

**Calling all LMCTs:
If you are a LMCT you must read this bulletin. It's time to say no more!**

Dear member

VACC has completed a detailed report to dispel the myth the LMCTs are clogging up VCAT, to highlight the dominance of the private-to-private market in Victoria and refute the call for an industry-funded lemon law ombudsman.

I encourage you, as a LMCT to read the comprehensive report, which can be accessed [HERE](#) and via the graphic.

The LMCT presence in the car
retailing market and VCAT.

A VACC report



For further ease, I include an executive summary below. It provides context on the issue, VACC's position and next steps in our advocacy. Should you have any questions, please do not hesitate to contact me.

The LMCT presence in the car retailing market and VCAT. A VACC report.

Preamble

Over the coming weeks, VACC members who trade as a Licensed Motor Car Trader (LMCT) in Victoria will see an increase in VACC and mainstream media activity regarding a call from consumer facing lobby groups pursuing the introduction of a government and industry-funded Lemon Law Ombudsman to Victoria.

The Consumer Action Law Centre (CALC) has led a group of not-for-profit consumer facing organisations, including the Victorian Aboriginal Legal Service, WEstjustice and Hume Riverina Community Legal Service in submitting a proposal to the Victorian Government in their 'Victorian Pre-Budget submission 2022-23' seeking the implementation of a government and industry-funded Lemon Law Ombudsman for Victoria. The scenario is largely based upon 3,000 consumer queries about motor cars to Consumer Affairs Victoria (CAV) in 2020-21. That is enquiries generated by consumers, not specifically complaints.

VACC is keen to put many of the inaccurate statements circulating about how LMCTs deal with consumers with regard to faulty vehicles to rest. VACC has also for a long time been concerned of the activity, be it via organised crime gangs or other channels in acquiring and retailing motor vehicles without any remedial action from the regulators and law enforcement agencies. Right now, the private-to-private market enjoy 63 per cent of the Victorian transfer market.

Members are reassured that VACC is well aware of the lobbying process being conducted by these consumer groups. VACC is well prepared with strong evidence that provides transparency, and refutes many of the claims being raised by those groups.

What the research tells us

VACC has clearly been able to establish that VCAT delays and costs cannot be attributed to LMCTs. VACC research conducted over a 17-week period has revealed that only 1.09 per cent of all VCAT hearings involve a LMCT as a respondent. This is from a sample of over 22,000 VCAT Hearings listed over the 17-week period. VACC has assumed that the 1.09 per cent consist of 100 per cent of consumer claims relating to a faulty vehicle. Of course, this will not be the case as many issues may be related to contractual obligations or disputes, or issues where certain Australian Consumer Law provisions, such as being fit for a previously advised intended purpose may ensue, contractual disputes, delivery delays and so on. So, in reality, that figure is generous.

It is important to note that VACC's research reflects that LMCTs are the fourth ranked industry sector for hearings listed at VCAT under the category of 'Goods and Services'. Key findings include:

- That the building construction and property maintenance sectors make an estimated 38.4 per cent of listed hearings in VCAT. This figure becomes 43 per cent if it was to include Real Estate Agents.
- IT providers (including digital, mobile phones and other) at 6.9 per cent.
- LMCTs come in fourth in this category at 6.49 percent. [\[1\]](#)
- That Directions Hearings and Compulsory Conferences account for 62 per cent of hearings and that a Civil Claims hearing or a Hearing account for 23 per cent of hearings. This would suggest that LMCTs and consumers are settling in or prior to a VCAT hearing, thus negating the requirement of a full Hearing.

Using this data, it can be demonstrated there is no market failure, no systemic issues with LMCTs and no logical reason for the introduction of a government and industry-funded Lemon Law Ombudsman.

VACC and its various LMCT Divisional Committees are steadfast that the *Motor Car Traders Act 1986* (Vic) and the *Australian Consumer Law 2012* (Cth) are operating in a proficient and complementary manner as far as consumer protections are concerned for our industry. Working exactly how consumer agencies such as the Australian Competition and Consumer Commission see as ideal.

Why the pursuit of an industry-funded Lemon Law Ombudsman?

CALC claim that the Victorian Civil and Administrative Tribunal (VCAT) is overloaded, too costly, time consuming and complex for the consumer. Because of this, it deters many consumers from seeking justice. VACC has seen no evidence that supports CALC's claim. VACC agrees with the adage 'justice delayed is justice denied', but justice in VCAT is two-way, there is no predetermined outcome that the applicant or the respondent will invariably be successful in their hearing.

How the industry-funded Lemon Law Ombudsman proposal has been put to Government and VACC

The CALC submission went to some lengths to explain what is referred to as a 'cost-recovery' or 'industry-model of dispute resolution'. Needless to say, the 'investment' recommended by CALC from LMCTs and the taxpayer is prohibitive for LMCTs and the taxpayer.

It is the view of VACC that the proposal put forward from CALC is ill thought through and illogical. The proposal put forward will have far reaching consequences for LMCTs, current and future employment, collection and payment of taxes and will encourage greater impetus for traders to not remain licensed – creating a vacuum and opportunity for an even greater presence of organised crime groups purchasing and retailing motor vehicles on-line and via auction houses. This is not an unlikely scenario when you consider that the private-to-private transfer market is at 63 per cent in Victoria with LMCTs at 37 per cent.

