

2004-2005

NSW OFFICE OF
Fair Trading
DEPARTMENT OF COMMERCE

for consumers
& traders

Motor Vehicle Repair Industry Authority

Annual Report 2004-2005



www.mvria.nsw.gov.au

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To
Parliament

The Hon Diane Beamer, MP
Minister for Fair Trading
Minister for Western Sydney
Minister Assisting the Minister for Commerce
Parliament House Sydney

Dear Ms Beamer

I am pleased to present the Annual Report of the Motor Vehicle Repair Industry Authority for the year ended 30 June 2005.

The report has been prepared for presentation to the Parliament of New South Wales in accordance with the requirements of the *Annual Reports (Statutory Bodies) Act 1984*.

Michael Coutts-Trotter
Director-General
Department of Commerce
28 October 2005

About MVRIA

The Motor Vehicle Repair Industry Authority (the Authority) is a state government statutory body responsible for the regulation of the motor vehicle repair industry in New South Wales under the *Motor Vehicle Repairs Act 1980*. The Authority is located within the Office of Fair Trading, which itself is a part of the NSW Department of Commerce.

Our Strategic Priority

Contribute to a fair marketplace in the area of motor vehicle repairs.

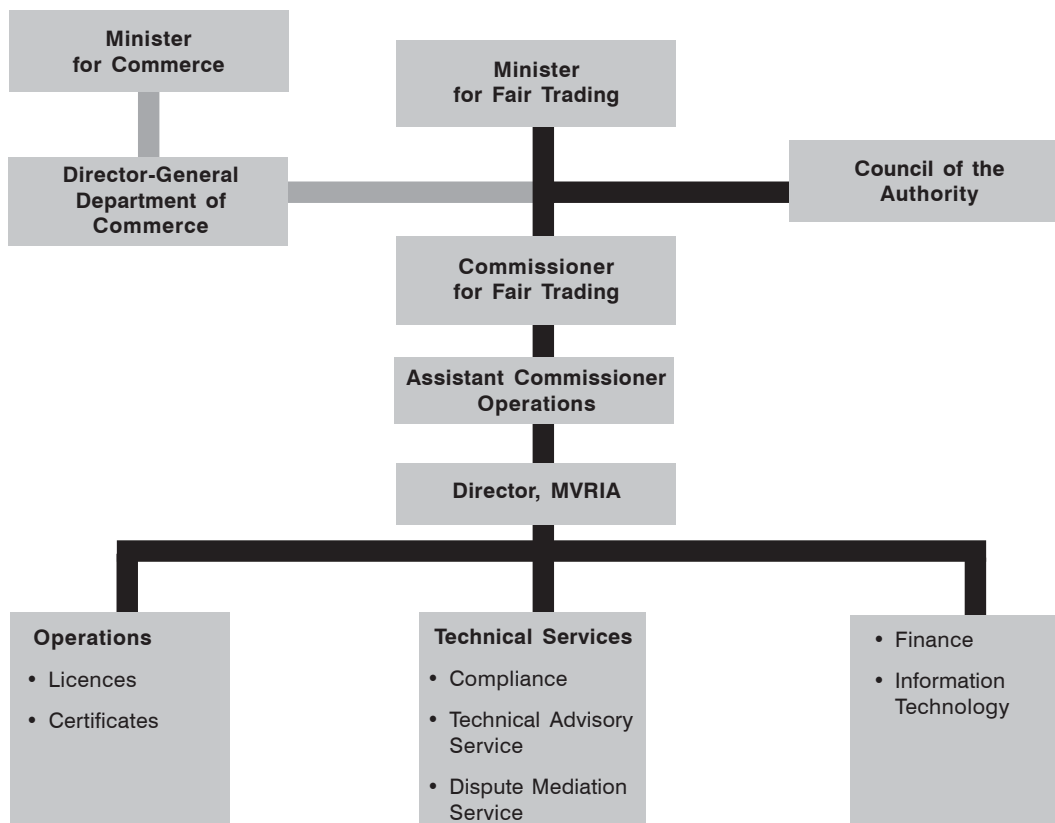
Our Legislation

- The *Motor Vehicle Repairs Act 1980*
- The *Motor Vehicle Repairs Regulation 1999*.
- The *Ozone Protection Regulation 1997* those sections related to motor vehicle air conditioning.

