

Bulletin

Industry Divisions



Reference No. risks for franchise dealers and the consumer/mm-8-23

Date: 07/09/2023

The rise of the Vehicle On-Seller: A guideline to the risks for franchise dealers and the consumer

Over the past two years, the supply chain of new vehicles to dealers from overseas based manufacturers was severely disrupted. In that post pandemic period and long after, VACC received many calls from new car, motorcycle, farm machinery and commercial vehicle franchise dealers who were experiencing a marked increase in the number of individuals purchasing new vehicles from franchise dealers with the sole intention of on-selling these vehicles at inflated prices.

Some individuals even sell their allocated vehicle delivery slot in the ordering pipeline.

Those individuals are referred to as 'on-sellers'.

What is the issue?

The issues connected with on-sellers causes much frustration for franchise dealers.

Quite often a dealer will have a clause in their franchise, agency or dealer agreement prohibiting them from retailing a vehicle to a person they 'suspect' or 'ought reasonably to know' is an on-seller or re-seller. In many instances an on-seller is never identified by a franchise dealer. Usually, the franchise dealers first knowledge of the purchaser being an on-seller is identified when the sold vehicle ends up on an on-line classified's portal or an irate end user arrives at a dealership with an issue with the vehicle that they purchased from the on-seller. More often than not it is not good news for the consumer who invariably discovers they either paid too much for their vehicle or that the vehicle had standard factory fittings such as tyres and rims removed and substituted for interior fittings.

The issues can be further compounded for the dealer when the manufacturer demands that the dealer terminate a contract of sale between a franchise dealer and an on-seller. This is unfair on the franchise dealer and leaves them in a precarious position. Putting pressure on the franchise dealer network is not the appropriate approach.

What has VACC done to assist dealers with this issue?

The Chair of the Victorian Automobile Dealers Association (VADA) has instructed VACC to develop the guidance document ['The rise of the Vehicle On-Seller: A guideline to the risks for franchise dealers and the consumer.'](#)

The rise of the vehicle on-seller:
a guideline to the risks for franchise
dealers and the consumer.

September 2023



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The guidance focuses on:

- Facets for the dealer to consider when dealing with the on seller, consumer, and manufacturer in the event of dispute.
- Various strategies that can be employed by industry to push back on the menace of on-sellers.
- A set of advice for dealers to consider including in their contracts of sale that may assist dealers in averting a potential adverse action being brought against them.
- Advice on standard form contracts and how they will interact with the Unfair Contract Terms (UCT) that will take effect from 10 November 2023.

It is important to note that the guidance is not, and should not, be considered as legal advice. Your best outcome should be arrived at with the assistance of your own legal advisors.

Other

VACC has been provided with various examples of terms placed in dealer contracts of sale by dealers that are aimed at advising the purchaser that they can not on-sell the vehicle. From what VACC has been provided, many of these various terms inserted by dealers are ambitious at best, or so unfair that any court would hold them to be unfair (and therefore inoperable) under the new UCT regime.

Dealers should note that VACC has conducted a legal review of its industry supplied New and Used Vehicle Contracts of Sale to test them for UCTs. Those new version contracts of sale will be available for members to purchase from VACC in mid-October 2023.

Members can contact me, Michael McKenna via mmckenna@vacc.com.au with any queries.

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