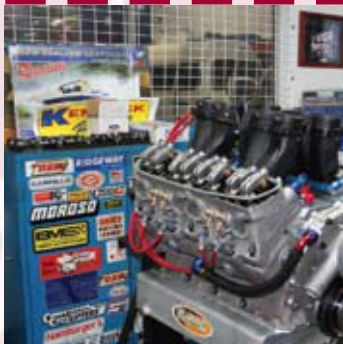


Motor Vehicle Industry Board

Annual Report 2007/2008



Department of Consumer
and Employment Protection
Government of Western Australia

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Annual Report

2007-2008



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and Employment Protection
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TABLE OF CONTENTS

1. Compliance with reporting standards	4
2. Executive summary.....	5
3. About the Board	7
3.1 Legislative charter	7
3.2 Mission	7
3.3 Functions of the Board	7
3.4 Membership of the Board	8
3.5 Meetings.....	11
3.6 Administrative support – Motor Vehicles Branch	11
4. Significant issues and trends.....	12
4.1 Focussing on the motor vehicle dealing industry	12
4.1.1 Regional compliance activities.....	12
4.1.2 Dealer inspection program.....	13
4.1.3 Unlicensed dealing.....	14
4.1.4 Proposed amendments to <i>Motor Vehicle Dealers Act</i>	16
4.2 Focussing on the motor vehicle repair industry	17
4.2.1 Motor vehicle repairers legislation	17
4.2.2 Motor Vehicle Repair Industry Compensation Fund and Motor Vehicle Repair Industry Education and Research Fund	18
4.3 Regulating for results – policy development	19
4.3.1 Motor vehicle repairers policies	19
4.3.2 Motor vehicle dealers policies.....	21
4.4 Raising industry standards	22
4.4.1 Review of training courses for motor vehicle dealers, yard managers and salespersons.....	22
4.4.2 Motor Vehicle Industry Newsletter	23
5. Board statistical data	24
5.1 Investigations undertaken at the direction of the Board.....	24
5.2 Formal hearings conducted by the Board	24
5.3 Matters brought before the State Administrative Tribunal.....	25
5.4 Licensing statistics.....	26
6. Compliance with public sector standards and ethical codes.....	27
7. Corruption prevention.....	27
8. Public Interest Disclosure	28

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

In accordance with Section 51(1) of the *Motor Vehicle Dealers Act 1973 -1982*,
I submit for your information and presentation to Parliament, the Annual Report of the
Motor Vehicle Industry Board for the year ending 30 June 2008.



Virginia Seymour
Chairperson

26 September 2008

1. Compliance with reporting standards

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

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

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

The Board is funded and provided with resources by the Department of Consumer and Employment Protection.

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

This Annual Report includes details of

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

2. Executive summary

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

The focus of the Board in this reporting year has been the implementation of Part 3 of the *Motor Vehicle Repairers Act 2003*. Under this legislation the motor vehicle repair industry is regulated by means of a licensing system for repair businesses and a certification system for individual repairers who do repair work unsupervised or who supervise repair work. Part 3 became operational on 19 March 2007.

The Board anticipated that in the course of the year it would certify in excess of 7500 individual repairers in preparation for the implementation of the business licensing provisions of the *Motor Vehicle Repairers Act* which will commence in July 2008. Unfortunately the number of applications has been less than anticipated. By the end of the year the Board had received less than 4000 applications. Attempts by the Board to stimulate the interest of industry have included a continuing program of seminars about the new law, working with industry, particularly the Motor Trade Association of Western Australia, to publicise the law, increasing the circulation of the Board newsletter and direct approaches to repair businesses by providing application forms. Given that a business licence cannot be approved without the applicant holding either a certification, or engaging a certified repairer as a supervisor, the Board anticipates that there will be a significant increase in applications over the next reporting year.

The Board is pleased to note the success of its dealer liaison and inspection programs which were reintroduced late in the previous financial year. Under these programs all new motor vehicle dealers are visited by Board inspectors within three months of commencing business and all dealer operations including vehicles displayed for sale are subject to an inspection at least every two years. The latter program is aimed at providing some assurance of quality and safety in the fleet of vehicles sold by dealers. It is now believed that the first round of the program, which includes both metropolitan and regional dealers, will be completed in just over 18 months, six months earlier than anticipated. Particularly pleasing to the Board is the positive feedback received from dealers.