Our Clientele

- Persons carrying on the business of repairing motor vehicles
- Tradespeople who perform repair work
- Consumers of motor vehicle repair services

a state government statutory body responsible for the regulation of the motor vehicle repair industry in New South Wales .





Introduction

Developing mechanisms to improve communication between repairers and consumers

The *Motor Trade Legislation Amendment Act 2001* introduced amendments to the *Motor Vehicle Repairs Act 1980* that allowed the Motor Vehicle Repair Industry Authority to better perform its functions in relation to consumer protection, deterrence of car rebirthing by people in the industry as well as providing a more efficient administration.

Included in the amendments was a requirement for the Act to be reviewed to determine whether its policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives.

The review was completed in late 2004 and the report tabled in both Houses of the Parliament. The review found that overall the legislation was meeting its objectives, however a number of enhancements were recommended, including:

- Bringing the Motor Vehicle Repair Industry Authority under the administrative responsibility of the Department of Commerce's Office of Fair Trading;
- Developing mechanisms to improve communication between repairers and consumers;
- Tradesperson certificates being subject to renewal, rather than being issued indefinitely; and
- Existing repair categories being aligned more closely to the qualifications contained in the National Training Package.

Stakeholders were consulted and implementation of the recommendations has commenced and will continue during the next reporting period.

In March 2005, the *Public Sector Employment and Management (Motor Vehicle Repair Industry Authority) Order 2005*, abolished the Authority as a public service department and transferred all of its staff and branches to the Department of Commerce.

Operating from within the Office of Fair Trading not only increases the Authority's administrative and budgetary efficiencies but also improves face-to-face access to information and services for consumers through the Office's extensive Fair Trading Centre network. The transfer also enhances consumer protection through further opportunities for joint compliance investigation and a more consistent approach to policy, licence administration and legislative enforcement.

Michael Coutts-Trotter

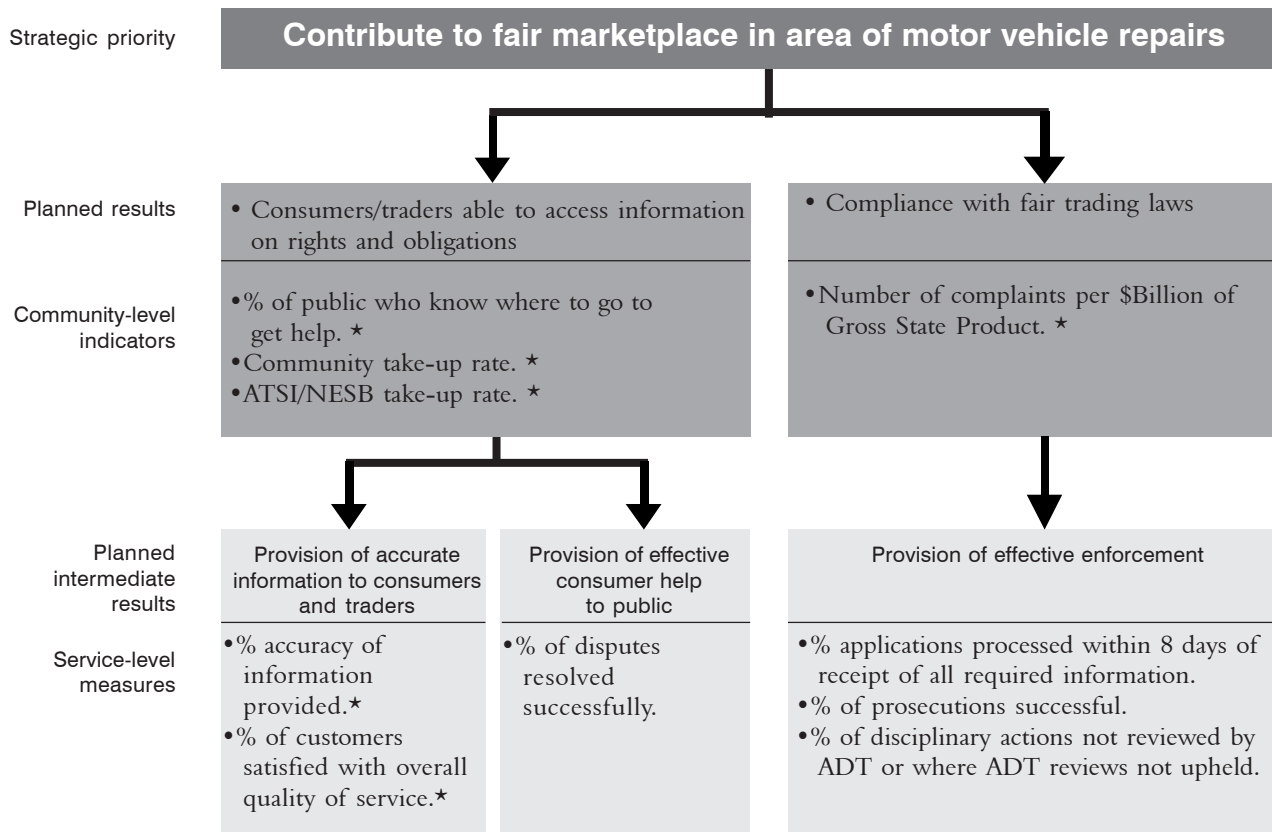
Director-General
Department of Commerce
28 October 2005

