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THE HONOURABLE JOHN CHARLES KOBELKE MINISTER FOR CONSUMER AND EMPLOYMENT PROTECTION

In accordance with Section 51(1) of the *Motor Vehicle Dealers Act* 1973 - 1982, I submit for your information and presentation to Parliament, the Annual Report of the Motor Vehicle Dealers Licensing Board for the year ending 30 June 2003.

Virginia Seymour **Chairperson**

25 November 2003

LEGISLATIVE CHARTER

The Motor Vehicle Dealers Licensing Board is established under the *Motor Vehicle Dealers Act 1973.*

MISSION

The Board has defined its mission as:

To regulate entry into, and influence standards of conduct within, the motor vehicle sales industry.

OBJECTIVES

The Board's objectives are to:

- license appropriate entities to carry on business in the motor vehicle sales industry;
- deny access to the motor vehicle sales industry by unfit entities;
- remove unfit entities from the motor vehicle sales industry; and
- ensure the registration and maintenance of appropriate facilities by licensed entities.

This means that licence holders will:

- behave in a way that is neither deceptive nor misleading;
- provide motor vehicles that are safe, of merchantable quality, and appropriately and accurately described and/or advertised;
- provide accurate and fair information about the availability of motor vehicles;
- inform themselves about their rights and responsibilities;
- not default prior to concluding a contract; and

provide appropriate levels of responsibility for post-sale performance, eg, through statutory or implied warranty, as applicable.

and that the marketplace will:

- operate freely with restrictions only where this is demonstrably in the public interest;
- allow market entry without significant barriers;
- afford appropriate protection for business transactions;
- provide no regulatory advantage for one section of the market over another; and
- have access to clear, easy to understand legislation and information about its accompanying rights and responsibilities.

KEY RESPONSIBILITIES

The Board's key responsibilities as determined by reference to the *Motor Vehicle Dealers Act 1973*, are:

- consideration of applications for dealers' licences;
- consideration of the registration of premises at which the business of dealing in motor vehicles is carried on;
- consideration of applications by persons seeking to be yard managers and salespersons in the motor vehicle sales industry;
- to conduct Inquiries into objections raised by the Commissioner for Fair Trading to an applicant obtaining a licence or a licensee continuing to hold a licence; and
- to conduct Inquiries on its own motion into matters concerning the fitness of an applicant to obtain a licence or a licensee to remain licensed.

MEMBERSHIP OF THE BOARD

The Board comprises members and deputy members appointed by the Governor in accordance with Section 8 of the *Motor Vehicle Dealers Act 1973*. Membership of the Board is determined by the provisions of the Act and requires that industry and consumer bodies nominate a panel of names to the Minister. In keeping with the State Government policy on gender equity, nominations are sought from industry and consumer bodies and wherever possible, include the nomination of female representatives.

The Motor Vehicle Dealers Licensing Board comprises the following persons:

• A person appointed as a member and Chairperson;

Name: Mrs Rona Joy OKELY

Occupation: Retired Community Welfare and Legal

Services Coordinator

Position: Chairperson

Last appointment date: 19 March 2001

Length of service: 15 years

Mrs Okely resigned with effect from

30 November 2002

Deputy to Chairperson: Miss Victoria BUTLER

Name: Ms Virginia Anne SEYMOUR

Occupation: Lawyer

Position: Mrs Seymour commenced the year as a

deputy (consumer representative) member of the Board and assumed the position of Chairperson from the date of Mrs Okely's

resignation

Last appointment date: 1 December 2002

Length of service: 3 years

Deputy to Chairperson: Miss Victoria Jane BUTLER.

Members Continued:

• A nominee of the Australian Automobile Dealers' Association;

Name: Mr Lance Douglas KERR

Occupation: Company Director and licensed motor vehicle

dealer.

