

Dealers must understand their indemnity position against manufacturers if claims are made under mislabelling representations.

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

Members of all VACC Licensed Motor Car Trader (LMCT) divisions should be aware of a recent Supreme Court of Victoria (the Court) decision in the case *Mitsubishi Motors Australia Ltd and North Park Berwick Investments Pty Ltd v Zelko Begovic*.^[1] The court upheld a decision that the appellants contravened Section 18 of the Australian Consumer Law ('the ACL') that the fuel consumption figures displayed on a brand-new 2016 Mitsubishi Triton were misleading and deceptive.

The respondent had relied on the contents of the label affixed to the windscreen of the new vehicle when making the decision to purchase the Triton.^[2]

Significance

VACC has received advice from prominent automotive retail industry lawyer, Evan Stents, Partner HWL Ebsworth Lawyers, that the result of this case may have far reaching consequences for many vehicles sold locally that have been required to display a Fuel Consumption Label as mandated from 2001.

The fuel consumption labelling standard ([ADR81/02](#)) requires a model specific fuel consumption label to be placed on the windscreens of all new vehicles up to 3.5 tonne gross vehicle mass.^[3] The Department of Infrastructure, Transport, Regional Development and Communications advise that the display of such a label is only required on new vehicles (i.e., not used) and in relation to pure electric vehicles and externally chargeable hybrid electric vehicles produced on or after 1 March 2011.^[4]

In the advice provided by HWL Ebsworth, the significance for LMCTs is demonstrated by key factors impacting on exposure to liability for misleading or deceptive conduct within the automotive industry. These include that:

- liability for misleading or deceptive conduct can apply to *both* manufacturers and dealers.
- section 18 of the ACL does not require an intent to mislead or deceive; and
- the ACL applies to representations whether or not they are required under law.^[5]
- The reported Supreme Court decision can be accessed at this [link](#).

It has been advised that the Court will determine the remedy for Mitsubishi's contravention of section 18 of the ACL for misleading or deceptive conduct (along with costs) at a date to be advised. ^[6] However, please be advised that there may be a number of class actions that may potentially arise out of this case if there is evidence that a vehicle did not perform to a stated fuel consumption figure on the label.

What should dealers do in the interim?

HWL Ebsworth advise that dealers need to consider their indemnity position against manufacturers if any consumer claims are made.

As the ADR81/02 is specifically relevant to new vehicles Dealers should also consider how used and demonstrator and service demonstrator stock is presented to consumers.

VACC thanks HWL Ebsworth for the advice. You are encouraged to contact [Evan Stents at HWL Ebsworth lawyers](#) (or your own legal firm) for legal advice on this or other automotive related issues.

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[1] [2021] VSC 252.

[2] *Begovic v Northpark Berwick Investments Pty Ltd* [2019] VCAT 772 [81] ('VCAT Decision').

[3] Department of Infrastructure ,Transport ,Regional Development and Communications ,Fuel Consumption Labe (2018)<https://www.infrastructure.gov.au/vehicles/environment/fuel_consumption_label.aspx> [1].

[4] Ibid.

[5] Evan Stents and Adam Den, *(Mis)Labelling: Manufacturer and Dealer Liable for Misrepresentations* (HWL Ebsworth Lawyers, 2021) [4].

[6] Ibid [12].