Planning Framework

The functions of the Motor Vehicle Repair Industry Authority (MVRIA) contribute to the strategic priority of a fair marketplace for NSW in the area of motor vehicle repairs. This is supported by two high-level community-impact objectives which flow from the functions of the Authority as set out under statute.

- Consumers/traders able to access information on rights and obligations.
- Compliance with fair trading laws.

To address the first of these objectives, the Authority provides information by phone, directly from its office, on-line and through publications, and outreach activities. Help is provided via dispute handling services where individual consumers who are in dispute with a repairer over the cost or quality of a repair can get ready access to assistance, without going through a formal process such as a Tribunal hearing. The Authority addresses the second objective through licensing, complaint handling and by investigating breaches of the legislation. Enforcement options range from prosecution to disciplinary action such as suspension or cancellation of a licence or the imposition of conditions.



* Relevant services provided as part of OFT's overall services. Results are monitored for services as a whole.

Results not in OFT direct control.
 Results over which OFT and MVRIA have higher degree of control

1 Context:

community-level objective one

Consumers/traders able to access information and consumer help

This is the first of two high-level, community impact objectives which contribute to the strategic priority of a fair marketplace for NSW in the area of motor vehicle repairs. Once a fair regulatory framework is in place, which is achieved through the policy and legislative development work of the Office of Fair Trading, it is essential for the community – consumers and traders – to be able to access information on their rights and obligations under that framework, and for consumers who are having difficulty acting on their rights to be able to get help.

Agency performance

Provision of accurate information to consumers and traders

Provision of effective consumer help to public

The Authority supports this high-level objective through two service-level objectives: provision of accurate information, and effective consumer help. The Authority provides information by phone, at its Five Dock counter and online through its website. Increasingly, it will take advantage of the broader community interface provided through the Office of Fair Trading's network of Fair Trading Centres. Help is provided through informal complaint-handling services where individual consumers who are in dispute with a repairer over the cost or quality of a repair can get ready access to assistance, without going through a formal process such as a Tribunal hearing.

Service delivery objectives/results

	00-01	01-02	02-03	03-04	04-05	Target 05-06
Result: <i>Provision of accurate information to public</i>						
Measures: <ul style="list-style-type: none"> • <i>Percentage accuracy of information provided*</i> • <i>Level of customer satisfaction with overall quality of services*</i> 	93%	99%	87%	99%	83%	≥90%
	89%	95%	94%	89%	87%	≥90%
Result: <i>Provision of effective consumer help to public</i>						
Measure: <ul style="list-style-type: none"> • <i>Percentage of disputes successfully resolved</i> 	78%	80%	72%	78%	74%	≥70 %

* Results are monitored for OFT services as a whole

Comment/Interpretation

We help consumers get a fair go in the vehicle repairs marketplace by providing information on their rights under the *Motor Vehicle Repairs Act 1980*. Fair Trading monitors the quality of information services provided to customers, assessing both customer satisfaction and the

accuracy of information provided, through independently conducted annual surveys. The Authority's services are included in both surveys but due to their proportion within the overall sample, the isolation of specific MVRIA results is not appropriate - hence overall Fair Trading results appear above. Individual

consumers can also contact us with a complaint, and we will approach the repairer to help the parties reach agreement – offering a speedy result for the consumer and helping cut government costs by reducing the load on the

Consumer, Trader and Tenancy Tribunal. This service is of value only if it achieves agreement in a high proportion of cases, and the table shows resolution rates are quite high, so the service is working.

