

Breach 5

Act: Property Agents and Motor Dealers Act 2000

Section: 300(2)

Breach: Motor Dealer failed to give prospective buyer statement in approved form

Infringe Code: PAA128

Infringe Desc: Motor Dealer failed to give prospective buyer statement in approved form

Breach 6

Act: Property Agents and Motor Dealers Act 2000

Section: 317(1)

Breach: Motor Dealer failed to give buyer notice about statutory warranty

Infringe Code: PAA139

Infringe Desc: Buyer to be given notice about statutory warranty

Breach 7

Act: Property Agents and Motor Dealers Act 2000

Section: 328(1)

Breach: Display and publication of Licensee's name

Infringe Code: PAA145

Infringe Desc: Display and publication of licensee's name/name of motor dealer in charge of place of business/particulars prescribed by regulation

Breach 8

Act: Property Agents and Motor Dealers Act 2000

Section: 332(1)

Breach: Motor dealer to give statement to buyer of vehicle

Infringe Code: PAA157

Infringe Desc: Motor Dealer to give statement of vehicle to buyer

Breach 9

Act: Property Agents and Motor Dealers Act 2000

Section: 333(1)

Breach: Dealer to ensure contract is in writing containing prescribed particulars.

Infringe Code: PAA161

Infringe Desc: Motor Dealer to give statement of vehicle to buyer

Breach 10

Act: Property Agents and Motor Dealers Regulations 2001

Section: 32(1)

Breach: Motor dealer fail to promptly issue motor dealer receipt

Infringe Code: PAR001

Infringe Desc: Motor Dealer fail to promptly issue motor dealer receipt

Breach 11

Act: Property Agents and Motor Dealers Act 2000

Section: 77

Breach: Motor dealer fails to display licence

Infringe Code: PAA010

Infringe Desc: Display of licence.

	<p>No cooling off period documentation</p> <p>No Statutory Warranty documentation</p> <p>No Statement to buyer documentation</p> <p>No Statement of no prior contact documentation</p> <p>No Statutory write off Documentation</p> <p>No guarantee of title documentation</p> <p>No contract</p> <p>Did not ask buyer to sign Statutory Write off Documentation.</p> <p>Fail to display signage</p> <p>Fail to display licence</p> <p><i>Prior knowledge of situation</i> insufficient evidence to a standard of beyond responsible doubt with regard to Section 574. The (C) had acquired a V check prior to the purchase and was aware of the repairable write off status of the vehicle, this was discussed with the (C) prior to purchase.</p> <p>The (T) honestly believed he could ensure the vehicle was registrable so long as he was able to obtain a copy of the receipt for the repairs and present that to QIS.</p> <p>All the other provisions identified were involved in an enforcement response on the (T). 3 as Infringement notices and the rest incorporated in a written Warning.</p> <p>BACHO, MACS2, NSW Motor Dealer, Fowles Auctions, QIS, QTMRD. VIU.</p>
<p>Trader's Response:</p>	<p>Breach 1</p> <ul style="list-style-type: none"> • (T) stated that there was never any intent to mislead or falsely mislead or make any false representation as to the condition of the vehicle or the registration ability of the vehicle. • He stated that he provided a V check clearly identifying the written off status of the vehicle as a repairable write off prior to sale and had told the (C) what that meant in that it had to pass the QIS vehicle inspection to be removed from WOVI and that only one receipt was outstanding but was being provided by the repairer from NSW. • The (T) stated be believed that it was merely the process of producing the receipt to QIS when it arrived and it would pass and be removed from WOVI and allowed to be registered. • The (T) offered to return the (C) purchase monies of \$9000 to the (C) the (C) refused to accept anything less then all the amounts inclusive of extras now on the vehicle - \$14,040.86. The (C) was not prepared to pay that amount to the (C).

