

The LMCT presence in the car retailing market and VCAT.

A VACC report

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About VACC

The Victorian Automotive Chamber of Commerce (VACC) is Victoria's peak automotive industry association, representing the interests of more than 5,000 members in over 20 retail automotive sectors that employ over 50,000 Victorians. In 2023, VACC celebrates 105 years of service to the Victorian automotive retail industry and the community.

VACC members range from new and used vehicle dealers (passenger, truck, commercial, motorcycles, recreational and farm machinery), repairers (mechanical, electrical, body and repair specialists, i.e. radiators and engines), vehicle servicing (service stations, vehicle washing, rental, windscreens), parts and component wholesale/retail and distribution and aftermarket manufacture (i.e. specialist vehicle, parts or component modification and/or manufacture), tyre dealers and automotive dismantlers and recyclers.

VACC represents approximately 1,600 of Victoria's 2,199 Licenced Motor Car Traders (LMCT).¹

VACC is an active member of the Motor Trades Association of Australia (MTAA) and contributes significantly to the national policy debate through Australia's peak national retail automotive association.



¹ Consumer Affairs Victoria (CAV) 2021-22 Annual report, Registers administered by CAV (2022),12.

1. About the document

1.1 The purpose of this document is:

- a. To establish the prominence and type of hearings posted for VCAT where a LMCT is listed as 'the respondent.' LMCTs are usually:
 - New vehicle franchise dealers (car, truck, motorcycle, farm machinery)
 - Used vehicle traders
 - Automotive dismantlers and recyclers.
- b. To provide the Victorian Government with an evidence-based portfolio for consideration prior to the introduction of any legislative or regulatory change relating to the management of consumer issues by a LMCT under the:
 - iii. *Motor Car Traders Act 1986 (Vic)*,
 - iv. *Motor Car Traders Regulations 2018 (Vic)*,
 - v. *Australian Consumer Law and Fair-Trading Act 2012 (Vic)*
 - vi. *Australian Consumer Law 2012 (Cth)*.
- c. To restate the consumer benefit in purchasing a vehicle from a LMCT, as opposed to the systemic consumer-risk of purchasing a motor vehicle privately or from an auction house under a fall of hammer scenario.
- d. To provide the Victorian Government with an evidence portfolio that supports VACC's position, which maintains LMCTs are not clogging the Victorian Civil and Administrative Tribunal (VCAT) system. Furthermore, consumer issues involving LMCTs are not at levels necessitating the consideration or introduction of a government and industry-funded Lemon Law Ombudsman (Ombudsman) to Victoria.
- e. To provide the Victorian Government and other stakeholders with current data that highlights the dominance of the private-to-private market in the transfer of motor vehicles to Victorian consumers.
- f. If VCAT does have scheduling issues, that the responsibility of accelerating the process for accessing justice for consumer and industry (remember, it is a two-way street) it is illogical for industry to have to pay for improving VCATs efficiencies. If the problem is VCAT, then fix VCAT.
- g. To highlight how a lack of knowledge, awareness or understanding of the purpose and terms of reference² for consumer claims with regard to the Motor Car Traders Guarantee Fund (the Fund) by various consumer facing stakeholder organisations may be contributing to the denial of justice to consumers.
- h. To highlight how the *Motor Car Traders Act 1986 (Vic)* (the Act), *Motor Car Traders Regulations 2018 (Vic)*(the Regulations) and the *Australian Consumer Law 2012 (ACL)* (Cth) complement each other and are working as intended with regard to legislative protection scenarios for consumers.
- i. To advise that VACC understands the frustration consumers may have when faced with the prospect of a costly repair to their motor vehicle.

² Section 76 Motor Car Traders Act 1986 (Vic).

2. Source of data used in this report

The analysis contained in this report has been formulated using data recorded by VACC interrogating 17 weeks of weekly VCAT hearing schedules. This data was sourced from the publicly available VCAT portal www.vcat.vic.gov.au/upcoming-hearings. The VCAT portal provides a statewide review of hearings listed and identifies the applicant and respondent as well as including the hearing time, date, location and case category of the hearing.

The prime research purpose was to identify VCAT hearings where a LMCT was listed in a VCAT hearing as the respondent under the case type category of 'Goods and Services.'

The research approach included verification of all respondents who were listed for that week under the Goods and Services hearing category. Further research was conducted to identify and compare what business sector the respondent in non LMCT was aligned to (e.g., building, IT, florists). Those respondents that could not be identified with any degree of confidence were not included in the data to be analysed

3. The purchase channels

3.1 Understanding the channel from where a consumer purchased a vehicle

Periodically, VACC receives reports from government agencies, media outlets or consumer groups alleging extraordinarily high levels of consumer issues regarding faulty vehicles. Typically, these reports bemoan consumers' lack of opportunity to have faults rectified in a timeframe and manner deemed acceptable to the consumer.

What is rarely made available within those reports is from what channel the consumer purchased their vehicle.

There is an absolute necessity to accurately record how a vehicle is purchased before handling a consumer complaint. It is neither appropriate, nor fair for LMCTS to be targeted by entities with regard to vehicle faults – especially when there is no evidence to support such claims if the vehicle was not purchased from a LMCT in the first instance. If the welfare of the consumer buying experience is truly a concern for government and consumer groups, and that vehicle purchasers are suffering issues with faulty vehicles, then the government must turn its investigative lens towards the private sale of vehicles, including those purchased at auction houses.