Position: Member

Last appointment date: 11 June 2002 Appointment expires: 31 March 2005

Length of service: 1 year

Deputy to Member: Mr Colin Saul ROCKMAN

• A nominee of the Motor Trade Association of Western Australia (Inc.);

Name: Mr Trevor Phillip HANCOCK

Occupation: Company Director and former licensed motor

vehicle dealer

Position: Member

Last appointment date: 21 March 2000 Appointment expires: 31 March 2003

Length of service: 13 years

(On expiry of his term, Mr Hancock was

replaced as a member by Mr Robert Arthur

Pearce)

Deputy to Member: Mr Robert Arthur PEARCE

Name: Mr Robert Arthur PEARCE

Occupation: Company Director and licensed motor vehicle

dealer

Position: Member

Last appointment date: 1 April 2003
Appointment expires: 1 April 2003
31 March 2006

Length of service: 11years

(Mr Pearce was previously deputy to Mr Trevor Phillip Hancock and replaced him as a member

as from 1 April 2003.)

Deputy to Member: Mr Trevor Phillip HANCOCK

Members Continued:

• A nominee of the Minister for Consumer Protection representing the interests of purchasers of motor vehicles;

Name: Miss Victoria Jane BUTLER

Occupation: Lawyer

Position: Member and Deputy to the Chair from April

2002

Last appointment date: 1 April 2003 Appointment expires: 31 March 2006

Length of service: 10 years

Deputy to Member: Ms Judy SEIF who was appointed for the first

time on 1 April 2003

• A nominee of the Royal Automobile Club of WA (Inc);

Name: Mr David Leslie MOIR

Occupation: Manager Position: Member

Last appointment date: 19 March 2001 Appointment expires: 31 March 2004

Length of service: 11 years

Deputy to Member: Mr Christopher Paul ATKINSON

BOARD ACTIVITIES

<u>ADMINISTRATIVE SUPPORT</u>

MOTOR VEHICLE & TRAVEL INDUSTRIES BRANCH

The Department of Consumer and Employment Protection through the Motor Vehicle and Travel Industries Branch provides the Motor Vehicle Dealers Licensing Board with administrative support.

This support strengthened in the last financial year due to the increased resources that were provided in 2001/2002. These resources continue to support the Government's Consumer Justice Strategy and its commitment to:

- prosecuting those undertaking unlicensed activity;
- increasing the level of general compliance activity; and
- ensuring rigorous checks are carried out on applications for licences to enhance the standards of those in the industry.

The Board wishes to acknowledge and thank the Minister, the Hon John Kobelke MLA for providing ongoing support to the Board despite the pressing demands on his time.

In addition the Board acknowledges the dedicated efforts of Consumer Protection staff and management in ensuring that all aspects of Board activity have been supported.

LEGAL AND PROSECUTION SERVICES UNIT.

The Department of Consumer and Employment protection provides legal services through the Legal and Prosecution Services Unit.

The Board acknowledges the commitment of the department's executive to providing quality legal services in a timely manner and is pleased to note the appointment of a General Counsel to manage the activities of the unit.

IMPLEMENTATION OF THE STATE ADMINISTRATIVE TRIBUNAL

Since May 2002 the Board has held ongoing discussions with and provided input to the Department and those responsible for the introduction of the State Administrative Tribunal. The Board continues to hold the view that the proposed model needs modification to ensure that the Board's current approach to dealing with discipline matters in a timely manner is maintained.

The Board continues to hold concerns that the new system as proposed, may lead to a diminution in the speed with which dealers who breach the Act will be dealt with thereby reducing protection to consumers.

DEALER COMPLIANCE UNIT

The Board continued to be provided with support from the Dealer Compliance Unit of the Department for Planning & Infrastructure. Such services include inspectors regularly visiting dealerships to assess the roadworthiness of vehicles and to ensure that dealers complete documentation in accordance with relevant legislation.

The Board acknowledges the continued support provided during the year by the Dealer Compliance Unit. In addition, discussions progressed with the Department for Planning & Infrastructure to ensure that the long-term provision of service by the Dealer Compliance Unit on behalf of the Board was maintained.

The Board Secretary has had discussions with Department for Planning and Infrastructure staff regarding the development of a service delivery agreement that will formalise the existing arrangements and outline specific services to be delivered. Such arrangements will include the type of activities for which the Board will issue instructions or policies and the manner in which those activities should be undertaken. As predicted in the last annual report, the introduction of the State Administrative Tribunal delayed the drafting of the agreement however substantial progress was made by the Board on this activity during the year and it is hoped that it will be implemented during 2003/2004.

UNLICENSED DEALING ACTIVITY

Unlicensed motor vehicle dealing activity continues to be a major area of concern to the Board.

