



**Annual Report  
2009/2010**

# Motor Vehicle Industry Board



Government of **Western Australia**  
Department of **Commerce**

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# **Motor Vehicle Industry Board**

## **Annual Report**

**2009-2010**

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**THE HONOURABLE WILLIAM (BILL) RICHARD MARMION MLA  
MINISTER FOR COMMERCE; SCIENCE AND INNOVATION; HOUSING;  
MINISTER ASSISTING THE TREASURER**

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 2010.

  
Virginia Seymour  
**Chairperson**

24 August 2010

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## 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 Commerce, Consumer Protection division.

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 outcomes 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.

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## 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.

A focus of the Board in this reporting year has again been the implementation of the licensing system for motor vehicle repair businesses, under the *Motor Vehicle Repairers Act 2003*.

The repair business licensing provisions, (Part 2) of the *Motor Vehicle Repairers Act 2003* commenced on 1 July 2008.

Following an extensive review of information databases and survey work undertaken by the Department of Commerce, the Board has reduced its projection of the number of businesses requiring a repair business licence, to approximately 5000. Nevertheless the Board continues to be disappointed with the poor response of industry to the new licensing system. As at 30 June 2010, the Board has received 3756 repair business applications, and 8778 of an expected 10000 individual certification applications.

The Board has continued to implement initiatives aimed at encouraging industry compliance, particularly within the motor vehicle repair industry. A second compliance program commenced in October 2009 and targeted both specific repairers with a history of non-compliance, and repair businesses which belonged to high profile trading franchises. The program escalated the compliance scrutiny to include an assessment of the certification requirements for individual tradespersons under the *Motor Vehicle Repairers Act 2003*. This phase involved departmental officers taking a more hard-line approach to those businesses which had not cooperated. 192 businesses were visited and 90% of these have since applied for a licence. The program revealed a relatively high turnover of repair businesses, as almost 10% of those businesses on the mailing lists which had been prepared in the previous years, had closed. Infringement notices were issued in 4 cases.

Towards the end of the year, Department staff completed a review of the Board's business information database and undertook a telephone survey to identify remaining unlicensed businesses. It is now estimated that approximately 1300 businesses are yet to apply for a licence. A new phase of the compliance program commenced in mid-June 2010, and may result in possible disciplinary action against traders who refuse to comply with the licensing requirements.

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The Board continues to be very pleased with its dealer liaison and inspection programs. Under these programs all new motor vehicle dealers are visited by Department inspectors within three months of commencing business, and all aspects of dealer operations, including vehicles displayed for sale, are subject to an inspection at least every two years. This program was curtailed this year because of a need to focus on the motor vehicle repair industry and resulted in periods in which the program was suspended. However, the Board remains of the view that the program offers positive benefits for both the community and the industry.

The Board has concluded that the program must be consistently applied because inspectors found that on resumption of inspections after a short hiatus, the level of dealer compliance had diminished.

The Board is also pleased to note that its new compliance strategy for auditing consignment trust accounts has resulted in dealers having a better understanding of the compliance requirements. This year dealers were sent a set of 'Guidelines for Auditors' with an accompanying courtesy letter advising of the key compliance requirements for the audit.

The new guidelines provided for a more rigorous assessment of dealer compliance in terms of the both the content of audit reports and the timeliness of the audits.

As a result of the audit, the Board has endorsed some new procedures which will improve dealer compliance. Dealers are now required to submit additional information with their audit reports, and are required to operate Consignment Trust Accounts using only a Western Australia branch of an authorised financial institution.

The Board is also pleased to report that it has again made progress in reducing 'red-tape' for small business.

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### 3. About the Board

#### 3.1 Legislative charter

The Motor Vehicle Industry Board is established under the *Motor Vehicle Dealers Act 1973* (as amended). 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, motor vehicle dealing, selling, and the motor vehicle repair industries.
- To regulate dealing in new and 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 dealers, 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 within 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.

