

VACC Guidance for LMCTs on how to deal with cooling-off, deposits and unlawful contract terminations by consumers

For some time, Victorian LMCTs have sporadically used or ignored their legislative right to enforce the cooling-off provisions as announced in the Motor Car Traders Act 1986 (Vic).

As well, many LMCTs have run into issues and have been uncertain as to what the LMCT rights are when a consumer unlawfully terminates a contract of sale for a new or used motor vehicle and whether they can retain the whole or part of a deposit (as well as what damages action they can pursue for that unlawful breach).

Typically, LMCTs who have refunded deposits, not taken cooling-off fees or allowed a contract to be illegally terminated by a consumer have done so under the guise of:

- not wanting to have an argument with a consumer
- not being able to deliver a new or used motor vehicle within a stipulated set of conditions or circumstances, or
- having staff who are not informed, nor confident enough, as to what the dealership rights may be.

Conversely, LMCTs may have not refunded deposits to consumers who have entered into contracts of sale with LMCTs under the belief that they (the LMCT) have the right to keep the deposit in all circumstances, which is not necessarily correct.

This approach by staff is alarming and can cost the business owner much resource.

To assist LMCTs VACC has created the [attached](#) guidelines for you to refer to.

VACC Guidance for Licensed Motor Car Traders

How to deal with cooling-off procedures, deposits and unlawful contract terminations by consumers.

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The purpose of the guidelines is to:

1. Remind Victorian Licensed Motor Car Traders (LMCT) of their (i.e., LMCTs) rights when enforcing cooling-off provisions as announced under the *Motor Car Traders Act 1986 (Vic)* (the Act).¹
2. Advise Victorian LMCTS on how to treat deposits paid by consumers before they have taken delivery of a vehicle, and how that deposit is to be treated if the purchaser reneges on the deal.
3. Advise Victorian LMCTS on what options they have when a consumer unlawfully terminates or breaches a contract of sale for a new or used vehicle.
4. Advise LMCTs on how to not impinge on consumers' rights under relevant sections of the Act, Australian Consumer Law and other consumer facing law.

Important note for LMCTs

The contents of this document do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such.

You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.

Dealer support

VACC will support your dealership in 2023 by conducting dealer briefings relating to the '**VACC Guidance for LMCTs on how to deal with cooling-off, deposits and unlawful contract terminations by consumers**' as well as how to handle issues relating to manufacturer indemnity for LMCTs when dealing with an ACL issue. The briefings will be held in all metro and country regions in Victoria or as an alternative, I can conduct a briefing at your dealership before, during or after business hours. These briefings will be provided at no cost to VACC members.

If you would like me to contact you regarding such a briefing on-site at your dealership please provide your details on this [link](#).

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