NO
Child-proof rear door locks (but must be able to disengage)	NO
Electric and winding windows (must wind up and down)	✓
Front windscreen	
(unless cracks or chips in driver's vision at time of purchase)	NO
Quarter windows	NO
Rear door stays/struts	✓
Rear window demister	NO

Sliding windows	✓
Wagon rear door	✓
Wagon rear window	✓
Water leaks (unless likely to damage electrical components)	NO
Windscreen washers (front only)	✓
Windscreen wiper blades	NO
Windscreen wipers (front only) must work on at least two speeds, where fitted, but not including intermittent speed	✓
Windscreen wipers and washers (rear)	NO

(Note: WINDSCREEN REPAIRS. Some windscreen cracks can be repaired by a poly-resin filler. The Department for Planning and Infrastructure, Licensing Services has advised that this method is acceptable, providing the crack is not more than 150mm (6 inches) long and repairs are done only on a laminated screen. The repair is not acceptable if the driver's vision is still impaired).

ELECTRICAL SYSTEM

HEADLIGHTS

Direction adjustment (but must be able to be adjusted)	NO
Globe	NO
Lens	NO
Reflectors	✓
Sealed beams	NO
Spot/foglights/driving lights	NO
Switch	✓
Wiring	✓

PARKING, INDICATOR, REAR STOP, HIGH REAR STOP AND REVERSE LIGHTS

Globe	NO
Lens (if discoloured)	✓
Reflectors	✓
Switch	✓
Wiring	✓

OTHER ELECTRICAL

Alternator	✓
Audible warning chime	NO
Battery (excluded under MVDA)	NO
Battery cable and terminals (if damaged)	✓
Battery must be secured	✓
Brake warning lights	✓
Coil	✓
Demister/fan (front only)	✓
Distributor (including vacuum unit)	✓
Electric windows (all must wind up and down)	✓
Electronic distributor	✓
Engine management system, computers and all allied equipment	✓
Fan belt (if cracked, broken, frayed badly or stretched badly, ie. no adjustment)	✓
Gear indicator quadrant light	✓
Hazard lights	NO
Headlight washers and wipers	NO
High tension and spark plug leads breaking down	✓
Horn (must work efficiently)	✓
Ignition switch and steering lock	✓
Immobiliser (if fitted at the time of purchase)	✓
Instrument panel/dash switches and lights	✓
Plugs and points	NO
Rear view external mirrors (if missing or unable to adjust manually)	✓
Regulator	✓
Starter motor	✓
Trailer wiring and connector	NO
Windscreen washers (front only)	✓
Windscreen wipers (front only)	✓
Wiring harness	✓

POWER ACCESSORIES

Aerials	NO
Brakes	✓
Electric windows (all must wind up and down)	✓
Rear view external mirrors (if missing or unable to adjust manually)	✓
Seats (driver's side)	✓
Steering (drive belt)	✓
Steering (oil leaks)	✓
Steering (operation and adjustment)	✓

OTHER ACCESSORIES

Air conditioner	NO
Central locking (but must be able to open doors manually)	NO
Cruise control (but must not interfere with operation of the vehicle)	NO
Radio/cassettes or compact disc players	NO
Sun roof	NO

(Note: If any of the above items are advertised as a feature, they must work satisfactorily at the time of sale).

Cigarette lighters	NO
Sun visors (interior)	✓

INTERIOR

INSTRUMENT PANEL/DASHBOARD

Air bag management systems	✓
Amp/Volt gauge (if no light fitted)	✓
Amp/Volt light	✓
Audible warning chimes	NO
Courtesy light	NO
Econometer (vacuum gauge)	NO
Fuel gauge	NO
Gear selector-quadrant lighting	✓

