

## eCommerce by Dealers

### A message from Ian Christman, Registrar of Motor Dealers

It has come to my attention that some dealers are not aware that they can conduct sales electronically. In the amendments to the *Motor Dealer Act* two years ago, (see section 3(1.1)) changes were made to allow electronic sales. The following are the key considerations for dealers conducting electronic sales.

1. The negotiations and what are known as offer and acceptance of an agreement must flow in and out of the dealer's business premises as registered with the Authority. It is incumbent on the dealer to retain information that can establish this. If the sale has occurred electronically, merely delivering the vehicle to the consumer is not "off-side". If you ask the consumer to sign paper versions of the agreement upon delivery, make sure there are no additional terms on the agreement, including the back page. If so, you will be conducting an unauthorized offsite sale.
2. The vehicle being offered for sale must be in the dealer's inventory. The word "inventory" is a defined term in the *Motor Dealer Act* and has three categories
  - a. A new vehicle in the possession of the motor dealer or in the manufacturer's possession and which the dealer is authorized to obtain. This allows a dealer to advertise vehicles that need to be ordered from the manufacturer.
  - b. A used vehicle owned by and in the possession of the motor dealer. Dealer's may not advertise a vehicle they do not own and possess. This means a dealer may not advertise a vehicle that is on another dealer's lot or tied up in customs at the border.
  - c. A vehicle that the dealer is selling on consignment so long as there is a consignment agreement in place compliant with the *Motor Dealer Consignment Sales Regulation*.
3. All required disclosures under the legislation must still be made. Ex. damage over \$2,000.
4. How the sale occurs, the exchange of documentation, and delivery of the vehicle must comply with the Distance Sales provisions of the *Business Practices and Consumer Protection Act* (Part 4, Division 4). Failure to follow these provisions may allow a consumer to cancel the contract and seek compensation. The Registrar is empowered to enforce these provisions.
5. To ensure you have created an enforceable electronic agreement, ensure you follow the requirements of the *Electronic Transactions Act*.
6. Finally, the *Sale of Goods Act* allows a person to inspect and reject goods they have ordered and never physically inspected under certain circumstances. Be aware of these provisions.

How you structure your processes and documentation is a business decision for each dealer. You may wish to speak to your lawyer on how to best structure and document your electronic sales.