The Board has also made substantial progress towards the development of a new motor vehicle sales industry training system. The Board has developed a new course outline and has assisted the Motor Trade Association of Western Australia to develop a new reference manual.

The Board is currently working with the Motor Trade Association to finalise the assessment process by which dealers, yard managers and salespersons can demonstrate to the Board that they have the skills to be licensed under the *Motor Vehicle Dealers Act*.

The Board appreciates the significant contribution the Department of Consumer and Employment Protection (DOCEP) staff have made to the development of the course and the reference material.

The major challenge confronting the Board for new financial year will be the successful implementation of the business licensing phase of the *Motor Vehicle Repairers Act*. Experience in the first stage involving the certification of individual repairers has demonstrated a reluctance on the part of the industry to embrace the new regulatory scheme. The Board will be working closely with DOCEP and industry to ensure a much greater community focus on the benefits which will arise from a successful implementation process.

3. About the Board

3.1 Legislative charter

The Motor Vehicle Industry Board is established under the *Motor Vehicle Dealers Act 1973* (as amended by the *Motor Vehicle Dealers Amendment Act 2003 – 73 of 2004*).

The Board has the functions, powers and duties conferred on it by both the *Motor Vehicle Dealers Act 1973* and the *Motor Vehicle Repairers Act 2003*.

3.2 Mission

The Board has defined its mission as:

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

3.3 Functions of the Board

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

- license appropriate entities to carry on business in the motor vehicle dealing industry;
- license yard managers and salespersons to work in the motor vehicle dealing industry;
- deny unfit entities and persons access to the motor vehicle dealing industry;
- investigate the conduct of licensed entities and individuals from the motor vehicle dealing industry to determine if that conduct should be reviewed by the State Administrative Tribunal;
- investigate the conduct of unlicensed entities and individuals and, if necessary, recommend prosecution action;
- ensure the registration and maintenance of appropriate facilities by licensed entities;

-
- approve training courses for persons seeking entry to the motor vehicle dealing industry; and
 - approve persons who provide those training courses.

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

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

3.4 Membership of the Board

The Board comprises members and deputy members appointed by the Governor in accordance with Section 8 of the *Motor Vehicle Dealers Act 1973*. The Governor will make all appointments to the Board based on nominations made by the Minister for Consumer Protection. In keeping with the State Government policy on gender equity, nominations are sought from industry and consumer bodies and wherever possible, include the nomination of female representatives.

The Motor Vehicle Industry Board comprises the following persons:

- A person appointed as Chairperson:

Name: Occupation: Position: Last appointment: Deputy to Chairperson:	Ms Virginia SEYMOUR Lawyer Chairperson 1 September 2006 to 30 September 2008 Mr David MOIR
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- Two persons nominated by the Minister for Consumer Protection who have knowledge and experience in the motor vehicle dealing industry:

Name: Occupation: Position: Last appointment: Deputy to Member:	Mr Robert PEARCE Company Director and licensed motor vehicle dealer Member 1 September 2006 to 30 September 2008 Mr Colin ROCKMAN
Name: Occupation: Position: Last appointment: Deputy to Member:	Mr Lance Douglas KERR Company Director and licensed motor vehicle dealer. Member 1 September 2007 to 31 August 2010 Mr Robert FOWLER

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

Name: Occupation: Position: Last appointment: Deputy to Member:	Mr Patrick BROWNE Company Director and certified repairer Member 1 September 2006 to 30 September 2008 Mr Brian FORBES
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Name:	Mr Wayne PHIPPS
Occupation:	Company Director and certified repairer
Position:	Member
Last appointment:	1 September 2007 to 31 August 2010
Deputy to Member:	Mr Ray Reichard

- Three persons nominated by the Minister for Consumer Protection who represent the interests of purchasers of motor vehicles or customers of motor vehicle repairers (persons licensed under the *Motor Vehicle Repairers Act 2003*):

Name:	Ms Helen TAPLIN
Occupation:	Member Financial Counsellors Resource Project
Position:	Member
Last appointment:	1 September 2006 to 30 September 2008
Deputy to Member:	Mr Diane HAYES
Name:	Ms Judy SEIF
Occupation:	Lawyer
Position:	Member
Last appointment:	1 September 2006 to 30 September 2008
Deputy to Member:	Ms Miriam SAULEY
Name:	Dr Allan BARTON
Occupation:	Member Policy Advisory Group, Australian Consumers Association; Associate Professor in Chemistry at Murdoch University
Position:	Member
Last appointment:	1 September 2007 to 31 August 2010
Deputy to Member:	Ms Rhonda ALGABA

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

Name:	Mr David MOIR
Occupation:	Executive Manager
Position:	Member
Last appointment:	1 September 2006 to 30 September 2008
Deputy to Member:	Mr Michael UPTON

3.5 Meetings

During this period under review the Board met on 17 occasions. At those meetings the Board considered new licence applications, renewal applications, and policy issues. The Board conducted nine Hearings about the fitness of licence applicants.

