

CE304*

Motor Vehicle Dealers Act 1973

**Motor Vehicle Dealers (Sales) Amendment
Regulations 2002**

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Motor Vehicle Dealers (Sales) Amendment Regulations 2002*.

2. Commencement

These regulations come into operation on the day on which the *Motor Vehicle Dealers Amendment Act 2002* comes into operation.

3. The regulations amended

The amendments in these regulations are to the *Motor Vehicle Dealers (Sales) Regulations 1974**.

[* Reprinted as at 2 July 1999.]

4. Part 1 heading inserted

Before regulation 1 the following Part heading is inserted —

“

Part 1 — Preliminary

”

5. Regulation 2 amended

Regulation 2 is amended as follows:

- (a) by deleting the definitions of “schedule” and “the Act”;
- (b) after the definition of “section” by deleting the semicolon and inserting instead a full stop.

6. Part 2 heading inserted

After regulation 2 the following Part heading is inserted —

“

Part 2 — Forms

”

7. Regulation 3 amended

Regulation 3 is amended by deleting “by a dealer”.

8. Regulation 5A repealed

Regulation 5A is repealed.

9. Part 3 and Part 4 heading inserted

After regulation 10 the following is inserted —

“

Part 3 — Trust Accounts

Division 1 — General

10A. Application

This Part applies to trust accounts required to be maintained by a dealer under section 32C.

10B. Prescribed financial institutions (section 32C)

For the purposes of section 32C all banks, building societies and credit societies are prescribed financial institutions.

Division 2 — Keeping and management of trust accounts

10C. Information to be given by the dealer to the Board

- (1) When a dealer opens a trust account the dealer must ensure that the name of the trust account includes —
 - (a) the full name of the dealer;
 - (b) the dealer's licence number;
 - (c) the trading name (if any); and
 - (d) the words “consignment trust account”.
- (2) When a dealer opens or closes a trust account the dealer must, as soon as is practicable, inform the Board in writing of the opening or closure of the trust account and, in doing so, must specify —
 - (a) the name and number of the trust account; and
 - (b) the name and address of the financial institution with which the trust account is or was maintained.

10D. Trust accounts records

- (1) A dealer must ensure that a record is kept relating to a trust account.
- (2) The record must be —
 - (a) kept in written form;
 - (b) kept for a period of not less than 6 years from the date on which the money was received; and
 - (c) readily accessible.

- (3) The record must contain the information contained on every receipt issued for money received, and may take the form of a duplicate copy of the receipt.

10E. Manner of accounting for moneys received

- (1) Where money has been received the dealer must ensure that a written receipt is issued to the person giving the money.
- (2) However the receipt may be in an electronic form where the money is received by electronic transfer.
- (3) The receipt must contain —
 - (a) the name of the dealer and the dealer's licence number;
 - (b) a number or letter, or a combination of both, in consecutive order that allows the receipt to be uniquely identified;
 - (c) the date on which the money is received;
 - (d) the name of the person paying the money;
 - (e) the amount of money received;
 - (f) a brief description of the purpose of the payment; and
 - (g) if the receipt is hand-written, the name of the person receiving the money evidenced by the signature of that person.

10F. Statutory declaration

Where in a calendar year a dealer has neither held nor received money in relation to a trust account, the dealer must, within 3 months of the end of that year, provide the Board with a statutory declaration to this effect.

Division 3 — Duties of financial institutions

10G. Reporting overdrawn accounts

If a dealer's trust account is overdrawn the relevant financial institution must, as soon as is practicable, inform the Board in writing of —

- (a) the name and number of the trust account; and
- (b) the amount by which the trust account is overdrawn.

Division 4 — Auditing of trust accounts

10H. Appointment of auditors

- (1) A dealer must appoint an auditor, approved by the Board, at the time of opening a trust account.

- (2) An auditor's appointment under this section is continuous unless the Board approves a subsequent change in the appointment.

10I. Production of records to auditors

The dealer and the relevant financial institution must, at the request of an auditor engaged in the audit of the dealer's trust account, produce to that auditor all such books, papers, accounts, documents and securities in their possession, custody, or power as may be reasonably necessary for the purposes of the audit.

