

BULLETIN

VACC Industry Divisions



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Change to VACC New and Used Car Agreement of Sale and Form 4 Mandatory warranty wording to be included from 8 June 2019

Members have been previously advised that amendments to the *Competition and Consumer Regulations 2010 (Cth)* will mandate the requirement of prescribed text for businesses who give consumer written warranties against defects for the supply of services, as well as goods and services. You can view a copy of the amendments by [taking this link](#).

The legislative change has resulted in VACC appointing legal firm HWL Ebsworth to conduct a legal review to the VACC supplied New and Used Car Agreements of Sale and Window Display Form 4 that would ensure members comply with the new legislation and the Unfair Contract Terms (UCT) regime. The advice below is for VACC members use only.

The sale agreement and window display form changes are summarised below:

Document	Summary
T&Cs for agreement of sale of New Motor Vehicle	<p>We have recommended various changes throughout the T&Cs in consideration of the UCT regime.</p> <p>We have recommended that clause 11(3)(b) is deleted because it conflicts with a consumer's available remedies under the ACL.</p> <p>The mandatory wording is not required because a warranty against defects is not given in these T&Cs, however the mandatory wording could still be retained to alert consumers to the ACL.</p> <p>We have also included the required amendments to these T&Cs in consideration of the amendments to the Motor Car Traders Regulations (2018 Regulations).</p>
T&Cs for agreement of sale of Used Motor Vehicle	<p>The review comments we made on the T&Cs for sale of New Motor Vehicle also apply to these T&Cs, where the clauses are identical (noting the majority of clauses are identical).</p> <p>We have therefore only included our additional comments on the T&Cs for sale of Used Motor Vehicle.</p> <p>In our view, if the statutory warranty under the MCT Act applies, then the Trader is giving a warranty against defects and the mandatory wording should be included on the T&Cs.</p> <p>We have also included the required amendments to these T&Cs in consideration of the 2018 Regulations.</p>
Form 4 Used Car Data Sheet	<p>As this form is prescribed by the MCT Regulations, we have not made any amendments to it in consideration of the UCT regime or to include the mandatory wording applicable to warranties against defects. The prescribed wording in this Form 4 already alerts the consumer to the Australian Consumer Law.</p> <p>We have also included the required amendments to this form in consideration of the changes to the 2018 Regulations.</p>

Mandatory wording for goods & services

'Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

1. to cancel your service contract with us; and
2. to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service'.

Mandatory wording for services

'Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

1. to cancel your service contract with us; and
2. to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract'.

Further advice:

- VACC supplied LMCT stationery will be updated and available for order from 8 May 2019.
- Current agreements of sale with the version number(s) March and/or September 2018 will be valid after 8 June however you are encouraged to use the new version agreements of sale and Form 4.
- For those who purchase VACC electronic products under licence, a new update of those documents will be remitted before 8 June 2019.

VACC urges members to review their current agreements of sale and any other documentation regarding the supply of services to ascertain whether it needs to be updated in line with new requirements from 8 June 2019.

If you remain unsure of your obligations, you are urged to contact your own legal advisors.

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