Community level statistics

	01-02	02-03	03-04	04-05	Target 05-06
Outcome: <i>Community able to access information and consumer help</i>					
Indicators: <i>Percentage of public who know where to go to get help</i>	58%	68%	73%	73%	65-70%
• <i>Community take-up rate: average number of services requested per 1,000 people in NSW</i>	400	502	509	557	Estimate: 580
• <i>ATSI/NESB take-up rate matches (M) or exceeds (E) population representation *</i>	E	E	E	E	Target ≥ M

*Measured by Community Profile Survey.

Comment/Interpretation

For an indication of results against its community level objective, the Authority relies on Office of Fair Trading data. Fair Trading monitors several items which are important but not entirely in its control.

It is not necessary – or possible – for every member of the community to know all their rights and obligations in every area, but it is important for people to know where to go for information when they need it, and for all customers, including Aboriginal and Torres Strait Islander customers, and customers from non-English-speaking backgrounds, to find the services easy to access, with no systemic barriers in the way. Fair Trading seeks to

service existing demand not create “market share”. The high community take-up rate indicates strong ongoing demand for our services. More services are becoming available through Fair Trading’s electronic channels, and the increase in average number of services per 1000 persons this year reflects greater use of those channels. The proportion of ATSI and NESB people contacting Fair Trading exceeds their representation in the population, indicating these customers need the services and do not experience barriers to using them. The increase in community knowledge of where to find the Office of Fair Trading (since it was created from Consumer Affairs and other agencies in 1996) indicates that our information campaigns are working.

Providing accurate information to consumers and traders

Informing the public about the industry

The Authority aims to increase vehicle owners’ understanding of their rights and obligations in respect to motor vehicle repair work and to enable them, as much as possible, to resolve differences with repairers without the need for recourse to more formal avenues. The Authority also aims to raise the awareness of vehicle owners as to the complexity of motor vehicles and the importance of regular maintenance by licensed repairers.

Web site information for motor vehicle owners and repairers

The Authority’s web site is a useful source of information for motor vehicle owners and repairers with a range of information related to motor vehicle repairs and dealing with repairers.

Register of licensed repairers and certificate holders

Members of the public are able to telephone the Authority to check the register to ensure that a business they intend using for repair work holds a licence. Repairers are able to check the register to see if tradespeople hold the necessary certificate to be employed to carry out repair work. This information is provided free of charge.

... a free technical advisory service to motor vehicle owners.

Good Car Care radio program

The Authority's *Good Car Care* radio program communicates the message that consumers should only deal with licensed repairers as well as providing useful advice on basic car maintenance. It is broadcast on over 30 radio stations throughout regional and rural NSW as well as on a number of metropolitan community radio stations.

Fact sheets

The Authority has produced a range of fact sheets to inform motor vehicle repairers about their rights and responsibilities in the conduct of their businesses.

Workshop visits by inspectors

All new repair businesses are visited by an inspector as soon as possible after they have commenced business. This provides an opportunity for the requirements of the legislation, fair trading principles and general business fundamentals to be discussed with the licensee, as well as ensuring that the equipment, human resources and signage requirements of the *Motor Vehicle Repairs Act* are being complied with.

Providing effective consumer help to the public.

Telephone assistance to repairers

The Authority provides a telephone information service to repairers to assist them with questions about repair, regulatory, dispute and business matters.

Liaison with peak industry bodies

The Authority has well-established communications channels with the various peak industry groups to ensure a proper two-way flow of information about issues related to the industry.

Technical advisory service to consumers

The Authority provides a free technical advisory service to motor vehicle owners who have concerns about the cost or quality of motor vehicle repairs. The technical advisory service is staffed by qualified and experienced

tradespeople who discuss the issues of concern with the motor vehicle owner. In many cases this discussion is sufficient for the owner to realise that their concern is unfounded or addresses the issue so that further action is not needed.