3.2 What VicRoads transfer data reveals regarding motor vehicle retail channels

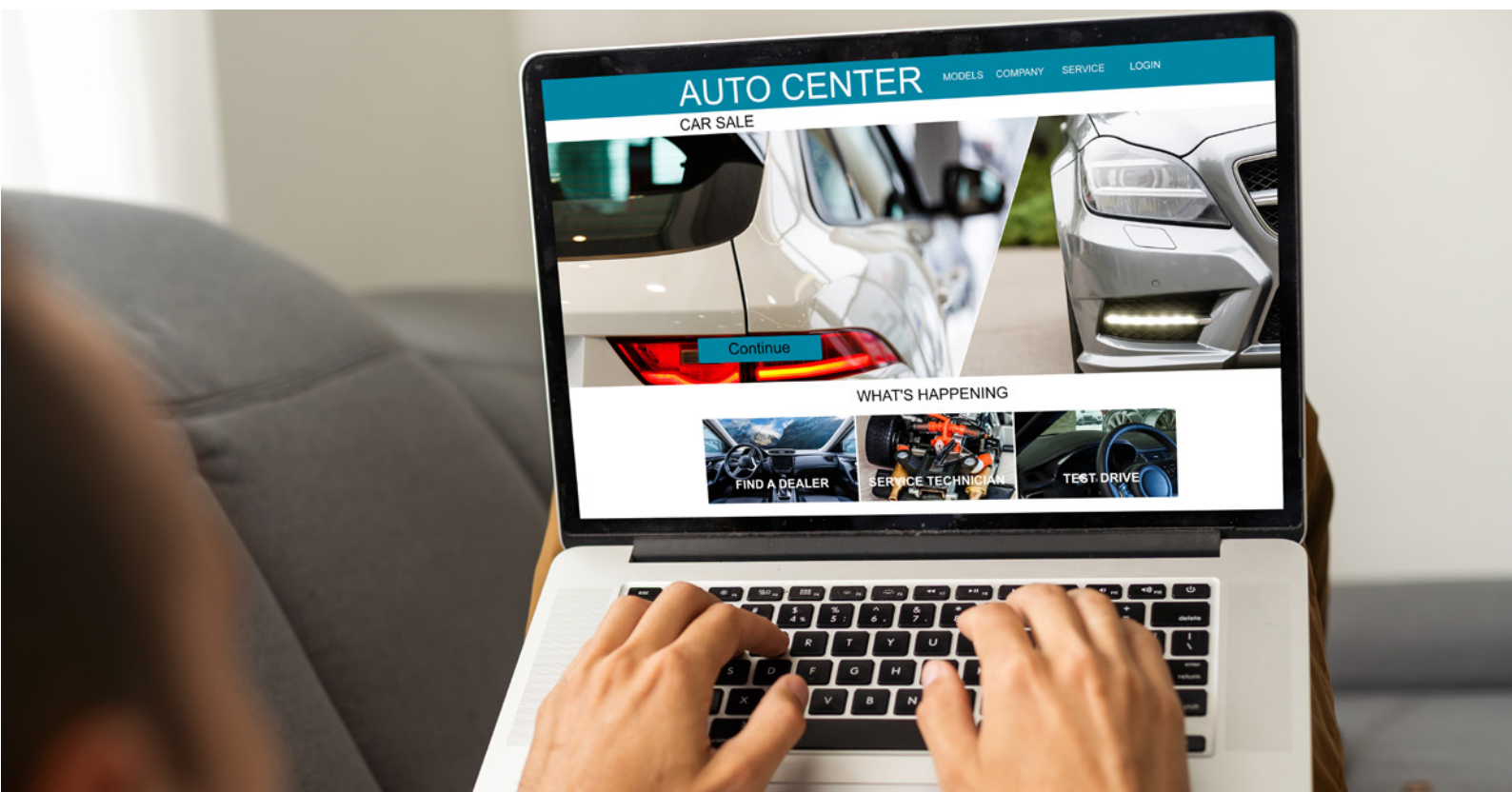
A review of vehicle transfer data provided by VicRoads to VACC is tabled below. It presents an aggregated and segmented data set of motor vehicles transferred in Victoria for the period March – August 2023.

VicRoads transfer statistics per channel								
Channel	March 2023	April 2023	May 2023	June 2023	July 2023	August 2023	Total	
Dealer to dealer	7,513	5,930	8,604	7,836	8,104	8,596	46,583	Wholesale trades between LMCTs
Dealer to Private	18,852	14,079	19,298	18,595	18,173	19,609	109,236	Vehicles sold to consumers from LMCTs
Private to dealer	14,235	11,220	15,731	16,071	14,729	15,438	87,424	Vehicles sold by a member of the public to LMCT
Private to private	37,822	29,620	36,596	33,834	33,812	35,831	206,515	Vehicles sold between private persons
Total	78,422	60,849	80,859	76,336	74,818	79,474	450,105	

The VicRoads data shows that:

- 53 per cent of vehicle transfers were conducted by the private-to-private market.
- When extracting the data relating to stock swaps (dealer-to-dealer) the figure reveals 63 per cent of the motor vehicles transferred to be in the favour of the private sector.

This is sizable discrepancy that allows for substantial consumer detriment.



3.3 How on-line classifieds portals have become integral in the consumer buying journey

The 63 per cent figure is further accentuated by a simple review of Australia's leading on-line classified portal carsales.com.au

VACC's review of the carsales.com.au portal conducted on 4 October 2023 reveals that used car inventory listed for sale in Victoria announces that:

- a. There were 32,751 used cars for sale by private advertisers.³
- b. There were 24,668 used cars available for sale by LMCTs.⁴

3.4 How consumers purchase their cars in 2023

Consumers invariably source and purchase a vehicle in the following ways:

- a. Privately, after sourcing the vehicle from an on-line classified provider (e.g., carsales.com.au, Facebook Marketplace, Gumtree).
- b. From a 'roadside' seller.
- c. From an auction house under fall of hammer conditions.
- d. From a new vehicle franchise dealer or independent used vehicle trader i.e., a LMCT.

If a vehicle is purchased privately, or under auction conditions, then any consumer protection(s) are substantially weakened (if at all).