Glove box	NO
Heater demister and fan (front) - ADR 15	✓
Instrument lights	✓
Odometer/trip meter	NO
Oil gauge	✓
Oil light	✓
Other instruments	NO
Rear view mirrors (must be able to adjust)	✓
Speedo	✓
Tacho	NO
Temperature gauge	✓
Temperature light	✓
Trip computer	NO

SEATS/SEAT BELTS

Any trim damage	NO
Retractable seat belts	✓
Seat belts (new belts only to be fitted)	✓
Seats (adjusters)	✓
Seats (driver's side power adjuster)	✓
Seats (if collapsed or have protruding springs)	✓
Seats (if mountings loose or broken)	✓

ADJUSTMENTS ONLY

Air cleaner (if missing, broken, modified or leaking)	✓
Air filter element blockage	NO
Anti-pollution controls (ADR requirement)	✓
Automatic transmission servicing	NO
Brakes	NO
Brakes - auto adjuster (should operate if fitted)	✓
Carburettor (if stalling, surging, racing or leaking)	✓
Clutch	NO
Distributor (including vacuum unit)	✓

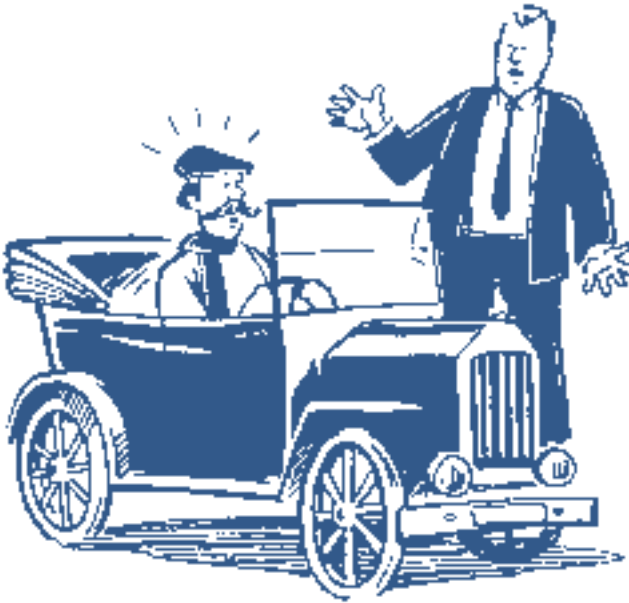
Door adjustments	NO
Electronic distributor	✓
Engine management systems, computer and all allied equipment including dash/ instrument panel warning indicators	✓
Fan belt	NO
Fuel injection systems (all components), includes servicing and cleaning of injectors, injection pump and delivery pump	✓
Handbrake adjuster must operate	✓
Headlight direction	NO
High tension plug leads breaking down	✓
Plugs and points	NO
Steering box (if manual)	NO
Steering box (if power)	✓
Tappet/valve clearance (if adjustable)	NO
Tuning (unless fuel injected)	NO
Wheel alignment	NO
Wheel alignment (after steering/suspension repairs)	✓
Wheel balance	NO
Wheel bearings	NO

MOTORCYCLES

The items stated below relate specifically to motorcycles and are in addition to the other warranty items listed.

Drive shaft, chain or belt (rear)	✓
Drive chain or belt adjustment	NO
Engine drive chain (primary chain)	✓
Front and rear suspension (complete unit)	✓
Front brake and clutch control cables (if broken, badly worn or frayed)	✓
Gear level rubber (if split, badly worn or missing)	✓
Rear brake pedal rubber (if split, badly worn or missing)	✓
Steering damper (where factory fitted)	✓

Length of warranty



*"I do appreciate that you've looked after your car since 1926, Sir.
However it is no longer under warranty".*

Under the Act, the length of the warranty period depends upon the purchase price of the vehicle.

Previously, the statutory warranty only applied to a limited range of second hand passenger vehicles. From 1 September 2002 the statutory warranty has been extended to apply to almost all second

hand passenger vehicles that meet certain criteria relating to cost, age and the number of kilometres the vehicle has travelled at the time of sale.