10J. Conduct of audits

The auditor must conduct the audit in accordance with accepted auditing practice, including selective testing when the auditor considers it appropriate.

10K. Auditors' reports, contents of

An auditor's report must contain a statement as to the following matters —

- (a) whether the trust account has, in the opinion of the auditor, been kept regularly and properly written up;
- (b) whether the trust account has been ready for examination at the periods appointed by the auditor;
- (c) whether the dealer has complied with the auditor's requirements;
- (d) whether the trust account is, or has been during the period of the audit, overdrawn;
- (e) whether in the opinion of the auditor the trust account is, and has been during the period of the audit, in order or otherwise;
- (f) any matter or thing in relation to the trust account that should in the opinion of the auditor be communicated to the Board.

10L. Obligation of auditor to disclose certain information

An auditor must disclose to the Board —

- (a) any close relationship by blood or marriage that he or she has with a dealer whose trust accounts the auditor has been appointed to audit; or
- (b) any business dealings the auditor has with or through the dealer at any time during the auditor's appointment,

and the Board may, if it thinks fit, disqualify that auditor from acting in that particular case.

10M. Costs of auditing

The reasonable fees and expenses of an auditor for an audit under section 32I are payable by the dealer.

10N. When and to whom the auditor must report

- (1) The audit period is to be set by the Board in relation to each dealer.
- (2) The auditor must within 3 months after the end of that period —
 - (a) deliver to the Board a report of the result of the audit, verified by a statutory declaration of the auditor, in an approved form; and
 - (b) deliver a copy of the report so verified to the dealer.
- (3) The dealer must retain the copy of the report and produce it on demand to the auditor making the next succeeding audit of the dealer's trust account.

10O. Confidentiality of audit information

- (1) An auditor must not, directly or indirectly, record, disclose or make use of any information obtained in the course of conducting any audit except —
 - (a) for the purpose of performing functions under the Act;
 - (b) as required or allowed by the Act or under another law.
- (2) However the Board may divulge the information to an interested person or to an auditor making a succeeding audit of the dealer's trust account.

Part 4 — Miscellaneous**10. Regulation 13 amended**

Regulation 13 is amended by deleting "section 34(3)(d)" and inserting instead —

“ section 34B(1)(d) ”.

11. Regulations 13A and 13B inserted

After regulation 13 the following regulations are inserted —

“

13A. Prescribed requirements for vehicle consignment agreements (Fourth Schedule)

For the purposes of section 32B the prescribed particulars, terms and conditions are those set out in the Fourth Schedule.

**13B. Prescribed requirements for vehicle sale agreements
(Fifth Schedule)**

For the purposes of section 42A the prescribed particulars, terms and conditions are those set out in the Fifth Schedule.

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12. Regulation 14 amended

Regulation 14 is amended by deleting “\$200” and inserting instead —

“ \$2 000 ”.

13. First Schedule amended

(1) The First Schedule Form 4 is amended as follows:

- (a) by deleting “WESTERN AUSTRALIA”;
- (b) by deleting “Reg. 7” and inserting instead —
“ Reg. 5 ”;
- (c) by deleting “OF VEHICLE” and inserting instead —
“ (INC. GST) ”.
- (d) by deleting the headings “STATUTORY WARRANTY” and “MORE INFORMATION” and the text under those headings and inserting instead —

“

STATUTORY WARRANTY

A motor vehicle is covered by the terms of a statutory warranty under the *Motor Vehicle Dealers Act 1973* because the cash price (inc. GST) paid is \$4 000 or more and the vehicle is less than 12 years old and has travelled less than 180 000 km. The length of time the vehicle is covered under warranty is determined by the age of the vehicle and kilometres it has travelled at the time of sale. Where a vehicle is —

- less than 10 years old and has travelled less than 150 000 km at the time of sale — warranty is for 3 months or 5 000 km, whichever happens first; or
- between 10 and 12 years old or has travelled between 150 000 and 180 000 km at the time of sale — warranty is for 1 month or 1 500 km, whichever happens first.