It is well known that a series of consumer protections are legally activated when purchasing a vehicle from a LMCT. These protections include:

- e. In most cases, a three clear day cooling-off period will apply.
- f. A three-month/5,000km statutory warranty if a car is not more than 10 years old and has travelled less than 160,000km (this does not apply to commercial vehicles, motorcycles and vehicles purchased by owner's corporations, formerly body corporates).
- g. A guarantee of clear title, which certifies that the vehicle is not listed as stolen, if the vehicle is written-off, and that money is not owed on it.⁵
- h. An opportunity for the purchaser to make claim through VCAT or other court for any faults or other issues under the ACL, if in the opinion of the purchaser, the vehicle does not meet one or more of the ACL Consumer Guarantees.
- i. The right for the purchaser to make claim upon the Motor Car Traders Guarantee Fund in the event of a breach by the LMCT under section 76(1) of the Act.
- j. A guaranteed drive-away price.
- k. Vehicle registration can be included or not.
- l. A certificate of roadworthiness for a registered vehicle acquired from a LMCT.

Buying a car privately or under auction conditions does not offer the following consumer benefits:

- a. There is no cooling-off period.
- b. The vehicle is not covered by a statutory warranty.
- c. When purchasing privately it is the purchaser's responsibility to check the car:

3 See [https://www.carsales.com.au/cars/?q=\(And.State.Victoria._CarAll.keyword\(private\).\)](https://www.carsales.com.au/cars/?q=(And.State.Victoria._CarAll.keyword(private).))

4 See [https://www.carsales.com.au/cars/?q=\(And.Service.carsales._State.Victoria._CarAll.keyword\(dealer\)._Condition.Used.\)](https://www.carsales.com.au/cars/?q=(And.Service.carsales._State.Victoria._CarAll.keyword(dealer)._Condition.Used.))

5 See <https://www.consumer.vic.gov.au/cars/buying-a-used-car/ways-to-buy-a-used-car/licensed-motor-car-trader>.

- i. *is not stolen*
- ii. *has no money owing on it*
- iii. *Does or does not appear on the written-off vehicles register*
- iv. *Is roadworthy before applying for registration.*
- d. The private purchase of a motor vehicle does not provide for the opportunity for the purchaser to take further action against the seller of the vehicle under the ACL should that vehicle not meet one or more of the ACL Consumer Guarantees.
- e. Buying a car at auction (fall of hammer) does not provide protections for purchasers under the Act or ACL. The only exception for cars purchased at fall of hammer is the guarantee to clear title. It is also a misnomer that buying a vehicle from auction is cheaper than buying from a LMCT. It may be the case from time-to-time but is not a rule of thumb. The statement to such should be removed from the Consumer Affairs Victoria (CAV) webpage.⁶
- f. VACC considers it perverse that the LMCT sector is placed under such scrutiny, yet governments and consumer groups ignore the consumer detriment generated within the higher transacting private-to-private market.



4. Consumer agencies

4.1 What CAV data does and does not report?

It is reported by the Consumer Action Law Center (CALC) that in the financial year 2020-2021 that CAV had received 3,045 calls⁷, with consumer queries about issues identified by CAV as minor or major defects to motor vehicles⁸. VACC views this as an unreliable figure as: There is no data to show through what channel the consumer purchased the vehicle.

- a. The resolution of and repetition of those 3,045 calls are not known.
- b. complaints out of a total of 5,157,172 registered vehicles in Victoria⁹ is miniscule. Based on the data, there is no evidence of a market failure.

⁶ Consumer Affairs Victoria ,Buying a Used Car at Auction (2023),< <https://www.consumer.vic.gov.au/cars/buying-a-used-car/ways-to-buy-a-used-car/auction>>.

⁷ No CAV data is available, figure taken from CALC 2023 Pre Budget-Submission.

⁸ VACC is unsure as to who in CAV is qualified to assess whether a vehicle fault to be minor or major.

⁹ ABS Motor Vehicle Census Data 2022 <https://www.abs.gov.au/statistics/industry/tourism-and-transport/motor-vehicle-census-australia/latest-release#states-and-territories>.

There is no mass consumer detriment or systemic issues generated by LMCTs that requires the introduction and complexity of a government and industry-funded Lemon Law Ombudsman. It is clear that the Act, the Regulations, and the ACL are functioning as intended.

The most recent data received by VACC from CAV showed the following:

4.2 Motor vehicle related issues 2014-15 (Data from CAV report to VACC November 2015)

This table lists the overall number of motor vehicle related cases recorded by CAV 1 July 2014 to 30 June 2015.¹⁰

1 Jul 2014 to 30 Sep 2015 Cases by Category	1 Jul 2014 to 30 Jun 2015
Enquiries	9,042
Disputes	1,481
Pro-active Compliance	560
Investigations & Enforcement	71
Grand Total	11,154

4.3 Motor vehicle related issues 2015-16 (Report to VACC December 2016)

This table lists the overall number of motor vehicle related cases recorded by CAV 1 July 2015 to 30 June 2016.¹¹

2015-16 Cases by Category	1 Jul 2015 to 30 Jun 2016
Enquiries	8,281
Disputes	1,639
Pro-active Compliance	443
Investigations & Enforcement	48
Grand Total	10,411

Most common issues regarding new car dealerships

Client contacts and disputes lodged with CAV about new vehicles purchased from dealerships concerned issues such as:

- Faults in vehicles: both electrical and mechanical defects, which generally developed within the manufacturer's warranty period
- Non-supply: for example, cases concerning:
 - a. unreasonable delivery delays experienced by consumers who had placed new car orders
 - b. features and optional extras that weren't fitted to vehicles as ordered.