	<p>Breach 2 -11 Unaware of requirements could offer no reasonable excuse he needed to get organised properly.</p>
<p>Findings and Supporting Reasons:</p>	<p>That the (C) had prior knowledge of a V check conducted by him on the 19/11/2011 in relation to the status of the vehicle that it was a repairable write off and that the (C) should have sought independent advice on that information to ensure he was aware of what that meant prior to purchase on the 24/11/2011.</p> <p>There was an obligation on the MD to ensure that he complied with legislation and provided a form to be signed by the (C) to ensure this was brought to his attention and that he then had a copy of that form to provide evidence of the repairable write off status was provided to the (C).</p> <p>The (T) has since made an offer to fully refund the (C) the amount of purchase of the vehicle - \$9000. The (C) has refused to accept the offer demanding that he be reimbursed for all the fittings he has placed on the vehicle and services as well to the sum of \$14,040.86</p> <p>The primary offence of Section 574 false representation about property was discussed at length and agreed that there would not be sufficient evidence to prove the element of the charge to the satisfactory level required to ensure a conviction by an appropriately informed court - beyond reasonable doubt.</p> <p>It was agreed however that there was sufficient evidence for the matter on the balance of probabilities concerning a claim assessment. In this instance however the (T) has offered and is still offering to take the vehicle back at the price paid by the (C) of \$9000. It is therefore agreed no further action in relation to Section 574.</p> <p>That the (T) is in breach of identified breaches numbered 2 -10 and the maximum number of infringements allowable of 3 should be issued to the (T) for:</p> <ol style="list-style-type: none"> 1. Section 300(2) Failure to provide buyer statement in approved Form - \$440 2. Section 333(1) Failure to ensure contract in writing containing prescribed particulars - \$440 3 Section 332(1) Motor dealer fail to give statement to buyer - \$440 <p>And further that the remaining identified breaches should be incorporated in a warning to the (T).</p>

Breach Category Schedule Recommendation:	1. Cat 2 2. Cat 2 3. Cat 4 1. Fine or Court 2. Warning Fine or Court 3. Warning Fine or Court
Recommendation/s: <small>If not the breach category schedule recommended action, document reasoning</small>	Breach 1: No further action Breach 5, 8 and 9 Infringement notices Breach 2,3,4,6,7, 10 and 11 Formal Warning. (Note issue with MACS2 with identifying breach of Section 592(4) Spoke to Bne.

RECOMMENDED ENFORCEMENT ACTION (Delete Section if Outcome is No Further Action Required)			
OFFENCE DETAILS: <small>If more than one offender or offence, cut & paste recommended enforcement action section.</small>	Ensure both offender and offence details are correctly entered on MACS and correspond with these details in order to facilitate enforcement action		
Date of Offence: (show between dates if applicable)	2. 24/11/2011 3. 24/11/2011 4. 24/11/2011 5. 24/11/2011 6. 24/11/2011 7. 30/10/2012 8. 09/10/2011 9. 24/11/2011 10. 24/11/2011 11. 30/10/2012	To: -----	25/11/2012
Offence Location:	Postman's Ridge	Section:	2 - 11
Offence Code:	2. Warning or Court 3. Warning or Court 4. PAA122 5. PAA128 6. PAA139 7. PAA145 8. PAA157 9. PAA161 10. PAR001 11.PAA010	Act:	
Prescribed Penalty:	2. Warning or Court 3. Warning or Court 4. \$400	Offender Interview:	2. Yes 3. Yes 4. Yes



Salespersons Employed:-	(b)	Cert. No.:-	Exp. Date:-
	(c)	Cert. No.:-	Exp. Date:-
	(d)	Cert. No.:-	Exp. Date:-
	(e)	Cert. No.:-	Exp. Date:-

Do all salespersons hold a Registration Certificate: ~~Yes~~ / No *N/A*

INSPECTION CHECKLIST Result code - ✓ denotes full compliance × denotes non compliance

