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## Important changes to Motor Car Traders Regulations effective 1 September 2018

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### Motor Car Traders (Fees) Regulations and Motor Car Traders (General) Regulations

Members are advised that the current Motor Car Traders Regulations 2008 will expire on 1 December 2018. A remake of the Regulations has taken place and VACC has been advised that the commencement date for these Regulations is 1 September 2018.

VACC has met with Consumer Affairs Victoria (CAV) to discuss the contents of a Regulatory Impact Statement (RIS) compiled by CAV. The RIS sets out options for remaking fees prescribed by the current Regulations [You can view the RIS by taking this link.](#)

VACC provided a submission in response to the RIS on behalf of its LMCT members. You can view the VACC submission [by taking this link.](#)

### What are the key changes?

In accordance with current drafting practice, the new Regulations will be split into two parts

- [The Motor Car Traders \(Fees\) Regulations 2018](#) will replace the fee-related aspects of the Motor Car Traders Regulations 2008, and the;
- [The Motor Car Traders \(General\) Regulations 2018](#) will replace the other aspects of the Motor Car Traders Regulations 2008.

The fees will be prescribed in the proposed Motor Car Traders (Fees) Regulations 2018 (the proposed Regulations).

VACC has been advised that the options set out in the RIS have been assessed against the following objectives:

- ensuring that the fees charged will meet the efficient costs of administering the Act, including paying out compensation claims from the Motor Car Traders Guarantee Fund (the Fund)
- ensuring that there are sufficient cash reserves in the Fund to pay out the average amount of claims each year over a period of ten years, as well as sufficient funds to meet the costs of any future increase in enforcement activity
- ensuring that the fees charged will not create incentives for traders to act in a manner inconsistent with the aims of the Act or the protection of consumers, and
- ensuring that the fees charged will be fair and reasonable.

It is the view of the Government that new Regulations meet the objectives above.

### A snapshot review of the new Regulations reveals the following key changes:

- A VACC request for a license fee reduction for low-risk and low-volume traders, was considered but rejected due to the difficulty in establishing a scheme that determined risk in a fair and defensible way, and because they would be unlikely to achieve the objectives above.
- Broadly, initial and permission application fees will rise. The net increase in fees is negligible (less than 1 per cent in total), and the annual fees have dropped slightly.
- Annual license fees will fall slightly.
- Importantly, new car dealerships should be aware of a note explaining that a 'demonstrator vehicle' is considered a used vehicle has been inserted into the proposed Motor Car Trader (General) Regulations 2018. For clarity, all demonstrator vehicles must have a Form 4 attached and be entered in your dealings book.
- An obligation of the LMCT to inform the Business Licensing Authority (BLA) of the appointment of a manager of the motor car trading business. This change would be communicated in the same way as any other prescribed change to the BLA. CAV advise the requirement is needed to ensure that update requirements accord with the initial disclosure requirements a trader must make on an application to become licensed. There is also a new requirement to advise the BLA of a change in the majority shareholding of a body corporate that is a licensee or if a person ceases or is appointed as a company secretary that is a licensee.

### Changes to prescribed forms from 1 September 2018

There have been some changes made to the following forms that will come into effect on September 1, 2018.

These changes are:

- A Contract for Sale of New Motor Vehicle will now be referred to as 'Agreement for sale of new motor car'
- A Contract for Sale of Used Motor Vehicle will now be referred to as 'Agreement for sale of used motor car'
- A window display form currently referred to as Form 5 USED MOTOR CAR PRICE DATA SHEET 'will now be referred to as 'Form 4 Part A – Used Motor Car Warranty & Part B – Used Motor Car Notice'
- The current version Form 8 '**statement of defects pursuant to section 55 of the Motor Cars Traders Act 1986 in a used motor car offered for sale**' will now be referred to as a Form 5 '**statement of defects in a used motor car offered for sale**'.

VACC objected to the changes to prescribed documents in our submission. VACC argued that each time a change in forms ensued there was potentially a cost to dealerships to adapt Dealer Management Systems and that industry had been exposed to 3 different changes to prescribed forms since 2008. CAV was also advised that industry would take some time to adapt to the new requirements.

CAV has informed VACC that our concerns regarding the new forms have been noted, and that CAV have liaised with the Office of the Chief Parliamentary Counsel in relation to this. Parliamentary Counsel have advised that, because there have not been substantial changes to the content of the forms, the updated forms will fall within sections 30 and 53 of the *Interpretation of Legislation Act 1984*.

Advice from CAV further informs that Section 53 provides that strict compliance with a prescribed form is not required for it to be sufficient in law. Section 30 provides that where a subordinate instrument is repealed and re-made with modifications, anything done under the repealed subordinate instrument will be taken to be done under the re-made instrument. **Therefore, LMCTs can continue using the current forms (and current numbering) to use up their current stock, until substantive changes are made to their content. However, traders should plan to use the new forms and numbering as soon as they are able.**

The commencement date for both sets of regulations has now been settled. The regulations will commence on 1 September 2018.

### What should LMCTs do to prepare for the changes?

Members who utilise the electronic version of the VACC Contracts of Sale under licence, and who have agreements with VACC that are currently financial, will have a new release of the prescribed documents updated on-line by 1 September 2018.

If traders are using manual versions of VACC stationery they are encouraged to run down that stock. VACC will advise when new versions of the prescribed window display and agreements of sale will be available.

Please feel free to call me with any queries.

Regards

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