



Motor Trade Association of WA
Your Business, Your Industry, Your Voice

**Submission to the Government of Western Australia Department of
Mines, Industry Regulation and Safety.**

Consumer Protection Division

Issue Paper

Review of the Disposal of Uncollected Goods Act 1970

June 2019

Response due by COB 27 September 2019.

**Submission provided by the
Motor Trade Association of WA.**

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Background

The Motor Trade Association of Western Australia (MTA WA) is the peak industry body for the Western Australian motor industry and represents approximately 1,500 businesses. The membership incorporates all aspects of the motor industry from automotive franchise dealers, used motor vehicle dealers, imported motor vehicle dealers, body repairers, manufacturers and technicians to heavy transport operators.

A key role of the MTA WA is to advocate on behalf of its members in relation to issues that affect the Western Australian motor industry with government and policymakers at all levels.

The MTAWA represents 19 different sectors of the automotive industry and almost all sectors at one time or another have to deal with the disposal of a motor vehicle of some kind.

Introduction

MTA WA welcomes the opportunity to provide this submission in response to a review of the Disposal of Uncollected Goods Act 1970 (the Act). MTAWA has worked closely with Consumer Protection in the development of relevant material for industry to better understand the process to dispose of a motor vehicle in line with the Act.

MTAWA has raised issues with the Act in relation to its relevance to a motor vehicle and that the current requirements within the Act are not in keeping with the technology change over the last 50 years.

Raising the amount to \$3,500 without proceeding to court when disposing of uncollected goods has assisted members, although this was a band-aid solution to the real problem which is an outdated process. The MTA WA recommends that goods of low value being under \$5,000 be shortened to 28 days after the Bailor has been notified.

The questions asked throughout the review are good and we are hopeful that this will provide a clear path for regulators to update of the Act.

The scope of this submission

MTA WA has sought input from members of the respective sector Committees as well as the expertise of staff within the MTA WA that aid members in applying the correct process with regard to disposing of a motor vehicle in line with the requirements of the Act.

Executive Summary

MTA WA would like to see that when an invoice has been provided to the Bailor, it has satisfied the requirements of the Act and will replace the Form 1.

Where the goods are of medium to high value the time to dispose of the goods should be reduced to three (3) months. For goods of high value, a court order should be required to ensure correct process of the DUG Act.

MTA WA recommend that goods of low value being under \$5,000 have further relaxed regulation, such as disposal by whatever means, 28 days after the Bailor has been notified the goods are ready for redelivery. Evidence of correct process to be recorded.

The current process of notifying the Police Commissioner, Government Gazette and state-wide circular paper is no longer relevant and there are other options available. The PPSR is the obvious choice to check for a registered interest on the vehicle or to ensure it is not listed as stolen.

Using a reference to low/medium and high value in the Act will assist in being able to change the amount of those values to remain current moving forward.

A reasonable person would be expected to know if their vehicle was missing for three (3) months, secondly if a reasonable person leaves a vehicle for repairs and fails to notify the business that their details change or fails to return any correspondence to the business, then that person should expect that the business will take action and sell the vehicle to recover costs.

If the MTA WA can provide any further clarification or assistance regarding the review of the Act please contact the MTA WA on the details provided on the front page of this submission.

The MTA WA position –

Review of the Diposal of Uncollected Goods Act 1970

Question 1 – How many notices should be issued prior to disposing of goods?

Preferred option:

- One notice should be issued prior to disposing of goods and this form should be the Form 2.
- The use of a Form 2 should be retained, as this form provides further notice to the Bailor that the Bailee will dispose of the goods using the Act if they are not collected.

Alternative option:

- One notice being the Form 1 only, and after the required period from that date the goods will be disposed of without further notification.

- If the use of Form 1 is to be retained then an invoice should be taken as enough notification as a Form 1 as the Bailor has been notified the goods are ready for redelivery, the amount to be paid, the Bailor details and where the goods are to be collected from (the Bailee).
- Remove the requirement on the Form 1 to notify the Bailor that the Bailee will follow the Act.
- High value goods to have a three (3) month retention period and a court order to establish compliance with the Act.

MTA WA preferred option allows for two (2) notifications over a longer period, being an invoice and a Form two (2).

