

Western Australia

Motor Vehicle Dealers Amendment Act 2003

As at 15 Dec 2003

No. 73 of 2003

Extract from www.slp.wa.gov.au, see that website for further information

Motor Vehicle Dealers Amendment Act 2003

CONTENTS

1.	Short title	1
2.	Commencement	2
3.	The Act amended	2
4.	Long title replaced	2
5.	Section 5 amended	2
6.	Section 6 amended	3
7.	Part II heading amended	3
8.	Part II Division 1 and Subdivision 1 headings inserted	3
	Division 1 — Provisions relating to Board	
	Subdivision 1 — Constitution of Board	
9.	Section 7 amended	3
10.	Section 8 replaced	4
	8. Membership of the Board	4
11.	Section 10 amended	5
12.	Part II Division 1 Subdivisions 2 and 3 and heading for Subdivision 4 inserted	5
	Subdivision 2 — Functions of Board and related matters	
12A.	Functions of Board	5
12B.	Minister may give directions	6
12C.	Inclusion of direction in annual report	7
12D.	Minister to have access to information	7
12E.	Delegation	8
12F.	Execution of documents by the Board	8
	Subdivision 3 — Disclosure of interests etc.	
12G.	Member to disclose interest	9
12H.	Voting by interested members	10
12I.	Section 12H may be declared inapplicable	10

Contents

	12J. Quorum where section 12H applies	11
	12K. Minister may declare sections 12H and 12J inapplicable	11
	Subdivision 4 — Miscellaneous	
13.	Section 14A amended	11
14.	Part II Division 2 heading inserted	12
15.	Section 17A repealed	12
16.	Part II Division 3 heading inserted	12
	Division 3 — Record-keeping and notification of authorities	
17.	Part II Division 4 heading inserted	12
	Division 4 — Powers to inspect vehicles and order remedial work	
18.	Part II Division 5 heading inserted	12
19.	Section 33 amended	12
20.	Part III Division 5 Subdivision 1 heading inserted	13
21.	Part III Division 5 Subdivision 2 inserted	13
	Subdivision 2 — Conciliation of disputes	
	39. Definition	13
	39A. When section 39B applies	13
	39B. Conciliation by Board at request of purchaser	14
	39C. Conciliation function	14
	39D. Examination of vehicle	15
	39E. False or misleading information	15
22.	Section 50 replaced	15
	50. Confidentiality	15
23.	Various provisions amended to change “Chairman” to “Chairperson”	16
24.	Consequential amendment to <i>Constitution Acts Amendment Act 1899</i>	17
25.	Transitional provision: membership of Board	17
26.	Transitional provisions: change of title of Board	17

Western Australia

Motor Vehicle Dealers Amendment Act 2003

No. 73 of 2003

**An Act to amend the *Motor Vehicle Dealers Act 1973* and to
consequentially amend the *Constitution Acts Amendment Act 1899*.**

[Assented to 15 December 2003]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Motor Vehicle Dealers Amendment Act 2003*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. The Act amended

The amendments in this Act are to the *Motor Vehicle Dealers Act 1973** unless otherwise indicated.

[* *Reprinted as at 14 November 1996.*

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 249, and Act No. 4 of 2002.]

4. Long title replaced

The long title is deleted and the following long title is inserted instead —

“

An Act —

- **to constitute a body with licensing, registration and other functions in respect of persons involved in motor vehicle dealing and motor vehicle repair work;**
- **to regulate dealing in motor vehicles; and**
- **for related purposes.**

”.

5. Section 5 amended

Section 5(1) is amended, in the definition of “the Board”, by deleting “Dealers Licensing” and inserting instead —

“ Industry ”.

6. Section 6 amended

After section 6(2) the following subsection is inserted —

“

- (3) For the purposes of carrying out investigations and inquiries for the purposes of this Act, an authorised officer who is approved by the Commissioner may exercise the powers in section 19, 20, 21 or 22 of the *Consumer Affairs Act 1971* as if the officer were the Commissioner and those sections apply accordingly to and in relation to persons and matters affected by the exercise of the powers.

”.

7. Part II heading amended

The heading to Part II is amended by deleting “Dealers Licensing” and inserting instead —

“ **Industry** ”.

8. Part II Division 1 and Subdivision 1 headings inserted

Before section 7 the following headings are inserted —

“

Division 1 — Provisions relating to Board

Subdivision 1 — Constitution of Board

”.

9. Section 7 amended

- (1) Section 7(1) is amended by deleting “Dealers Licensing” and inserting instead —

“ **Industry** ”.

s. 10

- (2) Section 7(2) and (3) are repealed and the following subsection is inserted instead —

“

- (2) The Board is a body corporate with perpetual succession.