Most common issues regarding used car dealerships

Client contacts and disputes lodged with CAV about second-hand vehicles purchased from used car dealerships concerned issues such as:

- Defective vehicles: allegations of various mechanical and electrical faults in vehicles.

¹⁰ CAV Report to VACC November 2015.

¹¹ CAV Report to VACC December 2016.

- Misleading claims: misleading claims made by traders regarding the condition of vehicles or misleading advertising relating to various vehicle features and accessories.
- Consumer guarantees: traders failing to recognise consumer rights under the consumer guarantees provided by the ACL for defective second-hand vehicles that were not subject to statutory warranties under the Act and
- Vehicle transfer details / stamp duty not forwarded: allegations that traders failed to pass on vehicle transfer and stamp duty fees to VicRoads within 14 days of the date of sale of vehicles.
- False or misleading advertisements, failed to include the drive-away price of the vehicle , misrepresented the specifications or year of manufacture.

4.4 How CAV has historically categorised how they identify a consumer enquiry, dispute, pro-active compliance and enforcement to investigation and enforcement

- General enquiries where CAV was contacted regarding questions or requests for advice or information. In response to enquiries, consumers may receive advice on resolving problems with traders or they may be invited to make a complaint if they've already made a reasonable attempt to resolve the dispute.*
- CAV defines a dispute as an expression of discontent or fault-finding regarding a trader where the complainant is seeking a resolution or is asking CAV to take action. This includes complaints handled via CAV's specialist dispute resolution service, and also FLR (Front Line Resolution) matters where front-line staff in CAV's Information and Dispute Services Centre undertook dispute resolution activities to fast-track the resolution of disputes.*
- Pro-active compliance cases involved compliance activities that were performed pro-actively rather than investigations and compliance actions undertaken in response to complaints from the public. This included instances where CAV's regional inspectors attended motor vehicle dealerships to monitor compliance with administered legislation.*
- Complaints involving alleged or potential breaches of the law that were assigned to compliance and enforcement staff for investigation, and cases involving activities undertaken by CAV's Enforcement and Legal Services Branch (such as court actions, including criminal prosecutions and civil proceedings).¹²*

What the CAV data shows is the number of enquires that convert to a consumer dispute is 19.80 per cent in 2015-16 and 16.37 per cent in 2014-15.

If we apply the last consumer enquiry total of 2015-16 of 8,281 to the last reported 2021-2022 figure of 3,045 enquiries (as stated in the consumer group report) then this means the total number of consumer queries to have reduced by 5,236 enquires in seven years.

Of those disputes it is unclear as to how many disputes were related to mechanical faults or whether there were other issues such as contractual arrangements, disputes about price, motor vehicle or transfer complaints, disputes about year of manufacturer etc at play.

4.5 What the Victorian Government can do to protect the licensed industry and consumers from the ever-growing private market

The evidence presented shows a bias from consumers that favors the private seller. There is good reason for this dominance in the private market. Private sellers do not pay land tax, Workcover expenses, payroll and other business obligations. Private buyers and sellers are rarely, if ever, subjected to State Revenue Office attention. Private sellers offer no warranty or have no obligations to a vehicle or consumer once a deal is done. As soon as the payment has taken

¹² Comments i-iv taken verbatim from CAV report to VACC 2014-15 and 2015-16.

effect, any commitment to the purchaser dissipates. VACC calls on the Victorian Government to address this disparity in the vehicle transfer market and consider the following areas of action for implementation:

- a. Launch a VACC supported, and government-led campaign utilising contemporary social media platforms and targeted public events that highlights the consumer benefit of purchasing a vehicle via a LMCT, over the potential negative outcomes of purchasing from a private seller or auction house.
- b. Create an inter departmental/agency taskforce to investigate the private vehicle sales market to ensure the sale of vehicles that are being transferred at the point of registration are paying the correct motor vehicle duty on the actual price paid for the vehicle and that the vehicle is being sold at current market rates.¹³
- c. The taskforce to randomly, but very publicly, review any private vehicle bought or advertised for sale to ensure the vehicle is legitimate, has not been re-birthed (or similar) and will not impact the private buyer.
- d. To investigate the on-line activity of persons who purchase and dispose of more than four vehicles from auction houses, including on-line auctions.
- e. Ensuring complaints received by government organisations dealing with motor vehicle issues are identified as either:
 - vi. *A retail purchase from a LMCT*
 - vii. *A private purchaser from a member of the public*
 - viii. *An auction house.*

5. The call for an industry-funded Lemon Law Ombudsman

VACC rejects the call for the introduction of a government and industry-funded Lemon Law Ombudsman. The introduction of such a scheme should only be considered if a market failure can be established.

VACC believes that the notion of the introduction of a government and industry-funded Ombudsman, applying a user-pays funding model to be naïve. VACC has requested actual evidence of consumer detriment that has been caused by LMCTs from consumer groups who are in support of the introduction of an industry funded Ombudsman. To date, the evidence has not been forthcoming, prompting VACC to state the introduction of such an Ombudsman, funded by industry or not, to be unwarranted.

The position put forward by consumer groups that LMCTs should pay for a specific government agency, under the basis that VCAT cannot hear cases within a certain timeframe, is illogical.

VACC supports access to justice for both applicant and respondent. It is a fact that the consumer protection mechanisms delivered via the Act and ACL provide the foundation for the opportunity for that justice for the applicant and respondent to rely upon.

VACC agrees that justice delayed is justice denied, but access to justice in VCAT is a two-way street, there is no predetermined outcome that the applicant or the respondent has a right to.

LMCTs are not causing the delay, complexity, or expense of VCAT. In many instances vexatious consumer claims, or consumers simply not arriving for their hearing, cause real inconvenience for those who are awaiting a hearing. There are many tribunals that can determine those issues. If VCAT cannot handle the case load it currently has¹⁴, then address the scheduling issues at VCAT. That is not for industry to remedy or underwrite.