Questions 2–4 Should the current retention periods be retained?

- No, the current retention period of six (6) months after the Form 1 has been served is too long.

Q3 If not, should retention periods be shortened where the owner of the goods is contactable?

- Yes, goods that have a low value should be shortened to 28 days for under\$5,000.
- Medium value \$5,000-\$20,000 should be reduced to a three (3) month retention period.
- For high value goods a three (3) month retention period with a court order.
- Disposal 28 days after Form 2 has been issued.
- Evidence of correct process to be recorded.

Q4 Where the business or receiver of the goods cannot contact or communicate with the owner should a longer period apply before goods can be disposed of?

- No, a three (3) month period for medium or high value goods is enough.
- Medium and high value goods to obtain court order if the Bailor is not contactable, this will protect the Bailor.
- Evidence of correct process to be recorded.

Questions 5–6 Should the current requirement to notify police for all goods be retained or abolished?

- Abolished
- Police resources are already stretched and using this resource when other options are available is a waste. Stolen vehicles are recorded on the Personal Properties Securities Register (PPSR) and are available to search for a small fee.

Q6 Should the requirement to notify police be limited to the disposal of certain types or categories of goods? If so, what type or category of goods should it apply to?

- Yes
- Goods that carry a title (vehicle, boat, bike etc.) Should require a certificate as a result of a PPSR search.

- If the search results identify that the vehicle/goods has a registered interest then those parties that have registered an interest must be notified.
- If the vehicle or other is registered as stolen then the police must be notified.

Questions 7–9 Should the current requirement to publish notices in the newspaper be retained or abolished?

- Abolished
- The cost to business to publish a notice in the newspaper is high and in some cases the cost exceeds the value of the uncollected goods.
- The purpose of the newspaper was to notify third parties that may have an interest, this process can be achieved easier and more cost effectively by registering an interest on the PPSR for medium and high value goods if the Bailor is not contactable.
- A simple PPSR search will identify third parties that have registered an interest in the goods.

Q8 Should the requirement to publish notices in the newspaper only apply to certain categories of goods? If so, what category of goods should it apply to?

- No requirement

Q9 Should other requirements be imposed such as publishing a notice on a business website?

Preferred option:

- Yes
- For medium and high value goods the Bailee should register an interest on the PPSR if the Bailor is not contactable.

Alternative option:

- When the Bailee does not have the last known address for items that have been registered with the Department of Transport, the Bailee should send the Department of Transport WA a Form 2 or relevant form, 28 days before disposing of the goods.
- The Department of Transport WA should then be required (under the Act) to send the notice to the last known address.
- Alternatively an application can be made to the Department of Transport WA to obtain the last known address details of the goods.
- The relevant form can then be sent.
- This would be in line with Victoria

Preferred option protects Bailor's privacy.

Questions 10–11 Should the requirement to publish notices in the Government Gazette be retained or abolished?

- Abolished

Q11 Should the requirement to publish notices in the Government Gazette apply in the case of some goods? If so, what category of goods should it apply to?

- No

Please provide reasons.

- The Government Gazette is no longer relevant and has not shown to be of any value in actioning the owner to respond to a notice or contact the Bailee.
- The PPSR is a Federal website that is accessible to all (that have internet access), and furthermore has become the conduit for all sources of information for finance companies, repairers, police and insurance companies.
- If the Bailor is not contactable and the value of the goods is medium or high then the Bailee should register the goods on the PPSR.

Questions 12–14 Would you support inserting a mandatory obligation in the DUG Act requiring a receiver of goods to search the PPSR?

- Yes for vehicles or registerable goods.

Q13 Should a requirement to consult the PPSR be restricted to certain categories of uncollected goods? If so, what type or category of goods?

- Yes
- Goods that have title and would likely be registered in the PPSR such as cars, trucks, bikes, farm machinery, boats, cranes etc.

Q14 Should security interests under the DUG Act take priority over other interests registered under the PPSA?

- Yes, provided the Bailee was unaware the goods were encumbered or had a registered interest. Repairers Lien to be maintained.
- It would be an unrealistic expectation on industry to check the PPSR before conducting services or repairs on every vehicle.
- If security interests under the DUG Act did not take priority over interests registered under the PPSR it may conflict with common law understanding.