Deputy Members normally attend meetings in a member's absence. However, a deputy member may sit on a Board licensing Hearing on the same day that a licensing and policy meeting is held and attended by the Member. Members and Deputies are unable to sit in deliberation on a matter at the same meeting.

3.6 Administrative support - Motor Vehicles Branch

The Department of Consumer and Employment Protection, through the Motor Vehicles Branch, continues to provide the Motor Vehicle Industry Board with administrative support.

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

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

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

The Board also acknowledges the significant work undertaken by Michael Johnson as both Manager of the Motor Vehicles Branch and Secretary to the Board in the implementation of the *Motor Vehicle Repairers Act*.

4. Significant issues and trends

4.1 Focussing on the motor vehicle dealing industry

4.1.1 Regional compliance activities

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

When this program was delivered by the Department for Planning and Infrastructure (and its predecessors), dealers were only visited in the major regional centres from Geraldton down to Esperance.

The current program has now visited every licensed dealer in regional Western Australia (excluding Christmas Island) in a twelve month period. For the first time dealers in the mining towns of Karratha and Port Hedland, along with dealers in the Kimberley towns of Kununurra, Halls Creek, Derby and Broome have been visited.

While the compliance staff were pleasantly surprised at the quality of the vehicles being offered for sale, the dealership's paperwork was another story. In almost every instance, the dealers had failed to correctly maintain their documentation as required.

As this was the first time that dealers in this region had the benefit of this type of visit, the compliance staff took the opportunity to offer advice and guidance in order that the dealerships fully understood their requirements under the relevant legislation. The officers also established clear lines of communication to ensure that the dealers would have continued assistance in the future.

In total **228** regional dealers have been visited, with officers inspecting a total of **3533** vehicles, issuing **55** Work Orders and **98** Minor Defect Notices.

The regional program also provided the Board with an opportunity to promote the implementation of the *Motor Vehicle Repairers Act* with compliance staff conducting information seminars in regional centres for motor vehicle repairers.

In all instances the officers were exceptionally well received, with dealers and repairers alike being very thankful that they now have a support network in place for future assistance.

4.1.2 Dealer inspection program

Having commenced on 1 February 2007, the Dealer Inspection Program has completed its first full year of operation.

In keeping with the undertakings given to the Motor Vehicle Industry Board, the program objectives have focused on visiting new dealerships within the first three months of operation to provide introductory advice and assistance to all new licensed dealers. In addition, the program has principally focussed on yards selling older, cheaper vehicles, which are not protected by the warranty provisions of the *Motor Vehicle Dealers Act* and are therefore considered at a higher risk to the consumer in terms of vehicle roadworthiness.

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

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

Currently, there are approximately **950** authorised dealer's premises, of which **720** are located within the metropolitan area and **230** throughout regional Western Australia. The program is to be delivered statewide, with all dealers being visited over a two year period.

In the twelve months to 30 June 2008, a total of **676** dealers have been visited, with officers inspecting a total of **13443** vehicles, issuing **102** Work Orders and **244** Minor Defect Notices.

The auditing of 'expired or surrendered' dealers licences was also incorporated as part of the program with officers attending at the premises of dealers whose licenses had either expired or been surrendered. This was in order to verify that the dealerships had actually ceased trading.

A major focus of the inspection program has been the amendments to the Motor Vehicle Dealers (Sales) Regulations 1974, which now allow dealers to use an 'electronic' version of the Dealers Register – Form 1. Along with the electronic version, changes were also made to the format and required particulars for the 'hard copy' version.

Officers have spent considerable time at all dealerships advising staff of the new laws, instructing them on the correct procedures to complete the documentation to ensure that they comply with their legislative requirements.