The amendments to the *Motor Vehicle Dealers Act 1973* which took effect on 1 September 2002 significantly increased the penalty for persons convicted of unlicensed dealing.

The Board was pleased to note the level of activity and the results achieved by the Consumer Protection Unlicensed Dealer Unit during the year. It is the Board's view that continued emphasis on prosecution of unlicensed dealers in the courts, will act as a strong deterrent to those undertaking or contemplating such activity. The Board also wishes to acknowledge the work of the Motor Trade Association of Western Australia (Inc) to help remove unlicensed dealing from the community through provision of intelligence to the Department. It is envisaged that this co-operation will continue and strengthen in the coming year.

PRO-ACTIVE COMPLIANCE PROGRAM

A pro-active audit program of licensed dealers continued in 2002/2003. The program focuses on ensuring:

- that dealerships are maintaining accurate records of staff and vehicle transactions;
- that advertising accords with the requirements of the Fair Trading,
 Motor Vehicle Dealers and Consumer Affairs Acts; and
- that employees hold appropriate licences to operate within the industry.

The additional staff foreshadowed in the 2001/2002 annual report commenced during the year enabling a much stronger focus on this activity to occur this year. Feedback is providing useful intelligence to the Board on industry trends and training needs.

The focus of the pro-active work in 2003/2004 is expected to broaden to incorporate a program of visits to car hire operators and auctioneers to ensure understanding of and compliance with the Act where the operators are licensed. this program will also ensure that those who hold an exemption are acting in accordance with the terms of that exemption.

DEALER FINANCIAL AUDIT PROGRAM

Two financial audit programs commenced during the year.

TRUST ACCOUNTS

From 1 September 2002 every dealer involved in selling vehicles on consignment is required to advise the Board that it has established a trust account. In keeping with the provisions of section 32[I] the Board wrote to all dealers who had a consignment trust account advising that the first audit must be completed for the period 1 September 2002 to 31 March 2003, and submitted no later than 31 July 2003.

Audits returns will be assessed by the Finance Officer for compliance and issues requiring action will be brought to the attention of the Board.

FINANCIAL VIABILITY

As outlined in the 2001/2002 Annual Report, Consumer Protection provided support to the Board to establish a pro-active financial audit program to ensure that licensed dealers remain financially viable throughout the whole of their triennial licence. The timing of and format for this program, have been determined, with returns being required by 31 March for those dealers selected.

LEGISLATIVE AMENDMENTS

PROPOSED MOTOR VEHICLE REPAIRER LEGISLATION

The Motor Vehicle Repairers Bill will, if enacted, make it mandatory for those carrying out repairs to motor vehicles to be licensed and employ either qualified tradespersons or to have employees under the supervision of qualified tradespersons.

The Board notes the progress made during the year by the Gallop Government on this matter. The Board continues to hold the view that once enacted, the legislation will significantly increase protection for consumers.

The Board believes this range of proposals and the expansion of functions and responsibilities will further improve industry standards in relation to consumer protection.

MOTOR VEHICLE DEALERS ACT 1973

The Motor Vehicle Dealers Amendment Act 2002 was enacted on 1 September 2002.

The Board considers that the introduction of stronger penalty provisions for unlicensed dealing, the prescription of standardised terms and conditions for the sale of vehicles, the enhancement of Board powers and the introduction of trust accounts for those licensees dealing in consignment vehicles have, as anticipated, considerably strengthened protection for consumers and enhanced the professional standards of licensed dealers.

The Board appreciates the efforts of Consumer Protection staff and the industry in ensuring the transition occurred on time and that industry, staff and consumers had ample notice.

POLICIES

REVIEW OF BOARD POLICIES

As highlighted in the 2001/2002 report, the amended legislation provided the catalyst for the Board to review its policies to ensure they reflect the new legislation.

In particular policies relating to authorised premises and financial matters have undergone substantial change to reflect the amendments made to the Act.

The pro-active compliance regime highlighted areas that have led to the Board re-examining its policies and making changes as appropriate. One such example relates to the co-location of premises. In the past where one dealer agreed to allow a second dealer to share premises, the requirements for differentiating the premises were minimal. However, as a result of a number of pro-active inspections, the Board established a need to amend the policy.