¹³ Similarly, to how LMCTs must justify the prove a vehicle is sold for under the Duties Act 2000.

¹⁴ VCAT advise that in general there is an wait between 30-58 weeks from the time you apply for the date of your mediation or hearing.

The naivety of a proposed ombudsman scheme is highlighted in that consumer groups seek the LMCT sector to fund a scheme via:

- a. A progressive levy. It is not known to VACC what a progressive levy is.
- b. An annual contribution of \$3,000 per licence per annum on top of the already existing annual licensing fee.
- c. Payment by the LMCT for supply of an 'independent expert' report for the applicant to use in evidence against the LMCT.
- d. Additional user charging and handling fees (no figure or explanation on what those charges may be).
- e. The entities calling for an industry funded Lemon Law Ombudsman also have stated they want the Victorian taxpayer to contribute seed funding of 'at least' \$1 million per year for the first four years, adjusted for CPI. A good argument could be mounted for directing that that amount taxpayer dollar to improving the safety of Victorian roads.

This would equate to the LMCT sector being subjected to:

- f. An additional \$6.597 million in levy fees per annum¹⁵
- g. The payment of an already mandated \$3.604 million in licensing fees¹⁶
- h. Additional user charging and handling fees (as cited in the CALC proposal)
- i. No compensation or liquidated damages avenue for the LMCT if the Ombudsman were to dismiss a consumer claim
- j. No explanation about how vexatious litigants or spurious claims would be managed
- k. Provision of payment for an 'independent' expert¹⁷ evidence report that will be provided free of charge to the applicant, to be used in evidence against the LMCT
- l. LMCTS will be forced to choose between the provision of community-based sponsorship, donations and free work provided to consumers (see tables below) over payment of escalated licensing fees, independent expert reports and other unknown or unquantified obligations. This will impact what Deloitte Motor Industry Services estimate to be \$14.73 million in donations and \$52.473 million in free work is completed by dealers in Victoria each year.

Table 1: Dealer contribution for sponsorship and donation to the Victorian community¹⁸

2019					
	Avg \$ contribution	Avg vehicle # contribution	Number of dealers	Total \$ extrapolation	Total vehicle extrapolation
Metro	\$21,067	.55	637	\$13,419,467	352
Rural	\$17,222	1.17	67	\$1,153,889	78
Total			704	14,573,355	430

2021					
	Avg \$ contribution	Avg vehicle # contribution	Number of dealers	Total \$ extrapolation	Total vehicle extrapolation
Metro	\$16,917	.36	637	\$10,775,916	232
Rural	\$16,111	.83	67	\$1,079,444	55
Total			704	\$11,855,361	287

15 Based on 2199 LMCTS paying \$3,000 per annum.

16 Based on indexed 2023-24 LMCT annual fee of \$1639.30 x 2,199 LMCTS.

17 A whole new wave of experts will flood the market, leading to unjust outcomes.

18 In 2022 the VACC's Victorian Automobile Dealers Association commissioned Deloitte Motor Industry Services to provide a detailed analysis and measurement in dollar volume as to the contribution of dealer donations and sponsorships to the Victorian community.



Table 2: Free work completed by the Victorian dealership network for the Victorian Community¹⁹

2019				
	Avg free work	Number of dealers	Total	Other
Metro	\$73,908	637	\$47,015,696	As per Deloitte
Rural	\$81,461	67	\$5,457,887	
Total		704	\$52,473,583	
2021				
	Avg free work	Number of Dealers	Total	Other
Metro	\$62,322	637	\$39,699,114	
Rural	\$67,832	67	\$4,544,744	
Total		704	\$44,243,858	

5.1 Why a Lemon Law Ombudsman is unnecessary

VACC has reviewed case studies in submissions to the Victorian Government from various consumer lobby groups, but is yet to see quantitative or qualitative evidence on how consumer calls claiming faults with vehicles purchased from LMCTs are measured and analysed. Evidence from the VACC Consumer Advisor shows that calls to that free service for consumers continues to dwindle.

VACC is concerned that from the consumer lobby groups submissions it has reviewed, rather than raising specifics about actual administrative and cost burdens, the consumer groups move directly to creating more administrative drag, through yet another government run facility. This surely cannot be attractive to government, the taxpayer or industry.

¹⁹ Ibid.

²⁰ The VACC Consumer Advisor is a free service, paid for by VACC, for consumers who have a complaint or query regarding dealing with a VACC member.

6. VCAT and how it deals with LMCTs and consumer

6.1 Why would LMCTs be expected to pay as a result of VCAT scheduling issues?

If it is the case that VCAT is overburdened and not an effective tribunal for industry and consumer cases, it would be VACC's assertion that an improvement in the screening of VCAT applications should be implemented. This action alone would eliminate many applications where there is clear evidence of buyer's remorse or are of a vexatious nature.

It is unfair to expect industry to fund a system-build to address a problem they did not create. Consumer groups have taken an 'adversarial first' approach by putting cases through VCAT in the hope they can rely on the protections of the ACL. This is a high-risk strategy, and one that has failed many of their clients, as it has failed many VACC members from time-to-time. This is the nature of the legal system. A review of some of the case studies provided by consumer groups in their submissions, the most appropriate remedy that was available to the consumer (that, in VACC's view would have been of the swiftest and most equitable) was ignored, or at worst, misunderstood by the consumer's advisor. That remedy should have been for the consumer to make an application to the Fund where they could have relied on the defined terms of reference and powerful remedies that fall under the terms of reference of Section 76 of the Act. This part of the Act is where the most effective consumer remedies are available and is a model example of how a state-based Act and federal legislation work together for consumer protection.

The proposal to fund an Ombudsman by government and industry will do nothing to increase the capacity for VCAT to commence more hearings.