Other common problems encountered by officers in the dealership inspections include the following:

- Signage containing business names and licence numbers not displayed.
- Vehicle Particulars – Forms 4 and 6 not displayed or completed at the time of sale.
- Dealerships not notifying of the change in staff (yard managers/salespersons).
- Yard managers/salespersons not notifying of change of employment.
- Dealers not ensuring the required information (business names, licence number, registration number of used vehicles, addresses, etc) are displayed on advertisements published by them, or on their behalf.

Officers have also been responsible for the delivery of the 'Motor Vehicle Repairers' information sessions as part of the education program designed to implement the requirements of the *Motor Vehicle Repairers Act 2003*. In total, **29** presentations have been delivered throughout metropolitan and regional Western Australia.

The Dealer Inspection Program as a whole has been extremely well received by the dealers, with all commenting that this type of visit was well overdue. Further the information offered by the officers was seen as invaluable by the dealers, with the majority expressing that they now have the support from the Board to allow them to successfully fulfil their obligations.

4.1.3 Unlicensed dealing

This year the Investigation Team of the Motor Vehicles Branch continued to investigate a number of persons who are alleged to be

involved in 'unlicensed dealing' matters, as defined in the *Motor Vehicle Dealers Act 1973*.

Some matters currently under investigation involve a range of breaches against current legislation including the *Motor Vehicle Dealers Act 1973*, the *Fair Trading Act 1987* and the *Consumer Affairs Act 1971*.

As a result of the growing prominence of e-Bay in the motor industry as evidenced in the previous year, the Investigation Team has continued to conduct periodic checks with e-Bay to ensure continued compliance with *Motor Vehicle Dealers Act*. This proactive measure is designed to reduce the incidence of unlicensed dealing through the e-Bay medium.

Investigations of major backyard dealers continued with a number of prosecutions being brought to conclusion and prosecution action has been initiated against other alleged backyard dealers.

During the past year, the following unlicensed dealing prosecutions were completed:

- **Jebraeil PISHANIDAR**
In January 2007, prosecution action was commenced in the Perth Magistrates Court against Jebraiel Pishanidar on a charge of unlicensed dealing as a result of an investigation undertaken. In July 2007, the court fined Mr Pishanidar \$5000 and ordered him to pay \$500 in costs.
- **Francesco Domenico LA ROSA**
In July 2007, the case of unlicensed dealing by Mr La Rosa was finalised in the Magistrates courts. Mr La Rosa was convicted and fined \$3000 and ordered to pay \$8891.66 in costs as a result.
- **Peter SPINI**
In August 2007, Mr Spini was fined \$3000 and ordered to pay \$593.50 in costs for unlicensed dealing.
- **Andrew and Suzannah GREGORY**
In January 2008, Andrew and Suzannah Gregory were fined \$2000 and ordered to pay \$291 in costs for unlicensed dealing.

The following matter is still before the Perth Magistrates Court:

- **Michael HOLMES**
In November 2007, Mr Holmes pleaded 'Not Guilty' to the allegations of unlicensed dealing and false and misleading representations. That matter is still awaiting trial before the court.

During the past year, the following infringements were issued:

- **Phoenix Motors Pty Ltd**
In February 2008, Phoenix Motors were issued two \$200 infringements for not clearly and accurately advertising the cash price of the second vehicle offered for sale as required under Part 4, 11 (1) (c) of Motor Vehicle Dealers (Sales) Regulations 1974.
- **Jai Ambe Investments Pty Ltd and Twin Star Motors Pty Ltd trading as Twin Star Autos**
In April 2008, Twin Star Autos was issued a \$500 infringement for allowing a second-hand vehicle for sale to be kept or parked elsewhere than at the authorised premises of the dealer. Twin Star Autos breached Section 27 (3) of the *Motor Vehicle Dealer's Act 1973* by permitting motor vehicles to be displayed for sale on the grass verge bordering the registered premises.

4.1.4 Proposed amendments to *Motor Vehicle Dealers Act*

Last year the Board reported its concerns about its capacity to properly carry out its functions under the *Motor Vehicle Dealers Act* (MVDA).

Of particular concern to the Board was its capacity to effectively undertake its obligation to satisfy itself of the requirement that an applicant for a motor vehicle dealer's licence must have '*sufficient resources*' before the Board grants a licence.

Under Section 15 (1) of the *Motor Vehicle Dealers Act 1973*, the Board grants a licence where it is satisfied that an applicant has complied with the requirements of section 15(1) of the Act.