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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 within 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 Commerce regarding claims against the Motor Vehicle Repair Industry Compensation Account;
- make recommendations to the Director General of the Department of Commerce regarding application of the Motor Vehicle Repair Industry Education and Research Account;
- 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 makes 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.

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The Motor Vehicle Industry Board comprises the following persons:

- A person appointed as Chairperson:

<b>Name:</b> <b>Occupation:</b> <b>Position:</b> <b>Appointment period:</b> <b>Deputy to Chairperson</b> <b>Length of service:</b>	Ms Virginia SEYMOUR Lawyer Chairperson 4 November 2008 to 3 November 2011 Ms Miriam SAULEY 5.5 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.
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- Two persons nominated by the Minister for Consumer Protection who have knowledge and experience in the motor vehicle dealing industry:

<b>Name:</b> <b>Occupation:</b> <b>Position:</b> <b>Appointment period:</b> <b>Deputy to member:</b> <b>Length of service:</b>	Mr Robert PEARCE Company Director and licensed motor vehicle dealer Member 4 November 2008 to 3 November 2011 Mr Colin ROCKMAN 5.5 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.
<b>Name:</b> <b>Occupation:</b> <b>Position:</b> <b>Appointment period:</b> <b>Deputy to member:</b> <b>Length of service:</b>	Mr Lance Douglas KERR Company Director and licensed motor vehicle dealer. Member 1 September 2007 to 31 August 2010 Mr Robert FOWLER 5.5 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.

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

<b>Name:</b> <b>Occupation:</b> <b>Position:</b> <b>Appointment period:</b> <b>Deputy to member:</b> <b>Length of service:</b>	Mr Patrick BROWNE Company Director and certified repairer Member 4 November 2008 to 3 November 2011 Mr Matt NEGUS from 4 November 2008 5.5 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.
<b>Name:</b> <b>Occupation:</b> <b>Position:</b> <b>Appointment period:</b> <b>Deputy to member:</b> <b>Length of service:</b>	Mr Wayne PHIPPS Company Director and certified repairer Member 1 September 2007 to 31 August 2010 Mr Ray REICHARD 5.5 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.

- 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*):

<b>Name:</b> <b>Occupation:</b> <b>Position:</b> <b>Appointment period:</b> <b>Deputy to member:</b> <b>Length of service:</b>	Ms Helen TAPLIN Member Financial Counsellors Resource Project Member 4 November 2008 to 3 November 2011 Ms Diane HAYES (resigned 6 June 2010) 5.5 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.
<b>Name:</b> <b>Occupation:</b> <b>Position:</b> <b>Appointment period:</b> <b>Deputy to member:</b> <b>Length of service:</b>	Ms Miriam SAULEY Lawyer, Department of Planning 4 November 2008 to 3 November 2011 Ms Jo GHIRARDI 5.5 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.

<b>Name:</b>	Dr Allan BARTON
<b>Occupation:</b>	Member Policy Advisory Group, Australian Consumers Association; Emeritus Professor in Chemistry at Murdoch University
<b>Position:</b>	Member
<b>Appointment period:</b>	1 September 2007 to 31 August 2010
<b>Deputy to member:</b>	Ms Rhonda ALGABA
<b>Length of service:</b>	5.5 years First appointed as a member of the Motor Vehicle Industry Board 22 December 2004.

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

<b>Name:</b>	Mr Adrian FIRTH
<b>Occupation:</b>	Corporate Communications Manager
<b>Position:</b>	Member
<b>Appointment period:</b>	11 August 2009 to 11 August 2012
<b>Deputy to member:</b>	Mr Matthew BROWN
<b>Length of service:</b>	1.5 years First appointed as a deputy member of the Motor Vehicle Industry Board 1 November 2008.

### 3.5 Meetings

During this period under review the Board met on 22 occasions. At those meetings the Board considered new licence applications, renewal applications, and policy issues. The Board conducted 17 Hearings into 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 deputy members are unable to sit in deliberation on a matter at the same meeting.