”.

10. Section 8 replaced

Section 8 is repealed and the following section is inserted instead —

“

8. Membership of the Board

- (1) The Board is to consist of 9 members appointed by the Governor on the nomination of the Minister.
- (2) Of the members —
- (a) one is to be appointed as Chairperson;
 - (b) 2 are to be persons each of whom in the opinion of the Minister has knowledge of and experience in the motor vehicle industry in the motor vehicle dealing sector regulated by this Act;
 - (c) 2 are to be persons each of whom in the opinion of the Minister has knowledge of and experience in the motor vehicle industry in the motor vehicle repairing sector regulated by the *Motor Vehicle Repairers Act 2003*;
 - (d) one is to be a person nominated by the Minister after the Minister has complied with subsection (3); and
 - (e) 3 are to be persons each of whom in the opinion of the Minister represents the interests of either —
 - (i) purchasers of motor vehicles; or

- (ii) customers of persons licensed under the *Motor Vehicle Repairers Act 2003*.
- (3) For the purposes of subsection (2)(d) —
 - (a) the Minister is to request the Royal Automobile Club of W.A. (Incorporated) to submit within a specified time a panel of the names of 3 persons to be considered for nomination by the Minister;
 - (b) the Minister is to have due regard to the panel submitted in accordance with a request under paragraph (a) but may decline to nominate any person on the panel;
 - (c) if the Minister so declines he or she may —
 - (i) make a further request under paragraph (a); or
 - (ii) nominate for appointment any person that he or she thinks fit;
 - (d) if the body referred to in paragraph (a) fails to comply with a request under that paragraph, the Minister may nominate for appointment any person that he or she thinks fit.

”.

11. Section 10 amended

Section 10(3) is amended by deleting “3” and inserting instead —
“ 5 ”.

12. Part II Division 1 Subdivisions 2 and 3 and heading for Subdivision 4 inserted

After section 12 the following Subdivisions and Subdivision heading are inserted —

“

Subdivision 2 — Functions of Board and related matters

12A. Functions of Board

- (1) The Board has the functions, powers and duties conferred or imposed on it by —
 - (a) this Act; and
 - (b) the *Motor Vehicle Repairers Act 2003*.
- (2) It is also a function of the Board to approve —
 - (a) motor vehicle industry training courses; and
 - (b) the persons who provide those courses.
- (3) The training courses referred to in subsection (2) are those for —
 - (a) dealers, yard managers and salespersons;
 - (b) persons to whom section 9 of the *Motor Vehicle Repairers Act 2003* applies; and
 - (c) persons who are required to hold a repairer's certificate as provided for in section 39 of that Act.

12B. Minister may give directions

- (1) The Minister may give written directions to the Board with respect to the performance and exercise of its functions, powers and duties.
- (2) A direction under subsection (1) —
 - (a) may be of a general nature or relate to a particular matter; but
 - (b) cannot relate to —
 - (i) the Board's responsibilities in respect of the licensing, registration or certification of a particular person; or
 - (ii) a particular application made to, or proceeding before, the Board.
- (3) The Board shall give effect to any direction given to it under subsection (1).

12C. Inclusion of direction in annual report

The text of a direction given under section 12B shall be included in the annual report referred to in section 51.

12D. Minister to have access to information

- (1) The Minister is entitled —
 - (a) to have information in the possession of the Board; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
 - (a) request the Board to furnish information to him;
 - (b) request the Board to give him access to information;
 - (c) for the purposes of paragraph (b), make use of persons whose services the Board is using under section 13(4) to obtain the information and furnish it to the Minister.
- (3) The Board is to comply with a request under subsection (2) and make available to the Minister for the purposes of paragraph (c) of that subsection —
 - (a) the services of persons referred to in that paragraph; and
 - (b) the facilities of the Board.
- (4) In this section —

“document” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

“information” means information specified, or of a description specified, by the Minister that relates to the Board.

12E. Delegation

- (1) The Board may delegate to an authorised officer any power or duty of the Board under another provision of this Act.
- (2) The Board may delegate to an authorised officer within the meaning of the *Motor Vehicle Repairers Act 2003* any power or duty of the Board under that Act, other than the power under section 102(1) or 103(1) of that Act.
- (3) The delegation must be in writing executed by the Board.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation, unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Board to perform a function through an officer or agent.