In other instances the Technical Advisory Officer is able to provide the owner with information to enable them to discuss the dispute with the repairer in an informed manner and to reach a satisfactory outcome. Where appropriate the Technical Advisory Officer will ring the repairer to discuss the matter. This also often results in a settlement being reached.

Where the matter cannot be resolved and if the owner intends to pursue it further, they are sent a notice of dispute form to formally lodge their dispute with the Authority. The technical advisory service answers approximately 15,000 telephone enquiries each year.

Claims to the Consumer, Trader and Tenancy Tribunal

Where a matter cannot be resolved the owner is advised that they can lodge a claim with the Consumer, Trader and Tenancy Tribunal. In these cases the Dispute Mediation Officer provides a report of the matter to both parties, which can be used by the Tribunal in its consideration of the matter.

Trial of telephone dispute mediation

A trial of teleconferencing proceeded during the reporting period. The trial has proven to be a success and provides owners, especially those in regional and rural areas with quicker access to the Authority's dispute resolution services than if they waited for a dispute mediation meeting to be scheduled in their area. Telephone mediation will be expanded during the next reporting period.

Dispute mediation

If an owner lodges a notice of dispute with the Authority arrangements are made for a Dispute Mediation Officer to meet with the owner and repairer to try to assist them reach a mutually agreed settlement. This process is free of charge and is entirely voluntary. If a settlement can be reached, the terms of the settlement are recorded in writing and signed by the owner and repairer as evidence of their agreement. The settlement terms can then be referred to in evidence, if the matter is taken to another forum such as a Court or the Consumer, Trader and Tenancy Tribunal. During the year 1,528

dispute matters were mediated, with 1,136 of these being either withdrawn by the owner or settled without the need for any further action. In 392 cases the dispute was not able to be resolved.

Contingency fund

If a motor vehicle owner has suffered a loss due to repair work that was incompetent then, subject to certain conditions, the Authority can make a payment from its Contingency Fund to recoup the amount of the loss, up to the maximum amount allowed, which is \$30,000. To be eligible for a Contingency Fund payment the owner must have done everything possible to recover the loss, such as taking debt recovery action through the courts. During the

reporting period seven owners were paid a total of \$42,389.22 from the Contingency Fund.

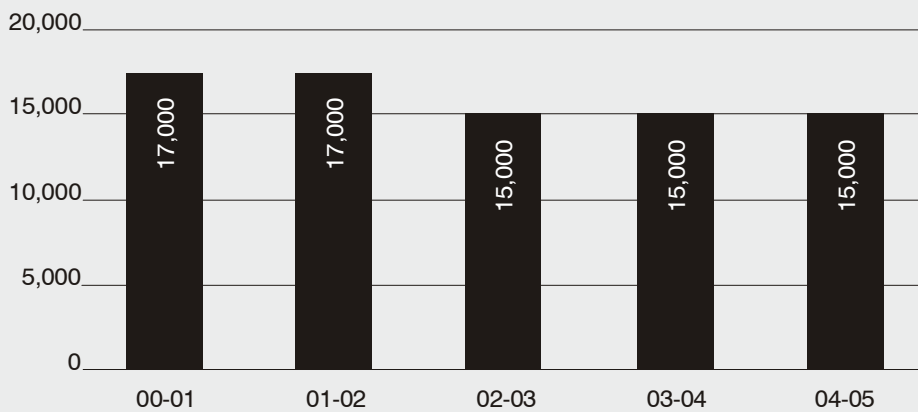
Monitoring repairers' dispute histories

The Authority reviews the dispute files of any repairer who has had three or more disputes in the previous twelve months.

Where the nature of the disputes suggests that either the standard of repair work needs improvement, the costs appear unreasonably high or the repairer has poor customer relations skills, the matters are discussed with the repairers in question and their conduct is then kept under review. This process is successful in reducing disputes.