All dealers wishing to co-locate are now required to have clearly differentiated signage, office arrangements and vehicle separation in the yard so that it is clear to consumers that there are two businesses operating.

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MEETINGS

During the year under review the Board met on fifteen occasions where it considered new licence applications, renewal applications, policy issues, and conducted Inquiries.

The Board met on three additional days to hear disciplinary Inquiries only and two additional days to consider policy matters.

MEMBER	MEETINGS ATTENDED	DEPUTY MEMBER	MEETINGS ATTENDED
R J Okely [Chair]	9		
V A Seymour [Chair]	11		
L D Kerr	16	C S Rockman	8
V J Butler	17	V A Seymour J Seif	5 2
T P Hancock	9	R A Pearce	3
R A Pearce	5	T P Hancock	5
D L Moir	10	C P Atkinson	10

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FORMAL INQUIRIES CONDUCTED BY THE BOARD IN THE 2002/2003 FINANCIAL YEAR

The Board conducted or finalised forty-three formal Inquiries into the fitness of applicants or licensees to obtain or hold a licence under the *Motor Vehicle Dealers Act 1973*. Inquiries are shown in the table below in two categories - New Applications and Disciplinary Inquiries.

Three Inquiries completed in 2002-2003 were commenced in 2001-2002: Two were for new applications for Salesperson's licences, and were approved. The third was a disciplinary Inquiry in relation to a Dealer's licence, which resulted in a disqualification. These are included in the figures below.

New Applications

Fourteen Inquiries were conducted in relation to applications for new licences. The Board disqualified one applicant on the basis that the applicant had been convicted of offences the Board considered rendered the person unfit to be a holder of a licence.

Two Inquiries into new applications were held over to 2003-2004, one pending legal action in another jurisdiction, and the other pending the result of an Inquiry by the Builders Registration Board. These are not included in the figures below.

New Applications ¹	Approved	Disqualified/or Refused/Pending	
Dealers	2	0	
Yard Managers	0	1	
Salespersons	9	2	
Total	11	3	

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¹ This denotes where an Inquiry 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.

Disciplinary Inquiries

As demonstrated by the table below, the Board conducted thirty one disciplinary Inquiries against existing licence holders which resulted in eight current licence holders being disqualified., four on the grounds that the licence holder had failed to meet the provisions of the Act regarding management of a Dealership and four on the grounds of convictions that the Board considered rendered the person unfit to be the holder of a licence. In addition two new dealer applicants were refused a licence after inquiry. Three Inquiries resulted in reprimands with licences being granted to two applicants. Three Inquiries resulted in fines being applied, with all three applicants being granted a licence.

Disciplinary Inquiries	No Action	Reprimand	Disqualified or Refused	Fined	Pending
Dealers & Directors	1	2	6	0	
Yard Managers	4	0	1	2	
Salespersons	9	1	3	1	1
Total	14	3	10	3	1

In addition to formal Inquiries, the Board struck out eighteen new applications for licences, as the applicants had not met the requirements of the *Motor Vehicle Dealers Act 1973*, mostly on the basis that the applicant failed to provide the information required to qualify for a licence or failed the requisite training course. These applications are not included in the tables above.

At its meeting of 17 December 2002 the Board determined that the Secretary would in future "refuse" licence applications where applications were incomplete. The Board determined to ratify these decisions at the meeting following the refusal by the Secretary.

DETAILS OF DISCIPLINARY INQUIRIES INVOLVING PENALTIES

Name of Applicant / Licence Holder

Outcome

STEPHEN RAISIN

Inquiry into his fitness to hold a dealer's licence. Held on 13 August 2002. (Inquiry commenced 4 June 2002.)

Disqualified until further order of the Board under Section 20(1)(c).

 disqualifying a person if found by any court or other tribunal, or, after due Inquiry, by the Board, to have been guilty of fraudulent conduct or dishonesty in connection with the business of buying or selling vehicles.

RAYMOND CHRISTOPHER

Inquiry into his fitness to hold a until further order of the Board. salesman's licence. Held on 16 July

• where the person is offence the commission.

Application refused under Section 20 (1) (b) and disqualified from holding or obtaining a licence until further order of the Board

 where the person is convicted of any offence, the commission of which would in the opinion of the Board render him unfit to be the holder of the licence.