The CALC proposition pushes for a progressive levy to be charged based on the size of the LMCT to help cover wages and administrative costs of the Ombudsman. Again, this does not make sense. It is not fair nor equitable that a large LMCT employer/volume dealer with no complaints per annum contributes the same levy as a small (one-two person) LMCT. Even more unfair if the LMCT has a blemish free history.

As a condition of LMCT licensing, CALC propose that each LMCT would pay an additional \$3,000 levy per year (on top of their annual licensing fee) to fund the Ombudsman, as well as additional user and complaint handling fees. CALC do not go into detail of what or how much those user and complaint handling fees may be. Further, CALC proposes that consumers using the Ombudsman should also have access to free engineers/expert reports made available to them at the cost of LMCTs and to be used in evidence against the LMCT. Finally, CALC has also sought seed funding from the Victorian Government of \$1 million per year over at least 4 years (adjusted for CPI). This is a further impost on taxpayers, who would likely prefer to see their tax dollars be invested in road improvements.

The 'investment' starts to add up significantly for industry and government, yet there is no mention of what will transpire if the consumer case is not proven, nor any mention of an option for the dealer to seek liquidated damages in the event of a frivolous or spurious case being dismissed.

How VACC has tried to use the current system to help the most vulnerable of consumer

VACC has had dialogues with CALC for some time. VACC supports the intention of the good work done by CALC and the diversity of community and issues it deals with daily. The work done by CALC on behalf of community and the limited resources that not-for-profit organisations such as CALC have available to them are also acknowledged by VACC and its members. VACC has made several offers to assist CALC and other groups to educate those who are most vulnerable in their vehicle buying journey (at pre- sale and post-sale). This is especially important for new arrivals to Australia and our First Nations Peoples.

VACC believes promoting the purchase of a motor vehicle from a LMCT to be in the consumer's best interest. It highlights the protections available to consumers, compared to systemic issues that can eventuate from a private sale.

Where those consumer groups may be going wrong

It is VACC's observation that the consumer groups appear to show a lack of knowledge or willingness to use the obvious consumer remedies that are available to them. This is evident in the many case studies that they have provided to government to help prosecute their argument. For instance, if the consumer (or their representative consumer group) is unsuccessful with the LMCT when attempting to resolve a dispute, and the LMCT does not acquiesce to the consumer demand, there are still options for the consumer to consider under the *Motor Car Traders Act 1986 (Vic)* (the Act) before lodging in VCAT.

Section 76(1)(a-h) of the Act deals with how a consumer can enter a claim on the Motor Car Traders Guarantee Fund (the Fund) requesting compensation for a breach of the Act by a LMCT under the very comprehensive terms of reference that are legislated within the Act. Consumers can seek compensation from the Fund if a LMCT is found to be in breach.

It is here that these vulnerable consumers may have been let down by those charged with the responsibility of representing them.

That refusal to seek, or even consider, compensation under the Act via the Fund in the very first instance should be of concern to all stakeholders – including the clients of the consumer groups, the Victorian Government, VCAT itself, community, and industry. VACC highlights four areas of concern related to this lack of knowledge and how it exposes stakeholders. These include:

1. That it has denied a speedy, free, and non-complex potential for remedy for the clients that the consumer groups represent.
2. That it perpetuates the myth that buying from an LMCT is a bad idea. The consumer protection afforded to the clients cited in the consumer group case studies may have been more than likely awarded a refund or compensation if they had made a claim via the Fund (that is if they did indeed buy from a LMCT). It appears those clients of the consumer groups may not have been advised of the option to claim on the Fund and instead advised that VCAT was their best avenue.
3. That if unsuccessful in claiming on the Fund, VCAT could be the fallback scenario for the consumer.
4. From an industry perspective it would help identify any serial LMCT offenders to the regulator and that the appropriate measures could be taken if deemed appropriate.

VACC supports LMCTs who do the right thing. Further, VACC supports correct, constant, and public compliance and enforcement of LMCTs. We also support the prospect of the regulators 'catching LMCTs doing the right thing'.

Next steps

I implore you to read the report "The LMCT presence in the car retailing market and VCAT. A VACC report."

The VACC CEO has written to the Minister for Consumer Affairs and the Attorney General to put the LMCT position to the Victorian Government that the private to market must be investigated to ascertain where they acquire their stock, the infiltration of organised crime to that sector and the consumer detriment that exists in that sector.

VACC will call upon its LMCT members if a political campaign is to be mounted. Motor vehicle taxes collected in Victoria for 2021 were \$2.967 billion and are forecasted to be \$3.352 billion in 2023-2024. All collected at no cost to the government.

I'm sure we are all up for the fight, time for LMCTs to say 'enough'.

Michael McKenna MBA MBLaw
Industry Policy Advisor

^[1] VACC has assumed that the 6.49 per cent is assumed to consist of 100 per cent of consumer claims being for a faulty vehicle. Of course, this will not be the case as many issues may be related to contractual obligations or disputes or issues where certain Australian Consumer Law provisions, such as a being fit for a previously advised intended purpose, may ensue.