

Motor vehicle industry newsletter



Motor Vehicle Industry Board message

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Chairperson - Motor Vehicle Industry Board

Repairers' compliance program – phase III

All businesses which repair motor vehicles for consumers or business customers were required, under the *Motor Vehicle Repairers Act 2003*, to apply for a motor vehicle repair business licence by 30 June 2009.

In June 2009 a circular was issued to industry members, advising that the Commissioner for Consumer Protection had agreed to extend the deadline for compliance with the new licensing requirements to 30 September 2009.

The motor vehicle repair industry is now a regulated industry, and all businesses which carry out repair work are required to have a business licence for their particular class or classes of work.

To ensure that repair business licensing and certification requirements are being complied with, authorised Compliance Officers from the Department of Commerce – Motor Vehicles Branch have carried out a two-

phase audit program. The first phase involved education and the second focused on compliance.

It has been two years since the introduction of the legislation requiring repair businesses to be licensed. However, the Motor Vehicle Industry Board is very concerned that there are still a number of businesses and individuals who have not applied for a licence or certificate. A large number of business and individual applications have not been finalised because the necessary information to process the application has not been provided.

Phase III of the Motor Vehicle Repairers Program has commenced, and Compliance Officers from the Motor Vehicles Branch are visiting all identified businesses and individuals who have not applied for the appropriate licence, or who have applied, but have not responded to correspondence requesting further documentation.

Evidence is being gathered during these visits, and where aspects of non-compliance are established, the Department will determine the most appropriate course of action after considering the facts of each case. One consequence may be the issue of infringement notices, with penalties up to \$500 for individuals, and \$2,500 for a body corporate. Another consequence may be prosecution in the courts, which carries penalties of up to \$50,000 for individuals and \$250,000 for a body corporate.

It is important for all repairers to be familiar with the following provisions of the Act. The education phase of the Department's program is now over, and the enforcement phase is in full swing. The Board strongly encourages every business or individual not already licensed, to become licensed, as a matter of urgency.

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Tackling unlicensed dealing and repairing

The sale of storm damaged vehicles into the market place is having a significant impact on the vehicle sales industry.

The Department of Transport estimates that some 40,000 vehicles were damaged in the storms in March 2010. In many instances the insurance write-off vehicles are being sold for significantly less than the market value. The supply of these vehicles into the market place has caused a significant drop in sales by used car dealers.

Consumer Protection has noted an increase in unlicensed motor vehicle dealing activities as a result. Enquiries undertaken by the Motor Vehicles Branch has revealed some people appear to be taking advantage of the cheap vehicles in order to repair and then on sell. Apart from the unlicensed dealing activity, there may be questionable repair standards if repairs are not conducted by licensed repair shops.

To address this issue, the Motor Vehicles Branch has developed an educational campaign directed at Auction Houses dealing with storm damaged vehicles. Campaign flyers and posters are designed to bring the unlicensed dealing and/or repairing offences to the attention of prospective purchasers who may be considering this type of activity.



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Repairers' compliance program – phase III

It is important for all repairers to be familiar with the following provisions of the Act.

Section 9. Licensing requirement

A person or firm must not carry on a business that consists of or includes the carrying out of repair work of a class prescribed by the regulations except under and in accordance with a business licence for that class of repair work.

Penalty: \$50 000 and a daily penalty of \$1 000

Section 39. Individuals carrying out repair work to hold certificate

(1) *This section applies to —*

(a) *a person or firm that carries on a business that consists of or includes the carrying out of repair work; and*

(b) *a person or firm that —*

(i) *holds a licence under the Motor Vehicle Dealers Act 1973; and*

(ii) *carries out repair work for the purposes of section 34 of that Act, but not otherwise.*

(2) *Any —*

(a) *individual; or*

(b) *individual member of a firm,*

that comes within subsection (1) must not, in connection with the business, personally carry out repair work of a class prescribed by the regulations

unless he or she holds a certificate for that class of repair work.

Penalty: \$5 000

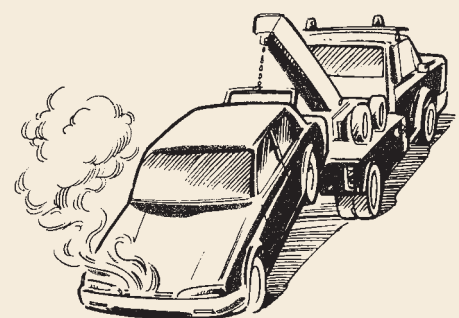
(3) *Any person or firm that comes within subsection (1) must not permit any other person to carry out any repair work of a class prescribed by the regulations unless the other person —*

(a) *holds a certificate for that class of repair work; or*

(b) *carries out the repair work under the supervision of a person who holds a repairer's certificate for that class of repair work.*

Penalty: \$5 000

(4) *For the purposes of subsection (3)(b), a person under whose supervision repair work is being carried out is required to exercise effective oversight and control of the carrying out of the work, but need not be continuously present while it is being carried out.*



Commonwealth ban on the supply of pocket rockets



The Commonwealth Government has published an Unsafe Goods Notice in the Commonwealth Gazette to ban the supply of miniature motorbikes (Pocket Rockets) that are not certified under the relevant Road Vehicle Certification System, and do not comply with the requirements shown in the Unsafe Goods Notice. The ban, which commenced on 1 July 2010, will be in place initially for a period of 18 months.