PETER SEAN LONG

Inquiry into his fitness to hold a Dealer's licence. Held on 16 July 2002.

Disqualified under Section 20 (1) (b) from holding or obtaining a licence until further order of the Board.

 where the person is convicted of any offence, the commission of which would in the opinion of the Board render him unfit to be the holder of the licence.

ALAN ERNEST DAVENPORT

Inquiry into his fitness to hold a yard managers licence. Held on 27 August 2002.

Disqualified under Section 20 (1) (c) from holding or obtaining a licence until further order of the Board.

 disqualifying a person if found by any court or other tribunal, or, after due Inquiry, by the Board, to have been guilty of fraudulent conduct or dishonesty in connection with the business of buying or selling vehicles.

PHILLIP JOHN GRIFFITHS

Application refused under Section 17(b).

salesman's licence Held on 15 October 2002.

Inquiry into his fitness to hold a Disqualified until further order of the Board under Section 20(1)(b).

> where the person is convicted of any offence, the commission of which would in the opinion of the Board render him unfit to be the holder of the licence.

VINCENT JAMES ROMEO

Reprimanded under Section 20A (6) for failing to comply with Section 31B.

Inquiry into his fitness to hold a salesman's licence and whether he has contravened the Act by acting as a salesman whilst unlicensed. Held on 4 March 2003.

Granted a salesperson's licence in accordance with the Act.

(Inquiry commenced 21 January 2003.)

- A person shall not act in the capacity of a salesperson, other than for or on behalf of a financier or car hire operator, unless he is the holder of a salesperson's licence under section 17(1).
- An order may be made reprimanding or cautioning a person.

STEPHEN GEORGE POYNER

Inquiry into whether the dealer had sufficient material and financial resources and whether he is a fit and proper person to hold a Dealers licence. Held on 18 February 2003.

or obtaining any authorisation until further order of the Board, and disqualified under section 20A(3) from being concerned in the management or conduct of a body corporate that is the holder, or a joint holder, of an authorisation.

Application refused and disqualified from holding

[Decision subject to Appeal]

An order may be made disqualifying a person from being concerned in the management or conduct of a body corporate that is the holder, or a joint holder, of an authorisation, whether or not at the time when the order is made the person is so concerned.

KHON MENG WONG T/A BERJAYA CORPORATION (AUST) PTY LTD

Inquiry into whether he had engaged in any conduct that would render him unfit to be the holder of an authorisation. Held on 18 February 2003.

Disqualified from holding or obtaining any authorisation under Sections 20(1)(a) and (b) and 20A(2) until further order of the Board.

Disqualified under section 20A(3) from being concerned in the management or conduct of a body corporate that is the holder, or a joint holder, of an authorisation, until further order of the Board.

having contravened or failed to comply with a provision of the Act; or an authorisation or a condition or restriction attached to an authorisation; or to have done or omitted to do any thing, or engaged in any conduct, where in the opinion of the Board the act, omission or conduct renders the person unfit; to be the holder, or a joint holder, of an authorisation; or to be concerned in the management or conduct of a body corporate that is the holder or a joint holder of an authorisation.

SAID PADSHA SADAT

Inquiry into whether he engaged in any conduct that would render him unfit to be the holder of an authorisation. Held on 18 March 2003.

[Decision subject to Appeal]

Disqualified under sections 20(1)(a) and (b) and 20A from holding or obtaining any authorisation under the Act, or from being concerned in the management or conduct of a body corporate that is the holder, or a joint holder, of an authorisation, until further order of the Board.

having contravened or failed to comply with a provision of the Act; or an authorisation or a condition or restriction attached to an authorisation; or to have done or omitted to do any thing, or engaged in any conduct, where in the opinion of the Board the act, omission or conduct renders the person unfit; to be the holder, or a joint holder, of an authorisation; or to be concerned in the management or conduct of a body corporate that is the holder or a joint holder of an authorisation.

A DOBRA PTY / MICHAEL DOBRA

Inquiry into his application for a vehicle dealer's licence and whether he contravened the Act by dealing whilst unlicensed. Held on 18 March 2003.