### 3.6 Administrative support - Motor Vehicles Branch

The Department of Commerce, through the Motor Vehicles Branch, continues to provide the Motor Vehicle Industry Board with administrative support.

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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, a Licensing Coordinator and a 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 whose hard work and professionalism has ensured that the Board operates both efficiently and effectively.

### **3.7 Abolition of the Board**

In January 2010 the Board received a letter from the then Minister, the Hon Troy Buswell, advising that the Board, along with others in the Consumer Protection Portfolio, will be abolished. The licensing and regulatory functions are to be vested in the Commissioner for Consumer Protection, with other responsibilities vesting in the Director General of the Department of Commerce. The Minister further advised that a Motor Vehicle Advisory Committee would be established, and the new structure will take effect from 1 July 2011.

The Board was then invited by Gary Newcombe, Director of Policy, Department of Commerce, to provide answers to a number of questions regarding possible mechanisms to replicate the Board's role to ensure the continued integrity of the licensing regime. The Board provided a comprehensive response, dated 18 March 2010, which addressed the Board's concerns about the proposed changes to the regulatory regime. A copy of this document has also been provided to the new Minister, the Hon William (Bill) Marmion.

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## 4. Significant issues and trends

### 4.1 Focussing on the motor vehicle dealing industry

#### 4.1.1 Dealer Trust Account Audit Program

Motor vehicle dealers who undertake consignment sales are required to hold the proceeds from the sale of those vehicles in consignment trust accounts and are required to have their trust accounts audited annually by an auditor approved by the Board. This audit report must be lodged with the Board within three months of the end of the audit period. If no transactions have been made in the trust account during the period, a statutory declaration to this effect is to be submitted to the Board.

The Guidelines for Auditors of motor vehicle dealer consignment trust accounts endorsed by the Board in 2009 were distributed in December of that year to all dealers holding consignment trust accounts. These Guidelines are intended to assist auditors in undertaking and preparing audit reports.

The audit period for consignment trust accounts is 1 January to 31 December of each year.

For the audit period of 1 January 2009 to 31 December 2009, under which audits were required to be submitted by 30 March 2010, the Board noted two areas of concern. First, there was a significant number of technical compliance issues identified, including the format of reporting and statutory declarations by auditors, appropriate auditor appointments, and minor technical matters relating to the charging of bank fees to the consignment trust account.

Secondly, the Board was also concerned about the continued lack of timeliness in the submission of audits, and a number of dealers were issued with formal cautions to ensure future completion and submission of audit reports within the approved time-frames.

The following table outlines the audit documentation for the audit period 1 January 2009 to 31 December 2009:

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## Trust account audit results

Statutory Declarations (used where there have not been any transactions through the consignment trust account for the period)	36
Unqualified audits	46
Qualified audits	4
<b>Total</b>	<b>86</b>
Warnings Issued	20

**Note:** Qualified audits refer to audit reports received which identify serious issues (e.g. misappropriation of trust monies).

Audits that identified minor technical issues were not classified as qualified audits.

For the audit period 1 January 2009 to 31 December 2009 only four audit reports were received which identified serious issues. As a result of these and other issues identified by the Principal Compliance Officer of the Department, several investigations were instigated. These investigations have indicated that it is highly likely that four dealers will have court proceedings commenced against them.

### 4.1.2 Dealer inspection program

The Dealer Inspection Program is now in its third year of operation.

In keeping with the priorities determined by the Board, the program has focused on visiting all new dealerships within the first three months of operation in order to provide introductory advice and assistance. In addition, the program has also focussed on vehicle safety inspection at yards selling older, cheaper vehicles. These are not protected by the warranty provisions of the *Motor Vehicle Dealers Act 1973* and are therefore considered to be a higher risk to the consumer in terms of vehicle roadworthiness.

Where a vehicle was found, upon inspection, to be unsafe or un-roadworthy, officers 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 reinspection at a Department of Transport licensing centre to have the notice removed.