A motorcycle is covered by the terms of a statutory warranty because the cash price (inc. GST) paid is \$3 500 or more and the motorcycle is less than 8 years old and has travelled less than 80 000 km. The warranty is for 3 months or 5 000 km, whichever happens first.

The warranty means that the selling dealer must repair or make good all defects which make or are likely to make the vehicle unroadworthy or unserviceable. The repair should make the vehicle roadworthy and in a reasonable condition having regard to its age.

MORE INFORMATION

If you have any questions or require further information about the statutory warranty contact the Consumer Protection Call Centre on 1300 30 40 54 (Mon to Fri). TTY (08) 9282 0800 (hearing impaired).

Internet: www.docep.wa.gov.au

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(2) First Schedule Form 5 is amended as follows:

- (a) by inserting after “Estimated cost of repair” —
“ (inc. GST) ”.

- (b) by deleting from the heading “MORE INFORMATION” to the end of the Form and inserting instead —

“

MORE INFORMATION

If you have any questions or require further information about statutory warranties or this notice, contact the Consumer Protection Call Centre on 1300 30 40 54 (Mon to Fri). TTY (08) 9282 0800 (hearing impaired).

Internet: www.docep.wa.gov.au

”

- (3) The First Schedule Form 6 is amended as follows:

- (a) by deleting “WESTERN AUSTRALIA”;
- (b) by deleting “OF VEHICLE” and inserting instead —
“ (INC. GST) ”.
- (c) by deleting from the heading “STATUTORY WARRANTY” to the end of the Form and inserting instead —

“

STATUTORY WARRANTY

This vehicle is not covered by the terms of the statutory warranty under Part III Division 4 of the *Motor Vehicle Dealers Act 1973*. This is because —

- the cash price (inc. GST) paid in the case of a motor cycle is less than \$3 500 or in the case of any other vehicle is less than \$4 000; or
- in the case of a motor cycle it is more than 8 years old or has been driven more than 80 000 km or in the case of any other vehicle it is more than 12 years old or has been driven more than 180 000 km; or
- the vehicle was sold at auction on behalf of a member of the public; or
- the vehicle is excluded from the statutory warranty under the *Motor Vehicle Dealers Act 1973*.

The following vehicles are excluded —

1. A caravan built to be towed by a motor vehicle.
2. A motor cycle —
 - (a) built for off-road use; and
 - (b) not built to carry any passengers.
3. A motor vehicle —
 - (a) built to be used primarily to carry goods or materials used in any trade, business or industry; and
 - (b) having only one row of seats.
4. A multi-wheeled open motor vehicle the driver of which sits astride the vehicle or part of the vehicle in a manner similar to that customary for the driver of a motor cycle.

WARRANTIES IMPLIED UNDER FAIR TRADING AND TRADE**PRACTICES LAWS**

The *Fair Trading Act 1987* and *Trade Practices Act 1974* (C'th) require the dealer selling this vehicle to ensure that the vehicle matches any description given and that it is of “merchantable quality.” This means that it must be fit for the purpose for which a vehicle of that nature is normally used. The amount of money you have paid for the vehicle is taken into account when determining merchantable quality.

For example, even though a vehicle is not covered by the statutory warranty under the *Motor Vehicle Dealers Act 1973*, you are entitled to expect the dealer to repair any major defects that were present at the time of sale which prevent the vehicle from being used in the normal way. This also applies to anything that makes the vehicle unsafe to drive (eg. faulty brakes, faulty steering or major structural rust).

The requirement of merchantable quality does not apply —

- to defects specifically drawn to your attention before the contract of sale is made; or
- if you examine the vehicle for defects before the contract is made, to defects that examination should have revealed.

VEHICLES BOUGHT AT AUCTION

Vehicles purchased at auction do not carry a "statutory warranty" if they are being auctioned on behalf of a member of the public.

MORE INFORMATION

If you have any questions or require further information about statutory warranties or this notice, contact the Consumer Protection Call Centre on 1300 30 40 54 (Mon to Fri). TTY (08) 9282 0800 (hearing impaired).

Internet: www.docep.wa.gov.au

”

- (4) The First Schedule Form 9 is deleted and the following Form is inserted instead —

“

Form 9.