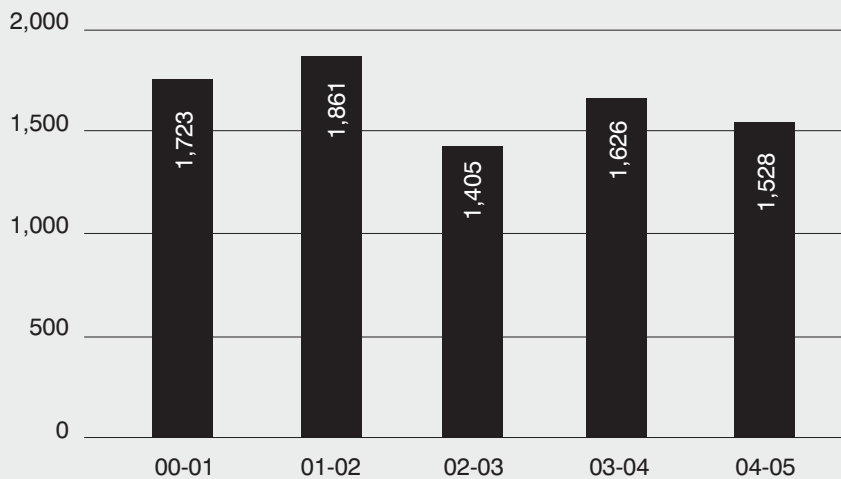
...arrangements are made for a Dispute Mediation Officer to meet with the owner and repairer to try to assist them reach a mutually agreed settlement.

Technical advisory telephone enquiries



Although increasing numbers of customers are using the Authority's website, demand for traditional contact methods remain high.

Formal disputes handled per year



The number of formal disputes handled each year is demand driven.

2 Context:

community-level objective two

Compliance with fair trading laws

This is the second of two high-level, community-impact objectives which contribute to the strategic priority of a fair marketplace for consumers and traders in the area of vehicle repairs. The ability to access information services helps consumers and repairers know their rights and obligations. However, repairers also need to act in accordance with the *Motor Vehicle Repairs Act* for a fair marketplace to be achieved. MVRIA's recent inclusion within the Office of Fair Trading was a strategic move to extend and improve the Authority's ability to monitor and enforce the Act throughout New South Wales.

Agency performance

Provision of effective enforcement

The Authority supports the community-level objective of maximum compliance with fair trading laws through a service-level objective of providing effective enforcement activities. Enforcement activities include inspection programs as well as investigations that arise from inspections or from specific consumer complaints. Enforcement options range from prosecution to disciplinary action such as suspension or cancellation of a licence or the imposition of conditions. Compliance with fair trading laws is supported by a licensing and certification process designed to ensure motor vehicle repairers are appropriately skilled to carry out repair work to a standard that would be reasonably expected by consumers.

Service delivery objectives/results

00-01 01-02 02-03 03-04 04-05 Target 05-06

Result: *Provision of effective enforcement*
Measures:

- % of prosecutions successful
- % of disciplinary actions not reviewed by ADT or where ADT reviews not upheld
- % of licence/certificate applications processed within 8 days of receipt of all required information

100%	100%	100%	100%	100%	≥95%
100%	100%	100%	100%	100%	≥95%
100%	100%	100%	100%	100%	≥95%

Comment/Interpretation

Good service level measures for compliance work are quite hard to develop. Currently we monitor successful prosecutions – those that result in conviction, as well as those where the

offence is proven but a conviction is not recorded. This measure reports the outcome of enforcement through the courts in matters where the Authority is satisfied, as a result of investigation, that significant legislative

breaches have occurred. Although this is a service-level measure, the results are not completely within our control as the outcomes depend not just on the cases prepared by the Authority, but on Court decisions. The effectiveness of our compliance work can be further measured by the incidence of recurrent complaints against particular repairers. The low frequency of these complaints (there were only 2 instances in 2004-2005) suggests the great majority of repairers understand the consequences of disregarding the law.

The Authority measures the quality of its disciplinary action by the percentage of its actions that are challenged in the Administrative Decisions Tribunal. That any such reviews have not been upheld in the past five years indicates the Authority's disciplinary processes meet high standards of professionalism and thoroughness.

Although licensing and certification of repairers is part of the overall compliance process, the resulting authorisations to carry on repair businesses in NSW are an important aspect of New South Wales' economy - with perhaps more than 40,000 people making their livelihood through direct involvement in the motor repairs industry. Equally, countless thousands of consumers expect access to qualified repair facilities when they require it.