If a defect is considered not to be of a serious nature, the officers may issue an administrative 'Minor Defect Advice Notice'.

The 'Minor Defect Advice Notice' audit program has continued and Officers have reinspected randomly selected vehicles at dealer's

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premises which had previously been issued with the administrative notice, in order to ensure that the defects noted have been repaired. Should the fault not have been rectified, and the dealer not had a legitimate reason, then the officers have issued an 'Order to Remedy Defects' as a result.

The auditing of 'expired or surrendered' dealer's licences continues to form part of the program, with officers attending at the premises of dealers whose licenses had either expired or been surrendered. This is in order to verify that the dealerships had in fact ceased trading.

The inspections also continue to focus on dealers who engage in consignment sales and therefore operate consignment trust accounts. As part of these visits officers examine consignment transactions and review the trust account and related records to ensure that the provisions of the *Motor Vehicle Dealers Act 1973* have been complied with.

Currently, there are **1267** authorised dealer's premises, of which **900** are located within the metropolitan area, and **367** throughout regional Western Australia.

In the twelve months to 30 June 2010, a total of **445** dealers have been visited, with officers inspecting a total of **5301** vehicles, issuing **89** Work Orders and **118** Minor Defect Notices.

The lower figures for this reporting period resulted from the Proactive Dealer Inspection program being curtailed for a short period in order to undertake the motor vehicle repairers compliance program.

Common problems encountered by officers in the dealership inspections included the following:

- The failure of dealers to maintain the dealer's register in the current prescribed form;
- The failure of yard managers/salespersons to provide notification of the change of employment, and dealerships not notifying the Department of changes in staff;
- Dealers not ensuring that licence numbers are contained in advertisements (including television and radio advertisements);
- Dealers who have vehicles displayed for sale on premises which are not authorised (e.g. premises located next door or adjacent to the licensed premises).

A number of infringement notices were issued for dealers failing to maintain their dealer's register in the prescribed form.

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The Dealer Inspection Program as a whole continues to be well received by dealers and the program will continue to be delivered State-wide, with the view to dealers being subject to a visit every two years.

#### **4.1.3 Regional compliance activities**

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

During 2009/2010 officers continued to visit licensed dealers in regional locations. Visits were made to Kununurra, Broome, Port Hedland, Karratha, Carnarvon, Geraldton, Dongara, Bunbury, Cunderdin, Northam, Merredin, Beverley, Toodyay and Kalgoorlie. Officers also joined other Consumer Protection staff for a Departmental visit to the Margaret River region in May 2010, focusing on educational and compliance activities.

In total **152** regional dealers have been visited, with officers inspecting a total of **1220** vehicles, issuing **17** Work Orders and **21** Minor Defect Notices.

#### **4.1.4 Investigations and Proceedings**

Again, this year saw the continuation of investigations into a range of breaches against current legislation including the *Motor Vehicle Dealers Act 1973*; the *Motor Vehicle Repairers Act 2003*; the *Fair Trading Act 1987*; and the *Consumer Affairs Act 1971*.

##### **Unlicensed Dealing**

The Investigations Team of the Motor Vehicles Branch investigated a number of allegations relating to a number of persons and business entities alleged to have been involved in 'unlicensed dealing', as defined in the *Motor Vehicle Dealers Act 1973*. Unlicensed dealing therefore continues to be a concern in Western Australia.

Some proceedings which had been commenced in the 2008/2009 financial year against alleged unlicensed 'backyard dealers' were brought to conclusion. These include:

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- **Unnamed person**

As a result of an investigation undertaken, in May 2009 prosecution action was commenced relating to a charge of unlicensed dealing.

In June 2009, the Perth Magistrate's Court fined the Respondent \$2000, and ordered him to pay \$308 in costs. As a spent conviction order was handed down by the Magistrate, this person cannot be named.