12F. Execution of documents by the Board

- (1) The Board is to have a common seal.
- (2) A document is duly executed by the Board if —
 - (a) the common seal of the Board is affixed to it in accordance with subsections (3) and (4); or
 - (b) it is signed on behalf of the Board by a person or persons authorised to do so under subsection (5).
- (3) The common seal of the Board is not to be affixed to any document except as authorised by the Board.

- (4) The common seal of the Board is to be affixed to the document in the presence of —
- (a) the Chairperson, or deputy chairperson; and
 - (b) the secretary,
- and each of them is to sign the document to attest that the common seal was so affixed.
- (5) The Board may, by writing under its seal, authorise documents to be signed on behalf of the Board by —
- (a) any member of the Board;
 - (b) any authorised officer; or
 - (c) more than one of such persons acting in conjunction,
- and an authorisation may be either general or subject to any condition or restriction.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) When a document is produced bearing a seal purporting to be the common seal of the Board, it is to be presumed that the seal is the common seal of the Board until the contrary is shown.

Subdivision 3 — Disclosure of interests etc.

12G. Member to disclose interest

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the Board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

Penalty: \$10 000.

- (2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting.

12H. Voting by interested members

A member who has a material personal interest in a matter that is being considered by the Board —

- (a) must not vote whether at a meeting or otherwise —
 - (i) on the matter; or
 - (ii) on a proposed resolution under section 12I in respect of the matter, whether relating to that member or a different member;

and

- (b) must not be present while —
 - (i) the matter; or
 - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),is being considered at a meeting.

12I. Section 12H may be declared inapplicable

Section 12H does not apply if the Board has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

12J. Quorum where section 12H applies

Despite section 10(3), if a member of the Board is disqualified under section 12H in relation to a matter, a quorum is present during the consideration of the matter if at least 4 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.

12K. Minister may declare sections 12H and 12J inapplicable

- (1) The Minister may by writing declare that section 12H or 12J or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (2) The Minister must within 14 days after a declaration under subsection (1) is made cause a copy of the declaration to be laid before each House of Parliament.

Subdivision 4 — Miscellaneous

”.

13. Section 14A amended

- (1) Section 14A(1) is amended by inserting after “this Act” —
“ or the *Motor Vehicle Repairers Act 2003* ”.
- (2) Section 14A(2) is amended as follows:
 - (a) by inserting after “under this Act” —
“ or the *Motor Vehicle Repairers Act 2003* ”;
 - (b) by deleting “not this Act” and inserting instead —
“ not those Acts ”.

14. Part II Division 2 heading inserted

Before section 15 the following heading is inserted —

“ **Division 2 — Licensing and registration** ”.

15. Section 17A repealed

Section 17A is repealed.

16. Part II Division 3 heading inserted

After section 24 the following heading is inserted —

“

**Division 3 — Record-keeping and notification
of authorities**

”.

17. Part II Division 4 heading inserted

After section 26 the following heading is inserted —

“

**Division 4 — Powers to inspect vehicles and order
remedial work**

”.

18. Part II Division 5 heading inserted

After section 29 the following heading is inserted —

“ **Division 5 — Offences: unlicensed dealing etc.** ”.

19. Section 33 amended

Section 33(7)(d) is amended by deleting “12 months” and inserting instead —

“ 2 years ”.

20. Part III Division 5 Subdivision 1 heading inserted

Before section 36 the following heading is inserted —

“ **Subdivision 1 — Resolution of disputes** ”.

21. Part III Division 5 Subdivision 2 inserted

After section 38 the following Subdivision is inserted —

“

Subdivision 2 — Conciliation of disputes

39. Definition

In this Subdivision —

“**dealer**” includes a former dealer.

39A. When section 39B applies

(1) Section 39B applies if —

- (a) a dispute has arisen between a purchaser and a dealer as to any matter described in section 36(a), (b), (c) or (d); and
- (b) the dispute —
 - (i) has not been decided by the Commissioner acting under section 37, or by a court or tribunal; and
 - (ii) is not the subject of any proceedings.

(2) A dispute is the subject of proceedings as mentioned in subsection (1)(b)(ii) if —

- (a) the Commissioner has advised the parties under section 36 that he proposes to determine the dispute; or
- (b) proceedings in respect of the issues in dispute are pending before a court or tribunal.

- (3) Section 39B does not apply to a dispute relating to —
 - (a) a dealer's obligations in respect of a second-hand vehicle that was sold; or
 - (b) any other matter that arose,

before the commencement of section 21 of the *Motor Vehicle Dealers Amendment Act 2003*.