From the perspective of both consumers and repairers, an efficient and effective licensing regime is essential to the viability of the motor repair industry. The Authority continues to exceed its target licensing and certification processing timeframes - demonstrating that the industry is not subject to any administrative or regulatory impediments.

*MVRIA's
disciplinary
processes meet
high standards
professionalism
and thoroughness*

Community level statistics

	01-02	02-03	03-04	04-05	Projection 05-06
Outcome: <i>Maximum compliance with regulatory requirements</i>					
Indicators: <i>Number of complaints per \$Billion of Gross State Product</i>	110	98	104	102	90-120

The Authority relies on the Office's overall assessment of the levels of compliance in the New South Wales marketplace.

There are immense difficulties, in principle and in practice, in directly measuring levels of compliance with fair trading legislation. It is not possible - or desirable - to monitor every transaction which occurs in the marketplace for compliance.

Numbers of complaints or Tribunal applications are possible indirect measures but by themselves can be very misleading, (for example, an increase in the number of complaints related to motor vehicles may not reflect a problem if the number of motor vehicles in the State is itself increasing). To get around this problem, as an indirect measure, Fair Trading has been monitoring the level of complaints relative to the amount of activity occurring in the marketplace, measured (for

practical reasons) by the dollar value of Gross State Product.

The indicator is still experimental, but since it was introduced it shows that the level of complaints per \$Billion of marketplace activity is both quite low and relatively steady in NSW.

Complaint numbers can be expected to vary within a bandwidth, but a very large increase in the ratio of complaints to marketplace activity would trigger closer scrutiny to see if there are problem areas where Fair Trading could be taking action.

Fair Trading can only contribute to the level of compliance in the marketplace - it does not directly control it - but the Office will continue to monitor this indicator which must be treated with caution as it is still experimental.

All motor vehicle repair businesses in New South Wales must hold a repairer's licence.

Licensing of motor vehicle repair businesses

Motor vehicle owners have a legitimate expectation that repairs to their motor vehicles will be carried out to proper trade standards and at a fair cost.

The core strategy to achieve this is the monitoring and enforcement of licensing and certification requirements and repair standards. This requires repair businesses to perform work to proper trade standards from a fixed or mobile workshop and to employ qualified tradespeople for the repair work undertaken.

All motor vehicle repair businesses in New South Wales must hold a repairer's licence for the class or classes of repair work that they perform.

To be granted a licence businesses must be fit and proper, must have sufficient financial and material resources to carry on the business and must employ suitably qualified tradespeople to perform the repair work. At the end of the reporting period there were 11,933 licences in force. During the year 1,645 applications for licences were received.

The Authority also issues Business Authorisations on behalf of the Department of Environment and Conservation for businesses that use ozone-depleting substances in

automotive air conditioning work. A total of 1,850 Business Authorisations were in force at the end of the year.

Certification of tradespeople

The *Motor Vehicle Repairs Act* requires motor vehicle repair businesses and commercial vehicle owners to employ tradespeople who are suitably qualified to perform the type of repair work carried on by the business. These tradespeople are required to hold tradespersons' certificates issued by the Authority.

The completion of an apprenticeship or traineeship for the particular work performed is the most common qualification used to support an application for a tradesperson's certificate. People who do not have formal qualifications may be granted a provisional tradesperson's certificate, to allow them to work in the industry while they gain the necessary skills and qualifications to be granted a full certificate.

Provisional certificates are usually granted for a specific period of time and may also be subject to certain conditions or restrictions, such as limiting the range of work that can be performed, or requiring the person to work under supervision. During the reporting period 2,684 applications for tradesperson certificates were granted.

Licences by Classes of Repair Work	03/04	04/05
Automotive electrician fixed workshop	879	874
Automotive electrician mobile workshop	86	121
Body maker	488	504
Brake mechanic	400	408
Exhaust repairer	300	327
Front end specialist	524	539
Liquefied petroleum gas mechanic	544	562
Motor cycle mechanic	466	466
Motor mechanic fixed workshop	7,714	7,839
Motor mechanic mobile workshop	569	689
Natural gas mechanic	38	39
Panel beater	2,085	2,161
Radiator repairer	240	251
Transmission specialist	501	503
Vehicle painter fixed workshop	1,900	1,863
Vehicle painter mobile workshop	81	110
Total	16,815	17,256

Note: the number of licensed classes of work is greater than the number of current licences because they can be issued for more than one class of repair work.