The statutory warranty applies to motor vehicles that have a purchase price of \$4000 or more and motorcycles that cost \$3500 or more.

The following table outlines the new statutory warranty provisions that apply to vehicles based on their age and the number of kilometres travelled at the time of sale. The age is calculated to the end of the compliance plate date month.

Age of car	Km travelled at time of sale	Warranty entitlement
Not more than 10 yrs	Not more than 150,000	3 months or 5000km (whichever happens first)
Between 10 – 12 yrs	Between 150,000 and 180,000	1 month or 1500km, (whichever happens first)
More than 12 yrs	More than 180,000	Nil
Age of motorcycle	Km travelled at time of sale	Warranty entitlement
Not more than 8 yrs	Not more than 80,000	3 months or 5000km, (whichever happens first)
More than 8 yrs	More than 80,000	Nil

The warranty periods do not include any time you have possession of the vehicle for warranty repairs. For example, if you keep the vehicle for two weeks to do warranty repairs the warranty is extended by two weeks. It is in your best interests to do repairs as soon as possible.

If a fault is brought to your attention during the warranty period and the same fault is still evident or becomes evident within a reasonable period after warranty, it is generally your responsibility to fix it.

Types of vehicles covered

For the purpose of the warranty provisions of the Act, a “vehicle” is defined to mean:

- a “passenger car” - a vehicle constructed principally for the conveyance of people;
- a “passenger car derivative” - including four-wheel drives of the same make as a factory-produced passenger car, and on which the forward part of the body and most of the mechanical equipment are the same as those in a passenger car, such as station wagons and dual-cab utes;
- a “motor cycle” - a motor cycle built to carry passengers;
- a “camper van” - a vehicle specially fitted for camping or touring purposes and equipped with **both** sleeping and cooking facilities; or
- vehicles which are prescribed by regulations to be vehicles to which the Act applies.

Vehicles not covered by warranty

From 1 September 2002 most used passenger vehicles will attract a statutory warranty providing they meet the criteria relating to cost, age, and number of kilometres the vehicle has travelled at the time of sale.

Vehicles that are still excluded from the statutory warranty provisions are:

- Buses and vehicles licensed to carry more than 8 passengers;
- Caravans built to be towed by a motor vehicle;
- Single rider motorcycles built for off-road use; and
- Motor vehicles built to carry goods or materials used in trade, business or industry and having only one row of forward facing seats.*

***(This means that station wagons and dual cabs do attract a statutory warranty. But most utilities and panel vans do not attract a statutory warranty, unless they have more than one row of seats).**

DISPLAYING VEHICLE PARTICULARS

From 1 September 2002 there are new forms and procedures you must use when selling a vehicle. Detailed below are the main requirements of the new regulations of the *Motor Vehicle Dealers Act*.

You have the choice of displaying vehicle particulars by using:

- a plastic vehicle particulars card;
- a paper Form 4 for motor vehicles/motorcycles covered by statutory warranty; or
- a paper Form 6 for vehicles not covered by statutory warranty.

Where you choose to use a plastic vehicle particulars card you will be required to state whether or not the vehicle is covered by statutory warranty

The method for displaying the particulars remains the same as before. On a motor vehicle the notice must be placed in the vehicle where it can be clearly read through the windscreen. On a motorcycle (or vehicle without a windscreen) the notice must be placed in a position that is clearly visible to a person standing near the motorcycle.

If you choose to display the vehicle particulars on a plastic vehicle particulars card, you must complete and provide the purchaser with a paper version of a Form 4 or Form 6 at the time of sale.

FORM 4 - DISPLAYED ON VEHICLES COVERED BY WARRANTY

Where you offer or display for sale a vehicle that is covered by statutory warranty, a Form 4 is required to be displayed on that vehicle. There are two (2) paper versions of the Form 4. One for motor vehicles and one for motorcycles.