39B. Conciliation by Board at request of purchaser

- (1) The purchaser of the vehicle concerned may in writing request the Board to act as a conciliator in a dispute to which this section applies, and the Board may at its discretion comply with the request.
- (2) A request under subsection (1) may be withdrawn at any time and the Board must then stop dealing with the matter.
- (3) The Board may appoint an authorised officer to assist it in the conciliation and may delegate any power in relation to the conciliation to such an officer.
- (4) Anything done by an authorised officer for the purposes of a conciliation is to be taken to be done by the Board.

39C. Conciliation function

- (1) The function of the Board as conciliator is to encourage the settlement of the dispute by —
 - (a) communicating with the purchaser and the dealer;
 - (b) arranging discussions between them and assisting in those discussions; and
 - (c) taking any other step that it considers appropriate.

- (2) It is not a function of the Board to conduct an arbitration of a dispute.
- (3) The Board must not perform the function under subsection (1) if, at any time after a request is made under section 39B(1), the dispute becomes subject to proceedings within the meaning in section 39A(2).

39D. Examination of vehicle

An authorised officer appointed under section 39B(3) may at any reasonable time —

- (a) enter premises of the dealer concerned at which the officer reasonably believes the relevant motor vehicle is situated; and
- (b) inspect the vehicle.

39E. False or misleading information

A person must not, in relation to a request under section 39B(1), or any attempt at conciliation by the Board, give information orally or in writing that the person knows to be —

- (a) false or misleading in a material particular; or
- (b) likely to deceive in a material way.

Penalty: \$5 000.

”.

22. Section 50 replaced

Section 50 is repealed and the following section is inserted instead —

“

50. Confidentiality

- (1) A person who is or has been a member of the Board shall not, whether directly or indirectly, record,

disclose, or make use of any information that has come to his knowledge in his capacity as a member except —

- (a) in the course of duty;
- (b) as required or allowed by this Act or any other law;
- (c) in connection with —
 - (i) the investigation of an offence or a possible offence; or
 - (ii) the conduct of proceedings for an offence,by a public officer acting in the course of duty;
or
- (d) in other circumstances prescribed by the regulations.

Penalty: \$5 000.

- (2) In subsection (1)(c) —

“**offence**” means an offence against the law of this State, the Commonwealth, another State or a Territory;

“**public officer**” means a public officer of this State, the Commonwealth, another State or a Territory.

”.

23. Various provisions amended to change “Chairman” to “Chairperson”

- (1) Section 5(1) is amended by deleting the definition of “Chairman” and inserting the following definition instead —

“ **“Chairperson”** means the Chairperson of the Board; ”.

- (2) Section 5(1) is amended, in the definition of “member”, by deleting “Chairman” and inserting instead —

“ Chairperson ”.

- (3) The provisions listed in the Table to this subsection are amended by deleting “Chairman” in each place where it occurs and inserting instead —

“ Chairperson ”.

Table

s. 9(1)(a) and (b)	s. 10(5) (twice)	s. 16(2)
s. 10(1)	s. 13(3)	s. 17(2)
s. 10(2) (3 times)	s. 14(1)(a) and (b)	s. 51(1)

24. Consequential amendment to *Constitution Acts Amendment Act 1899*

- (1) The amendments in this section are to the *Constitution Acts Amendment Act 1899**.

[* *Reprinted as at 8 June 2001.*

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 72 and Acts Nos. 60 of 1999, 2 and 76 of 2000, 24 and 25 of 2001 and 5, 20 and 30 of 2002.]

- (2) Schedule V Part 3 is amended in the item relating to the Motor Vehicle Dealers Licensing Board by deleting “Dealers Licensing” and inserting instead —

“ Industry ”.

25. Transitional provision: membership of Board

The persons who were members of the Motor Vehicle Dealers Licensing Board immediately before the commencement of section 10 cease to hold office on that commencement.

26. Transitional provisions: change of title of Board

- (1) This section relates to the amendment made by section 9(1) which changes the title of the body established by section 7 of the *Motor Vehicle Dealers Act 1973* from the “Motor Vehicle

Dealers Licensing Board” to the “Motor Vehicle Industry Board”.

- (2) The change of title of the body does not affect —
 - (a) its corporate identity;
 - (b) any right, power, or obligation of the body;
 - (c) any proceedings in progress; or
 - (d) anything previously done by, to or in respect of the body.

- (3) On and after the commencement of this Act a reference to the “Motor Vehicle Dealers Licensing Board” in any instrument (including any subsidiary legislation) is to be construed, unless the context otherwise requires, as if the reference had been amended to be a reference to the “Motor Vehicle Industry Board”.