- **James Basha Tewa Lofu**

In May 2009, prosecution action was commenced against Mr James Basha Tewa Lofu, trading as 'Lofu Car Sales'. This matter was adjourned until 10 July 2009, where it was heard in the Perth Magistrate's Court. Mr Lofu pleaded guilty to two charges of unlicensed dealing and was fined a global fine of \$7500 and costs of \$423.50.

- **P.C. Consultants (WA) Pty Ltd**

In May 2009, prosecution action was commenced against the sole director of *P.C. Consultants (WA) Pty Ltd* as well as the company itself, for two charges of unlicensed dealing.

This matter was adjourned to December 2009, where the director pleaded guilty to the charges and received a global fine of \$5000 and costs of \$356.50.

As a spent conviction order was awarded for the director, he cannot be named.

Other proceedings regarding allegations of unlicensed dealing, commenced during the 2009/2010 financial year but which are still before the Courts, are:

- **Leopold Scala**

Prosecution action was commenced against Mr Leopold Scala for two charges of unlicensed dealing as the activity covered the sale of vehicles as well as the sale of parts (wrecking).

In February 2010, Mr Scala pleaded not guilty to the charges and so the matter has been set for a hearing in the Perth Magistrate's Court, in October 2010.

- **Ghazy Fahd Majib Al-Defeary**

In May 2010, prosecution action was commenced against Mr Ghazy Fahd Majib Al-Defeary.

The matter has been adjourned to October 2010 where it is to be heard in the Perth's Magistrate's Court.

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## General Breaches

The Investigations Team of the Motor Vehicles Branch also investigated a number of allegations relating to various breaches of other provisions of the *Motor Vehicle Dealers Act 1973* and associated Regulations.

- **L.M.G. Automotive Pty Ltd**

In August 2009, prosecution action was taken against L.M.G. Automotive Pty Ltd, trading as L.M.G. Automotive, for waiving the statutory warranty without the approval of the Commissioner for Consumer Protection.

The directors, similarly charged with the offence, pleaded guilty and a total of \$1939 was awarded in fines and costs.

- **North Perth Wholesale Pty Ltd**

In February 2010, prosecution action was taken against North Perth Wholesale Pty Ltd, trading as North Perth Wholesale, for various offences, including not maintaining the register in the prescribed form; not having all transactions and prescribed particulars entered in the register; selling vehicles on consignment and not completing written agreements containing prescribed terms and particulars; and not providing a copy of the agreement to consignors of vehicles.

The company was found guilty of the offences (*ex parte*) and received a global fine of \$5000 and was ordered to pay costs of \$192.20.

- **Burswood Car Centre Pty Ltd**

In April 2010, prosecution action was taken against Burswood Car Centre Pty Ltd, trading as Burswood Honda for employing or engaging unlicensed salespersons.

The company pleaded guilty to seven charges and received a global fine of \$10,000 and was ordered to pay costs of \$319.

- **Sean George DeGois**

In May 2010, prosecution action was taken against the director of North Perth Wholesale Pty Ltd, for the same offences which were heard against the company in February. See above.

Mr DeGois was found guilty of all the offences (*ex parte*) and received a global fine of \$5000 and was ordered to pay \$346.50 in costs.

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- **Stephen Charles Eccles**

In May 2010, prosecution action was taken against Mr Stephen Charles Eccles for acting as a salesperson without a valid or current licence.

Mr Eccles pleaded guilty to the charge and received a fine of \$500 and was ordered to pay \$615.56 in costs.

- **Andrew John Durey**

In June 2010, prosecution action was taken against Mr Andrew John Durey for acting as a salesperson without a valid or current licence.

Mr Durey pleaded guilty to the charge and received a fine of \$600 and was ordered to pay \$615 in costs.

Some proceedings which had been commenced in the 2009/2010 financial year were not finalised, and will be reported in the 2010/2011 report. These proceedings include:

- **Scott Martin Ruppell**

In October 2009, prosecution action was commenced against Mr Scott Ruppell, licensed yard manager, for false and misleading representations regarding a vehicle sold to a consumer, under the *Fair Trading Act 1987*.