Signage

Sect. /Reg	Brief Description of Section	Result
Sect. 328(1) Reg 13	Licensee name followed by the word "licensee", and where applicable name of person in charge, category of licensee, details to be exhibited in a conspicuous place clearly visible when entering premises. Min. Print 1.5cm high.	✓

Licences to be displayed

Sect. /Reg	Brief Description of Section	Result
Sect 77 Reg. 10	Licences to be displayed in a conspicuous position which is clearly visible when entering the registered office	✓

Documentation

Document Type	Sect. /Reg	Y/N	Y/N
Transaction Register (Dealers Stock book)	Sect. 330 & Reg. 30 & 31	Is a Register being kept? ✓	Does the Register comply with the prescribed form? ✗
		Is the Register being completed fully? ✓	
Guarantee of Title (Form 63)	Sect. 295 & Reg. 20	Are the statements being issued? ✓	Do the statements comply? —
		Is the original being issued? ✓	Are the statements being completed fully? ✓
		Is receipt of statements being acknowledged by buyer? ✓	Is the statement given to buyer at time of sale? ✓
Statement from Seller (No prescribed form)	Sect. 331 & Reg. 24	Are statements being obtained from the seller of the vehicle? —	Do the statements comply? —
		Is a copy being retained? —	Are statements being completed fully? —
Statement	Sect.	Are statements being given to the	Do the statements comply?



to Buyer (No prescribed form)	332 & Reg. 25	buyer of the vehicle?	N		
		Is a copy being retained?	N	Are statements being completed fully?	—
Dealers' Receipts	Reg. 32	Are receipts being issued?	Y	Do the receipts comply?	N
		Is the original receipt being issued to buyer promptly on payment?	—	Are receipts being completed fully?	—
		Is the duplicate copy being retained?	Y		

Statutory Warranty	Sect. 317	Is the dealer providing a notice showing statutory warranty details to the buyer in the approved form?	N	Does the dealer sell unwarranted vehicles?	N
		Is the warranty period extension being correctly recorded? – s.321 Reg.23	—	Is proper signage displayed regarding unwarranted vehicles? - s.316 Reg.21	—
Cooling Off Period	Sect 300	Does the dealer give the buyer a notice of the cooling off period in the approved form?	N	Does the form contain the detail as required under the Act? Does the form state the amount of non-refundable deposit? (s. 300(3)(f))	—
Contract of Sale	Sect 333	Does the dealer provide a copy of the contract of sale in writing to the buyer?	N	Does the dealer retain a copy of the contract to be provided for immediate inspection by inspector?	—

Consignment Sales & Trust Accounts Receipts	Div. 2 Sect. 284 - 286	Does the dealer accept vehicles on consignment?		If Yes. Is a trust account being maintained?	
		Does the dealer obtain an Appointment to Act? – s.284 (Form 34)		Are trust account receipts being completed? Reg. 42	
		Is the appointment in the approved form? – s.285 Form 34		Do the receipts comply? Reg. 41	
		Does the dealer identify these vehicles as not subject to cooling off period? S 299. Reg 26		Is the trust money being banked immediately? s. 379	
				Are other trust account requirements being met? (Chapter 12)	

Code of Conduct	Part 4 Sect. 33	Is the Code of Conduct publicised in the public area?	N		
	Part 5 Sect. 34 - 36	Does the licensee maintain a complaint handling procedure?	N		



As identified from Transaction Register, Physical Inspection of Vehicle on Lot, Sellers Statement, Buyers Statement, Contract of Sale, Safety Certificate, Etc

Vehicle no: 1 (SOLD)	
Stock no	
Vehicle description	
Reg. no.	
Engine / Vin no.	
Date sold	
Sellers details (if necessary)	
Buyers details (if necessary)	
Odo. reading on transaction register	
Odo. reading on sellers statement / dealers invoice	
Odo. reading on buyer's statement.	
Odo. reading on contract	
Odo. reading identified from other documents (e.g. Safety Cert.)	
Comments (if applicable)	