Section 15 (6) defines the meaning of sufficient resources:

(6) In this section —

‘sufficient resources’ means sufficient material and financial resources available to the person or persons to enable the requirements of this Act to be complied with, but only so far as the Board considers that those requirements are relevant to the category of licence applied for.

Increasingly the Board has received financial information which raised concerns that many licensed entities were running at a loss. However the Board recognises that the financial position of these dealers is often stated in a form which provides the best tax outcome for the dealer, and that the stated financial position is not an indication that the dealer is insolvent.

The Board raised its concerns with the Minister for Consumer Protection who requested that the Department of Consumer and Employment Protection (DOCEP) examine the matter and make recommendations about possible changes to the law. DOCEP has since engaged consultants to advise it on possible solutions, and the Board is awaiting a report from those consultants.

4.2 Focussing on the motor vehicle repair industry

4.2.1 Motor vehicle repairers legislation

The first part of the *Motor Vehicles Repairers Act 2003* was proclaimed in the previous financial year but was implemented largely in the year under review.

In this first stage of the implementation process the Motor Vehicle Industry Board is approving individuals who wish to be certified repairers. While certification is not compulsory for individual repairers, any person who supervises repairers or owns a repair business and personally carries out repair work must be certified. A repair business must employ at least one certified repairer for each class of repair work, at each of the premises from which the business operates. The Board has approved a supervision ratio of one certified repairer to every three uncertified repairers.

As a result of the very slow take-up of certification, implementation of the second stage which will involve the licensing of repair businesses has been delayed to 1 July 2008.

At 30 June 2008 **2755** certification applications had been approved by the Board.

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

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

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

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

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

As only the certification of motor vehicle repairers continued in this financial year, these funds currently only hold a small amount of funds. One percent of each applicant's fee of \$65 has been deposited with each fund. The licensing of motor vehicle repair businesses does not commence until next financial year.

From 1 July 2008, when business licensing commences, one percent of the licence fee will be allocated to each of the funds. The Board believes that at the end of the first licensing year each fund should hold in excess of \$30000. At 30 June 2008, the balances held by these funds were as follows:

Fund:	Balance as at 30 June 2008
Motor Vehicle Repair Industry Compensation Fund	\$2294
Motor Vehicle Repair Industry Education and Research Fund	\$2294

4.3 Regulating for results - policy development

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

Throughout most of this financial year much emphasis was again placed on developing policies relating to the implementation of the motor vehicle repairer's legislation. New policies continued to focus on the certification of individual repairers, and the forthcoming licensing of motor vehicle repair businesses. The Board believes that its role is to encourage the growth and development of skills within the motor repair industry without unreasonably restricting those who have been operating in the pre-licensing environment. The Board also understands that the process of developing new regulatory legislation will not identify all of the issues in the operational environment and therefore uses policy to explain how the law will apply to those unforeseen problems.

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

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

4.3.1 Motor vehicle repairers policies

Motor Vehicle Repairer Certificate classes of repair work and approved equivalent qualifications

The *Motor Vehicle Repairers Act* prescribes that the educational qualification for an individual repairers certificate will be a Certificate II or Certificate III under the Automotive Industry Retail, Service and Repair Training Package.

The Board has quickly identified that this package is the successor to a range of trade qualifications which have been used for apprenticeship schemes across Australia over many years. In addition, the Board accepts that many overseas qualifications are equivalent to Australian qualifications. As a result the Board has

adopted an approach which gives flexibility to the approval of other training while retaining standards.

While an applicant may choose to have any overseas qualification assessed by Trades Recognition Australia or a Registered Training Organisation for equivalence to an Australian trade qualification, many participants in the industry arrived in Australia before the need for that recognition became necessary. The Board therefore adopted new policies to ensure that standards were maintained without imposing onerous requirements on existing repairers.

By way of example, the Board understands that the current Australian apprenticeship system is based around the English system and as a consequence recognises those qualifications and certain other international qualifications.

A New Zealand qualification is recognised as fully equivalent to an Australian qualification. An applicant who holds a trade qualification issued in the United Kingdom, the United States, Canada, South Africa or Zimbabwe or a Master Technicians qualification from Germany which has not been assessed for equivalence by Trades Recognition Australia, will be issued a certificate if they can demonstrate two years employment in their trade in Australia.

Applications from persons claiming equivalent qualifications from other European countries must be submitted to the Board for consideration.