The front of each version contains the same information. It explains why the vehicle/motorcycle is covered by statutory warranty and identifies vehicle particulars such as price, year of manufacture, odometer reading etc.

The back of each form differs in that one contains a quick guide to the main warranty items for vehicles and the other for motorcycles.

The requirements for completion of the Form 4 at the time of sale remain the same. Two completed copies of a Form 4 are required to be signed by

the dealer and purchaser. One copy is given to the purchaser and the other retained by the dealer for not less than 12 months.

FORM 6 - DISPLAYED ON VEHICLES NOT COVERED BY WARRANTY

Where you offer or display for sale a vehicle that is **not** covered by statutory warranty, you will be required to display a **Form 6 only** on that vehicle.

The front of the Form 6 contains the same vehicle particular details as the Form 4 (ie. price, year of manufacture etc.) and informs a purchaser that the vehicle is not covered by statutory warranty.

The back of the form explains why the vehicle is not covered by statutory warranty together with advice about a purchaser's rights under the *Fair Trading Act*.

The requirements for completion of the Form 6 at the time of sale are the same as the Form 4. Two completed copies of a Form-6 are required to be signed by the dealer and purchaser. One copy is given to the purchaser and the other retained by you for not less than 12 months.

The Form 6 is the only notice which **must** be displayed on all vehicles which are not covered by warranty.

Where you offer or display for sale a vehicle that is not covered by statutory warranty, you will be required to display a Form 6 only on that vehicle.

Warranty exemptions and exclusions

Can you exclude defects from warranty?

If you do not want to repair a particular defect in a vehicle which is covered by warranty, it can be excluded from the warranty, but only if the following requirements are met.

A detailed description of the defect and a fair estimate of the cost to repair must be noted on a “Notice of Defects Excluded from Warranty” (Form 5). This notice **must** be placed on the vehicle before the time of sale so it can be clearly read through the windscreen. The form must be signed by the buyer at or before the time of sale and a copy must be given to the buyer at the time of sale.

If the buyer is not given a copy, or the form is not signed or was not placed on the vehicle prior to sale, it has no effect.

If you do not describe the defect fully the notice will have no effect. For example, it would not be reasonable to state “engine” as the defect and state \$800 as the cost of repairs. You must describe the actual defect eg. “excessive exhaust smoke - piston rings require replacement” together with the cost of repairs.

If the estimated cost of repairs on the notice turns out to be less than the fair cost of the repairs, the buyer is entitled to claim the difference in cost from you.

There are many pitfalls in attempting to exclude warranty defects. You must be accurate in your paperwork or you may leave yourself open to carry out the repairs anyway.

This type of exclusion is not used very often by dealers because of the problems which may occur.

There are many pitfalls in attempting to exclude warranty defects. You must be accurate in your paperwork or you may leave yourself open to carry out the repairs anyway.



You cannot waive a warranty on a handshake. It must be approved by the Commissioner for Fair Trading

Can you waive the statutory warranty?

Neither you nor the buyer can actually waive any rights given under the Act, including the statutory warranty, **without the prior consent of the Commissioner for Fair Trading**. A statutory warranty may be waived if you follow a few simple rules. To waive the warranty the buyer must make an application to the Commissioner for Fair Trading through the Motor Vehicles Branch of Consumer Protection **before** the vehicle is sold.

An application may be made in person or by fax. The following forms must be submitted for an application to be considered:

- a completed application for warranty waiver form;
- a copy of the contract to buy the vehicle;
- a copy of a completed Form 4; and
- a detailed mechanical report on the vehicle's condition.

You should not deliver the vehicle to the buyer until the warranty is waived.

