

Bulletin

Industry Divisions



Reference No. new agreements of sale/mm-10-23

Date: 24/10/2023

Important and substantial changes to the VACC Agreements for Sale of New and Used Motor Cars

***** This is not legal advice*****

Members have previously been advised of changes to the law regarding the use, proposal or reliance of unfair contract terms (UCT) in standard form contracts. From 9 November 2023, UCTs will be illegal.

Why is this important for Licensed Motor Car Traders?

It is important for Licensed Motor Car Traders (LMCT) to note that an UCT in a standard form contract can attract significant penalties under the *Competition and Consumer Act 2010* (Cth) (CCA) or the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act).

LMCTs use standard form contracts (i.e. **VACC Agreements for Sale of New and Used Motor Cars**) when retailing vehicles to consumers.

What is a standard form contract?

The preferred VACC LMCT division's legal advisor, HWL Ebsworth Lawyers, advise that a standard form contract is generally understood as a set of standard terms and conditions that are issued on a repetitive basis to multiple people – for example, a gym membership application form or the terms and conditions governing an electricity service. These types of agreements can be contrasted with agreements that are often heavily negotiated, such as a business sale agreement or a complex commercial lease.

On this basis, the VACC Agreements for Sale of New and Used Motor Cars are considered to be standard form contracts. This means that the UCT regime will apply to an agreement/contract of sale in the following scenarios:

- standard form contract made or renewed on or after 9 November 2023.
- a term of a contract that is varied or added on or after 9 November 2023.

Changes to the VACC Agreements for Sale of New and Used Motor Cars

In preparedness for the new UCT laws taking effect from 9 November 2023, VACC has referred our New and Used Motor Vehicle Sales Agreements to HWL Ebsworth Lawyers for a comprehensive review to ensure they remain industry best practice. That review has been completed and resulted in substantial changes to the terms and conditions, as well as the commercial statements. See summary of some of the changes [here](#).

When will the new version of contracts be available for member purchase?

- VACC members will be given priority in the distribution of the new version agreements of sale.
- For those using the VACC Agreements for Sale of New and Used Motor Cars under licence from VACC, the new version electronic agreements will be available by 2 November 2023. The Disclosure Notices will be forwarded via email only on separate PDFs for you to print as required.

If a member intends to purchase a licensed a digital version of the Agreements of Sale, they should contact VACC's Daniel Ellul via dellul@vacc.com.au .Remember the new digital version will not be available for purchase until 2 November 2023.

- For those VACC members using the manual version VACC Agreements for Sale of New and Used Motor Cars, you will be able to pre-order the new version agreements from 2 November 2023. The Disclosure Notices will be forwarded via email only on separate PDFs for you to print as required.

If a member wants to pre-order the paper-based Agreements of Sale, they can do so by placing that order on-line at www.ourautoistore.com.au. Remember pre-orders will not be open until 2 November 2023.

- Delivery of the manual form VACC Agreements for Sale of New and Used Motor Cars will commence at the first opportunity the VACC suppliers can arrange.
- VACC and our suppliers understand the urgency of having the manual agreement of sale to you by 9 November. The logistics associated with printing and delivering the new agreements may result in you not receiving your new manual version agreements of sale until after the 9 November. Be assured that VACC is working hard to limit this inconvenience. We appreciate your understanding and patience.
- There will be an increase in the price of the products. This will apply to both manual agreements and electronic versions.

Use of VACC Intellectual Property

The VACC Agreements for Sale of New and Used Motor Cars are the Intellectual Property of VACC and are protected under Federal Legislation and common law rights. They are for the express use of VACC members only, unless otherwise expressly agreed to by VACC.

VACC is particularly alert to Dealer Management Systems providers and outside suppliers of LMCT forms using VACC IP without entering into a licensing agreement with VACC.

VACC will instigate the appropriate course of action if VACC IP is reproduced or used without VACC's express written authorisation.

VACC will monitor the market for potential breaches of its IP.

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