6.2 The Act and ACL are doing as intended

As it stands the Act and the ACL allows for LMCTs and consumers to work towards a resolution of issues without the need for interference, costly legal action, the courts, or an ombudsman. LMCTs and consumers, when in dispute, work through most issues (in most cases) transparently and consider not just the letter of the law, but also principles of fairness, resources and forgoing the 'principle of the matter' when resolving disputes.²¹

It makes no sense that the vast majority of LMCTs, who have never been subjected to any type of claim be required to contribute to a fund to support a Lemon Law Ombudsman.

6.3 The LMCT as the respondent in VCAT

Those who are calling for a Lemon Law Ombudsman and state the lack of opportunity for the consumer to have their say in VCAT make an argument about an issue that simply does not exist. The evidence shows a very low rate of LMCTs being listed as the respondent (see orange highlighted percentage in the table below).

In VCAT hearings over a 17-week period in 2023, the VACC research revealed the following:

LMCT as respondent in VCAT under Goods and Services Category						
Total VCAT Hearings of all categories	Total LMCT Hearings	Total OEM+ only Hearings	Luxury brands	Total Goods and Services	Total LMCT of ALL Hearings	Total LMCT of ALL Goods and Services
20,110	113	47	43	1,738	1.09%	6.49%

+ OEM = Original Equipment Manufacturer

Important points for consideration when analysing this data are that:

- The data shows that LMCTs are respondents in only 1.09 per cent of a sample of 20,110 VCAT hearings.

²¹ Benchmarks for Industry-Based Customer Dispute Resolution, Australian Government, The Treasury, Benchmarks for Industry Customer Dispute Resolution (February 2015), available at: <https://treasury.gov.au/publication/benchmarks-for-industry-based-customer-disputeresolution/>. Retrieved from CALC Pre Budget Submission 2023.

- b. VACC has taken a 100 per cent assumption on the hearings listed that the LMCT cases are responding to consumer allegations involving vehicles with fault/performance issues.
- c. A reasonable proportion of the hearings listed could be disputes about contract termination, delivery, transfer, cooling off or other elements that go towards the basis of a contract that leads to a dispute in many fields of commerce.
- d. Luxury brands (OEMS) are overrepresented at VCAT compared to used car traders or volume new car dealers.
- e. Hearings that cite the vehicle manufacturer as the respondent are not included in the analysis of LMCT cases. A manufacturer is not a LMCT for the purpose of a VCAT hearing.
- f. The VCAT stats clearly show that there is no market failure.
- g. The proportion of cases relating to Goods and Services (6.49 per cent) is not significant especially when comparing to other industry sectors (see below 6.4).



6.4 Comparing LMCTs to other industry sectors in VCAT

In the same 17-week period, the following sectors were subject to VCAT hearings, as the respondent, listed under the goods and services category.

LMCT % comparison to other sectors as respondent in VCAT under Goods and Services		
Sector	Total number of measured cases	Percentage of Goods and Services Hearings
Construction	460	26.4
Property Maintenance	209	12
Information Technology	116	6.7
LMCT	113	6.49
Real Estate Agents	64	3.7
Blinds and Awnings	21	1.2
Travel related	21	1.2
Removalists	15	1

6.5 Points to consider in this analysis include the fact that:

- a. The construction, maintenance and housing related trades are listed in over 40 per cent of VCAT hearings as respondents
- b. Technology (IT) providers are becoming more prevalent by the week

- c. The presence of real estate agents in the Goods and Services category is troubling as they already occupy high levels of activity in VCAT hearings under the Residential Tenancies and Building and Environment categories
- d. LMCTs rank fourth in the list of the aggregated total per sector as a respondent in VCAT
- e. There is no market failure.

6.6 Motor vehicles are not always sold as new products to a consumer. But computers and blinds are

It is VACC's view that in consideration of the number of transfers generated on an annual basis by LMCTs, the 6.49 per cent of cases by LMCTs is low. This is accentuated further when applying the lens of a 'reasonable consumer', in that that motor vehicles are not passive items, they can be sold as new/second/third/fourth hand purchases and can be high kilometers and/or damaged.

Information Technology as providers of computer programs and software, mobile phones, house awnings and blinds, plumbing installations and landscape gardening are usually always purchased as new products or services. Most of those sectors would not have the same transactional footprint as LMCTs. In VACC's view these sectors are overrepresented as respondents in VCAT.

6.7 How are LMCT cases being managed in VCAT?

In the same 17-week period, the breakup of type hearings that LMCTs are involved as the respondent in at VCAT are:

LMCT as respondent in VCAT hearings (type)	
Type of Hearing	Percentage of LMCT Cases
Directions Hearings	49
Civil Claims Hearing	19
Compulsory Conference	13
Fast Track Mediation	8
Hearing	4
Review Hearing	
Other	< 3

6.8 It is interesting to note the following:

- a. A Directions Hearing and/or Compulsory Conference are not final hearings.²² Under this premise, a case can resolved at, or before, a Directions Hearing or Compulsory Conference
- b. Using the VCAT data, it is highlighted that 62 per cent of LMCT hearings are listed as Directions Hearings or Compulsory Conferences over the 17-week sample period
- c. Only 23 per cent of LMCT cases progressed to a Civil Claims Hearing
- d. Fast Track Mediations are underutilised. This may be as a result of the mandated \$10,000 limit or that consumers are asking for far more in their VCAT claim than they would necessarily be entitled to, if successful.

It is VACC's view that the willingness of either party (usually the respondent) to 'give something' to resolve a case, is prevalent before a VCAT Civil Claims Hearing takes place. The figures above clearly show that the system is working for the consumer and if there is any issue at all, it is that consumers are not responding positively or being made aware of the right to a Fast Track Mediation. There is no evidence to show that applicants are choosing to not proceed with a hearing because it is 'too hard.'