When a warranty waiver application is assessed we look at factors such as whether:

- the buyer has received a genuine price reduction for the vehicle in return for waiving the warranty;
- the buyer accepts that the mechanical inspection is thorough, fair, accurate and highlights all defects;
- the likely cost of repairs for warranty defects which are disclosed in the mechanical report is substantially less than the discount offered, with sufficient discount left to justify waiving the warranty;
- the buyer fully understands the effect of the rights they are being asked to give up; and
- the buyer understands those rights under the Fair Trading Act which cannot be waived.

The Motor Vehicles Branch staff will generally waive the warranty if satisfied that these conditions have been met.

The warranty is not waived until the application is endorsed by Consumer Protection and you receive a faxed copy of the Department's approval, normally within 24 hours.

If an application is not accepted nor approved by us, the buyer cannot waive the warranty. We have had cases where a dealer has reduced the price of a vehicle and the buyer has agreed to waive the warranty. However, as it was a deal done between the dealer and buyer without approval from the Department being obtained, the warranty still stands. The requirements of the Act will override any agreement between the two parties.

Neither you nor the buyer can actually waive any rights given under the Act, including the statutory warranty, without the prior consent of the Commissioner for Fair Trading.

Warranty obligations

Carrying out warranty repairs

When a customer returns a vehicle for warranty repairs it is in your best interests to carry them out as soon as possible. As mentioned previously, the time you have the vehicle for warranty repairs is added to the warranty period.

If you hold the vehicle for longer than is considered normal for a particular repair, your customer may be able to claim damages from you to cover such expenses as hire cars or taxi's.

It is not a requirement of the *Motor Vehicle Dealers Act* that a customer return the vehicle to you for warranty repairs. However, we tell them to always contact you first about carrying out warranty repairs. If they do not give you that option and get it fixed elsewhere you may only have to pay what it would have cost you to repair the defects. If vehicles go back to you two or three times for the same repair, customers may exercise their right to take the vehicle elsewhere and claim the full cost of repairs from you.

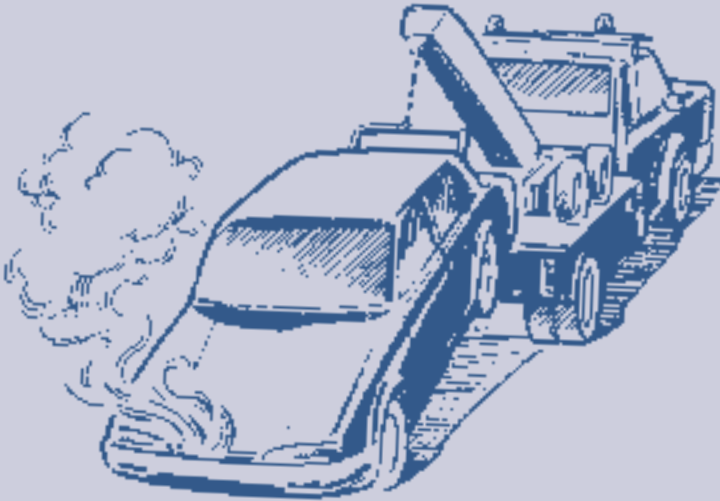
It could cost you more money in the long run if you do not make sure repairs are carried out properly in the first place.

Remember, the Board is able to disqualify a dealer from holding or obtaining a licence if they find a dealer has not carried out warranty obligations with “due expedition” (as quickly as possible).

When you have a customer's car it is always a good idea to keep the person informed of what is happening. If there are going to be delays it is best to say so, instead of allowing the customer to come to collect a car which is not ready.

When returning the car it is advisable to tell the customer what has been done or give them an itemised list. This can avoid disputes later if a customer complains that you did not fix a particular defect during warranty.

If you hold the vehicle for longer than is considered normal for a particular repair, your customer may be able to claim damages from you to cover such expenses as hire cars or taxi's.



Owner's responsibilities

If the owner lives close to your business and the vehicle is driveable they should return it to you. If, however, the vehicle is undriveable you should arrange to have the vehicle returned to your premises.