The Board has also recognised other applicants who have a trade certificate in other than a motor vehicle qualification. These applicants may be granted a certificate with certain conditions imposed by the Board. For example, an applicant for a 'Heavy Vehicle Work' or 'Light Vehicle Work' certificate who has a Trade Certificate in Fitter-and/or-Turner or Machining may be granted a 'Heavy Vehicle Work' or 'Light Vehicle Work' certificate with the condition that they have two years Australian motor trade experience.

Certification of 'scratch and dent' repairers

A major issue for the vehicle body repair industry has been the increasing reliance of the community and in particular, the used vehicle sales industry on those who undertake minor body repairs, commonly known as 'scratch and dent' repairers.

The legislation did not recognise the existence of this category of repair. After consultation with industry the Board resolved that it would need to develop a means by which it could approve the

certification of repairers who undertake minor cosmetic panel and/or paint repairs to motor vehicles.

As there was no class of repair work defined in the legislation the Board has resolved that 'scratch and dent' repairers may be certified as vehicle body and/or paint repairers with a condition restricting their repair work to minor cosmetic repairs (scratches, minor dents and chips in the paint work) to body panels and bumpers of motor cars. Repairers certified in this way will **not** be permitted to undertake the repair of complete panels and/or bumpers.

Ratio of 'certified' to 'uncertified' repairers

The Board is required to ensure that a business has sufficient 'manpower' resources before it approves a repair business licence. A business must ensure that uncertified repairers are effectively supervised. As a consequence the Board, after consultation with industry, has determined that it will not approve a business licence unless the applicant's business can demonstrate it has engaged an appropriate number of certified repairers to supervise. The Board has set a supervision ratio of one certified repairer to three uncertified repairers.

This ratio will apply to each class of repair work the business undertakes and will apply at each of the premises from which they operate.

4.3.2 Motor vehicle dealers policies

Authorisation of dealer premises

This policy was updated this financial year. The Board now accepts that written approval for the specified premises from the local government authority may be a letter of authority or confirmation rather than a planning certificate.

All Motor Vehicle Dealer Applications must include a Planning Certificate or written approval from the Local Government Authority that the premises will be used for the said purpose as per section 20E(2) of the *Motor Vehicle Dealers Act 1973* (MVDA) except:

- where the previous owners/operators have provided such documentation within two years prior to the receipt of the new application (dealer or change of premises);
- for an application for a Change of Entity.

The Board is also considering whether motor vehicle dealers should be required to include any storage yards as authorised premises on their licences.

Section 27 of the MVDA gives authorised officers permission to inspect second-hand vehicles. Dealers must keep or park second-hand vehicles at their authorised premises [s27(3)]. If a dealer keeps or parks second-hand vehicles at a storage yard, then that storage yard may have to be listed as an authorised premises on their licence. The Board may also attach any other condition to the licence in relation to that premises.

The Department of Consumer and Employment Protection is of the view that its compliance staff should not be required to check whether the vehicles stored are new or used. The Board is seeking advice from industry on this matter.

4.4 Raising industry standards

4.4.1 Review of training courses for motor vehicle dealers, yard managers and salespersons

It is a requirement of the *Motor Vehicle Dealers Act 1973* that a person engaged in the management of a company or a firm applying for a dealer's licence and all persons applying for a yard manager's or salesperson's licence, must have 'sufficient knowledge of the Act'.

Assessment of sufficient knowledge is measured by the applicant's successful completion of an examination currently provided by the Motor Trade Association WA (MTAWA). This arrangement has been in place for more than three decades.

Over the last twelve months the Board has been working with the Department of Consumer and Employment Protection and MTAWA to update the course requirements and to develop new course material.

While doing so, the Board obtained advice from the State Solicitor's Office, which concluded that although the Board cannot make the completion of a particular training course compulsory, the Board must be satisfied the applicant has 'sufficient knowledge' of the Act, and can make sitting an assessment in an approved way mandatory.

As a consequence the Board has shifted its focus to the development of an assessment regime. The Board has identified the core topics about which licence applicants should have sufficient knowledge and

will determine the examination questions which can be used by any organisation which it approves to conduct training and assessments. Any reference manuals or materials are to provide information on what topics will be included in the assessment, and also need to be approved by the Board.

Senior officers of the Board, the Department of Consumer and Employment Protection's Motor Vehicles Branch and MTAWA have been reviewing the current training requirements and developing new training materials.