Questions 16–17 Do you support the retention of the requirement for court orders when disposing of high value goods over \$3500 that are obtained in the course of business?

- No not over \$3,500.
- Yes for goods of high value being \$20,000 and over a court order would be appropriate.

Q17 Should the requirement to obtain court orders for the disposal of all goods not acquired in the course of business (irrespective of value) be retained?

- No
- Only for medium and high value goods being \$5,000 and over.

Question 18 Should sale by auction be retained for all goods or only required for higher value goods? Please indicate at what value sale by auction should be required.

- High value goods require a court order, so therefore the courts will decide on correct process, although auction can be used as a guide.
- Medium value goods \$5,000-\$20,000 may be sold through auction houses or online auctions, such as eBay or other.
- Medium value vehicles maybe sold privately provided they have been valued by a licensed motor vehicle dealer or online services such as Redbook have been utilized and evidence recorded.
- Low value goods (under \$5,000) disposal by whatever means after 28 days. Somewhat in line with NSW.
- Evidence of disposal to be retained.

Questions 19–20 Would you support a proposal to establish a category of low value goods with less onerous notification requirements, shorter retention periods, and sending notices by electronic/online communication?

- Yes

Q20 What do you think is a suitable threshold for low value goods?

- Less than \$5,000
- In most cases a vehicle with a value of \$5,000 or less will not be financed.
- Often, they are left at repairs businesses because the estimated value of the repair exceeds the value of the vehicle. The Bailor severs contact with the business because they cannot afford the repair and no longer want the vehicle.
- The Bailor is often unaware the business cannot dispose of their vehicle easily.

Questions 21–23 Would you support a proposal to establish a category of medium value goods with less onerous notification requirements, reduced retention periods, and sending notices by electronic/online communication?

- Yes three (3) month period.
- Notices by electronic/online communication would be appropriate.

Q22 What monetary values should define medium value goods?

- \$5,000-\$20,000

Q23 Would you support a proposal to allow medium value goods to be disposed of by auction or private sale rather than just by auction?

- Yes
- The difficulties with auctions and the requirements of presenting the vehicle at two (2) auctions no more than 14 days apart is that auctions are not always available, particularly in regional areas.
- It should be noted that many uncollected vehicles are reported from regional areas that do not have access the auctions.

Questions 24–28 Would you support a proposal to establish a category of high value goods? If so, what should be the monetary value to determine high value?

- Yes, for goods to the value of \$20,000 and over
- High value goods if uncollected will likely have a registered interest on the PPSR.
- The Bailor usually has failed to make payments to the finance company and therefore the finance company welcomes the contact from the repairer as to recover the vehicle.

Q25 Should a retention period of six months continue to apply for high value goods?

- No
- After three (3) months obtain a court order to dispose of the goods.
- Maintaining the requirement for a court order protects the Bailor regardless of the time period.
- As mentioned previously it is often the case that uncollected goods of high value have a registered interest. This will reduce court attendances in relation to uncollected goods. The court system is under extreme pressure and could do without dealing with uncollected goods of little value.

Q26 Should the requirement to publish a notice in the newspaper be retained?

- No

Q27 Should the requirement to notify the police be retained?

- Not unless the PPSR search identifies the vehicle/goods as stolen.

Q28 Should the requirement for a court order to be obtained prior to disposing of high value goods be retained?

- Yes provided the monetary amount for high value is raised to \$20,000 and more.

Question 29 Would you support a proposal to introduce provisions specifically for the disposal of perishable goods, with a relaxed set of requirements that are broadly in alignment with other Australian jurisdictions?

- Yes

Question 30 Should the process for disposing of goods that are not received in the course of business be the same as for disposing of goods left in the course of business?

- No
- To protect the goods receiver for medium to high value goods seek court order.

Question 31 Should conditions for the disposal of motor vehicles be different from those applying to other goods of similar value? If so, what provisions should apply?

- Yes
- The PPSR, use of Redbook, licensed dealer depending on the value.



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- Other goods of similar value may not be registered on the PPSR therefore an electronic publication maybe more appropriate.
- The MTA WA response to the PPSR was focused on DUG (motor vehicles).