- **Countdown Autos (David Bradley)**

In October 2009, prosecution action was commenced against David Bradley, trading as Countdown Autos for false and misleading representations under the *Fair Trading Act 1987*.

- **Wildfox Holdings Pty Ltd**

In May 2010, prosecution action was commenced against Wildfox Holdings Pty Ltd, trading as Toyotaways, for employing or engaging a salesperson without a valid or current licence.

The company has pleaded guilty to the charges and the matter is listed for 6 September 2010.

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## 4.2 Focussing on the motor vehicle repair industry

### 4.2.1 Motor vehicle repairer legislation

The implementation of the *Motor Vehicle Repairers Act 2003* was undertaken in two stages. The first stage of implementation commenced on 17 March 2007, with the certification of individual tradespersons who perform repair work. The second stage, the licensing of repair businesses, commenced from 1 July 2008, and allowed a 12 month transitional period, ending 30 June 2009, for motor vehicle repair businesses to apply for their licence.

Whilst there was initially a very slow take-up of repair business licensing, the original passive resistance on the part of the industry to commit to the new regulatory system appears to be somewhat diminishing, with industry members now beginning to see the advantages that the licensing regime will bring. However the Board still remains concerned that only about 70 per cent of expected licence applicants have applied.

In an effort to address this issue, and following concerns raised by industry about the onerous licensing requirements, amendments were made to the way that businesses are required to apply for a licence, by simplifying the licensing procedure in line the governments 'red tape reduction' policy.

Although the information requested by the Board is information required under the new laws, initiatives such as the exemption of motor vehicle repair businesses operating before 1 July 2008 from having to provide a planning certificate, and the removal of the requirement to submit photographs or site plans of premises, have greatly reduced the impost on repairers.

The commencement of compliance activities has also reinforced the Board's commitment to protect the legitimate business owner, with licensed repairers now working in partnership with the Motor Vehicles Branch to identify unlicensed repair businesses.

With the implementation process entering the final stages, a comprehensive analysis of the database for repairer licensing was undertaken. This revealed that the original estimates of over 7,000 repair businesses requiring licensing were in fact inflated. The new projected level of participation suggests that about 10,000 individual tradespersons will be certified, and 5,000 businesses will be licensed.

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As at 30 June 2010, the Motor Vehicle Industry Board had received **8778** applications for certification and **3756** business licence applications.

#### **4.2.2 Motor Vehicle Repair Industry Compensation Account and Motor Vehicle Repair Industry Education and Research Account**

The Motor Vehicle Repair Industry Compensation Account and Motor Vehicle Repair Industry Education and Research Account are funds established under the *Motor Vehicle Repairer's Act 2003*.

The purpose of the Compensation Account 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 Commerce on the recommendation of the Board.

The Board approved the Motor Vehicle Industry Compensation Account Administrative Procedures for processing claims against the account.

There were no claims to the Compensation Account in the financial year 2009-2010.

The purpose of the Education and Research Account 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 the Department of Commerce.

The Board considered the draft strategy developed by the Motor Vehicles Branch for the use of the Education and Research Fund. It is currently awaiting approval of the strategy from the Director General before obtaining feedback from key industry stakeholders and Registered Training Organisations.

Each of these funds is 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.

The Board believes that at the end of the first licensing year each fund should hold in excess of \$30 000. At 30 June 2010, the balances held by these funds were as follows:

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## Balance of accounts

Account:	Balance as at 30 June 2010
Motor Vehicle Repair Industry Compensation Account	\$29,161
Motor Vehicle Repair Industry Education and Research Account	\$29,161

### 4.3 Regulating for results - policy development

The Board maintains an extensive database of policy statements that provide transparency in the application of statute-based regulatory systems. These policies ensure that the regulation of the industry is undertaken in a transparent and consistent manner and provide certainty and clarity for the staff charged with compliance obligations.