WESTERN AUSTRALIA

Motor Vehicle Dealers Act 1973

(Section 28)

Motor Vehicle Dealers (Sales) Regulations 1974, Reg. 10

NOTICE PROHIBITING SALE OF SECOND-HAND VEHICLE

At the time of inspection by a member of the Police Force or an authorised officer ("**inspecting officer**"), this vehicle or its equipment was, in the opinion of the inspecting officer, defective and an order was issued specifying each defect.

The sale of this vehicle is prohibited, except for the purposes of breaking up, unless and until an inspecting officer is satisfied that —

- each defect specified in the order has been remedied; or
- the vehicle's number plates have been returned to the nearest licensing or registering authority,
and the inspecting officer accordingly cancels the order and removes this notice.

Reverse Side (Form 9)

The sale of this vehicle is prohibited, except for the purposes of breaking up, unless and until an inspecting officer is satisfied that —

- each defect specified in the order has been remedied; or
- the vehicle's number plates have been returned to the nearest licensing or registering authority,
and the inspecting officer accordingly cancels the order and removes this notice.

No. of Notice Issued

Make of Vehicle

Reg. No. of Vehicle

Engine No. of Vehicle

Vehicle Identification No

Signature

Rank

Number (if applicable)

State (or Licensing Authority)

Date of Issue/...../.....

WARNING

This notice must NOT be removed EXCEPT by a member of the Police Force or an authorised officer acting in accordance with the *Motor Vehicle Dealers Act 1973*.

”

14. Second Schedule amended

The Second Schedule item 1 is amended by deleting “2 days” and inserting instead —

“ 5 days ”.

15. Fourth and Fifth Schedule inserted

After the Third Schedule the following Schedule is inserted —

“

Fourth Schedule

[r. 13A]

VEHICLE CONSIGNMENT CONTRACT
TERMS AND CONDITIONS
(PLEASE READ CAREFULLY)

1. FORMATION

- 1.1 The signing of this Contract by the Owner and the Dealer or a person authorised by the Dealer means an agreement has been made between the Owner and the Dealer for the Vehicle to be sold on the terms and conditions stated in this Contract.
- 1.2 No agreement is made unless the Owner is provided with a copy of this Contract at the time it is signed by the Owner and Dealer or a person authorised by the Dealer.
- 1.3 The Owner grants the Dealer exclusive right to sell the Vehicle for the period stated on the Contract.

2. SALE PRICE

- 2.1 The Dealer may sell the Vehicle for more than the amount agreed to as the Minimum Sale Price for the Vehicle. The Dealer will be entitled to retain any amount in excess of the Minimum Sale Price as Commission.

3. SETTLEMENT

- 3.1 If the Dealer sells the Vehicle, the Dealer will pay any Total Net Proceeds to the Owner within two business days of receiving payment.
- 3.2 If the payment for all or part of the Sale Price of the Vehicle has been made by cheque, the payment will not be considered to have been received by the Dealer until the cheque has been honoured.
- 3.3 The Dealer will not release the Vehicle to the Purchaser until the Purchase Price has been paid in full to the Dealer.

4. OWNERSHIP

- 4.1 The Owner will retain ownership and property in the Vehicle until such time as the Purchase Price has been paid in full to the Dealer.

5. RESPONSIBILITY FOR REPAIRS

- 5.1 Subject to Clause 8.1, the Owner will be responsible for the cost of repairing any defects or faults identified prior to the Sale of the Vehicle.

6. VEHICLE DECLARED UNFIT FOR SALE

- 6.1 The Dealer will give Notice to the Owner if the Vehicle is declared unfit for Sale by any Government Authority.
- 6.2 The Owner will be responsible for any costs or actions necessary to have the Vehicle declared fit for sale or to remove the Vehicle from the Dealer's premises.

7. PAYMENT FOR REPAIRS

- 7.1 The Dealer will not carry out any work on the Vehicle without the prior written consent of the Owner. The Owner may authorise the Dealer to deduct the cost of repairs from the Proceeds Payable after the Sale of the Vehicle.