22 VCAT Directions Hearings (2023) < <https://www.vcat.vic.gov.au/the-vcat-process/types-of-hearings/directions-hearings>>.

7. Setting the record straight on how LMCTs deal with consumer issues

7.1 A bad customer experience does not make a bad LMCT

The issue some government agencies and consumer groups have with what they perceive to be bad customer service by LMCTs is not an issue for the Business Licensing Agency (BLA) and CAV to address. Good customer service, whilst desirable and something that VACC encourages for all its members, is not a legislated licensing requirement.

7.2 The CAV list of problematic LMCTs

In a recent meeting with CAV, VACC was informed of a number of LMCTs that are high on the compliance and enforcement radar of CAV as a result of being subject to a higher number of consumer complaints regarding retailing faulty vehicles. This sort of intelligence is useful and VACC encourages the sharing of this type of information from CAV for the purpose of educating the LMCT sector and providing better consumer outcomes.

It was interesting to note that not one of the LMCTs referred to by CAV have had a claim admitted by the Motor Car Traders Guarantee Fund for the past five years.²³ From the best of VACC research, only two of the nominated LMCTs had appeared in VCAT as respondents over the past 17 weeks. Without more data coming from CAV regularly it is impossible for VACC to promulgate areas of concern to our 1,600 LMCT members.



²³ Consumer Affairs Victoria, Motor Car Traders Guaranteed Fund claims register (2023), < <https://www.consumer.vic.gov.au/licensing-and-registration/motor-car-traders/public-register/motor-car-traders-guarantee-fund-claims-register> >.

If CAV has an evidence portfolio that supports the suspension or cancellation of any LMCT licence, then VACC urges CAV to act on that evidence. If it transpires that a transgressing LMCT was indeed a VACC member, then VACC would, of course, provide the appropriate support, advice and re-education process to the LMCT in the circumstances.

VACC treats the sanctity of the licensing regime with great seriousness and protects the reputation of the industry, the fund and good consumer outcomes with much vigour.

Whilst VACC is on the record as supporting good compliance and enforcement, what must occur is that the compliance, enforcement and associated punitive measures placed upon LMCTs must be based on actual transgressions. Punitive measures must not be based on questionable accusations or where a complaint is based on subjective 'bad customer service.'

VACC will always work with CAV and any Victorian LMCT to ensure that LMCTs understand and actively display best practice when retailing vehicles to consumers.

7.3 LMCTs solving the issues before they escalate (to their own detriment)

It is fact that the greater percentage of LMCTs deal with matters relating to vehicle or contractual concern with seriousness and usually rectify those issues to the benefit of the consumer outside of their obligations to the OEM, under the Act or the ACL. This much is evident in the amount of free repair and service provided by dealers as reported by Deloitte Motor Industry Services. LMCTs do this to avoid the prospect of a long-drawn-out legal exercise, to mitigate the amount of resource that will be expended in defending the issue, in order to have the consumer become a repeat customer and to avoid appearing in VCAT.

It is the view of the VACC that LMCTs take the mantra of not getting caught up in the principle of the matter and seek the quickest, most expedient solution available. This approach helps with repeat clientele, maintain the all-important Customer Service Index benchmark that is mandated by most franchisors and saves on wasted resources. Many LMCTs live in fear of a bad google review. There are some that have taken high-level legal action to have false or unfair reviews removed.

Many times, what actually transpires at dealerships is there is a complaint that may be managed contrary to how a consumer wishes, and that the consumer does not agree with what, or how, the LMCT remedy is to the issue. Bad customer service or experiences are unfortunate, but they are not an issue for the regulator or consumer lobby groups to use as the ammunition to add extra costs on industry by the introduction of a government and industry-funded Lemon Law Ombudsman.

Whilst VACC is not ignorant surrounding issues or consumer complaints that transpire at LMCTs, the simple fact is that most issues are resolved to the satisfaction of the consumer. In fact, many issues are resolved when the consumer has contributed to the problem. LMCTs just want the problem solved, so they just fix things. It is what smart LMCTs do.

Tightening legislation and introducing expensive alternate judicial avenues is not the answer and is considered by VACC to be regulatory overkill and a precursor to greater red tape.

8. VACC supports good compliance and enforcement activity and a well-resourced licensing regime

8.1 VACC supports the work of the Business Licensing Authority

VACC supports a robust, nimble, and transparent motor vehicle retailing licensing regime. We enjoy good dialogue with the BLA and consider them to be a model example of industry – government relationship and collaboration. They have solved many a consumer and licensing issue via interpreting the intention of the Act and Regulations as they were legislated to be.

VACC has much knowledge on individual LMCT history and behaviors. VACC is concerned at certain licensing conditions that are applied to a newly licensed or current LMCTs. VACC understands how and why those conditions are arrived, but it must be frustrating for BLA and other LMCTs to see or hear of those licence conditions.

To this end, VACC supports greater autonomy and investment in resources for the BLA when they are considering an application to grant, suspend, modify or cancel a licence.

It is VACC's view that BLA is the gatekeeper to setting the standard for the type of individual who will participate in the automotive retail sales sector. If BLA believe there to be an issue with a licence they must be able to react without the fear of being undermined by the appeals process. BLA must be resourced and supported by government to provide best outcomes for industry and consumer.

VACC recommends that a review of Division 2 of the Act be undertaken with the purpose of providing greater discretionary powers to the BLA when determining who is granted or retains a licence to trade in motor vehicles.

8.2 Examples of where conditions on licenses cause concern

VACC has recently become aware of a license granted to a person who resides in Victoria on a visa, does not speak English, and has a license condition that stipulates that the licensee will be required to advise BLA if the licensee's visa expires, is not renewed, is suspended, or cancelled. On more than five occasions, VACC has provided support to this LMCT to assist with the LMCTs obligations to consumers and government. On all of these occasions, VACC has had to use the services of a translator. The point is that the license has been granted, but the capacity for the licensee to understand their obligation to the consumer and the regulator is not evident. The risk to the Fund is also heightened.