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

#### 4.3.1 Motor vehicle repairer policies

##### Recognition of industry training

A key function of the Board under section 42 of the *Motor Vehicle Repairers Act 2003* is to grant a repairer's certificate to a person who satisfies the Board that they are sufficiently qualified. A person can be sufficiently qualified by holding prescribed qualifications or by having some other qualifications that the Board determines to be sufficient for the class of repair work for which the person has applied.

The Board has come to recognise that there are specialist repair businesses which do not neatly fit the standard licensing categories or for which there may be other specialist training available. Two of those specialist areas are glazing, and scratch and dent repairers who do minor body repairs, typified by the paintless dent removal systems which have been developed for hail damaged vehicles.

The Board has accepted, on a 'case by case' basis, applications for certification from persons who have undergone some form of in-house training to a standard acceptable to the Board.

Before approving the training programs of these businesses, the Board will require that the company submits a copy of a training 'curriculum' for review and assessment by Departmental staff and the Board.

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This year the Board has approved the following:

**Certification of glazing work repairers who have completed the O'Brien Glass training program**

Staff employed by O'Brien Glass may be certified in the class of repair work 'Glazing Work' on successful completion of the 'Windscreen/Window Replacement' training course. These staff will be granted a 'Glazing Work' Certificate restricted to the repair of laminated glass only.

**Certification of 'Scratch and Dent' repairers**

This year the Board approved that the company 'Color-Tech Systems' be endorsed as a provider of training for 'scratch and dent' repairers.

The Board also approved the certification of staff employed by Dentex for the class of repair work 'Panel Beating Work', on successful completion of the Dentex in-house training program, with a condition that they are 'restricted to paintless dent removal for hail damage only'.

**New conditions on air conditioning work repairers**

A Motor Vehicle Repair Business issued with an Air Conditioning Work class of repair work is only valid while the business employs a certified repairer holding a current National Refrigerant Handling Licence as defined in the Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995.

**4.3.2 Motor vehicle dealer policies**

**Financial assessment of applications - Family Trusts**

The Board has identified that many motor vehicle dealers operate through a family trust. As a trust is not an entity which can be licensed by the Board, the trustee becomes the licence applicant.

When determining whether an applicant has sufficient financial resources, the finance officer can take into account the funds held under a family trust if the applicant is the trustee for that trust.

Where a trustee is providing financial information for a family trust, because the trustee cannot independently satisfy the 'sufficient

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resources' obligations, it will be now necessary for the applicant to provide either:

- a) a copy of the trust instrument; or
- b) a statutory declaration from the trustee providing an assurance that the trust instrument does not contain a condition that expressly excludes the trustee's right to indemnification for liabilities for which the trustee may be responsible.

When the applicant provides the trust instrument, the finance officer shall ensure that the trust instrument satisfies this requirement.

### **Financial assessment of dealers who hold consignment accounts**

The Board has recognised that dealers who operate consignment trust accounts because they sell vehicles on consignment, pose greater financial risks to consumers. They hold consumers' money in trust.

As a consequence, the Board imposes greater obligations on these dealers to satisfy the Board that they have sufficient resources. These dealers must now always provide full financial statements and credit history reports on renewal of their licence.

### **Reducing 'red-tape' in licence applications**

The Board no longer requires licence applicants to provide traffic conviction certificates and traffic infringement records.

Furthermore the Board has resolved that Directors of Australian Prudential Regulation Authority (APRA) approved Authorised Deposit-taking Institutions do not need to supply a National Police Certificate or Statutory Declaration when their corporation makes an application for a dealer or repair business licence.

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## 5. Board statistical data

### 5.1 Investigations undertaken at the direction of the Board

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 under section 13A of the *Motor Vehicle Dealers Act 1973*.

However the Board, working closely with the Department of Commerce, rarely exercises this power, as most matters requiring investigation are referred directly to the Department. The Department informs the Board if disciplinary or prosecution action is required, on completion of the investigation.

In the previous reporting year the Board directed that one matter be investigated with a view to commencing disciplinary action before the State Administrative Tribunal.