Disciplinary action against repairers

Disciplinary action can be taken against repairers and tradespeople due to the way they conduct their business or the repair work they perform.

The most common grounds for disciplinary action is where the trade work of a repair business is below usual trade standard or where the business is being carried on in a dishonest or unfair manner.

Two formal disciplinary matters were determined during the year. The first matter related to a licence that had been granted to a company whose director was subsequently convicted for having received a stolen motor vehicle part. A determination was made to cancel the licence, and to disqualify the director from holding a licence or being concerned in the direction, management or conduct or a repair business for a period of ten years. It was also determined that the director was required for a period of ten years to advise any repairer who subsequently employed him as a tradesperson of his criminal record.

The primary grounds of the second matter were that a company was carrying on its business in a dishonest or unfair manner and that the repair work done by the business was below usual trade standards.

It was determined to cancel the licence held by the company, to permanently disqualify the company's sole director from holding a licence or being concerned in the direction, management or conduct of a repair business and to disqualify a former director from holding a licence or being concerned in the direction, management or conduct of a repair business for a period of five years.

Prosecution of offences

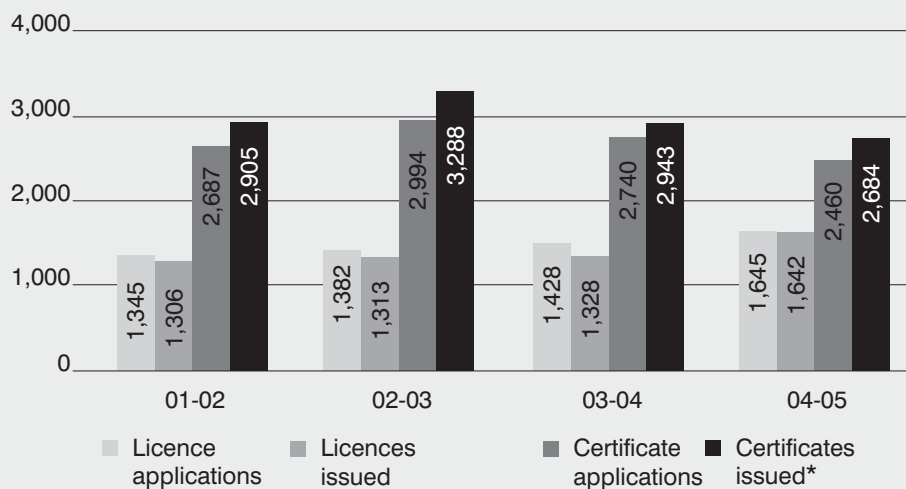
It is an offence under the *Motor Vehicle Repairs Act* to conduct a motor vehicle repair business without holding a licence for the class or classes of repair work performed or to employ uncertificated people to perform repair work. The Authority receives many complaints about alleged unlicensed repair work. The Authority investigates these complaints and except in the case of anonymous complaints informs the complainant about the outcome of the investigation.

In the majority of cases there is no breach of the Act, as the repair work being done is not the carrying on of a business, but is being done by an owner on his or her own vehicle or vehicles, or those of family members.

During the reporting period the Authority received 375 complaints about possible breaches of the Act. As in past years on investigation the majority of these complaints proved to be unfounded. As a result of its

As in past years on investigation the majority of these complaints proved to be unfounded.

Licence/certificate applications received and issued



* Some certificate applications involve the issuing of more than one certificate - first as a provisional certificate and then as a full certificate.

investigations the Authority prosecuted ten people for a total of 38 offences.

The offences related to the carrying on or advertising the business of motor vehicle repairer without a licence and the employment of uncertificated tradespeople and the failure to produce records to the Authority. All matters were found proven and a total of \$46,283 was awarded in fines and costs.

Three of the matters, involving 18 offences and costs and fines of \$30,134, are subject to annulment applications that will be heard by the court in the next reporting period.

Prosecutions and disciplinary actions	00-01	01-02	02-03	03-04	04-05
Number of prosecutions	3	6	10	5	10
Number of disciplinary actions	3	2	4	4	2