Western Australia is currently developing an order under the *Consumer Affairs Act 1971* that will mirror the Commonwealth's legislation.

Miniature motorbikes not certified under the Road Vehicle Certification System will have to comply with certain requirements related to the throttle, braking system, foot pegs, steering and supplemental engine stops before they can be sold.

Further information, including a copy of the Unsafe Goods Notice, is available from www.productsafety.gov.au or you can telephone 1300 30 40 54 and speak with a Product Safety Officer.

Motor vehicle sales and repair industry fees

The fees associated with the licensing requirements for both the motor vehicle sales and repair industries are calculated on a cost recovery basis.

As of 1 July 2010, the licensing fees associated with the motor vehicle sales industry were increased in line with the CPI increase.

However, the fees applying to licensing in the motor vehicle repair industry remain unchanged from the 2009 / 2010 financial year.

The schedule of fees for the Motor Vehicle repair industry from 1 July 2010 are:

Motor Vehicle Repair Businesses	
Motor Vehicle Repair Business Licence (1 to 2 repairers)	\$781.00
Motor Vehicle Repair Business Licence (3 repairers)	\$1,031.00
Motor Vehicle Repair Business Licence (4 repairers)	\$1,250.00
Motor Vehicle Repair Business Licence (5 to 7 repairers)	\$1,750.00
Motor Vehicle Repair Business Licence (8 to 10 repairers)	\$2,188.00
Motor Vehicle Repair Business Licence (11 or more repairers)	\$2,719.00
Duplicate Business Licence	\$37.25
Inspection of Register	\$17.50
Copy of individual registration (certified, uncertified or extract)	
• first page	\$17.50
• each subsequent page	\$3.50
Copy of all registrations (certified, uncertified or extract)	\$222.00
Adding or changing a mobile premise	\$58.00 (each)
Adding or changing a fixed premise	\$116.00 (each)
Adding class/es of repair work to a Motor Vehicle Repair Business Licence	\$112.00
Motor Vehicle Repairers	
Motor Vehicle Repairer Individual Certificate	\$70.00
Certified copy of certificate	\$38.50

New fees for the motor vehicle sales industry

The Motor Vehicle Dealers (Licensing) Regulations 1974 were amended from 1 July 2010 resulting in increased fees for the sales industry.

Motor Vehicle Dealers	
Motor Vehicle Dealers Licence – one Premise	\$1,468.00
Motor Vehicle Dealers Licence – two Premises	\$2,202.00
Motor Vehicle Dealers Licence – for each further premises to be authorised	\$734.00
Motor Vehicle Dealer Licence - change of premise	\$122.00
Motor Vehicle Dealer Licence - adding a premise (pro-rata fee applicable)	\$734.00
Motor Vehicle Dealer Licence - Special Occasion Permit	\$48.75
Individual Dealer – change to a firm	\$122.00
Individual Dealer – change to a body corporate	\$122.00
Firm - change to a sole proprietor	\$122.00
Firm – change to a body corporate	\$122.00
Body Corporate – change to an individual or a firm	\$122.00
Duplicate copy of licence	\$39.25
Copy of Individual Registration (certified, uncertified or extract)	
• first page	\$17.80
• each subsequent page	\$3.50
Copy of all registrations in the register (certified, uncertified or extract)	\$226.00
Car market operators	
Car Market Operator Licence – one premise	\$1,468.00
Car Market Operator Licence – for each further premises to be authorised	\$734.00
Car Market Operator Licence – alteration of premise	\$122.00
Car Market Operator Licence – adding a premise (Pro-rata fee applicable)	\$734.00
Motor vehicle yard managers and salespersons	
Yard manager’s licence application	\$374.00
Salesperson’s licence application	\$254.00
Application for Temporary Permit	\$48.75
Duplicate copy of Licence	\$39.25
Exemptions	
Certificate of Exemption - auctioneer, financier or car hire operator	\$122.00

If you are unsure of specific licensing requirements relating to your business contact the Department of Commerce Motor Vehicles Branch licensing section on (08) 9282 4362 for advice.

newsletter access online

Download copies of this edition of the Motor Vehicle Industry Newsletter and previous issues at: www.commerce.wa.gov.au/motorvehicles

Upcoming changes to REVS and Business Names

The Council of Australian Governments (COAG) is implementing reforms to reduce compliance costs for business and increase protection for consumers. Several areas of reform may have an impact on motor vehicle dealers and repairers.

Personal Property Securities Register

The Personal Property Securities Register (PPSR) is a new national register to record securities over all forms of personal property, including vehicles and boats. The PPSR is scheduled to commence in May 2011 and will replace the existing state and territory registers, including REVS.

Motor vehicle dealers will be able to access the PPSR in the same way as they currently access REVS - by internet or telephone. Dealers who currently obtain information via a broker should check that their broker will be making arrangements to link to the PPSR. More information about the PPSR can be found at www.ppsr.gov.au.

