

Used vehicle warranty how to waive it

October 2007

Warranties on certain vehicles priced at \$4000 or more (motorcycles \$3500 or more) can be waived by agreement between the parties and the consent of the Commissioner for Consumer Protection. However, there are certain rules and considerations which must be addressed first.

Statutory warranty

A motor vehicle is covered by statutory warranty when the cash price paid is \$4000 or more, and the vehicle is not more than 12 years old nor travelled more than 180,000km at the time of sale. Where a vehicle is:

- not more than 10 years old nor travelled more than 150,000 at the time of sale - warranty is for three months or 5000km, whichever happens first; or
- between 10 and 12 years old or has travelled between 150,000 and 180,000 at the time of sale - warranty is for one month or 1500km, whichever happens first.

A motorcycle is covered by statutory warranty where the cash price is \$3500 or more and the motorcycle is not more than eight years old nor travelled more than 80,000km at the time of sale. The warranty period is for three months or 5000km, whichever happens first.

Vehicles covered by warranty include passenger motorcycles, campervans, passenger cars including four-wheel drives, passenger vans that seat eight adult passengers or fewer, station wagons, and other passenger car derivatives that have more than one row of forward facing seats.

When one of the above vehicles is **auctioned**, the auctioneer is responsible for the warranty if at the time of sale the vehicle is owned by a motor vehicle dealer, hire-car company, or the auctioneer.

Warranty exemptions

Vehicles that are excluded are:

- caravans built to be towed by a motor vehicle;
- motor vehicles built primarily 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 are included, but most utilities and panel vans are not, unless they have more than one row of forward facing seats); and
- motor cycles built for off-road use and not built to carry passengers.

Motor Vehicles Branch

Office: 321 Selby Street (rear) Osborne Park, Western Australia
Post: Locked Bag 14, Cloisters Square, Western Australia 6850
Advice Line: 1300 30 40 54 Facsimile: 9282 4363
Email: consumer@docep.wa.gov.au
Internet: www.docep.wa.gov.au



Department of Consumer
and Employment Protection
Government of Western Australia

Warranty waiver

A purchaser can apply to the Commissioner for Consumer Protection for the warranty obligations to be set aside. This must be done before the vehicle is sold and the consumer takes possession.

If this is not done, then all warranty obligations will still apply to the vehicle. **It's an offence if a buyer is misled into believing there is no warranty.**

The Commissioner is likely to agree to the warranty being waived if satisfied that:

- the purchaser understands and accepts the effect of waiving the warranty; and
- the dealer has offered a genuine discount that is greater than both the expected cost of repairing known defects and a reasonable allowance for defects which might occur within the normal warranty period.

As a guide, a discount of about 10 per cent of the purchase price, but not less than \$500, should be offered above a reasonable allowance to repair known defects.

How to apply for a warranty waiver

The application to waive the warranty must be on the form ***Application for Waiver of Used Car Warranty***. You can use the form on the back of this fact sheet.

In all instances, the following documents must be submitted by fax or in person for a warranty waiver to be processed:

- a completed *Application for Waiver* form;
- a copy of the contract to buy the vehicle;
- a copy of the completed Form 4 (the 'pink slip'); and
- a detailed, current mechanical report on the condition of the vehicle.

The application may be made in person or by telephone with forms faxed to Consumer Protection on (08) 9282 4363. The warranty is not waived until it is endorsed by authorised departmental staff or you receive a facsimile copy of the department's approval.

Criteria for assessing an application

The officer assessing the application will interview the buyer to establish that:

- there has been a genuine reduction in the price of the vehicle to compensate for the loss of warranty rights;
- the buyer accepts that the mechanical report is thorough, fair and accurate and highlights all defects. The report does not have to be independent of the dealer, but the consumer has the right to organise his or her own report;
- the likely cost of repairs for defects which are disclosed in the mechanical report and that would be covered by warranty, is substantially less than the discount offered, with sufficient discount left to justify waiving the warranty;
- the buyer understands the effect of waiving the entitlement to the warranty under the *Motor Vehicle Dealers Act*; and
- the buyer understands those rights under the *Fair Trading Act* which cannot be waived but may be affected by the warranty waiver.

The warranty may be waived only after **all** of the above criteria have been satisfied.

Contract to be conditional on warranty waiver

The contract to buy the vehicle should include the condition "**Subject to the Commissioner for Consumer Protection approving a warranty waiver**".

By leaving this statement off the contract a dealer risks giving the buyer the right to buy the vehicle at the discounted price **with the warranty** if the application to waive is rejected or not made properly by the purchaser.

If Consumer Protection approves the application to waive the warranty, the contract to sell the vehicle usually becomes enforceable at that point. If the application is rejected, any offer that was conditional on a warranty waiver would lapse.

Implied warranties under the *Fair Trading Act*

The waiver of the statutory warranty under the *Motor Vehicle Dealers Act* does **not** waive a dealer's obligations under the *Fair Trading Act*. These obligations include the conditions which are implied in the contract that:

- the vehicle is provided with clear title;
- the vehicle will match a sample or description; and
- the vehicle will not have any significant defects other than those disclosed before the time of sale.

The *Fair Trading Act* states that where a person supplies goods in the course of a business (for instance, a dealer sells a car), it is an implied condition of the contract of sale that the goods are of "merchantable quality", that is, fit for the purpose for which goods of that nature are normally used.