Reprimanded under Section 20A (6) for breaching Section 30(1) and Section 15.

Granted application for a Dealer's licence subject to satisfying all of the requirements.

A person shall not engage in unlicensed dealing.

SHANE PATRICK ROZE

Inquiry into his fitness to hold a yard manager's licence. Held on 4 March 2003.

Fine of \$150 under section 20(1) for failure to comply with Section 16(1)(b).

manager's licence. Held on 4 March Application for a yard manager's licence granted.

 a person who applies to the Board in the approved form for a yard manager's licence and pays to the Board the prescribed fee therefore shall be granted such a licence upon satisfying the Board that he is a person of good character and repute and a fit and proper person to hold such a licence.

BRADLEY REGINALD SHORT

Inquiry into his fitness to hold a yard manager's licence and whether he contravened the Act by acting as a yard manager whilst unlicensed. Held on 13 May 2003.

Reprimanded under section 20A(6).

Application for a yard manager's licence granted subject to payment of a fine of \$500.00 and successful completion of the next available yard manager's training course.

 A person shall not act in the capacity of a yard manager, other than for or on behalf of a financier or car hire operator, unless he is the holder of a yard manager's licence under section 16(1).

TERENCE SIMON

Inquiry into his fitness to hold a salesman's licence and whether he contravened the Act by acting as a salesman whilst unlicensed. Held on 13 May 2003.

Reprimanded under section 20A (6) and ordered to pay a penalty of \$150.

Granted a salesperson's licence subject to payment of the penalty.

 A person shall not act in the capacity of a salesperson, other than for or on behalf of a financier or car hire operator, unless he is the holder of a salesperson's licence.

COLIN JOHN VARLEY

Inquiry into whether he had engaged in any conduct that would render him unfit to be the holder of an authorisation. Held on 13 May 2003.

Disqualified under Sections 20 and 20A from holding or obtaining any authorisation under the Act, or from being concerned in the management or conduct of a body corporate that is the holder, or a joint holder of an authorisation, until further order.

• The Board may make one or more of the orders ... in respect of a person if the person has been found by the Board to have contravened or failed to comply with a provision of this Act; ... or to have done or omitted to do any thing, or engaged in any conduct, where in the opinion of the Board the act, omission or conduct renders the person unfit to be the holder, or a joint holder, of an authorisation; or to be concerned in the management or conduct of a body corporate that is the holder or a joint holder of an authorisation.

SIMON PETER HALL

Inquiry into his fitness to hold a salesman's licence and whether he contravened the Act by acting as a salesman whilst unlicensed. Held on 24 June 2003.

Application for a licence refused.

Disqualified under sections 20 and 20A for a period of 12 months from holding or obtaining, whether solely or jointly, any authorisation or any specified kind of authorisation under the Act, or from being concerned in the management or conduct of a body corporate that is the holder, or a joint holder of an authorisation, until further order of the Board and subject to providing evidence of payments towards his outstanding fines, reinstatement of his driver's licence and that he is free of convictions. To provide character references and satisfy the Board he has been drug free during that period.

The Board may make one or more of the orders ... in respect of a person if the person has been found by the Board to have contravened or failed to comply with a provision of this Act; ... or to have done or omitted to do any thing, or engaged in any conduct, where in the opinion of the Board the act, omission or conduct renders the person unfit to be the holder, or a joint holder, of an authorisation; or to be concerned in the management or conduct of a body corporate that is the holder or a joint holder of an authorisation.

MICHAEL DI VIRGILIO / BUICK HOLDINGS PTY LTD

Inquiry into whether Buick Holdings understands fully the duties and obligations of a dealer and whether the company contravened the Act by employing an unlicensed salesman. Held on 24 June 2003.

Reprimanded and cautioned under Section 20A (6) for failing to comply with Section 31C and Section 20(1)(a).

 A dealer shall not have a person employed or engaged in his business if the performance of the person's duties involves the person contravening section 31A or 31B.

LICENSING STATISTICS

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

Licence Type	Current at 30 June 2003
Dealers	787
Car Market Operator	2
Yard managers	915
Salespersons	1938

During 2002/2003, the Board granted thirteen conditional exemptions from the licensing requirements of the *Motor Vehicle Dealers Act 1973*. These are not shown in the table above.