National Business Names Register

The Commonwealth government is introducing a National Business Names Register in 2011. This register will be administered by the Australian Securities and Investments Commission (ASIC).

All existing business names in the states and territories will be transferred into the new system so you will not need to re-register your business name with the Commonwealth until your next renewal. If your business name is identical to a business name in another state or territory, ASIC may identify it in the new national register by using a geographic indicator such as '(WA)'.

Once the National Business Names Register is introduced, new business names will not be able to be registered if they are identical to, or nearly identical to, another business name anywhere in Australia.

If you register your business name in only one state or territory, there will be little to no cost difference under the new system. If you currently register your business name in more than one state or territory, you will enjoy significant savings as you will only have to register your business name once for it to apply across Australia.

For more information about the National Business Names Register, a Frequently Asked Questions document can be accessed at www.innovation.gov.au (see Small Business > Australian Business Number (ABN) Business Names Registration Project).

Unfair contract terms

A new Australian Consumer Law is being introduced nationally in two parts. The first part came into effect on 1 July 2010 and the second part is to be introduced early next year.

Possibly the biggest changes arising out of these laws are the provisions around unfair contract terms. These provisions regulate terms in consumer contracts to the extent of whether or not they are unfair.

As from 1 July 2010, the unfair contract terms provisions in the Commonwealth *Trade Practices Act 1974* have applied to all corporations and to transactions that occur across state boundaries. These provisions are administered by the Australian Competition and Consumer Commission (ACCC).

Unfair contract terms provisions will be introduced in Western Australia on 1 January 2011. From this date, businesses that aren't corporations will be subject to the unfair contract terms provisions.

The Australian Consumer Law provides that terms in consumer contracts are void if they are found to be unfair. A consumer contract is a standard form agreement for the supply of goods or services intended for personal, domestic or household use or consumption.

The Australian Consumer Law provides that a consumer contract term is unfair when it:

- **causes a significant imbalance in the parties' rights and obligations and**
- **is not reasonably necessary to protect the legitimate interests of the supplier; and**
- **causes financial or non-financial detriment to a party.**

Hail storm update

As a result of the hail storm 'disaster' in March of this year, the Department of Commerce received a number of formal complaints from consumers. These complaints involved car hire companies charging damage fees of up to \$3000 and alleged hidden cost for hire vehicles damaged by the hail.

The Department, at face value, took the view that it seemed unreasonable for a hire car company to hold the hirer responsible for what appeared to be, from an insurance perspective, 'an act of God'.

In response to this view, the vehicle hire industry maintained that the 'Terms and Conditions of Rental' clearly states that the renter, upon signing the Rental Agreement, accepts responsibility for 'loss of, or damage to, the vehicle', irrespective of whether he or she was at fault.

The industry maintained that the hirer had the initial option to accept an 'excess reduction', which in general reduced liability to \$300 (plus GST, administration fee and premium location surcharge). A large majority of the complainants chose not to take up this option.

Subsequent legal advice received by the Department appeared to support the right of hire companies to recover the damages fee, as long as the quoted or actual cost of repairs were equal to or exceeded the damages fee amount.

In cases where the repair costs were less than the damages fee, the trader should reimburse the difference to the consumer.

Several complainants had concerns regarding what they considered to be undisclosed costs for example administration fees, premium location

surcharge, GST applied at the end of hire. They questioned the legality in the application of these costs and the resultant 'compounding' effect, especially when applied to the extra fees arising from hail damage.

The industry response advised that the rental document, initialled and signed by the hirer, does in fact cite these costs and applied percentages. The vehicle companies consider that they have discharged their responsibility on to the disclosure of these costs and also indicated that these costs were legally applicable under the terms and conditions of the rental agreement, with respect to damaged hire vehicles.

Although the Department held a slightly different view on disclosure, within the parameters of 'best practice', it seemed reasonable to expect that, by signing the rental document, the hirer had acknowledged and therefore accepted the formal content of that document and responsibility under the terms and conditions of the agreement.

As a result most complaints have reached a conclusion and those consumers, who were considering the option to pursue their claims, have been advised to seek their own legal advice before doing so.

Notwithstanding the considerable negative impact of the hail storm on the motor vehicle industry, a positive outcome has been subsequent establishment of communication and understanding between the Department and stakeholders in the hire vehicle industry, and clarification about their business, administrative procedures, processes and documentation.

The Motor Vehicles Branch of the Department of Commerce, Consumer Protection Division is located at the rear of 321 Selby Street, Osborne Park.

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9282 4362 (Licensing)

Facsimile:..... **9282 4363**

Email:..... **motorvehicles@commerce.wa.gov.au**

Website:..... **www.commerce.wa.gov.au**

Postal address: **Locked Bag 14 Cloisters Square
PERTH WA 6850**

The reception desk is open to the public between 8:30am and 5:00pm Monday to Friday (except for Public Holidays).

If you have any questions or feedback about this newsletter, please contact Mr Angelo Barbaro, Principal Customer Services Officer, Motor Vehicles Branch on 9282 4349 or email **angelo.barbaro@commerce.wa.gov.au**