If a customer requires warranty repairs and does not live near your business you have two options:

1. You can arrange for a repairer to fix the vehicle in the area where the owner lives. It is your responsibility to pay the repairer; or

2. You can arrange for the vehicle to be transported to your premises, repaired and returned to the customer. This should be at no cost to the customer.

Do you have to supply a courtesy car?

As the name implies a "courtesy car" is just that - a courtesy to the customer.

When repairing a customer's vehicle you are under no obligation to provide a loan car. However, doing this may improve the image of your business and enhance customer goodwill. It is obviously a business decision.

If you have to hold a customer's car for longer than anticipated it may be a good idea to arrange a loan car. This will reduce the likelihood of the person claiming damages from you for any delays.

If you give a customer a loan vehicle make sure they are aware of any insurance requirements which apply. You should make sure the customer reads, understands and signs a document which outlines their rights and responsibilities for the loan car. Doing this can help avoid disputes.

Other warranties on second-hand vehicles

When someone buys a vehicle from you that is not covered by a warranty under the Act, the buyer does however have some protection under the *Fair Trading Act*.

The *Fair Trading Act* requires that a dealer selling a vehicle ensures that the vehicle matches any description given and that it is of "merchantable quality". This means that it must be fit for the purpose for which a vehicle of that nature is normally used. The amount of money paid for the vehicle is taken into

account when determining merchantable quality.

For example, even though a vehicle is not covered by the statutory warranty under the *Motor Vehicle Dealers Act 1973*, a purchaser is entitled to expect you to repair any major defects that were present at the time of sale which prevent the vehicle from being used in the normal way. This also applies to anything that makes it unsafe to drive (eg. faulty brakes, faulty steering or major structural rust).

The requirement of merchantable quality does **not** apply to defects specifically drawn to the purchaser's attention before the contract of sale is made, or if the purchaser examines the vehicle before the contract is made, for defects that examination should have revealed.

The same rules would apply with vehicles which are exempted under the Act. If you sell an exempted vehicle which develops a serious defect shortly after you sold it, the customer may have a claim under the *Fair Trading Act*. Each case must be viewed separately. If you are unsure of your obligations give us a call.



"I'm sorry sir, but your bar fridge is not covered by warranty!"

Do you have to fix accessories/extras?

Generally you do not have to fix accessories or extra's. The *Motor Vehicle Dealers Act* states that radios, tape players and air conditioning units are not covered by the statutory warranty provisions.

However, the *Fair Trading Act* states that a person shall not engage in conduct that is misleading or deceptive or is likely to mislead or deceive. So, in some cases you may be obliged to rectify faults with accessories.

For example, if a vehicle is advertised as air-conditioned or having a radio/cassette player, it is expected that these accessories work at the time of sale. If they don't, the customer may have some claim on you for repairs.

The same principles would apply to a vehicle sold as having air bags or ABS brakes fitted. If the air bags have been identified or represented as a feature of a vehicle, then it is our view that the warranties implied by the *Fair Trading Act* would apply.

More information

For advice about your responsibilities under the *Motor Vehicle Dealers Act* or the *Fair Trading Act*, or any other matter relating to the sale or repair of motor vehicles, please telephone the Consumer Protection Advice Line on 1300 30 40 54, or (08) 9282 0900 (for the hearing impaired). You can also visit our website at www.docep.wa.gov.au or email us at consumer@docep.wa.gov.au

Contacts

Motor Trade Association of Western Australia (Inc)
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Telephone (08) 9453 7900
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Institute of Automotive Mechanical Engineers
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and Employment Protection
Government of Western Australia

Consumer Protection Division

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(for the cost of a local call statewide)

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This booklet is available in alternative formats such as large type, computer disk and Braille. If you require the services of an interpreter contact the Translating and Interpreting Services (TIS) on 131 450 and ask for connection to Labour Relations 1300 304 054 or WorkSafe 9327 8777. It is also available on our website www.docep.wa.gov.au

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