The Board anticipates that the new training and assessment system will be operational by the middle of the next financial year.

4.4.2 Motor Vehicle Industry Newsletter

The Motor Vehicle Industry Board commenced publishing the *Motor Vehicle Industry Newsletter* in December 2004.

The newsletter is prepared by the Motor Vehicles Branch of the Department of Consumer and Employment Protection, in conjunction with the Board, to keep those engaged in the buying, selling or repairing of motor vehicles informed about current issues and developments in the industry from a Board and Department perspective.

There have been numerous changes to the laws that regulate the motor vehicle sales industry, and the government has introduced completely new laws which will regulate how the vehicle repair industry operates. One of the aims of the newsletter is to provide the industry with the information it needs to understand the amended or new laws and what they may need to do in relation to the changes.

In this financial year, the Board has produced three newsletters for the industry. Topics in the newsletters included such issues as information on the progress of the motor vehicle repairers certification, preparations for the forthcoming motor vehicle repairer business licensing, reminders about requirements for Special Occasion Permits and consignment trust accounts, information about the Dealer Inspection Program visit to the North West, dealer prosecutions, dates for repairer information sessions, and current news on the Department's operations.

Customer feedback on the newsletter has been positive, indicating that the newsletter has been well received by industry participants.

5. Board statistical data

5.1 Investigations undertaken at the direction of the Board

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

However, as the Board works closely with the Department of Consumer and Employment Protection (DOCEP), which also provides the staff which conduct Board business, the Board rarely exercises this power as most matters requiring investigation are referred directly to DOCEP. On completion of the investigation where disciplinary or prosecution action is required, DOCEP informs the Board.

In the reporting year the Board directed that one matter be investigated with a view to disciplinary action be considered. In this matter a licensee is alleged to have operated in possible breach of both the *Motor Vehicle Dealers Act* and *Fair Trading Act* and had in the Board's view, taken extraordinary steps to avoid payment of a civil award made against him in the Magistrates Court. The Board is of the view that the actions of the licensee constitute conduct which might render the person unfit to hold a licence. Investigations are continuing.

The Board notes that DOCEP completed 130 investigations (of which 67 related to unlicensed vehicle dealing) into alleged breaches of the *Motor Vehicle Dealers Act* and *Fair Trading Act* during the course of the year.

5.2 Formal hearings conducted by the Board

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

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

Type of Application ¹	Approved	Refused/Pending
Dealer	-	-
Exemption	1	-
Yard Manager	1	-
Salesperson	5	1
Repairer	1	-
Total	8	1

Table of hearings:

Name of Applicant / Licence Holder	Outcome
Bernard Churchill	Application for Salesperson's Licence refused
Natalie Brennan	Application for Salesperson's Licence granted
Kristian Davis	Application for Salesperson's Licence granted
Denis Moralee	Application for Repairer's Certificate granted
Kim Lawson	Application for Yard Manager's Licence granted
Mohammad Yaqubi	Application for Salesperson's Licence granted
Charles Chan	Application for Salesperson's Licence granted
Andrew Trudgian	Application for Hire Car Exemption granted
Keith Bromfield	Application for Salesperson's Licence granted

5.3 Matters brought before the State Administrative Tribunal

There were no disciplinary matters referred to the State Administrative Tribunal during the year.

However, the Board notes that the Department of Consumer and Employment Protection had initiated two prosecutions in the Magistrates Court for unlicensed dealing and issued 14 administrative warnings and 68 informal warnings recommending that the person-of-interest modify their conduct to avoid potential breaches.

¹ This denotes where a hearing was held into the application for a licence. It does not reflect those applications that met all Board requirements for a licence to be issued.

5.4 Licensing statistics

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

Licence Type	Current as at 30 June 2005	Current as at 30 June 2006	Current as at 30 June 2007	Current as at 30 June 2008
Dealers	859	860	821	791
Car Market Operators	3	3	3	2
Yard Managers	1079	1089	1025	1073
Salespersons	2215	2244	1988	2073

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

Certified Motor Vehicle Repairers	n/a	n/a	209	2755
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6. Compliance with public sector standards and ethical codes

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

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

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

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

7. Corruption prevention

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

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

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

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

8. Public Interest Disclosure

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

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

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

The Board did not receive any public interest disclosures for the period 1 July 2007 to 30 June 2008.

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