Other licenses have conditions stipulated, such as a licensee having to advise the BLA with details in writing of the facts and circumstances of any criminal offences with which it, its director, or any other associated person is charged within seven days of being so charged.

8.3 The regulators know who the LMCTs are that require remedial attention

VACC would assume that CAV, BLA, the State Revenue Office and other law enforcement agencies know who the 'problematic LMCTs' would be. If that is the case, VACC urges those agencies to act with the full force of the law. VACC wants a world class, best practice system.

VACC implores the government to act in this regard.

8.4 The Motor Car Traders Guarantee Fund

It is VACC's view there is a vacuum of knowledge being displayed by consumer groups with regard to how and when a claim can be made upon the Fund.

The terms of reference under Section 76 of the Act are very powerful and if used correctly of great benefit to consumers who may have an issue with the purchase of a vehicle from a LMCT. VACC places great importance on the working of the Fund, after all it is comprised entirely of LMCT money. It is important that consumers and consumer groups have the knowledge on how and when to make a claim when faced with a dispute using the very powerful and defined terms of reference contained within Section 76 of the Act. It is just as important that those looking to clog up VCAT utilise the fund in the first instance where appropriate.

9. Other considerations to assist consumers

9.1 VACC can assist

VACC repeats its offer to support consumer facing groups, especially those working with new arrivals to the country or our First Nations People. This support would extend to how to purchase a motor vehicle and what to do when there is a problem after purchasing a vehicle via a LMCT. Pre and post purchase support is available from VACC. It is a matter of the consumer simply being informed.

That support is made in good faith using the vast resources available to VACC.

9.2 It would make good sense for CAV to provide consumer complaint data to VACC that will include:

- a. Nature of issues (is it a faulty vehicle, a transfer, bad service ?)
- b. Whether the complaint relates to a LMCTs, Auction or Private sale.
- c. How many complaints are referred to VCAT from CAV.
- d. Cleanse consumer enquiry data so repeat callers are only recorded as a single-issue caller.
- e. How complaints are resolved (LMCT attended to, legal action, other)
- f. How many may inquiries have been referred to VACC for advice.

This will allow VACC to tailor our advice when advising and educating LMCTs on what issues need attention and what punitive measures may apply if they are not resolved.

9.3 Create a government inter-agency taskforce to review the private-to-private market

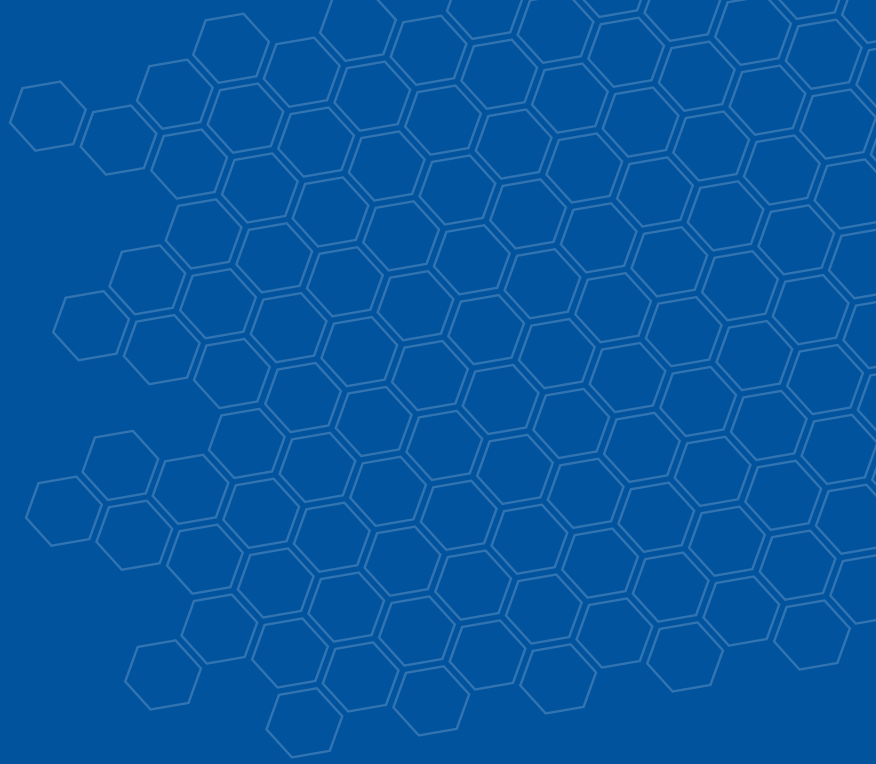
Let's promote LMCTS and the legislated consumer safeguards.

It would be useful for consumers and industry if the Victorian Government supported a VACC endorsed and government-led campaign utilising contemporary social media platforms, and targeted public events to highlight the consumer benefit of purchasing a vehicle via a LMCT over a private seller or auction house. VACC is willing to partner with the Victorian Government and co-contribute to any campaign led by the Victorian Government.

The infiltration of organised crime in the private-to-private market

It would also be a powerful message to organised crime participants who prey on the most vulnerable in our community if the government was to launch an inter departmental/agency taskforce to investigate the private-to-private market. This could include an investigation to ensure the sale of vehicles that are being transferred from a private-to-private sale are ,at the point of registration, quoting the actual price paid for the vehicle for the purposes of applying the correct motor vehicle duty. Further, the provenance of vehicle sold in the private-to-private mark could be investigated to establish where it was acquired from, whether the vehicle is rebirthed, along with an investigation of a vehicle's odometer history.

VACC would publicly support such a taskforce.



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