8. DEALER'S RESPONSIBILITY

- 8.1 The Dealer will not be liable for any loss or damage which may occur to the Vehicle while on Consignment except for:
 - (a) any theft, loss or damage which may arise out of any negligent act or omission on the part of the Dealer or any person acting on behalf of the Dealer; or
 - (b) any breach of the *Fair Trading Act 1987* or *Trade Practices Act 1974*, the liability and remedies for which cannot be excluded by agreement.

9. WARRANTY CLAIMS

- 9.1 The Dealer will be responsible to pay for warranty claims which arise about the quality or fitness of the Vehicle in accordance with the Dealer's statutory responsibility under the *Motor Vehicle Dealers Act 1973*, *Fair Trading Act 1987* or the *Trade Practices Act 1974*.
- 9.2 The Dealer can not claim from the Owner any costs arising for such repairs, either directly, or by way of deduction from the Total Net Proceeds retained in a Trust Account.

10. OWNERSHIP AND ENCUMBERANCES

- 10.1 The Owner declares that the Owner has the right to sell the Vehicle. The Owner will provide the Dealer with a certificate from the Register of Encumbered Vehicles within two (2) business days after signing this Contract.
- 10.2 If a registered security interest is recorded pursuant to the *Chattels Security Act 1987* on the Vehicle, the interest must be discharged prior to the Sale of the Vehicle.
- 10.3 The Owner will give the Dealer all licence and registration documents, owner's manual and service records (if any) relating to the Vehicle within two (2) days after signing this Contract.

11. ENDING THE AGREEMENT

- 11.1 This Contract can be terminated by either the Dealer or the Owner by giving twenty-four (24) hours Written Notice to the other at any time prior to the sale of the Vehicle.
- 11.2 The Owner will remove the Vehicle from the Dealer's premises within seven (7) days after termination of the Contract.

- 11.3 The Owner will pay any monies owed to the Dealer before removing the Vehicle.
- 11.4 If the Vehicle is not removed, or monies owed are not paid within seven (7) days, the Dealer may return the Vehicle to the Owner's address and recover any expenses incurred during the Consignment.
- 12. CHANGING THE AGREEMENT**
- 12.1 Any variation of this Contract must be in writing and signed by both the Owner and Dealer or a person authorised by the Dealer.
- 13. NOTICE**
- 13.1 Any Notice required by this Contract may be given by direct communication, telephone, electronically, fax or post to the addresses and numbers included in this Contract.
- 13.2 If sent by post, a Notice will be considered to have been received, unless the contrary is shown, at the time when the Notice would have been delivered in the ordinary course of the post.

Fifth Schedule

[r. 13B]

VEHICLE SALE CONTRACT TERMS AND CONDITIONS (PLEASE READ CAREFULLY)

- 1. FORMATION**
- 1.1 The signing of this Contract by the Purchaser means an offer has been made to purchase the Vehicle on the terms and conditions stated in this Contract. No offer is made unless the Purchaser is provided with a copy of this Contract at the time it is signed by the Purchaser.
- 1.2 The offer of the Purchaser is accepted by the Dealer when:
- (a) this Contract is signed by the Dealer or a person authorised by the Dealer; and
 - (b) notice of the acceptance is given to the Purchaser. This Contract will then be binding on both parties.
- 1.3 The offer of the Purchaser may be withdrawn by the Purchaser any time before it is accepted by the Dealer. It will automatically lapse at the close of business on the next normal business day for motor vehicle dealers.
- 2. FINANCE**
- 2.1 Where this Contract is subject to the Purchaser obtaining finance, the Contract is conditional upon the Purchaser obtaining approval for the granting of a loan:
- (a) before the Latest Time stated in the Contract;
 - (b) for the amount stated in the Contract;
 - (c) from the Lender named in the Contract (or a lender acceptable to the Purchaser); and
 - (d) upon reasonable terms and conditions in the circumstances.

- 2.2 The Purchaser agrees to take all reasonable steps toward obtaining loan approval.
- 2.3 If the Purchaser has taken all reasonable steps towards obtaining loan approval, but does not obtain approval, then either the Purchaser or the Dealer may terminate this Contract by giving Notice to the other party. The Dealer must immediately refund any deposit paid and return any trade-in vehicle to the Purchaser.