- **Pasquale Minniti**

Mr Pasquale Minniti, a partner in the dealership Collier Cars and Commercials, had been convicted of corruption related offences.

At a State Administrative Tribunal hearing on 3 May 2010, the actions of Mr Minniti were found to constitute conduct that renders a licensee unfit to hold a dealers licence or be involved in the management of a company which has a licence to sell cars, and Mr Minniti was disqualified until further order. The disqualification does not come into effect until 2 August 2010. Mr Minniti lodged an appeal notice in the Supreme Court of Western Australia on 28 May 2010.

### 5.2 Formal hearings conducted by the Board

The Board conducted 18 hearings into the fitness of applicants or licensees to obtain or hold a licence under the *Motor Vehicle Dealers Act 1973* or *Motor Vehicle Repairers Act 2003*.

The Board refused two new applicants on the basis that each 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.

The Board refused one repair business on the basis that the sole director of the company was not of good character and fit and proper, and his conduct rendered him unfit, to be concerned in the management of the business.

## Hearing decisions

Type of Application <sup>1</sup>	Approved	Refused
Dealer	2	-
Exemption	-	-
Yard Manager	2	-
Salesperson	5	2
Repairer	6	-
Repair Business	1	1
<b>Total *</b>	<b>16</b>	<b>3</b>

## Table of hearings

Name of Applicant / Licence Holder	Outcome
Clinton Egan	Application for Salespersons Licence Granted
Brian Vletter	Application for Dealers Licence Granted
Paul Berghella	Application for Repairers Certificate Granted
Hisham Jabado	Application for Repairers Certificate Granted
Julio Gonzalez	Application for Salesperson Licence Refused
Diwan Al-Braihi *	Application for Yard Managers Licence and Repairers Certificate Granted
Scott Campbell	Application for Salesperson Licence Refused
Ryan Smith	Application for Repairers Certificate Granted
Daniel Woodward	Application for Repairers Certificate Granted
Adam Groves	Application for Repairers Certificate Granted
Benjamin Croft	Application for Yard Managers Licence Granted
Darren Garwood	Application for Salespersons Licence Granted
Zeljko Grujin	Application for Salespersons Licence Granted
Steven Davey	Application for Dealers Licence and Repair Business Licence Granted
Patrick Brookes	Application for Repairers Certificate Granted
Malcolm Kelly	Application for Repairers Certificate Granted
Bradley Shenn	Application for Salespersons Licence Granted
Tiong Yew Bak / Oztree Pty Ltd	Application for Repair Business Licence Refused

\* The difference between the number of hearings conducted (18) and the total number of decisions made (19) is that one hearing was for an applicant who applied for both a dealer licence and repair business licence.

<sup>1</sup> 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.

### 5.3 Licensing statistics

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

Licence Type	Current as at 30 June 2007	Current as at 30 June 2008	Current as at 30 June 2009	Current as at 30 June 2010
<b>Dealers</b>	821	791	805	827
<b>Car Market Operators</b>	3	2	2	2
<b>Yard Managers</b>	1025	1073	1065	1088
<b>Salespersons</b>	1988	2073	1953	1980

<b>Exemption from holding a dealer's licence for Auctioneers</b>	9	7	2	3
<b>Exemption from holding a dealer's licence for Financiers</b>	44	33	12	19
<b>Exemption from holding a dealer's licence for Hire Car Operators</b>	58	56	52	70

<b>Certified Motor Vehicle Repairers</b>	209	2755	5125	8219
<b>Licensed Motor Vehicle Repair Businesses</b>	n/a	n/a	669	2668

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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.

Board members have all been provided with the Board's 'Code of Conduct', Public Sector Commission guide, and '*Good Governance for Western Australian Public Sector Boards and Committees*'.

The Board continues to hold Induction programs for any new Board members and Deputy members, where conflict of interest and confidentiality issues are highlighted as particularly important to the role of Board members.

The Board also 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. 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 2009 to 30 June 2010.

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