

Do you deliver demonstrator vehicles for the purpose of test drives off-premises or sell vehicles to a consumer away from your LMCT premises?

Over recent months, there has been an increased level of VACC Licensed Motor Car Traders (LMCT) member queries regarding how a LMCT should treat an 'off-trade-premises' negotiation with a consumer, and the process for delivering a demonstrator vehicle to a consumer's residence or workplace for the purpose of a test drive. There are many intricacies that are involved for the consumer, LMCT and staff by participating in such a trade.

It is an important question and issue. If not treated correctly, such a transaction can lead to a LMCT breach of the *Motor Car Traders Act 1986* (Vic) (the Act) and/or *Motor Car Traders Regulations 2018* (Vic)(the Regulations).

There are other considerations, including the welfare of your dealership staff, which must be taken seriously by dealership executive management.

What has caused the level of off-trade-premises transactions queries to escalate?

The level of query has escalated as LMCTs continue to change their trading styles, often applying sales techniques adopted (with great success) during the pandemic's restricted trading period. Added to this, is the current day scenario where consumers are more demanding and, in some instances, where on-line classified providers are encouraging consumers to request LMCTs provide a demonstration drive, trade valuation, discussion of finance scenarios or deliver a new purchase to the consumer at an off-premises location.

All of those services and innovations make sense, however, LMCTs must be sure to follow specific obligations under the Act and Regulations.

What is an off-trade premises agreement?

Under Section (S) 43(8) (a)-(b) of the Act, an off-trade-premises sales agreement means an agreement for the sale of a motor car that is made or entered into in the presence of the purchaser (or a person acting on behalf of the purchaser) and the LMCT (or a person acting on behalf of the LMCT) located at:

- (a) a private residence other than a private residence which is the business premises of the LMCT or the person acting on behalf of the LMCT; or
- (b) the workplace of the purchaser— unless the agreement was entered into at either of those premises at the request of the purchaser..

In simple terms an 'off-trade-premises' sale is one in which a consumer agrees to purchase the vehicle whilst they are at home, or at their workplace, and they did not ask for the agreement to be signed at their home or workplace.

VACC's advice to LMCTs who participate in delivering a demonstrator vehicle to a consumer's place of residence, or other location, is to be alert to whether your dealership is inadvertently entering into a contract of sale for the purchase of the vehicle, whilst providing those off-premises services. Whilst the Act permits such a transaction to occur, there are considerations for the LMCT to be aware should the agreement for sale be ended by a consumer.

What is the key element for LMCTs to be alert to in an off-trade-premises deal?

For those dealers conducting an off-premises trade agreement of a new vehicle, the cooling-off provisions change.

S 43 (4)(a) (i)-(ii) of the Act stipulates if an agreement for the sale of a motor car has been terminated in accordance with this section -

- (a) the vendor under the agreement must pay to the purchaser all money received by the vendor less—
 - (i) in the case of an agreement for the sale of a used motor car or an off-trade-premises sales agreement of any motor car, the sum of \$100 or 1 per cent of the purchase price under the agreement (whichever is the greater); or
 - (ii) in the case of an agreement for the sale of **a new motor car** that is not an off-trade-premises sales agreement, the sum of \$400 or 2 per cent of the purchase price under the agreement (whichever is the greater).

This means if you conduct an off-premises-agreement for a new vehicle and the consumer elects to end their contract within the 3 clear business days, as announced in S 43 of the Act, then the consumer is entitled to a refund of all the money they paid to the LMCT, less \$100 or 1 per cent of the purchase price, whichever is the greater.

Other considerations VACC urges dealership executive teams to consider

- The welfare of staff when delivering a vehicle to a consumer's residence, business or other off-premises location for the purpose of a demonstration drive must be front of mind.
- The collection, recording and verification of fees, as well as an adequate identification process of the consumer before delivering a vehicle to a consumer's residence, business, or other off-premises location for the purpose of a demonstration drive or off-premises-agreement.
- Ensuring that any trade evaluation is subject, in writing, to a final inspection at a dealership where the full suite of mechanical tools is available to the dealer to provide a thorough inspection. This would include not delivering a new vehicle until a thorough vehicle examination has taken place. VACC members have been victim, in too many instances, where consumers have traded (or attempted to trade) vehicles that are not of an acceptable quality (for instance no Diesel Particulate Filter or damaged undercarriage). This has resulted in an unsuspecting dealer being left in an invidious position.

Other key considerations under the Act and Regulations

- New vehicle dealers should refer to Schedule 3 of the Regulations for further information as to what elements are prescribed to be included in an agreement of sale for a new motor vehicle.
- Used vehicle traders should refer to Schedule 2 of the Regulations for further information as to what elements are prescribed to be included in an agreement of sale for a used vehicle.
- For the purposes of the Regulation 23, a demonstrator vehicle that is registered is considered to be a used motor vehicle.

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