However:

- if defects are specifically drawn to the attention of the purchaser before the contract is made; or
- if the consumer examines the vehicle before the contract is made, there is no implied warranty for defects made known or which the examination revealed or should have revealed.

Therefore, if the mechanical report that is obtained for the application to waive the warranty describes a defect, the buyer cannot later claim for that defect to be repaired under the *Fair Trading Act*.

However, a dealer may be required to repair any serious defect that existed at the time of sale which was not properly described in the pre-sale mechanical report, if that fault renders the vehicle "not of merchantable quality".

A fault which makes a vehicle "unmerchantable" includes a major defect in:

- the engine, gearbox or drive-train that prevents the vehicle from being used in the normal way; or
- the steering, brakes, or suspension or any other part that makes the vehicle unsafe to drive.

It's in everyone's best interests to **ensure that the mechanical report** relied upon by the buyer and the Commissioner **is thorough, accurate and properly describes all faults and the general condition of the vehicle.**

Offences

Only a person authorised by the Commissioner for Consumer Protection can waive the right to the statutory vehicle warranty.

It is an offence under the *Motor Vehicle Dealers Act* to attempt to waive the warranty without the prior consent of the Commissioner.

A dealer who misleads a buyer about the existence of, or exclusions from, a warranty commits an offence under the *Fair Trading Act*. Not only does the buyer's right to be compensated for warranty repairs continue, but the dealer and any person involved in committing the offence can be prosecuted.

The maximum fine under the *Fair Trading Act* is \$100,000 for a company and each officer of the company involved in the offence.

Where the dealer is not a company, the maximum fine is \$20,000 for the dealer and any employee involved in the offence.

If you are not sure about the warranty waiver process, you should contact Consumer Protection for more information.

We can help

For advice or assistance ring the Consumer Protection Advice Line on **1300 30 40 54** (cost of a local call statewide); the department's Motor Vehicles Branch general query line 9282 4361; or fax the Motor Vehicles Branch on (08) 9282 4363.

Consumer Protection provides a free telephone advisory service to consumers and business people on their rights and obligations under consumer protection laws. We are happy to provide advice on a particular dispute and general information on consumer protection issues.

This publication is available on request in other formats to assist people with special needs.



APPLICATION FOR WAIVER OF USED VEHICLE WARRANTY

Before making this application

The purchaser or dealer must arrange for a mechanical report to be prepared on the vehicle. If the purchaser is not satisfied with the reported condition of the vehicle the department will not approve the application. Where the Commissioner rejects the application and the contract was made subject to the Commissioner's approval of this application, the contract shall lapse. Dealers should ensure that the words "**subject to the Commissioner for Consumer Protection approving a warranty waiver**" are written on the contract.

How you make this application

You can make this application in person at the Department of Consumer and Employment Protection, Ground Floor, 219 St George's Terrace, Perth, or by telephone (08) 9282 4361 and fax to (08) 9282 4363. Country applicants can arrange a waiver through their regional Consumer Protection office or by telephone and fax by first ringing 1300 30 40 54 (for the cost of a local call from anywhere in the state).

The following documents must be submitted with this application:

- > Copy of contract.
- > Copy of Form 4 (pink form usually displayed on the dashboard).
- > Copy of a detailed, current mechanical report.

Important notice to applicant

Approval of this application by the Commissioner for Consumer Protection does not affect the rights and remedies conferred upon you by the *Trade Practices Act* and the *Fair Trading Act*. If a defect prevents you from using the vehicle for its normal purpose, you may be able to seek redress for the cost of repairs. This will only arise if the defect existed in the vehicle at the time of purchase and the defect could not have been detected during the mechanical inspection.

For further information, please contact Consumer Protection on 1300 30 40 54 (cost of a local call anywhere in the state), or National Relay Service 13 36 77 (for hearing impaired).

Contract and application details

Purchaser's details:

(Surname).....(Other names).....
(Address).....

Vehicle details:

(Make) (Year) (Model) (Reg. no.).....

Dealer's details:

(Dealer's name).....(Address or fax no.)
(Dealer's contact tel. no.).....(Dealer's Rep) Surname.....Given Name.....

Price reduction details:

- | | |
|---|---------|
| 1. Price of vehicle with warranty | \$..... |
| 2. Price of vehicle without warranty | \$..... |
| 3. Price reduction for waiving warranty (1 - 2) | \$..... |

To the Commissioner for Consumer Protection

The dealer and I have entered into a contract to purchase the motor vehicle described above. The dealer has agreed to reduce the price of the vehicle as described above. The contract is subject to the Commissioner for Consumer Protection approving my application to waive the warranty provided under Section 48 of the *Motor Vehicle Dealers Act*.

I therefore request your approval to waive that warranty.

I understand that if this application is approved, I will not be able to make a warranty claim, pursuant to Section 34 of the Motor Vehicle Dealers Act, against the dealer for defects which cause or are likely to cause the vehicle to be unroadworthy or unserviceable.

.....
(Signature of purchaser)

____ / ____ / ____
(Date)

OFFICE USE ONLY

- Approved Rejected

Officer Position Telephone
Signature Date Finalised Time:.....