Vehicle no: 2 (SOLD)	
Stock no	
Vehicle description	
Reg. no.	
Engine / Vin no.	
Date sold	
Sellers details (if necessary)	
Buyers details (if necessary)	
Odo. reading on transaction register	
Odo. reading on sellers statement / dealers invoice	
Odo. reading on buyer's statement.	
Odo. reading on contract	
Odo. reading identified from other documents (e.g. Safety Cert.)	
Comments (if applicable)	

Vehicle no: 3 (SOLD)	
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Stock no	
Vehicle description	
Reg. no.	
Engine / Vin no.	
Date sold	
Sellers details (if necessary)	
Buyers details (if necessary)	
Odo. reading on transaction register	
Odo. reading on sellers statement / dealers invoice	
Odo. reading on buyer's statement.	
Odo. reading on contract	
Odo. reading identified from other documents (e.g. Safety Cert.)	
Comments (if applicable)	

Vehicle no: 1 (UNSOLD - ON SITE)	
Stock no.	
Vehicle description	
Reg. no.	
Engine / vin no.	
Odo. reading on vehicle	
Odo. reading on transaction register	
Odo. reading on sellers statement/ dealers invoice	
Sellers details (if necessary)	
Odo. reading identified from other documents (e.g. log books)	
Comments (if applicable)	

Vehicle no: 2 (UNSOLD - ON SITE)	
Stock no.	



Vehicle description	
Reg. no.	
Engine / vin no.	
Odo. reading on vehicle	
Odo. reading on transaction register	
Odo. reading on sellers statement/ dealers invoice	
Sellers details (if necessary)	
Odo. reading identified from other documents (e.g. log books)	
Comments (if applicable)	

Vehicle no: 3 (UNSOLD - ON SITE)	
Stock no.	
Vehicle description	
Reg. no.	
Engine / vin no.	
Odo. reading on vehicle	
Odo. reading on transaction register	
Odo. reading on sellers statement/ dealers invoice	
Sellers details (if necessary)	
Odo. reading identified from other documents (e.g. log books)	
Comments (if applicable)	

Breaches Detected:



Act - Sect/Reg	Brief Description
Reg 32, 294B	① No Panda Receipt ② No WOV Notice
295, 332	③ No GANTRA Title ④ Statement to Buyer
317, 300	⑤ No Stat Warranty ⑥ Cooling Off Not Provided
323, 328, 77	⑦ No Contract of Sale ⑧ LIC Not Displayed ⑨ LIC Not Displayed

Outcome: (Please circle)	Proposed Action: (Please circle)	
Trader Compliant No Breaches Detected	Referred for Investigation	Prosecution Sought
	Written Warning	Undertaking Sought
	Infringement Notice	

[Signature]
Investigating Officer

—
Corroborator

30/10/12
~~30/10/2012~~ *[Signature]*
Date of Inspection

Inspectors Comments:

Numerous breaches possible Section 374 Panda?

Traders Comments (if applicable)

Name of Trader:-	
Inspectors name & signature:-	

or endorsed organisations utilising the same infrastructure.



13/1/2012

PHONED TWEED WRACKERS ON 02-66742121

CONFIRMED THAT THIS RAD SUPPORT WOULD ONLY
HAVE BEEN SOLD ON OR ABOUT 25/1/2011, NOT MONTHS
BEFORE. (SO COULD NOT HAVE BEEN ON A CAR
INSPECTED ON 14/4/2011.)

Dyball, Gordon

From: Nichols, Richard
Sent: Friday, 16 November 2012 10:10 AM
To: Dyball, Gordon
Subject: Phone call

Please call Justin Land TMRD on 30665265.
Richard

From: OFT-Toowoomba
Sent: Friday, 2 November 2012 10:34 AM
To: Dyball, Gordon
Subject: Scanned Docs

please find attached scanned docs