3. THE PURCHASE PRICE

- 3.1 Upon delivery of the Vehicle, the Purchaser will pay to the Dealer all of the Total Purchase Price, less any deposit paid and any value given to the Trade-In Vehicle.
- 3.2 In the case of a new Vehicle, if at any time after this Contract becomes binding on both parties but before delivery of the Vehicle to the Purchaser, the cost of the Vehicle to the Dealer changes because the manufacturer changes its price, or there is a change in statutory charges which apply to the Vehicle, the Total Purchase Price will be adjusted by the corresponding amount.
- 3.3 If the manufacturer increases the cost of a new Vehicle to the Dealer, the Dealer is only entitled to pass on to the Purchaser, an increase of up to and including 5% of the Total Factory Price of the Vehicle.
- 3.4 Payment by cheque for all or part of the Total Purchase Price will not be considered to have been received by the Dealer until the cheque has been honoured.

4. DELIVERY OF THE VEHICLE

- 4.1 The Dealer will deliver the Vehicle to the Purchaser on or before the delivery date stated in this Contract.
- 4.2 In the case of a new Vehicle, if a Delivery Date is not stated in this Contract, the Dealer will deliver the Vehicle within three (3) months of this Contract becoming binding on the parties.
- 4.3 In the case of a used Vehicle, if a Delivery Date is not stated in this Contract, the Dealer will deliver the Vehicle within one (1) month of this Contract becoming binding on the parties.
- 4.4 Delivery of the Vehicle to the Purchaser will take place at the Dealer's Premises, unless other arrangements are agreed to between the Purchaser and the Dealer.
- 4.5 The Purchaser will deliver any Trade-In Vehicle to the Dealer, and take delivery of the Vehicle, within seven (7) days of being notified by the Dealer that the Vehicle is ready for collection.

5. PASSING OF PROPERTY AND RISK IN THE VEHICLE

- 5.1 The Dealer remains the owner of the Vehicle until the Total Purchase Price has been received in full by the Dealer.
- 5.2 Risk in the Vehicle and the responsibility to insure the Vehicle will pass from the Dealer to the Purchaser when the Vehicle is delivered by the Dealer to the Purchaser, unless

the Purchaser and the Dealer agree to some other arrangement and include it as a Special Condition of this Contract. This applies whether delivery occurs at the Dealer's Premises or any other location.

6. TRADE-IN VEHICLE

- 6.1 The Purchaser will deliver the Trade-In Vehicle with Accessories to the Dealer in the same condition the Trade-In Vehicle was in at the time it was valued by the Dealer for the purpose of this Contract, except for normal wear and tear.

7. PURCHASER'S RIGHT TO TERMINATE THIS CONTRACT

- 7.1 The Purchaser may terminate this Contract if the Dealer has breached any of the obligations imposed on the Dealer by this Contract.
- 7.2 If this Contract is validly terminated by the Purchaser, the Dealer must immediately refund any deposit paid and return any Trade-In Vehicle to the Purchaser. If, in the event the Trade-In Vehicle has been sold, the cash equivalent of the Trade-In Vehicle value determined at the commencement of the Contract shall be refunded to the Purchaser.

8. DEALER'S RIGHT TO TERMINATE THIS CONTRACT

- 8.1 The Dealer may terminate this Contract if the Purchaser has breached any of the obligations imposed on the Purchaser by this Contract.
- 8.2 If this Contract is validly terminated by the Dealer, the Dealer may seek an amount up to, but not exceeding, 15% of the Total Purchase Price of the Vehicle as pre-estimated liquidated damages.
- 8.3 Any deposit paid by the Purchaser may be used by the Dealer to meet the pre-estimated liquidated damages payable by the Purchaser. Any surplus will be refunded to the Purchaser.

9. NOTICES

- 9.1 All Notices required by this Contract may be given by direct communication, telephone, electronically, fax or post to the addresses and numbers included in this Contract.
- 9.2 If sent by post, a Notice will be considered to have been received, unless the contrary is shown, at the time when the Notice would have been delivered in the ordinary course of the post.

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By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.